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MORRISON & FOERSTER LLP
250 W. 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

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

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

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

**RESCAP LIQUIDATING TRUST AND THE RESCAP BORROWER CLAIMS TRUST'S
OBJECTION TO CLAIM NOS. 112, 114, 416, AND 417 FILED BY ERLINDA ABIBAS
ANIEL, FERMIN SOLIS ANIEL, AND MARC JASON ANIEL**



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**TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:**

The ResCap Liquidating Trust (the “Liquidating Trust”) established pursuant to the terms of the Chapter 11 plan (the “Plan”) confirmed in the above captioned bankruptcy cases (the “Chapter 11 Cases”) [Docket No. 6065], as successor in interest to the above captioned debtors (collectively, the “Debtors”) and the ResCap Borrower Claims Trust (the “Borrower Trust”, and with the Liquidating Trust, the “Trusts”), established pursuant to the terms of the Plan, as successor in interest to Debtors with regard to Borrower Claims (as defined below), hereby submit this objection (the “Objection”) seeking to disallow and expunge, without leave to amend, (i) proof of claim nos. 112 and 114 (the “Estiva Property Claims”) filed by Erlinda Abibas Aniel against Debtors Executive Trustee Service (“ETS”) and GMAC Mortgage, LLC (“GMACM”), respectively, for \$1,085,000.00 and (ii) claim nos. 416 and 417 (the “Aniel Property Claims” and together with the Estiva Property Claims, the “Claims”) filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel (the “Claimants”) against ETS and GMACM, respectively, for an unliquidated amount, pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3007(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), on the grounds that the Claims fails to state a basis for liability against the Debtors.¹ The Trusts seek entry of an order substantially in the form annexed hereto as Exhibit 1 (the “Proposed Order”) granting the requested relief. In support of the Objection, the Trusts submit the declaration of Kathy Priore, Associate Counsel for the ResCap Liquidating Trust (the “Priore Declaration”), attached hereto as Exhibit 2, and the

¹ The Trusts reserve all of their rights to object on any other basis to the Claims not set forth in this Objection, and the Trusts reserve all of their rights to amend this Objection should any further bases come to light.

declaration of Norman S. Rosenbaum of Morrison & Foerster LLP, counsel to the Liquidating Trust and the Borrower Trust (the “Rosenbaum Declaration”), attached hereto as Exhibit 3.

PRELIMINARY STATEMENT

1. The Trusts examined the Claims and the statements and exhibits submitted in support thereof. The asserted basis for liability for the Claims are “Pending Lawsuit,” which relates to two lawsuits filed by the Claimants against the Debtors concerning two parcels of real property in which the Claimants assert an interest. The parcels of property each secured a separate loan, both of which were serviced by the Debtors. Upon review of the Claims and the Diligence Responses (defined herein), the Trusts conducted an exhaustive examination of the Debtors’ books and records to assess the allegations made in the Claims. The Trusts determined that the Claimants’ allegations of liability have no validity, and the Claimants have failed to sufficiently allege how the Debtors’ actions amount to liability for the stated causes of action.

2. Specifically, the Claimants fail to support their allegations that GMACM did not have the authority to commence foreclosure proceedings against the Claimants when both of the loans were substantially delinquent. As discussed herein, the relevant loans were properly transferred to HSBC (or HSBC Bank) as Trustee. As subservicer for HSBC/HSBC Bank, GMACM properly acted within its authority when it commenced foreclosure proceedings. While the Claimants attempt to assert liability under various statutory and common law causes of action, all of the Claimants’ causes of action are premised on the incorrect assertion that HSBC or HSBC Bank was not the owner of the relevant loan and as a result, the Debtors did not have authority to act as subservicer/executive trustee with respect to the loans, and the Claimants fail to demonstrate

any wrongdoing by the Debtors. The Debtors' actions while servicing the loans and during the foreclosure proceedings complied with both state and federal law. Accordingly, for the reasons discussed herein and in the Priore Declaration, the relief sought in the Objection should be granted with respect to the Claimants.

JURISDICTION, VENUE, AND STATUTORY PREDICATE

3. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007(a).

BACKGROUND

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

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

7. On June 9, 2012, the Claimants filed claim no. 112 asserting a \$10,000.00 general unsecured claim and a \$1,075,000.00 secured claim against Debtor Executive Trustee Services ("ETS") and claim no. 114 asserting the same against Debtor

GMAC Mortgage, LLC (“GMACM”). See Estiva Property Claims, attached to the Priore Declaration as Exhibit A. On August 20, 2012, the Claimants filed claim nos. 416 and 417 asserting unliquidated claims against GMACM and ETS, respectively. See Aniel Property Claims, attached to the Priore Declaration as Exhibit B.

8. On March 21, 2013, this Court entered an order approving procedures for the filing of objections to proofs of claim filed in these Chapter 11 Cases [Docket No. 3294] (the “Procedures Order”). The Procedures Order includes specific protections for Borrowers² and sets forth a process for the Debtors to follow before objecting to certain categories of Borrower Claims (the “Borrower Claim Procedures”).

9. The Debtors sent Request Letters to certain Borrowers, including the Claimants, requesting additional documentation in support of their claims. See Priore Declaration ¶ 6. The Request Letters state that the claimant must respond within 30 days with an explanation that states the legal and factual reasons why the claimant believes he is owed money or is entitled to other relief from the Debtors, and the claimant must provide copies of any and all documentation that the claimant believes supports the basis for his claim. The Request Letters further state that if the claimant does not provide the requested explanation and supporting documentation within 30 days, the Debtors may file a formal objection to the claimant’s claim, seeking to have the claim disallowed and permanently expunged. A Request Letter was sent to the Claimants and the Trusts received responses on July 11 and July 13, 2013, which are attached to the Priore Declaration as Exhibit C. See Priore Declaration ¶ 6.

² As used herein, the terms “Borrower” and “Borrower Claims” have the meanings ascribed to them in the Plan (defined below).

10. On December 11, 2013, the Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the “Confirmation Order”) approving the terms of the Chapter 11 plan, as amended (the “Plan”), filed in these Chapter 11 cases [Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred [Docket No. 6137].

11. The Plan provides for the creation and implementation of the Liquidating Trust, which, among other things, is “authorized to make distributions and other payments in accordance with the Plan and the Liquidating Trust Agreement” and is responsible for the wind down of the affairs of the Debtors’ estates. See Plan, Art. VI.A-D; see also Confirmation Order ¶ 22. Pursuant to the Confirmation Order and the Plan, the Liquidating Trust was vested with broad authority over the post-confirmation liquidation and distribution of the Debtors’ assets. See generally, Confirmation Order ¶¶ 26, 30, 48; Plan, Art. VI.

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

RELIEF REQUESTED

13. The Trusts file this Objection, pursuant to Bankruptcy Code section 502(b) and Bankruptcy Rule 3007, and seeks entry of an order, substantially in the form annexed hereto as Exhibit 1, disallowing and expunging the Claims with prejudice from the Claims Register in its entirety.

OBJECTION

14. A filed proof of claim is “deemed allowed, unless a party in interest ... objects.” 11 U.S.C. §502(a). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law....” 11 U.S.C. 502(b)(1). Furthermore, the burden of persuasion once an objection refutes an essential allegation of the claim is on the holder of a proof of claim to establish a valid claim against a debtor by a preponderance of the evidence. Feinberg v. Bank of N.Y. (In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010).

A. Background Facts

Claims 112 and 114 – The Estiva Property Claims

15. On March 22, 2007, Raul Estiva and Corazon Estiva (the “Estivas”) obtained a loan from non-Debtor MortgageIT in the amount of \$1,000,000.00 (the “Estiva Loan”), evidenced by a note (the “Estiva Note”) and secured by a deed of trust (the “Estiva Deed of Trust”) on property located at 801 Foothill Drive, San Mateo, CA 94402 (the “Estiva Property”). Copies of the Estiva Note and the Estiva Deed of Trust are attached to the Priore Declaration as Exhibit D and Exhibit E, respectively. The Estiva Deed of Trust

named Mortgage Electronic Registration Systems, Inc. (“MERS”) as the nominee for the lender and the lender’s successors and assigns and the beneficiary of the instrument. See Estiva Deed of Trust. The Claimants’ names were not on the Estiva Deed and were not identified as co-borrowers on the Estiva Note. See Estiva Note and Estiva Deed, see also Estiva Property Action Complaint (defined below), attached to Estiva Property Action Claims.

16. GMACM was the subservicer of the Estiva Loan. GMACM subserviced the loan from March 2007 until the foreclosure sale on March 10, 2011. The Estiva Loan was transferred to HSBC Bank U.S.A. as Trustee for DALT 2007-AO3 (“HSBC”) on or about May 1, 2007. The assignment of the Estiva Deed of Trust (the “Estiva Assignment”) was recorded on July 16, 2009, a copy of which is attached to the Priore Declaration as Exhibit F.³

17. On December 17, 2008, Debtor ETS Services, LLC recorded a notice of default (the “Estiva 2008 Notice of Default”), because the Estivas had not made a payment since September 8, 2008. A copy of the Estiva 2008 Notice of Default is attached to the Priore Declaration as Exhibit G. Also, on December 17, 2008, prior to recording the Estiva 2008 Notice of Default, ETS recorded a substitution of trustee (the “Estiva 2008

³ California law does not require the assignment of a deed of trust to be recorded prior to initiating foreclosure proceedings, which is why the assignment was not recorded until foreclosure proceedings were commenced against the Estiva Property. “California’s nonjudicial foreclosure scheme which is set forth in Civil Code sections 2924 through 2924k, provides a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust.” Gomes v. Countrywide Home Loans, Inc., 121 Cal. Rptr. 3d 819, 823 (Cal. Ct. App. 2011), quoting Moeller v. Lien, 30 Cal Rptr. 2d 777, 784 (Cal. Ct. App. 1994). “These provisions cover every aspect of the exercise of the power of sale contained in a deed of trust.” Gomes at 823, quoting I.E. Assocs. v. Safeco Title Ins. Co., 702 P.2d 596, 598 (Cal. 1985). Nothing in this statutory scheme requires the recording of assignments of the deed of trust. Rather, to commence foreclosure “[t]he trustee, mortgagee, or beneficiary, or any of their authorized agents...” must file the notice of default. Cal. Civ. Code § 2924(a)(1).

Substitution of Trustee”) in the San Mateo County Recorder’s Office. A copy of the Estiva 2008 Substitution of Trustee is attached to the Priore Declaration as Exhibit H. The Estivas failed to cure their default, and on March 20, 2009, a Notice of Trustee’s Sale (the “Estiva 2009 Notice of Trustee Sale”) was recorded in the San Mateo County Recorder’s Office. A copy of the Estiva 2009 Notice of Trustee Sale is attached to the Priore Declaration as Exhibit I. The sale was continued because the Estivas requested a loan modification; however, the Estivas never submitted a loan modification application. See Priore Declaration ¶ 9.

18. On February 25, 2009, Fermin Solis Aniel and Erlinda Abibas Aniel filed a chapter 11 bankruptcy petition in the Northern District of California. See Aniel Bankruptcy Docket, attached to the Priore Declaration as Exhibit J. On their amended schedules, the Claimants listed a 50% interest in the Estiva Property. See Bankruptcy Schedules, attached to the Priore Declaration as Exhibit I. The chapter 11 was converted to a chapter 7 on August 4, 2010 and the Claimants received a discharge on December 2, 2010. See Discharge Order, attached to the Priore Declaration as Exhibit L. On November 2, 2010, prior to the discharge, the trustee in the Claimant’s bankruptcy case abandoned the Claimants’ purported interest in the Estiva Property. See Order Authorizing Abandonment of Property, attached to the Priore declaration as Exhibit M.

19. A second Notice of Trustee Sale was recorded on December 31, 2010 (the “Estiva 2010 Notice of Trustee Sale”) in the San Mateo County Recorder’s Office. A copy of the Estiva 2010 Notice of Trustee Sale is attached to the Priore Declaration as Exhibit N. The 2010 Notice of Trustee Sale set the sale of the Estiva Property for January

27, 2011. At the auction the sale was postponed and continued to February 9, 2011. See Priore Declaration ¶ 11.

20. On February 2, 2011, the Claimants filed a civil action (the “Estiva Property Action”) in the California Superior Court, County of San Mateo (the “Superior Court”) against, inter alia, GMACM, ETS, HSBC, and MERS (the “Estiva Property Action Defendants”) (*Aniel v. ETS Services, LLC et al*, No. CIV502857). See Estiva Property Action Docket, attached to the Priore Declaration as Exhibit O; see also Estiva Property Action Complaint, attached to the Estiva Property Claims.

21. On February 3, 2011, two months after the Claimants received their bankruptcy discharge, a grant deed was recorded in the San Mateo County Recorder’s Office that purported to transfer a 1% interest in the Estiva Property to each of the Claimants. A copy of the Estiva 2011 Grant Deed is attached to the Priore Declaration as Exhibit P.

22. On March 7, 2011, the Estiva Property Action Defendants, including the Debtors, responded by demurrer on grounds that the Claimants lacked standing to bring the Estiva Property Action and that the Claimants failed to sufficiently plead the causes of action in the complaint. See Estiva Property Action Docket.

23. On March 10, 2011, the Estiva Property reverted to HSBC as Trustee at a public auction. The trustee’s deed upon sale in favor of HSBC as Trustee was recorded on April 21, 2011. A copy of the trustee’s deed upon sale is attached to the Priore Declaration as Exhibit Q. HSBC sold the property to a third party by grant deed dated

February 29, 2012 and recorded on March 29, 2012, a copy of which is attached to the Priore Declaration as Exhibit R.

24. On June 8, 2011, the Superior Court sustained the demurrer without leave to amend as to all causes of action on the grounds that the Claimants lacked standing to pursue the Estiva Property Action because they were not borrowers under the Estiva Loan (the “Superior Court Decision”). See Superior Court Decision, attached to the Priore Declaration as Exhibit S.

25. On February 2, 2012, the Claimants filed their notice of appeal of the Superior Court Decision. See Estiva Property Action Docket. The appeal was stayed pending the Debtors’ bankruptcy case.

Claims 416 and 417 – The Aniel Property Claims

26. On June 4, 2007, Erlinda Aniel refinanced an existing loan from Mortgage IT in the amount of \$2,000,000.00 (the “Aniel Loan”), evidenced by a note (the “Aniel Note”). The Aniel Loan was secured by a deed of trust (the “Aniel Deed of Trust”), executed by all of the Claimants, on property located at 75 Tobin Clark Drive, Hillsborough, California (the “Aniel Property”). Copies of the Aniel Note and the Aniel Deed of Trust are attached to the Priore Declaration as Exhibit T and Exhibit U, respectively. The Aniel Deed of Trust named Mortgage Electronic Registration Systems, Inc. (“MERS”) as the nominee for the lender and the lender’s successors and assigns and the beneficiary of the instrument. See Aniel Deed of Trust.

27. On or around July 1, 2007, the Aniel Loan was transferred to HSBC Bank U.S.A. as Trustee for DALT 2007-AO5 (“HSBC Bank”). The assignment of the Aniel

Deed of Trust (the “Aniel Assignment”) was recorded on August 24, 2009, a copy of which is attached to the Priore Declaration as Exhibit V.

28. GMACM acted as the subservicer of the Aniel Loan. See Aniel Payment Letter, attached to the Priore Declaration as Exhibit W. GMACM subserviced the Aniel Loan from the origination until servicing was transferred to Ocwen Financial Corporation (“Ocwen”) on February 16, 2013. See Priore Declaration ¶ 20.

29. On September 29, 2008, ETS recorded a substitution of trustee (the “Aniel 2008 Substitution of Trustee”) in the San Mateo County Recorder’s Office, noting MERS as the beneficiary of the Aniel Deed of Trust. A copy of the Aniel 2008 Substitution of Trustee is attached to the Priore Declaration as Exhibit X. Also on September 29, 2008 (after the Aniel 2008 Substitution of Trustee was recorded), ETS recorded a notice of default (the “Aniel 2008 Notice of Default”), as the Claimants had not made a payment since June 17, 2008. A copy of the Aniel 2008 Notice of Default is attached to the Priore Declaration as Exhibit Y.

30. On November 3, 2008, the Debtors spoke to the Claimants’ authorized third party via phone, at which time the authorized party requested a workout package for a possible loan modification. See Aniel Servicing Notes, attached to the Priore Declaration as Exhibit Z. On November 19, 2008, the Debtors received a short sale package from the Claimants. See id. On December 8 and December 17, 2008, the Claimants’ authorized representative called in requesting an update of the loan modification and the Debtors advised that the loan was under review for a short sale. See id. At that time, the Claimants’

representative stated that the Claimants would like to be reviewed for a loan modification.
See id.

31. The Claimants did not cure their default, and on January 2, 2009, a Notice of Trustee's Sale (the "Aniel 2009 Notice of Trustee Sale") was recorded in the San Mateo County Recorder's Office. A copy of the Aniel 2009 Notice of Trustee Sale is attached to the Priore Declaration as Exhibit AA.

32. The Debtors received a workout package on January 16, 2009. See Aniel Servicing Notes. This package was incomplete, and a ten day missing items letter was mailed to the Claimant on January 16, 2009. See id. The Debtors did not receive a completed package from the Claimants. See id. The Debtors also spoke with the Claimants' authorized third party via phone on January 19, 2009, at which time the Debtors advised that party the Debtors cannot approve the Aniel Loan for modification because the financial information provided by the Claimants indicated the Claimants were overextended by \$4,460.94 a month. See id.

33. On February 25, 2009, the Claimants filed a chapter 11 bankruptcy petition in the Northern District of California. See Aniel Bankruptcy Docket. The chapter 11 was converted to a chapter 7 proceeding on August 4, 2010 and the Claimants received a discharge on December 2, 2010. See Aniel Discharge Order. On November 2, 2010, the Aniel Property was abandoned because the Trustee determined that it had inconsequential value to the estate because the property was encumbered by the security interest of the owner of the Aniel Loan. See Trustee's Response to Motion to Compel, attached to the Priore Declaration as Exhibit BB.

34. On February 1, 2011, HSBC Bank assigned the Aniel Deed to GMACM. See 2011 Assignment, attached to the Priore Declaration as Exhibit CC. On July 1, 2011, a Notice of Rescission of Notice of Default was recorded because the Aniel 2008 Notice of Default was too old and the Debtors needed to start the foreclosure process over. See Rescission of Default, attached to the Priore Declaration as Exhibit DD.

35. Because of the continued delinquency of the Aniel Loan, GMACM attempted to call the Claimants on August 17, 18, and 19, 2011; however, the Debtors never were contacted by the Claimants. See Priore Declaration ¶ 27.

36. On October 11, 2011, GMACM sent a letter to the Claimants providing its phone numbers for its loss mitigation department and the Department of Housing and Urban Development, as well as a link to GMACM's internet site for further information regarding options to avoid foreclosure. See October 11 No Contact Letter, attached to the Priore Declaration as Exhibit EE. After receiving no response from the Claimants, the Debtors attempted to call six additional times on January 25, 26, and 30, 2012 in order to assess the Claimants' financial situation and explore options to avoid foreclosure. See id. Each time there was no answer. See id. After again receiving no response, the Debtors sent another letter, on February 14, 2012, providing the same information as was provided in the October letter. See February 14 No Contact Letter, attached to the Priore Declaration as Exhibit FF. There is nothing in the Debtors' books and records to indicate these letters were returned as undeliverable.

37. On April 27, 2012, ETS recorded another substitution of trustee (the "Aniel 2012 Substitution of Trustee") in the San Mateo County Recorder's Office. A copy

of the Aniel 2012 Substitution of Trustee is attached to the Priore Declaration as Exhibit GG. On April 27, 2012, after still receiving no communication from the Claimants, the Debtors recorded a notice of default (the “Aniel 2012 Notice of Default”). At the time, the Claimants had not made a payment since June 17, 2008. A copy of the Aniel 2012 Notice of Default is attached to the Priore Declaration as Exhibit HH. The Claimants failed to cure their default, and on August 1, 2012, a Notice of Trustee’s Sale (the “Aniel 2012 Notice of Trustee Sale”) was recorded in the San Mateo County Recorder’s Office. A copy of the Aniel 2012 Notice of Trustee Sale is attached to the Priore Declaration as Exhibit II. The Sale was scheduled for August 27, 2012. See Aniel 2012 Notice of Trustee Sale.

38. The Claimants made a request to GMACM to validate their debt (the “Debt Validation Request”), on or around May 10, 2012. The Debtors received the letter on May 17, 2012 and acknowledged the request on May 17, 2012, which was within the required five business day period. See Acknowledgement Letter, attached to the Priore Declaration as Exhibit JJ. On June 8, 2012, the Debtors responded to the letter. See Response Letter, attached to the Priore Declaration as Exhibit KK.

39. On August 9, 2012, the Claimants filed a civil action (the “Aniel Property Action”) in the United States District Court for the Northern District of California (the “District Court”) against, inter alia, GMACM and ETS (the “Aniel Property Action Defendants”) (*Aniel v. GMAC Mortgage, LLC et al*, No. 4:12-cv-04201-SBA). See Aniel Property Action Docket, attached to the Priore Declaration as Exhibit LL; see also Aniel Property Action Complaint. On August 28, 2012, the Debtors filed a notice of bankruptcy in the Aniel Property Action. On October 15, 2012, the Debtors then filed an answer. See Aniel Action Docket.

40. On August 15, 2012, the Claimants filed an *ex parte* application for a temporary restraining order to halt the trustee's sale. On September 11, 2012, the Debtors filed an opposition to that application. On September 26, 2012, the District Court denied the application on grounds that the Claimants were not likely to succeed on the merits and did not raise serious questions going to the merits. A copy of the District Court Order is attached to the Priore Declaration as Exhibit MM. A foreclosure sale has not yet been completed on the Aniel Property, and upon information and belief, the Claimants remain in the home. See Priore Declaration ¶ 32.

B. Legal Argument

Claims 112 and 114 – The Estiva Property Claims

1. The Claimants Lack Standing to Bring Any Cause of Action Related to the Foreclosure

41. The Claimants lack standing to bring these claims. As discussed above, the Claimants are not borrowers under the Note or the Deed of Trust, and they did not acquire any interest in the property until over two years after the non-judicial foreclosure process commenced with the Estiva 2008 Notice of Default. A nearly identical set of facts occurred in Anolik v. Bank of Am. Home Loans, No. 2:11-cv-00406-MCC-JFM, 2011 WL 1549291, *3 (E.D. Cal. Apr. 21, 2011). Anolik involved a plaintiff who was contesting the foreclosure of a property that he claimed to have an interest in prior to the commencement of foreclosure proceedings. See id. The Plaintiff was not the borrower under the Deed of Trust, and the Plaintiff did not record a grant deed until after foreclosure proceedings had commenced. See id. The court held that, since the plaintiff was not a borrower, had not assumed the obligations under the loan in writing (as required by the deed

of trust), or acquired any interest in the property until after the commencement of the foreclosure proceedings, he did not have standing to bring a cause of action contesting the foreclosure sale. See id.

42. The facts in this case are nearly identical to the facts in Anolik. Here, the Claimants are not and never were borrowers under the Estiva Deed of Trust, and have never had any interest in the Estiva Loan. While the Claimants assert that they acquired a 50% interest in the Estiva Property as early as February 2009 (which was after the Estiva 2008 Notice of Default commenced the foreclosure proceedings), the Claimants did not record a grant deed transferring to them a 1% interest in the Estiva Property until February 2011. Therefore, as in Anolik, they did not acquire any interest in the Estiva Property until after the non-judicial foreclosure proceeding had commenced. As a result, the Claimants do not have standing to contest the foreclosure of the Estiva Loan. And since all of the causes of action in the Estiva Property Action are implicitly tied to the foreclosure, the Claimants do not have standing as to bring the Estiva Property Claims.

43. Additionally, even if the Claimants were the borrower under the Estiva Deed of Trust, they would still lack standing to bring any of the causes of action. In California, a plaintiff challenging any irregularity in a foreclosure sale must tender the amount due. See Abdallah v. United Savs. Bank, 51 Cal. Rptr. 286, 292 (Cal. Ct. App. 1996) (“[A]ppellants are required to allege tender of the amount of the secured indebtedness in order to maintain any cause of action for irregularity in the sale procedure ... and have failed to do so.” (internal citations omitted)) Without such a tender, there is no standing to sue for wrongful foreclosure, or any cause of action that is implicitly integrated with the sale. See Arnolds Mgmt. Corp. v. Eischen, 205 Cal. Rptr. 15, 18 (Ct. App. 1984) (affirming

sustaining a demurrer without leave to amend on claims of fraud and negligence, as well as wrongful foreclosure, related to defective notice of foreclosure sale).

44. Here, all of the causes of action are implicitly tied to the foreclosure. The Claimants do not allege that they tendered the amount due under the Estiva Loan, and therefore, lack standing to bring any of their causes of action. On this basis alone, Claims 112 and 114 should be disallowed and expunged.

2. HSBC was the Owner of the Loan and ETS Was Properly Appointed as Substitute Trustee

45. All of the Claimants' causes of action are premised on the allegation that the Estiva Assignment was invalid because it was recorded after the alleged closing date of the securitization trust, and therefore HSBC was not the true owner of the Estiva Loan. The Claimants further allege the Debtors did not have standing to either collect payments on the Estiva Loan or to initiate foreclosure proceedings on behalf of HSBC, and ETS was not properly appointed as substitute trustee.

46. The Estiva Note was properly endorsed from Mortgage IT to HSBC. See Estiva Note; see also Cal. Com. Code §§ 3205(b), 3301. As a result, HSBC was the owner of the loan at the time the foreclosure was commenced, and GMACM, as subservicer for HSBC, had standing to initiate the foreclosure. In addition, the deed of trust was properly assigned from MERS, as beneficiary of MortgageIT, to HSBC. See 2009 Estiva Assignment. While the assignment of the Estiva Deed was not recorded until 2009, the Estiva Note was transferred to HSBC in May 2007, and as a result, the date that the Estiva Assignment was recorded is of no significance. See Cal. Civ. Code § 2936; Macklin v. Deutsche Bank Nat'l Trust Co. (In re Macklin), 495 B.R. 8, 13 (Bankr. E.D. Cal. 2013) ("If

one party receives the note and another receives the deed of trust, the holder of the note prevails regardless of the order in which the interests were transferred.” (citation omitted)); In re Choudhuri, No. 13-30873 (DM), 2013 WL 6818482, at *2 (Bankr. N.D. Cal. Dec. 25, 2013) (“Under California law, a deed of trust does not have an identity separate and apart from the note it secures.”); Tatum v. Litton Loan Servicing LP, No. B248732, 2015 WL 81906, at *5 (Cal. Ct. App. Jan. 6, 2015) (“For more than a century California law has been clear the transfer of a debt instrument automatically carries with it the security for the debt; thus, a separate assignment of the deed of trust or other security instrument is unnecessary when the debt itself has been properly transferred.”)

47. Additionally, the Claimants contest the validity of the Estiva Assignment because it was signed by an alleged “robo-signer” and that Jeffrey Stephan could not execute the document as a vice president of MERS because he was an employee of GMACM. See Estiva Property Action Complaint ¶¶ 39, 58. However, these allegations are conclusory and lack factual support, and therefore are insufficient to state a claim. See Baldoza v. Bank of Am., N.A., NO. C-12-05966 (JCS), 2013 WL 978268, at *13 (N.D. Cal. Mar. 12, 2013) (“District courts have consistently refused to find that a plaintiff can state a claim on the basis of a conclusory allegation of robo-signing, absent some factual support.”) Moreover, the Claimants have provided no reason that Mr. Stephan’s employment with GMACM prevented him from signing an assignment as a vice president of MERS. Mr. Stephan was appointed a Vice President of MERS pursuant to a MERS Corporate Resolution. See MERS Corporate Resolution, attached to the Supplemental Declaration as Exhibit NN.

48. The Claimants also assert that MERS did not have the authority to assign the deed to HSBC. See Estiva Property Action Complaint ¶¶ 21, 71. This allegation is premised on the argument that MERS, as nominee for MortgageIT, could not have transferred the Note after MortgageIT dissolved. However, MERS, as the beneficiary of the Estiva Deed of Trust and nominee for the lender, had the right to assign the Estiva Deed of Trust. The Estiva Deed of Trust states:

Borrower understands and agrees that MERS holds only legal title to the interests granted by the 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 interest, 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.

Courts in California have found that deeds of trust with the exact same language provide MERS with the right to assign the deed of trust. See Herrera v. Fed. Nat'l Mortg. Ass'n., 141 Cal. Rptr. 3d 326, 333 (Cal. Ct. App. 2012); Siliga v. Mortg. Elec. Registration Sys., Inc., 161 Cal. Rptr. 3d 500, 507 (Cal. Ct. App. 2013) ("The authority to exercise all of the rights and interests of the lender necessarily includes the authority to assign the deed of trust.") (citation omitted). Therefore, the Claimants have failed to supply any issue with the Estiva Assignment based on MERS acting as the assignor.

49. Furthermore, the Claimants were not a party to the assignment and therefore lack standing to contest it. In California, borrowers lack standing to challenge a foreclosure on claims of improper securitization. See Rivac v. Ndex West LLC, No. C13-1417 (PJH), 2013 WL 6662762, at *6 (N.D. Cal. Dec. 17, 2013) ("Where a plaintiff alleges that a document is void due to robo-signing, yet does not contest the validity of the underlying debt, and is not a party to the assignment, the plaintiff does not have standing to contest the alleged fraudulent transfer"); Keshtgar v. U.S. Bank, N.A., 172 Cal. Rptr. 3d 818

(Cal. Ct. App. 2014) (finding that a borrower did not have standing to challenge the assignment of a mortgage that allegedly occurred after the closing date of the trust); Elliot v. Mortg. Elec. Registration Sys., Inc., No. 12-cv-4370 (YGR), 2013 WL 1820904, at *2, (N.D. Cal. Apr. 30, 2013); Sandri v. Capital One, NA (In re Sandri), 501 B.R. 369 (Bankr. N.D. Cal. 2013) (finding that a borrower does not have standing to challenge the assignment when the borrower cannot show the alleged improper assignment interfered with her ability to pay); Patel v. Mortg. Elec. Registration Sys., Inc., No. 13-cv-1874 (KAW), 2013 WL 4029277, at *6 (N.D. Cal. Aug. 6, 2013) (finding that a borrower does not have standing to assert a breach of a pooling and servicing agreement); Aniel v. GMAC Mortg., LLC, No. 12-04201 (SBA), 2012 WL 5389706, at *5 (N.D. Cal. Nov. 2, 2012) (plaintiff borrowers lacked standing to challenge assignment of deed of trust based on noncompliance with pooling and service agreements). Since the Aniels are not a party to the PSA, nor are they a beneficiary, they lack standing to contest the assignment on the grounds that it violates the PSA.

50. Finally, the Claimants assert that ETS was not properly appointed as substitute trustee when it filed the Estiva 2008 Notice of Default. See Estiva Property Action Complaint ¶ 34. However, as detailed in ¶ 16 *supra*, ETS was properly appointed as substitute trustee when the Estiva 2008 Substitution of Trustee was recorded on December 17, 2008, prior to the Estiva 2008 Notice of Default being recorded that same day.⁴

⁴ The Estiva 2008 Substitution Trustee was recorded as document number 2008-135230. See Estiva 2008 Substitution of Trustee. The Estiva 2008 Notice of Default was recorded after this, as document number 2008-135231. See Estiva 2008 Notice of Default.

51. Since all of the causes of action rely on the incorrect allegations that HSBC was not the owner of the Estiva Loan and ETS was not properly appointed as substitute trustee, all of the causes of action for Claims 112 and 114 fail on this basis alone.

3. Causes of Action Would Still Fail

52. Assuming *arguendo* that there was an issue with the assignment or ETS' appointment and that the Claimants had standing to bring the Estiva Property Action Complaint, the Claimants causes of action still fail to provide a basis for an allowed claim against the Debtors.

a. Rosenthal Act

53. The Claimants allege that the Debtors violated the California Rosenthal Act by claiming an interest in the Estiva Deed of Trust through an allegedly fraudulent assignment, attempting to foreclose on the Estiva Property, and making an allegedly misleading statement that ETS is the trustee under the Estiva Deed of Trust. See Estiva Property Action Complaint ¶ 53.

54. As an initial matter, the Claimants cannot bring a cause of action under the Rosenthal Act because they are not, nor have they ever been, borrowers under the Estiva Note, and therefore there was never an attempt to enforce the Estiva Loan against them.

55. Additionally, the Claimants' cause of action under the Rosenthal Act fails because proceeding against a secured property on a mortgage is not a debt collection activity, and therefore, foreclosures are not subject to the Rosenthal Act. See, e.g., Puttkuri v. Recontrust Co., No. 08-CV-1919 (WQH), 2009 WL 32567, at *2 (S.D. Cal. Jan. 5, 2009) ("The Complaint fails to state a claim under the [Rosenthal Act] because Plaintiff

challenges the lawfulness of foreclosure proceedings on her home pursuant to a deed of trust.”); Ines v. Countrywide Home Loans, Inc., No. 08-cv-1267-WQH, 2008 WL 4791863, at *3 (S.D. Cal. Nov. 3, 2008) (“The Court finds that the Complaint arises out of the allegedly unlawful foreclosure on Plaintiff’s property pursuant to a deed of trust, which does not fall within the meaning of the [Rosenthal Act].”); Wilson v. JPMorgan Chase Bank, NA, No. 2:09-cv-863, 2010 WL 2574032, at *10 (E.D. Cal. June 25, 2010) (dismissing a Rosenthal Act claim where the plaintiff did not identify “any debt collection actions of defendants that fall outside the normal foreclosure process...”). Here, the Debtors’ actions that the Claimants allege were wrongful were all part of the normal foreclosure process, such as assigning a deed of trust, entering a notice of substitution of trustee, and foreclosing on the property. Therefore, the Claimants have failed to state a cause of action under the California Rosenthal Act.

b. *Fraud*

56. The Claimants assert a cause of action for fraud based on the allegations that the Debtors misrepresented HSBC as the owner of the Estiva Note, that the Claimants relied on this purported misrepresentation during their bankruptcy proceeding, and that the misrepresentation adversely affected their reorganization efforts. See Estiva Property Action Complaint ¶ 62. The Claimants also assert that ETS knowingly filed a notice of trustee sale without filing a notice of default.

57. The requisite elements of a fraud claim are (1) misrepresentation; (2) knowledge or falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damages. See Agric. Ins. Co. v. Superior Court of Los Angeles Cnty., 82 Cal. Rptr. 2d 594, 603 (Cal. App. Ct. 1999). As an initial matter, the fraud claim fails because, as discussed in

¶¶ 44-48 *supra*, the Debtors did not misrepresent HSBC as the true owner of the Estiva Loan. The Claimants' fraud claim also fails because the Claimants have not shown that they relied on the purported misrepresentation. They merely allege that not knowing the true owner of the Estiva Loan harmed them in their bankruptcy proceeding. However, the Claimants fail to explain with any reasonable degree of specificity why a loan to which they are not a party is material to their bankruptcy proceeding, and how purportedly not knowing who owned the loan interfered with their reorganization efforts.

58. Additionally, any purported misrepresentations made during the bankruptcy and in the notice of default and notice of sale were communications made in a judicial or quasi-judicial proceeding by litigants to achieve the objects of the litigation, and as a result, were privileged pursuant to Cal. Civ. Code section 47(b) and cannot form the basis of any tort action. See Jacob B. v. Cnty. of Shasta, 154 P.3d 1003, 1011 (Cal. 2007) (stating that the litigation privilege bars all tort causes of action that arise out of communication of litigants as part of a judicial or quasi-judicial proceeding); Nilsen v. Neilson (In re Cedar Funding, Inc.), 419 B.R. 807, 825 (9th Cir. B.A.P. 2009) ("A bankruptcy proceeding is a judicial proceeding within the scope of California's litigation privilege."); Mayen v. Bank of America N.A., No 14-CV-03757-JST, 2015 WL 179541, at *5 (N.D. Cal. Jan. 14, 2015) (holding that documents recorded as part of a non-judicial foreclosure proceeding were privileged communication protected by Cal. Civ. Code § 47). Since the Claimants' bankruptcy was a judicial proceeding, and the notice of default was part of a foreclosure proceeding, the litigation privilege applies.

59. The Claimants' fraud claim, as it relates to ETS, also fails because, as demonstrated in ¶ 16 *supra*, ETS recorded a notice of default on December 17, 2008, prior

to either notice of Trustee's sale being recorded. Furthermore, the Claimants fail to show how this allegation results in a misrepresentation by the Debtors, or how the Claimants were harmed by ETS' alleged actions.

c. *Wrongful Foreclosure*

60. The Claimants' wrongful foreclosure claim is mostly based on allegations previously discussed herein⁵, and therefore fails for the same reasons. The Claimants also assert a wrongful foreclosure claim based on the allegation that the Estiva Loan was sold to different investors and that as a result their debt to the original investor was satisfied. See Estiva Property Action Complaint ¶ 70. However, the Claimants do not provide any evidence to support this allegation, and the Debtors' books and records show that the Estiva Loan was not satisfied at the time that either foreclosure was initiated.

61. As a result, the Claimants' allegations fail to state a cause of action or wrongful foreclosure.

d. *Unlawful Business Practices*

62. "A court may not allow plaintiff to plead around an absolute bar to relief simply by recasting the cause of action as one for unfair competition." Chabner v. United of Omaha Life Ins. Co., 225 F.3d 1042, 1048 (9th Cir. 2000) (citation omitted); see also Rubio v. Capital One Bank (USA), N.A., 572 F. Supp. 2d 1157, 1168 (C.D. Cal. 2008) (since plaintiff's TILA claim failed, plaintiff's claim alleging unfair business practices

⁵ The Claimants' wrongful foreclosure claim is based on allegations that (i) ETS was not authorized to act as substitute trustee at the time it filed the Estiva 2008 Notice of Trustee Sale and the Estiva 2009 Notice of Trustee Sale, which was addressed in ¶¶ 49 and 58 *supra*; (ii) the Debtors falsely represented Jeffrey Stephan as Vice President of MERS, addressed in ¶ 46 *supra*; and (iii) MERS did not have authority to assign the Aniel Deed of Trust, discussed in ¶ 47 *supra*.

under California State law predicated on TILA likewise failed). Courts have made clear that California's Business and Professions Code § 17200 (the "UCL") cannot be used as an end-run around the requirements of other statutes. Glenn K. Jackson Inc. v. Roe, 273 F.3d 1192, 1203 (9th Cir. 2001) (dismissing a UCL claim where underlying negligence and fraud claims were insufficient as a matter of law); see also Krantz v. BT Visual Images, L.L.C., 107 Cal. Rptr. 209, 219 (Cal. Ct. App. 2001) (the viability of a UCL claim stands or falls with the antecedent substantive causes of action).

63. The Claimants predicate their UCL claim on the same theories that provide the basis for each of their other causes of action. See Estiva Property Action Complaint ¶¶ 73-77. Indeed, their UCL claim is a mere recasting of their other claims. As all of the Claimants' causes of actions fail—as do the faulty theories upon which they are predicated—so, too, does the Claimants' UCL claim.

4. The Claimants Have Not Identified Unlawful Activity

64. A claim under the UCL asserting an unlawful business practice requires an underlying violation of law. Therefore, any defense to the predicate claim is a defense to the alleged violation of the UCL. See People v. Duz-Mor Diagnostic Lab., Inc., 80 Cal. Rptr. 2d 419, 431 (Cal. Ct. App. 1998) (a defense to the underlying offense is a defense under the UCL); see also Glenn K. Jackson Inc. v. Roe, 273 F.3d at 1203 (dismissing section 17200 claim where underlying negligence and fraud claims were insufficient as a matter of law). As discussed herein, GMACM and ETS acted lawfully in their respective roles as subservicer and substitute trustee in connection with the Estiva Loan. As demonstrated herein, each of the Claimants' causes of action fails against the

Debtors, and the Claimants' UCL claim is predicated on the same conduct which accounts for the Claimants' other claims. Consequently, this claim, too, must fail.

5. The Claimants Have Not Alleged Unfair Activity

65. A business practice is considered "unfair" if it threatens to violate or violates the policy or spirit of an anti-trust law or otherwise significantly threatens or harms competition. Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 973 P.2d 527, 544 (Cal. 1999). However, if the customer has a meaningful market choice, *i.e.*, other vendors that offer reasonably available alternatives to the defendant's product, the challenged procedures cannot be considered "unfair." Dean Witter Reynolds, Inc. v. Sup. Ct. of Alameda Cnty., 259 Cal. Rptr. 789 (Cal. Ct. App. 1989). The Claimants fail to allege with particularity any claim that the Debtors engaged in an unfair business practice that, as provided by the UCL, "violates established public policy or . . . is immoral, unethical, oppressive or unscrupulous." McKell v. Wash. Mut., Inc., 49 Cal. Rptr. 3d 227, 240 (Cal. Ct. App. 2006). As such, the Claimants cannot allege the Debtors' actions are "unfair" under § 17200.

6. The Claimants Fail to Allege Fraudulent Conduct Under the UCL

66. A business practice is considered "fraudulent" within the meaning of § 17200 if the "public is likely to be deceived." Mass. Mut. Life Ins. Co. v. Sup. Ct. of San Diego Cnty., 119 Cal. Rptr. 2d 190, 195 (Cal. Ct. App. 2002). "The determination as to whether a business practice is deceptive is based on the likely effect such practice would have on a reasonable consumer." McKell v. Wash. Mut., Inc., 49 Cal. Rptr. 3d at 239 (citing Lavie v. Procter & Gamble Co., 129 Cal. Rptr. 2d 486, 494 (Cal. Ct. App. 2003)).

67. As set forth in subsection (b) herein, the Claimants fail to support the elements of any fraud claim against the Debtors. Therefore, the Claimants fail to allege fraudulent conduct under the UCL. Based on the foregoing, the Objection should be sustained as to the Claimants' UCL claim.

68. Additionally, the Claimants lack standing because they have not alleged that they have suffered an injury in fact or lost money or property as a result of the alleged "unfair competition," and therefore do not have standing to bring a claim under § 17200. See Cal. Bus. & Prof. Code, §17204; Californians for Disability Rights v. Mervyn's, LLC, 138 P.3d 207, 209 (Cal. 2006).

a. *Injunctive Relief*

69. The Claimants assert a claim for a preliminary injunction seeking a restraining order to stop the foreclosure sale. See Estiva Property Action Complaint ¶¶ 78-90. This claim fails because it is moot, given that the foreclosure sale occurred on April 21, 2011. Furthermore, a claim for injunctive relief is not an independent cause of action. See McDowell v. Watson, 69 Cal. Rptr. 2d 692, 695 (Cal. Ct. App. 1997). Therefore, because the Claimants' other claims are defective, the claim for injunctive relief cannot stand on its own.

b. *Quiet Title*

70. Finally, the Claimants assert a claim for quiet title, which is also without merit. See Estiva Property Action Complaint ¶¶ 92-94. While the Claimants have shown that they obtained a grant deed on the property on February 3, 2011, this was after the Estivas had entered into the Estiva Loan, and a notice of default had been recorded. As

a result, any property interest the Claimants obtained was subject to the valid lien created by the Estiva Deed of Trust.

71. Additionally, in California, in order to maintain a cause of action to quiet title, the mortgagor must allege tender or ability to tender the amounts admittedly borrowed. See Horton v. Cal. Credit Corp. Ret. Plan, 835 F. Supp. 2d 879, 893 (S.D. Cal. 2011) (citing California law). Since the Claimants neither demonstrate that they have discharged the Estiva Loan nor demonstrate the ability to discharge the Estiva Loan, they cannot maintain a cause of action for quiet title.

72. For these reasons, the Trusts submit that the Claimants have failed to demonstrate any liability of the Debtors' estates related to the Estiva Loan, and as a result, claim numbers 112 and 114 should be disallowed and expunged.

Claims 416 and 417 – The Aniel Property Claims

7. HSBC Bank Is the Owner of the Loan and ETS Was Properly Appointed as Substitute Trustee

73. Similar to the Estiva Property Action Complaint, all of the Claimants' causes of action in the Aniel Property Action Complaint are partially premised on the allegations that ETS was not properly appointed as substitute trustee and that the Aniel Assignment was invalid because it was recorded after the purported closing of the securitization trust, and therefore, HSBC Bank was not the true owner of the Aniel Loan. See Aniel Property Action Complaint ¶¶ 30-40. As a result, the Claimants assert that the Debtors did not have standing to either collect payments on the Aniel Loan or to initiate

foreclosure proceedings on behalf of HSBC Bank, and ETS was not properly appointed as substitute trustee.

74. As noted in ¶ 26 *supra*, the note was properly endorsed from Mortgage IT to blank. See In re Macklin, 495 B.R. at 13 n. 4 (“A holder of a note can enforce that note . . . when that note has been endorsed in blank or to bearer.”); see also Cal. Com. Code §§ 3205(b), 3301. As a result, HSBC Bank, as the holder of the Aniel Note, was the owner of the loan at the time the foreclosure was commenced, and GMACM, as subservicer for HSBC Bank, had standing to initiate the foreclosure.

75. Additionally, the Claimants contest the validity of the Aniel Assignment because it was signed by an alleged “robo-signer” Janine Yamoah. See Aniel Property Action Complaint ¶ 44. However, these allegations are conclusory and lack factual support, and, as discussed in ¶ 46 *supra*, are insufficient to state a claim. Moreover, as in the Estiva Property Action Complaint, the Claimants have provided no reason that Ms. Yamoah’s employment with GMACM prevented her from signing an assignment as a vice president of MERS. Ms. Yamoah was appointed a Vice President of MERS pursuant to a MERS Corporate Resolution. See MERS Corporate Resolution.

76. Furthermore, the Claimants were not a party to the assignment and lack standing to contest it. See ¶ 48 *supra*. Since the Claimants are not a party to the PSA, nor are they a beneficiary, they lack standing to contest the assignment of the Aniel Loan on the grounds that it violates the PSA.

77. Finally, the Claimants assert that ETS was not properly appointed as Substitution Trustee. However, as detailed in ¶ 29 *supra*, ETS was properly appointed as

substitute trustee when the Aniel 2008 Substitution of Trustee was recorded on September 29, 2008, prior to the Aniel 2008 Notice of Default being recorded that same day.⁶ ETS also properly recorded the Aniel 2012 Substitution of Trustee following the assignment of the Aniel Deed of Trust to GMACM.

78. As a result, all of the causes of action that rely on the inaccurate allegations that HSBC Bank was not the owner of the Aniel Loan or that ETS was not properly appointed as substitute trustee must fail on these bases alone.

8. Causes of Action Would Still Fail

79. Assuming *arguendo* that there was an issue with the assignment, the Claimants' causes of action would still fail.

a. Wrongful Foreclosure

80. In addition to the allegations regarding the invalid assignment of the Aniel Deed of Trust, Claimants also base their claim for wrongful foreclosure on the general allegation that "the Defendants conspired to conceal information regarding the dischargability of the loan, and fraudulently executed the recorded documents in order to foreclose the property." See Aniel Property Action Complaint ¶ 73. The Claimants do not allege what this purportedly concealed information was, or what documents were fraudulently executed. Therefore, the Claimants have failed to sufficiently plead a cause of action for wrongful foreclosure on these grounds.

⁶ The Aniel 2008 Substitution of Trustee was recorded at document number 2008-108476. See Aniel 2008 Substitution of Trustee. The Aniel 2008 Notice of Default was recorded after this, at document number 2008-108477. See Aniel 2008 Notice of Default.

81. In the Aniel Property Action Complaint, the Claimants also allege that the foreclosure was improper because the Debtors failed to respond to the Debt Validation Request. See Complaint ¶ 74. As discussed in ¶ 37 *supra*, the Debtors received the Debt Validation request on May 17, 2012 sent a letter acknowledging the request the same day, and responded to the request on June 8, 2012, as required by 12 U.S.C. § 2605(e). Therefore, the Claimants have failed to show that the Debtors are liable for wrongful foreclosure based on failure to respond to the Debt Validation Request.

82. The Aniels also allege that the foreclosure was wrongful because the Debtors never engaged, or even attempted to engage, in communications with the Claimants to discuss options to avoid foreclosure before proceeding with the foreclosure action, and that as a result the Debtors did not comply with California Civil Code §§ 2923.5 and 2924. See Aniel Property Action Complaint ¶¶ 67-69. Those sections require that a mortgage servicer may not record a notice of default until the:

Mortgage servicer contacts the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency.

Cal. Civ. Code §§ 2923.5, 2924.

83. In Mabry v. Superior Court of Orange Cnty., 110 Cal. Rptr. 3d 201 (Cal. Ct. App. 2010), the Court of Appeal interpreted the duties imposed on lenders pursuant to section 2923.5, concluding that “[t]he right conferred by section 2923.5 is a

right to be contacted to ‘assess’ and ‘explore’ alternatives to foreclosure prior to a notice of default.” Mabry at 213. However, because federal lending law occupies the entire field of “processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages,” the court concluded that: “to the degree that the words ‘assess’ and ‘explore’ can be narrowly or expansively construed, they must be narrowly construed in order to avoid crossing the line from state foreclosure law into federally preempted loan servicing.” Id. at 232. Therefore, “any ‘assessment’ must necessarily be simple – something on the order of, ‘why can’t you make your payments?’ . . . and [e]xploration must be necessarily limited to merely telling the borrower the traditional ways that foreclosure can be avoided.” Id.

84. As noted in ¶ 36 *supra*, the Debtors tried numerous times to call the Claimants in August 2011 and January 2012 to explore the Claimants’ options to avoid foreclosure. The Debtors also sent letters to the Claimants on October 11, 2011 and February 14, 2012, providing the Claimants with the toll-free number for HUD in order to locate a HUD-certified counseling office. See October 11 Letter and February 14 Letter. As a result, the Debtors attempted to assess and explore the Claimants’ options, and therefore complied with California Civil Code §§ 2923.5 and 2924.

85. The Claimants also assert that ETS violated California Code of Civil Procedure Section “2936a(b)” (presumably meant to be section 2936). It is unclear what the Claimants are referring to with this allegation, as this statute merely states that the assignment of a debt generally carries with it the security, and the Claimants do not allege any action on the part of ETS that would violate this statute. As a result, the Claimants have failed to sufficiently support this allegation.

b. Fair Debt Collection Practices Act Violation

86. The Claimants also assert a cause of action against the Debtors under the Fair Debt Collection Practices Act (“FDCPA”). See Aniel Property Action Complaint ¶¶ 78-91. However, the Claimants’ FDCPA claim cannot be sustained against GMACM. For purposes of the FDCPA, the definition of “debt collector” contains an exemption for an entity, such as a mortgage servicer, that collects debts that were “not in default at the time [they were] obtained” by the entity. 15 U.S.C. § 1692a(6)(F)(iii).

87. As noted in ¶¶ 27-28 *supra*, GMACM was acting as the subservicer of the Aniel Loan as of the origination on June 4, 2007, and the Claimants defaulted on their loan in September of 2008. As a result, GMACM is not a “debt collector” for purposes of the FDCPA, and the Claimants’ claim for violation of the FDCPA fails. See Parillon v. Fremont Inv. & Loan, No. L-09-3352, 2010 WL 1328425 (D. Md. Mar. 25, 2010) (dismissing claim for alleged violation of FDCPA on ground that “[FDCPA] exempts from liability entities attempting to collect their own debts, mortgagors, and mortgage servicing companies)” (citing Scott v. Wells Fargo Home Mortg. Inc., 326 F. Supp. 2d 709, 717 (E.D. Va. 2003)); Flores v. Deutsche Bank Nat’l Trust Co., No. DKC-10-0217, 2010 WL 2719849, at *6 (D. Md. Jul. 7, 2010) (dismissing claim for alleged violation of the FDCPA on ground that “creditors, mortgagors, and mortgage servicing companies are not debt collectors and are statutorily exempt from liability under the FDCPA.”) (citation omitted); Bever v. CitiMortgage, Inc., No. 1:11-CV-01584, 2014 WL 1577250, at *15 (E.D. Cal. Apr. 18, 2014) (“Even if a creditor obtains debt that is already in default, for the FDCPA to apply, a plaintiff must also allege that the debt was acquired solely for facilitating collection.” (citation omitted)); Gibbs v. SLM Corp., 336 F. Supp. 2d 1, 13-14 (D. Mass.

2004), aff'd, No. 05-1057, 2005 U.S. App. LEXIS 29462 (1st Cir. Aug. 23, 2005) (granting 12(b)(6) motion to dismiss claim because loan servicer was exempt from definition of debt collector under FDCPA); Glazer v. Chase Home Fin. LLC, 704 F.3d 453, 457 (6th Cir. 2013) (servicer need not also be owner of debt to be exempt from definition of debt collector under the FDCPA so long as it serviced the loan prior to the date of default).

c. *RESPA*

88. The Claimants assert a cause of action under the Real Estate Settlement Procedures Act (RESPA) based on the Debtors' alleged failure to respond to the Debt Validation Request. See Aniel Property Action Complaint ¶¶ 93-99. As detailed in ¶ 37 *supra*, the Debtors properly responded to the Debt Validation Request, and therefore cannot be liable under RESPA.

d. *Set Aside Trustee's Sale/Declaratory Relief*

89. The Claimants assert that they are entitled to declaratory relief based on the conclusory and inaccurate allegation that the debt and lien on the property are fully satisfied and therefore GMACM and ETS did not have any right to enforce the Aniel Deed of Trust. See Aniel Property Action Complaint ¶¶ 104. However, the Claimants provide no evidence of this alleged satisfaction. The Claimants' bankruptcy proceeding did not satisfy or discharge the Debtors' lien on the Aniel Property. As a result, the Debtors were entitled to enforce the lien under the terms of the Aniel Deed of Trust.

90. The Claimants also seek relief to set aside the trustee's sale and declaratory relief on the same grounds as the wrongful foreclosure claim, including that the documents were fraudulent and robo-signed, HSBC Bank does not have legal interest in the

property, and the Debtors did not comply with Cal. Civ. Code § 2923.5. See Aniel Property Action Complaint ¶¶ 114-115. For the same reasons as stated in ¶¶ 75-80 *supra*, this cause of action must also fail.

91. The Claimants also allege that ETS was not properly designated as substitution trustee under California law because they did not receive a copy of the Substitutions of Trustee. See Aniel Property Action Complaint ¶ 116. However, both the 2009 and the 2012 Substitution of Trustee were recorded prior to the Notices of Default. See Cal. Civ. Code § 2934a(b) (requiring the mailing of a copy of the substitution trustee if it is effected after the notice of default has been recorded). As a result, the Debtors were not required to mail a notice of substitution to the Claimants.

e. *Quiet Title*

92. The Claimants' cause of action for quiet title fails for numerous reasons. In order to assert a cause of action for quiet title in California, the plaintiff must allege:

(1) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any; (2) The title of the plaintiff as to which a determination of this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession. (3) The adverse claims to the title of the plaintiff against which a determination is sought; (4) The date of which the determination is sought. If the determination is sought as of a date other than the date of the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought; and (5) A prayer for the determination of the title of the plaintiff against the adverse claims. California Code Civ. Proc. § 761.020.

In addition, the plaintiff seeking to quiet title in the face of foreclosure must allege tender or an offer of tender of the amount borrowed. See Rosenfeld v. JPMorgan Chase Bank, N.A., 732 F. Supp. 2d 952, 975 (N.D. Cal. 2010) (“A basic requirement of an action to quiet title is an allegation that plaintiffs are the rightful owners of the property, i.e., that they have satisfied their obligations under the deed of trust.” (citation omitted)).

93. Here, the Debtors do not, nor have they ever, had any interest in the Note. At one point, the Debtors held the deed of trust, but a deed of trust “carries none of the incidents of ownership of the property, other than the right to convey upon default on the part of the debtor in payment of his debt.” Hamilton v. Bank of Blue Valley, 746 F.Supp.2d 1160, 1177 (E.D. Cal. 2010) (citation omitted). Therefore, the allegations that any Debtor holds or has held an adverse claim to title to the Aniel Property cannot be supported. See Diep v. Wells Fargo Bank, No. 14-452-JLS, 2014 WL 5089420 (C.D. Cal. Oct. 9, 2014) (holding that defendant cannot hold a claim adverse to the plaintiff because all that was held was the deed of trust). Additionally, the Claimants have not alleged that they have tendered or offered to tender the amount borrowed, and therefore have not shown that their obligations under the Aniel Deed of Trust have been satisfied. As a result, the Claimants cannot support a cause of action for quiet title.

f. *Fraudulent Concealment*

94. The Claimants assert a cause of action for fraudulent concealment premised on allegations that HSBC Bank was not the owner of the Aniel Loan and that the Debtors did not respond to the Debt Validation Request, which have previously been discussed herein and refuted. Specifically, the Claimants allege that ETS refused to disclose an account of the alleged debt and filed a notice of default when it knew “that GMAC and

HSBC do not and did not have a legal, equitable, and enforceable interest in the Note and Deed.” See Aniel Property Action Complaint ¶¶ 136. The Claimants also allege that GMACM stated it had authority to modify the Aniel Loan “knowing that they did not have any authority to modify the loan and that HSBC had no legal, equitable, or enforceable interest in the Note and Deed.” See Aniel Property Action Complaint ¶ 138. The Claimants specifically allege that they were told by GMACM “that they would be approved for a loan modification as long as they stopped making payments on the mortgage because GMACM had authority to modify the loan.” This cause of action is premised entirely on the allegation that GMACM misrepresented its **authority** to modify the loan, rather than any requirements for a loan modification.

95. The elements of a cause of action for fraudulent concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff sustained damage.” See Bank of Amer. Corp. v. Superior Court of Los Angeles Cnty., 130 Cal. Rptr. 3d 504, 509-10 (Cal. Ct. App. 2011).

96. As previously demonstrated, HSBC Bank was the owner of the loan, GMACM, as subservicer, had authority to modify the Aniel Loan and standing to foreclose the Aniel Loan, and ETS acted properly in filing the notices of default. As a result, the Claimants’ claim for fraudulent concealment fails, as the Claimants have not shown that the Debtors concealed a material fact related to the owner of the Loan.

97. The Claimants also allege that ETS did not respond to their debt validation request. However, as noted in ¶ 37 *supra*, the Debtors responded to the debt validation request on June 8, 2012. As a result, the Claimants have not demonstrated any liability for fraudulent concealment related to the debt validation request.

g. *Rosenthal Act*

98. The Claimants also assert that GMACM and ETS violated the Rosenthal Act by (a) claiming HSBC Bank was the owner of the Aniel Note; (b) allegedly falsely stating the amount owed by the Claimants; (c) submitting a purportedly fraudulent notice of default; and (d) attempting to enforce their security instrument. See Aniel Property Action Complaint ¶ 150. As these are the same allegations on which the Claimants' other causes of action are predicated, they fail for the same reasons. Furthermore, as noted in ¶ 54 *supra*, under California law, proceeding against a secured property on a mortgage is not a debt collection activity, and therefore, foreclosures are not subject to the Rosenthal Act.

99. Furthermore, the Claimants' cause of action against ETS also fails because the alleged improper actions taken by ETS, i.e. sending the notices of default and notices of trustee's sale, were privileged under California Civil Code § 47. In filing the various notices, ETS was acting pursuant to California Civil Code § 2924, subdivision (d) of which states "All of the following shall constitute privileged communications pursuant to Section 47: (1) The mailing, publication, and delivery of notices as required by this section." Cal. Civ. Code. § 2924(d). As a result, ETS actions were privileged communications for which they cannot be liable unless there are allegations of actual malice, which the Claimants have not alleged. See Kachlon v. Markowitz, 85 Cal. Rptr. 3d

532, 558 (Cal. Ct. App. 2008) (holding that unless a trustee acts with malice, it is immune from liability related to acts performed under Cal. Civ. Code § 2924).

h. *California Business and Professions Code*

100. The Claimants' UCL claims are premised on the same allegations that have previously been discussed, namely that the Debtors do not have any interest in the Note, the foreclosure documents were robo-signed, the Debtors did not respond to the debt validation request, GMACM misled the Claimants into believing that HSBC Bank was the owner of the Aniel Loan, and GMACM engaged in unlawful enforcement of the Aniel Loan.⁷ See Aniel Property Action Complaint ¶¶ 159-169. As demonstrated in the previous paragraphs, the Claimants have failed to substantiate these allegations. As a result, the Claimants have failed to establish a predicate act or violation of law to support their claim for unfair competition under the California Business and Professions Code §17200 (the "UCL"). See ¶ 61 *supra*. Since none of the Claimants' other causes of action are viable, and the Claimants have failed to demonstrate any unlawful, unfair, or fraudulent conduct of the Debtors, the Claimants cannot support a claim under the UCL.

101. For these reasons, the Trusts submits that the Claimants have failed to demonstrate any liability of the Debtors' estates related to the Aniel Loan, and as a result, claim numbers 416 and 417 should be disallowed and expunged.

⁷ The Claimants also appear to allege that there was an issue with the 2012 Notice of Sale because ETS "refused to disclose what lien they are foreclosing the subject property." See Aniel Property Action Complaint ¶ 168. It appears that the Claimants are referencing a notice in the 2012 Notice of Sale that warns of the risks of bidding on a lien rather than on the property itself. However, such a paragraph is explicitly required in a notice of sale under Cal. Civ. Code § 2924(f)(8)(A), and therefore cannot support a UCL claim.

NOTICE

102. The Trusts have provided notice of this Objection in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012 [Docket No. 141] and the Procedures Order.

CONCLUSION

WHEREFORE, the Trusts respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as this Court may deem proper.

Dated: March 5, 2015
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett
MORRISON & FOERSTER LLP
250 West 55th St.
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

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

Hearing Date: April 16, 2015 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: March 26, 2015 at 4:00 p.m. (Prevailing Eastern Time)

MORRISON & FOERSTER LLP
250 W. 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

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

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

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

**NOTICE OF RESCAP LIQUIDATING TRUST'S AND RESCAP BORROWER
CLAIMS TRUST'S OBJECTION TO CLAIM NOS. 112, 114, 416, AND 417
FILED BY ERLINDA ABIBAS ANIEL, FERMIN SOLIS ANIEL, AND MARC
JASON ANIEL**

PLEASE TAKE NOTICE that the undersigned has filed the attached *Rescap Liquidating Trust and ResCap Borrower Claims Trust's Objection to Claim Nos. 112, 114, 416, and 417 Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel* (the "**Objection**").

PLEASE TAKE FURTHER NOTICE that a hearing on the Objection will take place on **April 16, 2015 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New

York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501 (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141] and the Claims Procedures Order [Docket No. 3294], be filed electronically by registered users of the Bankruptcy Court’s electronic case filing system, and be served, so as to be received no later than **March 26, 2015 at 4:00 p.m. (Prevailing Eastern Time)**, upon (a) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408; (b) counsel to the ResCap Liquidating Trust and the ResCap Borrower Claims Trust, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attention: Norman S. Rosenbaum, Jordan A. Wishnew and Jessica J. Arett); (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda A. Riffkin and Brian S. Masumoto); (d) The ResCap Liquidating Trust, Quest Turnaround Advisors, 800 Westchester Avenue, Suite S-520, Rye Brook, NY 10573 (Attention: Jeffrey Brodsky); (e) The ResCap Borrower Claims Trust, Polsinelli PC, 900 Third Avenue, 21st Floor, New York, NY 10022 (Attention: Daniel J. Flanigan); (f) Erlinda Abibas Aniel, 75 Tobin Clark Drive, Hillsborough, CA 94010; and (g) Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel, c/o Law Offices of Marc Jason Aniel, 205 De Anza Blvd. #144, San Mateo, CA 94402.

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written response to the relief requested in the Objection, the Bankruptcy Court may deem any opposition waived, treat the Objection as conceded, and enter an order granting the relief requested in the Objection without further notice or hearing.

Dated: March 5, 2015
New York, New York

/s/ Norman S. Rosenbaum
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

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

Exhibit 1

Proposed Order

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

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**ORDER GRANTING THE RESCAP LIQUIDATING TRUST AND THE RESCAP
BORROWER CLAIMS TRUST'S OBJECTION TO CLAIM NOS. 112, 114, 416, AND
417 FILED BY ERLINDA ABIBAS ANIEL, FERMIN SOLIS ANIEL, AND MARC
JASON ANIEL**

Upon the *ResCap Liquidating Trust and ResCap Borrower Claims Trust's* *Objection to Claim Nos. 112, 114, 416, and 417 Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel* (the "Objection"), of the ResCap Liquidating Trust (the "Liquidating Trust") as successor to Residential Capital, LLC, and its affiliated debtors and debtors in possession (collectively, the "Debtors") and the ResCap Borrower Claims Trust (the "Borrower Trust", and with the Liquidating Trust, the "Trusts") as successor to the Debtors with respect to Borrower Claims, seeking entry of an order, pursuant to section 502(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, and this Court's order approving procedures for the filing of omnibus objections to proofs of claim [Docket No. 3294] (the "Procedures Order"), disallowing and expunging proofs of claim nos. 112, 114, 416, and 417 (collectively, the "Claims") on the basis that the Debtors have no liability with respect to the Claims; and it appearing that this Court has jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and

due and proper notice of the Objection having been provided, and it appearing that no other or further notice need be provided; and upon consideration of the Objection, the *Declaration of Kathy Priore in Support of the ResCap Liquidating Trust and ResCap Borrower Claims Trust's Objection to Claim Nos. 112, 114, 416, and 417 Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel* annexed thereto as Exhibit 2; and the *Declaration of Norman S. Rosenbaum in Support of the ResCap Liquidating Trust and ResCap Borrower Claims Trust's Objection to Claim Nos. 112, 114, 416, and 417 Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel*, annexed thereto as Exhibit 3; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Trusts, the Trusts' beneficiaries, the Debtors, and all parties in interest and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and the Court having determined that the Objection complies with the Borrower Claims Procedures set forth in the Procedures Order; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Claims are hereby disallowed and expunged in its entirety with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the Debtors' claims and noticing agent, is directed to disallow and expunge the Claims so that they are no longer maintained on the Debtors' Claims Register; and it is further

ORDERED that the Trusts are authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Objection as provided therein shall be deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a), the Case Management Procedures entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

ORDERED that this Order shall be a final order with respect to the Claim; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2015
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 2

Priore Declaration

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

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

**DECLARATION OF KATHY PRIORE IN SUPPORT OF THE RESCAP LIQUIDATING
TRUST AND THE RESCAP BORROWER CLAIMS TRUST’S OBJECTION TO CLAIM
NOS. 112, 114, 416, AND 417 FILED BY ERLINDA ABIBAS ANIEL, FERMIN SOLIS
ANIEL, AND MARC JASON ANIEL**

I, Kathy Priore, hereby declare as follows:

1. I serve as Associate Counsel for the ResCap Liquidating Trust (the “Liquidating Trust”), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Associate Counsel in the legal department of Residential Capital, LLC (“ResCap”), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the “Debtors”). I joined ResCap on May 1, 2008 as in-house litigation counsel. Prior to my in-house litigation counsel position, I held various roles within the legal department at ResCap.

2. In my role as Associate Counsel at ResCap, I was responsible for the management of litigation, including, among others, residential mortgage-related litigation. In connection with ResCap’s chapter 11 filing, I also assisted the Debtors and their professional advisors in connection with the administration of the chapter 11 cases, including the borrower litigation matters pending before this Court. In my current position as Associate Counsel to the

Liquidating Trust, among my other duties, I continue to assist the Liquidating Trust and the Borrower Claims Trust (the “Borrower Trust”) in connection with the claims reconciliation process.¹ I am authorized to submit this declaration (the “Declaration”) in support of the *ResCap Liquidating Trust and ResCap Borrower Claims Trust’s Objection to Claim Nos. 112, 114, 416, and 417 Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel* (the “Objection”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations, information learned from my review of relevant documents and information I have received through my discussions with other former members of the Debtors’ management or other former employees of the Debtors, the Liquidating Trust, and the Borrower Trust’s professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Objection on that basis.

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

¹The ResCap Liquidating Trust and the ResCap Borrower Claims Trust are parties to an Access and Cooperation Agreement, dated as December 17, 2013, which, among other things, provides the Borrower Trust with access to the books and records held by the Liquidating Trust and Liquidating Trust’s personnel to assist the Borrower Trust in performing its obligations.

²Capitalized terms not defined herein shall have the meanings ascribed to them in the Objection.

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

5. On June 9, 2012, the Claimants filed claim no. 112 asserting a \$10,000.00 general unsecured claim and a \$1,075,000.00 secured claim against Debtor Executive Trustee Services ("ETS") and claim no. 114 asserting the same against Debtor GMAC Mortgage, LLC ("GMAC"). See Estiva Property Claims, attached hereto as Exhibit A. On August 20, 2012, the Claimants filed claim nos. 416 and 417 asserting unliquidated claims against GMACM and ETS, respectively. See Aniel Property Claims, attached hereto as Exhibit B.

6. The Debtors have taken steps in these Chapter 11 Cases to afford Borrowers who have filed proofs of claim additional protections, as set forth in the Borrower Claim Procedures approved by the Procedures Order. A Request Letter was sent to the Claimants and the Liquidating Trust and the Borrower Trust received responses on July 11 and July 13, 2013, which are attached hereto as Exhibit C.

Claims 112 and 114 – The Estiva Property Claims

7. On March 22, 2007, Raul Estiva and Corazon Estiva (the "Estivas") obtained a loan from non-Debtor MortgageIT in the amount of \$1,000,000.00 (the "Estiva Loan"), evidenced by a note (the "Estiva Note") and secured by a deed of trust (the "Estiva Deed")

of Trust”) on property located at 801 Foothill Drive, San Mateo, CA 94402 (the “Estiva Property”). Copies of the Estiva Note and the Estiva Deed of Trust are attached hereto as Exhibit D and Exhibit E, respectively. The Estiva Deed of Trust named Mortgage Electronic Registration Systems, Inc. (“MERS”) as the nominee for the lender and the lender’s successors and assigns and the beneficiary of the instrument. See Estiva Deed of Trust. The Claimants’ names were not on the Estiva Deed and were not identified as co-borrowers on the Estiva Note. See Estiva Note and Estiva Deed, see also Estiva Property Action Complaint (defined below), attached to the Estiva Property Claims as Exhibit A.

8. GMACM acted as the subservicer for the Estiva Loan. GMACM subserviced the Estiva Loan from March 2007 until the foreclosure sale on March 10, 2011. The Estiva Loan was transferred to HSBC Bank U.S.A. as Trustee for DALT 2007-AO3 (“HSBC”) on or around May 1, 2007. The assignment of the Estiva Deed of Trust (the “Estiva Assignment”) was recorded on July 16, 2009, a copy of which is attached hereto as Exhibit F.

9. On December 17, 2008, Debtor ETS Services, LLC recorded a notice of default (the “Estiva 2008 Notice of Default”), because the Estivas had not made a payment since September 8, 2008. A copy of the Estiva 2008 Notice of Default is attached hereto as Exhibit G. Also, on December 17, 2008, prior to recording the Estiva 2008 Notice of Default, ETS recorded a substitution of trustee (the “Estiva 2008 Substitution of Trustee”) in the San Mateo County Recorder’s Office. A copy of the Estiva 2008 Substitution of Trustee is attached hereto as Exhibit H. The Estivas failed to cure their default, and on March 20, 2009, a Notice of Trustee’s Sale (the “Estiva 2009 Notice of Trustee Sale”) was recorded in the San Mateo County Recorder’s Office. A copy of the Estiva 2009 Notice of Trustee Sale is attached hereto as

Exhibit I. The sale was continued because the Estivas requested a loan modification; however, the Estivas never submitted a loan modification application.

10. On February 25, 2009, Fermin Solis Aniel and Erlinda Abibas Aniel filed a chapter 11 bankruptcy petition in the Northern District of California. See Aniel Bankruptcy Docket, attached hereto as Exhibit J. On their amended schedules, the Claimants listed a 50% interest in the Estiva Property. See Bankruptcy Schedules, attached hereto as Exhibit K. The chapter 11 was converted to a chapter 7 on August 4, 2010 and the Claimants received a discharge on December 2, 2010. See Discharge Order, attached hereto as Exhibit L. On November 2, 2010, prior to the discharge, the trustee in the Claimant's bankruptcy case abandoned the Claimants' purported interest in the Estiva Property. See Order Authorizing Abandonment of Property, attached hereto as Exhibit M.

11. A second Notice of Trustee Sale was recorded on December 31, 2010 (the "Estiva 2010 Notice of Trustee Sale") in the San Mateo County Recorder's Office. A copy of the Estiva 2010 Notice of Trustee Sale is attached hereto as Exhibit N. The 2010 Notice of Trustee Sale set the sale of the Estiva Property for January 27, 2011. At the auction the sale was postponed and continued to February 9, 2011.

12. On February 2, 2011, the Claimants filed a civil action (the "Estiva Property Action") in the California Superior Court, County of San Mateo (the "Superior Court") against, inter alia, GMACM, ETS, HSBC, and MERS (the "Estiva Property Action Defendants") (*Aniel v. ETS Services, LLC et al*, case number CIV502857). See Estiva Property Action Docket, attached hereto as Exhibit O.

13. On February 3, 2011, two months after the Claimants received their bankruptcy discharge, a grant deed was recorded in the San Mateo County Recorder's Office that

purported to transfer a 1% interest in the Estiva Property to each of the Claimants. A copy of the Estiva 2011 Grant Deed is attached hereto as Exhibit P.

14. On March 7, 2011, the Estiva Property Action Defendants, including the Debtors, responded by demurrer on grounds that the Claimants lacked standing to bring the Estiva Property Action and that the Claimants failed to sufficiently plead the causes of action in the complaint. See Estiva Property Action Docket.

15. On March 10, 2011, the Estiva Property reverted to HSBC as Trustee at a public auction. The trustee's deed upon sale in favor of HSBC as Trustee was recorded on April 21, 2011. A copy of the trustee's deed upon sale is attached hereto as Exhibit Q. HSBC sold the property to a third party by grant deed dated February 29, 2012 and recorded on March 29, 2012, a copy of which is attached hereto as Exhibit R.

16. On June 8, 2011, the Superior Court sustained the demurrer without leave to amend as to all causes of action on the grounds that the Claimants lacked standing to pursue the Estiva Property Action because they were not borrowers under the Estiva Loan (the "Superior Court Decision"). See Superior Court Decision, attached hereto as Exhibit S.

17. On February 2, 2012, the Claimants filed their notice of appeal of the Superior Court Decision. See Estiva Property Action Docket. The appeal was stayed pending the Debtors' bankruptcy case.

Claims 416 and 417 – The Aniel Property Claims

18. On June 4, 2007, Erlinda Aniel refinanced an existing loan from Mortgage IT in the amount of \$2,000,000.00 (the "Aniel Loan"), evidenced by a note (the "Aniel Note"). The Aniel Loan was secured by a deed of trust (the "Aniel Deed of Trust"), executed by all of the Claimants, on property located at 75 Tobin Clark Drive, Hillsborough, California (the "Aniel

Property”). Copies of the Aniel Note and the Aniel Deed of Trust are attached hereto as Exhibit T and Exhibit U, respectively. The Aniel Deed of Trust named Mortgage Electronic Registration Systems, Inc. (“MERS”) as the nominee for the lender and the lender’s successors and assigns and the beneficiary of the instrument. See Aniel Deed of Trust.

19. On or around July 1, 2007, the Aniel Loan was transferred to HSBC Bank U.S.A. as Trustee for DALT 2007-AO5 (“HSBC Bank”). The assignment of the Aniel Deed of Trust (the “Aniel Assignment”) was recorded on August 24, 2009, a copy of which is attached hereto as Exhibit V.

20. GMACM acted as the subservicer for the Aniel Loan. See Aniel Payment Letter, attached hereto as Exhibit W. GMACM subserviced the Aniel Loan from the origination until servicing was transferred to Ocwen Financial Corporation (“Ocwen”) on February 16, 2013.

21. On September 29, 2008, ETS recorded a substitution of trustee (the “Aniel 2008 Substitution of Trustee”) in the San Mateo County Recorder’s Office, noting MERS as the beneficiary of the Aniel Deed of Trust. A copy of the Aniel 2008 Substitution of Trustee is attached hereto as Exhibit X. Also on September 29, 2008 (after the Aniel 2008 Substitution of Trustee was recorded), ETS recorded a notice of default (the “Aniel 2008 Notice of Default”), as the Claimants had not made a payment since June 17, 2008. A copy of the Aniel 2008 Notice of Default is attached hereto as Exhibit Y.

22. On November 3, 2008, the Debtors spoke to the Claimants’ authorized third party via phone, at which time the authorized party requested a workout package for a possible loan modification. See Aniel Servicing Notes, attached hereto as Exhibit Z. On November 19, 2008, the Debtors received a short sale package from the Claimants. See id. On

December 8 and December 17, 2008, the Claimants' authorized representative called in requesting an update of the loan modification and the Debtors advised that the loan was under review for a short sale. See id. At that time, the Claimants' representative stated that the Claimants would like to be reviewed for a loan modification. See id.

23. The Claimants did not cure their default, and on January 2, 2009, a Notice of Trustee's Sale (the "Aniel 2009 Notice of Trustee Sale") was recorded in the San Mateo County Recorder's Office. A copy of the Aniel 2009 Notice of Trustee Sale is attached hereto as Exhibit AA.

24. The Debtors received a workout package on January 16, 2009. See Aniel Servicing Notes. This package was incomplete, and a ten day missing items letter was mailed to the Claimant on January 16, 2009. See id. The Debtors did not receive a completed package from the Claimants. See id. The Debtors also spoke with the Claimants' authorized third party via phone on January 19, 2009, at which time the Debtors advised that party the Debtors cannot approve the Aniel Loan for modification because the financial information provided by the Claimants indicated the Claimants were overextended by \$4,460.94 a month. See id.

25. On February 25, 2009, the Claimants filed a chapter 11 bankruptcy petition in the Northern District of California. See Aniel Bankruptcy Docket. The chapter 11 was converted to a chapter 7 proceeding on August 4, 2010 and the Claimants received a discharge on December 2, 2010. See Aniel Discharge Order. On November 2, 2010, the Aniel Property was abandoned because the Trustee determined that it had inconsequential value to the estate because the property was encumbered by the security interest of the owner of the Aniel Loan. See Trustee's Response to Motion to Compel, attached hereto as Exhibit BB.

26. On February 1, 2011, HSBC Bank assigned the Aniel Deed to GMACM. See 2011 Assignment, attached hereto as Exhibit CC. On July 1, 2011, a Notice of Rescission of Notice of Default was recorded because the Aniel 2008 Notice of Default was too old and the Debtors needed to start the foreclosure process over. See Rescission of Default, attached hereto as Exhibit DD.

27. Because of the continued delinquency of the Aniel Loan, GMACM attempted to call the Claimants on August 17, 18, and 19, 2011; however, the Debtors never were contacted by the Claimants.

28. On October 11, 2011, GMACM sent a letter to the Claimants providing its phone numbers for its loss mitigation department and the Department of Housing and Urban Development, as well as a link to GMACM's internet site for further information regarding options to avoid foreclosure. See October 11 No Contact Letter, attached hereto as Exhibit EE. After receiving no response from the Claimants, the Debtors attempted to call six additional times on January 25, 26, and 30, 2012 in order to assess the Claimants' financial situation and explore options to avoid foreclosure. See Aniel Servicing Notes. Each time there was no answer. See id. After again receiving no response, the Debtors sent another letter, on February 14, 2012, providing the same information as was provided in the October letter. See February 14 No Contact Letter, attached hereto as Exhibit FF. There is nothing in the Debtors' books and records to indicate these letters were returned as undeliverable.

29. On April 27, 2012, ETS recorded another substitution of trustee (the "Aniel 2012 Substitution of Trustee") in the San Mateo County Recorder's Office. A copy of the Aniel 2012 Substitution of Trustee is attached hereto as Exhibit GG. On April 27, 2012, after still receiving no communication from the Claimants, the Debtors recorded a notice of default

(the “Aniel 2012 Notice of Default”). At the time, the Claimants had not made a payment since June 17, 2008. A copy of the Aniel 2012 Notice of Default is attached hereto as Exhibit HH. The Claimants failed to cure their default, and on August 1, 2012, a Notice of Trustee’s Sale (the “Aniel 2012 Notice of Trustee Sale”) was recorded in the San Mateo County Recorder’s Office. A copy of the Aniel 2012 Notice of Trustee Sale is attached hereto as Exhibit II. The Sale was scheduled for August 27, 2012. See Aniel 2012 Notice of Trustee Sale.

30. The Claimants made a request to GMACM to validate their debt (the “Debt Validation Request”), on or around May 10, 2012. The Debtors received the letter on May 17, 2012 and acknowledged the request on May 17, 2012, which was within the required five business day period. See Acknowledgement Letter, attached hereto as Exhibit JJ. On June 8, 2012, the Debtors responded to the letter. See Response Letter, attached hereto as Exhibit KK.

31. On August 9, 2012, the Claimants filed a civil action (the “Aniel Property Action”) in the United States District Court for the Northern District of California (the “District Court”) against, inter alia, GMACM and ETS (the “Aniel Defendants”) (*Aniel v. GMAC Mortgage, LLC et al*, case number 4:12-cv-04201-SBA). See Aniel Property Action Docket, attached hereto as Exhibit LL; see also Aniel Property Action Complaint, attached to the Aniel Property Claims. On August 28, 2012, the Debtors filed a notice of bankruptcy in the Aniel Property Action. On October 15, 2012, the Debtors then filed an answer. See Aniel Property Action Docket.

32. On August 15, 2012, the Claimants filed an *ex parte* application for a temporary restraining order to halt the trustee’s sale. On September 11, 2012, the Debtors filed an opposition to that application. On September 26, 2012, the District Court denied the

application on grounds that the Claimants were not likely to succeed on the merits and did not raise serious questions going to the merits. A copy of the District Court Order is attached hereto as Exhibit MM. A foreclosure sale has not yet been completed on the Aniel Property, and upon information and belief, the Claimants remain in the home.

33. Pursuant to a MERS Corporate Resolution dated April 29, 2009, Jeffrey Stephan and Janine Yamoah were appointed as assistant secretaries and vice presidents of MERS. See MERS Corporate Resolution, attached hereto as Exhibit NN.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 5, 2015

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

Exhibit A

Claim No. 112

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM
Name of Debtor: EXECUTIVE TRUSTEE SERVICES, LLC	Case Number: 12-12028 (MG)	RECEIVED JUN 19 2012 KURTZMAN CARSON CONSULTANTS
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): ERLINDA ABIBAS ANIEL		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: 75 Tobin Clark Dr. Hillsborough CA 94010 Telephone number: 650-284-6417 email: _____ <input checked="" type="checkbox"/> Date Stamped Copy Returned <input type="checkbox"/> No self addressed stamped envelope <input type="checkbox"/> No copy to return		
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ 1,085,000.00 If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: Pending Lawsuit (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: 8943	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ 1,075,000.00 Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ 10,000.00 Basis for perfection: Litigation Expenses Amount of Secured Claim: \$ _____ Amount Unsecured: \$ 10,000.00
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(). Amount entitled to priority: \$ _____		
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		



121202812061900000000001

B 10 (Official Form 10) (12/11)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

JUN 19 2012

8. Signature: (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

☒ I am the creditor. ☐ I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

☐ I am the trustee, or the debtor,
or their authorized agent.
(See Bankruptcy Rule 3004.)

☐ I am a guarantor, surety, indorser, or other codebtor.
(See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Erlinda Abibas Aniel

Title: _____

Company: _____

Address and telephone number (if different from notice address above):

75 Tobin Clark Dr.
Hillsborough, CA 94010

Telephone number 650-284-6417 email: _____

(Signature)

(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

ATTACHMENT 1

PROOF OF CLAIM

This Proof of Claim is being filed concurrently with the Proof of Claim against debtor, GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION (case number: 12-12032 (MG)). EXECUTIVE TRUSTEE SERVICES, LLC and GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION are jointly and severely liable for the amount recoverable in the pending lawsuit.

FERMIN SOLIS ANIEL AND ERLINDA ABIBAS ANIEL, AS PLAINTIFF, PRO
PER, AGAINST ETS SERVICES LLC, GMAC MORTGAGE, LLC F/K/A GMAC
MORTGAGE CORPORATION AND GMAC MORTGAGE, HSBC BANK U.S.A. AS
TRUSTEE FOR DALT 2007-A03, MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; PITE DUNCAN, LLP AND DOES 1-50 INCLUSIVE

Aniel et. al. vs. ETS SERVICES LLC et. al.,
Superior Court of the State of California, County of San Mateo, Case No: CIV 502857.
Filed on February 2, 2011.

Aniel et. al. vs. ETS SERVICES LLC et. al.,
Court of Appeal Case No: A134461
Filed on May 3, 2012.
Status of the case: Pending

Subject Property Address: 801 Foothill Drive, San Mateo CA 94402 (legal property
description attached).

Loan No:

A. Description of Claims.

Claims arising from the following causes of action:

1. Violation of the California Rosenthal Act
2. Fraud (Misrepresentation)
3. Wrongful Foreclosure
4. Unfair Competition Law (Cal. Bus. & Prof. Code section 17200 et seq)
5. Request for Injunctive Relief
6. Quiet Title

B. History of the Lawsuits:

The claimants of the above proof of claim, filed their Chapter 11 petition in the
United States Bankruptcy Court of Northern District of California. See Case No:
09-30452 DM on February 25, 2009, and their case was converted to Chapter 7 on
August 02, 2010. The estate was discharged under 11 USC § 727 (the

Bankruptcy Code) on December 2, 2010. On February 4, 2011, the bankruptcy trustee was closed with no distribution and the trustee abandoned the claimant's (debtors) bankruptcy assets.

On the list of claimants' bankruptcy estates the claimants (debtors) identified the subject property above as part of the claimants' bankruptcy asset/estate that was abandon by the trustee under the jurisdiction of bankruptcy court. On February 2, 2011, the claimants filed a civil action in the Superior Court of California, County of San Mateo for equitable and legal relief for wrongful foreclosure fraud (misrepresentation), violation of Rosenthal Act, Violation of Unfair Competition Law (Cal. Bus. & Prof. Code section 17200 et seq.), Quiet Title, and request for injunctive relief. See attached verified complaint as exhibit "A". The very core of the complaint is the execution of the assignment of deed by Jeffrey Stephan, who is an infamous robo-signer. See Exhibit "B" Jeffrey Stephan Deposition on December 10, 2009, at West Palm Beach, Florida. Jeffrey Stephan signed the assignment of the deed without personal knowledge of its contents. The assignment also contained a fraudulent notarization that was certified under penalty of perjury under the laws of the State of California, when in fact the notary was done in Commonwealth of Pennsylvania, Upper Dublin Twp., Montgomery County. See Attached "C" copy of Assignment of Deed. Since, the assignment of deed is null and void, the substitution of trustee, notice of default, notice of trustee sale, trustee deed upon sale are null and void and no effect. Therefore, the foreclosure on the subject property is null and void and has no effect. However, on June 09, 2011, the state court ruled that the claimants (plaintiffs on the above civil case) had no standing because their names were not on the deed of trust at the commencement of the complaint on February 2, 2011. On March 29, 2012, the subject property was sold in the amount of \$ 1,075,000.00. On May 3, 2012 claimants (plaintiffs) filed their timely appeal in California Court of Appeal. see Exhibit "D", Appellants Brief.

C. Indemnification Claims:

1. The Claimants have been damaged by virtue of Debtor's selling the property while the case is still pending. Without limiting the generality of the foregoing, the Claimants have incurred, and will continue to incur, significant legal expenses enforcing and defending against the Debtor's improper foreclosure of claimant's subject property.
2. Pursuant to the Governing Documents and applicable laws, Debtor entities are liable to the Claimants for indemnification against any losses, claims, expenses or damages including legal fees and related cost, arising out of based upon any breaches of any representation warranty or covenant made by the Debtor or any affiliates of the Debtors in the Governing Documents
3. Base upon the foregoing, a claim is asserted in an unliquidated amount on account Debtor's indemnification obligation arising from fraud and wrongful foreclosure, and Governing Documents. As of this date of this Proof of

Claim, the Claimants has incurred expenses of not less than \$10,000.00 in connection with filing the civil actions against Debtor and its affiliates GMAC Mortgage, LLC, and ETS Services, LLC. Such expenses and indemnification obligations continue to accrue.

4. As of March 29, 2012, the Subject Property was sold in the amount of \$1,075,000.00. MLS number is 81204251.

D. Miscellaneous

1. By executing and filing this Proof of Claim, Claimants/ Plaintiffs does not waive any right to any security or any right or rights with respect to any claim that Claimants/Plaintiffs has.
2. To the knowledge of the signatory hereto, the claim are not subject to any set off or counterclaims, and no judgment has been rendered on this claim.
3. Claimant/Plaintiffs reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature that it has, or may have, that come to Claimants/Plaintiffs attention or arises after the filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.
4. Nothing contained in this Proof of Claim shall be deemed or construed as:
 - (a) A waiver of, or other limitation on, any right or remedies of Claimant/Plaintiffs.
 - (b) A consent by Claimants/Plaintiffs to this jurisdiction of the Court or any other court in respect to proceedings, if any.
 - (c) A waiver or release of, or any limitation on Claimants/Plaintiffs right to trial by jury in the Court or any court in any proceeding.
 - (d) A waiver or release of, or any other limitation on, Claimant/Plaintiffs' right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim or
 - (e) A waiver or release of, or any other limitation on claimants/Plaintiffs right to assert that any portion of the claim asserted herein are entitled to treatment as priority claims, including under Section 503(b) and Section 507(a)(1) of the bankruptcy code.

ATTACHMENT 2

TOTAL ITEM BREAKDOWN

1.	Value of Real Estate Property -	\$1,075,00.00
2.	Legal Expenses incurred during the pending case:	
a.	Court expenses -	\$2,000.00
b.	Shipping and Positing -	\$500.00
c.	Processing Cost -	\$500.00
d.	Others Misc. –	\$6700.00
	Totals	\$10,000.00
	Totals	\$ 1,085,000.00

EXHIBIT “ A ”

(ENDORSED)
FILED
SAN MATEO COUNTY

FEB - 2 2011

Clerk of the Superior Court
By G. Lacey
DEPUTY CLERK

FERMIN SOLIS ANIEL -IN PRO SE-
ERLINDA ABIBAS ANIEL
75 Tobin Clark Drive
Hillsborough, CA 94010
Phone: (650) 284 - 6417
Fax: (650) 571-582

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

CIV 502857

FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual;

Plaintiffs,

v.

ETS SERVICES, LLC, a Limited Liability
Company; GMAC MORTGAGE, LLC F/K/A
GMAC MORTGAGE CORPORATION AND
GMAC MORTGAGE; HSBC BANK, U.S.A.
as Trustee for DALT 2007-AO3;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PITE
DUNCAN, LLP; AND DOES 1-50 inclusive

Defendants

Case No.:

VERIFIED COMPLAINT FOR:

- (1) VIOLATION OF THE
CALIFORNIA ROSENTHAL ACT
- (2) FRAUD (MISREPRESENTATION)
- (3) WRONGFUL FORECLOSURE
- (4) UNFAIR COMPETITION LAW
(Cal. Bus. & Prof. Code § 17200 et
seq.)
- (5) REQUEST FOR INJUNCTIVE
RELIEF
- (6) QUIET TITLE

DEMAND FOR JURY TRIAL

**UNLIMITED CIVIL CASE (Exceeds
\$25,000)**

By this Complaint, Plaintiffs Erlinda Abibas Aniel, and Fermin Solis Aniel, (collectively "Plaintiffs") does hereby allege for causes of action against Defendants GMAC MORTGAGE, LLC F/K/A as GMAC Mortgage and GMAC Mortgage Corporation ("GMAC"); ETS SERVICES, LLC ("ETS"); Mortgage Electronic Registration Systems, Inc., ("MERS"); HSBC BANK U.S.A. as TRUSTEE for DALT 2007-A03 ("HSBC"); PITE DUNCAN, LLP ("Pite Duncan"); and DOES 1-50 inclusive plaintiffs (collectively "Defendants") states, alleges, and avers that the following allegations and other factual

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel -Pro Se- 75 Tobin Clark Dr. Hillsborough, CA 94010		FOR COURT USE ONLY RECEIVED FEB - 2 2011 CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY
TELEPHONE NO.: 650-284-6417 ATTORNEY FOR (Name): Pro Se	FAX NO.:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME:		
CASE NAME: Fermin Solis Aniel et al. v. ETS Services, LLC et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: CIV 502857 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) Non-P/IPD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): (6): Violation of CA Rosenthal Act, Fraud, Wrongful Foreclosure, etc.
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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1 contentions have evidentiary support or, where specifically identified as being pled "on
2 information and belief" are likely to have evidentiary support after a reasonable opportunity for
3 further investigation or discovery.

4 NATURE OF THIS ACTION

5 1. This is an action for fraud, misrepresentation, violation of California Rosenthal
6 Act, wrongful foreclosure, declaratory relief, quiet title, request for immediate injunction relief
7 (TRO), and violations of California Civil Code § 2924 et seq., and unfair completion law
8 California Business & Professional code § 17200 et seq., brought by Plaintiffs, the rightful
9 owners of the real property, against all defendants, who lacks the standing to enforce
10 Promissory Note and the Deed of Trust, which secures the Note, to foreclose on the Plaintiffs' property.

11 2. This action is also based on the fraudulent misrepresentations by all defendants
12 namely: the fabricated and manufactured assignment of the deed signed by Jeffrey Stephan as
13 Vice President of MERS, who admitted signing 10,000 foreclosure related documents a month
14 in behalf of defendant GMAC without personal knowledge of the documents. Jeffrey Stephan
15 is an employee of defendant GMAC. The assignment of deed was never notarized in front of
16 Jeffrey Stephan, but instead GMAC used another department to handle the notarization of such
17 an assignment of deed. Pite Duncan created the assignment of deed through GMAC referral
18 unit. Defendant GMAC procedure to foreclose a property is to have the file referred to
19 foreclosure attorney. *Pite Duncan is the foreclosing attorney in behalf of HSBC* and Pite
20 Duncan is the one that identified HSBC as the secured creditor in assignment of deed executed
21 by Jeffrey Stephan on May 26, 2009, notarized on the same date, and recorded on July 16,
22 2009. Defendant MERS, as nominee under plaintiffs' deed of trust, connived with all the
23 defendants in manufacturing the assignment of deed, and deliberately misled the plaintiffs into
24 believing that HSBC was secured creditor when defendants knew this representation to be
25 false. Defendants' conduct involved fraud, deceit, or reckless disregard of the statutory
26 requirements that could result in substantial loss, or significant risk of substantial loss to
27 plaintiffs through the creation of a false assignment of deed. Defendants committed these acts
28 in order to identify the secured creditor or beneficiaries, which violated the Pooling Servicing

1 Agreement. Defendants made a fraudulent conveyance during Plaintiffs' bankruptcy. The
2 subject property is part of plaintiffs' bankruptcy estates.

3 3. Defendants conduct involved fraud, deceit or deliberate or reckless disregard of
4 property rights and statutory requirements and resulted to substantial loss, or significant risk of
5 substantial loss to plaintiffs.

6 4. HSBC, in concert with MERS, willfully received the assignment of beneficial
7 interest while plaintiffs were in bankruptcy on May 26, 2009.

8 5. Pite Duncan willfully prepared the assignment of deed on May 26, 2009 in
9 concert with GMAC employee by the name of Jeffrey Stephan.

10 6. Pite Duncan willfully created the assignment of deed on May 26, 2009 and
11 recorded on July 17, 2009, knowing that the plaintiffs had a pending Chapter 11 case in
12 Bankruptcy Court as of February 25, 2009.

13 7. All the defendants were in concert to each other to defraud plaintiffs of their
14 property rights and stealing the subject property for profits.

15 8. ETS willfully recorded a notice of trustee sale without recording a notice of
16 default which violate the California Civil Code § 2924 et seq.

17 9. ETS willfully recorded notice of trustee sale, acting as a trustee without any
18 evidence of recorded substitution of trustee, in violations of Cal Civ. Code § 2934.

19 10. GMAC is in concert with other defendants to create and manufactured these
20 fraudulent documents in order to obtain a non-judicial foreclosure in California.

21 11. Pite Duncan falsely represented that assignment of deed assigned the beneficial
22 interest to HSBC as trustee for DALT 2007-A03, there is no evidence that MortgageIT, the
23 original lender, ever transferred the beneficial interest to HSBC, which was evidenced by Pite
24 Duncan not attaching any endorsement of the Note in their objection to plaintiffs
25 reorganization plan. MERS, as nominee of lender MortgageIt, is not authorized to assign any
26 assignment of deed because MERS is only an agent of lender MortgageIT. MERS' function is
27 only a mortgagee of record. Even if MERS could prove that it has authorization to assign or
28 transfer beneficiaries, MERS could be liable for violation of Cal. Civ. Code § 1095.

12. HSBC did not file any Proof of Claim in the bankruptcy Court as a secured creditor of plaintiffs' deed of trust and promissory note.

13. Defendants, while acting as beneficiaries, lenders and trustees, by use of the mail, and the means and instrumentalities of interstate commerce, directly or indirectly, engaged in acts practices or courses of business, which were fraudulent, deceptive, or manipulative. Defendants made untrue statements of material fact or omitted to state a material fact necessary to make the statement made, in the light of the circumstances under which they were made.

14. Defendants engaged in acts, practices or courses of business that were fraudulent, deceptive or manipulative with respect to the Defendants foreclosing on plaintiffs property. And unless enjoined, Defendants will continue to commit fraud and violate California Foreclosure Laws.

15. Defendants conducts could create a big havoc for plaintiffs' chain of title and would create a cloud of title on plaintiffs' property.

16. Plaintiffs are entitled to Quiet Title against defendants because plaintiffs have claim ownership of the subject property at 801 Foothill Drive, San Mateo, California, 94402.

PARTIES

17. Plaintiffs' property is located at 801 FOOTHILL DRIVE, SAN MATEO, CA 94402 ("Property"). Legal description:

THE LAND REFERRED TO HEREIN BELOW IS
SITUATED IN THE CITY OF SAN MATEO, COUNTY OF
SAN MATEO, STATE OF CALIFORNIA, AND IS
DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT
CERTAIN MAP ENTITLED "FOOTHILL TERRACE"
FILED IN THE OFFICE OF THE RECORDER ON JUNE 10,
1946 IN BOOK 25 AT PAGE (S) 59.

JPN: 034-031-312-03

APN: 034-312-030

1 18. Plaintiffs are informed, believe, and allege that Defendant Pite Duncan is a law
2 firm "debt collector" whose main purpose is to create and manufactured an assignment of deed
3 and have Jeffrey Stephan executed the fraudulent assignment of deed of trust in concert with
4 MERS, GMAC, HSBC, and ETS to commit the fraud. Defendant Pite Duncan is a debt
5 collector law firm and a limited liability partnership with its principal office in San Diego,
6 California. Pite Duncan represented to the Bankruptcy Court that they were the attorneys for
7 secured creditor HSBC.

8 19. Defendant MERS is a separate corporation that is acting solely as a nominee
9 for lender and lender's successors and assigns. MERS is the beneficiary under this Security
10 Instrument of Plaintiffs deed of trust. MERS is "mortgagee of records" who keeps track of all
11 beneficiaries. MERS is a confidential computer registry utilized by Lenders to list and trade
12 mortgage loans on the secondary market while avoiding the legal requisites of recording
13 conveyance of said loans and deed of trust. Rather Defendant MERS is simply a shell
14 designed to obscure the identity of the true holder of the note. MERS is responsible for
15 creating thousand of fabricated and bogus assignment of deed allowing third parties to do the
16 dirty work for MERS.

17 20. Plaintiffs are informed, believe, and allege that Defendant ETS is a purported
18 foreclosure trustee and is a debt collector whose main purpose is to foreclose on Plaintiffs'
19 property and collect the debt by violating California foreclosure law. ETS is an affiliate of
20 GMAC under the name of Executive Trust Services dba: ETS Services, LLC at 2255 North
21 Ontario Street, Suite 400, Burbank California 91504-3120.

22 21. Defendant GMAC Mortgage, LLC F/K/A, GMAC MORTGAGE and GMAC
23 MORTGAGE CORPORATION, based in Pennsylvania, is a loan servicer for plaintiffs'
24 mortgage or a bill collector. When plaintiffs defaulted on a loan, GMAC became a debt
25 collector and hired third parties vendors such as law firm debt collectors and debt collector
26 companies such as ETS, who represented to be trustee on plaintiffs' deed of trust when it
27 failed to collect a defaulted amount.

28 22. Defendant HSBC is the alleged Beneficiary of the Deed of Trust and new
Lender under the Promissory Note by way of a fabricated and manufactured assignment of

1 deed created by Pite Duncan and executed by the infamous robo-signer, Jeffrey Stephan, an
2 alleged vice president of MERS, which is false because Jeffrey Stephan is an employee of
3 GMAC. Plaintiffs believe that this is a securitized Trust and Plaintiffs' loan is one of many
4 loans within this securitized trust.

5 23. Defendants sued as DOES 1 through 50 are presently unknown to Plaintiffs
6 and Plaintiffs therefore uses these fictitious names pursuant to Code of Civil Procedure §
7 474, on information and belief, each of the fictitious named Defendant is responsible for the
8 event and happenings recited in this Complaint, Plaintiffs will amend this complaint upon
9 ascertaining the identities and capacities of the Doe Defendants.

10 24. On information and belief, each of the Defendants is and at all relevant times
11 were, the agent, servant, employee or representative of each remaining Defendants. On
12 further information and belief, each of each Defendant, in doing the things alleged, was
13 acting within the course and scope of his/her or its authority as an agent, servant, employee
14 and/or representative of the remaining Defendant with the knowledge, permission, consent,
15 authorization and/or subsequent ratification of the remaining Defendants.

16 JURISDICTION AND VENUE

17 25. This Court has subject matter jurisdiction of this action. The Superior Court is
18 a court of general jurisdiction. See Cal. Civ. Pro. §410.10. Plaintiffs seek damages under the
19 California Rosenthal Act, Fraud. Misrepresentation, violation of Ca. Civ. Code § 2924 et
20 seq., wrongful foreclosure and unfair competition law, (Cal. Bus. & Prof. Code § 17200 et
21 seq.). Plaintiffs also seek declaratory judgment, temporary restraining order, permanent
22 injunction, and quiet title.

23 26. All of the Defendants have conducted business in the State of California,
24 which included, among others, recording documents and pursuing a non-judicial foreclosure
25 in this County.

26 27. Venue is proper is this County because Defendants violated laws in this State
27 of California that involve real property located in this County. See Cal. Civ. Pro. §395(a).

28 28. Declaratory relief is available pursuant to Cal. Civ. Pro. §1060.

FACTUAL ALLEGATIONS

Inception of the Plaintiffs' Loan

29. On or around March 22, 2007, Raul Estiva and Corazon Estiva, (non-parties to this action) signed a Deed of Trust. That Deed of Trust was recorded on April 03, 2007, in the County of Recorders Office in San Mateo. See Exhibit "A".

30. Under the Deed of Trust, the Original Lender was MortgageIT, Inc.

31. Under the Deed of Trust, MERS, is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the security instrument.

32. Plaintiffs allege and believe that MortgageIT has been dissolved.

33. Under the promissory note, MortgageIT is the lender.

Notice of Default

34. On December 17, 2008, ETS recorded a Notice of Default in San Mateo County Recorder's office. See Exhibit "B". The documents stated that "to find out the amount you must pay, or arrange to pay for payment to stop foreclosure, or your property is in foreclosure for any reason, contact Mortgage Electronic Registration Systems, Inc.

C/O ETS Services, LLC

2255 North Ontario Street Suite 400

Burbank, California 91504-3120

(818) 280-1800"

ETS claimed to act as an AGENT for Beneficiary. Neda Cayco, a Trustee Sale Officer, signed the Notice of Default. During this period of time, ETS had no evidence that ETS was in fact a trustee or an agent of beneficiary of MERS. ETS did not disclose that ETS was a debt collector attempting to collect a debt.

35. On February 25, 2009, plaintiffs filed a voluntary bankruptcy under Chapter 11. Plaintiffs owned a 50% interest of the subject property as disclosed on their Amended Schedule A-Real Property in the bankruptcy forms. Plaintiffs Chapter 11 converted to Chapter 7 on August 4, 2010 and plaintiffs were discharged on December 2, 2010. Bankruptcy trustee abandon plaintiffs' property on subject property on November 2, 2010. Plaintiffs had 50%

1 interest on the property with Raul Estiva (now deceased) and Corazon Estiva. Raul Estiva was
2 the one who took out the refinancing of the loan in 2007 with MortgageIT, Inc., which has
3 been dissolved. Although plaintiffs' names were not on the deed, plaintiffs paid the regular
4 payments of the mortgage to GMAC, who is a loan servicer/bill collector. Plaintiffs disclosed
5 this property in their income tax return. Plaintiffs maintained the property and paid for the
6 mortgages, hazard insurance, and property taxes. By late 2008, the mortgage payment
7 increased tremendously and the rent cannot sustain the mortgage payment. Since plaintiffs
8 have a 50% interest in the property, plaintiffs filed this action against all the defendants.

9 36. The assignment of deed transferring all beneficial interest to defendant HSBC
10 by MERS was in violation of the automatic stay because plaintiffs were still in bankruptcy at
11 the time the assignment of deed were executed and recorded. HSBC never request a motion
12 for relief from the automatic stay and only objected to plaintiffs' reorganization plan, which
13 Pite Duncan submitted on July 28, 2010. HSBC did not file any proof of claim in the
14 bankruptcy court neither proof of any chain of title to perfect the lien.

15 37. On July 28, 2010, Pite Duncan filed an objection to plaintiffs reorganization
16 plan and attached to its object: a promissory note, a deed of trust, an assignment of deed of
17 trust signed by robo-signer Jeffrey Stephan, and Broker Price Opinion. Pite Duncan's version
18 of the promissory note intentionally deleted the original loan numbers and the MERS MIN
19 numbers. Pite Duncan attempted to hide the true identity of all the investors, who bought the
20 promissory note. By hiding the identity of all the investors, the promissory note could be sold
21 and resold numerous times. In other words, if borrowers owe one million dollars on a note,
22 that million dollars note would be sold numerous times resulting in a big profit for lenders.
23 Plaintiffs' loan is under a securitized mortgages as Pite Duncan asserted that the secured
24 creditor is HSBC, who were in concert with all defendants to have Jeffrey Stephan, without
25 personal knowledge, execute the fabricated and manufactured assignment of deed and have it
26 acknowledged by a notary in the same office without the presence of Jeffrey Stephan.

26 **Assignment of the Deed of Trust**

27 38. On May 26, 2009, Pite Duncan manufactured an assignment of deed, which was
28 signed by Jeffrey Stephan, an infamous robo-signer, who executed the document as a MERS

1 vice president and acknowledged the document by a notary public by the name of Thomas P.
2 Strain. See Exhibit "C". The assignment of deed was recorded by First American Title
3 Company as an accommodation only that certain assignment of deed be mail to Pite Duncan at
4 4375 Jutland Drive P.O. Box 17933 San Diego, California 92117-0933, and recorded on July
5 16, 2009.

6 39. On May 26, 2009, MERS, without authority, executed and acknowledged an
7 assignment of deed through GMAC employee Jeffrey Stephan who signed under MERS as
8 vice president. See Exhibit "D", Jeffrey Stephan deposition.

9 **Substitution of Trustee**

10 40. The original trustee under the deed of trust is Fidelity National Title. None of
11 the defendants have any evidence that they have powers as a trustee under the deed of trust to
12 conduct a foreclosure sale.

13 **Notice of Trustee Sale**

14 41. On December 28, 2010, ETS executed a NOTICE OF TRUSTEE SALE and
15 recorded the document on December 31, 2010. ETS scheduled to have the subject property to
16 be auctioned January 27, 2011. See Exhibit "E".

17 42. On January 26, 2011, plaintiffs were only aware of the impending trustee sale
18 through their tenants.

19 43. On January 27, 2011, plaintiffs attended the auction sale but the sale was
20 postponed to February 9, 2011.

21 44. Plaintiffs assert that there is no substitution of trustee ever recorded in the
22 County San Mateo authorizing ETS to conduct the trustee sale or authorizing as a legal trustee.

23 45. ETS hurriedly recorded a Notice of Trustee Sale in order to profit from an
24 illegal foreclosure. ETS has no evidence that ETS is a trustee under the deed of trust. The
25 original trustee under the deed is Fidelity National Title. There is no evidence in the County of
26 Recorder's Office in San Mateo that the beneficiaries under the deed recorded a substitution of
27 trustee. Even if ETS could provide that evidence of a recorded substituted trustee, it has to
28 comply with Cal Civ. Code § 2924 et seq. in order to do non-judicial foreclosure in California.
ETS did not record a Notice of Default prior to recording a Notice of Trustee Sale. ETS failed

1 to comply with California Civil Code § 2924 et seq. Therefore, the notice of trustee sale is null
2 and void and has no legal effect as a matter of law. There is no evidence of recorded
3 substitution of trustee and notice of default ever recorded by defendant ETS in the County of
4 San Mateo where the property is located. The 2008 notice of default that was recorded has
5 been expired and did not meet the timeline of California foreclosure procedures.

6 46. Plaintiffs were injured in fact and lost money or property as a result of these
7 unlawful, unfair fraudulent business practices.

8 **MERS' Disclosure on Investor of Plaintiffs' Loan**

9 47. On June 16, 2010, MERS' Servicer ID disclosure stated that the investor is
10 HSBC Bank, USA as Trustee. However, it did not disclose specifically which Trust was
11 HSBC as trustee for? MERS disclosure mislead plaintiffs in discovering the real investor of
12 this complex security mortgages. See Exhibit "F". How did Pite Duncan arrive into conclusion
13 that the trust was under DALT 2007-A03 when MERS' disclosure did not identify the name of
14 the TRUST themselves?

15 48. Defendant HSBC as Trustee on information and belief handles many Trusts and
16 that all the Defendants in this action are in concert with one another to defraud Plaintiffs in
17 order to foreclose Plaintiffs property.

18 **Pite Duncan's Role in Plaintiffs' Loan.**

19 49. Pite Duncan, claiming to be hired by the secured creditor HSBC submitted an
20 objection to plaintiffs bankruptcy reorganization plan on July 28, 2010. There is no proof
21 that this debt collectors law firm Pite Duncan was ever hired by HSBC as secured creditor.
22 How could a competent law firm file an objection to plaintiffs reorganization plan when there
23 is no Proof of Claim filed in the bankruptcy court in order to perfect the lien?

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA ROSENTHAL ACT**

26 **(As Against ETS, GMAC, HSBC, PITE DUNCAN)**

27 50. Plaintiffs incorporate by reference paragraphs 1-49 each and every allegation
28 set forth above and herein.

51. To establish a violation of the California Rosenthal Act:

(1) the plaintiff is any natural person who is harmed by violations of the California Rosenthal Act. Cal Civ. Code § 1788.2(g)

(2) involves a "debt", which means money, property or their equivalent which is due or owing or alleged to be due or owing from a natural person to another person. Cal Civ. Code § 1788.2(d)

(3) defendants were "debt collector", engaging in "debt collection" practices under the Rosenthal Fair Debt Collection Practices Act ("the Rosenthal Act), Cal. Civ. Code section 1788.2(c), on which is "any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection." Cal Civ. Code § 1788.2(c).

(4) the defendant has violated, by act or omission, a provision of the California Rosenthal Act.

52. Plaintiffs allege that Defendants are debt collectors under the definition of the California Rosenthal Act in that they regularly, in the course of their business, on behalf of themselves or others, engage in the collection of debt. ETS is a debt collector and failed to disclose that ETS is a debt collector attempting to collect a debt. GMAC is a debt collector because it attempted to collect money on a defaulted loan and participated in the executing of documents to collect on that debt. Pite Duncan is a debt collecting law firm because its principal business is to collect debts on defaulted mortgage loans. HSBC is a debt collector when it attempted to gain beneficial interest in a defaulted loan.

53. Defendants violated the Act when in attempting to collect the debt by using false, deceptive and misleading statement in connection with their collection of Plaintiffs mortgage debt as alleged herein Cal Civ. Code section 1788.17, incorporating 15 U.S.C.A. section 1692e.

a. misrepresented to Plaintiffs who the true owner of the Note and the Deed. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17, incorporating 15 U.S.C.A. section 1692e.

1 b. claimed an interest in the DEED through a fraudulent assignment of
2 the Deed of Trust. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because,
3 for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ
4 Code § 1788.17.;

5 c. submitted fraudulent, fabricated and bogus assignment of deed This
6 is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above,
7 this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17;

8 d. Inflated amount of a debt, fraudulent, and false charges, which they
9 cannot explain. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for
10 reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ Code
11 § 1788.17

12 e. Attempting to foreclose on the property without any evidence or chain
13 of title that the Defendants had any interest in the promissory note and the deed of trust. This
14 is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above,
15 this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17.

16 f. Defendant ETS made false and misleading statement to plaintiffs that
17 ETS is a trustee under then deed of trust, the fact is the original trustee of plaintiff deed is
18 Fidelity National Title.

19 54. Defendants' actions have caused Plaintiff actual damages, including, but not
20 limited to, severe emotional distress, their marriage, frustration, anger, anxiety, sleeplessness,
21 sadness and depression.

22 SECOND CAUSE OF ACTION

23 FRAUD

24 (As Against All Defendants)

25 55. Plaintiffs incorporate by reference paragraphs 1-55 each and every allegation
26 set forth above and herein.

27 56. Plaintiffs allege that the Defendants made false representations to the
28 Plaintiffs regarding material facts, including but not limited to, the true owner and holder of

1 the NOTE and DEED, true agents of the creditors, transfers of the deed of trust, notice of
2 default, and notice of trustee sale.

3 57. Plaintiffs relied on these representations of the owner, beneficiary, and
4 servicer of the loan, which cause the debt to rise on their property and now face losing the
5 property to a wrongful foreclosure.

6 58. Plaintiffs argue that all of the Defendants misrepresented to Plaintiffs the true
7 owner of the loan and to whom Plaintiffs' are indebted to, by assigning the debt to HSBC.
8 Plaintiffs, who denied they even owe money to these entities, could not possibly owe money to
9 HSBC. Jeffrey Stephan, an infamous robo-signer, who is working with GMAC, pretending to
10 act as vice president of MERS, signed the assignment of deed. Jeffery Stephan is not a vice
11 president of MERS, had no authorization to execute an assignment of deed, and falsely
12 executed the assignment of beneficial interest in the Plaintiffs' deed. This misrepresentation
13 by defendants constitutes a fraud.

14 59. Defendants conspired with each other by representing that Jeffrey Stephan is the
15 vice president of MERS, which is false. Jeffrey Stephan is an employee of GMAC.

16 60. A misrepresentation is fraudulent if the maker (1) knows or believes that the
17 matter is not as he represents it to be, (2) does not have the confidence in the accuracy of his
18 representation that he states or implied, and (3) knows that he does not have the basis for his
19 representation that he states or implied.

20 61. Pite Duncan committed "fraud upon the court" by filing an objection to
21 plaintiffs reorganization plan by stating that HSBC is the secured creditor when there is no
22 evidence to prove the HSBC was the secured creditor. Pite Duncan knowingly relied on false
23 information, like the assignment of the deed, in claiming HSBC was the secured creditor of
24 plaintiffs loan.

25 62. Pite Duncan violated the Trust by not complying with Pooling & Servicing
26 Agreement ("PSA") of the Trust, which must comply with its agreement on how to transfer the
27 loan so investors will not be subjected to Internal Revenue Services.

28 63. Plaintiffs relied on these misrepresentations when Plaintiffs filed for bankruptcy

1 in order to stop the foreclosure sale. Plaintiffs relied on Defendants' misrepresentations about
2 the owner of the loan during Plaintiffs' bankruptcy proceeding while Plaintiffs were
3 reorganizing their Chapter 11 Plan. Defendants' misrepresentations adversely affected
4 Plaintiffs' reorganization efforts. The truth is that Defendants never intended to give Plaintiffs
5 an opportunity to reorganize their Plan because these Defendants were in cohort by creating a
6 false and manufactured assignment of deed in order to collect a debt through the non-judicial
7 foreclosure process.

8 64. ETS knowingly filed a notice of trustee sale without filing a notice of default.

9
10 65. ETS knowingly claimed to be the trustee without any recorded substitution of
11 trustee. The original Trustee under the deed is Fidelity National Title.

12 66. This misrepresentation allowed ETS to continue with the foreclosure for non-
13 compliance of Ca. Civil Code 2924 et seq.

14 **THIRD CAUSE OF ACTION**

15 **WRONGFUL FORECLOSURE UNDER CAL CIV CODE §§ 2924a, 2934a**

16 **(As Against ETS, GMAC, HSBC, Pite Duncan, and MERS)**

17 67. Plaintiffs incorporate by reference paragraphs 1-66 each and every allegation set
18 forth above and herein.

19 66. Defendants recorded bogus assignments of Deed, executed by Jeffrey Stephan.
20 This assignment of the deed was an attempt to allow HSBC and ETS to foreclose the property
21 regardless of the fact they were not the original beneficiary and trustee of the deed.

22 67. Defendant ETS claiming to be the foreclosing trustee, was not authorized to act
23 as trustee at the time that it filed the Notice of Trustee Sale on the subject property. This is
24 violation of Cal Civ. Pro § 2934a(a)(1).

25 68. In order to initiate a non-judicial foreclosure in the State of California, trustees
26 should comply with Ca. Civ. Code § 2924, § 2934(a)(1). Only the beneficiary under the Deed
27 of Trust may execute a substitution of trustee. Recorded substitution of trustee becomes
28

1 effective and Notice of Default will be recorded after the recording a substitution of trustee.
2 See Cal Civ. Code § 2924a-2934a.

3 In addition according to Fannie Mae Release 98-06:

4 A trustee that is not the original named in the mortgage documents must not
5 submit the "notice of default" for recordation in connection with a non-judicial
6 foreclosure of a California property until after a "substitution of trustee" has
7 been recorded...If the "notice of default" names the new trustee, that trustee is
8 acting without power because under § 2934a of the California Civil Code it is
9 the filing of "substitution of trustee" that provides authority to the new trustee.
10 When a "substitution of trustee" is required in connection with non-judicial
11 foreclosures in California, a servicer should make sure that the trustees it uses
12 has the "substitution of trustee" recorded before the "notice of default" is
13 recorded.

14 69. In the instant case, the Notice of Trustee Sale was recorded on December 31,
15 2010, without first filing the Notice of Default. Then ETS made a fatal mistake in claiming to
16 act as a trustee without a recorded substitution of trustee. Therefore, for that reason as well,
17 the notice of trustee sale is of no legal effect and the foreclosure cannot lawfully occur as a
18 result of this defect.

19 70. Plaintiffs believe that their loan mortgage has been securitized and sold to
20 different investors and that the investors for refinancing Plaintiffs property have satisfied the
21 original lender MortgageIT.

22 71. MERS had no authority to assign the deed to HSBC as Trustee for DALT 2007-
23 A03, MERS as nominee for MortgageIT have no evidence to prove it act in behalf of
24 MortgageIT. MortgageIT has been dissolved prior to MERS transferring all the beneficial
25 interest to HSBC under plaintiffs deed of trust. MERS does not have any beneficial interest in
26 the promissory note.

27 72. For these reasons, Defendants did not properly follow the procedures set in Cal.
28 Civ. Code 2924a. Therefore, all previous actions and future actions are VOID.

FOURTH CAUSE OF ACTION
UNLAWFUL BUSINESS PRACTICES
(Against all Defendants)

73. Plaintiffs incorporate by reference paragraphs 1-72 each and every allegation set forth above and herein.

74. Plaintiff is informed and believes, and on that basis alleges, that Defendants have been engaged in, and continues to engage in, numerous acts and/or a pattern and practice of unfair competition within the State of California in violation of Business and Professions Code § 17200 et seq., proscribing deceptive business practices. Defendants undertook in the unfair and unlawful business practices in their dealing with the Plaintiffs engaging in the following acts:

a. Pite Duncan knowingly representing to the Plaintiffs that HSBC was the secured creditor by a way of a fraudulent assignment of the deed of trust. Pite Duncan requested and created the fraudulent assignment of the deed, which they recorded in the County of San Mateo.

b. GMAC knowingly allowed its employees at the time of the commission of the fraud, on MAY 26, 2009, Jeffrey Stephan executed an assignment of the deed of trust without any personal knowledge or authorization by MERS to sign such a document on MERS' behalf and acknowledged by a notary public by the name of Thomas P. Strain.

c. MERS, without any authority of authorization by its principal, MortgageIT, used a GMAC employee, Jeffery Stephan, to pretend to act as a vice president of MERS in executing an assignment of the deed of trust.

d. HSBC unjustly received beneficial interest in the deed of trust without any endorsement or possession of the original promissory note.

e. ETS wrongfully claims to act as the foreclosing trustee on the subject property without providing any evidence of a recorded substitution of trustee, a necessary document in order for ETS to attempt to conduct a trustee sale.

1 75. The above-described unlawful, unfair, negligent and fraudulent business
2 practices are an ongoing threat of injury to the Plaintiffs and the general public. Plaintiffs and
3 the general public continue to be financially harmed by such conduct and, unless restrained,
4 Defendant will continue to engage in such conduct.

5 76. Pursuant to California Business and Professions Code § 17203, Plaintiffs are
6 entitled to an order of this Court enjoining defendants from continuing to engage in unfair
7 competition, as defined in Business and Professions Code § 17200, in the State of California.
8 Plaintiffs and the general public will be irreparably harmed if such an order is not granted.

9 77. Defendants have been unjustly enriched at the expense of the Plaintiffs who
10 therefore are entitled to equitable restitution and disgorgement of profits realized by
11 Defendants in attempting to foreclose Plaintiffs' real property.

12 **FIFTH CAUSE OF ACTION**
13 **REQUEST FOR INJUNCTIVE RELIEF**

14 **(As to All Defendants)**

15 78. Plaintiffs incorporate by reference paragraphs 1-77 each and every allegation
16 set forth above and herein.

17 **INJUNCTION IS PROPER**

18 79. INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE because all the
19 documents were procured through means of misrepresentation, knowledge of falsity, and
20 intended to defraud Plaintiffs, which violates Cal Civ. Code §§ 2924 et seq. and 2934a, violates
21 the California Rosenthal Act, and constitutes Fraud.

22 **General Standard For Granting Preliminary Injunction**

23 80. The general test for determining whether the moving party is entitled to a
24 preliminary injunction is either a combination of (1) probable success on the merits and the
25 possibility of irreparable injury without such injunction, or (2) that serious questions are raised
26 and the balance of the hardship tips sharply in the moving party's favor. *California Cedar*
27 *products Co. v. Pine Mountain Corp.*, 724 F.2d 827, 830 (9th Cir. 1984); *Universal Life*
28

1 *Church, Inc. v. State* (1984) 158, Cal. App.3d 533, 536 (“a preliminary injunction may be
2 granted when the party seeking relief is likely to succeed on the merits of the action, or will
3 suffer irreparable injury if an injunction is not granted”); Code of Civil Proc. § 526. In general,
4 in order to obtain the equitable relief of an injunction, the Plaintiffs must show a significant
5 threat of “irreparable injury” and that legal remedies are “inadequate”. The greater the relative
6 hardship to the moving party, the less probability of success must be shown. *Arcamuzi v.*
7 *Continental Airlines, Inc.*, 819 F.2d 935,937 (9th Cir. 1987); *First Brands Corp. v. Fred*
8 *Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir. 1987).

9 **There Is A Strong Likelihood that Plaintiffs Will Prevail On The Merits**

10 81. Plaintiffs are able to present serious questions on the merits. Defendants are in
11 violation of California Civil Code §§ 2934, 2924 et seq. Under Cal Civil code § 2924, only the
12 trustee, mortgagee, or beneficiary, or any of their authorized agents may file and record a
13 Notice of Default. ETS filed and recorded a Notice of Default on December 17, 2008, twenty-
14 four months after Notice of Trustee Sale was recorded on December 31, 2010.

15 82. Therefore, “...without a valid notice of default, a foreclosure sale cannot
16 proceed...[t]he available, existing remedy is found in the ability of a court in section 2924g,
17 subdivision (c)(1)(A), to postpone the sale until there has been compliance with section
18 2923.5.” *Mabry v. Superior Court*, 185 Cal. App. 4th 208 at 223.

19 83. ETS claims to be acting as the Trustee. However, there is no substitution of
20 trustee recorded that substituted ETS as trustee. Under § 2934a(a)(1), “The trustee under a
21 trust deed...may be substituted by the **recording** in the county in which the property is located
22 of a substitution **executed and acknowledged** by (A) all the beneficiaries under the deed of
23 trust. (2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not
24 effective unless all the parties signing the substitution sign, under penalty of perjury, a separate
25 written document. ETS has no evidence of executed and recorded Substitution of Trustee.
26 Therefore, ETS has no authority to conduct a trustee sale of the property.

27 84. Also, only the beneficiaries under the deed of trust may substitute the trustee.
28 See Cal. Civ. Code § 2934a(a)(1)(a). HSBC’s only became the beneficiary under the Deed of

1 Trust through a fraudulent assignment of deed of trust, executed by Jeffery Stephan, who was
2 never a MERS employee. Even if the assignment of the deed of trust were valid, HSBC never
3 substituted the original trustee with ETS. Therefore, ETS lacks authority to conduct a trustee
4 sale.

5 85. ETS committed many violations against the Plaintiffs. Plaintiffs are able to
6 present serious allegations that have merit against the Defendants, which are likely to succeed
7 in those claims.

8 **Equity Support the Issuance of An Injunction**

9 86. The principles of equity apply to a foreclosure sale. Equity does not allow one
10 to take advantage of his own wrong nor will it assist in perpetration of fraud on another or the
11 public. Courts can set aside a foreclosure sale when there has been fraud, when the sale has
12 been improperly, unfairly, or unlawfully conducted, or when there has been such a mistakes
13 that it would be inequitable to let it stand. See e.g. *Bank of America National Trust and Savings*
14 *Ass'n v. Reidy* (1940) 15 Cal. 2d 243, 248; *Whitman v. Transtate Title Vo.* (1985) 165 Cal.
15 App. 3d 312, 322-323.

16 87. With these equitable concepts in mind, it is clear from the evidence presented
17 that Defendants were not authorized to record an assignment of deed of trust and notice of
18 trustee sale in order to gain standing and be a real party in interest and to conduct a non-
19 judicial foreclosure on Plaintiffs' property. Defendants failed to comply with California Civil
20 Code §§ 2934(a)(1), (A), (B) and 2924 et seq. These failures and violations mandate that the
21 subject foreclosure process does not meet the requirements of California non-judicial
22 foreclosure. This foreclosure is, therefore, invalid, and an injunction preventing the
23 foreclosure should be issued.

24 **The Relative Hardship Weigh Heavily For Plaintiffs**

25 88. In this matter, the relative hardship to Plaintiffs is losing their rental property to
26 a pretender trustee, ETS, who did not comply with Ca. Civil Code 2924 et seq. by not filing a
27 notice of default. Plaintiffs also stand to lose the property based on a Fraudulent Assignment
28 of Deed from MERS, which was signed by infamous robo-signer Jeffrey Stephan, who had no

1 authority to signed in behalf of MERS. ETS and GMAC cannot proceed with a Trustee Sale.
2 This represents an irreparable injury because Plaintiffs invested all their hard earned money on
3 this rented property. However, these defendants did not contribute any penny towards the
4 Plaintiffs' refinancing the property. Plaintiffs spent money to remodel the property in order for
5 the tenants to live comfortably. The Defendants will get the Plaintiffs' property by using
6 fabricated documents to profits on this foreclosure proceeding by getting the house for FREE.
7 The loss of one's property due to foreclosure constitutes an irreparable injury. *Demarest v.*
8 *Quick Loan Fund, Inc.* 2009 WL 9403377 (C.D. Cal.); *Wrobel v. S.L. Pope & Associates*, 2007
9 WL 2345036 at 1 (S.D. Cal. 2007) ("losing one's home through foreclosure is an irreparable
10 injury"); *Bland v. Carone Family Trust*, 2007 WL 951344 at 2 (S.D. Cal. 2007). Numerous
11 courts have found this inquiry enough by itself to mandate preliminary injunctive relief. See
12 e.g. *Nichols v. Deutsche Bank National Trust Co.*, 2007 WL 4181111, at 2 (S. D. Cal. 2007);
13 *United Church of Med. Ctr. v. Med. Ctr. Commo'n* (7th Cir. 1982) 689 F.2d 693, 701; *Johnson*
14 *v. U.S Department of Agriculture*, supra at 789.

15 89. If Defendants are allowed to foreclose, Plaintiffs' tenants, who have five
16 children, will be wrongfully displaced because of the Defendants' misconduct and Fraud.
17 Plaintiffs' tenants will likely have a difficult time finding an alternative place to live. This
18 would be a burden for the community as a whole especially for the City of San Mateo.

19 90. In contrast, Defendants suffer nothing by preserving the status quo and allowing
20 Plaintiffs and their tenants to remain in the property until the matter is determined on the
21 merits. Indeed, inasmuch as Plaintiffs tenants continue to occupy and maintain the property, its
22 value will be preserved accordingly. In contrast, if the Plaintiffs property is foreclosed upon
23 and left vacant-as thousand of other properties in our community have-it will likely fall into
24 despair and decline in value.

25 **Exigent Circumstances Exist For TRO.**

26 91. As set forth above and in supporting Declarations, unless Defendants are
27 immediately enjoined from conducting the trustee sale that is set for February 9, 2011,
28 Plaintiffs will suffer immediate and irreparable damage in that Plaintiffs will lose their rental

1 property forever as a result of FRAUD.

2 **SIXTH CAUSE OF ACTION**

3 **QUIET TITLE**

4 **(As Against all Defendants)**

5 92. Plaintiffs incorporate by reference paragraphs 1-91 each and every allegation
6 set forth above and herein.

7 93. Plaintiffs, at all times relevant herein, were the owner and/or entitled to
8 possession of The Property along with the co-tenant/owners.

9 94. Plaintiffs are seeking to quiet title against Defendants' claim of right to
10 foreclosure and own the property with the following LEGAL DESCRIPTION:

11 THE LAND REFERRED TO HEREIN BELOW IS
12 SITUATED IN THE CITY OF SAN MATEO, COUNTY OF
13 SAN MATEO, STATE OF CALIFORNIA, AND IS
14 DESCRIBED AS FOLLOWS:

15 LOT 11, BLOCK 3, AS SHOWN ON THAT
16 CERTAIN MAP ENTITLED " FOOTHILL TERRACE"
17 FILED IN THE OFFICE OF THE RECORDER ON JUNE 10,
18 1946 IN BOOK 25 AT PAGE (S) 59.

19 JPN: 034-031-312-03

20 APN: 034-312-030


21 **DEMAND FOR JURY TRIAL AND PRAYER FOR DAMAGE AND FOR RELIEF**

22 WHEREFORE, plaintiffs respectfully pray for this court to enter a judgment in favor
23 of Plaintiffs on all causes of action against Defendants as follows:

- 24 1. That the foreclosure or attempted foreclosure of the subject property is
25 deemed illegal and void and the same be immediately and permanently
26 enjoined, and that Defendants are prevented from engaging in any sale,
27 transfer, conveyance action or any conduct adverse to Plaintiff's interest
28 therein;

2. That the action of all of the Defendants be determined to be unfair and deceptive practices in violation of California law and that this Court award all such relief to Plaintiffs as they may be entitled, including injunctive relief, treble damages and an award of cost;
3. For compensatory damages according to proof;
4. For punitive damages according to proof;
5. For an immediate, preliminary and permanent restraining order and injunction preventing Defendants or any of their agents or representative from taking any further action on the Subject Property.
6. For any other relief the Court may deem just and proper.

Dated: February 2, 2011


FERMIN SOLIS ANIEL
PRO SE PLAINTIFF

Dated: February 2, 2011

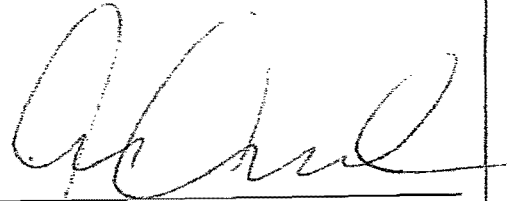

ERLINDA ABIBAS ANIEL
PRO SE PLAINTIFF

Verification

The undersigned, for herself declares:

I am one of the Plaintiffs in the above-entitled action. I have read the forgoing complaint, filed on February 2, 2011, and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as those matter which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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



ERLINDA ABIBAS ANIEL

EXHIBIT “ B ”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008 CA 040805XXXX MB

GMAC MORTGAGE, LLC,

Plaintiff,

-vs-

ANN M NEU A/K/A ANN MICHELLE
PEREZ; DOUGLAS WILLIAM NEU;
UNKNOWN TENANT (S) IN
POSSESSION OF THE SUBJECT
PROPERTY,

Defendants.

DEPOSITION OF JEFFREY STEPHAN

Thursday, December 10, 2009
1:00 p.m. - 2:30 p.m.

Consor & Associates
1655 Palm Beach Lakes Blvd., Ste. 500
West Palm Beach, Florida 33401

Reported By:

Jamie Reynolds Bentley, Court Reporter
Notary Public, State of Florida
Consor & Associates
1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401
(561) 682-0905

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 ALEJANDRA ARROYAVE, ESQ.

Lapin & Leichtling

4 225 Alahamra Circle

Suite 800

5 Coral Gables, Florida 33134

(305) 569-4100

6

7

8 On behalf of the Defendant:

9 CHRISTOPHER IMMEL, ESQ.

Ice Legal, P.A.

10 1975 Sansbury's Way

Suite 104

11 West Palm Beach, Florida 33411

(561) 798-5658

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I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

JEFFREY STEPHAN

BY MR. IMMEL 4 54

JEFFREY STEPHAN

BY MS. ARROYAVE 51

E X H I B I T S

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P R O C E E D I N G S

- - -

Deposition taken before Jamie Reynolds Bentley, Court
Reporter and Notary Public in and for the State of Florida
at Large, in the above cause.

- - -

THE COURT REPORTER: Do you swear or affirm that
the testimony you are about to give will be the truth,
the whole truth and nothing but the truth?

THE WITNESS: I do.

Thereupon,

(JEFFREY STEPHAN)

having been first duly sworn or affirmed, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. IMMEL:

Q. All right. We are here on GMAC Mortgage, LLC
versus Neu. This is the deposition of Jeffrey Stephan.
I'm sure your attorney has gone over things with you a
little bit. But if you could just keep one thing in
mind, to answer, not to simply nod your head or anything
like that. We need for your answers to be clear for the
court reporter that way.

A. Yes.

Q. Could you please state your name for the

1 record.

2 A. My name is Jeffrey Stephan.

3 Q. Okay. And who do you work for?

4 A. GMAC, LLC.

5 Q. And is there a difference between GMAC, LLC
6 and GMAC Mortgage, LLC?

7 A. GMAC, LLC -- I'm trying to think of the word
8 to use -- the most recent name.

9 Q. Okay.

10 A. It's GMCA Mortgage Corporation.

11 Q. Okay.

12 A. I'm not sure how you would word that.

13 Q. Okay. So are they -- does GMAC, LLC -- now
14 has that basically taken over these other entities --

15 A. Yes.

16 Q. -- that formerly existed?

17 A. Yes.

18 Q. So these entities no longer currently exist?

19 A. Right.

20 Q. Okay. And how long then have you been
21 employed by GMAC, LLC?

22 A. Five years.

23 Q. Okay. And prior to that, it was GMAC Mortgage
24 and GMAC Corporation?

25 A. That was as the whole five years.

1 Q. Oh, okay.

2 A. Yes.

3 Q. As the whole five years. And what is your
4 title?

5 A. I'm a team leader in the foreclosure
6 department.

7 Q. Okay. And what are your responsibilities?

8 A. I am the team lead of the document execution
9 unit.

10 Q. Okay.

11 A. And also the service transfer unit.

12 Q. And so what type of documents do you
13 ordinarily execute?

14 A. I execute on a daily basis assignments of
15 mortgage, affidavits of any type that might be needed,
16 deeds. Any type of the document that would need a
17 signature of an officer of GMAC.

18 Q. Okay. And who do you report to?

19 A. I report to Margie Kwiatanowski.

20 Q. Could you spell that?

21 A. Yes. It's K-W-I-A-T-A-N-O-W-S-K-I.

22 Q. Okay. And approximately how many employees
23 does GMAC Mortgage, LLC have?

24 A. I couldn't guess. I don't know.

25 Q. Sure. Okay. And as part of your

1 responsibilities, you execute assignments as a vice
2 president of MERS?

3 A. Yes, that's correct.

4 Q. And in executing affidavits as a vice
5 president, do you receive any compensation from MERS?

6 A. No.

7 Q. Have you had any training from MERS?

8 A. No.

9 Q. Okay. How many documents would you say you
10 sign on an average week as far as executing affidavits
11 and things of that nature?

12 A. It's very tough to estimate that to be honest
13 with you.

14 Q. In a given month, would that be easier to say
15 --

16 A. I would say --

17 Q. -- one hundred, 500?

18 A. -- in a month, my team brings to me
19 approximately, I'd say a round number of 10,000. That's
20 just an estimate, of course.

21 Q. Okay. And so, 10,000 your team brings to you.
22 How many people do you oversee?

23 A. A team of 13 people.

24 Q. Okay. Now, would these people be given the
25 duties of actually preparing the documents that you

1 ultimately sign and execute?

2 A. They would review the document that is given
3 to them through our computer systems.

4 Q. Okay.

5 A. So they don't actually prepare it per se.
6 They review it for the accuracy of what type of entity
7 I'm signing as.

8 Q. Okay. How many different entities do you sign
9 as?

10 MS. ARROYAVE: Objection: Form.

11 BY MR. IMMEL:

12 Q. Can you name what entities you sign --

13 A. I sign presently as MERS.

14 Q. Okay.

15 A. And under MERS as vice president or an
16 assistant secretary. Also, I sign for GMAC Mortgage.
17 And to be honest with you, it's too many entities for me
18 to actually quote under GMAC. But it is as a limited
19 signing officer.

20 Q. Okay. And earlier you stated that right now
21 it's GMAC, LLC.

22 A. Uh-huh.

23 Q. You do still currently sign documents as GMAC
24 Mortgage, LLC?

25 A. Yes, I do.

1 Q. Okay. And also as a corporation --

2 A. Yes.

3 Q. -- and some of the others that we've seen your
4 signature on?

5 A. Yes, I do.

6 Q. Okay. Where then does the information that
7 goes into the system that your team reviews --

8 A. Yes.

9 Q. -- where does that information come from?

10 A. The process that we use is -- and this is to
11 my knowledge -- a file is referred to a foreclosure
12 attorney stating exactly what entity would be needed
13 through the referral unit. And at that point, the
14 attorney receives the file to proceed with the
15 foreclosure. That foreclosure name is generated upon
16 GMAC supplying it on the referral. I'm not 100 percent
17 sure of what that process is.

18 Q. Okay.

19 A. The documentation, as you stated, that you're
20 asking about, is given to us after the attorney has been
21 instructed on what name to foreclose in.

22 Q. And who instructs the attorney as to what name
23 to foreclose it in?

24 A. It comes to our referral unit. Which is
25 another process to my knowledge.

Page 10

1 Q. Okay. Approximately, if 10,000 are signed in
2 a given month, you know, on an average, how long would
3 you say you spend executing each one and actually
4 signing?

5 A. It's tough to say.

6 Q. Okay. Would it be accurate to say that when
7 these documents have been presented to you by your team
8 --

9 A. Uh-huh.

10 Q. -- you take the face value that they are --
11 they have been checked by your team?

12 A. That would be a correct statement, yes.

13 Q. So these documents wouldn't be actually
14 executed on your own personal knowledge?

15 A. Right.

16 Q. It would be based on knowledge that came
17 through --

18 A. Right.

19 Q. -- the chain --

20 A. I'm sorry.

21 MS. ARROYAVE: Can I interrupt just for a
22 second? I just want to make sure that he finishes
23 his question before you answer.

24 THE WITNESS: Sure. Sorry.

25

1 BY MR. IMMEL:

2 Q. Yes, yes, that's true, too.

3 So the information that your team obtains
4 isn't based on their personal knowledge either, it's
5 located within the computer networks?

6 MS. ARROYAVE: Objection: Form.

7 BY MR. IMMEL:

8 Q. The information on the documents that you
9 execute is stored within your data base?

10 A. No, somewhere else.

11 Q. No. Okay. The information then is that --
12 your team, they get that from a computer network that
13 you have, correct?

14 A. No.

15 Q. Where does your team get that information?

16 A. That information is first given to the
17 attorney to foreclose under which name as needed. If we
18 are stating some type of assignment, for example, the
19 attorney, to my knowledge, and I'm not 100 percent sure
20 of their process because I don't work for the attorney,
21 they would do a title check to verify what name the lien
22 is presently in.

23 Q. Okay.

24 A. At that point is when it would initial if an
25 assignment would be needed or not.

1 Q. So at the direction of the attorney, your team
2 creates these documents and then you execute them?

3 MS. ARROYAVE: Objection: Form.

4 BY MR. IMMEL:

5 Q. So your team executes documents at the request
6 of attorneys?

7 MS. ARROYAVE: Objecting: Form. You can
8 still answer it if you understand the question.

9 BY MR. IMMEL:

10 Q. Do you understand what I'm asking?

11 A. Yes, I understand what you're asking. My team
12 does not create any documents.

13 Q. These documents are then sent from the
14 attorney?

15 A. Yes.

16 Q. Okay. And you're -- so then the team that you
17 oversee --

18 A. Uh-huh.

19 Q. -- simply reviews them for accuracy?

20 A. That's correct.

21 Q. Okay. And how do they verify the information
22 is accurate?

23 A. They do not go into the system and verify the
24 information as accurate. We are relying on our attorney
25 network to ensure that they are asking for the correct

1 information.

2 Q. So the attorney creates these documents and
3 you are relying that the attorney is correct?

4 A. Yes.

5 MS. ARROYAVE: Objection: Form.

6 BY MR. IMMEL:

7 Q. Okay. And then they are required to be
8 notarized. Are they notarized in your office?

9 A. Yes.

10 Q. Is the notary present with you or is it down
11 the hall?

12 A. The notary is in the same department.

13 Q. Same department. Okay. Are they physically
14 present when you (sic) notarize this -- or when they
15 notarize and then you execute it?

16 A. No, they are not physically present. But I
17 will -- I do deliver them to the notary.

18 Q. All right.

19 A. And I wait for them to notarize it to hand
20 them back to my team.

21 Q. Okay. All right. What department then? You
22 said your department?

23 A. Right.

24 Q. And as part of their job responsibilities,
25 would notarizing be their sole responsibility, or do

1 they have other responsibilities?

2 A. They have other responsibilities.

3 Q. Are any of the members of your team, people
4 that also notarize documents that you execute?

5 A. Yes.

6 Q. Yes. Okay. Is there a job requirement that
7 certain employees become notaries?

8 A. I don't know.

9 Q. Okay. And what type of -- what level of a
10 type of employee would it typically be that is a notary?

11 A. I don't know that either.

12 Q. All right. Does the company pay for the
13 process of becoming a notary or the renewal fees?

14 A. Yes.

15 Q. Okay. If a notary feels that they are being
16 asked to notarize something that's done improperly, is
17 there a process which they can, you know, raise that to
18 anybody's attention?

19 A. I honestly don't know.

20 Q. You are not sure. Do you notarize any
21 assignments of mortgage or other documents yourself?

22 A. No.

23 Q. Are you a notary?

24 A. No.

25 Q. How are witnesses ordinarily chosen?

1 MS. ARROYAVE: Object: Form.

2 Chosen for what?

3 BY MR. IMMEL:

4 Q. The witnesses to, say, the assignments of the
5 mortgage, and the witnesses of things that you execute.

6 A. They are just chosen randomly.

7 Q. Chosen randomly. Okay. Approximately how
8 many days a week do you spend executing assignments,
9 affidavits, and the various documents that you execute?

10 A. Five.

11 Q. Five. Okay. Are there any specific days
12 where it's one day these types of documents, this type
13 of documents, or can it be just a mix?

14 A. It's a mix.

15 Q. Okay. Approximately how many documents would
16 you say are presented to you by your team at a given
17 time? Is it one at a time, or ten at a time?

18 A. It is done in bulk.

19 Q. Done in bulk.

20 A. I could not quote you the exact number.

21 Q. Okay. Going back to the signing officer as
22 Mortgage Electronic Registration Systems, you said that
23 you are -- you sign as both vice president and as an
24 assistant secretary?

25 A. That is correct.

1 Q. Is there any basis for one -- you sign as one
2 versus the other?

3 A. The majority of the time I sign as a vice
4 president. Most times we do not need an assistant
5 secretary, unless they are asking for a second signature
6 on any type of an affidavit or assignment.

7 Q. Okay. And, again, you are not paid by MERS.
8 Do you hold any other responsibilities with MERS that
9 would be consistent with having the title of a vice
10 president?

11 A. No.

12 Q. No. Okay. So you don't attend any board
13 meetings for MERS?

14 A. No.

15 Q. You don't report to the secretary of MERS or
16 any other people at MERS?

17 A. No.

18 Q. How did you become a MERS representative? Did
19 you request to be a vice president of MERS?

20 A. I received the responsibility as being the
21 team lead for document executing. It was assigned to me
22 by our legal area.

23 Q. Okay. All right. So your responsibilities as
24 a vice president of MERS to execute the assignments is
25 really your job perspective, or an aspect of your job at

1 GMAC Mortgage, LLC or GMAC, LLC?

2 A. That is correct.

3 Q. Okay. And you've never been to any MERS
4 offices or their headquarters?

5 A. No.

6 Q. Are you aware of why you were given the title
7 of vice president versus assistant secretary or...

8 A. No, I'm not aware of that.

9 Q. Okay. All right. I have here the assignment
10 of mortgage which you executed in this case.

11 A. Okay.

12 MR. IMMEL: I'll enter that as Exhibit A.

13 (Defendant's Exhibit Letter A was marked for
14 identification.)

15 MR. IMMEL: I have a copy for you, as well.

16 THE WITNESS: Thank you.

17 BY MR. IMMEL:

18 Q. In the top left-hand corner it says, Record
19 and return to offices of Marshall C. Watson.

20 Based on your earlier statements, it's
21 accurate to say that attorneys at Marshall C. Watson
22 created the information on this document?

23 MS. ARROYAVE: Objection: Form.

24 THE WITNESS: That would be correct.

25

1 BY MR. IMMEL:

2 Q. Okay. And who -- so an attorney chose the
3 date of the 4th day of March, 2009.

4 Can you tell me the date actually. Whether
5 that's the 3rd or the 5th of March.

6 A. To me it seems to be the 5th.

7 Q. Okay.

8 A. Actually, excuse me, let me change that. It
9 would have to be the 3rd, because the notary did it on
10 the 4th.

11 Q. Okay. And that is your signature on this
12 document?

13 A. That is correct.

14 Q. Okay. Is it commonplace then for the notary
15 to notarize a document the day after you've apparently
16 executed it?

17 MS. ARROYAVE: Objection: Form.

18 THE WITNESS: I would say, yes, it would be
19 common.

20 BY MR. IMMEL:

21 Q. Okay. So typically when you hand these off to
22 the notary, and then they kind of catch up?

23 A. Uh-huh. Yes.

24 Q. Okay. The witnesses, Heather Reinhart, do you
25 know her personally?

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1 A. Yes, she is one of my employees.

2 Q. Is she on your team?

3 A. Yes.

4 Q. Is it possible that she would have been one of
5 the people who reviewed this for accuracy?

6 A. That is possible.

7 Q. And the other person appears to be Tyra
8 Wilks --

9 A. Wilson.

10 Q. Tyra Wilson. Okay. Is she also a member of
11 your team?

12 A. Yes.

13 Q. And you know her personally, as well?

14 A. Yes.

15 Q. The notary, Susan Turner, is she a member of
16 your team?

17 A. No, she is not.

18 Q. Do you know her personally?

19 A. Yes.

20 Q. It says here that you personally appeared
21 before her on the 4th day of March. Is it possible that
22 you executed then on the 3rd, and handed it to her and
23 then you weren't personally in front of her at the time
24 she notarized this?

25 A. I don't know. I can't recollect.

1 Q. All right. And how did you determine on this
2 to execute it to GMAC Mortgage, LLC?

3 MS. ARROYAVE: Objection: Form.

4 THE WITNESS: I'm not sure if I understand the
5 question.

6 BY MR. IMMEL:

7 Q. Okay. Did you have any say in the creation of
8 who MERS would assign this to?

9 A. No.

10 Q. No. Your attorney, the Law Office of Marshall
11 C. Watson, determined that?

12 A. No.

13 Q. No.

14 A. That is, as I stated earlier, when the
15 foreclosure referral goes out, the referral unit
16 determines what entity they should be foreclosing on.

17 Q. Okay. And the foreclosure referral unit that
18 you speak of, is that part of your department?

19 A. Yes.

20 Q. Okay. So would they have records that they
21 are able to refer to to determine who the new mortgagee
22 should be according to these assignments?

23 A. Yes.

24 Q. And who -- do you have a name of any person
25 that keeps those documents?

1 A. The team lead for that would be Brenda.

2 Q. Brenda?

3 A. Her last name is Staehle, S-T-A-E-H-L-E.

4 Q. Okay.

5 A. I think that's the way it's spelled.

6 Q. Can you tell me -- you really don't have any
7 knowledge or information as to who should be the
8 mortgagee? According to this document, you take it for
9 face value; is that correct?

10 MS. ARROYAVE: Objection: Form.

11 THE WITNESS: Can you explain that further?

12 BY MR. IMMEL:

13 Q. You take it for face value that GMAC Mortgage,
14 LLC is expected to be the mortgagee?

15 MS. ARROYAVE: Objection: Form.

16 BY MR. IMMEL:

17 Q. Who would have information who -- who MERS
18 should assign this to? Would it be you or Brenda
19 Staehle?

20 A. Brenda Staehle would be the individual or her
21 team to refer the files, and they determine what name
22 should be foreclosing in.

23 Q. Okay. So everything from that point on is
24 based on the presumption that her team has ascertained
25 those things to be correct?

1 A. That is correct.

2 MS. ARROYAVE: Objection: Form.

3 BY MR. IMMEL:

4 Q. All right. Okay. So on March 5th, 2009,
5 you're not aware --

6 A. I believe it's the 3rd.

7 Q. March 3rd. I'm sorry. March 3rd, 2009,
8 you're not aware of any physical transfer of the
9 mortgage?

10 A. Can you rephrase that? I'm not following.

11 Q. Are you aware of any reason why the assignment
12 of mortgage had to be executed on March 5th, 2009 -- or
13 the 3rd, 2009? I'm sorry.

14 A. We have a process that's set up with our
15 attorney network. And Marshall Watson is in that
16 attorney network. The file is referred to them with a
17 certain name to proceed with the foreclosure in. They
18 will pull title. And whatever they see title is in, in
19 order to proceed in the proper name, they need to get an
20 assignment. In this instance it's MERS to GMAC.

21 Q. Okay. Are the assignments supposed to be
22 completed prior to the filing of the foreclosure
23 lawsuit?

24 MS. ARROYAVE: Objection: Form.

25

1 BY MR. IMMEL:

2 Q. Are you aware if it's a company policy at
3 least?

4 A. I don't know.

5 Q. Okay. So as this assignment of mortgage, on
6 the face of it, transfers from Mortgage Electronic
7 Registration Systems as nominee for Mortgage Investors
8 Corporation to GMAC Mortgage, LLC on March 3rd, 2009,
9 would it be accurate to say that prior to that, this
10 assignment, Mortgage Electronic Registration Systems was
11 the mortgagee?

12 A. No.

13 Q. No. Okay. Why would that not be accurate to
14 say?

15 A. Mortgage Electronic Registration, to my
16 knowledge, is an origination entity to allow the passing
17 of assignments through performing loans to make it more
18 easier, I guess you would say, to transfer amongst
19 different companies. MERS does not own loans.

20 Q. They wouldn't own the loan. But they would
21 own the mortgage; is that correct?

22 MS. ARROYAVE: Objection: Form.

23 THE WITNESS: It's not correct, no.

24 BY MR. IMMEL:

25 Q. No. So they are the named mortgagee, so that

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1 when the note is passed from entity to entity it doesn't
2 have to be rerecorded?

3 A. That is to my knowledge, yes.

4 Q. All right. On this it also says that MERS is
5 assigning the mortgage together with the note. I don't
6 know if you see that line there. It's right there
7 (indicating).

8 As you just stated, MERS has no interest in
9 the note ever; is that correct?

10 A. I honestly don't know.

11 Q. Oh, okay. As far as you're aware --

12 A. Yes.

13 Q. -- MERS doesn't --

14 A. As far as I'm aware. (Witness nods head.)

15 Q. Okay. Are you aware of whether that's common
16 language to exist in the assignments that you execute?

17 A. I honestly don't know.

18 Q. You're not sure. Okay. All right.

19 MR. IMMEL: And I have a copy of the first
20 page of the mortgage here. Which I'll enter as
21 ExhibitB.

22 (Defendant's Exhibit Letter B was marked for
23 identification.)

24 BY MR. IMMEL:

25 Q. If you will notice it says that the mortgagee

1 according to the mortgage is Mortgage Electronic
2 Registration Systems.

3 I believe it's right down there (indicating).

4 A. I disagree with that interpretation.

5 MS. ARROYAVE: Was there a question?

6 MR. IMMEL: Yes.

7 MS. ARROYAVE: What was the question?

8 BY MR. IMMEL:

9 Q. According to the mortgage, it says that MERS
10 is the mortgagee?

11 A. My interpretation, it says right in the same
12 paragraph, it says they are a nominee for the lender or
13 the lender successors.

14 Q. Right. Okay. They are the mortgagee as
15 nominee --

16 A. Uh-huh.

17 Q. -- for the lenders?

18 A. Yes.

19 Q. Okay. But they are a different entity from
20 the lender and lender successors and things?

21 A. Yes.

22 Q. Okay. What does nominee in that regards mean?

23 A. I don't know.

24 Q. Okay. We can move on from there.

25 I have here -- which I'll enter as Exhibit

1 C -- some discovery that we received from MERS.

2 (Defendant's Exhibit Letter C was marked for
3 identification.)

4 BY MR. IMMEL:

5 Q. And if you will turn to the second page. It
6 is the document entitled, Min Summary.

7 And have you ever seen these records before?

8 A. No, I have not.

9 Q. So in executing the assignments of mortgage on
10 behalf of MERS, do you consult any of MERS' records?

11 A. No.

12 Q. And you are not able to tell me what any of
13 these entries would then mean? This is the first time
14 you have seen this type of information?

15 A. In this format, yes.

16 Q. Okay. Have you seen this type of information
17 in other formats?

18 A. Some of it. I understand what they mean as
19 far as the acronyms in there.

20 Q. Okay. Based on your understanding, the
21 investor says -- the investor is identified as
22 Government National Mortgage Association - Ginnie Mae.
23 What does the word "investor" mean in MERS' acronym?
24 Are you aware?

25 A. I'm not sure how I can explain it. GMAC would

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1 be the holder and the owner of the mortgage. GMAC would
2 be the investor who is in the organization that
3 contributed the fund. That's really the only way I can
4 explain the relationship of an investor and servicer.

5 Q. Okay.

6 A. But that's only to my knowledge. I mean, I
7 don't work in that fashion.

8 Q. Okay. So the servicer is supposed to take on
9 the day-to-day activities of administering the mortgage
10 of loan and collecting payments and so forth?

11 A. That would be correct.

12 Q. And they do that on behalf of the investor who
13 loaned the monies?

14 A. Yes.

15 Q. Okay. And any monies that are received from
16 the servicers, would they really be for the investor
17 then to pay him back the loan?

18 A. I don't know.

19 Q. Okay. And as custodian, also, that would mean
20 that they are in possession of the mortgage file,
21 essentially, the note and any other applicable
22 documents?

23 A. That's correct.

24 Q. Okay. All right. Where it has the pool
25 number and it is blacked out. Do you know what the pool

1 number refers to?

2 A. No, I don't.

3 Q. No. Okay. And what about the investor loan
4 number?

5 A. Yes, I understand what that is.

6 Q. And what would that relate to?

7 A. Every investor would have their own loan
8 number. The same as GMAC would have their own loan
9 number to classify the different files.

10 Q. Okay. And are you aware of how a mortgage
11 that has been securitized, a mortgage note that's been
12 securitized, would be reflected on something like this,
13 on this summary?

14 A. I am not familiar.

15 Q. You are not familiar. Okay. Are you aware of
16 anyone at GMAC Mortgage, LLC that has access to these
17 MERS documents and records?

18 A. No, I'm not.

19 Q. You are not aware. Okay. Are you aware of
20 anybody at GMAC that would have a responsibility to
21 update the MERS documentation?

22 A. No.

23 Q. Okay. So the various individuals at GMAC that
24 execute assignments on behalf of MERS have no
25 responsibility to update the MERS' system that they had

1 actually done those assignments or anything like that?

2 A. That would be correct.

3 Q. Okay. Are you aware then of how the MERS'
4 system is updated?

5 A. No.

6 Q. Okay. As a vice president, do you owe a
7 fiduciary duty to the original lender to ensure that the
8 mortgage is assigned to the proper entity?

9 MS. ARROYAVE: Objection: Form.

10 THE WITNESS: I actually don't understand your
11 question.

12 BY MR. IMMEL:

13 Q. Do you own any duty to the -- when you assign
14 these mortgages, you execute them as -- for MERS as
15 nominee for a particular entity, correct?

16 A. That would be correct.

17 Q. Do you owe any responsibility then to that
18 particular entity that MERS is nominee for to ensure
19 that the mortgage is transferred to the new correct
20 entity?

21 A. I don't know.

22 Q. Okay. All right.

23 MR. IMMEL: I have the corporate resolution
24 here. Which I'll enter it as Exhibit D.

25

1 (Defendant's Exhibit Letter D was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. Have you seen this document before?

5 A. Yes, I have.

6 Q. When was the first time you saw it?

7 A. I'm sorry, I can't say. I don't recollect.

8 Q. You're not sure. Is it fair to say it was
9 quite a while ago?

10 A. Yes.

11 Q. Did you have any role in creating it or
12 negotiating it?

13 A. No, I did not.

14 Q. No. Okay. The first paragraph says that you
15 are authorized to assign a lien of any mortgage loan
16 registered on the MERS register to the member.

17 Who would be the member according to this?
18 Would that be GMAC Mortgage, LLC?

19 A. I don't know.

20 Q. Okay. Assign the lien, in paragraph 2, of any
21 mortgage loan naming MERS as the mortgagee when the
22 member is also the current promissory note-holder, or if
23 the mortgage loan is registered on the MERS system, is
24 shown to be registered to the member.

25 When you are assigning liens, you already

1 stated that you don't consult with any of the MERS
2 records to determine whether or not it's registered to
3 who -- whoever?

4 MS. ARROYAVE: Objection: Form. Asked and
5 answered. Mischaracterization of prior testimony.
6 BY MR. IMMEL:

7 Q. Okay. You don't consult MERS system when
8 assigned these liens?

9 A. Yes.

10 MS. ARROYAVE: Asked and answered.

11 BY MR. IMMEL:

12 Q. All right. Okay. But is it fair to say that
13 you don't ascertain whether the member is the current
14 promissory note-holder when you assign the lien?

15 A. That would be correct.

16 Q. And you also don't know if the mortgage loan
17 is registered on the MERS system?

18 A. We are relying on our attorney network when
19 they check the title --

20 Q. Okay.

21 A. -- to verify what title it is presently in.
22 If it is MERS, we would sign for MERS.

23 Q. Okay.

24 MR. IMMEL: Exhibit E.

25

1 (Defendant's Exhibit Letter E was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. Here is the GMAC Mortgage, LLC certificate of
5 assistant secretary. Here you go.

6 And you are considered a limited signing
7 officer giving you basically the same responsibility as
8 a junior officer?

9 MS. ARROYAVE: Objection: Form.

10 THE WITNESS: I don't know if that's a correct
11 statement.

12 BY MR. IMMEL:

13 Q. Okay. Are you familiar with this document?

14 A. I have a copy of this document. Which to my
15 recollection means that next to my name it gives me the
16 authority to sign for GMAC and its entities as a limited
17 signing officer.

18 Q. Okay. In this case, you also filed an
19 affidavit of lost original document?

20 MS. ARROYAVE: Objection: Form.

21 BY MR. IMMEL:

22 Q. Okay. And you executed this document. Is
23 this your signature? Here is a copy of it.

24 MR. IMMEL: I'll enter this as Exhibit F, I
25 believe.

1 (Defendant's Exhibit Letter F was marked for
2 identification.)

3 THE WITNESS: Yes, that is my signature.

4 BY MR. IMMEL:

5 Q. Okay. And you signed this affidavit claiming
6 that at the time plaintiff was not presently in custody
7 or control of plaintiff or any of plaintiff's agents,
8 and that would be the note that was not in your -- their
9 custody or control?

10 A. Yes. Once again, we have a process in place
11 where if our attorney needs an original document, they
12 open up a request in our system. At that time, we have
13 another unit -- which is not located in Pennsylvania
14 where I am located -- contact custodians, contact their
15 own records, go to different investors. They do not do
16 an affidavit of this fashion unless they've exhausted
17 all efforts.

18 Q. Okay. Would it be fair to say that you're not
19 involved in any of those efforts?

20 A. That is fair to say.

21 Q. Okay. Why then do they ask you to execute the
22 affidavit of lost document -- lost original document?

23 A. They asked me to execute this for the
24 foreclosure department. Because after conversations
25 between the attorney and this other department, they

1 determine that it is not available. I am the
2 foreclosure team lead that handles document execution.

3 Q. Okay. So would it be accurate to say that the
4 department that actually searches for the lost note
5 would have a better understanding of why it's lost and
6 where the search occurred?

7 A. That is a fair statement.

8 Q. Okay. It says that the copy of said note
9 attached to the complaint is a true and correct and
10 substantial copy of the lost or destroyed note.

11 Do you review any documents before executing
12 the affidavits of lost original documents?

13 A. No, I do not. I review this. Let me change
14 this. Excuse me. I do review this. However, I do not
15 review any documents. I rely, once again, on my
16 attorney network who is requesting the document, and
17 communications between the departments to determine if
18 it's -- if a lost affidavit is needed.

19 Q. Okay. So the portion that sets claims in
20 paragraph 1: Affiant has custody and personal knowledge
21 of the account pertaining the original mortgage loan
22 instruments. Affiant has actual and personal knowledge
23 of the facts stated herein and is authorized to make
24 this affidavit. Would that be accurate?

25 A. Yes, that is accurate.

1 Q. You being the affiant have custody and
2 personal knowledge of the account pertaining to the
3 original mortgage loan instruments?

4 MS. ARROYAVE: Object to the form. Go ahead.

5 THE WITNESS: I do not have the specific
6 knowledge to this one account. But I understand
7 what the other department does in general to try to
8 locate these documents.

9 BY MR. IMMEL:

10 Q. Okay. All right. And so in this particular
11 case, the -- there was no note attached to the
12 complaint. You would have no way of ascertaining that
13 because you don't actually review?

14 A. That, once again, is determined by our
15 attorneys' office.

16 Q. Okay. I'm going to just -- I have a
17 substantial copy of the complaint. And just to show
18 that there is no note attached to it, that was the
19 original filing of the complaint.

20 You have never reviewed that, nor do you
21 review any other note to determine whether it is, in
22 fact, a true, correct and substantial copy of the lost
23 or destroyed note?

24 MS. ARROYAVE: Objection: Form.

25 THE WITNESS: Can you rephrase that for me? I

1 don't completely follow what you are saying.

2 BY MR. IMMEL:

3 Q. When you execute the affidavit of lost
4 original document, and make the claim that you've seen a
5 copy of the note that is attached and that's a
6 substantial copy, you really have no basis for making
7 that claim.

8 THE WITNESS: I'm still not following.

9 MS. ARROYAVE: Objection: Form.

10 BY MR. IMMEL:

11 Q. When the complaint in this case was filed,
12 there was no note attached to the complaint, correct?

13 A. From what you have just handed to me, there is
14 no note.

15 Q. Okay. Based on what I've provided you.

16 A. Yes.

17 Q. Do you normally review notes to make sure that
18 they are a true copy of the lost note?

19 MS. ARROYAVE: Objection: Form.

20 THE WITNESS: That is -- no, I do not. It is
21 not in my position.

22 BY MR. IMMEL:

23 Q. It's not in your position.

24 MR. IMMEL: All right. I guess I can enter
25 this a Exhibit G.

1 (Defendant's Exhibit Letter G was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. And going back, just for a second, to the lost
5 note affidavit. That is your signature?

6 A. Yes, that's correct.

7 Q. And your understanding is that the attorney
8 representing -- from your network drafts this?

9 A. That is correct.

10 Q. Okay.

11 MR. IMMEL: This is going to be Exhibit H.

12 (Defendant's Exhibit Letter H was marked for
13 identification.)

14 BY MR. IMMEL:

15 Q. This is a copy of the note filed after the
16 complaint in this case. I don't have the notice of
17 filing page.

18 Have you ever seen this document before?

19 A. I have seen these documents. I have not seen
20 this document.

21 Q. Okay. And this wouldn't have been the
22 document that you reviewed in executing the lost note
23 affidavit?

24 A. No. We do not -- once again, we do not review
25 the note. Our attorney determines that the note is not

1 available through our processes.

2 Q. Okay.

3 MR. IMMEL: This would be Exhibit I.

4 (Defendant's Exhibit Letter I was marked for
5 identification.)

6 BY MR. IMMEL:

7 Q. This is the newly found note. Here. And as
8 you can see, if you could compare the two notes, one has
9 a couple of additional endorsements. Whereas, the
10 previous one did not. Is that correct?

11 A. That is what I observe here, yes.

12 Q. Okay. In the review of the two notes and the
13 endorsements that are on them, have you seen this type
14 of situation before where one note that's been filed in
15 the case is partially endorsed and the other is a more
16 complete record of endorsements?

17 A. No, I have not.

18 Q. In following along the endorsements, can you
19 determine who was the last owner of the note prior to
20 your companies?

21 A. I'm sorry. Can you rephrase that for me?

22 Q. Can you determine who GMAC Mortgage, LLC has
23 acquired the mortgage note from?

24 A. The first endorsement I see here has a date.
25 It says, Mortgage Investor Corporation. It's signed on

1 February 27th, I believe, that's 2002.

2 Q. All right. And they were the original lender.
3 And then, as you can see, there is another endorsement
4 there to, I believe, GMAC Mortgage Corporation. And
5 there is also one GMAC Bank. Correct?

6 A. That is correct according to the observation
7 that I see on this document.

8 Q. So would you need an assignment from -- why do
9 you assign the MERS -- as a vice president of MERS, why
10 do you assign the MERS -- I'm sorry. Let me start over
11 there.

12 Why do you execute the assignment of mortgage
13 on behalf of MERS as nominee for the original lender and
14 not the last lender?

15 MS. ARROYAVE: Objection: Form.

16 THE WITNESS: Because as you stated, it's an
17 assignment of mortgage. It's not an assignment of
18 note.

19 BY MR. IMMEL:

20 Q. Right.

21 A. That's the only way I can answer that. The
22 mortgage itself, which we've both reviewed, states that
23 it's MERS as a nominee for Mortgage Investor
24 Corporation.

25 Q. Okay. So would you agree then that as the

1 note was transferred through these endorsements to new
2 note-holders and owners that MERS remained the
3 mortgagee?

4 MS. ARROYAVE: Objection: Form.

5 THE WITNESS: I wouldn't have that knowledge.

6 BY MR. IMMEL:

7 Q. Okay. It's your understanding that MERS does
8 not assign the mortgage every time the note is
9 transferred; is that correct?

10 MS. ARROYAVE: Objection: Form.

11 THE WITNESS: I wouldn't have that knowledge
12 either.

13 BY MR. IMMEL:

14 Q. Okay. All right. Do you know who would have
15 that knowledge?

16 A. No, I do not.

17 Q. Okay. All right.

18 MR. IMMEL: And we have here defendant's
19 request for production regarding the Jeffrey
20 Stephan documents. That will be Exhibit J.

21 (Defendant's Exhibit Letter J was marked for
22 identification.)

23 BY MR. IMMEL:

24 Q. Have you seen that document before?

25 A. I have not seen this document until recently

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1 when I found out that I was coming here.

2 Q. Okay. And also we have the response to the
3 request for production regarding the Jeffrey Stephan
4 document.

5 MR. IMMEL: That will be marked as Exhibit K.

6 (Defendant's Exhibit Letter K was marked for
7 identification.)

8 BY MR. IMMEL:

9 Q. I'm going to direct you to paragraph 5 where
10 there has been an objection based on our request for all
11 MERS system documents, records, computer data, or other
12 MERS information reviewed by Jeffrey Stephan prior to
13 executing the assignment of mortgage filed in this case
14 to determine the proper SNE.

15 It's been objected to as vague and ambiguous
16 and improperly presumes that plaintiff has custody or
17 control over any MERS system documents.

18 As a MERS vice president, you don't have
19 access to any MERS system documents?

20 A. No, I do not.

21 Q. Okay.

22 A. I do not work for MERS.

23 Q. Okay. And so you don't actually review any
24 documents prior to executing the assignment of mortgage?

25 MS. ARROYAVE: Asked and answered.

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1 BY MR. IMMEL:

2 Q. Okay. And are there any -- do you receive any
3 letters, e-mails, or other correspondence from other
4 departments that have given you any instruction on any
5 of the documents which you execute?

6 A. No.

7 Q. No. And in paragraphs -- request No. 7, as
8 far as the search for the lost note, you didn't actually
9 partake in that search. So you are not aware of any of
10 the locations searched, other than by other people?

11 A. That's correct.

12 Q. Do you know who those people would be that
13 searched for the note?

14 A. There is a team that's in our Minnesota
15 office. I am not familiar with who would actually
16 search for the said document.

17 Q. What is the name of that team? Do you know
18 the name of that team?

19 A. I don't have a formal name for them. I call
20 them document control. But that's my own name for them.

21 Q. Okay. All right. You said that the attorneys
22 representing you prior in this case only ask you to
23 execute the lost note affidavit after a substantial
24 effort has occurred?

25 MS. ARROYAVE: Objection. That goes into the

1 attorney-client privilege.

2 BY MR. IMMEL:

3 Q. As far as you understand, a substantial search
4 for the lost note has already occurred by various people
5 within your team, other teams within GMAC at the request
6 of the attorneys?

7 A. Within GMAC the lost note affidavit or lost
8 instrument affidavit would not be executed until
9 everything has been exhausted.

10 Q. Okay. Is it common for a lost note affidavit
11 to be executed and then later the note to be found?

12 A. I don't know.

13 Q. You're not sure. Okay. Earlier you were
14 mentioning that now you work for GMAC, LLC; is that
15 correct?

16 A. That is correct.

17 Q. And you still execute documents as GMAC
18 Mortgage, LLC limited signing officers, as well?

19 A. That's the same thing you just stated.

20 Q. Right. One they dropped the name -- the
21 mortgage from the name, and one they haven't; is that
22 correct?

23 A. No.

24 Q. No.

25 A. One they dropped corporation and changed it to

1 LLC.

2 Q. Oh, okay.

3 A. They became a limited liability company.
4 That's what LLC stands for.

5 Q. Okay. You said that there was an -- initially
6 there was a referral from the referral department to the
7 attorneys?

8 A. That would be correct.

9 Q. Do you ever review any of those documents in
10 your duties as executing these other documents?

11 A. No.

12 Q. So I'm going to turn to the -- this is the
13 note of authenticity ownership interrogatories limited
14 answers. Here you are.

15 MR. IMMEL: That will be Exhibit L.

16 (Defendant's Exhibit Letter L was marked for
17 identification.)

18 BY MR. IMMEL:

19 Q. Do you know, I think, it is Juan A. Aquirre?

20 A. I do not know him. But I am familiar with his
21 name.

22 Q. Okay. Are you familiar with his duties? He's
23 a senior litigation analyst.

24 A. Yes.

25 Q. Do you know if he's a senior litigation

1 analyst for GMAC Mortgage, LLC, or are there other
2 entities that he works for?

3 A. I honestly do not know.

4 Q. Okay. Would he be part of the document team
5 in Minnesota that may find a note?

6 A. No.

7 Q. No. Okay. Would he be somebody, do you know,
8 if in his duties he's somebody that searches for lost
9 documents?

10 A. No.

11 Q. Okay.

12 MS. ARROYAVE: Is that, no, you don't know?

13 THE WITNESS: No. He does not do that.

14 BY MR. IMMEL:

15 Q. He doesn't do that. Do you know what his
16 duties are?

17 A. As it states here, he is a senior litigation
18 analyst. I'm not sure of what his exact
19 responsibilities would be.

20 Q. Okay. But searching for lost documents
21 wouldn't be one of his responsibilities, more than
22 likely?

23 A. No, it would not be.

24 Q. Okay. And here are plaintiff's amended
25 answers. Okay.

1 MR. IMMEL: I'll mark it as Exhibit M.

2 (Defendant's Exhibit Letter M was marked for
3 identification.)

4 BY MR. IMMEL:

5 Q. It asks to identify all persons and/or
6 entities who are the current beneficial owners of, or
7 who have a beneficial or equitable interest in the
8 promissory note. And Federal National Mortgage
9 Association has been identified, Fannie Mae.

10 Are you aware -- and then if you look at No.
11 3, it says, Please identify all person and/or entities
12 who are current legal owners of, or who have legal
13 interest in the promissory note.

14 A. I don't have the same affidavit you have.

15 Q. Okay. Defendant's note. Do you have the
16 mortgage loan?

17 A. That's the mortgage loan.

18 Q. Okay.

19 MS. ARROYAVE: What has been introduced? Has
20 this set of interrogatory been --

21 MR. IMMEL: Yes.

22 MS. ARROYAVE: But not the other?

23 MR. IMMEL: No. This was also entered,
24 correct?

25 THE COURT REPORTER: I think it was the last

1 one.

2 BY MR. IMMEL:

3 Q. So if you look at paragraphs 2 and 3, can you
4 explain to me why Fannie Mae would have the beneficial
5 or equitable interest in the promissory note, based on
6 your understanding?

7 MS. ARROYAVE: Objection. It calls for a
8 legal conclusion.

9 THE WITNESS: No, I can't.

10 BY MR. IMMEL:

11 Q. And earlier when we discussed the MERS
12 documentation where Ginnie Mae was identified as the
13 investor, would it be fair to say that the beneficial or
14 equitable interest would actually lie with the person
15 who made the loan?

16 MS. ARROYAVE: Objection. It calls for a
17 legal conclusion.

18 THE WITNESS: I don't have that knowledge.

19 BY MR. IMMEL:

20 Q. Okay. And based on the MERS documentation
21 that I presented to you earlier, where the investor was
22 identified as Ginnie Mae. In paragraph 5 here, they are
23 identifying Fannie Mae as the investor.

24 Do you have any understanding of -- as to why
25 those two things would --

1 A. No, I don't.

2 Q. -- there would be a discrepancy there? Okay.

3 All right.

4 And going back to the mortgage loan ownership
5 and the interrogatories one more time. Can you explain
6 why one entity would have the beneficial interest and
7 another entity would have a legal interest --

8 MS. ARROYAVE: Objection. It calls for a
9 legal conclusion.

10 BY MR. IMMEL:

11 Q. -- based on your company's protocols?

12 A. I don't have that knowledge.

13 Q. Okay. GMAC Mortgage owns some loans and
14 services other; is that correct?

15 A. To my knowledge that would be a correct
16 statement.

17 Q. Okay. Do they -- and then in other instances,
18 they both own loan and service the loan?

19 A. That would be a fair statement.

20 Q. Okay. Is it possible that GMAC Mortgage is
21 the servicer for this loan and another entity -- whether
22 it be Fannie Mae, Ginnie Mae, or any other entity --
23 perhaps is the owner and GMAC is just the servicer?

24 A. That's possible. But I'm not familiar enough
25 to say yes or no.

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1 Q. Okay. All right. I'm just going to go over
2 the notice of taking the deposition duces tecum.

3 (Defendant's Exhibit Letter N was marked for
4 identification.)

5 BY MR. IMMEL:

6 Q. All right. This is -- and just for the
7 record, Exhibit A, if you would turn to that. This is a
8 list of the documents that we requested that you bring.
9 A request for production. And you provided some of them
10 earlier.

11 I just wanted to go over it and see if you
12 brought any of these documents today, or if you were
13 just relying on what was produced in the request for
14 production. Okay?

15 The deponent's most recent curriculum vitae?

16 A. I didn't feel I needed to bring that. That's
17 personal.

18 Q. Okay. You actually provided the corporate
19 resolution for MERS and for GMAC. You presented the
20 list of certifying officers. And the MERS system
21 documents records, you already stated that you don't
22 have any access.

23 Your team brings you the documents. And you
24 don't receive any direct communication from the
25 attorneys that draft them?

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1 A. The only type of communication I would receive
2 from an attorney is if a document is late in being
3 returned.

4 Q. Okay. All right. And it would be fair to say
5 that your primary responsibility is to create and
6 execute these documents, not to actually do any of the
7 underlying duties of ascertaining specific knowledge or
8 information about them, correct?

9 MS. ARROYAVE: Objection: Form. Asked and
10 answered.

11 THE WITNESS: And the answer to that would be,
12 no.

13 MR. IMMEL: All right. I think that's most of
14 it. Just let me have on second to review, but I
15 think that's most of it. All right. I think that
16 should do it for today.

17 Thank you very much for traveling here.

18 MS. ARROYAVE: I have a few questions.

19 MR. IMMEL: Yeah. I'm sorry about that.

20 MS. ARROYAVE: You can't have all of the fun.

21 Can I look at the exhibits?

22 CROSS (JEFFREY STEPHAN)

23 BY MS. ARROYAVE:

24 Q. I'm going to show you what has been previously
25 marked as Defendant's Exhibit C to your deposition.

1 Do you have any knowledge of how this document
2 is created?

3 A. No.

4 Q. Do you have any knowledge as to whether the
5 information in this document is accurate?

6 A. No.

7 Q. Do you know how this is prepared?

8 A. No.

9 Q. Okay. Let me show you what has been
10 previously marked as Defendant's Exhibit A to your
11 deposition. It is the assignment of mortgage.

12 The information that is used to prepare this
13 mortgage is kept in GMAC Mortgages' business records; is
14 that correct?

15 A. Yes.

16 Q. And these business records from where this
17 information came from were created by persons in GMAC
18 Mortgage, employees of GMAC Mortgage, right?

19 A. Yes.

20 Q. And the information was entered into the
21 computer system by these GMAC Mortgage employees at the
22 time that they became aware of the information?

23 A. Yes.

24 Q. And they had a business duty to enter the
25 information into the computer system; is that correct?

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1 A. Yes.

2 Q. And this information, these business records
3 are kept within the course and scope of GMAC's regularly
4 conducted business activities; is that correct?

5 A. I'm going to say yes.

6 Q. Okay. I'm going to show you what has been
7 previously marked as Defendant's Exhibit F to your
8 deposition. And it's the affidavit of lost original
9 document.

10 Is the information you used to prepare this
11 lost original document kept in GMAC Mortgages' business
12 records?

13 A. I don't understand the question.

14 Q. Okay. The information in the lost original
15 document, is that -- GMAC Mortgage is the owner and
16 holder of the note, correct?

17 A. Yes.

18 Q. Is that information kept within the course and
19 scope of GMAC's business records?

20 A. Yes.

21 Q. And the information in GMAC's business records
22 are entered by persons with knowledge of the information
23 that GMAC is the owner of the note?

24 MR. IMMEL: Objection: Leading.

25 THE WITNESS: Can you rephrase it? I'm not

1 sure if I follow what you are saying.

2 BY MS. ARROYAVE:

3 Q. The business records that GMAC has regarding
4 whether it is the original -- whether it is the owner of
5 the note, was entered by persons that have personal
6 knowledge of whether GMAC is the owner of the note; is
7 that correct?

8 A. I honestly don't know. I do not work in those
9 departments.

10 Q. Okay.

11 MS. ARROYAVE: I have nothing further.

12 REDIRECT (JEFFREY STEPHAN)

13 BY MR. IMMEL:

14 Q. I would just ask: The assignment of the
15 mortgage and the information on it, this is not created
16 by anyone at -- this specific document isn't actually
17 created by a member or a worker for GMAC Mortgage, it is
18 actually created by the attorney?

19 A. Yes.

20 Q. Okay. So the attorney would have to be
21 relying on business records of GMAC Mortgage in forming
22 this?

23 A. That would be correct.

24 Q. Okay. And as to the lost note, this too is
25 created by the attorney, correct?

1 A. That is correct.

2 Q. Okay.

3 MR. IMMEL: All right. That does it.

4 MS. ARROYAVE: That's it.

5 MR. IMMEL: All right. Thank you.

6 MS. ARROYAVE: We will read.

7 THE COURT REPORTER: Okay.

8 (Witness excused.)

9 (Deposition was concluded.)

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CERTIFICATE OF OATH

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I, the undersigned authority, certify that Jeffrey
Stephan personally appeared before me and was duly
sworn. Dated the 10th day of December, 2009.

Dated this 22nd day of December, 2009.

Jamie Reynolds Bentley



Jamie Reynolds Bentley, Court Reporter

Notary Public - State of Florida

My Commission Expires: 7/20/2013

My Commission No.: DD 453053

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

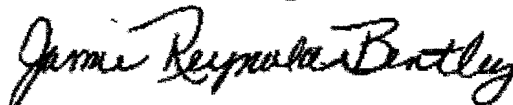
I, Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 22nd day of December, 2009.



Jamie Reynolds Bentley, Court Reporter

1 DATE: December 31, 2009
2 TO: Jeffrey Stephan
3 IN RE: GMAC Mortgage, LLC vs Ann M. Neu, Michelle Perez,
Douglas William

4
5 CASE NO.: 50 2008 CA 040805XXXX MB

6 Please take notice that on Thursday, the 10th
7 of December, 2009, you gave your deposition in the
above-referred matter. At that time, you did not
waive signature. It is now necessary that you sign
your deposition.

8 Please call our office at the below-listed
9 number to schedule an appointment between the hours
of 9:00 a.m. and 4:30 p.m., Monday through Friday,
10 at the Consor & Associates office located nearest
you.

11 If you do not read and sign the deposition
12 within a reasonable time, the original, which has
already been forwarded to the ordering attorney, may
13 be filed with the Clerk of the Court. If you wish
to waive your signature, sign your name in the blank
at the bottom of this letter and return it to us.

14 Very truly yours,

15
16
17 _____
Jamie Reynolds Bentley, Court Reporter
Consor & Associates
18 1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401

19
20 I do hereby waive my signature.

21 _____
22 Jeffrey Stephan

23 I do hereby waive my signature:

24 Cc: Via transcript: Chrisopher Immel, Esquire
25 File copy

C E R T I F I C A T E

- - -

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ____ day of _____,
2009.

JEFFREY STEPHAN

E R R A T A S H E E T

IN RE: GMAC MORTGAGE, LLC VS ANN M. NEU, MICHELLE PEREZ,
DOUGLAS WILLIAM

CR: JAMIE REYNOLDS BENTLEY

DEPOSITION OF: JEFFREY STEPHAN

TAKEN: 12/10/09

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Please forward the original signed errata sheet to this
office so that copies may be distributed to all parties.

Under penalty of perjury, I declare that I have read my
deposition and that it is true and correct subject to any
changes in form or substance entered here.

DATE: _____

SIGNATURE OF DEPONENT: _____

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EXHIBIT “ C ”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.
as Nominee for Mortgageit, Inc.

ORDERED MAIL TO:
Duncan, LLP
Jutland Drive, Suite 200
Box 17933
San Diego, CA 92117-0933

2009-094899

09:34am 07/16/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



21-028478

ASSIGNMENT OF DEED OF TRUST

VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC BANK A. as Trustee for DALT 2007-AO3 all beneficial interest under that certain Deed of Trust dated 12/22, 2007, executed by Raul Estiva and Corazon Estiva, husband and wife as joint tenants to City National Title, as trustee, for Mortgage Electronic Registration Systems, Inc., Solely as Nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007-050317 on April 07, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

5-26-09

Mortgage Electronic Registration Systems, Inc., Solely
as Nominee for Mortgageit, Inc.

By: _____

Its: _____

Jeffrey Stephan
Vice President

Penney Ivasic
of Montgomery
5/26/09
Jeffrey Stephan

) ss.

before me,

Thomas P. Strain

Notary Public

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

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.

Thomas P. Strain
Notary Public

(This Area for Official Notary Seal)

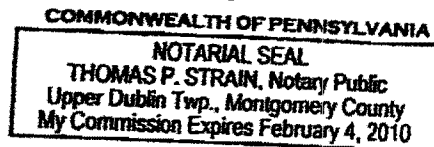


EXHIBIT C

AA46

Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

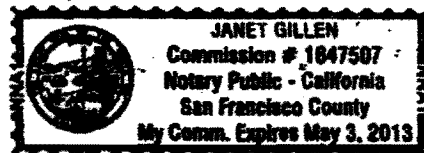
EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030



Janet Gillen, Notary Public
1/27/11

EXHIBIT “ D ”

CALIFORNIA COURT OF APPEALS
FOR THE FIRST APPELLATE DISTRICT DIVISION FOUR

No. A134401

Terrell Solis Arnes and Sandra Arnes Arnes

Appellants

vs.

U.S. Bank, U.C. MAC Mortgage U.S. Bank, U.C. MAC Mortgage
and U.C. MAC Mortgage, NBC Bank, U.S.A. de Mexico, U.C. MAC
Mortgage Electronic Systems, Inc., The Duncan, U.C.

Appellees

Case No. CIV 50154

Appeal from the Superior Court of California

County of San Mateo

Filed for filing on 03/05/15

APPELLANTS' OPENING BRIEF

Terrell Solis Arnes
Sandra Arnes Arnes
c/o Fulton Clark, Jr.
Hillsborough, CA 94011
708-881-6417
Appellants by Postage

FILED

APR 3 2015

CLERK OF COURT

San Mateo County

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FOUR		Court of Appeal Case Number: A134461
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel in Pro Per 75 Tobin Clark Dr. Hillsborough, CA 94010 TELEPHONE NO.: 650-284-6417 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Pro Se		Superior Court Case Number: CIV502857
APPELLANT/PETITIONER: Fermin Solis Aniel et. al. RESPONDENT/REAL PARTY IN INTEREST: ETS Services, LLC et. al.		FOR COURT USE ONLY
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name): Fermin Solis Aniel and Erlinda Abibas Aniel

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

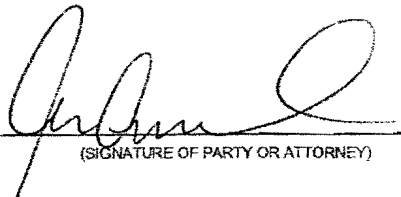
The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

5/8/12

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

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STATEMENT OF THE CASE

Plaintiffs and Appellants—FERMIN SOLIS ANIEL, and ERLINDA ABIBAS ANIEL—filed their COMPLAINT against Appellees—ETS SERVICES, LLC (“ETS”), GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION and GMAC MORTGAGE (“GMAC”), HSBC BANK, U.S.A. AS TRUSTEE FOR DALT 2007-AO3 (“HSBC”), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”), AND PITE DUNCAN, LLP (“PITE”), on February 02, 2011, in the Superior Court of the State of California, County of San Mateo. See Case number CIV502857. On March 03, 2011, Appellee, ETS, GMAC, HSBC, and MERS, filed a Demurrer to Appellants’ Complaint. On March 15, 2011, Appellee, PITE, filed a Demurrer to Appellants’ Complaint.

On May 25, 2011, Appellants filed an Opposition to Appellee’s, PITE, Demurrer to the Appellants’ Complaint. On May 26, 2011, Appellants filed an Opposition to Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer to the Appellants’ Complaint.

On June 02, 2011, Appellees, ETS, GMAC, HSBC, and MERS, filed a Reply in support for their Demurrer to the Appellants’ Complaint.

On June 08, 2011, the Court adopted its tentative ruling, and sustained Appellee’s, PITE, Demurrer to the Appellants’ Complaint without leave to amend. On June 09, 2011, the Court, after a hearing on the merits, adopted its tentative ruling, and sustained Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer without leave to amend.

On June 30, 2011, the Court filed its Order Sustaining Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer to the Appellants’ Complaint without leave to amend. On July 18, 2011, the Court filed its Order Sustaining Appellee’s, PITE, Demurrer to Appellants’ Complaint without leave to amend. On December 06,

2011, the Court, during a Case Management Conference, ordered that the case be dismissed with prejudice. This served as a Final Judgment in the case.

On February 02, 2012, Appellants filed a Notice of Appeal to the Court's order to dismiss the case with prejudice on December 06, 2011. On February 02, 2012, the Court filed a Clerk's Notice of Filing of the Notice of Appeal. On February 08, 2012, Appellants filed a Notice of Designation of Record, electing to file an appendix under California Rule of Court, Rule 8.124.

STATEMENT OF APPEALABILITY

This appeal is from the order dismissing the case with prejudice of the Superior Court of California, County of San Mateo and is authorized by the California Civil Procedure Code § 581d.

STATEMENT OF THE FACTS

On or around March 22, 2007, Raul Estiva (now deceased) and Corazon Estiva (non-parties to this action) signed Deed of Trust, to the property located at 801 Foothill Drive, San Mateo, CA 94402. (AA8). The Deed of Trust was recorded on April 03, 2007 in the County of Records' Office in San Mateo. Under the Deed of Trust, the Lender was MortgageIT, Inc. (a non-party). (AA8). Under the Deed of Trust, MERS, acting solely as a nominee for Lender and Lender's successors and assigns, was named as the beneficiary under the Deed of Trust. (AA8). Fidelity National Title was named as the Trustee under the Deed of Trust. (AA28).

Appellants own a 50% interest in the property. (AA8). Appellants disclosed their interest in their Amended Schedule A-Real Property in their Bankruptcy estate. Appellants' arrangement consisted of Raul Estiva refinancing the loan in 2007, and Appellants' making regular payments on the mortgage to the servicer,

GMAC. (AA8-AA9). Appellants' reported income received from rent from the subject property in their income tax return. (AA9). Appellants maintained the property, collected rent, and paid for the mortgages, hazard insurance, and property taxes. (AA9). On February 03, 2011, Corazon Estiva executed a Grant Deed that transferred interest in the Deed to the Appellants. (AA405).

On December 15, 2008, ETS, claiming to be merely an agent of MERS, executed a Notice of Default on the subject property. (AA43-AA44). In that Notice of Default, MERS, in its own name without identifying the Lender, claimed to be the beneficiary of the Deed of Trust. (AA43-AA44). MERS did not act as a nominee in the Notice of Default. (AA43-AA44). On the same day, December 15, 2008, MERS, in its own capacity and without identifying the Lender, executed a Substitution of Trustee, which identified ETS as the Substituted Trustee. (AA380). Both the Notice of Default and the Substitution of Trustee were recorded on the same day in San Mateo County on December 17, 2008. (AA43-AA44; AA380).

On May 26, 2009, Pite manufactured an Assignment of the Deed of Trust, transferring beneficial interest in the Deed of Trust from MERS, solely as nominee for MortgageIT, Inc., to HSBC. (AA9, AA10). The Assignment of the Deed was manufactured because Jeffrey Stephan, executed the document. (AA9, AA10). The Assignment of the Deed states that Jeffrey Stephan, a vice president of MERS, executed the Assignment of the Deed, and that Thomas P. Strain, a notary public, acknowledged the execution of the Assignment of the Deed. (AA9, AA10). Jeffrey Stephan is an infamous and admitted robo-signer, whose name has appeared in thousands of mortgage related documents. (AA9, AA10). The Assignment was recorded on July 16, 2008, while Appellants were in Bankruptcy and under the protection of the automatic stay. (AA9, AA10).

On December 28, 2010, ETS executed a Notice of Trustee Sale, which was recorded on December 31, 2010. (AA10). The subject property was eventually

foreclosed after Appellants filed their complaint and prior to Appellants' Notice of Appeal.

STANDARD OF REVIEW

On review of an order sustaining a demurrer without leave to amend, the Appellate Court's standard of review is de novo, determining its own independent judgment about whether the complaint states a cause of action as a matter of law." (Montclair Parkowners Assn. v. City of Montclair (1999) 76 Cal.App.4th 784, 790 [90 Cal.Rptr.2d 598].).

A demurrer tests the legal sufficiency of the complaint. For purposes of review, the Appellate Court accepts as true all material facts alleged in the complaint, but not contentions, deductions or conclusions of fact or law. We also consider matters that may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (Id.) Plaintiff has the burden to show a reasonable possibility the complaint can be amended to state a cause of action. (Id.)

ARGUMENT

A. APPELLANTS ESTABLISHED STANDING BECAUSE OF THEIR INTEREST IN THE PROPERTY THAT WAS HARMED BY THE ACTIONS OF THE APPELLEE.

Under California Civil Code of Procedure § 367, every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute. In the case, Jasmine Networks, Inc. v. Superior Court (Marvell Semiconductor, Inc.), 180 Cal. App. 4th 980 (2009), the Court stated that § "367 simply requires that the action be maintained in the name of "[t]he person who has

the right to sue under the substantive law." (4 Witkin, Cal. Procedure, *supra*, Pleading, § 121, p. 187, *italics added*.) *Jasmine Networks, Inc. v. Superior Court (Marvell Semiconductor, Inc.)*, 180 Cal. App. 4th 980 (2009). Thus if the plaintiff has a cause of action in his own right, and he pursues it in his own name, section 367 poses no obstacle to maintenance of the action. *Id.* The application of the statute, "while superficially concerned with procedural rules, really calls for a consideration of rights and obligations." (4 Witkin, *supra*, Pleading, § 121, p. 187.). *Id.*

Appellants established an interest in the property as alleged in their Complaint. Appellants established a substantive cause of action based on the Appellees attempts to wrongfully foreclose the property. Appellants' interest in the property was adversely affected by the fraudulent nature of the execution and creation of the Substitution of Trustee, Notice of Default, and Assignment of the Deed of Trust. Without Appellees actions, Appellants would continue to have interest and possession of the property. Based on Appellants' injuries, they have established a cause of action against the Appellees. The Court in its decision refused to acknowledge Appellants' interest in the property but rather focused on the fact that Appellants' names do not appear on the Promissory Note or the Deed of Trust. The focus should have been on Appellants' substantive case rather than whether only the Estivas have standing to sue the Appellees. Based on Appellants' bankruptcy case, the grant deed, and the allegations made in the complaint, Appellants have established an interest in the property despite their names not appearing on the Promissory Note or the Deed of Trust.

The Court abused its discretion by determining that Appellants lack standing because their names do not appear on the Deed of Trust or the Promissory Note. The Court failed to determine whether the Appellants, with an interest in the property, have established a claim for a wrongful foreclosure that led to an injury

of their interest in the property. The Court did not rule whether in fact Appellants had interest in the property, but rather only names that appear on the Deed of Trust or the Promissory Note may establish a claim based on the property. Appellants were never given an opportunity to prove its ownership interest in the property. Had Appellants established that ownership interest in the property, Appellants' allegations in their Complaint were enough to establish a cause of action based on substantive law.

Therefore, the Court's attempt to create a prerequisite in order to challenge a foreclosure was an abuse of discretion. The Appellants' sufficiently established an ownership interest based on its allegations concerning the Bankruptcy Court, their contributions to the maintenance of the property, and rental income received and reported in their income tax returns. (AA8-AA9). Based on this interest, Appellees' wrongful actions seriously injured Appellants' established interest in the property. This created a substantive cause of action by the Appellants, the real party in interest.

B. UNITED STATES BANKRUPTCY DETERMINED APPELLANTS HAD STANDING BASED ON THEIR SCHEDULES AND ITS DECISION TO ABANDON THE SUBJECT PROPERTY.

Res judicata or claim preclusion bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) Res judicata applies if the decision in the prior proceeding is final and on the merits and the present proceeding is on the same cause of action as the prior proceeding. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 974.) Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated. (*Id.* at p. 975.)

The Superior Court's decision to grant Appellees' Demurrer to the Appellants' Complaint was solely based on Appellants' lack of standing to have a valid claim against the Appellees. The Court determined that Appellants lacked any standing to challenge the foreclosure of the Appellees. (AA445-AA446). However, because Appellants' filed for Bankruptcy and listed the property as their property with 50% interest, the Bankruptcy Court had already established Appellants' standing. (AA8-AA9). Further, the Bankruptcy Court approved Appellants' request to abandon the property in order for the Appellants' to assert their rights in a lawsuit outside the Bankruptcy court. (AA356-AA357).

The Court abused its discretion when it did not take into consideration the events that took place during the Appellants' bankruptcy. Appellees did not attempt to foreclose the property while the property was protected under the Automatic Stay in the Appellants' bankruptcy case. It was only after Appellants' property was abandoned did Appellees record a Notice of Trustee Sale without a new Notice of Default as required by California law. (AA393).

Appellees had an opportunity to challenge Appellants' claim of ownership interest in the Bankruptcy Court when Appellants' sent Appellee notice through its schedules, and prior to the Trustee's ruling to abandon the property. (AA356-AA357). Appellees failed to challenge the standing in the Bankruptcy Court. As such, Appellants, based on the decision of the Bankruptcy Court, did establish their interest in the property. That 50% interest could not be challenged in the Superior Court. The Court abused its discretion when it did not accept the Bankruptcy Court's ruling establishing the subject property as part of the Appellants' estate and their standing as 50% interest ownership in the property. Therefore, the Court lacked jurisdiction to rule that Appellants did not have standing to continue their complaint against the Appellees.

C. THE COURT ERRED BY NOT GIVING APPELLANTS AN OPPORTUNITY TO AMEND THEIR COMPLAINT

In the event that the complaint is found to not state a cause of action, but there is a reasonable possibility that amendment can cure the defect, leave to amend must be granted. (Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 38, 39).

The Superior Court determined that they were not convinced of Appellants' ownership interest in the subject property. Even if Appellants' Complaint was not sufficient to establish an ownership interest, Appellants should have had one more opportunity to amend their Complaint to establish a sufficient cause of action. If the Court was not convinced about the Appellants' interest in the property, Appellants could have amended their Complaint to establish more allegations to support their ownership interest, including declarations from Corazon Estiva, co-owner named in the Deed of Trust. Instead, the Court sustained Appellees' Demurrers without leave to amend. Appellants can prove its ownership interest in the property had they been given a chance to amend their Complaint.

CONCLUSION

The Superior Court erred in sustaining the demurrer without leave to amend and entering a judgment of dismissal. The Court should not have prevented Appellants from testing the sufficiency of their causes of action. The Court made no findings regarding the substantive basis of their causes of action. Appellants suffered an injury based on Appellees' conduct in foreclosing the property. Appellants should have been given an opportunity to continue their Complaint, and the Court should not have prevented them from recovery based on their names not appearing on the Deed of Trust or Promissory Note. Appellants' request attorney's fees and cost for this Appeal.

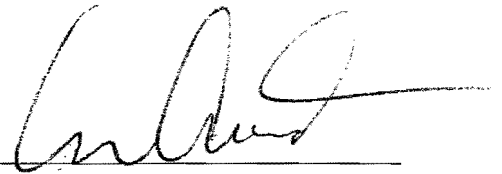
Respectfully submitted.

Dated: May 3, 2012



FERMIN SOLIS ANIEL
PRO SE APPELLANT

Dated: May 3, 2012



ERLINDA ABIBAS ANIEL
PRO SE APPELLANT

Certificate of Compliance

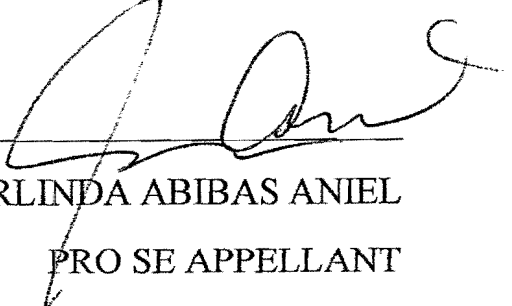
Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 2073 words, including footnotes. In making this certification, I have relied on the word count of the computer program, Microsoft Office 2008, used to prepare the brief.

Executed on May 03, 2012 at Hillsborough, California



FERMIN SOLIS ANIEL

PRO SE APPELLANT



ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over eighteen years of age and not a party to the within action. My address is

75 Tobin Clark Dr., Hillsborough, CA 94010

On May ~~4~~⁶₃, 2012, I served the following:

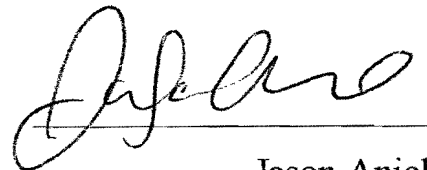
Appellants' Opening Brief

Certificate of Interested Parties or Entities

on the parties set forth on Exhibit A by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing. I caused such envelope, with postage thereon full prepaid, to be placed in the United States Mail at San Francisco, California, or personally delivered. The addresses to which each party was served are as set forth in Exhibit A.

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

Executed on May ~~4~~⁶₃, 2012 at San Mateo, California



Jason Aniel

EXHIBIT A
TO PROOF OF SERVICE

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(Four Copies)

Honorable Judge Joseph C. Scott
Southern Court, Dept. 25, Courtroom 2M
400 County Center
Redwood City, CA 94063

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

CHRISTOPHER L. PETERSON
Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

BRIAN S. WHITEMORE SEVERSON & WERSON, P.C. One Embarcadero Center, Suite 2600 San Francisco, California, 94111	Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALIT 2007-A03, and Mortgage Electronic Registration Systems, Inc.
--	---

Claim No. 114

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM						
Name of Debtor: GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION		Case Number: 12-12032 (MG)						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		<div style="font-size: 2em; font-weight: bold;">RECEIVED</div> <div style="font-size: 1.5em;">JUN 19 2012</div> <div style="font-weight: bold;">KURTZMAN CARSON CONSULTANTS</div>						
Name of Creditor (the person or other entity to whom the debtor owes money or property): ERLINDA ABIBAS ANIEL								
Name and address where notices should be sent: 75 Tobin Clark Dr. Hillsborough CA 94010								
Telephone number: 650-284-6417 email: _____		<div style="border: 1px solid black; padding: 5px; margin: 5px;"> <input checked="" type="checkbox"/> Date Stamped Copy Returned <input type="checkbox"/> No self addressed stamped envelope <input type="checkbox"/> No copy to return </div>						
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____						
1. Amount of Claim as of Date Case Filed: \$ <u>1,085,000.00</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
2. Basis for Claim: <u>Pending Lawsuit</u> (See instruction #2)								
3. Last four digits of any number by which creditor identifies debtor: <u>4840</u>	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)						
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.								
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ <u>1,075,000.00</u> Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>10,000.00</u> Basis for perfection: <u>Litigation Expenses</u> Amount of Secured Claim: \$ _____ Amount Unsecured: \$ <u>10,000.00</u>						
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.								
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). </td> </tr> </table>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).						
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).						
Amount entitled to priority: \$ _____								
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.								
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								



121203212061900000000003

2100-0001 Form 100 (12-11)

2

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

JUN 19 2012

8. Signature: (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

- ☒ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Erlinda Abibas Aniel

Title: _____

Company: _____

Address and telephone number (if different from notice address above):

75 Tobin Clark Dr.

Hillsborough, CA 94010

Telephone number 650-284-6417 email: _____

(Signature)

(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

ATTACHMENT 1

PROOF OF CLAIM

FERMIN SOLIS ANIEL AND ERLINDA ABIBAS ANIEL, AS PLAINTIFF, PRO
PER, AGAINST ETS SERVICES LLC, GMAC MORTGAGE, LLC F/K/A GMAC
MORTGAGE CORPORATION AND GMAC MORTGAGE, HSBC BANK U.S.A. AS
TRUSTEE FOR DALT 2007-A03, MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; PITE DUNCAN, LLP AND DOES 1-50 INCLUSIVE

Aniel et. al. vs. ETS SERVICES LLC et. al.,
Superior Court of the State of California, County of San Mateo, Case No: CIV 502857.
Filed on February 2, 2011.

Aniel et. al. vs. ETS SERVICES LLC et. al.,
Court of Appeal Case No: A134461
Filed on May 3, 2012.
Status of the case: Pending

Subject Property Address: 801 Foothill Drive, San Mateo CA 94402 (legal property
description attached).

Loan No:

A. Description of Claims.

Claims arising from the following causes of action:

1. Violation of the California Rosenthal Act
2. Fraud (Misrepresentation)
3. Wrongful Foreclosure
4. Unfair Competition Law (Cal. Bus. & Prof. Code section 17200 et seq)
5. Request for Injunctive Relief
6. Quiet Title

B. History of the Lawsuits:

The claimants of the above proof of claim, filed their Chapter 11 petition in the
United States Bankruptcy Court of Northern District of California. See Case No:
09-30452 DM on February 25, 2009, and their case was converted to Chapter 7 on
August 02, 2010. The estate was discharged under 11 USC § 727 (the
Bankruptcy Code) on December 2, 2010. On February 4, 2011, the bankruptcy
trustee was closed with no distribution and the trustee abandoned the claimant's
(debtors) bankruptcy assets.

On the list of claimants' bankruptcy estates the claimants (debtors) identified the subject property above as part of the claimants' bankruptcy asset/estate that was abandon by the trustee under the jurisdiction of bankruptcy court. On February 2, 2011, the claimants filed a civil action in the Superior Court of California, County of San Mateo for equitable and legal relief for wrongful foreclosure fraud (misrepresentation), violation of Rosenthal Act, Violation of Unfair Competition Law (Cal. Bus. & Prof. Code section 17200 et seq.), Quiet Title, and request for injunctive relief. See attached verified complaint as exhibit "A". The very core of the complaint is the execution of the assignment of deed by Jeffrey Stephan, who is an infamous robo-signer. See Exhibit "B" Jeffrey Stephan Deposition on December 10, 2009, at West Palm Beach, Florida. Jeffrey Stephan signed the assignment of the deed without personal knowledge of its contents. The assignment also contained a fraudulent notarization that was certified under penalty of perjury under the laws of the State of California, when in fact the notary was done in Commonwealth of Pennsylvania, Upper Dublin Twp., Montgomery County. See Attached "C" copy of Assignment of Deed. Since, the assignment of deed is null and void, the substitution of trustee, notice of default, notice of trustee sale, trustee deed upon sale are null and void and no effect. Therefore, the foreclosure on the subject property is null and void and has no effect. However, on June 09, 2011, the state court ruled that the claimants (plaintiffs on the above civil case) had no standing because their names were not on the deed of trust at the commencement of the complaint on February 2, 2011. On March 29, 2012, the subject property was sold in the amount of \$ 1,075,000.00. On May 3, 2012 claimants (plaintiffs) filed their timely appeal in California Court of Appeal. see Exhibit "D", Appellants Brief.

C. Indemnification Claims:

1. The Claimants have been damaged by virtue of Debtor's selling the property while the case is still pending. Without limiting the generality of the foregoing, the Claimants have incurred, and will continue to incur, significant legal expenses enforcing and defending against the Debtor's improper foreclosure of claimant's subject property.
2. Pursuant to the Governing Documents and applicable laws, Debtor entities are liable to the Claimants for indemnification against any losses, claims, expenses or damages including legal fees and related cost, arising out of based upon any breaches of any representation warranty or covenant made by the Debtor or any affiliates of the Debtors in the Governing Documents
3. Base upon the foregoing, a claim is asserted in an unliquidated amount on account Debtor's indemnification obligation arising from fraud and wrongful foreclosure, and Governing Documents. As of this date of this Proof of Claim, the Claimants has incurred expenses of not less than \$10,000.00 in connection with filing the civil actions against Debtor and its affiliates GMAC Mortgage, LLC, and ETS Services, LLC. Such expenses and indemnification obligations continue to accrue.

4. As of March 29, 2012, the Subject Property was sold in the amount of \$1,075,000.00. MLS number is 81204251.

D. Miscellaneous

1. By executing and filing this Proof of Claim, Claimants/ Plaintiffs does not waive any right to any security or any right or rights with respect to any claim that Claimants/Plaintiffs has.
2. To the knowledge of the signatory hereto, the claim are not subject to any set off or counterclaims, and no judgment has been rendered on this claim.
3. Claimant/Plaintiffs reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature that it has, or may have, that come to Claimants/Plaintiffs attention or arises after the filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.
4. Nothing contained in this Proof of Claim shall be deemed or construed as:
 - (a) A waiver of, or other limitation on, any right or remedies of Claimant/Plaintiffs.
 - (b) A consent by Claimants/Plaintiffs to this jurisdiction of the Court or any other court in respect to proceedings, if any.
 - (c) A waiver or release of, or any limitation on Claimants/Plaintiffs right to trial by jury in the Court or any court in any proceeding.
 - (d) A waiver or release of, or any other limitation on, Claimant/Plaintiffs' right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim or
 - (e) A waiver or release of, or any other limitation on claimants/Plaintiffs right to assert that any portion of the claim asserted herein are entitled to treatment as priority claims, including under Section 503(b) and Section 507(a)(1) of the bankruptcy code.

ATTACHMENT 2

TOTAL ITEM BREAKDOWN

1.	Value of Real Estate Property -	\$1,075,00.00
2.	Legal Expenses incurred during the pending case:	
a.	Court expenses -	\$2,000.00
b.	Shipping and Positing -	\$500.00
c.	Processing Cost -	\$500.00
d.	Others Misc. -	\$6700.00
	Totals	\$10,000.00
	Totals	\$ 1,085,000.00

EXHIBIT "A"

1 FERMIN SOLIS ANIEL -IN PRO SE-
2 ERLINDA ABIBAS ANIEL
3 75 Tobin Clark Drive
4 Hillsborough, CA 94010
5 Phone: (650) 284 - 6417
6 Fax: (650) 571-582

(ENDORSED)
FILED
SAN MATEO COUNTY

FEB - 2 2011

Clerk of the Superior Court
By G. Lacey
DEPUTY CLERK

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN MATEO

9 FERMIN SOLIS ANIEL, an individual;
10 ERLINDA ABIBAS ANIEL, an individual;

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
15 GMAC MORTGAGE CORPORATION AND
16 GMAC MORTGAGE; HSBC BANK, U.S.A.
17 as Trustee for DALT 2007-AO3;
18 MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS, INC.; PITE
20 DUNCAN, LLP; AND DOES 1-50 inclusive

21 Defendants

Case No.:

CIV 502857

VERIFIED COMPLAINT FOR:

- (1) VIOLATION OF THE CALIFORNIA ROSENTHAL ACT
- (2) FRAUD (MISREPRESENTATION)
- (3) WRONGFUL FORECLOSURE
- (4) UNFAIR COMPETITION LAW (Cal. Bus. & Prof. Code § 17200 et seq.)
- (5) REQUEST FOR INJUNCTIVE RELIEF
- (6) QUIET TITLE

DEMAND FOR JURY TRIAL

UNLIMITED CIVIL CASE (Exceeds \$25,000)

22 By this Complaint, Plaintiffs Erlinda Abibas Aniel, and Fermin Solis Aniel,
23 (collectively "Plaintiffs") does hereby allege for causes of action against Defendants GMAC
24 MORTGAGE, LLC F/K/A as GMAC Mortgage and GMAC Mortgage Corporation
25 ("GMAC"); ETS SERVICES, LLC ("ETS"); Mortgage Electronic Registration Systems, Inc.,
26 ("MERS"); HSBC BANK U.S.A. as TRUSTEE for DALT 2007-AO3 ("HSBC"); PITE
27 DUNCAN, LLP ("Pite Duncan"); and DOES 1-50 inclusive plaintiffs (collectively
28 "Defendants") states, alleges, and avers that the following allegations and other factual

CM-010

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel -Pro Se- 75 Tobin Clark Dr. Hillsborough, CA 94010</p> <p>TELEPHONE NO.: 650-284-6417 FAX NO.: _____</p> <p>ATTORNEY FOR (Name): Pro Se</p> <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo</p> <p>STREET ADDRESS: 400 County Center</p> <p>MAILING ADDRESS: 400 County Center</p> <p>CITY AND ZIP CODE: Redwood City, CA 94063</p> <p>BRANCH NAME: _____</p> <p>CASE NAME: Fermin Solis Aniel et al. v. ETS Services, LLC et al.</p>	<p>FOR COURT USE ONLY</p> <p style="font-size: 2em; font-weight: bold;">RECEIVED</p> <p style="font-size: 1.5em; font-weight: bold;">FEB - 2 2011</p> <p>CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY</p>
<p>CIVIL CASE COVER SHEET</p> <p><input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)</p> <p>Complex Case Designation</p> <p><input type="checkbox"/> Counter <input type="checkbox"/> Joinder</p> <p>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</p>	<p>CASE NUMBER: CIV 502857</p> <p>JUDGE: _____</p> <p>DEPT: _____</p>

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input checked="" type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| <p>a. <input type="checkbox"/> Large number of separately represented parties</p> <p>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve</p> <p>c. <input type="checkbox"/> Substantial amount of documentary evidence</p> | <p>d. <input type="checkbox"/> Large number of witnesses</p> <p>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court</p> <p>f. <input type="checkbox"/> Substantial postjudgment judicial supervision</p> |
|---|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): (6): Violation of CA Rosenthal Act, Fraud, Wrongful Foreclosure, etc.
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 contentions have evidentiary support or, where specifically identified as being pled "on
2 information and belief" are likely to have evidentiary support after a reasonable opportunity for
3 further investigation or discovery.

4 NATURE OF THIS ACTION

5 1. This is an action for fraud, misrepresentation, violation of California Rosenthal
6 Act, wrongful foreclosure, declaratory relief, quiet title, request for immediate injunction relief
7 (TRO), and violations of California Civil Code § 2924 et seq., and unfair completion law
8 California Business & Professional code § 17200 et seq., brought by Plaintiffs, the rightful
9 owners of the real property, against all defendants, who lacks the standing to enforce
10 Promissory Note and the Deed of Trust, which secures the Note, to foreclose on the Plaintiffs' property.

11 2. This action is also based on the fraudulent misrepresentations by all defendants
12 namely: the fabricated and manufactured assignment of the deed signed by Jeffrey Stephan as
13 Vice President of MERS, who admitted signing 10,000 foreclosure related documents a month
14 in behalf of defendant GMAC without personal knowledge of the documents. Jeffrey Stephan
15 is an employee of defendant GMAC. The assignment of deed was never notarized in front of
16 Jeffrey Stephan, but instead GMAC used another department to handle the notarization of such
17 an assignment of deed. Pite Duncan created the assignment of deed through GMAC referral
18 unit. Defendant GMAC procedure to foreclose a property is to have the file referred to
19 foreclosure attorney. *Pite Duncan is the foreclosing attorney in behalf of HSBC* and Pite
20 Duncan is the one that identified HSBC as the secured creditor in assignment of deed executed
21 by Jeffrey Stephan on May 26, 2009, notarized on the same date, and recorded on July 16,
22 2009. Defendant MERS, as nominee under plaintiffs' deed of trust, connived with all the
23 defendants in manufacturing the assignment of deed, and deliberately misled the plaintiffs into
24 believing that HSBC was secured creditor when defendants knew this representation to be
25 false. Defendants' conduct involved fraud, deceit, or reckless disregard of the statutory
26 requirements that could result in substantial loss, or significant risk of substantial loss to
27 plaintiffs through the creation of a false assignment of deed. Defendants committed these acts
28 in order to identify the secured creditor or beneficiaries, which violated the Pooling Servicing

1 Agreement. Defendants made a fraudulent conveyance during Plaintiffs' bankruptcy. The
2 subject property is part of plaintiffs' bankruptcy estates.

3 3. Defendants conduct involved fraud, deceit or deliberate or reckless disregard of
4 property rights and statutory requirements and resulted to substantial loss, or significant risk of
5 substantial loss to plaintiffs.

6 4. HSBC, in concert with MERS, willfully received the assignment of beneficial
7 interest while plaintiffs were in bankruptcy on May 26, 2009.

8 5. Pite Duncan willfully prepared the assignment of deed on May 26, 2009 in
9 concert with GMAC employee by the name of Jeffrey Stephan.

10 6. Pite Duncan willfully created the assignment of deed on May 26, 2009 and
11 recorded on July 17, 2009, knowing that the plaintiffs had a pending Chapter 11 case in
12 Bankruptcy Court as of February 25, 2009.

13 7. All the defendants were in concert to each other to defraud plaintiffs of their
14 property rights and stealing the subject property for profits.

15 8. ETS willfully recorded a notice of trustee sale without recording a notice of
16 default which violate the California Civil Code § 2924 et seq.

17 9. ETS willfully recorded notice of trustee sale, acting as a trustee without any
18 evidence of recorded substitution of trustee, in violations of Cal Civ. Code § 2934.

19 10. GMAC is in concert with other defendants to create and manufactured these
20 fraudulent documents in order to obtain a non-judicial foreclosure in California.

21 11. Pite Duncan falsely represented that assignment of deed assigned the beneficial
22 interest to HSBC as trustee for DALT 2007-A03, there is no evidence that MortgageIT, the
23 original lender, ever transferred the beneficial interest to HSBC, which was evidenced by Pite
24 Duncan not attaching any endorsement of the Note in their objection to plaintiffs
25 reorganization plan. MERS, as nominee of lender MortgageIt, is not authorized to assign any
26 assignment of deed because MERS is only an agent of lender MortgageIT. MERS' function is
27 only a mortgagee of record. Even if MERS could prove that it has authorization to assign or
28 transfer beneficiaries, MERS could be liable for violation of Cal. Civ. Code § 1095.

12. HSBC did not file any Proof of Claim in the bankruptcy Court as a secured creditor of plaintiffs' deed of trust and promissory note.

13. Defendants, while acting as beneficiaries, lenders and trustees, by use of the mail, and the means and instrumentalities of interstate commerce, directly or indirectly, engaged in acts practices or courses of business, which were fraudulent, deceptive, or manipulative. Defendants made untrue statements of material fact or omitted to state a material fact necessary to make the statement made, in the light of the circumstances under which they were made.

14. Defendants engaged in acts, practices or courses of business that were fraudulent, deceptive or manipulative with respect to the Defendants foreclosing on plaintiffs property. And unless enjoined, Defendants will continue to commit fraud and violate California Foreclosure Laws.

15. Defendants conducts could create a big havoc for plaintiffs' chain of title and would create a cloud of title on plaintiffs' property.

16. Plaintiffs are entitled to Quite Title against defendants because plaintiffs have claim ownership of the subject property at 801 Foothill Drive, San Mateo, California, 94402.

PARTIES

17. Plaintiffs' property is located at 801 FOOTHILL DRIVE, SAN MATEO, CA 94402 ("Property"). Legal description:

THE LAND REFERRED TO HEREIN BELOW IS
SITUATED IN THE CITY OF SAN MATEO, COUNTY OF
SAN MATEO, STATE OF CALIFORNIA, AND IS
DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT
CERTAIN MAP ENTITLED "FOOTHILL TERRACE"
FILED IN THE OFFICE OF THE RECORDER ON JUNE 10,
1946 IN BOOK 25 AT PAGE (S) 59.

JPN: 034-031-312-03

APN: 034-312-030

1 18. Plaintiffs are informed, believe, and allege that Defendant Pite Duncan is a law
2 firm "debt collector" whose main purpose is to create and manufactured an assignment of deed
3 and have Jeffrey Stephan executed the fraudulent assignment of deed of trust in concert with
4 MERS, GMAC, HSBC, and ETS to commit the fraud. Defendant Pite Duncan is a debt
5 collector law firm and a limited liability partnership with its principal office in San Diego,
6 California. Pite Duncan represented to the Bankruptcy Court that they were the attorneys for
7 secured creditor HSBC.

8 19. Defendant MERS is a separate corporation that is acting solely as a nominee
9 for lender and lender's successors and assigns. MERS is the beneficiary under this Security
10 Instrument of Plaintiffs deed of trust. MERS is "mortgagee of records" who keeps track of all
11 beneficiaries. MERS is a confidential computer registry utilized by Lenders to list and trade
12 mortgage loans on the secondary market while avoiding the legal requisites of recording
13 conveyance of said loans and deed of trust. Rather Defendant MERS is simply a shell
14 designed to obscure the identity of the true holder of the note. MERS is responsible for
15 creating thousand of fabricated and bogus assignment of deed allowing third parties to do the
dirty work for MERS.

16 20. Plaintiffs are informed, believe, and allege that Defendant ETS is a purported
17 foreclosure trustee and is a debt collector whose main purpose is to foreclose on Plaintiffs'
18 property and collect the debt by violating California foreclosure law. ETS is an affiliate of
19 GMAC under the name of Executive Trust Services dba: ETS Services, LLC at 2255 North
20 Ontario Street, Suite 400, Burbank California 91504-3120.

21 21. Defendant GMAC Mortgage, LLC F/K/A, GMAC MORTGAGE and GMAC
22 MORTGAGE CORPORATION, based in Pennsylvania, is a loan servicer for plaintiffs'
23 mortgage or a bill collector. When plaintiffs defaulted on a loan, GMAC became a debt
24 collector and hired third parties vendors such as law firm debt collectors and debt collector
25 companies such as ETS, who represented to be trustee on plaintiffs' deed of trust when it
failed to collect a defaulted amount.

26 22. Defendant HSBC is the alleged Beneficiary of the Deed of Trust and new
27 Lender under the Promissory Note by way of a fabricated and manufactured assignment of
28

1 deed created by Pite Duncan and executed by the infamous robo-signer, Jeffrey Stephan, an
2 alleged vice president of MERS, which is false because Jeffrey Stephan is an employee of
3 GMAC. Plaintiffs believe that this is a securitized Trust and Plaintiffs' loan is one of many
4 loans within this securitized trust.

5 23. Defendants sued as DOES 1 through 50 are presently unknown to Plaintiffs
6 and Plaintiffs therefore uses these fictitious names pursuant to Code of Civil Procedure §
7 474, on information and belief, each of the fictitious named Defendant is responsible for the
8 event and happenings recited in this Complaint, Plaintiffs will amend this complaint upon
9 ascertaining the identities and capacities of the Doe Defendants.

10 24. On information and belief, each of the Defendants is and at all relevant times
11 were, the agent, servant, employee or representative of each remaining Defendants. On
12 further information and belief, each of each Defendant, in doing the things alleged, was
13 acting within the course and scope of his/her or its authority as an agent, servant, employee
14 and/or representative of the remaining Defendant with the knowledge, permission, consent,
15 authorization and/or subsequent ratification of the remaining Defendants.

16 JURISDICTION AND VENUE

17 25. This Court has subject matter jurisdiction of this action. The Superior Court is
18 a court of general jurisdiction. See Cal. Civ. Pro. §410.10. Plaintiffs seek damages under the
19 California Rosenthal Act, Fraud. Misrepresentation, violation of Ca. Civ. Code § 2924 et
20 seq., wrongful foreclosure and unfair competition law, (Cal. Bus. & Prof. Code § 17200 et
21 seq.). Plaintiffs also seek declaratory judgment, temporary restraining order, permanent
22 injunction, and quiet title.

23 26. All of the Defendants have conducted business in the State of California,
24 which included, among others, recording documents and pursuing a non-judicial foreclosure
25 in this County.

26 27. Venue is proper in this County because Defendants violated laws in this State
27 of California that involve real property located in this County. See Cal. Civ. Pro. §395(a).

28 28. Declaratory relief is available pursuant to Cal. Civ. Pro. §1060.

FACTUAL ALLEGATIONS

Inception of the Plaintiffs' Loan

29. On or around March 22, 2007, Raul Estiva and Corazon Estiva, (non-parties to this action) signed a Deed of Trust. That Deed of Trust was recorded on April 03, 2007, in the County of Recorders Office in San Mateo. See Exhibit "A".

30. Under the Deed of Trust, the Original Lender was MortgageIT, Inc.

31. Under the Deed of Trust, MERS, is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the security instrument.

32. Plaintiffs allege and believe that MortgageIT has been dissolved.

33. Under the promissory note, MortgageIT is the lender.

Notice of Default

34. On December 17, 2008, ETS recorded a Notice of Default in San Mateo County Recorder's office. See Exhibit "B". The documents stated that "to find out the amount you must pay, or arrange to pay for payment to stop foreclosure, or your property is in foreclosure for any reason, contact Mortgage Electronic Registration Systems, Inc.

C/O ETS Services, LLC

2255 North Ontario Street Suite 400

Burbank, California 91504-3120

(818) 280-1800"

ETS claimed to act as an AGENT for Beneficiary. Neda Cayco, a Trustee Sale Officer, signed the Notice of Default. During this period of time, ETS had no evidence that ETS was in fact a trustee or an agent of beneficiary of MERS. ETS did not disclose that ETS was a debt collector attempting to collect a debt.

35. On February 25, 2009, plaintiffs filed a voluntary bankruptcy under Chapter 11. Plaintiffs owned a 50% interest of the subject property as disclosed on their Amended Schedule A-Real Property in the bankruptcy forms. Plaintiffs Chapter 11 converted to Chapter 7 on August 4, 2010 and plaintiffs were discharged on December 2, 2010. Bankruptcy trustee abandon plaintiffs' property on subject property on November 2, 2010. Plaintiffs had 50%

1 interest on the property with Raul Estiva (now deceased) and Corazon Estiva. Raul Estiva was
2 the one who took out the refinancing of the loan in 2007 with MortgageIT, Inc., which has
3 been dissolved. Although plaintiffs' names were not on the deed, plaintiffs paid the regular
4 payments of the mortgage to GMAC, who is a loan servicer/bill collector. Plaintiffs disclosed
5 this property in their income tax return. Plaintiffs maintained the property and paid for the
6 mortgages, hazard insurance, and property taxes. By late 2008, the mortgage payment
7 increased tremendously and the rent cannot sustain the mortgage payment. Since plaintiffs
8 have a 50% interest in the property, plaintiffs filed this action against all the defendants.

9 36. The assignment of deed transferring all beneficial interest to defendant HSBC
10 by MERS was in violation of the automatic stay because plaintiffs were still in bankruptcy at
11 the time the assignment of deed were executed and recorded. HSBC never request a motion
12 for relief from the automatic stay and only objected to plaintiffs' reorganization plan, which
13 Pite Duncan submitted on July 28, 2010. HSBC did not file any proof of claim in the
14 bankruptcy court neither proof of any chain of title to perfect the lien.

15 37. On July 28, 2010, Pite Duncan filed an objection to plaintiffs reorganization
16 plan and attached to its object: a promissory note, a deed of trust, an assignment of deed of
17 trust signed by robo-signer Jeffrey Stephan, and Broker Price Opinion. Pite Duncan's version
18 of the promissory note intentionally deleted the original loan numbers and the MERS MIN
19 numbers. Pite Duncan attempted to hide the true identity of all the investors, who bought the
20 promissory note. By hiding the identity of all the investors, the promissory note could be sold
21 and resold numerous times. In other words, if borrowers owe one million dollars on a note,
22 that million dollars note would be sold numerous times resulting in a big profit for lenders.
23 Plaintiffs' loan is under a securitized mortgages as Pite Duncan asserted that the secured
24 creditor is HSBC, who were in concert with all defendants to have Jeffrey Stephan, without
25 personal knowledge, execute the fabricated and manufactured assignment of deed and have it
26 acknowledged by a notary in the same office without the presence of Jeffrey Stephan.

26 Assignment of the Deed of Trust

27 38. On May 26, 2009, Pite Duncan manufactured an assignment of deed, which was
28 signed by Jeffrey Stephan, an infamous robo-signer, who executed the document as a MERS

1 vice president and acknowledged the document by a notary public by the name of Thomas P.
2 Strain. See Exhibit "C". The assignment of deed was recorded by First American Title
3 Company as an accommodation only that certain assignment of deed be mail to Pite Duncan at
4 4375 Jutland Drive P.O. Box 17933 San Diego, California 92117-0933, and recorded on July
5 16, 2009.

6 39. On May 26, 2009, MERS, without authority, executed and acknowledged an
7 assignment of deed through GMAC employee Jeffrey Stephan who signed under MERS as
8 vice president. See Exhibit "D", Jeffrey Stephan deposition.

9 **Substitution of Trustee**

10 40. The original trustee under the deed of trust is Fidelity National Title. None of
11 the defendants have any evidence that they have powers as a trustee under the deed of trust to
12 conduct a foreclosure sale.

13 **Notice of Trustee Sale**

14 41. On December 28, 2010, ETS executed a NOTICE OF TRUSTEE SALE and
15 recorded the document on December 31, 2010. ETS scheduled to have the subject property to
16 be auctioned January 27, 2011. See Exhibit "E".

17 42. On January 26, 2011, plaintiffs were only aware of the impending trustee sale
18 through their tenants.

19 43. On January 27, 2011, plaintiffs attended the auction sale but the sale was
20 postponed to February 9, 2011.

21 44. Plaintiffs assert that there is no substitution of trustee ever recorded in the
22 County San Mateo authorizing ETS to conduct the trustee sale or authorizing as a legal trustee.

23 45. ETS hurriedly recorded a Notice of Trustee Sale in order to profit from an
24 illegal foreclosure. ETS has no evidence that ETS is a trustee under the deed of trust. The
25 original trustee under the deed is Fidelity National Title. There is no evidence in the County of
26 Recorder's Office in San Mateo that the beneficiaries under the deed recorded a substitution of
27 trustee. Even if ETS could provide that evidence of a recorded substituted trustee, it has to
28 comply with Cal Civ. Code § 2924 et seq. in order to do non-judicial foreclosure in California.
ETS did not record a Notice of Default prior to recording a Notice of Trustee Sale. ETS failed

1 to comply with California Civil Code § 2924 et seq. Therefore, the notice of trustee sale is null
2 and void and has no legal effect as a matter of law. There is no evidence of recorded
3 substitution of trustee and notice of default ever recorded by defendant ETS in the County of
4 San Mateo where the property is located. The 2008 notice of default that was recorded has
5 been expired and did not meet the timeline of California foreclosure procedures.

6 46. Plaintiffs were injured in fact and lost money or property as a result of these
7 unlawful, unfair fraudulent business practices.

8 **MERS' Disclosure on Investor of Plaintiffs' Loan**

9 47. On June 16, 2010, MERS' Servicer ID disclosure stated that the investor is
10 HSBC Bank, USA as Trustee. However, it did not disclose specifically which Trust was
11 HSBC as trustee for? MERS disclosure mislead plaintiffs in discovering the real investor of
12 this complex security mortgages. See Exhibit "F". How did Pite Duncan arrive into conclusion
13 that the trust was under DALT 2007-A03 when MERS' disclosure did not identify the name of
14 the TRUST themselves?

15 48. Defendant HSBC as Trustee on information and belief handles many Trusts and
16 that all the Defendants in this action are in concert with one another to defraud Plaintiffs in
17 order to foreclose Plaintiffs property.

18 **Pite Duncan's Role in Plaintiffs' Loan.**

19 49. Pite Duncan, claiming to be hired by the secured creditor HSBC submitted an
20 objection to plaintiffs bankruptcy reorganization plan on July 28, 2010. There is no proof
21 that this debt collectors law firm Pite Duncan was ever hired by HSBC as secured creditor.
22 How could a competent law firm file an objection to plaintiffs reorganization plan when there
23 is no Proof of Claim filed in the bankruptcy court in order to perfect the lien?

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA ROSENTHAL ACT**

26 **(As Against ETS, GMAC, HSBC, PITE DUNCAN)**

27 50. Plaintiffs incorporate by reference paragraphs 1-49 each and every allegation
28 set forth above and herein.

1 51. To establish a violation of the California Rosenthal Act:

2 (1) the plaintiff is any natural person who is harmed by violations of the
3 California Rosenthal Act. Cal Civ. Code § 1788.2(g)

4 (2) involves a "debt", which means money, property or their equivalent which
5 is due or owing or alleged to be due or owing from a natural person to another person.
6 Cal Civ. Code § 1788.2(d)

7 (3) defendants were "debt collector", engaging in "debt collection" practices
8 under the Rosenthal Fair Debt Collection Practices Act ("the Rosenthal Act), Cal.
9 Civ. Code section 1788.2(c), on which is "any person who, in the ordinary course of
10 business, regularly, on behalf of himself or herself or others, engages in debt
11 collection." Cal Civ. Code § 1788.2(c).

12 (4) the defendant has violated, by act or omission, a provision of the
13 California Rosenthal Act.

14 52. Plaintiffs allege that Defendants are debt collectors under the definition of the
15 California Rosenthal Act in that they regularly, in the course of their business, on behalf of
16 themselves or others, engage in the collection of debt. ETS is a debt collector and failed to
17 disclose that ETS is a debt collector attempting to collect a debt. GMAC is a debt collector
18 because it attempted to collect money on a defaulted loan and participated in the executing of
19 documents to collect on that debt. Pite Duncan is a debt collecting law firm because its
20 principal business is to collect debts on defaulted mortgage loans. HSBC is a debt collector
21 when it attempted to gain beneficial interest in a defaulted loan.

22 53. Defendants violated the Act when in attempting to collect the debt by using
23 false, deceptive and misleading statement in connection with their collection of Plaintiffs
24 mortgage debt as alleged herein Cal Civ. Code section 1788.17, incorporating 15 U.S.C.A.
25 section 1692e.

26 a. misrepresented to Plaintiffs who the true owner of the Note and the
27 Deed. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons
28 stated above, this action violates the FDCPA, this is also a violation of Cal Civ Code §
1788.17, incorporating 15 U.S.C.A. section 1692e.

1 b. claimed an interest in the DEED through a fraudulent assignment of
2 the Deed of Trust. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because,
3 for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ
4 Code § 1788.17.;

5 c. submitted fraudulent, fabricated and bogus assignment of deed This
6 is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above,
7 this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17;

8 d. Inflated amount of a debt, fraudulent, and false charges, which they
9 cannot explain. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for
10 reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ Code
11 § 1788.17

12 e. Attempting to foreclose on the property without any evidence or chain
13 of title that the Defendants had any interest in the promissory note and the deed of trust. This
14 is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above,
15 this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17.

16 f. Defendant ETS made false and misleading statement to plaintiffs that
17 ETS is a trustee under then deed of trust, the fact is the original trustee of plaintiff deed is
18 Fidelity National Title.

19 54. Defendants' actions have caused Plaintiff actual damages, including, but not
20 limited to, severe emotional distress, their marriage, frustration, anger, anxiety, sleeplessness,
21 sadness and depression.

22 SECOND CAUSE OF ACTION

23 FRAUD

24 (As Against All Defendants)

25 55. Plaintiffs incorporate by reference paragraphs 1-55 each and every allegation
26 set forth above and herein.

27 56. Plaintiffs allege that the Defendants made false representations to the
28 Plaintiffs regarding material facts, including but not limited to, the true owner and holder of

1 the NOTE and DEED, true agents of the creditors, transfers of the deed of trust, notice of
2 default, and notice of trustee sale.

3 57. Plaintiffs relied on these representations of the owner, beneficiary, and
4 servicer of the loan, which cause the debt to rise on their property and now face losing the
5 property to a wrongful foreclosure.

6 58. Plaintiffs argue that all of the Defendants misrepresented to Plaintiffs the true
7 owner of the loan and to whom Plaintiffs' are indebted to, by assigning the debt to HSBC.
8 Plaintiffs, who denied they even owe money to these entities, could not possibly owe money to
9 HSBC. Jeffrey Stephan, an infamous robo-signer, who is working with GMAC, pretending to
10 act as vice president of MERS, signed the assignment of deed. Jeffery Stephan is not a vice
11 president of MERS, had no authorization to execute an assignment of deed, and falsely
12 executed the assignment of beneficial interest in the Plaintiffs' deed. This misrepresentation
13 by defendants constitutes a fraud.

14 59. Defendants conspired with each other by representing that Jeffrey Stephan is the
15 vice president of MERS, which is false. Jeffrey Stephan is an employee of GMAC.

16 60. A misrepresentation is fraudulent if the maker (1) knows or believes that the
17 matter is not as he represents it to be, (2) does not have the confidence in the accuracy of his
18 representation that he states or implied, and (3) knows that he does not have the basis for his
19 representation that he states or implied.

20 61. Pite Duncan committed "fraud upon the court" by filing an objection to
21 plaintiffs reorganization plan by stating that HSBC is the secured creditor when there is no
22 evidence to prove the HSBC was the secured creditor. Pite Duncan knowingly relied on false
23 information, like the assignment of the deed, in claiming HSBC was the secured creditor of
24 plaintiffs loan.

25 62. Pite Duncan violated the Trust by not complying with Pooling & Servicing
26 Agreement ("PSA") of the Trust, which must comply with its agreement on how to transfer the
27 loan so investors will not be subjected to Internal Revenue Services.

28 63. Plaintiffs relied on these misrepresentations when Plaintiffs filed for bankruptcy

1 in order to stop the foreclosure sale. Plaintiffs relied on Defendants' misrepresentations about
2 the owner of the loan during Plaintiffs' bankruptcy proceeding while Plaintiffs were
3 reorganizing their Chapter 11 Plan. Defendants' misrepresentations adversely affected
4 Plaintiffs' reorganization efforts. The truth is that Defendants never intended to give Plaintiffs
5 an opportunity to reorganize their Plan because these Defendants were in cohort by creating a
6 false and manufactured assignment of deed in order to collect a debt through the non-judicial
7 foreclosure process.

8 64. ETS knowingly filed a notice of trustee sale without filing a notice of default.

9
10 65. ETS knowingly claimed to be the trustee without any recorded substitution of
11 trustee. The original Trustee under the deed is Fidelity National Title.

12 66. This misrepresentation allowed ETS to continue with the foreclosure for non-
13 compliance of Ca. Civil Code 2924 et seq.

14 **THIRD CAUSE OF ACTION**

15 **WRONGFUL FORECLOSURE UNDER CAL CIV CODE §§ 2924a, 2934a**

16 **(As Against ETS, GMAC, HSBC, Pite Duncan, and MERS)**

17 67. Plaintiffs incorporate by reference paragraphs 1-66 each and every allegation set
18 forth above and herein.

19 66. Defendants recorded bogus assignments of Deed, executed by Jeffrey Stephan.
20 This assignment of the deed was an attempt to allow HSBC and ETS to foreclose the property
21 regardless of the fact they were not the original beneficiary and trustee of the deed.

22 67. Defendant ETS claiming to be the foreclosing trustee, was not authorized to act
23 as trustee at the time that it filed the Notice of Trustee Sale on the subject property. This is
24 violation of Cal Civ. Pro § 2934a(a)(1).

25 68. In order to initiate a non-judicial foreclosure in the State of California, trustees
26 should comply with Ca. Civ. Code § 2924, § 2934(a)(1). Only the beneficiary under the Deed
27 of Trust may execute a substitution of trustee. Recorded substitution of trustee becomes
28

1 effective and Notice of Default will be recorded after the recording a substitution of trustee.
2 See Cal Civ. Code § 2924a-2934a.

3 In addition according to Fannie Mae Release 98-06:

4 A trustee that is not the original named in the mortgage documents must not
5 submit the "notice of default" for recordation in connection with a non-judicial
6 foreclosure of a California property until after a "substitution of trustee" has
7 been recorded...If the "notice of default" names the new trustee, that trustee is
8 acting without power because under § 2934a of the California Civil Code it is
9 the filing of "substitution of trustee" that provides authority to the new trustee.
10 When a "substitution of trustee" is required in connection with non-judicial
11 foreclosures in California, a servicer should make sure that the trustees it uses
12 has the "substitution of trustee" recorded before the "notice of default" is
13 recorded.

14 69. In the instant case, the Notice of Trustee Sale was recorded on December 31,
15 2010, without first filing the Notice of Default. Then ETS made a fatal mistake in claiming to
16 act as a trustee without a recorded substitution of trustee. Therefore, for that reason as well,
17 the notice of trustee sale is of no legal effect and the foreclosure cannot lawfully occur as a
18 result of this defect.

19 70. Plaintiffs believe that their loan mortgage has been securitized and sold to
20 different investors and that the investors for refinancing Plaintiffs property have satisfied the
21 original lender MortgageIT.

22 71. MERS had no authority to assign the deed to HSBC as Trustee for DALT 2007-
23 A03, MERS as nominee for MortgageIT have no evidence to prove it act in behalf of
24 MortgageIT. MortgageIT has been dissolved prior to MERS transferring all the beneficial
25 interest to HSBC under plaintiffs deed of trust. MERS does not have any beneficial interest in
26 the promissory note.

27 72. For these reasons, Defendants did not properly follow the procedures set in Cal.
28 Civ. Code 2924a. Therefore, all previous actions and future actions are VOID.

FOURTH CAUSE OF ACTION
UNLAWFUL BUSINESS PRACTICES
(Against all Defendants)

73. Plaintiffs incorporate by reference paragraphs 1-72 each and every allegation set forth above and herein.

74. Plaintiff is informed and believes, and on that basis alleges, that Defendants have been engaged in, and continues to engage in, numerous acts and/or a pattern and practice of unfair competition within the State of California in violation of Business and Professions Code § 17200 et seq., proscribing deceptive business practices. Defendants undertook in the unfair and unlawful business practices in their dealing with the Plaintiffs engaging in the following acts:

a. Pite Duncan knowingly representing to the Plaintiffs that HSBC was the secured creditor by a way of a fraudulent assignment of the deed of trust. Pite Duncan requested and created the fraudulent assignment of the deed, which they recorded in the County of San Mateo.

b. GMAC knowingly allowed its employees at the time of the commission of the fraud, on MAY 26, 2009, Jeffrey Stephan executed an assignment of the deed of trust without any personal knowledge or authorization by MERS to sign such a document on MERS' behalf and acknowledged by a notary public by the name of Thomas P. Strain.

c. MERS, without any authority of authorization by its principal, MortgageIT, used a GMAC employee, Jeffery Stephan, to pretend to act as a vice president of MERS in executing an assignment of the deed of trust.

d. HSBC unjustly received beneficial interest in the deed of trust without any endorsement or possession of the original promissory note.

e. ETS wrongfully claims to act as the foreclosing trustee on the subject property without providing any evidence of a recorded substitution of trustee, a necessary document in order for ETS to attempt to conduct a trustee sale.

1 75. The above-described unlawful, unfair, negligent and fraudulent business
2 practices are an ongoing threat of injury to the Plaintiffs and the general public. Plaintiffs and
3 the general public continue to be financially harmed by such conduct and, unless restrained,
4 Defendant will continue to engage in such conduct.

5 76. Pursuant to California Business and Professions Code § 17203, Plaintiffs are
6 entitled to an order of this Court enjoining defendants from continuing to engage in unfair
7 competition, as defined in Business and Professions Code § 17200, in the State of California.
8 Plaintiffs and the general public will be irreparably harmed if such an order is not granted.

9 77. Defendants have been unjustly enriched at the expense of the Plaintiffs who
10 therefore are entitled to equitable restitution and disgorgement of profits realized by
11 Defendants in attempting to foreclose Plaintiffs' real property.

12 **FIFTH CAUSE OF ACTION**

13 **REQUEST FOR INJUNCTIVE RELIEF**

14 **(As to All Defendants)**

15 78. Plaintiffs incorporate by reference paragraphs 1-77 each and every allegation
16 set forth above and herein.

17 **INJUNCTION IS PROPER**

18 79. INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE because all the
19 documents were procured through means of misrepresentation, knowledge of falsity, and
20 intended to defraud Plaintiffs, which violates Cal Civ. Code §§ 2924 et seq. and 2934a, violates
21 the California Rosenthal Act, and constitutes Fraud.

22 **General Standard For Granting Preliminary Injunction**

23 80. The general test for determining whether the moving party is entitled to a
24 preliminary injunction is either a combination of (1) probable success on the merits and the
25 possibility of irreparable injury without such injunction, or (2) that serious questions are raised
26 and the balance of the hardship tips sharply in the moving party's favor. *California Cedar*
27 *products Co. v. Pine Mountain Corp.*, 724 F.2d 827, 830 (9th Cir. 1984); *Universal Life*
28

1 *Church, Inc. v. State* (1984) 158, Cal. App.3d 533, 536 (“a preliminary injunction may be
2 granted when the party seeking relief is likely to succeed on the merits of the action, or will
3 suffer irreparable injury if an injunction is not granted”); Code of Civil Proc. § 526. In general,
4 in order to obtain the equitable relief of an injunction, the Plaintiffs must show a significant
5 threat of “irreparable injury” and that legal remedies are “inadequate”. The greater the relative
6 hardship to the moving party, the less probability of success must be shown. *Arcamuzi v.*
7 *Continental Airlines, Inc.*, 819 F.2d 935,937 (9th Cir. 1987); *First Brands Corp. v. Fred*
8 *Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir. 1987).

9 **There Is A Strong Likelihood that Plaintiffs Will Prevail On The Merits**

10 81. Plaintiffs are able to present serious questions on the merits. Defendants are in
11 violation of California Civil Code §§ 2934, 2924 et seq. Under Cal Civil code § 2924, only the
12 trustee, mortgagee, or beneficiary, or any of their authorized agents may file and record a
13 Notice of Default. ETS filed and recorded a Notice of Default on December 17, 2008, twenty-
14 four months after Notice of Trustee Sale was recorded on December 31, 2010.

15 82. Therefore, “...without a valid notice of default, a foreclosure sale cannot
16 proceed...[t]he available, existing remedy is found in the ability of a court in section 2924g,
17 subdivision (c)(1)(A), to postpone the sale until there has been compliance with section
18 2923.5.” *Mabry v. Superior Court*, 185 Cal. App. 4th 208 at 223.

19 83. ETS claims to be acting as the Trustee. However, there is no substitution of
20 trustee recorded that substituted ETS as trustee. Under § 2934a(a)(1), “The trustee under a
21 trust deed...may be substituted by the **recording** in the county in which the property is located
22 of a substitution **executed and acknowledged** by (A) all the beneficiaries under the deed of
23 trust. (2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not
24 effective unless all the parties signing the substitution sign, under penalty of perjury, a separate
25 written document. ETS has no evidence of executed and recorded Substitution of Trustee.
26 Therefore, ETS has no authority to conduct a trustee sale of the property.

27 84. Also, only the beneficiaries under the deed of trust may substitute the trustee.
28 See Cal. Civ. Code § 2934a(a)(1)(a). HSBC’s only became the beneficiary under the Deed of

1 Trust through a fraudulent assignment of deed of trust, executed by Jeffery Stephan, who was
2 never a MERS employee. Even if the assignment of the deed of trust were valid, HSBC never
3 substituted the original trustee with ETS. Therefore, ETS lacks authority to conduct a trustee
4 sale.

5 85. ETS committed many violations against the Plaintiffs. Plaintiffs are able to
6 present serious allegations that have merit against the Defendants, which are likely to succeed
7 in those claims.

8 **Equity Support the Issuance of An Injunction**

9 86. The principles of equity apply to a foreclosure sale. Equity does not allow one
10 to take advantage of his own wrong nor will it assist in perpetration of fraud on another or the
11 public. Courts can set aside a foreclosure sale when there has been fraud, when the sale has
12 been improperly, unfairly, or unlawfully conducted, or when there has been such a mistakes
13 that it would be inequitable to let it stand. See e.g. *Bank of America National Trust and Savings*
14 *Ass'n v. Reidy* (1940) 15 Cal. 2d 243, 248; *Whitman v. Transtate Title Vo.* (1985) 165 Cal.
15 App. 3d 312, 322-323.

16 87. With these equitable concepts in mind, it is clear from the evidence presented
17 that Defendants were not authorized to record an assignment of deed of trust and notice of
18 trustee sale in order to gain standing and be a real party in interest and to conduct a non-
19 judicial foreclosure on Plaintiffs' property. Defendants failed to comply with California Civil
20 Code §§ 2934(a)(1), (A), (B) and 2924 et seq. These failures and violations mandate that the
21 subject foreclosure process does not meet the requirements of California non-judicial
22 foreclosure. This foreclosure is, therefore, invalid, and an injunction preventing the
23 foreclosure should be issued.

24 **The Relative Hardship Weigh Heavily For Plaintiffs**

25 88. In this matter, the relative hardship to Plaintiffs is losing their rental property to
26 a pretender trustee, ETS, who did not comply with Ca. Civil Code 2924 et seq. by not filing a
27 notice of default. Plaintiffs also stand to lose the property based on a Fraudulent Assignment
28 of Deed from MERS, which was signed by infamous robo-signer Jeffrey Stephan, who had no

1 authority to signed in behalf of MERS. ETS and GMAC cannot proceed with a Trustee Sale.
2 This represents an irreparable injury because Plaintiffs invested all their hard earned money on
3 this rented property. However, these defendants did not contribute any penny towards the
4 Plaintiffs' refinancing the property. Plaintiffs spent money to remodel the property in order for
5 the tenants to live comfortably. The Defendants will get the Plaintiffs' property by using
6 fabricated documents to profits on this foreclosure proceeding by getting the house for FREE.
7 The loss of one's property due to foreclosure constitutes an irreparable injury. *Demarest v.*
8 *Quick Loan Fund. Inc.* 2009 WL 9403377 (C.D. Cal.); *Wrobel v. S.L. Pope & Associates*, 2007
9 WL 2345036 at 1 (S.D. Cal. 2007) ("losing one's home through foreclosure is an irreparable
10 injury"); *Bland v. Carone Family Trust*, 2007 WL 951344 at 2 (S.D. Cal. 2007). Numerous
11 courts have found this inquiry enough by itself to mandate preliminary injunctive relief. See
12 e.g. *Nichols v. Deutsche Bank National Trust Co.*, 2007 WL 4181111, at 2 (S. D. Cal. 2007);
13 *United Church of Med. Ctr. v. Med. Ctr. Commo'n* (7th Cir. 1982) 689 F.2d 693, 701; *Johnson*
14 *v. U.S Department of Agriculture*, *supra* at 789.

15 89. If Defendants are allowed to foreclose, Plaintiffs' tenants, who have five
16 children, will be wrongfully displaced because of the Defendants' misconduct and Fraud.
17 Plaintiffs' tenants will likely have a difficult time finding an alternative place to live. This
18 would be a burden for the community as a whole especially for the City of San Mateo.

19 90. In contrast, Defendants suffer nothing by preserving the status quo and allowing
20 Plaintiffs and their tenants to remain in the property until the matter is determined on the
21 merits. Indeed, inasmuch as Plaintiffs tenants continue to occupy and maintain the property, its
22 value will be preserved accordingly. In contrast, if the Plaintiffs property is foreclosed upon
23 and left vacant—as thousand of other properties in our community have—it will likely fall into
24 despair and decline in value.

25 **Exigent Circumstances Exist For TRO.**

26 91. As set forth above and in supporting Declarations, unless Defendants are
27 immediately enjoined from conducting the trustee sale that is set for February 9, 2011,
28 Plaintiffs will suffer immediate and irreparable damage in that Plaintiffs will lose their rental

1 property forever as a result of FRAUD.

2 **SIXTH CAUSE OF ACTION**

3 **QUIET TITLE**

4 **(As Against all Defendants)**

5 92. Plaintiffs incorporate by reference paragraphs 1-91 each and every allegation
6 set forth above and herein.

7 93. Plaintiffs, at all times relevant herein, were the owner and/or entitled to
8 possession of The Property along with the co-tenant/owners.

9 94. Plaintiffs are seeking to quiet title against Defendants' claim of right to
10 foreclosure and own the property with the following LEGAL DESCRIPTION:

11 THE LAND REFERRED TO HEREIN BELOW IS
12 SITUATED IN THE CITY OF SAN MATEO, COUNTY OF
13 SAN MATEO, STATE OF CALIFORNIA, AND IS
14 DESCRIBED AS FOLLOWS:

15 LOT 11, BLOCK 3, AS SHOWN ON THAT
16 CERTAIN MAP ENTITLED "FOOTHILL TERRACE"
17 FILED IN THE OFFICE OF THE RECORDER ON JUNE 10,
18 1946 IN BOOK 25 AT PAGE (S) 59.

19 JPN: 034-031-312-03

20 APN: 034-312-030


21 **DEMAND FOR JURY TRIAL AND PRAYER FOR DAMAGE AND FOR RELIEF**

22 WHEREFORE, plaintiffs respectfully pray for this court to enter a judgment in favor
23 of Plaintiffs on all causes of action against Defendants as follows:

- 24 1. That the foreclosure or attempted foreclosure of the subject property is
25 deemed illegal and void and the same be immediately and permanently
26 enjoined, and that Defendants are prevented from engaging in any sale,
27 transfer, conveyance action or any conduct adverse to Plaintiff's interest
28 therein;

2. That the action of all of the Defendants be determined to be unfair and deceptive practices in violation of California law and that this Court award all such relief to Plaintiffs as they may be entitled, including injunctive relief, treble damages and an award of cost;
3. For compensatory damages according to proof;
4. For punitive damages according to proof;
5. For an immediate, preliminary and permanent restraining order and injunction preventing Defendants or any of their agents or representative from taking any further action on the Subject Property.
6. For any other relief the Court may deem just and proper.

Dated: February 2, 2011


FERMIN SOLIS ANIEL
PRO SE PLAINTIFF

Dated: February 2, 2011

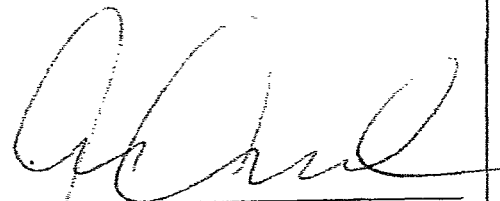

ERLINDA ABIBAS ANIEL
PRO SE PLAINTIFF

Verification

The undersigned, for herself declares:

I am one of the Plaintiffs in the above-entitled action. I have read the forgoing complaint, filed on February 2, 2011, and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as those matter which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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



ERLINDA ABIBAS ANIEL

EXHIBIT “ B ”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008 CA 040805XXXX MB

GMAC MORTGAGE, LLC,

Plaintiff,

-vs-

ANN M NEU A/K/A ANN MICHELLE
PEREZ; DOUGLAS WILLIAM NEU;
UNKNOWN TENANT (S) IN
POSSESSION OF THE SUBJECT
PROPERTY,
Defendants.

DEPOSITION OF JEFFREY STEPHAN

Thursday, December 10, 2009
1:00 p.m. - 2:30 p.m.

Consor & Associates
1655 Palm Beach Lakes Blvd., Ste. 500
West Palm Beach, Florida 33401

Reported By:

Jamie Reynolds Bentley, Court Reporter
Notary Public, State of Florida
Consor & Associates
1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401
(561) 682-0905

Ph. 561.682.0905 - Fax. 561.682.1771
1655 Palm Beach Lakes Blvd., Suite 500 - West Palm Beach, FL 33401

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 ALEJANDRA ARROYAVE, ESQ.

Lapin & Leichtling

4 225 Alahamra Circle

Suite 800

5 Coral Gables, Florida 33134

(305) 569-4100

6

7

8 On behalf of the Defendant:

9 CHRISTOPHER IMMEL, ESQ.

Ice Legal, P.A.

10 1975 Sansbury's Way

Suite 104

11 West Palm Beach, Florida 33411

(561) 798-5658

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I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS
JEFFREY STEPHAN
BY MR. IMMEL 4 54

JEFFREY STEPHAN
BY MS. ARROYAVE 51

E X H I B I T S

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P R O C E E D I N G S

- - -

Deposition taken before Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

THE COURT REPORTER: Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Thereupon,

(JEFFREY STEPHAN)

having been first duly sworn or affirmed, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. IMMEL:

Q. All right. We are here on GMAC Mortgage, LLC versus Neu. This is the deposition of Jeffrey Stephan. I'm sure your attorney has gone over things with you a little bit. But if you could just keep one thing in mind, to answer, not to simply nod your head or anything like that. We need for your answers to be clear for the court reporter that way.

A. Yes.

Q. Could you please state your name for the

1 record.

2 A. My name is Jeffrey Stephan.

3 Q. Okay. And who do you work for?

4 A. GMAC, LLC.

5 Q. And is there a difference between GMAC, LLC
6 and GMAC Mortgage, LLC?

7 A. GMAC, LLC -- I'm trying to think of the word
8 to use -- the most recent name.

9 Q. Okay.

10 A. It's GMCA Mortgage Corporation.

11 Q. Okay.

12 A. I'm not sure how you would word that.

13 Q. Okay. So are they -- does GMAC, LLC -- now
14 has that basically taken over these other entities --

15 A. Yes.

16 Q. -- that formerly existed?

17 A. Yes.

18 Q. So these entities no longer currently exist?

19 A. Right.

20 Q. Okay. And how long then have you been
21 employed by GMAC, LLC?

22 A. Five years.

23 Q. Okay. And prior to that, it was GMAC Mortgage
24 and GMAC Corporation?

25 A. That was as the whole five years.

Page 6

1 Q. Oh, okay.

2 A. Yes.

3 Q. As the whole five years. And what is your
4 title?

5 A. I'm a team leader in the foreclosure
6 department.

7 Q. Okay. And what are your responsibilities?

8 A. I am the team lead of the document execution
9 unit.

10 Q. Okay.

11 A. And also the service transfer unit.

12 Q. And so what type of documents do you
13 ordinarily execute?

14 A. I execute on a daily basis assignments of
15 mortgage, affidavits of any type that might be needed,
16 deeds. Any type of the document that would need a
17 signature of an officer of GMAC.

18 Q. Okay. And who do you report to?

19 A. I report to Margie Kwiatkowski.

20 Q. Could you spell that?

21 A. Yes. It's K-W-I-A-T-A-N-O-W-S-K-I.

22 Q. Okay. And approximately how many employees
23 does GMAC Mortgage, LLC have?

24 A. I couldn't guess. I don't know.

25 Q. Sure. Okay. And as part of your

Page 7

1 responsibilities, you execute assignments as a vice
2 president of MERS?

3 A. Yes, that's correct.

4 Q. And in executing affidavits as a vice
5 president, do you receive any compensation from MERS?

6 A. No.

7 Q. Have you had any training from MERS?

8 A. No.

9 Q. Okay. How many documents would you say you
10 sign on an average week as far as executing affidavits
11 and things of that nature?

12 A. It's very tough to estimate that to be honest
13 with you.

14 Q. In a given month, would that be easier to say
15 --

16 A. I would say --

17 Q. -- one hundred, 500?

18 A. -- in a month, my team brings to me
19 approximately, I'd say a round number of 10,000. That's
20 just an estimate, of course.

21 Q. Okay. And so, 10,000 your team brings to you.
22 How many people do you oversee?

23 A. A team of 13 people.

24 Q. Okay. Now, would these people be given the
25 duties of actually preparing the documents that you

1 ultimately sign and execute?

2 A. They would review the document that is given
3 to them through our computer systems.

4 Q. Okay.

5 A. So they don't actually prepare it per se.
6 They review it for the accuracy of what type of entity
7 I'm signing as.

8 Q. Okay. How many different entities do you sign
9 as?

10 MS. ARROYAVE: Objection: Form.

11 BY MR. IMMEL:

12 Q. Can you name what entities you sign --

13 A. I sign presently as MERS.

14 Q. Okay.

15 A. And under MERS as vice president or an
16 assistant secretary. Also, I sign for GMAC Mortgage.
17 And to be honest with you, it's too many entities for me
18 to actually quote under GMAC. But it is as a limited
19 signing officer.

20 Q. Okay. And earlier you stated that right now
21 it's GMAC, LLC.

22 A. Uh-huh.

23 Q. You do still currently sign documents as GMAC
24 Mortgage, LLC?

25 A. Yes, I do.

1 Q. Okay. And also as a corporation --

2 A. Yes.

3 Q. -- and some of the others that we've seen your
4 signature on?

5 A. Yes, I do.

6 Q. Okay. Where then does the information that
7 goes into the system that your team reviews --

8 A. Yes.

9 Q. -- where does that information come from?

10 A. The process that we use is -- and this is to
11 my knowledge -- a file is referred to a foreclosure
12 attorney stating exactly what entity would be needed
13 through the referral unit. And at that point, the
14 attorney receives the file to proceed with the
15 foreclosure. That foreclosure name is generated upon
16 GMAC supplying it on the referral. I'm not 100 percent
17 sure of what that process is.

18 Q. Okay.

19 A. The documentation, as you stated, that you're
20 asking about, is given to us after the attorney has been
21 instructed on what name to foreclose in.

22 Q. And who instructs the attorney as to what name
23 to foreclose it in?

24 A. It comes to our referral unit. Which is
25 another process to my knowledge.

Page 10

1 Q. Okay. Approximately, if 10,000 are signed in
2 a given month, you know, on an average, how long would
3 you say you spend executing each one and actually
4 signing?

5 A. It's tough to say.

6 Q. Okay. Would it be accurate to say that when
7 these documents have been presented to you by your team
8 --

9 A. Uh-huh.

10 Q. -- you take the face value that they are --
11 they have been checked by your team?

12 A. That would be a correct statement, yes.

13 Q. So these documents wouldn't be actually
14 executed on your own personal knowledge?

15 A. Right.

16 Q. It would be based on knowledge that came
17 through --

18 A. Right.

19 Q. -- the chain --

20 A. I'm sorry.

21 MS. ARROYAVE: Can I interrupt just for a
22 second? I just want to make sure that he finishes
23 his question before you answer.

24 THE WITNESS: Sure. Sorry.

25

1 BY MR. IMMEL:

2 Q. Yes, yes, that's true, too.

3 So the information that your team obtains
4 isn't based on their personal knowledge either, it's
5 located within the computer networks?

6 MS. ARROYAVE: Objection: Form.

7 BY MR. IMMEL:

8 Q. The information on the documents that you
9 execute is stored within your data base?

10 A. No, somewhere else.

11 Q. No. Okay. The information then is that --
12 your team, they get that from a computer network that
13 you have, correct?

14 A. No.

15 Q. Where does your team get that information?

16 A. That information is first given to the
17 attorney to foreclose under which name as needed. If we
18 are stating some type of assignment, for example, the
19 attorney, to my knowledge, and I'm not 100 percent sure
20 of their process because I don't work for the attorney,
21 they would do a title check to verify what name the lien
22 is presently in.

23 Q. Okay.

24 A. At that point is when it would initial if an
25 assignment would be needed or not.

Page 12

1 Q. So at the direction of the attorney, your team
2 creates these documents and then you execute them?

3 MS. ARROYAVE: Objection: Form.

4 BY MR. IMMEL:

5 Q. So your team executes documents at the request
6 of attorneys?

7 MS. ARROYAVE: Objecting: Form. You can
8 still answer it if you understand the question.

9 BY MR. IMMEL:

10 Q. Do you understand what I'm asking?

11 A. Yes, I understand what you're asking. My team
12 does not create any documents.

13 Q. These documents are then sent from the
14 attorney?

15 A. Yes.

16 Q. Okay. And you're -- so then the team that you
17 oversee --

18 A. Uh-huh.

19 Q. -- simply reviews them for accuracy?

20 A. That's correct.

21 Q. Okay. And how do they verify the information
22 is accurate?

23 A. They do not go into the system and verify the
24 information as accurate. We are relying on our attorney
25 network to ensure that they are asking for the correct

1 information.

2 Q. So the attorney creates these documents and
3 you are relying that the attorney is correct?

4 A. Yes.

5 MS. ARROYAVE: Objection: Form.

6 BY MR. IMMEL:

7 Q. Okay. And then they are required to be
8 notarized. Are they notarized in your office?

9 A. Yes.

10 Q. Is the notary present with you or is it down
11 the hall?

12 A. The notary is in the same department.

13 Q. Same department. Okay. Are they physically
14 present when you (sic) notarize this -- or when they
15 notarize and then you execute it?

16 A. No, they are not physically present. But I
17 will -- I do deliver them to the notary.

18 Q. All right.

19 A. And I wait for them to notarize it to hand
20 them back to my team.

21 Q. Okay. All right. What department then? You
22 said your department?

23 A. Right.

24 Q. And as part of their job responsibilities,
25 would notarizing be their sole responsibility, or do

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1 they have other responsibilities?

2 A. They have other responsibilities.

3 Q. Are any of the members of your team, people
4 that also notarize documents that you execute?

5 A. Yes.

6 Q. Yes. Okay. Is there a job requirement that
7 certain employees become notaries?

8 A. I don't know.

9 Q. Okay. And what type of -- what level of a
10 type of employee would it typically be that is a notary?

11 A. I don't know that either.

12 Q. All right. Does the company pay for the
13 process of becoming a notary or the renewal fees?

14 A. Yes.

15 Q. Okay. If a notary feels that they are being
16 asked to notarize something that's done improperly, is
17 there a process which they can, you know, raise that to
18 anybody's attention?

19 A. I honestly don't know.

20 Q. You are not sure. Do you notarize any
21 assignments of mortgage or other documents yourself?

22 A. No.

23 Q. Are you a notary?

24 A. No.

25 Q. How are witnesses ordinarily chosen?

1 MS. ARROYAVE: Object: Form.

2 Chosen for what?

3 BY MR. IMMEL:

4 Q. The witnesses to, say, the assignments of the
5 mortgage, and the witnesses of things that you execute.

6 A. They are just chosen randomly.

7 Q. Chosen randomly. Okay. Approximately how
8 many days a week do you spend executing assignments,
9 affidavits, and the various documents that you execute?

10 A. Five.

11 Q. Five. Okay. Are there any specific days
12 where it's one day these types of documents, this type
13 of documents, or can it be just a mix?

14 A. It's a mix.

15 Q. Okay. Approximately how many documents would
16 you say are presented to you by your team at a given
17 time? Is it one at a time, or ten at a time?

18 A. It is done in bulk.

19 Q. Done in bulk.

20 A. I could not quote you the exact number.

21 Q. Okay. Going back to the signing officer as
22 Mortgage Electronic Registration Systems, you said that
23 you are -- you sign as both vice president and as an
24 assistant secretary?

25 A. That is correct.

1 Q. Is there any basis for one -- you sign as one
2 versus the other?

3 A. The majority of the time I sign as a vice
4 president. Most times we do not need an assistant
5 secretary, unless they are asking for a second signature
6 on any type of an affidavit or assignment.

7 Q. Okay. And, again, you are not paid by MERS.
8 Do you hold any other responsibilities with MERS that
9 would be consistent with having the title of a vice
10 president?

11 A. No.

12 Q. No. Okay. So you don't attend any board
13 meetings for MERS?

14 A. No.

15 Q. You don't report to the secretary of MERS or
16 any other people at MERS?

17 A. No.

18 Q. How did you become a MERS representative? Did
19 you request to be a vice president of MERS?

20 A. I received the responsibility as being the
21 team lead for document executing. It was assigned to me
22 by our legal area.

23 Q. Okay. All right. So your responsibilities as
24 a vice president of MERS to execute the assignments is
25 really your job perspective, or an aspect of your job at

1 GMAC Mortgage, LLC or GMAC, LLC?

2 A. That is correct.

3 Q. Okay. And you've never been to any MERS
4 offices or their headquarters?

5 A. No.

6 Q. Are you aware of why you were given the title
7 of vice president versus assistant secretary or...

8 A. No, I'm not aware of that.

9 Q. Okay. All right. I have here the assignment
10 of mortgage which you executed in this case.

11 A. Okay.

12 MR. IMMEL: I'll enter that as Exhibit A.

13 (Defendant's Exhibit Letter A was marked for
14 identification.)

15 MR. IMMEL: I have a copy for you, as well.

16 THE WITNESS: Thank you.

17 BY MR. IMMEL:

18 Q. In the top left-hand corner it says, Record
19 and return to offices of Marshall C. Watson.

20 Based on your earlier statements, it's
21 accurate to say that attorneys at Marshall C. Watson
22 created the information on this document?

23 MS. ARROYAVE: Objection: Form.

24 THE WITNESS: That would be correct.

25

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1 BY MR. IMMEL:

2 Q. Okay. And who -- so an attorney chose the
3 date of the 4th day of March, 2009.

4 Can you tell me the date actually. Whether
5 that's the 3rd or the 5th of March.

6 A. To me it seems to be the 5th.

7 Q. Okay.

8 A. Actually, excuse me, let me change that. It
9 would have to be the 3rd, because the notary did it on
10 the 4th.

11 Q. Okay. And that is your signature on this
12 document?

13 A. That is correct.

14 Q. Okay. Is it commonplace then for the notary
15 to notarize a document the day after you've apparently
16 executed it?

17 MS. ARROYAVE: Objection: Form.

18 THE WITNESS: I would say, yes, it would be
19 common.

20 BY MR. IMMEL:

21 Q. Okay. So typically when you hand these off to
22 the notary, and then they kind of catch up?

23 A. Uh-huh. Yes.

24 Q. Okay. The witnesses, Heather Reinhart, do you
25 know her personally?

1 A. Yes, she is one of my employees.

2 Q. Is she on your team?

3 A. Yes.

4 Q. Is it possible that she would have been one of
5 the people who reviewed this for accuracy?

6 A. That is possible.

7 Q. And the other person appears to be Tyra
8 Wilks --

9 A. Wilson.

10 Q. Tyra Wilson. Okay. Is she also a member of
11 your team?

12 A. Yes.

13 Q. And you know her personally, as well?

14 A. Yes.

15 Q. The notary, Susan Turner, is she a member of
16 your team?

17 A. No, she is not.

18 Q. Do you know her personally?

19 A. Yes.

20 Q. It says here that you personally appeared
21 before her on the 4th day of March. Is it possible that
22 you executed then on the 3rd, and handed it to her and
23 then you weren't personally in front of her at the time
24 she notarized this?

25 A. I don't know. I can't recollect.

1 Q. All right. And how did you determine on this
2 to execute it to GMAC Mortgage, LLC?

3 MS. ARROYAVE: Objection: Form.

4 THE WITNESS: I'm not sure if I understand the
5 question.

6 BY MR. IMMEL:

7 Q. Okay. Did you have any say in the creation of
8 who MERS would assign this to?

9 A. No.

10 Q. No. Your attorney, the Law Office of Marshall
11 C. Watson, determined that?

12 A. No.

13 Q. No.

14 A. That is, as I stated earlier, when the
15 foreclosure referral goes out, the referral unit
16 determines what entity they should be foreclosing on.

17 Q. Okay. And the foreclosure referral unit that
18 you speak of, is that part of your department?

19 A. Yes.

20 Q. Okay. So would they have records that they
21 are able to refer to to determine who the new mortgagee
22 should be according to these assignments?

23 A. Yes.

24 Q. And who -- do you have a name of any person
25 that keeps those documents?

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1 A. The team lead for that would be Brenda.

2 Q. Brenda?

3 A. Her last name is Staehle, S-T-A-E-H-L-E.

4 Q. Okay.

5 A. I think that's the way it's spelled.

6 Q. Can you tell me -- you really don't have any
7 knowledge or information as to who should be the
8 mortgagee? According to this document, you take it for
9 face value; is that correct?

10 MS. ARROYAVE: Objection: Form.

11 THE WITNESS: Can you explain that further?

12 BY MR. IMMEL:

13 Q. You take it for face value that GMAC Mortgage,
14 LLC is expected to be the mortgagee?

15 MS. ARROYAVE: Objection: Form.

16 BY MR. IMMEL:

17 Q. Who would have information who -- who MERS
18 should assign this to? Would it be you or Brenda
19 Staehle?

20 A. Brenda Staehle would be the individual or her
21 team to refer the files, and they determine what name
22 should be foreclosing in.

23 Q. Okay. So everything from that point on is
24 based on the presumption that her team has ascertained
25 those things to be correct?

1 A. That is correct.

2 MS. ARROYAVE: Objection: Form.

3 BY MR. IMMEL:

4 Q. All right. Okay. So on March 5th, 2009,
5 you're not aware --

6 A. I believe it's the 3rd.

7 Q. March 3rd. I'm sorry. March 3rd, 2009,
8 you're not aware of any physical transfer of the
9 mortgage?

10 A. Can you rephrase that? I'm not following.

11 Q. Are you aware of any reason why the assignment
12 of mortgage had to be executed on March 5th, 2009 -- or
13 the 3rd, 2009? I'm sorry.

14 A. We have a process that's set up with our
15 attorney network. And Marshall Watson is in that
16 attorney network. The file is referred to them with a
17 certain name to proceed with the foreclosure in. They
18 will pull title. And whatever they see title is in, in
19 order to proceed in the proper name, they need to get an
20 assignment. In this instance it's MERS to GMAC.

21 Q. Okay. Are the assignments supposed to be
22 completed prior to the filing of the foreclosure
23 lawsuit?

24 MS. ARROYAVE: Objection: Form.

25

1 BY MR. IMMEL:

2 Q. Are you aware if it's a company policy at
3 least?

4 A. I don't know.

5 Q. Okay. So as this assignment of mortgage, on
6 the face of it, transfers from Mortgage Electronic
7 Registration Systems as nominee for Mortgage Investors
8 Corporation to GMAC Mortgage, LLC on March 3rd, 2009,
9 would it be accurate to say that prior to that, this
10 assignment, Mortgage Electronic Registration Systems was
11 the mortgagee?

12 A. No.

13 Q. No. Okay. Why would that not be accurate to
14 say?

15 A. Mortgage Electronic Registration, to my
16 knowledge, is an origination entity to allow the passing
17 of assignments through performing loans to make it more
18 easier, I guess you would say, to transfer amongst
19 different companies. MERS does not own loans.

20 Q. They wouldn't own the loan. But they would
21 own the mortgage; is that correct?

22 MS. ARROYAVE: Objection: Form.

23 THE WITNESS: It's not correct, no.

24 BY MR. IMMEL:

25 Q. No. So they are the named mortgagee, so that

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1 when the note is passed from entity to entity it doesn't
2 have to be rerecorded?

3 A. That is to my knowledge, yes.

4 Q. All right. On this it also says that MERS is
5 assigning the mortgage together with the note. I don't
6 know if you see that line there. It's right there
7 (indicating).

8 As you just stated, MERS has no interest in
9 the note ever; is that correct?

10 A. I honestly don't know.

11 Q. Oh, okay. As far as you're aware --

12 A. Yes.

13 Q. -- MERS doesn't --

14 A. As far as I'm aware. (Witness nods head.)

15 Q. Okay. Are you aware of whether that's common
16 language to exist in the assignments that you execute?

17 A. I honestly don't know.

18 Q. You're not sure. Okay. All right.

19 MR. IMMEL: And I have a copy of the first
20 page of the mortgage here. Which I'll enter as
21 Exhibit B.

22 (Defendant's Exhibit Letter B was marked for
23 identification.)

24 BY MR. IMMEL:

25 Q. If you will notice it says that the mortgagee

1 according to the mortgage is Mortgage Electronic
2 Registration Systems.

3 I believe it's right down there (indicating).

4 A. I disagree with that interpretation.

5 MS. ARROYAVE: Was there a question?

6 MR. IMMEL: Yes.

7 MS. ARROYAVE: What was the question?

8 BY MR. IMMEL:

9 Q. According to the mortgage, it says that MERS
10 is the mortgagee?

11 A. My interpretation, it says right in the same
12 paragraph, it says they are a nominee for the lender or
13 the lender successors.

14 Q. Right. Okay. They are the mortgagee as
15 nominee --

16 A. Uh-huh.

17 Q. -- for the lenders?

18 A. Yes.

19 Q. Okay. But they are a different entity from
20 the lender and lender successors and things?

21 A. Yes.

22 Q. Okay. What does nominee in that regards mean?

23 A. I don't know.

24 Q. Okay. We can move on from there.

25 I have here -- which I'll enter as Exhibit

1 C -- some discovery that we received from MERS.

2 (Defendant's Exhibit Letter C was marked for
3 identification.)

4 BY MR. IMMEL:

5 Q. And if you will turn to the second page. It
6 is the document entitled, Min Summary.

7 And have you ever seen these records before?

8 A. No, I have not.

9 Q. So in executing the assignments of mortgage on
10 behalf of MERS, do you consult any of MERS' records?

11 A. No.

12 Q. And you are not able to tell me what any of
13 these entries would then mean? This is the first time
14 you have seen this type of information?

15 A. In this format, yes.

16 Q. Okay. Have you seen this type of information
17 in other formats?

18 A. Some of it. I understand what they mean as
19 far as the acronyms in there.

20 Q. Okay. Based on your understanding, the
21 investor says -- the investor is identified as
22 Government National Mortgage Association - Ginnie Mae.
23 What does the word "investor" mean in MERS' acronym?
24 Are you aware?

25 A. I'm not sure how I can explain it. GMAC would

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1 be the holder and the owner of the mortgage. GMAC would
2 be the investor who is in the organization that
3 contributed the fund. That's really the only way I can
4 explain the relationship of an investor and servicer.

5 Q. Okay.

6 A. But that's only to my knowledge. I mean, I
7 don't work in that fashion.

8 Q. Okay. So the servicer is supposed to take on
9 the day-to-day activities of administering the mortgage
10 of loan and collecting payments and so forth?

11 A. That would be correct.

12 Q. And they do that on behalf of the investor who
13 loaned the monies?

14 A. Yes.

15 Q. Okay. And any monies that are received from
16 the servicers, would they really be for the investor
17 then to pay him back the loan?

18 A. I don't know.

19 Q. Okay. And as custodian, also, that would mean
20 that they are in possession of the mortgage file,
21 essentially, the note and any other applicable
22 documents?

23 A. That's correct.

24 Q. Okay. All right. Where it has the pool
25 number and it is blacked out. Do you know what the pool

1 number refers to?

2 A. No, I don't.

3 Q. No. Okay. And what about the investor loan
4 number?

5 A. Yes, I understand what that is.

6 Q. And what would that relate to?

7 A. Every investor would have their own loan
8 number. The same as GMAC would have their own loan
9 number to classify the different files.

10 Q. Okay. And are you aware of how a mortgage
11 that has been securitized, a mortgage note that's been
12 securitized, would be reflected on something like this,
13 on this summary?

14 A. I am not familiar.

15 Q. You are not familiar. Okay. Are you aware of
16 anyone at GMAC Mortgage, LLC that has access to these
17 MERS documents and records?

18 A. No, I'm not.

19 Q. You are not aware. Okay. Are you aware of
20 anybody at GMAC that would have a responsibility to
21 update the MERS documentation?

22 A. No.

23 Q. Okay. So the various individuals at GMAC that
24 execute assignments on behalf of MERS have no
25 responsibility to update the MERS' system that they had

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1 actually done those assignments or anything like that?

2 A. That would be correct.

3 Q. Okay. Are you aware then of how the MERS'
4 system is updated?

5 A. No.

6 Q. Okay. As a vice president, do you owe a
7 fiduciary duty to the original lender to ensure that the
8 mortgage is assigned to the proper entity?

9 MS. ARROYAVE: Objection: Form.

10 THE WITNESS: I actually don't understand your
11 question.

12 BY MR. IMMEL:

13 Q. Do you own any duty to the -- when you assign
14 these mortgages, you execute them as -- for MERS as
15 nominee for a particular entity, correct?

16 A. That would be correct.

17 Q. Do you owe any responsibility then to that
18 particular entity that MERS is nominee for to ensure
19 that the mortgage is transferred to the new correct
20 entity?

21 A. I don't know.

22 Q. Okay. All right.

23 MR. IMMEL: I have the corporate resolution
24 here. Which I'll enter it as Exhibit D.

25

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1 (Defendant's Exhibit Letter D was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. Have you seen this document before?

5 A. Yes, I have.

6 Q. When was the first time you saw it?

7 A. I'm sorry, I can't say. I don't recollect.

8 Q. You're not sure. Is it fair to say it was
9 quite a while ago?

10 A. Yes.

11 Q. Did you have any role in creating it or
12 negotiating it?

13 A. No, I did not.

14 Q. No. Okay. The first paragraph says that you
15 are authorized to assign a lien of any mortgage loan
16 registered on the MERS register to the member.

17 Who would be the member according to this?
18 Would that be GMAC Mortgage, LLC?

19 A. I don't know.

20 Q. Okay. Assign the lien, in paragraph 2, of any
21 mortgage loan naming MERS as the mortgagee when the
22 member is also the current promissory note-holder, or if
23 the mortgage loan is registered on the MERS system, is
24 shown to be registered to the member.

25 When you are assigning liens, you already

1 stated that you don't consult with any of the MERS
2 records to determine whether or not it's registered to
3 who -- whoever?

4 MS. ARROYAVE: Objection: Form. Asked and
5 answered. Mischaracterization of prior testimony.

6 BY MR. IMMEL:

7 Q. Okay. You don't consult MERS system when
8 assigned these liens?

9 A. Yes.

10 MS. ARROYAVE: Asked and answered.

11 BY MR. IMMEL:

12 Q. All right. Okay. But is it fair to say that
13 you don't ascertain whether the member is the current
14 promissory note-holder when you assign the lien?

15 A. That would be correct.

16 Q. And you also don't know if the mortgage loan
17 is registered on the MERS system?

18 A. We are relying on our attorney network when
19 they check the title --

20 Q. Okay.

21 A. -- to verify what title it is presently in.
22 If it is MERS, we would sign for MERS.

23 Q. Okay.

24 MR. IMMEL: Exhibit E.

25

1 (Defendant's Exhibit Letter E was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. Here is the GMAC Mortgage, LLC certificate of
5 assistant secretary. Here you go.

6 And you are considered a limited signing
7 officer giving you basically the same responsibility as
8 a junior officer?

9 MS. ARROYAVE: Objection: Form.

10 THE WITNESS: I don't know if that's a correct
11 statement.

12 BY MR. IMMEL:

13 Q. Okay. Are you familiar with this document?

14 A. I have a copy of this document. Which to my
15 recollection means that next to my name it gives me the
16 authority to sign for GMAC and its entities as a limited
17 signing officer.

18 Q. Okay. In this case, you also filed an
19 affidavit of lost original document?

20 MS. ARROYAVE: Objection: Form.

21 BY MR. IMMEL:

22 Q. Okay. And you executed this document. Is
23 this your signature? Here is a copy of it.

24 MR. IMMEL: I'll enter this as Exhibit F, I
25 believe.

1 (Defendant's Exhibit Letter F was marked for
2 identification.)

3 THE WITNESS: Yes, that is my signature.

4 BY MR. IMMEL:

5 Q. Okay. And you signed this affidavit claiming
6 that at the time plaintiff was not presently in custody
7 or control of plaintiff or any of plaintiff's agents,
8 and that would be the note that was not in your -- their
9 custody or control?

10 A. Yes. Once again, we have a process in place
11 where if our attorney needs an original document, they
12 open up a request in our system. At that time, we have
13 another unit -- which is not located in Pennsylvania
14 where I am located -- contact custodians, contact their
15 own records, go to different investors. They do not do
16 an affidavit of this fashion unless they've exhausted
17 all efforts.

18 Q. Okay. Would it be fair to say that you're not
19 involved in any of those efforts?

20 A. That is fair to say.

21 Q. Okay. Why then do they ask you to execute the
22 affidavit of lost document -- lost original document?

23 A. They asked me to execute this for the
24 foreclosure department. Because after conversations
25 between the attorney and this other department, they

1 determine that it is not available. I am the
2 foreclosure team lead that handles document execution.

3 Q. Okay. So would it be accurate to say that the
4 department that actually searches for the lost note
5 would have a better understanding of why it's lost and
6 where the search occurred?

7 A. That is a fair statement.

8 Q. Okay. It says that the copy of said note
9 attached to the complaint is a true and correct and
10 substantial copy of the lost or destroyed note.

11 Do you review any documents before executing
12 the affidavits of lost original documents?

13 A. No, I do not. I review this. Let me change
14 this. Excuse me. I do review this. However, I do not
15 review any documents. I rely, once again, on my
16 attorney network who is requesting the document, and
17 communications between the departments to determine if
18 it's -- if a lost affidavit is needed.

19 Q. Okay. So the portion that sets claims in
20 paragraph 1: Affiant has custody and personal knowledge
21 of the account pertaining the original mortgage loan
22 instruments. Affiant has actual and personal knowledge
23 of the facts stated herein and is authorized to make
24 this affidavit. Would that be accurate?

25 A. Yes, that is accurate.

1 Q. You being the affiant have custody and
2 personal knowledge of the account pertaining to the
3 original mortgage loan instruments?

4 MS. ARROYAVE: Object to the form. Go ahead.

5 THE WITNESS: I do not have the specific
6 knowledge to this one account. But I understand
7 what the other department does in general to try to
8 locate these documents.

9 BY MR. IMMEL:

10 Q. Okay. All right. And so in this particular
11 case, the -- there was no note attached to the
12 complaint. You would have no way of ascertaining that
13 because you don't actually review?

14 A. That, once again, is determined by our
15 attorneys' office.

16 Q. Okay. I'm going to just -- I have a
17 substantial copy of the complaint. And just to show
18 that there is no note attached to it, that was the
19 original filing of the complaint.

20 You have never reviewed that, nor do you
21 review any other note to determine whether it is, in
22 fact, a true, correct and substantial copy of the lost
23 or destroyed note?

24 MS. ARROYAVE: Objection: Form.

25 THE WITNESS: Can you rephrase that for me? I

1 don't completely follow what you are saying.

2 BY MR. IMMEL:

3 Q. When you execute the affidavit of lost
4 original document, and make the claim that you've seen a
5 copy of the note that is attached and that's a
6 substantial copy, you really have no basis for making
7 that claim.

8 THE WITNESS: I'm still not following.

9 MS. ARROYAVE: Objection: Form.

10 BY MR. IMMEL:

11 Q. When the complaint in this case was filed,
12 there was no note attached to the complaint, correct?

13 A. From what you have just handed to me, there is
14 no note.

15 Q. Okay. Based on what I've provided you.

16 A. Yes.

17 Q. Do you normally review notes to make sure that
18 they are a true copy of the lost note?

19 MS. ARROYAVE: Objection: Form.

20 THE WITNESS: That is -- no, I do not. It is
21 not in my position.

22 BY MR. IMMEL:

23 Q. It's not in your position.

24 MR. IMMEL: All right. I guess I can enter
25 this a Exhibit G.

1 (Defendant's Exhibit Letter G was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. And going back, just for a second, to the lost
5 note affidavit. That is your signature?

6 A. Yes, that's correct.

7 Q. And your understanding is that the attorney
8 representing -- from your network drafts this?

9 A. That is correct.

10 Q. Okay.

11 MR. IMMEL: This is going to be Exhibit H.

12 (Defendant's Exhibit Letter H was marked for
13 identification.)

14 BY MR. IMMEL:

15 Q. This is a copy of the note filed after the
16 complaint in this case. I don't have the notice of
17 filing page.

18 Have you ever seen this document before?

19 A. I have seen these documents. I have not seen
20 this document.

21 Q. Okay. And this wouldn't have been the
22 document that you reviewed in executing the lost note
23 affidavit?

24 A. No. We do not -- once again, we do not review
25 the note. Our attorney determines that the note is not

1 available through our processes.

2 Q. Okay.

3 MR. IMMEL: This would be Exhibit I.

4 (Defendant's Exhibit Letter I was marked for
5 identification.)

6 BY MR. IMMEL:

7 Q. This is the newly found note. Here. And as
8 you can see, if you could compare the two notes, one has
9 a couple of additional endorsements. Whereas, the
10 previous one did not. Is that correct?

11 A. That is what I observe here, yes.

12 Q. Okay. In the review of the two notes and the
13 endorsements that are on them, have you seen this type
14 of situation before where one note that's been filed in
15 the case is partially endorsed and the other is a more
16 complete record of endorsements?

17 A. No, I have not.

18 Q. In following along the endorsements, can you
19 determine who was the last owner of the note prior to
20 your companies?

21 A. I'm sorry. Can you rephrase that for me?

22 Q. Can you determine who GMAC Mortgage, LLC has
23 acquired the mortgage note from?

24 A. The first endorsement I see here has a date.
25 It says, Mortgage Investor Corporation. It's signed on

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1 February 27th, I believe, that's 2002.

2 Q. All right. And they were the original lender.
3 And then, as you can see, there is another endorsement
4 there to, I believe, GMAC Mortgage Corporation. And
5 there is also one GMAC Bank. Correct?

6 A. That is correct according to the observation
7 that I see on this document.

8 Q. So would you need an assignment from -- why do
9 you assign the MERS -- as a vice president of MERS, why
10 do you assign the MERS -- I'm sorry. Let me start over
11 there.

12 Why do you execute the assignment of mortgage
13 on behalf of MERS as nominee for the original lender and
14 not the last lender?

15 MS. ARROYAVE: Objection: Form.

16 THE WITNESS: Because as you stated, it's an
17 assignment of mortgage. It's not an assignment of
18 note.

19 BY MR. IMMEL:

20 Q. Right.

21 A. That's the only way I can answer that. The
22 mortgage itself, which we've both reviewed, states that
23 it's MERS as a nominee for Mortgage Investor
24 Corporation.

25 Q. Okay. So would you agree then that as the

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1 note was transferred through these endorsements to new
2 note-holders and owners that MERS remained the
3 mortgagee?

4 MS. ARROYAVE: Objection: Form.

5 THE WITNESS: I wouldn't have that knowledge.

6 BY MR. IMMEL:

7 Q. Okay. It's your understanding that MERS does
8 not assign the mortgage every time the note is
9 transferred; is that correct?

10 MS. ARROYAVE: Objection: Form.

11 THE WITNESS: I wouldn't have that knowledge
12 either.

13 BY MR. IMMEL:

14 Q. Okay. All right. Do you know who would have
15 that knowledge?

16 A. No, I do not.

17 Q. Okay. All right.

18 MR. IMMEL: And we have here defendant's
19 request for production regarding the Jeffrey
20 Stephan documents. That will be Exhibit J.

21 (Defendant's Exhibit Letter J was marked for
22 identification.)

23 BY MR. IMMEL:

24 Q. Have you seen that document before?

25 A. I have not seen this document until recently

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1 when I found out that I was coming here.

2 Q. Okay. And also we have the response to the
3 request for production regarding the Jeffrey Stephan
4 document.

5 MR. IMMEL: That will be marked as Exhibit K.

6 (Defendant's Exhibit Letter K was marked for
7 identification.)

8 BY MR. IMMEL:

9 Q. I'm going to direct you to paragraph 5 where
10 there has been an objection based on our request for all
11 MERS system documents, records, computer data, or other
12 MERS information reviewed by Jeffrey Stephan prior to
13 executing the assignment of mortgage filed in this case
14 to determine the proper SNE.

15 It's been objected to as vague and ambiguous
16 and improperly presumes that plaintiff has custody or
17 control over any MERS system documents.

18 As a MERS vice president, you don't have
19 access to any MERS system documents?

20 A. No, I do not.

21 Q. Okay.

22 A. I do not work for MERS.

23 Q. Okay. And so you don't actually review any
24 documents prior to executing the assignment of mortgage?

25 MS. ARROYAVE: Asked and answered.

1 BY MR. IMMEL:

2 Q. Okay. And are there any -- do you receive any
3 letters, e-mails, or other correspondence from other
4 departments that have given you any instruction on any
5 of the documents which you execute?

6 A. No.

7 Q. No. And in paragraphs -- request No. 7, as
8 far as the search for the lost note, you didn't actually
9 partake in that search. So you are not aware of any of
10 the locations searched, other than by other people?

11 A. That's correct.

12 Q. Do you know who those people would be that
13 searched for the note?

14 A. There is a team that's in our Minnesota
15 office. I am not familiar with who would actually
16 search for the said document.

17 Q. What is the name of that team? Do you know
18 the name of that team?

19 A. I don't have a formal name for them. I call
20 them document control. But that's my own name for them.

21 Q. Okay. All right. You said that the attorneys
22 representing you prior in this case only ask you to
23 execute the lost note affidavit after a substantial
24 effort has occurred?

25 MS. ARROYAVE: Objection. That goes into the

1 attorney-client privilege.

2 BY MR. IMMEL:

3 Q. As far as you understand, a substantial search
4 for the lost note has already occurred by various people
5 within your team, other teams within GMAC at the request
6 of the attorneys?

7 A. Within GMAC the lost note affidavit or lost
8 instrument affidavit would not be executed until
9 everything has been exhausted.

10 Q. Okay. Is it common for a lost note affidavit
11 to be executed and then later the note to be found?

12 A. I don't know.

13 Q. You're not sure. Okay. Earlier you were
14 mentioning that now you work for GMAC, LLC; is that
15 correct?

16 A. That is correct.

17 Q. And you still execute documents as GMAC
18 Mortgage, LLC limited signing officers, as well?

19 A. That's the same thing you just stated.

20 Q. Right. One they dropped the name -- the
21 mortgage from the name, and one they haven't; is that
22 correct?

23 A. No.

24 Q. No.

25 A. One they dropped corporation and changed it to

1 LLC.

2 Q. Oh, okay.

3 A. They became a limited liability company.
4 That's what LLC stands for.

5 Q. Okay. You said that there was an -- initially
6 there was a referral from the referral department to the
7 attorneys?

8 A. That would be correct.

9 Q. Do you ever review any of those documents in
10 your duties as executing these other documents?

11 A. No.

12 Q. So I'm going to turn to the -- this is the
13 note of authenticity ownership interrogatories limited
14 answers. Here you are.

15 MR. IMMEL: That will be Exhibit L.

16 (Defendant's Exhibit Letter L was marked for
17 identification.)

18 BY MR. IMMEL:

19 Q. Do you know, I think, it is Juan A. Aquirre?

20 A. I do not know him. But I am familiar with his
21 name.

22 Q. Okay. Are you familiar with his duties? He's
23 a senior litigation analyst.

24 A. Yes.

25 Q. Do you know if he's a senior litigation

1 analyst for GMAC Mortgage, LLC, or are there other
2 entities that he works for?

3 A. I honestly do not know.

4 Q. Okay. Would he be part of the document team
5 in Minnesota that may find a note?

6 A. No.

7 Q. No. Okay. Would he be somebody, do you know,
8 if in his duties he's somebody that searches for lost
9 documents?

10 A. No.

11 Q. Okay.

12 MS. ARROYAVE: Is that, no, you don't know?

13 THE WITNESS: No. He does not do that.

14 BY MR. IMMEL:

15 Q. He doesn't do that. Do you know what his
16 duties are?

17 A. As it states here, he is a senior litigation
18 analyst. I'm not sure of what his exact
19 responsibilities would be.

20 Q. Okay. But searching for lost documents
21 wouldn't be one of his responsibilities, more than
22 likely?

23 A. No, it would not be.

24 Q. Okay. And here are plaintiff's amended
25 answers. Okay.

1 MR. IMMEL: I'll mark it as Exhibit M.

2 (Defendant's Exhibit Letter M was marked for
3 identification.)

4 BY MR. IMMEL:

5 Q. It asks to identify all persons and/or
6 entities who are the current beneficial owners of, or
7 who have a beneficial or equitable interest in the
8 promissory note. And Federal National Mortgage
9 Association has been identified, Fannie Mae.

10 Are you aware -- and then if you look at No.
11 3, it says, Please identify all person and/or entities
12 who are current legal owners of, or who have legal
13 interest in the promissory note.

14 A. I don't have the same affidavit you have.

15 Q. Okay. Defendant's note. Do you have the
16 mortgage loan?

17 A. That's the mortgage loan.

18 Q. Okay.

19 MS. ARROYAVE: What has been introduced? Has
20 this set of interrogatory been --

21 MR. IMMEL: Yes.

22 MS. ARROYAVE: But not the other?

23 MR. IMMEL: No. This was also entered,
24 correct?

25 THE COURT REPORTER: I think it was the last

1 one.

2 BY MR. IMMEL:

3 Q. So if you look at paragraphs 2 and 3, can you
4 explain to me why Fannie Mae would have the beneficial
5 or equitable interest in the promissory note, based on
6 your understanding?

7 MS. ARROYAVE: Objection. It calls for a
8 legal conclusion.

9 THE WITNESS: No, I can't.

10 BY MR. IMMEL:

11 Q. And earlier when we discussed the MERS
12 documentation where Ginnie Mae was identified as the
13 investor, would it be fair to say that the beneficial or
14 equitable interest would actually lie with the person
15 who made the loan?

16 MS. ARROYAVE: Objection. It calls for a
17 legal conclusion.

18 THE WITNESS: I don't have that knowledge.

19 BY MR. IMMEL:

20 Q. Okay. And based on the MERS documentation
21 that I presented to you earlier, where the investor was
22 identified as Ginnie Mae. In paragraph 5 here, they are
23 identifying Fannie Mae as the investor.

24 Do you have any understanding of -- as to why
25 those two things would --

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1 A. No, I don't.

2 Q. -- there would be a discrepancy there? Okay.

3 All right.

4 And going back to the mortgage loan ownership
5 and the interrogatories one more time. Can you explain
6 why one entity would have the beneficial interest and
7 another entity would have a legal interest --

8 MS. ARROYAVE: Objection. It calls for a
9 legal conclusion.

10 BY MR. IMMEL:

11 Q. -- based on your company's protocols?

12 A. I don't have that knowledge.

13 Q. Okay. GMAC Mortgage owns some loans and
14 services other; is that correct?

15 A. To my knowledge that would be a correct
16 statement.

17 Q. Okay. Do they -- and then in other instances,
18 they both own loan and service the loan?

19 A. That would be a fair statement.

20 Q. Okay. Is it possible that GMAC Mortgage is
21 the servicer for this loan and another entity -- whether
22 it be Fannie Mae, Ginnie Mae, or any other entity --
23 perhaps is the owner and GMAC is just the servicer?

24 A. That's possible. But I'm not familiar enough
25 to say yes or no.

1 Q. Okay. All right. I'm just going to go over
2 the notice of taking the deposition duces tecum.

3 (Defendant's Exhibit Letter N was marked for
4 identification.)

5 BY MR. IMMEL:

6 Q. All right. This is -- and just for the
7 record, Exhibit A, if you would turn to that. This is a
8 list of the documents that we requested that you bring.
9 A request for production. And you provided some of them
10 earlier.

11 I just wanted to go over it and see if you
12 brought any of these documents today, or if you were
13 just relying on what was produced in the request for
14 production. Okay?

15 The deponent's most recent curriculum vitae?

16 A. I didn't feel I needed to bring that. That's
17 personal.

18 Q. Okay. You actually provided the corporate
19 resolution for MERS and for GMAC. You presented the
20 list of certifying officers. And the MERS system
21 documents records, you already stated that you don't
22 have any access.

23 Your team brings you the documents. And you
24 don't receive any direct communication from the
25 attorneys that draft them?

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1 A. The only type of communication I would receive
2 from an attorney is if a document is late in being
3 returned.

4 Q. Okay. All right. And it would be fair to say
5 that your primary responsibility is to create and
6 execute these documents, not to actually do any of the
7 underlying duties of ascertaining specific knowledge or
8 information about them, correct?

9 MS. ARROYAVE: Objection: Form. Asked and
10 answered.

11 THE WITNESS: And the answer to that would be,
12 no.

13 MR. IMMEL: All right. I think that's most of
14 it. Just let me have on second to review, but I
15 think that's most of it. All right. I think that
16 should do it for today.

17 Thank you very much for traveling here.

18 MS. ARROYAVE: I have a few questions.

19 MR. IMMEL: Yeah. I'm sorry about that.

20 MS. ARROYAVE: You can't have all of the fun.

21 Can I look at the exhibits?

22 CROSS (JEFFREY STEPHAN)

23 BY MS. ARROYAVE:

24 Q. I'm going to show you what has been previously
25 marked as Defendant's Exhibit C to your deposition.

1 Do you have any knowledge of how this document
2 is created?

3 A. No.

4 Q. Do you have any knowledge as to whether the
5 information in this document is accurate?

6 A. No.

7 Q. Do you know how this is prepared?

8 A. No.

9 Q. Okay. Let me show you what has been
10 previously marked as Defendant's Exhibit A to your
11 deposition. It is the assignment of mortgage.

12 The information that is used to prepare this
13 mortgage is kept in GMAC Mortgages' business records; is
14 that correct?

15 A. Yes.

16 Q. And these business records from where this
17 information came from were created by persons in GMAC
18 Mortgage, employees of GMAC Mortgage, right?

19 A. Yes.

20 Q. And the information was entered into the
21 computer system by these GMAC Mortgage employees at the
22 time that they became aware of the information?

23 A. Yes.

24 Q. And they had a business duty to enter the
25 information into the computer system; is that correct?

1 A. Yes.

2 Q. And this information, these business records
3 are kept within the course and scope of GMAC's regularly
4 conducted business activities; is that correct?

5 A. I'm going to say yes.

6 Q. Okay. I'm going to show you what has been
7 previously marked as Defendant's Exhibit F to your
8 deposition. And it's the affidavit of lost original
9 document.

10 Is the information you used to prepare this
11 lost original document kept in GMAC Mortgages' business
12 records?

13 A. I don't understand the question.

14 Q. Okay. The information in the lost original
15 document, is that -- GMAC Mortgage is the owner and
16 holder of the note, correct?

17 A. Yes.

18 Q. Is that information kept within the course and
19 scope of GMAC's business records?

20 A. Yes.

21 Q. And the information in GMAC's business records
22 are entered by persons with knowledge of the information
23 that GMAC is the owner of the note?

24 MR. IMMEL: Objection: Leading.

25 THE WITNESS: Can you rephrase it? I'm not

1 sure if I follow what you are saying.

2 BY MS. ARROYAVE:

3 Q. The business records that GMAC has regarding
4 whether it is the original -- whether it is the owner of
5 the note, was entered by persons that have personal
6 knowledge of whether GMAC is the owner of the note; is
7 that correct?

8 A. I honestly don't know. I do not work in those
9 departments.

10 Q. Okay.

11 MS. ARROYAVE: I have nothing further.

12 REDIRECT (JEFFREY STEPHAN)

13 BY MR. IMMEL:

14 Q. I would just ask: The assignment of the
15 mortgage and the information on it, this is not created
16 by anyone at -- this specific document isn't actually
17 created by a member or a worker for GMAC Mortgage, it is
18 actually created by the attorney?

19 A. Yes.

20 Q. Okay. So the attorney would have to be
21 relying on business records of GMAC Mortgage in forming
22 this?

23 A. That would be correct.

24 Q. Okay. And as to the lost note, this too is
25 created by the attorney, correct?

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1 A. That is correct.

2 Q. Okay.

3 MR. IMMEL: All right. That does it.

4 MS. ARROYAVE: That's it.

5 MR. IMMEL: All right. Thank you.

6 MS. ARROYAVE: We will read.

7 THE COURT REPORTER: Okay.

8 (Witness excused.)

9 (Deposition was concluded.)

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1 CERTIFICATE OF OATH

2 THE STATE OF FLORIDA

3 COUNTY OF PALM BEACH

4
5
6 I, the undersigned authority, certify that Jeffrey
7 Stephan personally appeared before me and was duly
8 sworn. Dated the 10th day of December, 2009.

9
10 Dated this 22nd day of December, 2009.

11
12
13 



14 Jamie Reynolds Bentley, Court Reporter

15 Notary Public - State of Florida

16 My Commission Expires: 7/20/2013

17 My Commission No.: DD 453053
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25

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 22nd day of December, 2009.



Jamie Reynolds Bentley, Court Reporter

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1 DATE: December 31, 2009
2 TO: Jeffrey Stephan
3 IN RE: GMAC Mortgage, LLC vs Ann M. Neu, Michelle Perez,
 Douglas William

4

CASE NO.: 50 2008 CA 040805XXXX MB

6 Please take notice that on Thursday, the 10th
of December, 2009, you gave your deposition in the
above-referred matter. At that time, you did not
7 waive signature. It is now necessary that you sign
your deposition.

8 Please call our office at the below-listed
number to schedule an appointment between the hours
9 of 9:00 a.m. and 4:30 p.m., Monday through Friday,
at the Consor & Associates office located nearest
10 you.

11 If you do not read and sign the deposition
12 within a reasonable time, the original, which has
13 already been forwarded to the ordering attorney, may
be filed with the Clerk of the Court. If you wish
to waive your signature, sign your name in the blank
at the bottom of this letter and return it to us.

14 Very truly yours,

17 Jamie Reynolds Bentley, Court Reporter
Conсор & Associates
18 1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401

20 I do hereby waive my signature.

22 Jeffrey Stephan

23 I do hereby waive my signature:

24 Cc: Via transcript: Christopher Immel, Esquire

25 File copy

C E R T I F I C A T E

- - -

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing
deposition by me given, and that the statements
contained herein are true and correct to the best of
my knowledge and belief, with the exception of any
corrections or notations made on the errata sheet,
if one was executed.

Dated this ____ day of _____,
2009.

JEFFREY STEPHAN

1 E R R A T A S H E E T
2 IN RE: GMAC MORTGAGE, LLC VS ANN M. NEU, MICHELLE PEREZ,
DOUGLAS WILLIAM
3 CR: JAMIE REYNOLDS BENTLEY
DEPOSITION OF: JEFFREY STEPHAN
4 TAKEN: 12/10/09

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18 Please forward the original signed errata sheet to this
office so that copies may be distributed to all parties.

20 Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

22 DATE:

24 SIGNATURE OF DEPONENT: _____

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EXHIBIT “ C ”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.
as Nominee for Mortgageit, Inc.

ORDERED MAIL TO:
Duncan, LLP
1 Rutland Drive, Suite 200
Box 17933
San Diego, CA 92117-0933

2009-094899

09:34am 07/16/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 9 0 0 9 4 8 9 9 A R *

01-028478

ASSIGNMENT OF DEED OF TRUST

VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC BANK A. as Trustee for DALT 2007-AO3 all beneficial interest under that certain Deed of Trust dated 12/22, 2007, executed by Raul Estiva and Corazon Estiva, husband and wife as joint tenants to First American National Title, as trustee, for Mortgage Electronic Registration Systems, Inc., Solely as Nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007-050317 on April 07, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and payments accrued or to accrue under said Deed of Trust.

5-26-09

Mortgage Electronic Registration Systems, Inc., Solely
as Nominee for Mortgageit, Inc.

By:

Its:

Jeffrey Stephan
Vice President

Penney Ivaric)
of Montgomery) ss.
5/26/09
Jeffrey Stephan

before me, Thomas P. Strain - Notary Public, personally appeared [Name] who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

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.

Thomas P. Strain
Notary Public

(This Area for Official Notary Seal)

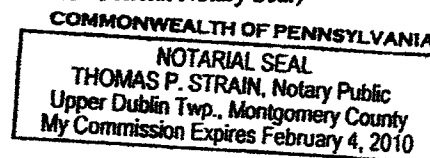


EXHIBIT C

AA46

Jan 27 11 11:07a

Office

50-571-5829

p.1

Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

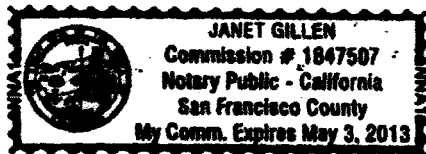
EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030



Janet Gillen, Notary Public
1/27/11

EXHIBIT “ D ”

FEDERAL COURT OF APPEALS

THIRTEENTH JUDICIAL CIRCUIT DIVISION FOUR

No. 14-1114

Family and Child Welfare Services

Available

FILED

OK

Date Filed

FILED

U.S. Supreme Court, 135 S. Ct. 1103, 135 L. Ed. 2d 1019 (2015), cert. denied, 135 S. Ct. 1103, 135 L. Ed. 2d 1019 (2015).
U.S. Supreme Court, 135 S. Ct. 1103, 135 L. Ed. 2d 1019 (2015), cert. denied, 135 S. Ct. 1103, 135 L. Ed. 2d 1019 (2015).

Amicus

Robert M. Lutz

Amicus Curiae, Son-Do and a Child Welfare
Agency of State of Texas

Amicus Curiae, Son-Do and a Child Welfare

Agency of State of Texas

Amicus Curiae, Son-Do

Agency of State of Texas

Amicus Curiae, Son-Do

Agency of State of Texas

Amicus Curiae, Son-Do

Agency of State of Texas

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FOUR	Court of Appeal Case Number: A134461
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel in Pro Per 75 Tobin Clark Dr. Hillsborough, CA 94010 TELEPHONE NO.: 650-284-6417 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Pro Se	Superior Court Case Number: CIV502857 FOR COURT USE ONLY
APPELLANT/PETITIONER: Fermin Solis Aniel et. al. RESPONDENT/REAL PARTY IN INTEREST: ETS Services, LLC et. al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Fermin Solis Aniel and Erlinda Abibas Aniel

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

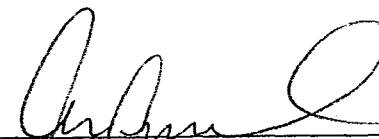
☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 5/8/12

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

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STATEMENT OF THE CASE

Plaintiffs and Appellants—FERMIN SOLIS ANIEL, and ERLINDA ABIBAS ANIEL—filed their COMPLAINT against Appellees—ETS SERVICES, LLC (“ETS”), GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION and GMAC MORTGAGE (“GMAC”), HSBC BANK, U.S.A. AS TRUSTEE FOR DALT 2007-AO3 (“HSBC”), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”), AND PITE DUNCAN, LLP (“PITE”), on February 02, 2011, in the Superior Court of the State of California, County of San Mateo. See Case number CIV502857. On March 03, 2011, Appellee, ETS, GMAC, HSBC, and MERS, filed a Demurrer to Appellants’ Complaint. On March 15, 2011, Appellee, PITE, filed a Demurrer to Appellants’ Complaint.

On May 25, 2011, Appellants filed an Opposition to Appellee’s, PITE, Demurrer to the Appellants’ Complaint. On May 26, 2011, Appellants filed an Opposition to Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer to the Appellants’ Complaint.

On June 02, 2011, Appellees, ETS, GMAC, HSBC, and MERS, filed a Reply in support for their Demurrer to the Appellants’ Complaint.

On June 08, 2011, the Court adopted its tentative ruling, and sustained Appellee’s, PITE, Demurrer to the Appellants’ Complaint without leave to amend. On June 09, 2011, the Court, after a hearing on the merits, adopted its tentative ruling, and sustained Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer without leave to amend.

On June 30, 2011, the Court filed its Order Sustaining Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer to the Appellants’ Complaint without leave to amend. On July 18, 2011, the Court filed its Order Sustaining Appellee’s, PITE, Demurrer to Appellants’ Complaint without leave to amend. On December 06,

2011, the Court, during a Case Management Conference, ordered that the case be dismissed with prejudice. This served as a Final Judgment in the case.

On February 02, 2012, Appellants filed a Notice of Appeal to the Court's order to dismiss the case with prejudice on December 06, 2011. On February 02, 2012, the Court filed a Clerk's Notice of Filing of the Notice of Appeal. On February 08, 2012, Appellants filed a Notice of Designation of Record, electing to file an appendix under California Rule of Court, Rule 8.124.

STATEMENT OF APPEALABILITY

This appeal is from the order dismissing the case with prejudice of the Superior Court of California, County of San Mateo and is authorized by the California Civil Procedure Code § 581d.

STATEMENT OF THE FACTS

On or around March 22, 2007, Raul Estiva (now deceased) and Corazon Estiva (non-parties to this action) signed Deed of Trust, to the property located at 801 Foothill Drive, San Mateo, CA 94402. (AA8). The Deed of Trust was recorded on April 03, 2007 in the County of Records' Office in San Mateo. Under the Deed of Trust, the Lender was MortgageIT, Inc. (a non-party). (AA8). Under the Deed of Trust, MERS, acting solely as a nominee for Lender and Lender's successors and assigns, was named as the beneficiary under the Deed of Trust. (AA8). Fidelity National Title was named as the Trustee under the Deed of Trust. (AA28).

Appellants own a 50% interest in the property. (AA8). Appellants disclosed their interest in their Amended Schedule A-Real Property in their Bankruptcy estate. Appellants' arrangement consisted of Raul Estiva refinancing the loan in 2007, and Appellants' making regular payments on the mortgage to the servicer,

GMAC. (AA8-AA9). Appellants' reported income received from rent from the subject property in their income tax return. (AA9). Appellants maintained the property, collected rent, and paid for the mortgages, hazard insurance, and property taxes. (AA9). On February 03, 2011, Corazon Estiva executed a Grant Deed that transferred interest in the Deed to the Appellants. (AA405).

On December 15, 2008, ETS, claiming to be merely an agent of MERS, executed a Notice of Default on the subject property. (AA43-AA44). In that Notice of Default, MERS, in its own name without identifying the Lender, claimed to be the beneficiary of the Deed of Trust. (AA43-AA44). MERS did not act as a nominee in the Notice of Default. (AA43-AA44). On the same day, December 15, 2008, MERS, in its own capacity and without identifying the Lender, executed a Substitution of Trustee, which identified ETS as the Substituted Trustee. (AA380). Both the Notice of Default and the Substitution of Trustee were recorded on the same day in San Mateo County on December 17, 2008. (AA43-AA44; AA380).

On May 26, 2009, Pite manufactured an Assignment of the Deed of Trust, transferring beneficial interest in the Deed of Trust from MERS, solely as nominee for MortgageIT, Inc., to HSBC. (AA9, AA10). The Assignment of the Deed was manufactured because Jeffrey Stephan, executed the document. (AA9, AA10). The Assignment of the Deed states that Jeffrey Stephan, a vice president of MERS, executed the Assignment of the Deed, and that Thomas P. Strain, a notary public, acknowledged the execution of the Assignment of the Deed. (AA9, AA10). Jeffrey Stephan is an infamous and admitted robo-signer, whose name has appeared in thousands of mortgage related documents. (AA9, AA10). The Assignment was recorded on July 16, 2008, while Appellants were in Bankruptcy and under the protection of the automatic stay. (AA9, AA10).

On December 28, 2010, ETS executed a Notice of Trustee Sale, which was recorded on December 31, 2010. (AA10). The subject property was eventually

foreclosed after Appellants filed their complaint and prior to Appellants' Notice of Appeal.

STANDARD OF REVIEW

On review of an order sustaining a demurrer without leave to amend, the Appellate Court's standard of review is de novo, determining its own independent judgment about whether the complaint states a cause of action as a matter of law." (Montclair Parkowners Assn. v. City of Montclair (1999) 76 Cal.App.4th 784, 790 [90 Cal.Rptr.2d 598].).

A demurrer tests the legal sufficiency of the complaint. For purposes of review, the Appellate Court accepts as true all material facts alleged in the complaint, but not contentions, deductions or conclusions of fact or law. We also consider matters that may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (Id.) Plaintiff has the burden to show a reasonable possibility the complaint can be amended to state a cause of action. (Id.)

ARGUMENT

A. APPELLANTS ESTABLISHED STANDING BECAUSE OF THEIR INTEREST IN THE PROPERTY THAT WAS HARMED BY THE ACTIONS OF THE APPELLEE.

Under California Civil Code of Procedure § 367, every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute. In the case, Jasmine Networks, Inc. v. Superior Court (Marvell Semiconductor, Inc.), 180 Cal. App. 4th 980 (2009), the Court stated that § "367 simply requires that the action be maintained in the name of "[t]he person who has

the right to sue under the substantive law." (4 Witkin, Cal. Procedure, *supra*, Pleading, § 121, p. 187, *italics added*.) *Jasmine Networks, Inc. v. Superior Court (Marvell Semiconductor, Inc.)*, 180 Cal. App. 4th 980 (2009). Thus if the plaintiff has a cause of action in his own right, and he pursues it in his own name, section 367 poses no obstacle to maintenance of the action. *Id.* The application of the statute, "while superficially concerned with procedural rules, really calls for a consideration of rights and obligations." (4 Witkin, *supra*, Pleading, § 121, p. 187.). *Id.*

Appellants established an interest in the property as alleged in their Complaint. Appellants established a substantive cause of action based on the Appellees attempts to wrongfully foreclose the property. Appellants' interest in the property was adversely affected by the fraudulent nature of the execution and creation of the Substitution of Trustee, Notice of Default, and Assignment of the Deed of Trust. Without Appellees actions, Appellants would continue to have interest and possession of the property. Based on Appellants' injuries, they have established a cause of action against the Appellees. The Court in its decision refused to acknowledge Appellants' interest in the property but rather focused on the fact that Appellants' names do not appear on the Promissory Note or the Deed of Trust. The focus should have been on Appellants' substantive case rather than whether only the Estivas have standing to sue the Appellees. Based on Appellants' bankruptcy case, the grant deed, and the allegations made in the complaint, Appellants have established an interest in the property despite their names not appearing on the Promissory Note or the Deed of Trust.

The Court abused its discretion by determining that Appellants lack standing because their names do not appear on the Deed of Trust or the Promissory Note. The Court failed to determine whether the Appellants, with an interest in the property, have established a claim for a wrongful foreclosure that led to an injury

of their interest in the property. The Court did not rule whether in fact Appellants had interest in the property, but rather only names that appear on the Deed of Trust or the Promissory Note may establish a claim based on the property. Appellants were never given an opportunity to prove its ownership interest in the property. Had Appellants established that ownership interest in the property, Appellants' allegations in their Complaint were enough to establish a cause of action based on substantive law.

Therefore, the Court's attempt to create a prerequisite in order to challenge a foreclosure was an abuse of discretion. The Appellants' sufficiently established an ownership interest based on its allegations concerning the Bankruptcy Court, their contributions to the maintenance of the property, and rental income received and reported in their income tax returns. (AA8-AA9). Based on this interest, Appellees' wrongful actions seriously injured Appellants' established interest in the property. This created a substantive cause of action by the Appellants, the real party in interest.

B. UNITED STATES BANKRUPTCY DETERMINED APPELLANTS HAD STANDING BASED ON THEIR SCHEDULES AND ITS DECISION TO ABANDON THE SUBJECT PROPERTY.

Res judicata or claim preclusion bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them. (Mycogen Corp. v. Monsanto Co. (2002) 28 Cal.4th 888, 896.) Res judicata applies if the decision in the prior proceeding is final and on the merits and the present proceeding is on the same cause of action as the prior proceeding. (Busick v. Workmen's Comp. Appeals Bd. (1972) 7 Cal.3d 967, 974.) Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated. (Id. at p. 975.)

The Superior Court's decision to grant Appellees' Demurrer to the Appellants' Complaint was solely based on Appellants' lack of standing to have a valid claim against the Appellees. The Court determined that Appellants lacked any standing to challenge the foreclosure of the Appellees. (AA445-AA446). However, because Appellants' filed for Bankruptcy and listed the property as their property with 50% interest, the Bankruptcy Court had already established Appellants' standing. (AA8-AA9). Further, the Bankruptcy Court approved Appellants' request to abandon the property in order for the Appellants' to assert their rights in a lawsuit outside the Bankruptcy court. (AA356-AA357).

The Court abused its discretion when it did not take into consideration the events that took place during the Appellants' bankruptcy. Appellees did not attempt to foreclose the property while the property was protected under the Automatic Stay in the Appellants' bankruptcy case. It was only after Appellants' property was abandoned did Appellees record a Notice of Trustee Sale without a new Notice of Default as required by California law. (AA393).

Appellees had an opportunity to challenge Appellants' claim of ownership interest in the Bankruptcy Court when Appellants' sent Appellee notice through its schedules, and prior to the Trustee's ruling to abandon the property. (AA356-AA357). Appellees failed to challenge the standing in the Bankruptcy Court. As such, Appellants, based on the decision of the Bankruptcy Court, did establish their interest in the property. That 50% interest could not be challenged in the Superior Court. The Court abused its discretion when it did not accept the Bankruptcy Court's ruling establishing the subject property as part of the Appellants' estate and their standing as 50% interest ownership in the property. Therefore, the Court lacked jurisdiction to rule that Appellants did not have standing to continue their complaint against the Appellees.

C. THE COURT ERRED BY NOT GIVING APPELLANTS AN OPPORTUNITY TO AMEND THEIR COMPLAINT

In the event that the complaint is found to not state a cause of action, but there is a reasonable possibility that amendment can cure the defect, leave to amend must be granted. (Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 38, 39).

The Superior Court determined that they were not convinced of Appellants' ownership interest in the subject property. Even if Appellants' Complaint was not sufficient to establish an ownership interest, Appellants should have had one more opportunity to amend their Complaint to establish a sufficient cause of action. If the Court was not convinced about the Appellants' interest in the property, Appellants could have amended their Complaint to establish more allegations to support their ownership interest, including declarations from Corazon Estiva, co-owner named in the Deed of Trust. Instead, the Court sustained Appellees' Demurrers without leave to amend. Appellants can prove its ownership interest in the property had they been given a chance to amend their Complaint.

CONCLUSION

The Superior Court erred in sustaining the demurrer without leave to amend and entering a judgment of dismissal. The Court should not have prevented Appellants from testing the sufficiency of their causes of action. The Court made no findings regarding the substantive basis of their causes of action. Appellants suffered an injury based on Appellees' conduct in foreclosing the property. Appellants should have been given an opportunity to continue their Complaint, and the Court should not have prevented them from recovery based on their names not appearing on the Deed of Trust or Promissory Note. Appellants' request attorney's fees and cost for this Appeal.

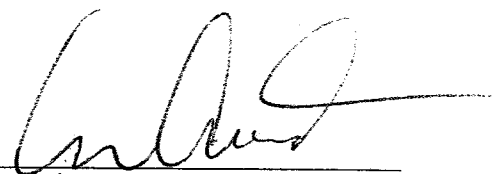
Respectfully submitted.

Dated: May 3, 2012



FERMIN SOLIS ANIEL
PRO SE APPELLANT

Dated: May 3, 2012



ERLINDA ABIBAS ANIEL
PRO SE APPELLANT

Certificate of Compliance

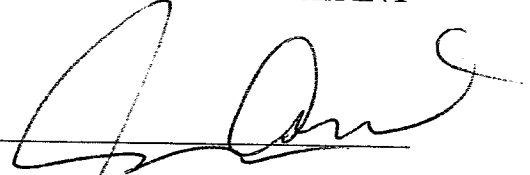
Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 2073 words, including footnotes. In making this certification, I have relied on the word count of the computer program, Microsoft Office 2008, used to prepare the brief.

Executed on May 03, 2012 at Hillsborough, California



FERMIN SOLIS ANIEL

PRO SE APPELLANT



ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over eighteen years of age and not a party to the within action. My address is

75 Tobin Clark Dr., Hillsborough, CA 94010

On May ~~4~~¹⁰₃, 2012, I served the following:

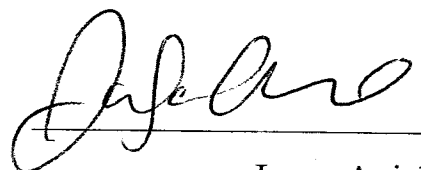
Appellants' Opening Brief

Certificate of Interested Parties or Entities

on the parties set forth on Exhibit A by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing. I caused such envelope, with postage thereon full prepaid, to be placed in the United States Mail at San Francisco, California, or personally delivered. The addresses to which each party was served are as set forth in Exhibit A.

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

Executed on May ~~4~~¹⁰₃, 2012 at San Mateo, California



Jason Aniel

EXHIBIT A
TO PROOF OF SERVICE

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(Four Copies)

Honorable Judge Joseph C. Scott
Southern Court, Dept. 25, Courtroom 2M
400 County Center
Redwood City, CA 94063

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

CHRISTOPHER L. PETERSON
Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

BRIAN S. WHITEMORE SEVERSON & WERSON, P.C. One Embarcadero Center, Suite 2600 San Francisco, California, 94111	Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, and Mortgage Electronic Registration Systems, Inc.
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Exhibit B

Claim No. 416

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM
Name of Debtor: GMAC Mortgage, LLC		Case Number: 12-12032 (MG)
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		<div style="font-size: 2em; font-weight: bold;">RECEIVED</div> <div style="font-size: 1.2em; font-weight: bold;">AUG 20 2012</div> <div style="font-weight: bold;">KURTZMAN CARSON CONSULTANTS</div>
Name of Creditor (the person or other entity to whom the debtor owes money or property): Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel		COURT USE ONLY
Name and address where notices should be sent: C/O Law Offices of Marc Jason Aniel 205 De Anza Blvd. #144 San Mateo, CA 94402 Telephone number: (650) 814-9478 email: mj_aniel@me.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>Unliquidated</u>		
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Pending Lawsuit</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>Unliquidated</u>
Value of Property: \$ <u>Unliquidated</u>		Basis for perfection: <u>Litigation Expenses</u>
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of Secured Claim: \$ <u>Unliquidated</u> Amount Unsecured: \$ <u>Unliquidated</u>
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
Amount entitled to priority: \$ _____		
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



121203212082000000000001

B 10 (Official Form 10) (12/11)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

AUG 20 2012

8. Signature: (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

- ☒ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Erlinda Abibas Aniel
Title: _____
Company: _____
Address and telephone number (if different from notice address above):
75 Tobin Clark Dr.
Hillsborough, CA 94402
Telephone number: (650) 284-6417 email: _____

(Signature)

(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Attachment 1

Proof of Claim

This Proof of Claim is being filed concurrently with the Proof of Claim against debtor, GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION (case number: 12-12032 (MG)). EXECUTIVE TRUSTEE SERVICES, LLC and GMAC MORTGAGE LLC AKA GMAC MORTGAGE CORPORATION are jointly and severely liable for the amount recoverable in the pending lawsuit.

ERLINDA ABIBAS ANIEL, FERMIN SOLIS ANIEL, AND MARC JASON ANIEL, AS PLAINTIFFS, AGAINST GMAC MORTGAGE, LLC; EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES, LLC; AND DOES 1 THROUGH 50.

Aniel et al. v. GMAC MORTGAGE, LLC et al.
United States District Court
For the Northern District of California
Oakland Division
Case Number: C 12-04201 SBA
Filed on: August 09, 2012

Subject Property Address: 75 Tobin Clark Drive, Hillsborough, CA 94010

A. Description of Claims

Claims arising from the following causes of action:

- (1) Wrongful Foreclosure (Violation of Civil Code § 2923.5 2924 et. Seq.)
- (2) Violation of 15 U.S.C. § 1692, et seq.
- (3) Violation of 12 U.S.C. § 2605
- (4) Set aside and Cancel Trustee's Sale
- (5) Declaratory Relief
- (6) Quiet Title
- (7) Fraudulent Concealment
- (8) Violation of California Rosenthal Act
- (9) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et. Seq.)

B. History of the Lawsuit

ETS Service executed and recorded a Notice of Trustee's Sale, which is scheduled on August 27, 2012, at 1:00 p.m. at Marshall Street, Redwood City, CA 94063.

On August 9, 2012, the claimants filed a civil action in the United States District Court for the Northern District of California for equitable and legal relief for wrongful foreclosure, violation of 15 U.S.C. § 1692 et seq., violation of 12 U.S.C. §

2605, setting aside and canceling the Trustee's Sale, Declaratory Relief, Quiet Title, Fraudulent Concealment, Violation of California Rosenthal Act, Violation of the Unfair Competition Law. See attached verified complaint as exhibit "A". Claimants alleged that neither GMAC nor ETS have any interest in the loan, and that the loan that is secured by the subject property was not disclosed as an asset for the Debtors' estate. However, Debtors are attempting to be unjustly enriched if they proceed with the Trustee's Sale through the use of fabricated documents like the Assignment of the Deed, Substitution of Trustee, notice of default, and notice of trustee sale. Each and every document Debtors, or their agents, have executed and recorded are VOID and have no legal effect. Therefore, the attempted foreclosure of the subject property is VOID and has no legal effect. Claimants have filed a Temporary Restraining Order enjoining the scheduled Trustee's Sale and an order to show cause of why a Preliminary Injunction should not be filed against Debtors.

C. Indemnifications Claims:

1. The Claimants have been damaged by virtue of Debtors' attempt to sell the property while the case is still pending. Without limiting the generality of the foregoing, the Claimants have incurred, and will continue to incur significant legal expenses enforcing and defending against the Debtors' improper foreclosure of the claimants' subject property.
2. Pursuant to the Governing Documents and applicable laws, Debtors' entities are liable to the Claimants for indemnification against any losses, claims, expenses or damages including legal fees and related cost, arising out of and based upon any breaches of any representation warranty or covenant made by the Debtor or any affiliates of the Debtors in the Governing Documents.
3. Based upon the foregoing, a claim is asserted in an unliquidated amount on account of Debtors' indemnification obligation arising from fraud, wrongful foreclosure, violation of federal law, unlawful business practice, and governing documents. As of this date of this Proof of Claim, the Claimants has incurred expenses of a unliquidated amount which is unknown at this time in connection with filing the civil actions against Debtors and its affiliates GMAC Mortgage, LLC, and Executive Trustee Services, LLC. Such expenses and indemnification obligation continue to accrue.

D. Miscellaneous

1. By executing and filing this Proof of Claim, Claimants do not waive any right to any security or any right or rights with respect to any claim that Claimants have.
2. To the knowledge of the signatory hereto, the claim is not subject to any set off or counterclaims, and no judgment has been rendered on this claim or the lawsuit.

3. Claimant reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature it has, or may have, that come to Claimants' attention or arises after filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.
4. Nothing contained in this Proof of Claim shall be deemed or construed as:
 - a. A waiver of, or other limitation on, any right or remedies of Claimants.
 - b. A consent by Claimants to this jurisdiction of the Court or any other court in respect to proceedings, if any.
 - c. A waiver or release of, or any limitation on Claimants' right to a trial by jury in this Court or any court in any proceeding.
 - d. A waiver or release of, or any other limitation on, Claimants' right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim or
 - e. A waiver of release of, or any other limitation on Claimants' right to assert that any portion of the claim asserted herein are entitled to treatment as priority claims, including under Section 503(b) and Section 507(a)(1) of the bankruptcy code.

Attachment 2

Total Item Breakdown

1.	Value of Real Estate Property -	Unliquidated (approx. \$3,500,000.00)
2.	Legal Damages suffered under Claimants' claims	Unliquidated (approx. \$2,500,000.00)
3.	Legal Expenses incurred - during the pending case	Unliquidated
	Totals	Unliquidated (approx. \$6,000,000.00 plus expenses

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ERLINDA ABIBAS ANIEL, an individual; FERMIN SOLIS ANIEL, an individual;

MARC JASON ANIEL, an individual

(b) County of Residence of First Listed Plaintiff **San Mateo**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Marc Jason Aniel, Law Office of Marc Jason Aniel
205 De Anza Blvd. #144, San Mateo, CA 94402
650-814-9478

DEFENDANTS

GMAC MORTGAGE, LLC; EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES, LLC; AND DOES 1 THROUGH 50.

County of Residence of First Listed Defendant **Delaware**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

- | | | | | | |
|--|---|--|--|--|--|
| <input type="checkbox"/> 110 Insurance
<input type="checkbox"/> 120 Marine
<input type="checkbox"/> 130 Miller Act
<input type="checkbox"/> 140 Negotiable Instrument
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment
<input type="checkbox"/> 151 Medicare Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits
<input type="checkbox"/> 160 Stockholders' Suits
<input type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise | PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 360 Other Personal Injury
<input type="checkbox"/> 362 Personal Injury - Med. Malpractice | PERSONAL INJURY
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881
<input type="checkbox"/> 690 Other
<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 751 Family and Medical Leave Act
<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 861 HIA (1395(f))
<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 210 Land Condemnation
<input checked="" type="checkbox"/> 220 Foreclosure
<input type="checkbox"/> 230 Rent Lease & Ejectment
<input type="checkbox"/> 240 Torts to Land
<input type="checkbox"/> 245 Tort Product Liability
<input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights
<input type="checkbox"/> 441 Voting
<input type="checkbox"/> 442 Employment
<input type="checkbox"/> 443 Housing/Accommodations
<input type="checkbox"/> 445 Amer. w/Disabilities - Employment
<input type="checkbox"/> 446 Amer. w/Disabilities - Other
<input type="checkbox"/> 448 Education | <input type="checkbox"/> 510 Motions to Vacate Sentence
Habeas Corpus:
<input type="checkbox"/> 530 General
<input type="checkbox"/> 535 Death Penalty
<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 555 Prison Condition
<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 462 Naturalization Application
<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)
<input type="checkbox"/> 465 Other Immigration Actions | | |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692, ET SEQ.; 12 U.S.C. § 2605; 28 U.S.C. § 2201

Brief description of cause:

Defendants, strangers to the Plaintiffs' loan, falsely claimed ownership of the loan and attempt to foreclose.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
6,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

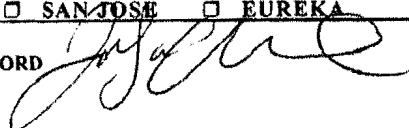
IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE 08/08/2012

SIGNATURE OF ATTORNEY OF RECORD



Marc Jason Aniel (SBN: 282466)
LAW OFFICES OF MARC JASON ANIEL
205 De Anza Blvd. #144
San Mateo, CA 94402
Phone: 650-814-9478
Fax: 650-571-5829
Email: mj_aniel@me.com

Attorney for Plaintiffs, Fermin Solis Aniel and Erlinda Abibas Aniel
Plaintiff, Marc Jason Aniel, in Pro Per

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERLINDA ABIBAS ANIEL, an individual;
FERMIN SOLIS ANIEL, an individual;
MARC JASON ANIEL, an individual

Plaintiffs,

v.

GMAC MORTGAGE, LLC; EXECUTIVE
TRUSTEE SERVICES, LLC., DBA ETS
SERVICES, LLC; AND DOES 1 THROUGH
50.

Defendants

Case No.:

12-12020-1

- (1) WRONGFUL FORECLOSURE
(VIOLATION OF CIVIL CODE §
2923.5 2924 ET. SEQ.)**
**(2) VIOLATION OF 15 U.S.C. § 1692,
ET SEQ.**
(3) VIOLATION OF 12 U.S.C. § 2605
**(4) SET ASIDE AND CANCEL
TRUSTEE'S SALE**
(5) DECLARATORY RELIEF
(6) QUIET TITLE
(7) FRAUDULENT CONCEALMENT
**(8) VIOLATION OF CALIFORNIA
ROSENTHAL ACT**
**(9) VIOLATION OF THE UNFAIR
COMPETITION LAW (CAL. BUS.
& PROF. CODE §§ 17200 ET. SEQ.)**

DEMAND FOR JURY TRIAL

I. COMPLAINT

COMES NOW Plaintiffs, Erlinda Abibas Aniel and Fermin Solis Aniel, by way of their
Attorney, and Plaintiff, Marc Jason Aniel, in Pro Per, complain of the above-named

1 Defendants, demand a jury trial, and allege that the following allegations and other factual
2 contentions have evidentiary support or, where specifically identified as being pled "on
3 information and belief" are likely have evidentiary support after a reasonable opportunity for
4 further investigation or discovery as follows:

5 **II. STATEMENT OF THE CASE**

6 1. This lawsuit arises from: (i) Defendants' attempt to wrongfully foreclose the
7 property through fraudulent documentations containing false and contradictory information;
8 (ii) Defendants' continued attempt to collect debt that the Plaintiffs do not owe; (iii)
9 Defendants' concealment of relevant information regarding Plaintiffs' loan; (iv) Defendants'
10 violations of Federal and State law; and (v) Defendant's continuing tortuous conduct intent to
11 deprive Plaintiffs of their rights, described below.

12 2. This action seeks remedies for the foregoing improper activities, including the
13 wrongful foreclosure of the Plaintiffs' property, fraudulent concealment of important
14 information and actions involving the Plaintiffs' property, which resulted in devastating losses
15 and damages by Plaintiffs, which includes, but is not limited to, lost of their property, lost
16 value in their property, lost income, and lost equity in the property.

17 4. It has become all too clear now that millions of homes that were foreclosed since
18 the Mortgage crisis in 2008 were in violation of California Law and were done through
19 fraudulent documentation. Robo-signing, false pleadings, false recorded documents, and debt
20 collectors did many other unlawful business practices in order to take advantage of the non-
21 judicial foreclosure laws of California.

22 5. As a result, more and more debt collectors involved in wrongful foreclosures have
23 paid for their actions. In 2008, Bear Stearns Companies, LLC, and its subsidiary EMC
24 Mortgage Corporation agreed on a settlement to pay \$28 million to settle with Federal Trade
25 Commission for unlawful Mortgage Servicing and Debt Collection Practices. See FTC File
26 No. 0623031. Attorney Generals for Forty-Nine States and the District of Columbia in the
27 United States reached a \$26 Billion settlement with Bank of America, JPMorgan Chase, Wells
28 Fargo, Citigroup and Ally Financial. The U.S. District Court for the District of Columbia

1 approved the settlement over foreclosure process abuses. The settlement arises from multiple
2 abuse of servicing of loans and the foreclosure process. Since most loan were sold in the
3 secondary market, servicer and debt collectors covered up their acts by routinely forging, back-
4 dating fabricated documents at county recorder officers and state and federal courts across the
5 country. Furthermore, the debt collectors employed "robo-signers," who signed hundred of
6 thousands (if not millions) of documents and affidavits without any knowledge of the
7 underlying mortgages. (See CNNMoney Article, "Court approves \$26 billion foreclosure
8 settlement," available at: [http://money.cnn.com/2012/04/06/real_estate/mortgage-](http://money.cnn.com/2012/04/06/real_estate/mortgage-settlement/index.htm)
[settlement/index.htm](http://money.cnn.com/2012/04/06/real_estate/mortgage-settlement/index.htm)).

9 6. Despite their admission and attempts to settle based on their wrongful conduct, debt
10 collectors continue to this day using fraudulent documents recorded in the County Recorder's
11 office in order to wrongfully foreclose properties.

12 7. In 2007, Defendant, GMAC Mortgage, LLC (hereinafter "GMAC"), attempted, but
13 failed to assign or transfer Plaintiffs' Promissory Note to HSBC Bank, USA, National
14 Association as Trustee for DALT2007-OA5. As such, GMAC has no authority to collect on
15 the Note and enforce the Deed of Trust. Despite this fact, Defendant, GMAC, and its agents,
16 attempted to collect on this Note and enforce the Deed of Trust with the knowledge that they
17 have no legal right to do so. In addition to violating the Fair Debt Collection Practices Act and
18 the Real Estate Settlement Procedures Act, Defendants knowingly concealed their lack of an
19 enforceable security interest by fabricating and recording false documents in the San Mateo
20 County Recorder's Office. Defendants' conduct is not only unfair and fraudulent, but also
21 constitutes a violation of the California Penal Code section 532(f)(a)(4) (which prohibits any
22 person from filing a document related to a mortgage loan transaction with the county
23 recorder's office, which that person knows to contain a deliberate misstatement.) Through this
24 action, Plaintiffs seeks damages resulting from Defendants' unlawful conduct and a declaratory
25 judgment establishing that Defendants have failed to substantiate a perfected security interest
26 in the Note and the Deed of Trust. Simply put, Defendants have no legal, equitable, or
27 pecuniary interest in the Note and the Deed of Trust.
28

1 8. In the alternative, if the Court finds that GMAC does have an enforceable security
2 interest in the Note and the Deed of Trust, Defendants did not follow proper non-judicial
3 foreclosure process in California. Defendants did not engage in certain communications and
4 contacts, or attempt to engage in such communications and contacts with Plaintiffs to help
5 them avoid foreclosure on the Subject Property, and that GMAC was required to conduct these
6 communications and contacts prior to filing the Notice of Default against the Plaintiffs.
7 Defendants were in violation of California Civil Procedure §§ 2923.5 and 2936a(b). Also, if
8 the Court determines that the HSBC Bank did have a valid interest in the loan, that it was fully
9 satisfied by the government bailouts and insurance payments. Defendant, GMAC, is
10 attempting to double dip on the debt of the loan by attempting to foreclose the property.

11 **III. JURISDICTION AND VENUE**

12 9. This Court has original jurisdiction over the claims in this action based on 28
13 U.S.C. §§ 1331, 1343, 2201, 2202, 15 U.S.C. § 1692, and 12 U.S.C. § 2605 which confer
14 original jurisdiction on the federal district courts in suits to address the Defendants' violation
15 of federal law.

16 10. This Court also has supplemental jurisdiction over the pendant state law claims
17 because they form part of the same case or controversy under Article III of the United States
18 Constitution, pursuant to 28 U.S.C. § 1367.

19 11. This Court has original jurisdiction over the claims in this action based on 28
20 U.S.C. 1332, which confers original jurisdiction on federal district court in suits between
21 complete diverse citizens that involve an amount in controversy in excess of \$75,000.00.

22 12. The unlawful conduct, illegal practices, and acts complained of and alleged in this
23 Complaint were all committed in the Northern District of California and involved real property
24 that is located in the Northern District of California. Therefore, venue properly lies in this
25 District, pursuant to 28 U.S.C. § 1391(b).

26 **IV. PARTIES**

27 13. Plaintiff, ERLINDA ABIBAS ANIEL, is now and at all times mentioned herein, an
28 individual residing in the State of California, who owns and lives in real property commonly

1 known as 75 Tobin Clark Drive, Hillsborough, CA 94010. She signed the Promissory Note
2 and the Deed of Trust.

3 14. Plaintiff, FERMIN SOLIS ANIEL, is now and at all times mentioned herein, an
4 individual residing in the State of California, who owns and lives in real property commonly
5 known as 75 Tobin Clark Drive, Hillsborough, CA 94010. He only signed the Deed of Trust.

6 15. Plaintiffs, MARC JASON ANIEL, is now and at all times mentioned herein, an
7 individual residing in the State of California, who owns and lives in the real property
8 commonly known as 75 Tobin Clark Drive, Hillsborough, CA 94010. He did not sign the
9 Promissory Note and is only named in the Deed of Trust as a Joint Tenant.

10 16. Defendant GMAC MORTGAGE, LLC, is incorporated in Delaware and is based in
11 Pennsylvania and does business in the State of California. At all material times hereto, GMAC
12 was at one point, a sub-servicer, servicer, and beneficiary of the Deed of Trust through a
fraudulent Assignment of the Deed of Trust.

13 17. Defendant EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES,
14 LLC (herein "ETS"), is incorporated in Delaware and is an affiliate of GMAC. ETS is also
15 known as Executive Trust Services dba: ETS Services, LLC with a business address of 2255
16 North Ontario Street, Suite 400, Burbank California 91504-3120.

17 18. Plaintiffs are ignorant of the true identity and capacity of Defendants designated
18 as Does 1-50, but will amend the Complaint when their identities have been ascertained
19 according to proof within the time permitted. However, Plaintiffs allege on information and
20 belief, that each and every Doe Defendant is in some manner responsible for the acts and
21 conduct of other Defendants, and were, and are, responsible for the injuries, damages, and
22 harm incurred by Plaintiffs.

23 19. At all times material hereto, the business of Defendants was operated through a
24 common plan and scheme designed to conceal from Plaintiffs the material facts set forth
25 below. Such facts were also concealed from the public and the regulators, either directly or as
26 successors-in-interest to the business acquired from others. The concealment was completed,
27 ratified and/or confirmed by each Defendant herein directly or as a successor-in-interest as the
28

1 acquirer of an entire business, and each Defendant performed or has sought to benefit from the
2 tortious acts set further herein for its own monetary gain and as a party of a common plan
3 developed and carried with the other Defendants or as successor-in-interest to the business that
4 did the foregoing.

5 20. Plaintiffs allege that each of the wrongful acts or omissions described below was
6 performed either by each Defendant herein, named or unnamed, or ratified and adopted by
7 each Defendant after its occurrence.

8 21. Further, those Defendants that did not actively perform the acts or omissions
9 described in this Complaint did affirmatively aid and abet the other Defendants in the
10 performance of such acts of omissions, before, during or after the fact.

11 22. Finally, each Defendant herein, named or unnamed, did knowingly derive some
12 form of profit or benefit from the acts and omissions described herein.

13 23. Any allegation about acts of any corporate or other business Defendants means the
14 corporation or other business did the acts alleged through its officers, directors, employees,
15 agents, and/or representatives while they were acting within the actual or ostensible scope of
16 their authority.

17 24. All Defendants agreed to work together in the conspiracy and/or joint enterprise
18 described in this Complaint based upon an express agreement among all Defendants to
19 wrongfully foreclose the subject property, collect the debt through a Trustee Sale, and profit on
20 the eventual sale of the foreclosed property described herein. Accordingly, each Defendant,
21 named or unnamed, should be held liable for the acts and omissions of all other Defendants
22 with respect to the causes of action set forth below.

23 25. Each of the Defendants herein, named or unnamed, was the agent of each of the
24 other Defendants herein, named or unnamed, and thereby participated in all of the wrongdoing
25 set forth below. Thus, each such Defendant is responsible for the acts, events, and
26 concealment of every other such Defendant as set forth below.

FACTUAL ALLEGATIONS

26. On or around June 4, 2007, Erlinda Abibas Aniel executed a Promissory Note (herein "Note") in favor of MortgageIT, Inc. for the refinance of the subject property.

27. On or around June 4, 2007, Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel executed a Deed of Trust in favor of MortgageIT, Inc., to secure the Promissory Note that was executed on the same day by Erlinda Abibas Aniel. In the Deed of Trust, MortgageIT, Inc. was disclosed as the Lender. Mortgage Electronic Registration Systems, Inc. was disclosed as the beneficiary, solely in its capacity as a nominee for the Lender. Fidelity National Title was disclosed as the Trustee. See Exhibit "A".

28. On information and belief, Plaintiffs allege that prior to them signing the Note and Deed, MortgageIT had already agreed to sell her loan to another entity or entities. And that shortly after the origination of her Loan, MortgageIT did in fact sell her loan to another entity or entities.

29. Securitization is the process whereby mortgage loans were made and then turned into negotiable securities sold to Wall Street. Loans were funded, packaged together and sold to Wall Street, or at least that was the way it was explained. The reality is much different. Wall Street (Wall Street Investment Banks) decided that loan securitization was a new methodology whereby they could lure investors into buying subprime and other loans as new investment vehicle. This would provide the investor with a good Rate of Return on investments, while providing Wall Street with a new methodology of generating commissions. It has generally been assumed that these funds consisted of Wall Street's own funds, but that is far from the truth. The methodology for Securitization is:

a. Wall Street promoted the Investment Vehicles and received AAA ratings on them. They went to investors, and sold them on the idea. The investors then put up the money for the loans.

b. Wall Street created pooling agreements where they defined in the agreements the loans that they would accept for each investment vehicle. They executed

1 agreements with the lenders and then immediately issued warehouse lines of credit to
2 the lenders.

3 c. Lenders then let brokers know the loan parameters to meet the pooling
4 agreement guidelines and the brokers went out and found the borrowers.

5 d. Wall Street took all the loans, packaged them up and sold them as bonds and
6 other security instruments to other investors, i.e. Pension Funds, and paid off original
7 investors or reissued new lines of credit, and earned commissions on both ends.

8 e. The process was repeated time and time again

9 f. The reality is that the reported lender on the Deed of Trust was NOT the
10 actual lender. The actual lender who lent the money was the Wall Street investment
11 Bank. They simply rented the license of the lender, so that they would not run afoul of
12 banking regulations and/or avoid liability and tax issues.
13

14 30. Plaintiffs allege that these unknown entities and Defendants were involved in an
15 attempt to securitize their Note into the HSBC Bank, USA, National Association as Trustee for
16 DALT2007-OA5 trust ("HSBC"). In order for the Plaintiffs' Note to be a part of the HBSC
17 trust, the entities involved were required to follow various agreements and established laws,
18 including the Trust Agreement that govern the creation of the Trust. Plaintiffs allege the
19 entities involved in the attempted securitization of the Plaintiffs' Note failed to adhere to the
20 requirements of the Trust. As a result, Plaintiffs' Note was not part of the DALT-2007-AO5
21 asset/res. This became more apparent when on or around September of 2009, Erlinda Abibas
22 Aniel called HSBC Bank, the trustee of the Trust, to confirm that her Note was in fact in the
23 alleged Trust. A representative of HSBC Bank, named "Marianne", informed Erlinda Abibas
24 Aniel that her subject property, loan number, her name, and the property address was no where
25 to be found in their database, and that HSBC did not have that subject property in their records.

26 31. This fatal defect renders Defendants third-party strangers to the underlying debt
27 obligation without the power or right to demand payment, declare default, negotiate the loan,
28

1 and foreclose the subject property. Although Defendants were aware of this fact, they have
2 and continue to act as if they have authority to demand payment, declare default, negotiate the
3 loan, and foreclose on their property. Plaintiffs specifically dispute this fact.

4 32. Plaintiffs' information and belief is based on (1) a title report and analysis of the
5 Property's County records; (2) An independent forensic loan audit mortgage compliance
6 analysis report on the subject property; (3) direct written and oral communication with
7 Defendants; (4) Plaintiffs' research, experience, and extensive review of depositions, case law,
8 amicus briefs, correspondence, news articles, reports, other complaints, and publicly available
9 securitization documents and practices; (5) HSBC's Pooling and Servicing Agreement
10 ("PSA").

11 33. Based on the findings, Plaintiffs believe and thereon alleges that her Note was
12 supposed to be properly securitized as a mortgage-backed security that is "pooled" together
13 into the DALT-2007-OA5. The trust is regulated by New York Trust Laws. Plaintiffs allege
14 that the Note was not securitized and that the DALT-2007-AO5 has no legal, equitable, or
15 monetary interest in the Promissory Note such that it can demand payment from the Plaintiffs.
16 Further, after reviewing the PSA, chain of title, recorded documents, and other documents, the
17 Note and the Deed were not properly conveyed to the DALT-2007-AO5 because (1) the
18 beneficial interest in the Plaintiffs' Note and Deed were not effectively assigned, granted, or
19 transferred to the Sponsor or Depositor (who were supposed to convey Plaintiffs' Note and
20 Deed into the Trust) prior to the closing date of the Trust and (2) HSBC failed to perfect the
21 title to the Note and Deed by not strictly following the requirements of the PSA and other law,
22 regulations, and agreements that govern the DALT-2007-AO5. An assignment of beneficial
23 interest in the Deed and endorsement of the Note after the closing date of the trust was a
24 violation of the PSA.

25 34. Plaintiffs allege that the Note was endorsed after the closing date of the DALT-
26 2007-AO5, which was on July 31, 2007. This date was established in the PSA and is the date
27 by which all of the Notes had to be transferred into the DALT-2007-AO5 in order for the Note
28 to be part of the trust res.

1 35. The true investor or lender was subsequently bailed out by the U.S. Government or
2 through insurance providers who fully satisfied the investor's investment in the loan or the
3 Trust.

4 36. Conscious they lacked any beneficial interest in the Plaintiffs' loan, Defendants
5 deceptive acts began on or around October 2008, when Plaintiffs sought a loan modification.

6 37. On or around October 2008, under the belief that there was debt on her property
7 and that she still owed money to MortgageIT, Plaintiffs, with the help of a Law Office, sought
8 a loan modification. Plaintiffs contacted GMAC, the servicer of the loan, and their agent
9 "David" instructed Plaintiffs to submit an application with certain financial forms to the
10 GMAC lost mitigation department. Plaintiffs submitted a loan modification application
11 package at the request of GMAC. After Plaintiffs submitted its application, they were not
12 contacted or informed of any decision.

13 38. On or around December 2008, Erlinda Abibas Aniel, on her own, spoke to a
14 GMAC representative by the name of "Jacob". This agent informed Ms. Aniel that GMAC did
15 receive the application, but that it was an application for a "Short Sale" and not a loan
16 modification. "Jacob" promised to change the request from a "Short Sale" to a loan
17 modification and promised that as long as Plaintiffs were in default of the mortgage, they
18 would be approved of a loan modification.

19 39. Plaintiffs have never received any response in relation to their loan modification
20 application from GMAC.

21 40. On September 25, 2008, ETS, claiming to be an agent for the beneficiary, executed
22 a Notice of Default, and then recorded that Notice of Default on September 29, 2008. In that
23 Notice of Default, ETS demanded \$29,905.26 be paid to MERS in order to cure the default.
24 There were several issues with this Notice of Default. See Exhibit "B". First, it disclosed that
25 MERS was the beneficiary of the Deed and is entitled to payments of the default amount.
26 While MERS was named as a beneficiary it was only authorized to act solely in its capacity as
27 a nominee for the Lender, and not on its own powers. Also, MERS is merely a registration
28 system and is not entitled to any payments on the mortgage or any default amount. Second,

1 ETS purposefully mislead the Plaintiffs to believe that they were the agent for the beneficiary
2 (MERS). This was not true. ETS was a debt collector with the purpose of collecting a debt on
3 this property. ETS could not be a Trustee and an agent for the beneficiary because that would
4 be a violation of California's Civil Code §2934, where a Trustee must remain neutral. The
5 truth is, and Plaintiffs allege this truth, ETS was not the Trustee or the agent of the beneficiary
6 but rather a debt collecting company with no legal, equitable, or enforceable interest in the
7 Deed.

8 41. On September 25, 2008, and on the same day the Notice of Default was executed,
9 MERS executed another Substitution of Trustee. See Exhibit "C". Rosalie Solano, claiming to
10 be an assistant secretary for MERS, in its own capacity without authorization from the Lender,
11 executed a Substitution of Trustee in favor of ETS. Christine Gomez-Schwab, California a
12 notary public, acknowledged the document. The document was recorded on September 29,
13 2008, which was the same day the Notice of Default was recorded.

14 42. On December 30, 2008, Christine Gomez-Schwab, a Trustee Sale Officer, executed
15 a Notice of Trustee Sale on the subject property, which the sale was scheduled on January 26,
16 2009. See Exhibit "D". Ms. Gomez-Schwab is the same individual that notarized and
17 acknowledged the September 25, 2008 Substitution of Trustee.

18 43. On February 25, 2009, Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
19 filed for Bankruptcy under Chapter 11.

20 44. On or around August 08, 2009, "Janine Yamoah", a purported " Assistant
21 Secretary" for MERS, executed a purported Assignment of the Deed of Trust. See Exhibit "E".
22 The Assignment alleges that for "value received" MERS granted, assigned, and transferred to
23 HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest
24 in the Deed, together with the Note "the money due and to become due thereon with interests,
25 and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no such
26 transfer ever occurred and that "Janine Yamoah" had no corporate authority to assign
27 Plaintiffs' Note and Deed to HSBC and was not an employee of MERS, but is an employee of
28 GMAC and a robo-signer.

1 45. On or around September 09, 2009, Katherine L. Johnson, an attorney for GMAC,
2 submitted a Proof of Claim to the U.S. Bankruptcy Court where they purported that HSBC was
3 the Secured Creditor, and that the debt on the loan was \$2,218,509.71, which was \$218,509.71
4 more than the original loan amount of \$2,000,000.00. Plaintiffs objected to the Proof of Claim.

5 46. On or around August 2, 2010, Plaintiffs' bankruptcy case was converted to a
6 Chapter 7, on their own motion. On or around December 2, 2010, the Bankruptcy Court fully
7 discharged the obligation to pay on the any debt on the subject property. On or around January
8 5, 2011, Plaintiffs'—Erlinda Abibas Aniel and Fermin Solis Aniel—credit report disclosed that
9 no debt was owed on the subject property. On or around February 4, 2011, Plaintiffs'
10 bankruptcy case was closed.

11 47. On or around February 01, 2011, "Mira Smoot", a purported "Authorized Officer"
12 for HSBC, executed a purported Assignment of the Deed of Trust. See Exhibit "F". The
13 Assignment alleges that for "value received" HSBC granted, assigned, and transferred to
14 GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION all beneficial
15 interest in the Deed, together with the Note "the money due and to become due thereon with
16 interests, and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no
17 such transfer ever occurred and that "Mira Smoot" had no corporate authority to assign
18 Plaintiffs' Note and Deed to GMAC and was not an employee of HSBC, but is an employee of
19 GMAC and a robo-signer. Also, the cut off date on this Trust was July 30, 2007. HSBC
20 could not move or transfer asset in the Trust after the cut off date because it would be a
21 violation of the PSA and be subject to taxation under REMIC. The Document was recorded on
22 February 9, 2011.

23 48. Sometime after February 9, 2011, GMAC associated account number
24 "0713288492" as the loan in relation to the subject property. This account number is different
25 from the account number on Plaintiffs' Deed of Trust. Based on this information, Plaintiffs are
26 unsure what loan GMAC was attempting to collect because the account number is different
27 from the account number on the Plaintiffs' Deed.
28

1 49. On or around June 27, 2011, Lizeth Chavez, a Trustee Sale Officer, purported a
2 Notice of Recession of a Notice of Default. The document was recorded on July 1, 2011. See
3 Exhibit "G".

4 50. In an attempt to clear the title defects on the property, on or around March 15,
5 2012, Plaintiff, Erlinda Abibas Aniel, mailed a letter requesting a Deed of Full Reconveyance
6 on the subject property from MortgageIT, the originator of the loan. MortgageIT made no
7 response to the request.

8 51. Based on information and belief, Plaintiffs thus allege that in retaliation for the
9 request for a Deed of Full Reconveyance, on or around April 21, 2012, Dee Ortega, a Trustee
10 Sale Officer for ETS, as an agent for the beneficiary and not the Trustee purported a Notice of
11 Default on the subject property. See Exhibit "H". The Notice of Default purported that
12 Plaintiffs owed \$516,041.70 in a default amount. Plaintiffs allege that they do not owe any
13 money on the property. The document was recorded on April 27, 2012.

14 52. The Notice of Default also purported that Dee Ortega declared that the "beneficiary
15 or its authorized agent declared that they have complied with California Civil code Section
16 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower
17 as required by California Civil Code Section 2923.5." Plaintiffs allege that no such contact
18 was ever made by any of the Defendants, or their authorized agents, to the Plaintiffs in order to
19 seek alternatives to a foreclosure. No contact was made because none of the Defendants have
20 an enforceable interest in the property to offer such alternatives to a foreclosure. The
21 declaration of compliance was not acknowledge or sworn under penalty of perjury cannot be
22 deemed as a true statement.

23 53. Prior to the execution of a purported Notice of Default, on or around April 5, 2012,
24 Marcell G. Pace, a purported "authorized officer" of GMAC, purported a substitution of
25 trustee, where the new trustee would be ETS. See Exhibit "I". Plaintiffs allege that no
26 substitution ever took place, and that the substitution has no legal effect because GMAC has no
27 legal, equitable, or enforceable interest in the subject property to substitute ETS as the Trustee.
28 The document was recorded on April 27, 2012, which was the same day the Notice of Default
was recorded.

1 54. In the alternative, even if the Substitution did take place, ETS was not properly
2 substituted under California law. Plaintiffs allege that no notice of the substitution was ever
3 sent to any of the original beneficiary or any entity that was entitled to receive notice of the
4 Notice of Default. Under California Civil Procedure Section 2934(a)(b):

5 "If the substitution is executed, but not recorded, prior to
6 or concurrently with the recording of the notice of default, the
7 beneficiary or beneficiaries or their authorized agents shall cause
8 notice of the substitution to be mailed prior to or concurrently with
9 the recording thereof, in the manner provided in Section 2924b, to
10 all persons to whom a copy of the notice of default would be
11 required to be mailed by the provisions of Section 2924b. An
12 affidavit shall be attached to the substitution that notice has been
13 given to those persons and in the manner required by this
14 subdivision."

15 ETS never sent any such notice of the substitution of trustee and did not attached any affidavit
16 of mailing in its recording of the Substitution of Trustee.

17 55. In the Notice of Default, ETS, as required by Federal and California law, sent
18 Plaintiffs a "Debt Validation Notice" along with the Notice of Default. See Exhibit "J". In that
19 Notice, ETS represented to the Plaintiffs that \$516,041.70 was owed to GMAC, the creditor of
20 the loan, and that any dispute of the debt or the debt amount should be in writing and mailed to
21 ETS within thirty (30) of receiving the Notice of Debt Validation or else ETS would assume
22 that the debt was valid. Upon receipt of a letter disputing the debt, ETS promised that
23 they would obtain and mail to the Plaintiffs a verification of the debt. On or around May 10,
24 2012, which was less than 30 days after receiving the notice of debt validation, Plaintiff,
25 Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified mail, to ETS, disputing the
26 validity of the debt that was claimed to be owed to GMAC. Mrs. Aniel request a proper
27 accounting of the debt and the standing for which GMAC can demand that amount from the
28 Plaintiffs. ETS never responded to the notice of Plaintiffs' dispute of the debt as they promised
and were required to do under Federal and California law.

56. On or around July 27, 2012, Ileanna Peterson, a Trustee Sale Officer of ETS,
purported a Notice of Trustee Sale on the subject property. See Exhibit "K". In that Notice,
ETS scheduled a Trustee's Sale on the lien of the subject property for August 27, 2012. ETS

1 purported that the total debt on the property under the Deed was \$2,856,811.25, which is
2 \$856,811.25 more than the original loan amount of \$2,000,000.00. ETS also identified the
3 subject property by the wrong Accessory's Parcel Number (APN). ETS purported that the
4 APN number was 038-352-040-0. However, Plaintiffs allege that the APN number under the
5 Deed is 038-352-040. The document was recorded on August 1, 2012.

6 57. Defendants' failure to provide any information regarding Plaintiffs' note at issue in
7 this case supports Plaintiffs' allegations that their Note was not properly transferred to
8 DALT2007-OA5, and as such, never transferred its interest to GMAC, such that Defendants
9 can enforce Plaintiffs' obligation and/or collect Plaintiffs' mortgage payments.

10 58. Plaintiffs made payments based on the allegedly improper, inaccurate and
11 fraudulent representations of the Plaintiffs' account.

12 59. Plaintiffs' credit and credit score were severely damaged.

13 60. The title to the Plaintiffs' home has been slandered, clouded, and its salability has
14 been rendered unmarketable.

15 61. Defendants' wrongful acts include (but are not limited to) the following: (i)
16 attempting to collect an unenforceable debt upon the Plaintiffs, (ii) falsely claiming money was
17 due from the Plaintiffs, (iii) creating false reasons to charge Plaintiffs fees, (iv) instituting a
18 foreclosure proceeding, (v) issuing wrongful Notices of Default to Plaintiffs, (vi) by refusing to
19 respond, in any way, to Plaintiffs' communications or communications made for Plaintiffs by
20 their private and public representatives, (vii) issuing wrongful Assignment of the Deed of Trust
21 and Substitution of Trustee, (viii) issuing wrongful Notice of Trustee Sale, and (iv) violating
22 California Civil Procedure Section 2924 et seq., 2923.5, and 2934a(b).

23 62. Based on information and belief, the holder of all legal rights to the Plaintiffs' loan
24 is unknown by the Plaintiffs and, more importantly, by any of the Defendants. None of the
25 Defendants are the Lender of the loan. None of the Defendants are the Beneficiaries of the
26 loan. None of the Defendants are the Trustee of the loan. On or around May 14, 2012, both
27 GMAC and ETS filed for Bankruptcy under Chapter 11. Based on information and belief,
28

1 Plaintiffs allege that neither GMAC nor ETS scheduled the Subject Property as part of their
2 bankruptcy estate or as an asset of their estate.

3 **FIRST CAUSE OF ACTION**
4 **Wrongful Foreclosure**
5 **(Violation of Civil Code §§ 2923.5 2924 et. seq.)**
6 **(AGAINST ALL DEFENDANTS)**

7 63. Paragraphs 1 through 62 and the paragraphs following this cause of action are
8 incorporated by reference as though fully set forth herein.

9 64. Plaintiffs allege that they do not owe any money to any of the Defendants.
10 Plaintiffs further allege that they do not owe any money or debt to any Lender, owner, or
11 beneficiary in relation to the Subject Property. Whoever was owed money from the loan
12 transaction involving the Plaintiffs was paid off and fully satisfied long before any of the
13 Defendants claimed ownership of the loan.

14 65. Defendants have scheduled the subject property to be foreclosed on August 27,
15 2012, in the County of San Mateo. Even if Defendants postpone the Trustee's Sale,
16 Defendants fully intend to collect on the debt by foreclosing the property.

17 66. Plaintiffs allege that at times mentioned herein the Subject Property was their
18 owner-occupied residence and that Plaintiff was a member of the class of persons protected
19 under Civil Code §§ 2923.5 and 2924. Plaintiff alleges further that at all times mentioned
20 herein Defendants had a duty to comply with foreclosure avoidance and workout plan
21 requirements of Civil Code §2923.5.

22 67. Plaintiffs allege further that Civil Code § 2923.5 expressly required GMAC to
23 engage in certain communications and contacts, or attempt to engage in such communications
24 and contacts with Plaintiffs to help them avoid foreclosure on the Subject Property, and that
25 GMAC and ETS were required to conduct these communications and contacts prior to filing
26 the Notice of Default against the Plaintiffs.

27 68. Defendants falsely claimed that they contacted or attempted to contact Plaintiffs in
28 compliance with Civil Code § 2923.5 prior to filing the 2012 Notice of Default against the
Plaintiffs. Plaintiffs allege further that, at all times prior to the Defendants' filing of the initial

1 notice of default on or about April 23, 2012, Plaintiffs were fully available to meet with
2 GMAC or its authorized representative to assess Plaintiffs' financial condition and explore
3 options for Plaintiffs to avoid foreclosure.

4 69. Because Defendants are not the holders of the Note or the Deed and are not
5 operating under a valid power of sale under the Deed, the Defendants do not have the right to
6 proceed with the foreclosure.

7 70. The burden of proving an assignment or interest in the loan falls upon the party
8 asserting the rights thereunder. In an action by an alleged assignee to enforce an assigned
9 right, the evidence must not only be sufficient to establish the fact of assignment when that fact
10 is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and
11 convincing to protect an obligor from any further claim by the primary obligee. Defendants
12 failed to do so and improperly foreclosed by reason of lack of proof that they had the right to
13 proceed.

14 71. In California, the assignment of a note generally carries with it an assignment of
15 the mortgage (Cal. Civ. Code § 2936), it is still required in California that the holder of the
16 Note or person operating with authority from that holder be the foreclosing party and that the
17 mortgage not have been assigned away from the note.

18 72. HSBC did not perfect its interest in the property when Defendants attempted to
19 securitize the loan. The Assignment of the Deed took place after the DALT-2007-AO5 Cut off
20 date, and thus the Assignment did not take place because it would have been in violation of the
21 Trust PSA. Indeed, Defendants do not have a legal, equitable, or enforceable interest in the
22 Note, and the Assignment of the Deed is VOID.

23 73. As described above, the Defendants conspired to conceal information regarding the
24 dischargability of the loan, and fraudulently executed and recorded documents in order to
25 foreclose the property.

26 74. The foreclosure was wrongful for each of the following reasons, independent of
27 any of the other following reasons: (1) the beneficial interest in the Plaintiffs' Note and Deed
28 were not effectively assigned, granted, or transferred to the Sponsor or Depositor (who were

1 supposed to convey Plaintiffs' Note and Deed into the Trust) prior to the closing date of the
2 Trust; (2) HSBC failed to perfect the title to the Note and Deed by not strictly following the
3 requirements of the PSA and other law, regulations, and agreements that govern the DALT-
4 2007-AO5. An assignment of beneficial interest in the Deed and endorsement of the Note after
5 the closing date of the trust was a violation of the PSA; (3) Defendants used Robo-Signers to
6 execute foreclosure documents; (4) failing to respond to Plaintiffs' debt validation request after
7 receiving the Notice of Default; (5) GMAC's violation Cal. Civ. Pro. § 2923.5; and (6) ETS'
8 violation of Cal. Civ. Pro § 2936a(b).

9 75. As a result of the foreclosure, Plaintiffs were dispossessed of their property and lost
10 income related to the use of the property. Plaintiffs were further dispossessed of the value of
11 their property and the potential appreciation thereof.

12 76. Defendants thereby acted outrageously and persistently with actual malice in
13 performing the acts alleged in this cause of action. Accordingly, Plaintiffs are entitled to
14 exemplary and punitive damages in a sum according to proof and to such other relief as is set
15 forth below in the section captioned Prayer for Relief, which is by this referenced, incorporated
16 herein.

17 **SECOND CAUSE OF ACTION**
18 **Fair Debt Collection Practices Act**
19 **(Violation of 15 U.S.C. § 1692, et seq.)**
20 **(AGAINST ALL DEFENDANTS)**

21 77. Paragraphs 1 through 66 and the paragraphs following this cause of action are
22 incorporated by reference as though fully set forth herein.

23 78. Defendant GMAC, and its agent Defendant, ETS, have attempted to collect
24 Plaintiffs' debt obligation and thus is a debt collector pursuant to the Federal Debt Collection
25 Practices Act ("FDCPA"). "The term 'debt collector' means any person who uses any
26 instrumentality of interstate commerce or the mails in any business the principal purpose of
27 which is the collection of any debts, or who regularly collects or attempts to collect, directly or
28 indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

79. Federal law prohibits the use of "any false, deceptive, or misleading representation
or means in connection with the collection of any debt...[including] the false representation

1 of...the character, amount, or legal status of any debt...or [t]he threat to take any action that
2 cannot legally be taken..." 15 U.S.C. §1692(2)(A), (5).

3 80. Defendants attempt to collect on the Note under false pretenses, namely that HSBC
4 was the creditor and subsequently GMAC was assigned the Plaintiffs' debt when in fact they
5 were not.

6 81. GMAC, in its capacity as the Plaintiffs' servicer, acted in manner to mislead
7 Plaintiffs that HSBC and eventually GMAC had authority to demand payment and authority to
8 modify the loan.

9 82. As alleged herein, Plaintiffs' Note was not properly transferred to HSBC, who
10 GMAC purports to have been the assignee of HSBC's interest in the Note and Deed, seek to
11 use their agent, ETS, to collect a paid-off mortgage payments, collect on the Trustee's Sale,
12 and engage in other unlawful collection practices.

13 83. On information and belief, HSBC did not have a perfected security interest in the
14 Plaintiffs' Note such that they can enforce Plaintiffs' obligation, collect on the debt, or transfer
15 its interest to GMAC.

16 84. Plaintiffs allege that GMAC falsely represented the status of their debt and
17 Defendants' ability to enforce the Plaintiffs' obligation on the debt, in which they have no
18 pecuniary, equitable, or legal interest.

19 85. The conduct described above by GMAC, was malicious because Defendants knew
20 that they were not acting on behalf of the current beneficiary of the Note and Mortgage.
21 However, despite such knowledge, Defendants continued to demand and collect Plaintiffs'
22 mortgage payments.

23 86. On information and belief, Plaintiffs allege that Defendants engaged and is
24 engaging in a pattern and practice of defrauding Plaintiffs, in that during the entire life of the
25 loan, Defendants failed to properly credit payments made, incorrectly calculate interest on the
26 account, failed to accurately debit fees, and added unnecessary foreclosure fees and attorney
27 fees, to the point that a purported \$856,811.25 in additional fees and debt was added onto the
28 original debt amount of \$2,000,000.00.

1 87. On information and belief, at all times material, Defendants had, and have, actual
2 knowledge that Plaintiffs' account had inaccurate statements, but that Plaintiffs would rely on
3 those statements based on Defendants' inaccurate account.

4 88. The foregoing acts and omission of each and every Defendant and their agents
5 constitute numerous and multiple violations of the FDCPA including, but not limited to, each
6 and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq., with
7 respect to the Plaintiffs.

8 89. Plaintiffs could not have reasonably known of the existence of a claim for violation
9 of 15 U.S.C. § 1692(e) because Defendant fraudulently concealed the fact that they were not
10 entitled to enforce Plaintiffs' debt obligation and that they were falsely requesting to the
11 Plaintiffs that they still owed a debt to GMAC.

12 90. As a result of each and every Defendants' violation of the FDCPA, Plaintiffs are
13 entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an
14 amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); reasonable attorneys' fees and
15 cost pursuant to 15 U.S.C. § 1692k(a)(3); and declaratory relief, from each an every Defendant
16 herein.

17 91. Plaintiffs suffered damages as a result of Defendants' fraud in the following ways:
18 (1) multiple parties may seek to enforce their debt obligation, if there is still one that exist; (2)
19 title to their home has been clouded and its salability has been rendered unmarketable, as any
20 buyer of the Plaintiffs' home will find themselves in legal limbo, unable to know whether they
21 can safely buy Plaintiffs' home or get title insurance; (3) Plaintiffs paid the wrong party for an
22 undetermined amount of time and overpaid in interest; (4) Plaintiffs are unable to determine if
23 they sent their mortgage payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and
24 Erlinda Abibas Aniel—credit score have been damages; (6) they expect significant funds to
25 cover the cost of attorneys' fees and related cost.

26 **THIRD CAUSE OF ACTION**
27 **Violation of RESPA**
28 **(Violation of 12 U.S.C. § 2605)**
(AGAINST ALL DEFENDANTS)

1 92. Paragraphs 1 through 91 and the paragraphs following this cause of action are
2 incorporated by reference as though fully set forth herein.

3 93. Plaintiffs' loan is a federally regulated mortgage loan and is subject to the federal
4 Real Estate Settlement Procedures Act and its implementing regulation, and the Dodd-Frank
5 Act.

6 94. On or around May 10, 2012, which was less than 30 days after receiving the notice
7 of debt validation, Plaintiff, Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified
8 mail, to the debt ETS claimed was owed to GMAC. Mrs. Aniel request a proper accounting of
9 the debt and the standing for which GMAC can demand that amount from the Plaintiffs.

10 95. On information and belief, ETS received the Debt Validation letter on or around
11 May 15, 2012.

12 96. The Debt Validation request contained information to enable ETS and GMAC to
13 identify the Plaintiffs' loan including the borrower's name, loan number, and property address.
14 Also, the debt validation request contained requests for information of the loan, specifically the
15 identity and contact information of the creditor of the Plaintiffs' Note, a complete loan history,
16 accumulated late fees and charges, and information about the validity of the debt purported to
17 be owed to GMAC.

18 97. On information and belief, ETS and GMAC never acknowledged receipt of the
19 Plaintiffs' Debt Validation letter within five (5) days of receipt of the letter, as required by
20 section 1463(c) of the Dodd-Frank Act.

21 98. Because the loan is subject to RESPA and the Dodd-Frank Act, all Defendants
22 were required to comply with section 1463 of the Dodd-Frank Act.

23 99. Defendants violated 12 U.S.C. § 2605 and are subject to statutory damages, civil
24 liability, penalties, attorneys' fees, and actual damage. 12 U.S.C. § 2605.

25 100. The actual pecuniary damages include, but are not limited to, the over calculation
26 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
27 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
28

1 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
2 in an amount to be proven at trial.

3 101. As a direct and proximate result of the violations of RESPA and Dodd-Frank Act
4 by ETS and GMAC, Plaintiffs have suffered actual pecuniary damages including but not
5 limited to statutory damages, civil liability, and attorneys' fees, in an amount to be proven at
6 trial.

7 102. As a result of Defendants' violation of 12 U.S.C. § 2605, RESPA, and the Dodd-
8 Frank Act, Plaintiffs have been damaged in the following ways: (1) multiple parties may seek
9 to enforce their debt obligation, if there is still one that exist; (2) title to their home has been
10 clouded and its salability has been rendered unmarketable, as any buyer of the Plaintiffs' home
11 will find themselves in legal limbo, unable to know whether they can safely buy Plaintiffs'
12 home or get title insurance; (3) Plaintiffs paid the wrong party for an undetermined amount of
13 time and overpaid in interest; (4) Plaintiffs are unable to determine if they sent their mortgage
14 payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
15 credit score have been damages; (6) they expect significant funds to cover the cost of
16 attorneys' fees and related cost.

17 **FOURTH CAUSE OF ACTION**
18 **Set Aside Trustee's and/or Cancel Trustee's Sale**
19 **(AGAINST ALL DEFENDANTS)**

20 103. Paragraphs 1 through 102 and the paragraphs following this cause of action are
21 incorporated by reference as though fully set forth herein.

22 104. Plaintiffs allege that do not owe any money on this debt and property. Any
23 money that was owed in the Deed was fully satisfied when the originator, MortgageIT, sold the
24 loan to unknown entities, which are currently fully satisfied of any money they paid.

25 105. Plaintiffs allege that they do not owe any money to any of the Defendants because
26 none of the Defendants have legal, equitable, or an enforceable right to collect payment from
27 the Plaintiffs.

28 106. Plaintiffs are not required to Tender because a tender amount would constitute a
reaffirmation of the debt, which Plaintiffs deny they have debt. A Tender is not required when

1 owner's action attacks the validity of the underlying debt because tender would constitute and
2 affirmation of the debt. *Sacci v. Mortgage Electronic Registration Systems, Inc.*, No. CV 11-
3 1658 AHM, 2011 WL 2533029 at *16 (C.D. Cal June 24, 2011) citing *Onofrio v. Rice*, 55 Cal.
4 App. 4th 413, 424 (1997).

5 107. The Trustee Sale conducted by ETS is improper for several reasons. Defendants
6 did not follow Cal. Civ. Code §2924. Under Cal Civ. Code § 2924(a)(1), only the trustee,
7 mortgagee, or beneficiary, or any of their authorized agents must first file a Notice of Default.
8 The beneficiary, trustee, mortgagee, or any of their authorized agents did not file the Notice of
9 Default that was recorded on April 27, 2012, in the County of San Mateo. Defendant, ETS,
10 falsely claimed to be the authorized agent for the beneficiary, GMAC, who claimed ownership
11 of the debt. In reality, GMAC had no interest in the loan because the Assignment from HSBC
12 to GMAC was VOID. Therefore, because the Notice of Default was not in compliance with
13 §2924(a)(1), the Trustee's Sale was also not in compliance with § 2924 et. seq., and must be
14 canceled and set aside by the Court.

15 108. The Trustee's Sale is also unlawful and must be set aside and canceled because
16 Defendant, ETS, does not have any legal right to be a Trustee.

17 109. Defendants' fraudulent acts in creating these foreclosure documents, using Robo-
18 Signers to blindly execute and record the documents, are also reasons why the Trustee's Sale
19 should never take place, be set aside, or canceled.

20 110. If none of the Defendants, who are attempting to foreclose the property, have any
21 legal interest in the Note and Deed, then the Court is within its power to set aside and cancel
22 the Trustee's Sale.

23 111. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such
24 further relief as is set forth below in the section captioned Prayer for Relief, which is by this
25 reference incorporated herein

26 112. In the alternative, even if Defendants can foreclose the property, they did not
27 follow proper procedure of California non-judicial law.
28

1 113. Plaintiffs allege that at times mentioned herein the Subject Property was their
2 owner-occupied residence and that Plaintiff was a member of the class of persons protected
3 under Civil Code §§ 2923.5 and 2924. Plaintiff alleges further that at all times mentioned
4 herein Defendants had a duty to comply with foreclosure avoidance and workout plan
5 requirements of Civil Code §2923.5.

6 114. Plaintiffs allege further that Civil Code § 2923.5 expressly required GMAC to
7 engage in certain communications and contacts, or attempt to engage in such communications
8 and contacts with Plaintiffs to help them avoid foreclosure on the Subject Property, and that
9 GMAC and ETS were required to conduct these communications and contacts prior to filing
10 the Notice of Default against the Plaintiffs.

11 115. Defendants falsely claimed that they contacted or attempted to contact Plaintiffs
12 in compliance with Civil Code § 2923.5 prior to filing the 2012 Notice of Default against the
13 Plaintiffs. Plaintiffs allege further that, at all times prior to the Defendants' filing of the initial
14 notice of default on or about April 23, 2012, Plaintiffs were fully available to meet with
15 GMAC or its authorized representative to assess Plaintiffs' financial condition and explore
16 options for Plaintiffs to avoid foreclosure.

17 116. Second, ETS was not properly substituted under California law. Plaintiffs allege
18 that no notice of the substitution was ever sent to any of the original beneficiary or any entity
19 that was entitled to receive notice of the Notice of Default. Under California Civil Procedure
20 Section 2934(a)(b):

21 "If the substitution is executed, but not recorded, prior to
22 or concurrently with the recording of the notice of default, the
23 beneficiary or beneficiaries or their authorized agents shall cause
24 notice of the substitution to be mailed prior to or concurrently with
25 the recording thereof, in the manner provided in Section 2924b, to
26 all persons to whom a copy of the notice of default would be
27 required to be mailed by the provisions of Section 2924b. An
28 affidavit shall be attached to the substitution that notice has been
given to those persons and in the manner required by this
subdivision."

ETS never sent any such notice of the substitution of trustee and did not attached any affidavit
of mailing in its recording of the Substitution of Trustee. The Substitution was also in

1 violation of the covenants under the Deed of Trust, where only the Lender may substituted the
2 Trustee and not the beneficiary. Under covenant 24 of the Deed of Trust, "[l]ender, at its
3 option, may from time to time appoint a successor trustee to any Trustee appointed hereunder b
4 an instrument executed and acknowledged by Lender and recorded in the office of the
5 Recorder of the country in which the Property is located." In this case, the Lender did not
6 substitute the Trustee.

7 117. The Court has a right to set aside or stay any Trustee's Sale that is in violation of
8 Cal. Civ. Code §§ 2923.5 and 2936a(b).

9 **FIFTH CAUSE OF ACTION**
10 **Declaratory Relief**
11 **(AS AGAINST ALL DEFENDANTS)**

12 118. Paragraphs 1 through 117 and the paragraphs following this cause of action are
13 incorporated by reference as though fully set forth herein.

14 119. Section 2201(a) of Title 28 of the United States Code states, "[i]n a case of actual
15 controversy within its jurisdiction...any court of the United States, upon the filling of an
16 appropriate pleading, may declare the rights and other legal relations of any interested party
17 seeking such declaration, whether or not further relief is or could be sought. Any such
18 declaration shall have the force and effect of a final judgment or decree and shall be reviewable
19 as such.

20 120. Plaintiffs allege that GMAC does not have a secured or unsecured legal,
21 equitable, or pecuniary interest in the lien evidence by the Deed of Trust and that is purported
22 assignment has no value and is VOID since the Deed of Trust has been paid off fully.

23 121. On February 2011, GMAC claimed they were assigned and transferred a secured
24 enforceable interest in, and perfected lien against the Plaintiffs' Note and Deed.

25 122. Thus, the competing allegations made by the Plaintiffs and the Defendants, above,
26 establish that a real and actual controversy exists as to the respective right of the parties to this
27 matter, including ownership of the property.
28

1 123. Plaintiffs request that the Court make a finding and issue appropriate orders
2 stating that none of the named Defendants or Doe Defendants, have any right or interest in
3 Plaintiffs' Note, Deed of Trust, or the subject Property which authorizes them, in fact or as
4 matter of law, to collect Plaintiffs' mortgage payments or enforce the terms of the Note or
Deed of Trust in any manner whatsoever.

5 124. Plaintiffs request that the Court declare that none of the Defendants are the
6 Beneficiary, Trustee, or Lender of the Plaintiffs' loan.

7 125. Plaintiffs will suffer prejudice if the Court does not determine the rights and
8 obligations of the parties because Plaintiffs will be denied the right to conduct discovery and
9 have Defendants' claims verified by a custodian of records who has personal knowledge of the
10 loan and all transactions related to it.

11 126. Due to the actual case and controversy regarding competing claims and
12 allegations, it is necessary that the Court declare the actual rights and obligation of the parties
13 and make a determination as to whether Defendants' claims against Plaintiffs are enforceable
14 and whether they are secured or unsecured by any right title, or interest in Plaintiffs' Property.

15 127. Furthermore, the conduct of Defendants, and/or one or more of the Doe
16 Defendants, and each of them, as herein described, was so malicious and contemptible that it
17 would be looked down upon and despised by ordinary people. Plaintiffs are therefore entitled
18 to punitive damages in an amount appropriate to punish Defendants and to deter other from
engaging in similar conduct.

19
20 **SIXTH CAUSE OF ACTION**
21 **Quiet Title**
(AGAINST ALL DEFENDANTS)

22 128. Paragraphs 1 through 127 and the paragraphs following this cause of action are
23 incorporated by reference as though fully set forth herein.

24 129. Plaintiffs, at all times relevant herein, were the owner and/or entitled to
25 possession of the property. The subject property is further described as the following "Legal
26 Description":

1 "Lot 15, as shown on that certain Map entitled, "TOBIN CLARK ESTATES UNIT
2 NO. TWO, SAN MATEO COUNTY, CALIFORNIA", filed in the Office of the Recorder of
3 the County of San Mateo, State of California on June 25, 1976 in Book 91 of Maps at Pages 17
4 and 18. APN: 038-352-040"

5 130. Plaintiffs' title to the property is Fee Simple.

6 131. Plaintiffs are credibly informed and believe that these non-real parties in interest
7 Defendants make some claim adverse to Plaintiffs. Defendant, GMAC, currently possess an
8 adverse interest in Plaintiffs' subject property through a fraudulent Assignment of the Deed.
9 Defendant, ETS, currently possess an adverse interest in the subject property through a
10 fraudulent Substitution of Trustee. Their claimed interests in the Title of the Property create a
cloud on title in California. Quiet Title is the remaining option.

11 132. Plaintiffs seek a determination that Plaintiffs are the sole owners of the subject
12 property free from any adverse interest held by the Defendants, or anyone unknown entity
13 claiming an adverse interest in the subject property.

14 133. WHEREFORE, Plaintiffs PRAY that the Court orders that all adverse claims
15 against the subject property, commonly known as 75 Tobin Clark Drive, Hillsborough,
16 California, 94010, are quieted.

17 **SEVENTH CAUSE OF ACTION**
18 **Fraudulent Concealment**
19 **(AGAINST ALL DEFENDANTS)**

20 134. Paragraphs 1 through 133 and the paragraphs following this cause of action are
21 incorporated by reference as though fully set forth herein.

22 135. Defendants had exclusive knowledge not accessible to the Plaintiffs of material
23 facts pertaining to its foreclosure practices. Defendants are fully aware that they do not have a
24 legal, equitable, or enforceable interest in the Note and Deed. Yet, they continue to mislead
25 the Plaintiffs about the status of their debt, attempt to collect the debt, and to foreclose the
26 property.

1 136. ETS, willfully, with intent, in concert with the other Defendants, refuse to
2 disclose an accounting of the alleged debt that the Plaintiffs owe to GMAC. ETS refused to
3 disclose the address and location of the current Lender and the validity of the debt. ETS knows
4 that GMAC and HSBC do not and did not have a legal, equitable, and enforceable interest in
5 the Note and Deed, but has yet still filed a Notice of Default and attempted to collect the debt.

6 137. GMAC, willfully, with intent, in concert with the other Defendants, refused to
7 disclose that HSBC did not perfect its security interest in the Property. Instead, GMAC
8 continues to purport that Plaintiffs owe money to GMAC, and that GMAC is a Beneficiary
9 entitled to foreclose the property.

10 138. GMAC, willfully, with intent, in concert with the other Defendants, told the
11 Plaintiffs that they would be approved for a loan modification as long as they stopped making
12 payments on the mortgage because GMAC had authority to modify the loan, knowing that they
13 did not have any authority to modify the loan and that HSBC had no legal, equitable, or
14 enforceable interest in the Note and Deed.

15 139. Each and every Defendant knew that their actions were wrong and intended to
16 mislead the Plaintiffs. As described herein, there deception was essential to their overall plan
17 for unjust enrichment through the wrongful foreclosure of the property. Defendants stood to
18 receive an unjust enrichment without having any interest in the property.

19 140. As a proximate and actual result of the foregoing concealment by Defendants,
20 Plaintiffs are faced with an impending Trustee's Sale, and the potential lost of their property.
21 Should the foreclosure take place, Plaintiffs will have suffered grave damages by depriving
22 them use of their property, income from the property, depriving them access to equity lines of
23 credit, value from the property, and harm to their credit reports.

24 141. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs
25 damages arise from this Cause of Action include loss of equity in their property, costs and
26 expenses related to protecting their interest in the property, reduced credit score, as well as fees
27 and costs, including, without limitation, attorney's fees and costs.
28

1 142. The actual pecuniary damages include, but are not limited to, the over calculation
2 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
3 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
4 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
5 in an amount to be proven at trial.

6 143. As a direct and proximate result of the Defendants' Fraud, Plaintiffs have suffered
7 actual pecuniary damages including but not limited to statutory damages, civil liability, and
8 attorneys' fees, in an amount to be proven at trial.

9 144. As a result of Defendants' Fraud, Plaintiffs have been damaged in the following
10 ways: (1) multiple parties may seek to enforce their debt obligation, if there is still one that
11 exist; (2) title to their home has been clouded and its salability has been rendered
12 unmarketable, as any buyer of the Plaintiffs' home will find themselves in legal limbo, unable
13 to know whether they can safely buy Plaintiffs' home or get title insurance; (3) Plaintiffs paid
14 the wrong party for an undetermined amount of time and overpaid in interest; (4) Plaintiffs are
15 unable to determine if they sent their mortgage payments to the right party; (5) Plaintiffs—
16 Fermin Solis Aniel and Erlinda Abibas Aniel—credit score have been damages; (6) they expect
17 significant funds to cover the cost of attorneys' fees and related cost.

18 145. To this day, Defendants are under the false belief that they own the loan, which
19 was sold to an unknown investor years ago. Defendants acted outrageously and persistently
20 with actual malice in performing the acts alleged herein and continue to do so. Accordingly,
21 Plaintiffs are entitled to exemplary and punitive damages in a sum according to proof and to
22 such other relief as is set forth below in the section captioned Prayer for Relief, which is by this
23 reference incorporated herein.

24 **EIGHTH CAUSE OF ACTION**
25 **Violation of California Rosenthal Act**
26 **(As Against all Defendants)**

27 146. Plaintiffs incorporate by reference paragraphs 1-145 each and every allegation
28 set forth above and herein.

147. To establish a violation of the California Rosenthal Act:

1 (1) the plaintiffs are a natural person who is harmed by violations of the
2 California Rosenthal Act. Cal Civ. Code § 1788.2(g).

3 (2) involves a "debt", which means money, property or their equivalent which
4 is due or owing or alleged to be due or owing from a natural person to another person.
5 Cal Civ. Code § 1788.2(d). Here, the debt is a discharged mortgage loan.

6 (3) the defendant collecting the debt is a "debt collector", which is "any person
7 who, in the ordinary course of business, regularly, on behalf of himself or herself or
8 others, engages in debt collection." Cal Civ. Code § 1788.2(c) because they are not in
9 the lending business but rather in collecting on defaulted mortgage loans by
10 demanding inflated amounts or creating fraudulent documents in order to collect a
11 debt.

12 (4) the defendant has violated, by act or omission, a provision of the
13 California Rosenthal Act.

14 148. Based on information and belief, Plaintiffs allege that GMAC is a Debt
15 Collector. GMAC is in the business of servicing the loan, which includes receiving payments
16 and demanding payment from borrowers.

17 149. Based on information and belief, Plaintiffs allege that Defendant, ETS, in its
18 alleged role as an agent of the beneficiary, is a debt collector. Defendant, ETS is a debt
19 collector because they warned the Plaintiffs that they were a debt collector in the Notice of
20 Trustee's Sale. Defendant, ETS, is also a debt collector because their interest in the debt
21 occurred after the debt was purported in default.

22 150. Defendants violated the Act when in attempting to collect the debt they:

23 a. GMAC misrepresented to Plaintiffs the owner of the Note and the
24 Deed when it claimed that HSBC was the owner of the loan and subsequently GMAC was
25 the owner of the loan. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l).
26 Because, for reasons stated above, this action violates the FDCPA, this is also a violation of
27 Cal Civ. Code § 1788.17;
28

1 b. ETS falsely claimed Plaintiffs owed \$856,811.25 to GMAC. This is a
2 violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this
3 action violates the FDCPA, this is also a violation of Cal Civ. Code § 1788.17;

4 c. Defendants submitted and recorded fraudulent, fabricated and bogus
5 Notice of Default. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because,
6 for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ.
7 Code § 1788.17;

8 d. Defendants falsified the amount due, falsely claimed HSBC and later
9 GMAC was the owner of the loan, and refused to explain or breakdown the charges on the
10 account. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons
11 stated above, this action violates the FDCPA, this is also a violation of Cal Civ. Code §
12 1788.17;

13 e. Defendant attempting to enforce an interest in the property when they
14 had no legal, equitable, or enforceable interest in the property. See ¶ 39-46. This is a violation
15 of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this violates
16 the FDCPA, this is also a violation of Cal Civ. Code § 1788.17;

17 f. Making false, deceptive, or misleading representation or means in
18 connection with the collection of any debt. 15 U.S.C § 1692e:

19 g. Making false representations or using deceptive means to collect or
20 attempt to collect on any debt, U.S.C. § 1692e(10); and

21 h. Making unfair or using unconscionable means to collect or attempt to
22 collect any debt, 15 U.S.C. § 1692f.

23 151. Pursuant to California Civil Code §§ 1788.30 and 1788.17, Plaintiffs are entitled
24 to recover actual damages sustained as a result of Defendants for violations of the Rosenthal
25 Act. Such damages include, without limitation, monetary losses and damages, and emotional
26 distress suffered, which damages are in an amount to be proven at trial. In addition, pursuant
27 to Cal. Civil Code §§ 1788.30 and 1788.17, Plaintiffs are entitled to recover penalties of at
28 least \$1000.00 per violation as provided for in the act.

1 152. Pursuant to Cal. Civ. Code §§ 1788.30 and 1788.17, Plaintiffs are entitled to
2 recover all attorneys' fees, and cost incurred in the bringing of this action.

3 153. The actual pecuniary damages include, but are not limited to, the over calculation
4 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
5 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
6 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
7 in an amount to be proven at trial.

8 154. As a direct and proximate result of the violations of Rosenthal Act by ETS and
9 GMAC, Plaintiffs have suffered actual pecuniary damages including but not limited to
10 statutory damages, civil liability, and attorneys' fees, in an amount to be proven at trial.

11 155. As a result of Defendants' violation of the Rosenthal Act, Plaintiffs have been
12 damaged in the following ways: (1) multiple parties may seek to enforce their debt obligation,
13 if there is still one that exist; (2) title to their home has been clouded and its salability has been
14 rendered unmarketable, as any buyer of the Plaintiffs' home will find themselves in legal
15 limbo, unable to know whether they can safely buy Plaintiffs' home or get title insurance; (3)
16 Plaintiffs paid the wrong party for an undetermined amount of time and overpaid in interest;
17 (4) Plaintiffs are unable to determine if they sent their mortgage payments to the right party;
18 (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—credit score have been damages;
19 (6) they expect significant funds to cover the cost of attorneys' fees and related cost.

20 **NINTH CAUSE OF ACTION**
21 **Violation of the Unfair Competition Law**
22 **(Cal. Bus. & Prof. Code §§ 17200 et. sq.)**
23 **(AGAINST ALL DEFENDANTS)**

24 156. Paragraphs 1 through 155 and the paragraphs following this cause of action are
25 incorporated by reference as though fully set forth herein.

26 157. Defendants have engaged in unfair, unlawful, and fraudulent business practices in
27 the State of California, as set forth above.

28 158. The California Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200 et. Seq.,
("UCL") defines unfair competition to include any "unlawful" or "deceptive" business act or

1 practice. The UCL authorizes this Court to issue whatever orders or judgment may be
2 necessary to prevent unfair or unlawful practices, or to "restore to any person-in-interest any
3 money or Property, real or personal, which may have been acquired by means of such unfair
4 competition" *Id.*

5 159. GMAC's conduct, for the reasons stated herein, is in direct violation of 15 U.S.C.
6 § 1692, et seq., Cal Civ. Code §§ 2924 et seq., and 2923.5.

7 160. ETS' conduct, for the reasons stated herein, is in direct violation of 12 U.S.C. §
8 2605, Cal Civ. Code §§ 2924 et seq., and 2934a(b).

9 161. Defendants are in direct violation of Cal. Penal Code § 532(f)(a)(4).

10 162. Defendants failed to disclose the principal for which documents were being
11 executed and recorded in violation of Cal. Civ. Code section 1095.

12 163. Also, All of the Defendants' acts and practices alleged herein are unlawful
13 business practices for the following reasons, independent of any of the other following reasons:
14 (1) because Defendants do not have any legal, equitable, or enforceable interest the Note or the
15 Deed, (2) because Defendants cannot surmount their burden of demonstrating they own the
16 Note or have a power of attorney with respect thereto, (3) Defendants used Robo-Signers to
17 execute purported foreclosure documents, (4) GMAC falsely claiming to be the owner of the
18 Loan (5) failing to respond to Plaintiffs' debt validation request after receiving the Notice of
19 Default; (6) accepting and demanding payments from debts that were non-existent; (7) acted as
20 beneficiary without the legal authority to do so.

21 164. Defendants facilitated, aided, and abetted the illegal, deceptive, and unlawful
22 enforcement of Plaintiffs' Note and Deed and engaged in other illegal debt collection activities.

23 165. GMAC, in its role as servicer, had been acting in a manner to mislead Plaintiffs
24 into believe HSBC was the owner of the loan and subsequently GMAC was the owner of the
25 loan.

26 166. As alleged herein, Plaintiffs' Note was not properly transferred to HSBC, who
27 sought to foreclose the property, collect the debt, and later transferred its interest to GMAC, in
28 order for GMAC to collect on the debt.

1 167. On information and belief, HSBC and GMAC did not and do not have a perfected
2 security interest in the Plaintiffs' Note such they can enforce Plaintiffs' obligation and/or
3 foreclose the property.

4 168. On information and belief, ETS refused to disclose what lien they are foreclosing
5 the subject property. In the Notice of Sale, ETS warns potential bidders that they may or may
6 not be bidding on a first or second lien and not the subject property, and that the winning
7 bidder may suffer legal consequences in bidding on the lien.

8 169. Defendants willfully, with knowledge of the wrongdoing, maliciously executed
9 and recorded foreclosure documents in order to wrongfully foreclose the property. Defendants
10 are merely debt collectors attempting to collect a debt. Defendants, fully verse in California
11 non-judicial laws, take advantage of the lack of proof required by non-judicial foreclosures by
12 establishing these practices. This conduct was malicious because Defendants knew that they
13 were not acting on behalf of the current beneficiary of the Note and Deed. However, despite
14 such knowledge, Defendants continued to make demands for payment.

15 170. As more fully described above, Defendants' acts and practices are unlawful. This
16 conduct is ongoing and continues to this date.

17 171. As a result, Plaintiffs, along with millions of homeowners, suffer the
18 consequences of losing their homes to entities, who did not put a single dollar into the
19 property. Plaintiffs' lose irreplaceable value in their property, and may have to relocate and
20 lose their home as a result of these practices. Based on information and beliefs, Defendants'
21 benefits in their wrongful conduct does not come close to outweighing the prejudice suffered
22 by the Plaintiffs and consumers in California. This conduct is ongoing and continues to this
23 date.

24 172. Accordingly, Plaintiffs are entitled to exemplary and punitive damages in a sum
25 according to proof and to such other relief as is set forth below in the section captioned Prayer
26 for Relief, which is by this reference incorporated herein.

27 173. Plaintiffs are entitled to restitution pursuant to UCL § 17203. Defendants violated
28 several laws including UCL § 17200 et seq. and must be required to disgorge all profits related

1 to their unfair, unlawful, and deceptive business practices. Defendants have been unjustly
2 enriched, by collecting payments that they are not entitle to, and should be required to make
3 restitution to the Plaintiffs and other California consumers who have bee harmed, and/or be
4 enjoined from continuing in such practices pursuant to Cal. Bus. Prof. Code §§ 17203 and
17204.

5 174. As a direct and proximate cause of the actions of the Defendants, and each of
6 them, state above, Plaintiffs were injured in that a cloud has been placed upon the title to the
7 Plaintiffs' Property and Defendants have failed to remove this from Plaintiffs' title.

8 175. Plaintiffs request the Court to issue an order compelling GMAC, ETS, and any
9 other Defendant claiming an interest in and to the Subject Property to take any and all action
10 necessary to remove the cloud they have placed upon this title and an order enjoining such
11 Defendants from taking such action again in the future.

12 176. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover
13 their reasonable attorney's fees, cost, and expenses incurred in bringing this action.

14 177. As a result of Defendants' violations of Cal. Bus. and Prof. Code section 17200 et
15 seq., Plaintiffs have been damaged in the following ways: (1) multiple parties may seek to
16 enforce their debt obligation, if there is still one that exist; (2) title to their home has been
17 clouded and its salability has been rendered unmarketable, as any buyer of the Plaintiffs' home
18 will find themselves in legal limbo, unable to know whether they can safely buy Plaintiffs'
19 home or get title insurance; (3) Plaintiffs paid the wrong party for an undetermined amount of
20 time and overpaid in interest; (4) Plaintiffs are unable to determine if they sent their mortgage
21 payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
22 credit score have been damages; (6) they expect significant funds to cover the cost of
attorneys' fees and related cost.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as
25 follows:

1 1. General, special, compensatory, and exemplary damages according to proof but
2 no less than \$6,000,000.00, against all Defendants

3 2. Statutory relief according to proof.

4 3. Restitution relief according to proof.

5 4. Temporary, preliminary, and permanent injunctive relief restraining Defendants,
6 their agents, or employees from continuing or initiating any action against the Property and
7 enjoining Defendants, their agents, or employees from doing during the pendency of this
8 matter.

9 5. On all causes of action, for cost of suit herein;

10 6. On all causes of action, for pre-judgment and post-judgment interest;

11 7. On all causes of action for which attorney's fees may be awarded pursuant to
12 statute, or otherwise, reasonable attorney's fees;

13 8. For declaratory judgment finding that Defendant do not have any legally
14 cognizable rights as to Plaintiffs, the Subject Property, the Note, the Deed, or any other matter
15 based on contract or any of the documents prepared by Defendants, tenders to and executed by
16 Plaintiffs;

17 9. For an order compelling Defendants to remove any instrument, including the
18 Assignment of the Deed, which does or could not be construed as constituting a cloud upon
19 Plaintiffs' title to the property; and

20 10. On all causes of action, for such other and further relief as this Court may deem
21 just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs—Fermin Solis Aniel, Erlinda Abibas Aniel, and Marc Jason Aniel—hereby
24 demand a trial by jury on all claims.

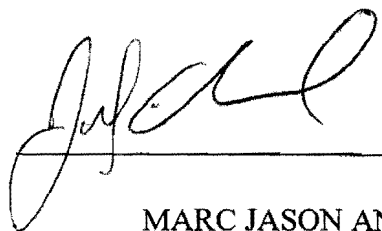
25 Dated: August 8, 2012

LAW OFFICES OF MARC JASON ANIEL



MARC JASON ANIEL

Attorney for Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel



MARC JASON ANIEL

Plaintiff in Pro Per

Verification

The undersigned, for herself declares:

I am one of the Plaintiffs in the above-entitled action. I have read the forgoing Complaint, and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as those matter which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

8-8-12 
ERLINDA ABIBAS ANIEL

Table of Contents

Exhibit	# of Pages
A. Deed of Trust	15
B. Notice of Default 2008	2
C. Substitution of Trustee 2008	1
D. Notice of Trustee Sale 2009	1
E. Assignment of the Deed 2009	1
F. Assignment of the Deed 2011	1
G. Notice of Recession 2011	1
H. Notice of Default 2012	2
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J. Debt Validation Notice	1
K. Notice of Trustee's Sale 2012	2

EXHIBIT “ A “

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 53562

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

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01:24pm 06/08/07 DT Fee: 67.00

Count of pages 21

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 7 0 0 8 8 5 6 1 A R *

DEED OF TRUST

2/7/07

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 JUNE 4, 2007 together with all Riders to this document.

(B) "Borrower" is

FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

MORTGAGEIT, INC.

Lender is a CORPORATION

organized and existing under the laws of NEW YORK

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)

CA71 : 07/01

(Page 1)

Form 3005 1/01

[Handwritten signature]

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Lender's address is

33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is

FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 4, 2007

The Note states that Borrower owes Lender

TWO MILLION AND NO / 100

Dollars (U.S. \$ 2,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037

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

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

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

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

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

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

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

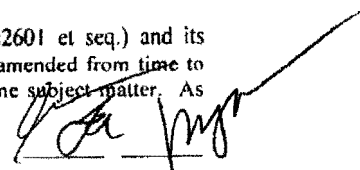
(M) "Escrow Items" means those items that are described in Section 3.

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As



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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

of **SAN MATEO**

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. 038-352-040

which currently has the address of **75 TOBIN CLARK DRIVE**

[Street]

HILLSBOROUGH 660326 00074

[City]

, California

94010

[Zip Code]

("Property Address");

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

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

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

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

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

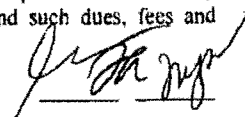
Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and



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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

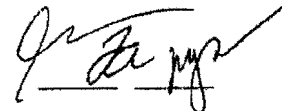
The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such



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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

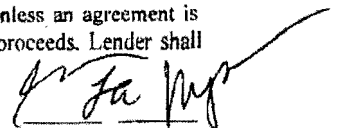
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall



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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

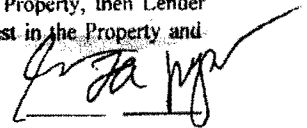
6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and



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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.

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

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

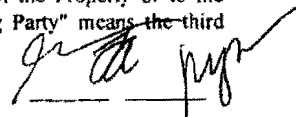
If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third



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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

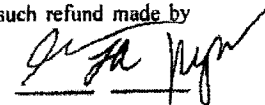
12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower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

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

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

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

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



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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

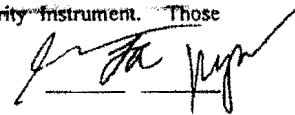
17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those



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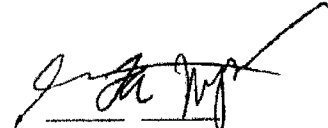
conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not



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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and the notes.

1137

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

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

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

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.

BORROWERS:



ERLINDA ANIEL (Seal)
- Borrower



FERMIN ANIEL (Seal)
- Borrower



MARC JASON ANIEL (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

1137

[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF San Mateo

On June 4, 2007 before me, Carolyn Chan, Notary Public,
personally appeared
ERLINDA ANIEL AND FERMIN ANIEL AND MARC JASON ANIEL

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

WITNESS my hand and official seal.



Carolyn Chan

(Seal)

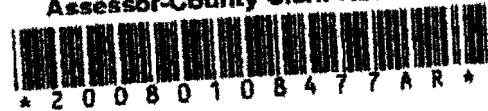
EXHIBIT “ B ”

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

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

2008-108477
09:04am 09/29/08 ND Fee: 12.00
Count of pages 2
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



TS No. : GM-164602-C Loan No. 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$29,905.26 as of 9/25/2008, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

C/O ETS Services, LLC

2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

TS NO.: GM-164602-C

LOAN NO.: [REDACTED] 3492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 6/4/2007, executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary, recorded 6/8/2007, as Instrument No. 2007-088561, in Book , Page , of Official Records in the Office of the Recorder of San Mateo County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including ONE NOTE FOR THE ORIGINAL sum of \$2,000,000.00 ; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus Impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 9/25/2008

ETS Services, LLC AS AGENT FOR
BENEFICIARY

BY: Anabel Mardros

Anabel Mardros
TRUSTEE SALE OFFICER

EXHIBIT “ C ”

9. RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

2008-108476

09:04am 09/29/08 ST Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



TS NO : GM-164602-C
LOAN NO : [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 6/4/2007 and recorded on 6/8/2007 as Instrument No. 2007-088561, in Book , Page of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute **Executive Trustee Services, LLC dba ETS Services, LLC**, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 9/25/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.



Rosalie Solano, ASSISTANT SECRETARY

State of California) ss.
County of Los Angeles }

On 9/25/2008 before me, Christine Gomez-Schwab Notary Public, personally appeared Rosalie Solano who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

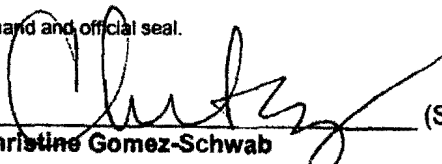
Signature  (Seal)
Christine Gomez-Schwab



EXHIBIT “ D ”

23
FIRST AMERICAN TITLE COMPANY

RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. GM-164602-C
Loan No. 3492
875

2009-000000
09:05am 01/02/09 NT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



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SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 8/4/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Recorded 6/8/2007 as Instrument No. 2007-088561 in Book , page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 1/26/2009 at 1:00 PM

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California

Property Address is purported to 75 TOBIN CLARK DRIVE

be: HILLSBOROUGH, California 94010-0000

APN #: 038-352-040

The total amount secured by said instrument as of the time of initial publication of this notice is ~~\$2,207,100.00~~ which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Date: 12/30/2008

ETS Services, LLC

2255 North Ontario Street, Suite 400

Burbank, California 91504-3120

Sale Line: 714-730-2727

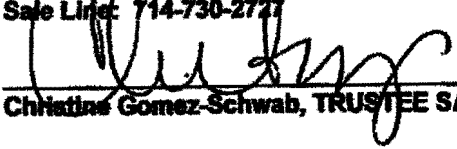

Christina Gomez-Schwab, TRUSTEE SALE OFFICER

EXHIBIT “ E “

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
RECORDING REQUESTED BY:

Mortgage Electronic Registration Systems, Inc.,
solely as nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933

2009-125757

09:34am 09/21/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



4263507

APN: 038-352-040

ASSIGNMENT OF DEED OF TRUST

1-026976

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest under that certain Deed of Trust dated June 4, 2007, executed by Fermin Aniel, and Erlinda Aniel, Husband and Wife and Marc Jason Aniel, A Single man, all as joint tenants, to Fidelity National Title as trustee, for Mortgage Electronic Registration Systems, Inc., solely as nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007008561, on June 8, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 8-24-09

Mortgage Electronic Registration Systems, Inc., solely
as nominee for Mortgageit, Inc.

By:

Jamaine Galloway
Its: Jamaine Galloway ASSISTANT SECRETARY

State of PA

County of Montgomery

On 8/24/09

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

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

WITNESS my hand and official seal.

Zahrah Y Sweet
Notary Public

(This Area for Official Notary Seal)

NOTARIAL SEAL
ZAHRAH Y SWEET
Notary Public
UPPER DUBLIN TWP, MONTGOMERY CNTY
My Commission Expires Mar 7, 2013

ATTACHED TO SP. Note.

EXHIBIT “ F “

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

Requested and Prepared by:
ETS Services, LLC

When Recorded Mail To:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

2011-016800

11:18 am 02/08/11 AT Fee: 15.00
Count of Pages 1
Recorded in Official Records
County of San Mateo
Mark Church

Assessor-County Clerk-Recorder



3879875

Loan No.: 8492

TS NO: GM-164602-C

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to:

GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION

all beneficial interest under that certain Deed of Trust dated: 6/4/2007 executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor(s), to FIDELITY NATIONAL TITLE, as Trustee, and recorded as Instrument No. 2007-088561, on 6/8/2007, in Book XX, Page XX of Official Records, in the office of the County Recorder of San Mateo County, California together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

DATE: February 4, 2011

HSBC Bank USA, National Association as Trustee
for DALT2007-OA5

Mira Smoot
Authorized Officer

State of Pennsylvania } ss.
County of Montgomery }

On FEB 01 2011 before me, Mary Lynch Notary Public, personally appeared Mira Smoot who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Mary Lynch (Seal)

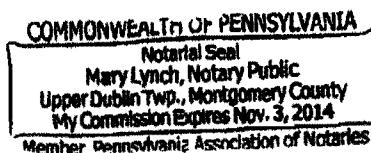


EXHIBIT “ G “

2011-074586

2:00 pm 07/01/11 NR Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 2 1 2 1 4 1 *

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120

3879875 DM

Loan No.: [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. No.: GM-164602-C

038-352-040

NOTICE OF RESCISSION OF NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is duly appointed Trustee under a Deed of Trust dated **06/04/2007**, executed by ***FERMIN ANIEL* AND *ERLINDA ANIEL*, HUSBAND AND WIFE AND *MARC JASON ANIEL*, A SINGLE MAN, ALL AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGEIT, INC.**, as Beneficiary, recorded **06/08/2007**, as Instrument No. **2007-088561**, in book **XX**, page **XX**, of Official Records in the Office of the Recorder of **San Mateo** County, California describing land therein as more fully described on the above referenced deed of trust.

said obligations including one note for the sum of **\$2,000,000.00**.

Whereas, the present beneficiary under that certain Deed of Trust herein above described, heretofore delivered to the Trustee thereunder written Declaration of Default and Demand for Sale; and Whereas, Notice was heretofore given of breach of obligations for which said Deed of Trust is security and of election to cause to be sold the property therein described; and Whereas, a Notice of Default was recorded on the day and in the book and page set forth below:

Notice was recorded on **09/29/2008** in the office of the Recorder of **San Mateo** County, California, Instrument No. **2008-108477**, in Book **I**, of Official Records.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN that the present Beneficiary and/or the Trustee, does hereby rescind, cancel and withdraw said Declaration of Default and Demand for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default--past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall nowise jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.

Dated: Jun 27, 2011

ETS Services, LLC

By: _____

Lizeth Chavez, TRUSTEE SALE OFFICER

EXHIBIT “ H “

27

RECORDING REQUESTED BY:
FIRST AMERICAN Title

WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC
dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
APN: 038-352-040-0

2012-058861

10:33 am 04/27/12 ND Fee: 18.00

Count of Pages 2

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 3 9 8 0 5 0 *

TS No. : CA1200053786

Loan No. : 3492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until **approximately 90 days** from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$516,041.70 as of **Apr 21, 2012**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, **GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation).**
C/O Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932 phone

2p/ac

TS NO.: CA1200053786

LOAN NO.: [REDACTED] 8492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **06/04/2007**, executed by **FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC.**, as beneficiary, recorded **06/08/2007**, as Instrument No. **2007-088561**, in Book **XX**, Page **XX**, of Official Records in the Office of the Recorder of **San Mateo County, California** describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$2,000,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5

Dated: Apr 21, 2012

ETS Services, LLC as Agent for Beneficiary



BY: _____

Dee Ortega
TRUSTEE SALE OFFICER

EXHIBIT "I"

RECORDING REQUESTED BY:

FIRST AMERICAN Title

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

2012-058860

10:33 am 04/27/12 ST Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



TS NO : CA1200053786
LOAN NO : [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC. was the original Beneficiary under that certain Deed of Trust dated 06/04/2007 and recorded on 06/08/2007 as Instrument No. 2007-088561, in Book XX, Page XX of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 4-5-12

GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

Marcell G. Pace

Marcell G. Pace
Authorized Officer

State of **Pennsylvania**
County of **Montgomery**

} ss.

On **April 5, 2012**
Marcell G. Pace

before me, **Christine Morales**

Notary Public, personally appeared

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

I certify under penalty of perjury under the laws of the State of **Pennsylvania**

that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Christine Morales* (Seal)
Christine Morales

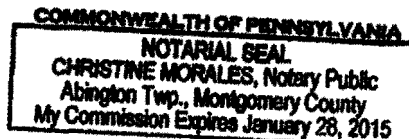


EXHIBIT “J”

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

Date: Apr 30, 2012

T.S. Number: CA1200053786
Loan Number: [REDACTED] 8492

DEBT VALIDATION NOTICE

1. The enclosed document relates to a debt owed to the current creditor:
GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

You may send us a written request for the name and address of the original creditor, if different from the current creditor, and we will obtain and mail the information to you.

2. As of 04/21/2012, the total delinquency owed was \$516,041.70, but this amount will increase until the delinquency has been fully cured.
3. As of 04/30/2012, the amount required to pay the entire debt in full was \$2,117,458.81, but this amount will increase daily until the debt has been fully paid.
4. You may dispute the validity of this debt, or any portion thereof, within thirty (30) days after receiving this notice. Otherwise, we will assume that the debt is valid.
5. If you notify us in writing that you dispute all or any portion of this debt within thirty (30) days after receiving this notice, we will obtain and mail to you verification of the debt, or a copy of any judgement against you.

WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION
WE OBTAIN WILL BE USED FOR THAT PURPOSE



EXHIBIT “K”

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 714-730-2727 or visit this Internet Web site address www.lpsasap.com for information regarding the sale of this property, using the file number assigned to this case file number CA1200053786. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

Date: 07/27/2012

Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
Sale Line: 714-730-2727

Ileanna Petersen, TRUSTEE SALE OFFICER

Claim No. 417

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM						
Name of Debtor: Executive Trustee Services, LLC		Case Number: 12-12028 (MG)						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		<div style="font-size: 2em; font-weight: bold;">RECEIVED</div> <div style="font-size: 1.5em; font-weight: bold;">AUG 20 2012</div> <div style="font-weight: bold;">KURTZMAN CARSON CONSULTANTS</div> <div style="font-weight: bold; font-size: 0.8em;">COURT USE ONLY</div>						
Name of Creditor (the person or other entity to whom the debtor owes money or property): Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel								
Name and address where notices should be sent: C/O Law Offices of Marc Jason Aniel 205 De Anza Blvd. #144 San Mateo, CA 94402 Telephone number: (650) 814-9478 email: mja_aniel@me.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____						
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.						
1. Amount of Claim as of Date Case Filed: \$ <u>Unliquidated</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
2. Basis for Claim: <u>Pending Lawsuit</u> (See instruction #2)								
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)						
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ <u>Unliquidated</u> Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>Unliquidated</u> Basis for perfection: <u>Litigation Expenses</u> Amount of Secured Claim: \$ <u>Unliquidated</u> Amount Unsecured: \$ <u>Unliquidated</u>						
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.								
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). </td> </tr> </table>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).						
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).						
Amount entitled to priority: \$ _____								
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.								
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								

☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



121202812082000000000001

B 10 (Official Form 10) (12/11)

2

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

AUG 20 2012

8. Signature: (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

- ☒ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Erlinda Abibas Aniel

Title: _____

Company: _____

Address and telephone number (if different from notice address above):

75 Tobin Clark Dr.
Hillsborough, CA 94010

(Signature)

(Date)

Telephone number: (650) 284-6417 email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Attachment 1

Proof of Claim

This Proof of Claim is being filed concurrently with the Proof of Claim against debtor, GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION (case number: 12-12032 (MG)). EXECUTIVE TRUSTEE SERVICES, LLC and GMAC MORTGAGE LLC AKA GMAC MORTGAGE CORPORATION are jointly and severely liable for the amount recoverable in the pending lawsuit.

ERLINDA ABIBAS ANIEL, FERMIN SOLIS ANIEL, AND MARC JASON ANIEL, AS PLAINTIFFS, AGAINST GMAC MORTGAGE, LLC; EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES, LLC; AND DOES 1 THROUGH 50.

Aniel et al. v. GMAC MORTGAGE, LLC et al.
United States District Court
For the Northern District of California
Oakland Division
Case Number: C 12-04201 SBA
Filed on: August 09, 2012

Subject Property Address: 75 Tobin Clark Drive, Hillsborough, CA 94010

A. Description of Claims

Claims arising from the following causes of action:

- (1) Wrongful Foreclosure (Violation of Civil Code § 2923.5 2924 et. Seq.)
- (2) Violation of 15 U.S.C. § 1692, et seq.
- (3) Violation of 12 U.S.C. § 2605
- (4) Set aside and Cancel Trustee's Sale
- (5) Declaratory Relief
- (6) Quiet Title
- (7) Fraudulent Concealment
- (8) Violation of California Rosenthal Act
- (9) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et. Seq.)

B. History of the Lawsuit

ETS Service executed and recorded a Notice of Trustee's Sale, which is scheduled on August 27, 2012, at 1:00 p.m. at Marshall Street, Redwood City, CA 94063.

On August 9, 2012, the claimants filed a civil action in the United States District Court for the Northern District of California for equitable and legal relief for wrongful foreclosure, violation of 15 U.S.C. § 1692 et seq., violation of 12 U.S.C. §

2605, setting aside and canceling the Trustee's Sale, Declaratory Relief, Quiet Title, Fraudulent Concealment, Violation of California Rosenthal Act, Violation of the Unfair Competition Law. See attached verified complaint as exhibit "A". Claimants alleged that neither GMAC nor ETS have any interest in the loan, and that the loan that is secured by the subject property was not disclosed as an asset for the Debtors' estate. However, Debtors are attempting to be unjustly enriched if they proceed with the Trustee's Sale through the use of fabricated documents like the Assignment of the Deed, Substitution of Trustee, notice of default, and notice of trustee sale. Each and every document Debtors, or their agents, have executed and recorded are VOID and have no legal effect. Therefore, the attempted foreclosure of the subject property is VOID and has no legal effect. Claimants have filed a Temporary Restraining Order enjoining the scheduled Trustee's Sale and an order to show cause of why a Preliminary Injunction should not be filed against Debtors.

C. Indemnifications Claims:

1. The Claimants have been damaged by virtue of Debtors' attempt to sell the property while the case is still pending. Without limiting the generality of the foregoing, the Claimants have incurred, and will continue to incur significant legal expenses enforcing and defending against the Debtors' improper foreclosure of the claimants' subject property.
2. Pursuant to the Governing Documents and applicable laws, Debtors' entities are liable to the Claimants for indemnification against any losses, claims, expenses or damages including legal fees and related cost, arising out of and based upon any breaches of any representation warranty or covenant made by the Debtor or any affiliates of the Debtors in the Governing Documents.
3. Based upon the foregoing, a claim is asserted in an unliquidated amount on account of Debtors' indemnification obligation arising from fraud, wrongful foreclosure, violation of federal law, unlawful business practice, and governing documents. As of this date of this Proof of Claim, the Claimants has incurred expenses of a unliquidated amount which is unknown at this time in connection with filing the civil actions against Debtors and its affiliates GMAC Mortgage, LLC, and Executive Trustee Services, LLC. Such expenses and indemnification obligation continue to accrue.

D. Miscellaneous

1. By executing and filing this Proof of Claim, Claimants do not waive any right to any security or any right or rights with respect to any claim that Claimants have.
2. To the knowledge of the signatory hereto, the claim is not subject to any set off or counterclaims, and no judgment has been rendered on this claim or the lawsuit.

3. Claimant reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature it has, or may have, that come to Claimants' attention or arises after filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.
4. Nothing contained in this Proof of Claim shall be deemed or construed as:
 - a. A waiver of, or other limitation on, any right or remedies of Claimants.
 - b. A consent by Claimants to this jurisdiction of the Court or any other court in respect to proceedings, if any.
 - c. A waiver or release of, or any limitation on Claimants' right to a trial by jury in this Court or any court in any proceeding.
 - d. A waiver or release of, or any other limitation on, Claimants' right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim or
 - e. A waiver of release of, or any other limitation on Claimants' right to assert that any portion of the claim asserted herein are entitled to treatment as priority claims, including under Section 503(b) and Section 507(a)(1) of the bankruptcy code.

Attachment 2

Total Item Breakdown

1.	Value of Real Estate Property -	Unliquidated (approx. \$3,500,000.00)
2.	Legal Damages suffered under Claimants' claims	Unliquidated (approx. \$2,500,000.00)
3.	Legal Expenses incurred - during the pending case	Unliquidated
	Totals	Unliquidated (approx. \$6,000,000.00 plus expenses)

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS ERLINDA ABIBAS ANIEL, an individual; FERMIN SOLIS ANIEL, an individual; MARC JASON ANIEL, an individual (b) County of Residence of First Listed Plaintiff San Mateo (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Marc Jason Aniel, Law Office of Marc Jason Aniel 205 De Anza Blvd. #144, San Mateo, CA 94402 650-814-9478	DEFENDANTS GMAC MORTGAGE, LLC; EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES, LLC; AND DOES 1 THROUGH 50. County of Residence of First Listed Defendant Delaware (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	HANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-- Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692, ET SEQ.; 12 U.S.C. § 2605; 28 U.S.C. § 2201 Brief description of cause: Defendants, strangers to the Plaintiffs' loan, falsely claimed ownership of the loan and attempt to foreclose.
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ 6,000,000.00	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE	DOCKET NUMBER
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IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) (Place an "X" in One Box Only)		
<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND	<input type="checkbox"/> SAN JOSE	<input type="checkbox"/> EUREKA

DATE 08/08/2012	SIGNATURE OF ATTORNEY OF RECORD	
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Marc Jason Aniel (SBN: 282466)
LAW OFFICES OF MARC JASON ANIEL
205 De Anza Blvd. #144
San Mateo, CA 94402
Phone: 650-814-9478
Fax: 650-571-5829
Email: mj_aniel@me.com

ORIGINAL
FILED

AUG - 8 2012

RICHARD W. WICKING
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorney for Plaintiffs, Fermin Solis Aniel and Erlinda Abibas Aniel
Plaintiff, Marc Jason Aniel, in Pro Per

DMR

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERLINDA ABIBAS ANIEL, an individual
FERMIN SOLIS ANIEL, an individual;
MARC JASON ANIEL, an individual

Case No.:

CV 12-4201

COMPLAINT FOR:

Plaintiffs,

v.

GMAC MORTGAGE, LLC; EXECUTIVE
TRUSTEE SERVICES, LLC., DBA ETS
SERVICES, LLC; AND DOES 1 THROUGH
50.

Defendants

- (1) WRONGFUL FORECLOSURE
(VIOLATION OF CIVIL CODE §
2923.5 2924 ET. SEQ.)
- (2) VIOLATION OF 15 U.S.C. § 1692,
ET SEQ.
- (3) VIOLATION OF 12 U.S.C. § 2605
- (4) SET ASIDE AND CANCEL
TRUSTEE'S SALE
- (5) DECLARATORY RELIEF
- (6) QUIET TITLE
- (7) FRAUDULENT CONCEALMENT
- (8) VIOLATION OF CALIFORNIA
ROSENTHAL ACT
- (9) VIOLATION OF THE UNFAIR
COMPETITION LAW (CAL. BUS.
& PROF. CODE §§ 17200 ET. SEQ.)

DEMAND FOR JURY TRIAL

I. COMPLAINT

COMES NOW Plaintiffs, Erlinda Abibas Aniel and Fermin Solis Aniel, by way of their
Attorney, and Plaintiff, Marc Jason Aniel, in Pro Per, complain of the above-named

1 Defendants, demand a jury trial, and allege that the following allegations and other factual
2 contentions have evidentiary support or, where specifically identified as being pled "on
3 information and belief" are likely have evidentiary support after a reasonable opportunity for
4 further investigation or discovery as follows:

5 **II. STATEMENT OF THE CASE**

6 1. This lawsuit arises from: (i) Defendants' attempt to wrongfully foreclose the
7 property through fraudulent documentations containing false and contradictory information;
8 (ii) Defendants' continued attempt to collect debt that the Plaintiffs do not owe; (iii)
9 Defendants' concealment of relevant information regarding Plaintiffs' loan; (iv) Defendants'
10 violations of Federal and State law; and (v) Defendant's continuing tortuous conduct intent to
11 deprive Plaintiffs of their rights, described below.

12 2. This action seeks remedies for the foregoing improper activities, including the
13 wrongful foreclosure of the Plaintiffs' property, fraudulent concealment of important
14 information and actions involving the Plaintiffs' property, which resulted in devastating losses
15 and damages by Plaintiffs, which includes, but is not limited to, lost of their property, lost
16 value in their property, lost income, and lost equity in the property.

17 4. It has become all too clear now that millions of homes that were foreclosed since
18 the Mortgage crisis in 2008 were in violation of California Law and were done through
19 fraudulent documentation. Robo-signing, false pleadings, false recorded documents, and debt
20 collectors did many other unlawful business practices in order to take advantage of the non-
21 judicial foreclosure laws of California.

22 5. As a result, more and more debt collectors involved in wrongful foreclosures have
23 paid for their actions. In 2008, Bear Stearns Companies, LLC, and its subsidiary EMC
24 Mortgage Corporation agreed on a settlement to pay \$28 million to settle with Federal Trade
25 Commission for unlawful Mortgage Servicing and Debt Collection Practices. See FTC File
26 No. 0623031. Attorney Generals for Forty-Nine States and the District of Columbia in the
27 United States reached a \$26 Billion settlement with Bank of America, JPMorgan Chase, Wells
28 Fargo, Citigroup and Ally Financial. The U.S. District Court for the District of Columbia

1 approved the settlement over foreclosure process abuses. The settlement arises from multiple
2 abuse of servicing of loans and the foreclosure process. Since most loan were sold in the
3 secondary market, servicer and debt collectors covered up their acts by routinely forging, back-
4 dating fabricated documents at county recorder officers and state and federal courts across the
5 country. Furthermore, the debt collectors employed "robo-signers," who signed hundred of
6 thousands (if not millions) of documents and affidavits without any knowledge of the
7 underlying mortgages. (See CNNMoney Article, "Court approves \$26 billion foreclosure
8 settlement," available at: [http://money.cnn.com/2012/04/06/real_estate/mortgage-](http://money.cnn.com/2012/04/06/real_estate/mortgage-settlement/index.htm)
[settlement/index.htm](http://money.cnn.com/2012/04/06/real_estate/mortgage-settlement/index.htm)).

9 6. Despite their admission and attempts to settle based on their wrongful conduct, debt
10 collectors continue to this day using fraudulent documents recorded in the County Recorder's
11 office in order to wrongfully foreclose properties.

12 7. In 2007, Defendant, GMAC Mortgage, LLC (hereinafter "GMAC"), attempted, but
13 failed to assign or transfer Plaintiffs' Promissory Note to HSBC Bank, USA, National
14 Association as Trustee for DALT2007-OA5. As such, GMAC has no authority to collect on
15 the Note and enforce the Deed of Trust. Despite this fact, Defendant, GMAC, and its agents,
16 attempted to collect on this Note and enforce the Deed of Trust with the knowledge that they
17 have no legal right to do so. In addition to violating the Fair Debt Collection Practices Act and
18 the Real Estate Settlement Procedures Act, Defendants knowingly concealed their lack of an
19 enforceable security interest by fabricating and recording false documents in the San Mateo
20 County Recorder's Office. Defendants' conduct is not only unfair and fraudulent, but also
21 constitutes a violation of the California Penal Code section 532(f)(a)(4) (which prohibits any
22 person from filing a document related to a mortgage loan transaction with the county
23 recorder's office, which that person knows to contain a deliberate misstatement.) Through this
24 action, Plaintiffs seeks damages resulting from Defendants' unlawful conduct and a declaratory
25 judgment establishing that Defendants have failed to substantiate a perfected security interest
26 in the Note and the Deed of Trust. Simply put, Defendants have no legal, equitable, or
27 pecuniary interest in the Note and the Deed of Trust.

1 8. In the alternative, if the Court finds that GMAC does have an enforceable security
2 interest in the Note and the Deed of Trust, Defendants did not follow proper non-judicial
3 foreclosure process in California. Defendants did not engage in certain communications and
4 contacts, or attempt to engage in such communications and contacts with Plaintiffs to help
5 them avoid foreclosure on the Subject Property, and that GMAC was required to conduct these
6 communications and contacts prior to filing the Notice of Default against the Plaintiffs.
7 Defendants were in violation of California Civil Procedure §§ 2923.5 and 2936a(b). Also, if
8 the Court determines that the HSBC Bank did have a valid interest in the loan, that it was fully
9 satisfied by the government bailouts and insurance payments. Defendant, GMAC, is
10 attempting to double dip on the debt of the loan by attempting to foreclose the property.

11 **III. JURISDICTION AND VENUE**

12 9. This Court has original jurisdiction over the claims in this action based on 28
13 U.S.C. §§ 1331, 1343, 2201, 2202, 15 U.S.C. § 1692, and 12 U.S.C. § 2605 which confer
14 original jurisdiction on the federal district courts in suits to address the Defendants' violation
15 of federal law.

16 10. This Court also has supplemental jurisdiction over the pendant state law claims
17 because they form part of the same case or controversy under Article III of the United States
18 Constitution, pursuant to 28 U.S.C. § 1367.

19 11. This Court has original jurisdiction over the claims in this action based on 28
20 U.S.C. 1332, which confers original jurisdiction on federal district court in suits between
21 complete diverse citizens that involve an amount in controversy in excess of \$75,000.00.

22 12. The unlawful conduct, illegal practices, and acts complained of and alleged in this
23 Complaint were all committed in the Northern District of California and involved real property
24 that is located in the Northern District of California. Therefore, venue properly lies in this
25 District, pursuant to 28 U.S.C. § 1391(b).

26 **IV. PARTIES**

27 13. Plaintiff, ERLINDA ABIBAS ANIEL, is now and at all times mentioned herein, an
28 individual residing in the State of California, who owns and lives in real property commonly

1 known as 75 Tobin Clark Drive, Hillsborough, CA 94010. She signed the Promissory Note
2 and the Deed of Trust.

3 14. Plaintiff, FERMIN SOLIS ANIEL, is now and at all times mentioned herein, an
4 individual residing in the State of California, who owns and lives in real property commonly
5 known as 75 Tobin Clark Drive, Hillsborough, CA 94010. He only signed the Deed of Trust.

6 15. Plaintiffs, MARC JASON ANIEL, is now and at all times mentioned herein, an
7 individual residing in the State of California, who owns and lives in the real property
8 commonly known as 75 Tobin Clark Drive, Hillsborough, CA 94010. He did not sign the
9 Promissory Note and is only named in the Deed of Trust as a Joint Tenant.

10 16. Defendant GMAC MORTGAGE, LLC, is incorporated in Delaware and is based in
11 Pennsylvania and does business in the State of California. At all material times hereto, GMAC
12 was at one point, a sub-servicer, servicer, and beneficiary of the Deed of Trust through a
fraudulent Assignment of the Deed of Trust.

13 17. Defendant EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES,
14 LLC (herein "ETS"), is incorporated in Delaware and is an affiliate of GMAC. ETS is also
15 known as Executive Trust Services dba: ETS Services, LLC with a business address of 2255
16 North Ontario Street, Suite 400, Burbank California 91504-3120.

17 18. Plaintiffs are ignorant of the true identity and capacity of Defendants designated
18 as Does 1-50, but will amend the Complaint when their identities have been ascertained
19 according to proof within the time permitted. However, Plaintiffs allege on information and
20 belief, that each and every Doe Defendant is in some manner responsible for the acts and
21 conduct of other Defendants, and were, and are, responsible for the injuries, damages, and
22 harm incurred by Plaintiffs.

23 19. At all times material hereto, the business of Defendants was operated through a
24 common plan and scheme designed to conceal from Plaintiffs the material facts set forth
25 below. Such facts were also concealed from the public and the regulators, either directly or as
26 successors-in-interest to the business acquired from others. The concealment was completed,
27 ratified and/or confirmed by each Defendant herein directly or as a successor-in-interest as the
28

1 acquirer of an entire business, and each Defendant performed or has sought to benefit from the
2 tortious acts set further herein for its own monetary gain and as a party of a common plan
3 developed and carried with the other Defendants or as successor-in-interest to the business that
4 did the foregoing.

5 20. Plaintiffs allege that each of the wrongful acts or omissions described below was
6 performed either by each Defendant herein, named or unnamed, or ratified and adopted by
7 each Defendant after its occurrence.

8 21. Further, those Defendants that did not actively perform the acts or omissions
9 described in this Complaint did affirmatively aid and abet the other Defendants in the
10 performance of such acts of omissions, before, during or after the fact.

11 22. Finally, each Defendant herein, named or unnamed, did knowingly derive some
12 form of profit or benefit from the acts and omissions described herein.

13 23. Any allegation about acts of any corporate or other business Defendants means the
14 corporation or other business did the acts alleged through its officers, directors, employees,
15 agents, and/or representatives while they were acting within the actual or ostensible scope of
16 their authority.

17 24. All Defendants agreed to work together in the conspiracy and/or joint enterprise
18 described in this Complaint based upon an express agreement among all Defendants to
19 wrongfully foreclose the subject property, collect the debt through a Trustee Sale, and profit on
20 the eventual sale of the foreclosed property described herein. Accordingly, each Defendant,
21 named or unnamed, should be held liable for the acts and omissions of all other Defendants
22 with respect to the causes of action set forth below.

23 25. Each of the Defendants herein, named or unnamed, was the agent of each of the
24 other Defendants herein, named or unnamed, and thereby participated in all of the wrongdoing
25 set forth below. Thus, each such Defendant is responsible for the acts, events, and
26 concealment of every other such Defendant as set forth below.

FACTUAL ALLEGATIONS

26. On or around June 4, 2007, Erlinda Abibas Aniel executed a Promissory Note (herein "Note") in favor of MortgageIT, Inc. for the refinance of the subject property.

27. On or around June 4, 2007, Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel executed a Deed of Trust in favor of MortgageIT, Inc., to secure the Promissory Note that was executed on the same day by Erlinda Abibas Aniel. In the Deed of Trust, MortgageIT, Inc. was disclosed as the Lender. Mortgage Electronic Registration Systems, Inc. was disclosed as the beneficiary, solely in its capacity as a nominee for the Lender. Fidelity National Title was disclosed as the Trustee. See Exhibit "A".

28. On information and belief, Plaintiffs allege that prior to them signing the Note and Deed, MortgageIT had already agreed to sell her loan to another entity or entities. And that shortly after the origination of her Loan, MortgageIT did in fact sell her loan to another entity or entities.

29. Securitization is the process whereby mortgage loans were made and then turned into negotiable securities sold to Wall Street. Loans were funded, packaged together and sold to Wall Street, or at least that was the way it was explained. The reality is much different. Wall Street (Wall Street Investment Banks) decided that loan securitization was a new methodology whereby they could lure investors into buying subprime and other loans as new investment vehicle. This would provide the investor with a good Rate of Return on investments, while providing Wall Street with a new methodology of generating commissions. It has generally been assumed that these funds consisted of Wall Street's own funds, but that is far from the truth. The methodology for Securitization is:

a. Wall Street promoted the Investment Vehicles and received AAA ratings on them. They went to investors, and sold them on the idea. The investors then put up the money for the loans.

b. Wall Street created pooling agreements where they defined in the agreements the loans that they would accept for each investment vehicle. They executed

1 agreements with the lenders and then immediately issued warehouse lines of credit to
2 the lenders.

3 c. Lenders then let brokers know the loan parameters to meet the pooling
4 agreement guidelines and the brokers went out and found the borrowers.

5 d. Wall Street took all the loans, packaged them up and sold them as bonds and
6 other security instruments to other investors, i.e. Pension Funds, and paid off original
7 investors or reissued new lines of credit, and earned commissions on both ends.

8 e. The process was repeated time and time again

9 f. The reality is that the reported lender on the Deed of Trust was NOT the
10 actual lender. The actual lender who lent the money was the Wall Street investment
11 Bank. They simply rented the license of the lender, so that they would not run afoul of
12 banking regulations and/or avoid liability and tax issues.

13
14 30. Plaintiffs allege that these unknown entities and Defendants were involved in an
15 attempt to securitize their Note into the HSBC Bank, USA, National Association as Trustee for
16 DALT2007-OA5 trust ("HSBC"). In order for the Plaintiffs' Note to be a part of the HBSC
17 trust, the entities involved were required to follow various agreements and established laws,
18 including the Trust Agreement that govern the creation of the Trust. Plaintiffs allege the
19 entities involved in the attempted securitization of the Plaintiffs' Note failed to adhere to the
20 requirements of the Trust. As a result, Plaintiffs' Note was not part of the DALT-2007-AO5
21 asset/res. This became more apparent when on or around September of 2009, Erlinda Abibas
22 Aniel called HSBC Bank, the trustee of the Trust, to confirm that her Note was in fact in the
23 alleged Trust. A representative of HSBC Bank, named "Marianne", informed Erlinda Abibas
24 Aniel that her subject property, loan number, her name, and the property address was no where
25 to be found in their database, and that HSBC did not have that subject property in their records.

26 31. This fatal defect renders Defendants third-party strangers to the underlying debt
27 obligation without the power or right to demand payment, declare default, negotiate the loan,

1 and foreclose the subject property. Although Defendants were aware of this fact, they have
2 and continue to act as if they have authority to demand payment, declare default, negotiate the
3 loan, and foreclose on their property. Plaintiffs specifically dispute this fact.

4 32. Plaintiffs' information and belief is based on (1) a title report and analysis of the
5 Property's County records; (2) An independent forensic loan audit mortgage compliance
6 analysis report on the subject property; (3) direct written and oral communication with
7 Defendants; (4) Plaintiffs' research, experience, and extensive review of depositions, case law,
8 amicus briefs, correspondence, news articles, reports, other complaints, and publicly available
9 securitization documents and practices; (5) HSBC's Pooling and Servicing Agreement
10 ("PSA").

11 33. Based on the findings, Plaintiffs believe and thereon alleges that her Note was
12 supposed to be properly securitized as a mortgage-backed security that is "pooled" together
13 into the DALT-2007-OA5. The trust is regulated by New York Trust Laws. Plaintiffs allege
14 that the Note was not securitized and that the DALT-2007-AO5 has no legal, equitable, or
15 monetary interest in the Promissory Note such that it can demand payment from the Plaintiffs.
16 Further, after reviewing the PSA, chain of title, recorded documents, and other documents, the
17 Note and the Deed were not properly conveyed to the DALT-2007-AO5 because (1) the
18 beneficial interest in the Plaintiffs' Note and Deed were not effectively assigned, granted, or
19 transferred to the Sponsor or Depositor (who were supposed to convey Plaintiffs' Note and
20 Deed into the Trust) prior to the closing date of the Trust and (2) HSBC failed to perfect the
21 title to the Note and Deed by not strictly following the requirements of the PSA and other law,
22 regulations, and agreements that govern the DALT-2007-AO5. An assignment of beneficial
23 interest in the Deed and endorsement of the Note after the closing date of the trust was a
24 violation of the PSA.

25 34. Plaintiffs allege that the Note was endorsed after the closing date of the DALT-
26 2007-AO5, which was on July 31, 2007. This date was established in the PSA and is the date
27 by which all of the Notes had to be transferred into the DALT-2007-AO5 in order for the Note
28 to be part of the trust res.

1 35. The true investor or lender was subsequently bailed out by the U.S. Government or
2 through insurance providers who fully satisfied the investor's investment in the loan or the
3 Trust.

4 36. Conscious they lacked any beneficial interest in the Plaintiffs' loan, Defendants
5 deceptive acts began on or around October 2008, when Plaintiffs sought a loan modification.

6 37. On or around October 2008, under the belief that there was debt on her property
7 and that she still owed money to MortgageIT, Plaintiffs, with the help of a Law Office, sought
8 a loan modification. Plaintiffs contacted GMAC, the servicer of the loan, and their agent
9 "David" instructed Plaintiffs to submit an application with certain financial forms to the
10 GMAC lost mitigation department. Plaintiffs submitted a loan modification application
11 package at the request of GMAC. After Plaintiffs submitted its application, they were not
12 contacted or informed of any decision.

13 38. On or around December 2008, Erlinda Abibas Aniel, on her own, spoke to a
14 GMAC representative by the name of "Jacob". This agent informed Ms. Aniel that GMAC did
15 receive the application, but that it was an application for a "Short Sale" and not a loan
16 modification. "Jacob" promised to change the request from a "Short Sale" to a loan
17 modification and promised that as long as Plaintiffs were in default of the mortgage, they
18 would be approved of a loan modification.

19 39. Plaintiffs have never received any response in relation to their loan modification
20 application from GMAC.

21 40. On September 25, 2008, ETS, claiming to be an agent for the beneficiary, executed
22 a Notice of Default, and then recorded that Notice of Default on September 29, 2008. In that
23 Notice of Default, ETS demanded \$29,905.26 be paid to MERS in order to cure the default.
24 There were several issues with this Notice of Default. See Exhibit "B". First, it disclosed that
25 MERS was the beneficiary of the Deed and is entitled to payments of the default amount.
26 While MERS was named as a beneficiary it was only authorized to act solely in its capacity as
27 a nominee for the Lender, and not on its own powers. Also, MERS is merely a registration
28 system and is not entitled to any payments on the mortgage or any default amount. Second,

1 ETS purposefully mislead the Plaintiffs to believe that they were the agent for the beneficiary
2 (MERS). This was not true. ETS was a debt collector with the purpose of collecting a debt on
3 this property. ETS could not be a Trustee and an agent for the beneficiary because that would
4 be a violation of California's Civil Code §2934, where a Trustee must remain neutral. The
5 truth is, and Plaintiffs allege this truth, ETS was not the Trustee or the agent of the beneficiary
6 but rather a debt collecting company with no legal, equitable, or enforceable interest in the
7 Deed.

8 41. On September 25, 2008, and on the same day the Notice of Default was executed,
9 MERS executed another Substitution of Trustee. See Exhibit "C". Rosalie Solano, claiming to
10 be an assistant secretary for MERS, in its own capacity without authorization from the Lender,
11 executed a Substitution of Trustee in favor of ETS. Christine Gomez-Schwab, California a
12 notary public, acknowledged the document. The document was recorded on September 29,
13 2008, which was the same day the Notice of Default was recorded.

14 42. On December 30, 2008, Christine Gomez-Schwab, a Trustee Sale Officer, executed
15 a Notice of Trustee Sale on the subject property, which the sale was scheduled on January 26,
16 2009. See Exhibit "D". Ms. Gomez-Schwab is the same individual that notarized and
17 acknowledged the September 25, 2008 Substitution of Trustee.

18 43. On February 25, 2009, Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
19 filed for Bankruptcy under Chapter 11.

20 44. On or around August 08, 2009, "Janine Yamoah", a purported " Assistant
21 Secretary" for MERS, executed a purported Assignment of the Deed of Trust. See Exhibit "E".
22 The Assignment alleges that for "value received" MERS granted, assigned, and transferred to
23 HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest
24 in the Deed, together with the Note "the money due and to become due thereon with interests,
25 and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no such
26 transfer ever occurred and that "Janine Yamoah" had no corporate authority to assign
27 Plaintiffs' Note and Deed to HSBC and was not an employee of MERS, but is an employee of
28 GMAC and a robo-signer.

1 45. On or around September 09, 2009, Katherine L. Johnson, an attorney for GMAC,
2 submitted a Proof of Claim to the U.S. Bankruptcy Court where they purported that HSBC was
3 the Secured Creditor, and that the debt on the loan was \$2,218,509.71, which was \$218,509.71
4 more than the original loan amount of \$2,000,000.00. Plaintiffs objected to the Proof of Claim.

5 46. On or around August 2, 2010, Plaintiffs' bankruptcy case was converted to a
6 Chapter 7, on their own motion. On or around December 2, 2010, the Bankruptcy Court fully
7 discharged the obligation to pay on the any debt on the subject property. On or around January
8 5, 2011, Plaintiffs'—Erlinda Abibas Aniel and Fermin Solis Aniel—credit report disclosed that
9 no debt was owed on the subject property. On or around February 4, 2011, Plaintiffs'
10 bankruptcy case was closed.

11 47. On or around February 01, 2011, "Mira Smoot", a purported "Authorized Officer"
12 for HSBC, executed a purported Assignment of the Deed of Trust. See Exhibit "F". The
13 Assignment alleges that for "value received" HSBC granted, assigned, and transferred to
14 GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION all beneficial
15 interest in the Deed, together with the Note "the money due and to become due thereon with
16 interests, and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no
17 such transfer ever occurred and that "Mira Smoot" had no corporate authority to assign
18 Plaintiffs' Note and Deed to GMAC and was not an employee of HSBC, but is an employee of
19 GMAC and a robo-signer. Also, the cut off date on this Trust was July 30, 2007. HSBC
20 could not move or transfer asset in the Trust after the cut off date because it would be a
21 violation of the PSA and be subject to taxation under REMIC. The Document was recorded on
22 February 9, 2011.

23 48. Sometime after February 9, 2011, GMAC associated account number
24 "0713288492" as the loan in relation to the subject property. This account number is different
25 from the account number on Plaintiffs' Deed of Trust. Based on this information, Plaintiffs are
26 unsure what loan GMAC was attempting to collect because the account number is different
27 from the account number on the Plaintiffs' Deed.
28

1 49. On or around June 27, 2011, Lizeth Chavez, a Trustee Sale Officer, purported a
2 Notice of Recession of a Notice of Default. The document was recorded on July 1, 2011. See
3 Exhibit "G".

4 50. In an attempt to clear the title defects on the property, on or around March 15,
5 2012, Plaintiff, Erlinda Abibas Aniel, mailed a letter requesting a Deed of Full Reconveyance
6 on the subject property from MortgageIT, the originator of the loan. MortgageIT made no
7 response to the request.

8 51. Based on information and belief, Plaintiffs thus allege that in retaliation for the
9 request for a Deed of Full Reconveyance, on or around April 21, 2012, Dee Ortega, a Trustee
10 Sale Officer for ETS, as an agent for the beneficiary and not the Trustee purported a Notice of
11 Default on the subject property. See Exhibit "H". The Notice of Default purported that
12 Plaintiffs owed \$516,041.70 in a default amount. Plaintiffs allege that they do not owe any
13 money on the property. The document was recorded on April 27, 2012.

14 52. The Notice of Default also purported that Dee Ortega declared that the "beneficiary
15 or its authorized agent declared that they have complied with California Civil code Section
16 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower
17 as required by California Civil Code Section 2923.5." Plaintiffs allege that no such contact
18 was ever made by any of the Defendants, or their authorized agents, to the Plaintiffs in order to
19 seek alternatives to a foreclosure. No contact was made because none of the Defendants have
20 an enforceable interest in the property to offer such alternatives to a foreclosure. The
21 declaration of compliance was not acknowledge or sworn under penalty of perjury cannot be
22 deemed as a true statement.

23 53. Prior to the execution of a purported Notice of Default, on or around April 5, 2012,
24 Marcell G. Pace, a purported "authorized officer" of GMAC, purported a substitution of
25 trustee, where the new trustee would be ETS. See Exhibit "I". Plaintiffs allege that no
26 substitution ever took place, and that the substitution has no legal effect because GMAC has no
27 legal, equitable, or enforceable interest in the subject property to substitute ETS as the Trustee.
28 The document was recorded on April 27, 2012, which was the same day the Notice of Default
was recorded.

1 54. In the alternative, even if the Substitution did take place, ETS was not properly
2 substituted under California law. Plaintiffs allege that no notice of the substitution was ever
3 sent to any of the original beneficiary or any entity that was entitled to receive notice of the
4 Notice of Default. Under California Civil Procedure Section 2934(a)(b):

5 "If the substitution is executed, but not recorded, prior to
6 or concurrently with the recording of the notice of default, the
7 beneficiary or beneficiaries or their authorized agents shall cause
8 notice of the substitution to be mailed prior to or concurrently with
9 the recording thereof, in the manner provided in Section 2924b, to
10 all persons to whom a copy of the notice of default would be
11 required to be mailed by the provisions of Section 2924b. An
12 affidavit shall be attached to the substitution that notice has been
13 given to those persons and in the manner required by this
14 subdivision."

15 ETS never sent any such notice of the substitution of trustee and did not attached any affidavit
16 of mailing in its recording of the Substitution of Trustee.

17 55. In the Notice of Default, ETS, as required by Federal and California law, sent
18 Plaintiffs a "Debt Validation Notice" along with the Notice of Default. See Exhibit "J". In that
19 Notice, ETS represented to the Plaintiffs that \$516,041.70 was owed to GMAC, the creditor of
20 the loan, and that any dispute of the debt or the debt amount should be in writing and mailed to
21 ETS within thirty (30) of receiving the Notice of Debt Validation or else ETS would assume
22 that the debt was valid. Upon receipt of a letter disputing the debt, ETS promised that
23 they would obtain and mail to the Plaintiffs a verification of the debt. On or around May 10,
24 2012, which was less than 30 days after receiving the notice of debt validation, Plaintiff,
25 Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified mail, to ETS, disputing the
26 validity of the debt that was claimed to be owed to GMAC. Mrs. Aniel request a proper
27 accounting of the debt and the standing for which GMAC can demand that amount from the
28 Plaintiffs. ETS never responded to the notice of Plaintiffs' dispute of the debt as they promised
and were required to do under Federal and California law.

56. On or around July 27, 2012, Ileanna Peterson, a Trustee Sale Officer of ETS,
purported a Notice of Trustee Sale on the subject property. See Exhibit "K". In that Notice,
ETS scheduled a Trustee's Sale on the lien of the subject property for August 27, 2012. ETS

1 purported that the total debt on the property under the Deed was \$2,856,811.25, which is
2 \$856,811.25 more than the original loan amount of \$2,000,000.00. ETS also identified the
3 subject property by the wrong Accessory's Parcel Number (APN). ETS purported that the
4 APN number was 038-352-040-0. However, Plaintiffs allege that the APN number under the
5 Deed is 038-352-040. The document was recorded on August 1, 2012.

6 57. Defendants' failure to provide any information regarding Plaintiffs' note at issue in
7 this case supports Plaintiffs' allegations that their Note was not properly transferred to
8 DALT2007-OA5, and as such, never transferred its interest to GMAC, such that Defendants
9 can enforce Plaintiffs' obligation and/or collect Plaintiffs' mortgage payments.

10 58. Plaintiffs made payments based on the allegedly improper, inaccurate and
11 fraudulent representations of the Plaintiffs' account.

12 59. Plaintiffs' credit and credit score were severely damaged.

13 60. The title to the Plaintiffs' home has been slandered, clouded, and its salability has
14 been rendered unmarketable.

15 61. Defendants' wrongful acts include (but are not limited to) the following: (i)
16 attempting to collect an unenforceable debt upon the Plaintiffs, (ii) falsely claiming money was
17 due from the Plaintiffs, (iii) creating false reasons to charge Plaintiffs fees, (iv) instituting a
18 foreclosure proceeding, (v) issuing wrongful Notices of Default to Plaintiffs, (vi) by refusing to
19 respond, in any way, to Plaintiffs' communications or communications made for Plaintiffs by
20 their private and public representatives, (vii) issuing wrongful Assignment of the Deed of Trust
21 and Substitution of Trustee, (viii) issuing wrongful Notice of Trustee Sale, and (iv) violating
22 California Civil Procedure Section 2924 et seq., 2923.5, and 2934a(b).

23 62. Based on information and belief, the holder of all legal rights to the Plaintiffs' loan
24 is unknown by the Plaintiffs and, more importantly, by any of the Defendants. None of the
25 Defendants are the Lender of the loan. None of the Defendants are the Beneficiaries of the
26 loan. None of the Defendants are the Trustee of the loan. On or around May 14, 2012, both
27 GMAC and ETS filed for Bankruptcy under Chapter 11. Based on information and belief,
28

1 Plaintiffs allege that neither GMAC nor ETS scheduled the Subject Property as part of their
2 bankruptcy estate or as an asset of their estate.

3 **FIRST CAUSE OF ACTION**
4 **Wrongful Foreclosure**
5 **(Violation of Civil Code §§ 2923.5 2924 et. seq.)**
6 **(AGAINST ALL DEFENDANTS)**

7 63. Paragraphs 1 through 62 and the paragraphs following this cause of action are
8 incorporated by reference as though fully set forth herein.

9 64. Plaintiffs allege that they do not owe any money to any of the Defendants.
10 Plaintiffs further allege that they do not owe any money or debt to any Lender, owner, or
11 beneficiary in relation to the Subject Property. Whoever was owed money from the loan
12 transaction involving the Plaintiffs was paid off and fully satisfied long before any of the
13 Defendants claimed ownership of the loan.

14 65. Defendants have scheduled the subject property to be foreclosed on August 27,
15 2012, in the County of San Mateo. Even if Defendants postpone the Trustee's Sale,
16 Defendants fully intend to collect on the debt by foreclosing the property.

17 66. Plaintiffs allege that at times mentioned herein the Subject Property was their
18 owner-occupied residence and that Plaintiff was a member of the class of persons protected
19 under Civil Code §§ 2923.5 and 2924. Plaintiff alleges further that at all times mentioned
20 herein Defendants had a duty to comply with foreclosure avoidance and workout plan
21 requirements of Civil Code §2923.5.

22 67. Plaintiffs allege further that Civil Code § 2923.5 expressly required GMAC to
23 engage in certain communications and contacts, or attempt to engage in such communications
24 and contacts with Plaintiffs to help them avoid foreclosure on the Subject Property, and that
25 GMAC and ETS were required to conduct these communications and contacts prior to filing
26 the Notice of Default against the Plaintiffs.

27 68. Defendants falsely claimed that they contacted or attempted to contact Plaintiffs in
28 compliance with Civil Code § 2923.5 prior to filing the 2012 Notice of Default against the
Plaintiffs. Plaintiffs allege further that, at all times prior to the Defendants' filing of the initial

1 notice of default on or about April 23, 2012, Plaintiffs were fully available to meet with
2 GMAC or its authorized representative to assess Plaintiffs' financial condition and explore
3 options for Plaintiffs to avoid foreclosure.

4 69. Because Defendants are not the holders of the Note or the Deed and are not
5 operating under a valid power of sale under the Deed, the Defendants do not have the right to
6 proceed with the foreclosure.

7 70. The burden of proving an assignment or interest in the loan falls upon the party
8 asserting the rights thereunder. In an action by an alleged assignee to enforce an assigned
9 right, the evidence must not only be sufficient to establish the fact of assignment when that fact
10 is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and
11 convincing to protect an obligor from any further claim by the primary obligee. Defendants
12 failed to do so and improperly foreclosed by reason of lack of proof that they had the right to
13 proceed.

14 71. In California, the assignment of a note generally carries with it an assignment of
15 the mortgage (Cal. Civ. Code § 2936), it is still required in California that the holder of the
16 Note or person operating with authority from that holder be the foreclosing party and that the
17 mortgage not have been assigned away from the note.

18 72. HSBC did not perfect its interest in the property when Defendants attempted to
19 securitize the loan. The Assignment of the Deed took place after the DALT-2007-AO5 Cut off
20 date, and thus the Assignment did not take place because it would have been in violation of the
21 Trust PSA. Indeed, Defendants do not have a legal, equitable, or enforceable interest in the
22 Note, and the Assignment of the Deed is VOID.

23 73. As described above, the Defendants conspired to conceal information regarding the
24 dischargability of the loan, and fraudulently executed and recorded documents in order to
25 foreclose the property.

26 74. The foreclosure was wrongful for each of the following reasons, independent of
27 any of the other following reasons: (1) the beneficial interest in the Plaintiffs' Note and Deed
28 were not effectively assigned, granted, or transferred to the Sponsor or Depositor (who were

1 supposed to convey Plaintiffs' Note and Deed into the Trust) prior to the closing date of the
2 Trust; (2) HSBC failed to perfect the title to the Note and Deed by not strictly following the
3 requirements of the PSA and other law, regulations, and agreements that govern the DALT-
4 2007-AO5. An assignment of beneficial interest in the Deed and endorsement of the Note after
5 the closing date of the trust was a violation of the PSA; (3) Defendants used Robo-Signers to
6 execute foreclosure documents; (4) failing to respond to Plaintiffs' debt validation request after
7 receiving the Notice of Default; (5) GMAC's violation Cal. Civ. Pro. § 2923.5; and (6) ETS'
8 violation of Cal. Civ. Pro § 2936a(b).

9 75. As a result of the foreclosure, Plaintiffs were dispossessed of their property and lost
10 income related to the use of the property. Plaintiffs were further dispossessed of the value of
11 their property and the potential appreciation thereof.

12 76. Defendants thereby acted outrageously and persistently with actual malice in
13 performing the acts alleged in this cause of action. Accordingly, Plaintiffs are entitled to
14 exemplary and punitive damages in a sum according to proof and to such other relief as is set
15 forth below in the section captioned Prayer for Relief, which is by this referenced, incorporated
16 herein.

17 **SECOND CAUSE OF ACTION**
18 **Fair Debt Collection Practices Act**
19 **(Violation of 15 U.S.C. § 1692, et seq.)**
20 **(AGAINST ALL DEFENDANTS)**

21 77. Paragraphs 1 through 66 and the paragraphs following this cause of action are
22 incorporated by reference as though fully set forth herein.

23 78. Defendant GMAC, and its agent Defendant, ETS, have attempted to collect
24 Plaintiffs' debt obligation and thus is a debt collector pursuant to the Federal Debt Collection
25 Practices Act ("FDCPA"). "The term 'debt collector' means any person who uses any
26 instrumentality of interstate commerce or the mails in any business the principal purpose of
27 which is the collection of any debts, or who regularly collects or attempts to collect, directly or
28 indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

79. Federal law prohibits the use of "any false, deceptive, or misleading representation
or means in connection with the collection of any debt...[including] the false representation

1 of...the character, amount, or legal status of any debt...or [t]he threat to take any action that
2 cannot legally be taken..." 15 U.S.C. §1692(2)(A), (5).

3 80. Defendants attempt to collect on the Note under false pretenses, namely that HSBC
4 was the creditor and subsequently GMAC was assigned the Plaintiffs' debt when in fact they
5 were not.

6 81. GMAC, in its capacity as the Plaintiffs' servicer, acted in manner to mislead
7 Plaintiffs that HSBC and eventually GMAC had authority to demand payment and authority to
8 modify the loan.

9 82. As alleged herein, Plaintiffs' Note was not properly transferred to HSBC, who
10 GMAC purports to have been the assignee of HSBC's interest in the Note and Deed, seek to
11 use their agent, ETS, to collect a paid-off mortgage payments, collect on the Trustee's Sale,
12 and engage in other unlawful collection practices.

13 83. On information and belief, HSBC did not have a perfected security interest in the
14 Plaintiffs' Note such that they can enforce Plaintiffs' obligation, collect on the debt, or transfer
15 its interest to GMAC.

16 84. Plaintiffs allege that GMAC falsely represented the status of their debt and
17 Defendants' ability to enforce the Plaintiffs' obligation on the debt, in which they have no
18 pecuniary, equitable, or legal interest.

19 85. The conduct described above by GMAC, was malicious because Defendants knew
20 that they were not acting on behalf of the current beneficiary of the Note and Mortgage.
21 However, despite such knowledge, Defendants continued to demand and collect Plaintiffs'
22 mortgage payments.

23 86. On information and belief, Plaintiffs allege that Defendants engaged and is
24 engaging in a pattern and practice of defrauding Plaintiffs, in that during the entire life of the
25 loan, Defendants failed to properly credit payments made, incorrectly calculate interest on the
26 account, failed to accurately debit fees, and added unnecessary foreclosure fees and attorney
27 fees, to the point that a purported \$856,811.25 in additional fees and debt was added onto the
28 original debt amount of \$2,000,000.00.

1 87. On information and belief, at all times material, Defendants had, and have, actual
2 knowledge that Plaintiffs' account had inaccurate statements, but that Plaintiffs would rely on
3 those statements based on Defendants' inaccurate account.

4 88. The foregoing acts and omission of each and every Defendant and their agents
5 constitute numerous and multiple violations of the FDCPA including, but not limited to, each
6 and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq., with
7 respect to the Plaintiffs.

8 89. Plaintiffs could not have reasonably known of the existence of a claim for violation
9 of 15 U.S.C. § 1692(e) because Defendant fraudulently concealed the fact that they were not
10 entitled to enforce Plaintiffs' debt obligation and that they were falsely requesting to the
11 Plaintiffs that they still owed a debt to GMAC.

12 90. As a result of each and every Defendants' violation of the FDCPA, Plaintiffs are
13 entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an
14 amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); reasonable attorneys' fees and
15 cost pursuant to 15 U.S.C. § 1692k(a)(3); and declaratory relief, from each an every Defendant
16 herein.

17 91. Plaintiffs suffered damages as a result of Defendants' fraud in the following ways:
18 (1) multiple parties may seek to enforce their debt obligation, if there is still one that exist; (2)
19 title to their home has been clouded and its salability has been rendered unmarketable, as any
20 buyer of the Plaintiffs' home will find themselves in legal limbo, unable to know whether they
21 can safely buy Plaintiffs' home or get title insurance; (3) Plaintiffs paid the wrong party for an
22 undetermined amount of time and overpaid in interest; (4) Plaintiffs are unable to determine if
23 they sent their mortgage payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and
24 Erlinda Abibas Aniel—credit score have been damages; (6) they expect significant funds to
25 cover the cost of attorneys' fees and related cost.

26 **THIRD CAUSE OF ACTION**
27 **Violation of RESPA**
28 **(Violation of 12 U.S.C. § 2605)**
(AGAINST ALL DEFENDANTS)

1 92. Paragraphs 1 through 91 and the paragraphs following this cause of action are
2 incorporated by reference as though fully set forth herein.

3 93. Plaintiffs' loan is a federally regulated mortgage loan and is subject to the federal
4 Real Estate Settlement Procedures Act and its implementing regulation, and the Dodd-Frank
5 Act.

6 94. On or around May 10, 2012, which was less than 30 days after receiving the notice
7 of debt validation, Plaintiff, Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified
8 mail, to the debt ETS claimed was owed to GMAC. Mrs. Aniel request a proper accounting of
9 the debt and the standing for which GMAC can demand that amount from the Plaintiffs.

10 95. On information and belief, ETS received the Debt Validation letter on or around
11 May 15, 2012.

12 96. The Debt Validation request contained information to enable ETS and GMAC to
13 identify the Plaintiffs' loan including the borrower's name, loan number, and property address.
14 Also, the debt validation request contained requests for information of the loan, specifically the
15 identity and contact information of the creditor of the Plaintiffs' Note, a complete loan history,
16 accumulated late fees and charges, and information about the validity of the debt purported to
17 be owed to GMAC.

18 97. On information and belief, ETS and GMAC never acknowledged receipt of the
19 Plaintiffs' Debt Validation letter within five (5) days of receipt of the letter, as required by
20 section 1463(c) of the Dodd-Frank Act.

21 98. Because the loan is subject to RESPA and the Dodd-Frank Act, all Defendants
22 were required to comply with section 1463 of the Dodd-Frank Act.

23 99. Defendants violated 12 U.S.C. § 2605 and are subject to statutory damages, civil
24 liability, penalties, attorneys' fees, and actual damage. 12 U.S.C. § 2605.

25 100. The actual pecuniary damages include, but are not limited to, the over calculation
26 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
27 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
28

1 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
2 in an amount to be proven at trial.

3 101. As a direct and proximate result of the violations of RESPA and Dodd-Frank Act
4 by ETS and GMAC, Plaintiffs have suffered actual pecuniary damages including but not
5 limited to statutory damages, civil liability, and attorneys' fees, in an amount to be proven at
6 trial.

7 102. As a result of Defendants' violation of 12 U.S.C. § 2605, RESPA, and the Dodd-
8 Frank Act, Plaintiffs have been damaged in the following ways: (1) multiple parties may seek
9 to enforce their debt obligation, if there is still one that exist; (2) title to their home has been
10 clouded and its salability has been rendered unmarketable, as any buyer of the Plaintiffs' home
11 will find themselves in legal limbo, unable to know whether they can safely buy Plaintiffs'
12 home or get title insurance; (3) Plaintiffs paid the wrong party for an undetermined amount of
13 time and overpaid in interest; (4) Plaintiffs are unable to determine if they sent their mortgage
14 payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
15 credit score have been damages; (6) they expect significant funds to cover the cost of
16 attorneys' fees and related cost.

17 **FOURTH CAUSE OF ACTION**
18 **Set Aside Trustee's and/or Cancel Trustee's Sale**
19 **(AGAINST ALL DEFENDANTS)**

20 103. Paragraphs 1 through 102 and the paragraphs following this cause of action are
21 incorporated by reference as though fully set forth herein.

22 104. Plaintiffs allege that do not owe any money on this debt and property. Any
23 money that was owed in the Deed was fully satisfied when the originator, MortgageIT, sold the
24 loan to unknown entities, which are currently fully satisfied of any money they paid.

25 105. Plaintiffs allege that they do not owe any money to any of the Defendants because
26 none of the Defendants have legal, equitable, or an enforceable right to collect payment from
27 the Plaintiffs.

28 106. Plaintiffs are not required to Tender because a tender amount would constitute a
reaffirmation of the debt, which Plaintiffs deny they have debt. A Tender is not required when

1 owner's action attacks the validity of the underlying debt because tender would constitute and
2 affirmation of the debt. *Sacci v. Mortgage Electronic Registration Systems, Inc.*, No. CV 11-
3 1658 AHM, 2011 WL 2533029 at *16 (C.D. Cal June 24, 2011) citing *Onofrio v. Rice*, 55 Cal.
4 App. 4th 413, 424 (1997).

5 107. The Trustee Sale conducted by ETS is improper for several reasons. Defendants
6 did not follow Cal. Civ. Code §2924. Under Cal Civ. Code § 2924(a)(1), only the trustee,
7 mortgagee, or beneficiary, or any of their authorized agents must first file a Notice of Default.
8 The beneficiary, trustee, mortgagee, or any of their authorized agents did not file the Notice of
9 Default that was recorded on April 27, 2012, in the County of San Mateo. Defendant, ETS,
10 falsely claimed to be the authorized agent for the beneficiary, GMAC, who claimed ownership
11 of the debt. In reality, GMAC had no interest in the loan because the Assignment from HSBC
12 to GMAC was VOID. Therefore, because the Notice of Default was not in compliance with
13 §2924(a)(1), the Trustee's Sale was also not in compliance with § 2924 et. seq., and must be
14 canceled and set aside by the Court.

15 108. The Trustee's Sale is also unlawful and must be set aside and canceled because
16 Defendant, ETS, does not have any legal right to be a Trustee.

17 109. Defendants' fraudulent acts in creating these foreclosure documents, using Robo-
18 Signers to blindly execute and record the documents, are also reasons why the Trustee's Sale
19 should never take place, be set aside, or canceled.

20 110. If none of the Defendants, who are attempting to foreclose the property, have any
21 legal interest in the Note and Deed, then the Court is within its power to set aside and cancel
22 the Trustee's Sale.

23 111. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such
24 further relief as is set forth below in the section captioned Prayer for Relief, which is by this
25 reference incorporated herein

26 112. In the alternative, even if Defendants can foreclose the property, they did not
27 follow proper procedure of California non-judicial law.
28

1 113. Plaintiffs allege that at times mentioned herein the Subject Property was their
2 owner-occupied residence and that Plaintiff was a member of the class of persons protected
3 under Civil Code §§ 2923.5 and 2924. Plaintiff alleges further that at all times mentioned
4 herein Defendants had a duty to comply with foreclosure avoidance and workout plan
5 requirements of Civil Code §2923.5.

6 114. Plaintiffs allege further that Civil Code § 2923.5 expressly required GMAC to
7 engage in certain communications and contacts, or attempt to engage in such communications
8 and contacts with Plaintiffs to help them avoid foreclosure on the Subject Property, and that
9 GMAC and ETS were required to conduct these communications and contacts prior to filing
10 the Notice of Default against the Plaintiffs.

11 115. Defendants falsely claimed that they contacted or attempted to contact Plaintiffs
12 in compliance with Civil Code § 2923.5 prior to filing the 2012 Notice of Default against the
13 Plaintiffs. Plaintiffs allege further that, at all times prior to the Defendants' filing of the initial
14 notice of default on or about April 23, 2012, Plaintiffs were fully available to meet with
15 GMAC or its authorized representative to assess Plaintiffs' financial condition and explore
16 options for Plaintiffs to avoid foreclosure.

17 116. Second, ETS was not properly substituted under California law. Plaintiffs allege
18 that no notice of the substitution was ever sent to any of the original beneficiary or any entity
19 that was entitled to receive notice of the Notice of Default. Under California Civil Procedure
20 Section 2934(a)(b):

21 "If the substitution is executed, but not recorded, prior to
22 or concurrently with the recording of the notice of default, the
23 beneficiary or beneficiaries or their authorized agents shall cause
24 notice of the substitution to be mailed prior to or concurrently with
25 the recording thereof, in the manner provided in Section 2924b, to
26 all persons to whom a copy of the notice of default would be
27 required to be mailed by the provisions of Section 2924b. An
28 affidavit shall be attached to the substitution that notice has been
given to those persons and in the manner required by this
subdivision."

ETS never sent any such notice of the substitution of trustee and did not attached any affidavit
of mailing in its recording of the Substitution of Trustee. The Substitution was also in

1 violation of the covenants under the Deed of Trust, where only the Lender may substituted the
2 Trustee and not the beneficiary. Under covenant 24 of the Deed of Trust, "[l]ender, at its
3 option, may from time to time appoint a successor trustee to any Trustee appointed hereunder b
4 an instrument executed and acknowledged by Lender and recorded in the office of the
5 Recorder of the country in which the Property is located." In this case, the Lender did not
6 substitute the Trustee.

7 117. The Court has a right to set aside or stay any Trustee's Sale that is in violation of
8 Cal. Civ. Code §§ 2923.5 and 2936a(b).

9 **FIFTH CAUSE OF ACTION**
10 **Declaratory Relief**
11 **(AS AGAINST ALL DEFENDANTS)**

12 118. Paragraphs 1 through 117 and the paragraphs following this cause of action are
13 incorporated by reference as though fully set forth herein.

14 119. Section 2201(a) of Title 28 of the United States Code states, "[i]n a case of actual
15 controversy within its jurisdiction...any court of the United States, upon the filling of an
16 appropriate pleading, may declare the rights and other legal relations of any interested party
17 seeking such declaration, whether or not further relief is or could be sought. Any such
18 declaration shall have the force and effect of a final judgment or decree and shall be reviewable
19 as such.

20 120. Plaintiffs allege that GMAC does not have a secured or unsecured legal,
21 equitable, or pecuniary interest in the lien evidence by the Deed of Trust and that is purported
22 assignment has no value and is VOID since the Deed of Trust has been paid off fully.

23 121. On February 2011, GMAC claimed they were assigned and transferred a secured
24 enforceable interest in, and perfected lien against the Plaintiffs' Note and Deed.

25 122. Thus, the competing allegations made by the Plaintiffs and the Defendants, above,
26 establish that a real and actual controversy exists as to the respective right of the parties to this
27 matter, including ownership of the property.

1 123. Plaintiffs request that the Court make a finding and issue appropriate orders
2 stating that none of the named Defendants or Doe Defendants, have any right or interest in
3 Plaintiffs' Note, Deed of Trust, or the subject Property which authorizes them, in fact or as
4 matter of law, to collect Plaintiffs' mortgage payments or enforce the terms of the Note or
Deed of Trust in any manner whatsoever.

5 124. Plaintiffs request that the Court declare that none of the Defendants are the
6 Beneficiary, Trustee, or Lender of the Plaintiffs' loan.

7 125. Plaintiffs will suffer prejudice if the Court does not determine the rights and
8 obligations of the parties because Plaintiffs will be denied the right to conduct discovery and
9 have Defendants' claims verified by a custodian of records who has personal knowledge of the
10 loan and all transactions related to it.

11 126. Due to the actual case and controversy regarding competing claims and
12 allegations, it is necessary that the Court declare the actual rights and obligation of the parties
13 and make a determination as to whether Defendants' claims against Plaintiffs are enforceable
14 and whether they are secured or unsecured by any right title, or interest in Plaintiffs' Property.

15 127. Furthermore, the conduct of Defendants, and/or one or more of the Doe
16 Defendants, and each of them, as herein described, was so malicious and contemptible that it
17 would be looked down upon and despised by ordinary people. Plaintiffs are therefore entitled
18 to punitive damages in an amount appropriate to punish Defendants and to deter other from
19 engaging in similar conduct.

20 **SIXTH CAUSE OF ACTION**
21 **Quiet Title**
(AGAINST ALL DEFENDANTS)

22 128. Paragraphs 1 through 127 and the paragraphs following this cause of action are
23 incorporated by reference as though fully set forth herein.

24 129. Plaintiffs, at all times relevant herein, were the owner and/or entitled to
25 possession of the property. The subject property is further described as the following "Legal
26 Description":

1 “Lot 15, as shown on that certain Map entitled, “TOBIN CLARK ESTATES UNIT
2 NO. TWO, SAN MATEO COUNTY, CALIFORNIA”, filed in the Office of the Recorder of
3 the County of San Mateo, State of California on June 25, 1976 in Book 91 of Maps at Pages 17
4 and 18. APN: 038-352-040”

5 130. Plaintiffs’ title to the property is Fee Simple.

6 131. Plaintiffs are credibly informed and believe that these non-real parties in interest
7 Defendants make some claim adverse to Plaintiffs. Defendant, GMAC, currently possess an
8 adverse interest in Plaintiffs’ subject property through a fraudulent Assignment of the Deed.
9 Defendant, ETS, currently possess an adverse interest in the subject property through a
10 fraudulent Substitution of Trustee. Their claimed interests in the Title of the Property create a
cloud on title in California. Quiet Title is the remaining option.

11 132. Plaintiffs seek a determination that Plaintiffs are the sole owners of the subject
12 property free from any adverse interest held by the Defendants, or anyone unknown entity
13 claiming an adverse interest in the subject property.

14 133. WHEREFORE, Plaintiffs PRAY that the Court orders that all adverse claims
15 against the subject property, commonly known as 75 Tobin Clark Drive, Hillsborough,
16 California, 94010, are quieted.

17 **SEVENTH CAUSE OF ACTION**
18 **Fraudulent Concealment**
(AGAINST ALL DEFENDANTS)

19 134. Paragraphs 1 through 133 and the paragraphs following this cause of action are
20 incorporated by reference as though fully set forth herein.

21 135. Defendants had exclusive knowledge not accessible to the Plaintiffs of material
22 facts pertaining to its foreclosure practices. Defendants are fully aware that they do not have a
23 legal, equitable, or enforceable interest in the Note and Deed. Yet, they continue to mislead
24 the Plaintiffs about the status of their debt, attempt to collect the debt, and to foreclose the
25 property.

1 136. ETS, willfully, with intent, in concert with the other Defendants, refuse to
2 disclose an accounting of the alleged debt that the Plaintiffs owe to GMAC. ETS refused to
3 disclose the address and location of the current Lender and the validity of the debt. ETS knows
4 that GMAC and HSBC do not and did not have a legal, equitable, and enforceable interest in
5 the Note and Deed, but has yet still filed a Notice of Default and attempted to collect the debt.

6 137. GMAC, willfully, with intent, in concert with the other Defendants, refused to
7 disclose that HSBC did not perfect its security interest in the Property. Instead, GMAC
8 continues to purport that Plaintiffs owe money to GMAC, and that GMAC is a Beneficiary
9 entitled to foreclose the property.

10 138. GMAC, willfully, with intent, in concert with the other Defendants, told the
11 Plaintiffs that they would be approved for a loan modification as long as they stopped making
12 payments on the mortgage because GMAC had authority to modify the loan, knowing that they
13 did not have any authority to modify the loan and that HSBC had no legal, equitable, or
14 enforceable interest in the Note and Deed.

15 139. Each and every Defendant knew that their actions were wrong and intended to
16 mislead the Plaintiffs. As described herein, there deception was essential to their overall plan
17 for unjust enrichment through the wrongful foreclosure of the property. Defendants stood to
18 receive an unjust enrichment without having any interest in the property.

19 140. As a proximate and actual result of the foregoing concealment by Defendants,
20 Plaintiffs are faced with an impending Trustee's Sale, and the potential lost of their property.
21 Should the foreclosure take place, Plaintiffs will have suffered grave damages by depriving
22 them use of their property, income from the property, depriving them access to equity lines of
23 credit, value from the property, and harm to their credit reports.

24 141. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs
25 damages arise from this Cause of Action include loss of equity in their property, costs and
26 expenses related to protecting their interest in the property, reduced credit score, as well as fees
27 and costs, including, without limitation, attorney's fees and costs.
28

1 142. The actual pecuniary damages include, but are not limited to, the over calculation
2 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
3 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
4 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
5 in an amount to be proven at trial.

6 143. As a direct and proximate result of the Defendants' Fraud, Plaintiffs have suffered
7 actual pecuniary damages including but not limited to statutory damages, civil liability, and
8 attorneys' fees, in an amount to be proven at trial.

9 144. As a result of Defendants' Fraud, Plaintiffs have been damaged in the following
10 ways: (1) multiple parties may seek to enforce their debt obligation, if there is still one that
11 exist; (2) title to their home has been clouded and its salability has been rendered
12 unmarketable, as any buyer of the Plaintiffs' home will find themselves in legal limbo, unable
13 to know whether they can safely buy Plaintiffs' home or get title insurance; (3) Plaintiffs paid
14 the wrong party for an undetermined amount of time and overpaid in interest; (4) Plaintiffs are
15 unable to determine if they sent their mortgage payments to the right party; (5) Plaintiffs—
16 Fermin Solis Aniel and Erlinda Abibas Aniel—credit score have been damages; (6) they expect
17 significant funds to cover the cost of attorneys' fees and related cost.

18 145. To this day, Defendants are under the false belief that they own the loan, which
19 was sold to an unknown investor years ago. Defendants acted outrageously and persistently
20 with actual malice in performing the acts alleged herein and continue to do so. Accordingly,
21 Plaintiffs are entitled to exemplary and punitive damages in a sum according to proof and to
22 such other relief as is set forth below in the section captioned Prayer for Relief, which is by this
23 reference incorporated herein.

24 **EIGHTH CAUSE OF ACTION**
25 **Violation of California Rosenthal Act**
26 **(As Against all Defendants)**

27 146. Plaintiffs incorporate by reference paragraphs 1-145 each and every allegation
28 set forth above and herein.

147. To establish a violation of the California Rosenthal Act:

1 (1) the plaintiffs are a natural person who is harmed by violations of the
2 California Rosenthal Act. Cal Civ. Code § 1788.2(g).

3 (2) involves a "debt", which means money, property or their equivalent which
4 is due or owing or alleged to be due or owing from a natural person to another person.
5 Cal Civ. Code § 1788.2(d). Here, the debt is a discharged mortgage loan.

6 (3) the defendant collecting the debt is a "debt collector", which is "any person
7 who, in the ordinary course of business, regularly, on behalf of himself or herself or
8 others, engages in debt collection." Cal Civ. Code § 1788.2(c) because they are not in
9 the lending business but rather in collecting on defaulted mortgage loans by
10 demanding inflated amounts or creating fraudulent documents in order to collect a
11 debt.

12 (4) the defendant has violated, by act or omission, a provision of the
13 California Rosenthal Act.

14 148. Based on information and belief, Plaintiffs allege that GMAC is a Debt
15 Collector. GMAC is in the business of servicing the loan, which includes receiving payments
16 and demanding payment from borrowers.

17 149. Based on information and belief, Plaintiffs allege that Defendant, ETS, in its
18 alleged role as an agent of the beneficiary, is a debt collector. Defendant, ETS is a debt
19 collector because they warned the Plaintiffs that they were a debt collector in the Notice of
20 Trustee's Sale. Defendant, ETS, is also a debt collector because their interest in the debt
21 occurred after the debt was purported in default.

22 150. Defendants violated the Act when in attempting to collect the debt they:

23 a. GMAC misrepresented to Plaintiffs the owner of the Note and the
24 Deed when it claimed that HSBC was the owner of the loan and subsequently GMAC was
25 the owner of the loan. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l).
26 Because, for reasons stated above, this action violates the FDCPA, this is also a violation of
27 Cal Civ. Code § 1788.17;
28

1 b. ETS falsely claimed Plaintiffs owed \$856,811.25 to GMAC. This is a
2 violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this
3 action violates the FDCPA, this is also a violation of Cal Civ. Code § 1788.17;

4 c. Defendants submitted and recorded fraudulent, fabricated and bogus
5 Notice of Default. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because,
6 for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ.
7 Code § 1788.17;

8 d. Defendants falsified the amount due, falsely claimed HSBC and later
9 GMAC was the owner of the loan, and refused to explain or breakdown the charges on the
10 account. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons
11 stated above, this action violates the FDCPA, this is also a violation of Cal Civ. Code §
12 1788.17;

13 e. Defendant attempting to enforce an interest in the property when they
14 had no legal, equitable, or enforceable interest in the property. See ¶ 39-46. This is a violation
15 of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this violates
16 the FDCPA, this is also a violation of Cal Civ. Code § 1788.17;

17 f. Making false, deceptive, or misleading representation or means in
18 connection with the collection of any debt. 15 U.S.C § 1692e:

19 g. Making false representations or using deceptive means to collect or
20 attempt to collect on any debt, U.S.C. § 1692e(10); and

21 h. Making unfair or using unconscionable means to collect or attempt to
22 collect any debt, 15 U.S.C. § 1692f.

23 151. Pursuant to California Civil Code §§ 1788.30 and 1788.17, Plaintiffs are entitled
24 to recover actual damages sustained as a result of Defendants for violations of the Rosenthal
25 Act. Such damages include, without limitation, monetary losses and damages, and emotional
26 distress suffered, which damages are in an amount to be proven at trial. In addition, pursuant
27 to Cal. Civil Code §§ 1788.30 and 1788.17, Plaintiffs are entitled to recover penalties of at
28 least \$1000.00 per violation as provided for in the act.

1 152. Pursuant to Cal. Civ. Code §§ 1788.30 and 1788.17, Plaintiffs are entitled to
2 recover all attorneys' fees, and cost incurred in the bringing of this action.

3 153. The actual pecuniary damages include, but are not limited to, the over calculation
4 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
5 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
6 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
7 in an amount to be proven at trial.

8 154. As a direct and proximate result of the violations of Rosenthal Act by ETS and
9 GMAC, Plaintiffs have suffered actual pecuniary damages including but not limited to
10 statutory damages, civil liability, and attorneys' fees, in an amount to be proven at trial.

11 155. As a result of Defendants' violation of the Rosenthal Act, Plaintiffs have been
12 damaged in the following ways: (1) multiple parties may seek to enforce their debt obligation,
13 if there is still one that exist; (2) title to their home has been clouded and its salability has been
14 rendered unmarketable, as any buyer of the Plaintiffs' home will find themselves in legal
15 limbo, unable to know whether they can safely buy Plaintiffs' home or get title insurance; (3)
16 Plaintiffs paid the wrong party for an undetermined amount of time and overpaid in interest;
17 (4) Plaintiffs are unable to determine if they sent their mortgage payments to the right party;
18 (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—credit score have been damages;
19 (6) they expect significant funds to cover the cost of attorneys' fees and related cost.

20 **NINTH CAUSE OF ACTION**
21 **Violation of the Unfair Competition Law**
22 **(Cal. Bus. & Prof. Code §§ 17200 et. sq.)**
23 **(AGAINST ALL DEFENDANTS)**

24 156. Paragraphs 1 through 155 and the paragraphs following this cause of action are
25 incorporated by reference as though fully set forth herein.

26 157. Defendants have engaged in unfair, unlawful, and fraudulent business practices in
27 the State of California, as set forth above.

28 158. The California Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200 et. Seq.,
("UCL") defines unfair competition to include any "unlawful" or "deceptive" business act or

1 practice. The UCL authorizes this Court to issue whatever orders or judgment may be
2 necessary to prevent unfair or unlawful practices, or to "restore to any person-in-interest any
3 money or Property, real or personal, which may have been acquired by means of such unfair
4 competition" *Id.*

5 159. GMAC's conduct, for the reasons stated herein, is in direct violation of 15 U.S.C.
6 § 1692, et seq., Cal Civ. Code §§ 2924 et seq., and 2923.5.

7 160. ETS' conduct, for the reasons stated herein, is in direct violation of 12 U.S.C. §
8 2605, Cal Civ. Code §§ 2924 et seq., and 2934a(b).

9 161. Defendants are in direct violation of Cal. Penal Code § 532(f)(a)(4).

10 162. Defendants failed to disclose the principal for which documents were being
11 executed and recorded in violation of Cal. Civ. Code section 1095.

12 163. Also, All of the Defendants' acts and practices alleged herein are unlawful
13 business practices for the following reasons, independent of any of the other following reasons:
14 (1) because Defendants do not have any legal, equitable, or enforceable interest the Note or the
15 Deed, (2) because Defendants cannot surmount their burden of demonstrating they own the
16 Note or have a power of attorney with respect thereto, (3) Defendants used Robo-Signers to
17 execute purported foreclosure documents, (4) GMAC falsely claiming to be the owner of the
18 Loan (5) failing to respond to Plaintiffs' debt validation request after receiving the Notice of
19 Default; (6) accepting and demanding payments from debts that were non-existent; (7) acted as
20 beneficiary without the legal authority to do so.

21 164. Defendants facilitated, aided, and abetted the illegal, deceptive, and unlawful
22 enforcement of Plaintiffs' Note and Deed and engaged in other illegal debt collection activities.

23 165. GMAC, in its role as servicer, had been acting in a manner to mislead Plaintiffs
24 into believe HSBC was the owner of the loan and subsequently GMAC was the owner of the
25 loan.

26 166. As alleged herein, Plaintiffs' Note was not properly transferred to HSBC, who
27 sought to foreclose the property, collect the debt, and later transferred its interest to GMAC, in
28 order for GMAC to collect on the debt.

1 167. On information and belief, HSBC and GMAC did not and do not have a perfected
2 security interest in the Plaintiffs' Note such they can enforce Plaintiffs' obligation and/or
3 foreclose the property.

4 168. On information and belief, ETS refused to disclose what lien they are foreclosing
5 the subject property. In the Notice of Sale, ETS warns potential bidders that they may or may
6 not be bidding on a first or second lien and not the subject property, and that the winning
bidder may suffer legal consequences in bidding on the lien.

7 169. Defendants willfully, with knowledge of the wrongdoing, maliciously executed
8 and recorded foreclosure documents in order to wrongfully foreclose the property. Defendants
9 are merely debt collectors attempting to collect a debt. Defendants, fully verse in California
10 non-judicial laws, take advantage of the lack of proof required by non-judicial foreclosures by
11 establishing these practices. This conduct was malicious because Defendants knew that they
12 were not acting on behalf of the current beneficiary of the Note and Deed. However, despite
13 such knowledge, Defendants continued to make demands for payment.

14 170. As more fully described above, Defendants' acts and practices are unlawful. This
15 conduct is ongoing and continues to this date.

16 171. As a result, Plaintiffs, along with millions of homeowners, suffer the
17 consequences of losing their homes to entities, who did not put a single dollar into the
18 property. Plaintiffs' lose irreplaceable value in their property, and may have to relocate and
19 lose their home as a result of these practices. Based on information and beliefs, Defendants'
20 benefits in their wrongful conduct does not come close to outweighing the prejudice suffered
21 by the Plaintiffs and consumers in California. This conduct is ongoing and continues to this
date.

22 172. Accordingly, Plaintiffs are entitled to exemplary and punitive damages in a sum
23 according to proof and to such other relief as is set forth below in the section captioned Prayer
24 for Relief, which is by this reference incorporated herein.

25 173. Plaintiffs are entitled to restitution pursuant to UCL § 17203. Defendants violated
26 several laws including UCL § 17200 et seq. and must be required to disgorge all profits related
27
28

1 to their unfair, unlawful, and deceptive business practices. Defendants have been unjustly
2 enriched, by collecting payments that they are not entitle to, and should be required to make
3 restitution to the Plaintiffs and other California consumers who have bee harmed, and/or be
4 enjoined from continuing in such practices pursuant to Cal. Bus. Prof. Code §§ 17203 and
5 17204.

6 174. As a direct and proximate cause of the actions of the Defendants, and each of
7 them, state above, Plaintiffs were injured in that a cloud has been placed upon the title to the
8 Plaintiffs' Property and Defendants have failed to remove this from Plaintiffs' title.

9 175. Plaintiffs request the Court to issue an order compelling GMAC, ETS, and any
10 other Defendant claiming an interest in and to the Subject Property to take any and all action
11 necessary to remove the cloud they have placed upon this title and an order enjoining such
12 Defendants from taking such action again in the future.

13 176. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover
14 their reasonable attorney's fees, cost, and expenses incurred in bringing this action.

15 177. As a result of Defendants' violations of Cal. Bus. and Prof. Code section 17200 et
16 seq., Plaintiffs have been damaged in the following ways: (1) multiple parties may seek to
17 enforce their debt obligation, if there is still one that exist; (2) title to their home has been
18 clouded and its salability has been rendered unmarketable, as any buyer of the Plaintiffs' home
19 will find themselves in legal limbo, unable to know whether they can safely buy Plaintiffs'
20 home or get title insurance; (3) Plaintiffs paid the wrong party for an undetermined amount of
21 time and overpaid in interest; (4) Plaintiffs are unable to determine if they sent their mortgage
22 payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
23 credit score have been damages; (6) they expect significant funds to cover the cost of
24 attorneys' fees and related cost.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as
27 follows:
28

1 1. General, special, compensatory, and exemplary damages according to proof but
2 no less than \$6,000,000.00, against all Defendants

3 2. Statutory relief according to proof.

4 3. Restitution relief according to proof.

5 4. Temporary, preliminary, and permanent injunctive relief restraining Defendants,
6 their agents, or employees from continuing or initiating any action against the Property and
7 enjoining Defendants, their agents, or employees from doing during the pendency of this
8 matter.

9 5. On all causes of action, for cost of suit herein;

10 6. On all causes of action, for pre-judgment and post-judgment interest;

11 7. On all causes of action for which attorney's fees may be awarded pursuant to
12 statute, or otherwise, reasonable attorney's fees;

13 8. For declaratory judgment finding that Defendant do not have any legally
14 cognizable rights as to Plaintiffs, the Subject Property, the Note, the Deed, or any other matter
15 based on contract or any of the documents prepared by Defendants, tenders to and executed by
16 Plaintiffs;

17 9. For an order compelling Defendants to remove any instrument, including the
18 Assignment of the Deed, which does or could not be construed as constituting a cloud upon
19 Plaintiffs' title to the property; and

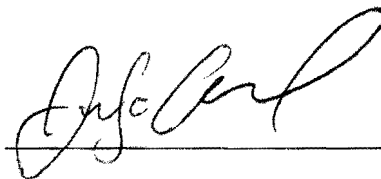
20 10. On all causes of action, for such other and further relief as this Court may deem
21 just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs—Fermin Solis Aniel, Erlinda Abibas Aniel, and Marc Jason Aniel—hereby
24 demand a trial by jury on all claims.

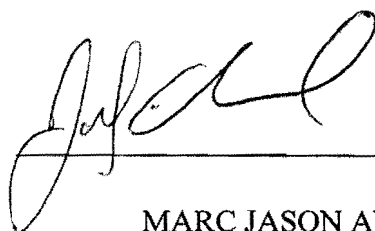
25 Dated: August 8, 2012

1 LAW OFFICES OF MARC JASON ANIEL

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3
4 

5 MARC JASON ANIEL

6 Attorney for Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel

7
8
9
10 

11 MARC JASON ANIEL

12 Plaintiff in Pro Per

Verification

The undersigned, for herself declares:

I am one of the Plaintiffs in the above-entitled action. I have read the forgoing Complaint, and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as those matter which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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


8-8-12 
ERLINDA ABIBAS ANIEL

Table of Contents

Exhibit	# of Pages
A. Deed of Trust	15
B. Notice of Default 2008	2
C. Substitution of Trustee 2008	1
D. Notice of Trustee Sale 2009	1
E. Assignment of the Deed 2009	1
F. Assignment of the Deed 2011	1
G. Notice of Recession 2011	1
H. Notice of Default 2012	2
I. Substitution of Trustee 2012	1
J. Debt Validation Notice	1
K. Notice of Trustee's Sale 2012	2

EXHIBIT “ A “

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 53562

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

9565875
[Space Above This Line for Recording Data]

MIN: 137 8632

2007-088561

01:24pm 06/08/07 DT Fee: 67.00

Count of pages 21

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



DEED OF TRUST

21 p 2

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 JUNE 4, 2007 together with all Riders to this document.

(B) "Borrower" is

FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

MORTGAGEIT, INC.

Lender is a CORPORATION

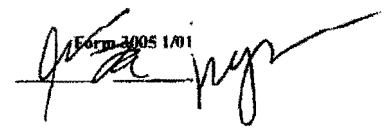
organized and existing under the laws of NEW YORK

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)

CA71 : 07/01

(Page 1)

Form 3005 1/01



1137

Lender's address is
33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. ~~MERS is the beneficiary under this Security Instrument.~~ MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 4, 2007

The Note states that Borrower owes Lender
TWO MILLION AND NO / 100

Dollars (U.S. \$ 2,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037

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

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

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

<input checked="" 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"/> Biweekly Payment Rider
<input type="checkbox"/> 1-4 Family Rider		
<input type="checkbox"/> Other(s) [specify]		

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

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

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

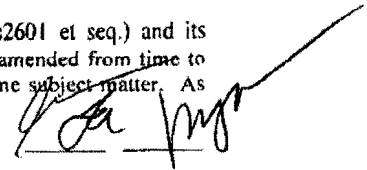
(M) "Escrow Items" means those items that are described in Section 3.

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As



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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

of **SAN MATEO**

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. 038-352-040

which currently has the address of **75 TOBIN CLARK DRIVE**

[Street]

HILLSBOROUGH 060326 0607A

[City]

, California

94010

[Zip Code]

("Property Address"):

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

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

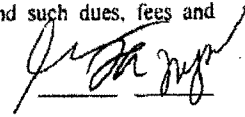
Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and



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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

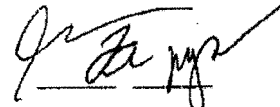
The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such



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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

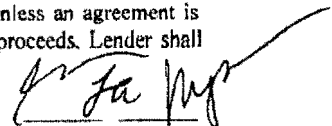
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall



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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

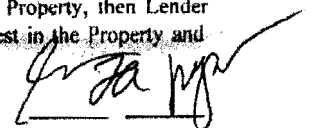
6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and



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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.

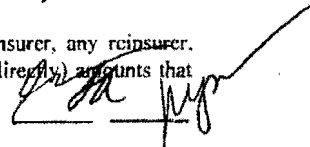
If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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.

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



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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

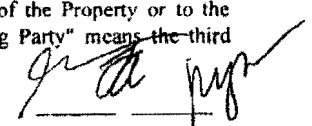
If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third



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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

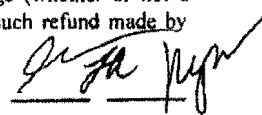
12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower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

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

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

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

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



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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

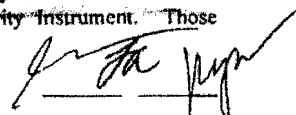
17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those



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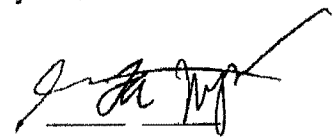
conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not



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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

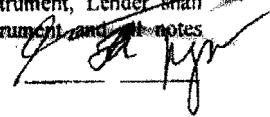
If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes.

CA83: 07/01

(Page 13)



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

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

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

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.

BORROWERS:



ERLINDA ANIEL (Seal)
- Borrower



FERMIN ANIEL (Seal)
- Borrower



MARCO ANIEL (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF San Mateo

On June 4, 2007 before me, Carolyn Chan, Notary Public
personally appeared
ERLINDA ANIEL AND FERMIN ANIEL AND MARC JASON ANIEL

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

WITNESS my hand and official seal.




 (Seal)
Carolyn Chan

EXHIBIT “ B ”

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

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

2008-108477

09:04am 09/29/08 ND Fee: 12.00

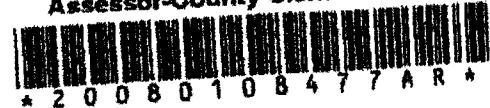
Count of pages 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



TS No. : GM-164602-C Loan No.: 3492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$29,905.26 as of 9/25/2008, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

C/O ETS Services, LLC

2255 North Ontario Street, Suite 400

Burbank, California 91504-3120

(818) 260-1600 phone

TS NO.: GM-164602-C

LOAN NO.: [REDACTED] 3492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 6/4/2007, executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary, recorded 6/8/2007, as Instrument No. 2007-088561, in Book , Page , of Official Records in the Office of the Recorder of San Mateo County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including ONE NOTE FOR THE ORIGINAL sum of \$2,000,000.00 ; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 9/25/2008

ETS Services, LLC AS AGENT FOR
BENEFICIARY

BY: Mardros

Anabel Mardros
TRUSTEE SALE OFFICER

EXHIBIT “ C “

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

2008-108476

09:04am 09/29/08 ST Fee: 9.00

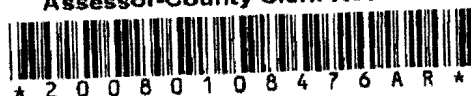
Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



TS NO : GM-164602-C
LOAN NO : 3492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 6/4/2007 and recorded on 6/8/2007 as Instrument No. 2007-088561, in Book , Page of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated:- 9/25/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.


Rosalie Solano, ASSISTANT SECRETARY

State of California } ss.
County of Los Angeles }

On 9/25/2008 before me, Christine Gomez-Schwab Notary Public, personally appeared Rosalie Solano who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature


Christine Gomez-Schwab

(Seal)



EXHIBIT “ D “

23
FIRST AMERICAN TITLE COMPANY
RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. GM-164602-C
Loan No. 3492
3875

2009-010000
09:05am 01/02/09 NT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



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SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 8/4/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Recorded 6/8/2007 as Instrument No. 2007-088561 in Book , page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 1/26/2009 at 1:00 PM

Place of Sale: **At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California**

Property Address is purported to be: **75 TOBIN CLARK DRIVE
HILLSBOROUGH, California 94010-0000**

APN #: 038-352-040

The total amount secured by said instrument as of the time of initial publication of this notice is ~~\$2,207,000.00~~ which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Date: 12/30/2008

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
Sale Line: 714-730-2727


Christine Gomez-Schwab, TRUSTEE SALE OFFICER

EXHIBIT “ E ”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
RECORDING REQUESTED BY:

Mortgage Electronic Registration Systems, Inc.,
solely as nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933

2009-125757

09:34am 09/21/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



4263507

APN: 038-352-040

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest under that certain Deed of Trust dated June 4, 2007, executed by Fermin Aniel, and Erlinda Aniel, Husband and Wife and Marc Jason Aniel, A Single man, all as joint tenants, to Fidelity National Title as trustee, for Mortgage Electronic Registration Systems, Inc., solely as nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007008561, on June 8, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 8-24-09

Mortgage Electronic Registration Systems, Inc., solely
as nominee for Mortgageit, Inc.

By: Genuine Guarantee

Its: James James ASSISTANT SECRETARY

State of PA

County of Montgomery

On 8/24/09

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

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

WITNESS my hand and official seal.

Zahrah Y Sweet
Notary Public

(This Area for Official Notary Seal)

NOTARIAL SEAL
ZAHRAH Y SWEET
Notary Public
UPPER DUBLIN TWP, MONTGOMERY CNTY
My Commission Expires Mar 7, 2013

ATTACHED TO SP. Note.

EXHIBIT “ F “

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

Requested and Prepared by:
ETS Services, LLC

When Recorded Mail To:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91604-3120

2011-016800

11:18 am 02/09/11 AT Fee: 15.00
Count of Pages 1
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder



Loan No.: 88492
TS NO: GM-164602-C

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to:

GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION

all beneficial interest under that certain Deed of Trust dated: 6/4/2007 executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor(s), to FIDELITY NATIONAL TITLE, as Trustee, and recorded as Instrument No. 2007-088561, on 6/8/2007, in Book XX, Page XX of Official Records, in the office of the County Recorder of San Mateo County, California together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

DATE: February 1, 2011

HSBC Bank USA, National Association as Trustee
for DALT2007-OA5

Mira Smoot
Mira Smoot
Authorized Officer

State of Pennsylvania) ss.
County of Montgomery)

On FEB 01 2011 before me, Mary Lynch Notary Public, personally appeared Mira Smoot who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Mary Lynch (Seal)

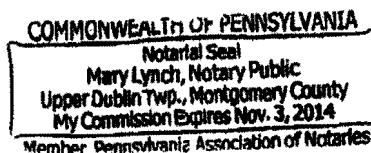


EXHIBIT “ G “

2011-074586

2:00 pm 07/01/11 NR Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120

Loan No.: [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. No.: GM-164602-C

038-352-040

NOTICE OF RESCISSION OF NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is duly appointed Trustee under a Deed of Trust dated **06/04/2007**, executed by ***FERMIN ANIEL* AND *ERLINDA ANIEL***, HUSBAND AND WIFE AND ***MARC JASON ANIEL***, A SINGLE MAN, ALL AS **JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGEIT, INC.**, as Beneficiary, recorded **06/08/2007**, as Instrument No. **2007-088561**, in book **XX**, page **XX**, of Official Records in the Office of the Recorder of **San Mateo** County, California describing land therein as more fully described on the above referenced deed of trust.

said obligations including one note for the sum of **\$2,000,000.00**.

Whereas, the present beneficiary under that certain Deed of Trust herein above described, heretofore delivered to the Trustee thereunder written Declaration of Default and Demand for Sale; and Whereas, Notice was heretofore given of breach of obligations for which said Deed of Trust is security and of election to cause to be sold the property therein described; and Whereas, a Notice of Default was recorded on the day and in the book and page set forth below:

Notice was recorded on **09/29/2008** in the office of the Recorder of **San Mateo** County, California, Instrument No. **2008-108477**, in Book **I**, of Official Records.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN that the present Beneficiary and/or the Trustee, does hereby rescind, cancel and withdraw said Declaration of Default and Demand for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default--past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall nowise jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.

Dated: Jun 27, 2011

ETS Services, LLC

By: [Signature]
Lizeth Chavez, TRUSTEE SALE OFFICER

EXHIBIT “ H ”

27

2012-058861

10:33 am 04/27/12 ND Fee: 18.00

Count of Pages 2

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 3 9 8 0 5 0 *

RECORDING REQUESTED BY:
FIRST AMERICAN Title

WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC
dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
APN: 038-352-040-0

TS No. : CA1200053786

Loan No.: 3492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$516,041.70 as of Apr 21, 2012, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation).
C/O Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932 phone

2p/ac

TS NO.: CA1200053786

LOAN NO.: [REDACTED] 3492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **06/04/2007**, executed by **FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC.**, as beneficiary, recorded **06/08/2007**, as Instrument No. **2007-088561**, in Book **XX**, Page **XX**, of Official Records in the Office of the Recorder of **San Mateo County, California** describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$2,000,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent Installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5

Dated: Apr 21, 2012

ETS Services, LLC as Agent for Beneficiary



BY: _____

Dee Ortega
TRUSTEE SALE OFFICER

EXHIBIT “I”

RECORDING REQUESTED BY:

FIRST AMERICAN Title

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

2012-058860

10:33 am 04/27/12 ST Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



TS NO : CA1200053786
LOAN NO : 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC. was the original Beneficiary under that certain Deed of Trust dated 06/04/2007 and recorded on 06/08/2007 as Instrument No. 2007-068561, in Book XX, Page XX of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 4-5-12

GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

Marcell G. Pace

Marcell G. Pace
Authorized Officer

State of **Pennsylvania**
County of **Montgomery**

On **April 5, 2012**
Marcell G. Pace

} ss. **Christine Morales**

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

Notary Public, personally appeared

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

WITNESS my hand and official seal.

Signature *Christine Morales* (Seal)
Christine Morales

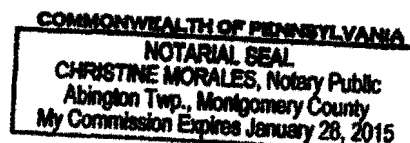


EXHIBIT “J”

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

Date: Apr 30, 2012

T.S. Number: CA1200053786

Loan Number: [REDACTED] 8492

DEBT VALIDATION NOTICE

1. The enclosed document relates to a debt owed to the current creditor:
GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

You may send us a written request for the name and address of the original creditor, if different from the current creditor, and we will obtain and mail the information to you.

2. As of 04/21/2012, the total delinquency owed was \$516,041.70, but this amount will increase until the delinquency has been fully cured.
3. As of 04/30/2012, the amount required to pay the entire debt in full was \$2,117,458.81, but this amount will increase daily until the debt has been fully paid.
4. You may dispute the validity of this debt, or any portion thereof, within thirty (30) days after receiving this notice. Otherwise, we will assume that the debt is valid.
5. If you notify us in writing that you dispute all or any portion of this debt within thirty (30) days after receiving this notice, we will obtain and mail to you verification of the debt, or a copy of any judgement against you.

WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION
WE OBTAIN WILL BE USED FOR THAT PURPOSE



EXHIBIT “K”

AND WHEN RECORDED MAIL TO:

Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120

T.S. No. **CA1200053786**

Loan No. **3492**

Insurer No. **4254**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 06/04/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Recorded **06/08/2007** as Instrument No. **2007-088561** in Book **XX**, page **XX** of Official Records in the office of the Recorder of **San Mateo** County, California

Date of Sale: **08/27/2012** at **01:00 P.M.**

Place of Sale: **At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, CA 94061**

Property Address is purported to be: **75 TOBIN CLARK DRIVE**
HILLSBOROUGH, CA 94010

APN #: **038-352-040-0**

The total amount secured by said instrument as of the time of initial publication of this notice is **\$2,856,811.25**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.



NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 714-730-2727 or visit this Internet Web site address www.lpsasap.com for information regarding the sale of this property, using the file number assigned to this case file number CA1200053786. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

Date: 07/27/2012

Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
Sale Line: 714-730-2727

Ileanna Petersen, TRUSTEE SALE OFFICER

Exhibit C

Estiva Diligence Response

RESCAP

JUL 11 2013

To: _____
By: KT

MORRISON | FOERSTER

Claim Information

Claim Number	112
Basis of Claim Explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you must provide copies of any and all documentation that you believe supports the basis for your claim.	<i>See attached documents and EXplanations.</i>

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number: [REDACTED] <i>1440</i> , [REDACTED] <i>4814</i> and [REDACTED] <i>9056</i>		
Address of property related to the above loan number: <i>801 Foothill Dr. San Mateo</i>		
City: <i>San Mateo</i>	State: <i>CA</i>	ZIP Code: <i>94402</i>

Additional resources may be found at - <http://www.kccllc.net/rescap>

Residential Capital, LLC P.O. Box 385220 Bloomington, MN 55438

Claim Number: 112
Erinda Abibas Aniel
Type: POC

Claim #112 Date Filed: 6/19/2012

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM						
Name of Debtor: EXECUTIVE TRUSTEE SERVICES, LLC	Case Number: 12-12028 (MG)	RECEIVED JUN 19 2012 KURTZMAN CARSON CONSULTANTS						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.								
Name of Creditor (the person or other entity to whom the debtor owes money or property): ERLUNDA ABIBAS ANIEL		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____						
Name and address where notices should be sent: 75 Tobin Clark Dr. Hillsborough CA 94010 Telephone number: 650-284-6417 email: _____ <input checked="" type="checkbox"/> Date Stamped Copy Returned <input type="checkbox"/> No self addressed stamped envelope <input type="checkbox"/> No copy to return								
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.						
1. Amount of Claim as of Date Case Filed: \$ 1,085,000.00 If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
2. Basis for Claim: <u>Pending Lawsuit</u> (See instruction #2)								
3. Last four digits of any number by which creditor identifies debtor: 8943	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)						
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ 1,075,000.00 Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ 10,000.00 Basis for perfection: <u>Litigation Expenses</u> Amount of Secured Claim: \$ _____ Amount Unsecured: \$ 10,000.00						
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <table border="0"><tr><td><input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).</td><td><input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier -- 11 U.S.C. § 507 (a)(4).</td><td><input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. § 507 (a)(5).</td></tr><tr><td><input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507 (a)(7).</td><td><input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. § 507 (a)(8).</td><td><input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).</td></tr></table> *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier -- 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier -- 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. § 507 (a)(5).						
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).						
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								



12120281206190000000000001

B 10 (Official Form 10) (12/11)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

JUN 19 2012

8. Signature: (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

☒ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Eriinda Abibas Aniel

Title:

Company:

Address and telephone number (if different from notice address above):

75 Tobin Clark Dr.
Hillsborough, CA 94010

Telephone number 650-284-6417 email:

(Signature)

(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Attachment

Proof of Claim #112 and #114

The following is a summary of the Creditor's claim against the Debtors and the basis of Creditor's Proof of Claim, originally submitted with the Proof of Claim No. 112.

Fraudulent Documentation

Trustee's Deed Upon Sale recorded on April 21, 2011. I disputed the legitimacy of the Trustee's Deed Upon Sale, recorded on April 21, 2011, because it was a fabricated recorded document. Also, I dispute the Grant Deed recorded on March 29, 2011, because it was a fabricated recorded document. Scott Buskirk, a purported authorized officer of GMAC Mortgage, LLC, as attorney in fact, did not have the authority of HSBC Bank USA National Association, as Trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2004-OA3, who purported to have acquired title as HSBC Bank, NA as Trustee of Series 2007-OA3, because there was no record in the County of San Mateo, California, that Scott Buskirk was given Power of Attorney by HSBC Bank USA, as trustee of the certain trust, authorizing him to execute and record a Grant Deed of the property to Julian Basler and Vanessa Love, as joint tenants to the property. This resulted in a defect of title.

Securitization

Through my intensive research of GMAC Mortgages, LLC, and Executive Trust Services (the "Debtors"), the debtors committed enormous amounts of misrepresentations to the homeowners and to the investors, who bought securitized mortgages under different trusts, including the trust that purports to own my property. HSBC Bank, NA, as Trustee of Series 2007-OA3 is not even the correct trust because the name of the trust that was disclosed to the certificate holders was "DEUTSCHE ALT-A SECURITIES INC. Mortgage Pass-Through Certificates Series 2007-OA3." Wells Fargo was the Master Servicer. HSBC was the trustee of the certificate holders and investors of this trust. GMAC was the servicer. ETS was a purported "substituted trustee" after a loan in the Trust was in default.

I have pieced together this complicity of securitized mortgages and it is not that complicated at all. From the very beginning of these structured schemes were designed to FAIL. The banks sought Borrowers, like us, for the promissory notes and deed of trusts in order to create a supplemental prospectus and the parameters of what kind of target areas, like individual characteristics, ZIP codes, type of the property, and many more categories, which were needed to complete their supplemental prospectus. Once those targets were met, the banks looked for help from mortgage brokers to search the borrowers, who were looking to get a loan. The Wall Street Bankers funded the loans through their subsidiaries in order to target their Pooling and Servicing Agreement, which stated that all loans that belong to the trust should be transferred within 90 days after the closing date of Pooling and Servicing Agreement.

I have read the Prospectus and the PSA of this trust. According to the PSA, there were approximately 2,000 loans under the trust. GMAC was the Servicer of the loans and Wells Fargo Bank was the master servicer. With my recent research and investigation, I found out that the loan number under the named trust, "Deutsche ALT-A Securities, Inc. Mortgage Pass-Through Certificates Series 2007-OA3," had either been altered or changed from the original loans documents. The trust number is listed as loan No. 115304814. That number is different than the loan number on my original loan documents. GMAC, as the loan servicer, who accepted payments used another different loan number of "0713271440." GMAC used the same number in all foreclosure documents. The origination of the refinancing documents has the original loan number of "40769056," with Mortgagelt, Inc., as our original Lender. By altering and changing my loan number from original loan number to two different loan numbers suggested that the Debtors intentionally and with malice separated the note and deed of trust, sold the note to the trust with different loan numbers, assumed to possess a beneficial interest on the deed of trust with different loan number, and collected mortgage payments under a different loan number. GMAC also advised homeowners to default on their payments in order to be qualified for a loan modification so GMAC can place a "force

placed insurance" in the mortgage billing account in order to increase the debt, resulting to wrongfully foreclosing the property. GMAC used their subsidiaries, like ETS, to act as a "substituted trustee" on the deed of trust. In reality, ETS is a debt collector, collecting on defaulted loans and collecting on discharged and charged off loans. ETS collected on second loans, through foreclosures, when they had no authority to do so.

Debtors have no authority to alter, change, and/or fabricate multiple loan numbers for the same borrower's note and deed of trust. Debtors used employees who had no actual knowledge of the mortgagors. This was a violation of TILA and RESPA regulations.

The property was foreclosed on April 21, 2011. However, the loan number was still disclosed in the Deutsche Alt-A Trust Remittance Report as "liquidation" as recent as March 29, 2012. See www.ctslink.com. Therefore, the Trust still continues to purport acuminating realized losses even when GMAC received a windfall from this foreclosure sale.

GMAC and ETS Continues to Violate State Laws, Federal Laws, and the Consent Order.

Debtor admitted on its bankruptcy filing that most of their lawsuits from homeowners are based on wrongful foreclosures, fraud, unfair competition laws, and other causes of action because the Debtors used their name as the creditor when they wrongfully foreclosed the property. Because of this fraudulent representation, the Debtors created ROBO-signers like the infamous, Jeffrey Stephan, who admitted to have signed thousands of assignments of deed without any personal knowledge of the truthfulness of the contents of the documents.

Damages done by GMAC and ETS

Because of this fraudulent representation, I lost my property to the Debtors, who had no authority to foreclose the property. Debtors claim of interest in the property was by way of fabricated documents signed by employees of GMAC and ETS, who had no actual knowledge of the documents they were executing.

Because of this fraud, I suffered health problems such as high blood pressure, diabetes, anxiety, depression, and an unexpected retirement of my husband, who lost all hope enjoying his retirement investment in real estate. I am now estranged from my husband. I also experienced an unexplained gain of weight because of a heavy burden placed on me after discovering the fraudulent nature, committed by the Debtors, that my property was defaulted and foreclosed.

Basis for the Claimed Amount

The property at 801 Foothill Dr. San Mateo, California was sold for one million seventy five thousand dollars (\$1,075,000.00) last March 28, 2012, even though the value of the property was around 1.2 million dollars.

My proof of claim supports the amount claimed based on the amount Debtors profited from the wrongful foreclosure of the property which is \$1,075,000.00 plus another \$10,000.00 for continued expenses I incur during the pendency of my case at the California Court of Appeal.

The proof of claim No. 114 in the amount of \$ 1,075,000.00 are for damages done by GMAC for conniving with ETS to foreclose the property using defective and fabricated documentation in violation of California foreclosure laws and in violation of Consent Order, where Debtors promised to correct their mistakes in handling their documentations. Debtor continues to violate the Consent Order.

Conclusion

There will be a future litigation against Wells Fargo and the buyer of the property for failure to monitor the debtors servicing, debt collecting, and foreclosure conduct if this proof of claim will be expunge because Debtors documents were defective and fabricated, which resulted in a cloud of title. The title of the property is currently defective and void on its face. I am the true and legitimate owner of the property. Therefore, GMAC and ETS are civilly liable for the damages they have caused my husband, my family, and me.

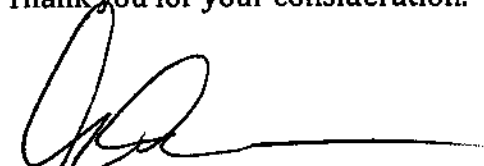
My case is still pending in California Court of Appeals. The California Court of Appeal has stayed the proceeding under the request of the Debtor.

Supporting Documentation

The following are attached documents that support the claims made in this attachment:

- a. Attachment 1 of the Creditor's proof of claim
- b. Trustee's deed upon sale
- c. Grant deed
- d. Copy of notice of the California Court of Appeals
- e. Appellant's Opening Brief
- f. Appellant's Reply Brief to Respondent, Pite Duncan
- g. Appellant's Reply Brief to Respondents, GMAC Mortgage, LLC, ETS Services, LLC, HSBC Bank as Trustee for DALT 2007-OA3 and Mortgage Electronic Registration Systems, Inc.
- h. Respondent's, Pite Duncan, Response Brief
- i. Response by Respondent ETS, GMAC, and MERS
- j. Appellant's Appendix to its Opening Brief Volume 1
- k. Appellant's Appendix to its Opening Brief Volume 2

Thank you for your consideration.



Erlinda Aniel
Creditor
75 Tobin Clark Drive
Hillsborough, CA 94010
650-284-6417

Dated: July 7, 2013

A

Claim # 112 & 114

ATTACHMENT 1

PROOF OF CLAIM

This Proof of Claim is being filed concurrently with the Proof of Claim against debtor, GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION (case number: 12-12032 (MG)). EXECUTIVE TRUSTEE SERVICES, LLC and GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION are jointly and severely liable for the amount recoverable in the pending lawsuit.

FERMIN SOLIS ANIEL AND ERLINDA ABIBAS ANIEL, AS PLAINTIFF, PRO
PER, AGAINST ETS SERVICES LLC, GMAC MORTGAGE, LLC F/K/A GMAC
MORTGAGE CORPORATION AND GMAC MORTGAGE, HSBC BANK U.S.A. AS
TRUSTEE FOR DALI 2007-A03, MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; PITE DUNCAN, LLP AND DOES 1-50 INCLUSIVE

Aniel et. al. vs. ETS SERVICES LLC et. al.,
Superior Court of the State of California, County of San Mateo, Case No: CIV 502857.
Filed on February 2, 2011.

Aniel et. al. vs. ETS SERVICES LLC et. al.,
Court of Appeal Case No: A134461
Filed on May 3, 2012.
Status of the case: Pending

Subject Property Address: 801 Foothill Drive, San Mateo CA 94402 (legal property
description attached).

Loan No:

A. Description of Claims.

Claims arising from the following causes of action:

1. Violation of the California Rosenthal Act
2. Fraud (Misrepresentation)
3. Wrongful Foreclosure
4. Unfair Competition Law (Cal. Bus. & Prof. Code section 17200 et seq)
5. Request for Injunctive Relief
6. Quiet Title

B. History of the Lawsuits:

The claimants of the above proof of claim, filed their Chapter 11 petition in the
United States Bankruptcy Court of Northern District of California. See Case No:
09-30452 DM on February 25, 2009, and their case was converted to Chapter 7 on
August 02, 2010. The estate was discharged under 11 USC § 727 (the

Bankruptcy Code) on December 2, 2010. On February 4, 2011, the bankruptcy trustee was closed with no distribution and the trustee abandoned the claimant's (debtors) bankruptcy assets.

On the list of claimants' bankruptcy estates the claimants (debtors) identified the subject property above as part of the claimants' bankruptcy asset/estate that was abandon by the trustee under the jurisdiction of bankruptcy court. On February 2, 2011, the claimants filed a civil action in the Superior Court of California, County of San Mateo for equitable and legal relief for wrongful foreclosure fraud (misrepresentation), violation of Rosenthal Act, Violation of Unfair Competition Law (Cal. Bus. & Prof. Code section 17200 et seq.), Quiet Title, and request for injunctive relief. See attached verified complaint as exhibit "A". The very core of the complaint is the execution of the assignment of deed by Jeffrey Stephan, who is an infamous robo-signer. See Exhibit "B" Jeffrey Stephan Deposition on December 10, 2009, at West Palm Beach, Florida. Jeffrey Stephan signed the assignment of the deed without personal knowledge of its contents. The assignment also contained a fraudulent notarization that was certified under penalty of perjury under the laws of the State of California, when in fact the notary was done in Commonwealth of Pennsylvania, Upper Dublin Twp., Montgomery County. See Attached "C" copy of Assignment of Deed. Since, the assignment of deed is null and void, the substitution of trustee, notice of default, notice of trustee sale, trustee deed upon sale are null and void and no effect. Therefore, the foreclosure on the subject property is null and void and has no effect. However, on June 09, 2011, the state court ruled that the claimants (plaintiffs on the above civil case) had no standing because their names were not on the deed of trust at the commencement of the complaint on February 2, 2011. On March 29, 2012, the subject property was sold in the amount of \$ 1,075,000.00. On May 3, 2012 claimants (plaintiffs) filed their timely appeal in California Court of Appeal. see Exhibit "D", Appellants Brief.

C. Indemnification Claims:

1. The Claimants have been damaged by virtue of Debtor's selling the property while the case is still pending. Without limiting the generality of the foregoing, the Claimants have incurred, and will continue to incur, significant legal expenses enforcing and defending against the Debtor's improper foreclosure of claimant's subject property.
2. Pursuant to the Governing Documents and applicable laws, Debtor entities are liable to the Claimants for indemnification against any losses, claims, expenses or damages including legal fees and related cost, arising out of based upon any breaches of any representation warranty or covenant made by the Debtor or any affiliates of the Debtors in the Governing Documents
3. Base upon the foregoing, a claim is asserted in an unliquidated amount on account Debtor's indemnification obligation arising from fraud and wrongful foreclosure, and Governing Documents. As of this date of this Proof of

Claim, the Claimants has incurred expenses of not less than \$10,000.00 in connection with filing the civil actions against Debtor and its affiliates GMAC Mortgage, LLC, and ETS Services, LLC. Such expenses and indemnification obligations continue to accrue.

4. As of March 29, 2012, the Subject Property was sold in the amount of \$1,075,000.00. MLS number is 81204251.

D. Miscellaneous

1. By executing and filing this Proof of Claim, Claimants/ Plaintiffs does not waive any right to any security or any right or rights with respect to any claim that Claimants/Plaintiffs has.
2. To the knowledge of the signatory hereto, the claim are not subject to any set off or counterclaims, and no judgment has been rendered on this claim.
3. Claimant/Plaintiffs reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature that it has, or may have, that come to Claimants/Plaintiffs attention or arises after the filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.
4. Nothing contained in this Proof of Claim shall be deemed or construed as:
 - (a) A waiver of, or other limitation on, any right or remedies of Claimant/Plaintiffs.
 - (b) A consent by Claimants/Plaintiffs to this jurisdiction of the Court or any other court in respect to proceedings, if any.
 - (c) A waiver or release of, or any limitation on Claimants/Plaintiffs right to trial by jury in the Court or any court in any proceeding.
 - (d) A waiver or release of, or any other limitation on, Claimant/Plaintiffs' right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim or
 - (e) A waiver or release of, or any other limitation on claimants/Plaintiffs right to assert that any portion of the claim asserted herein are entitled to treatment as priority claims, including under Section 503(b) and Section 507(a)(1) of the bankruptcy code.

ATTACHMENT 2

TOTAL ITEM BREAKDOWN

1.	Value of Real Estate Property -	\$1,075,00.00
2.	Legal Expenses incurred during the pending case:	
a.	Court expenses -	\$2,000.00
b.	Shipping and Positing -	\$500.00
c.	Processing Cost -	\$500.00
d.	Others Misc. -	\$6700.00
	Totals	\$10,000.00
	Totals	\$ 1,085,000.00

B

Claim # 112-114

RECORDING REQUESTED BY:

Executive Trustee Services, LLC dba ETS Services, LLC

2011-045481

9:53 am 04/21/11 TD Fee: 21.00

Count of Pages 3

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



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

Forward Tax Statements to
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

TS # GM-172824-C

LOAN # [REDACTED] 440

INVESTOR #: [REDACTED] 4814

TITLE ORDER # 080134572-CA-MSI

TRUSTEE'S DEED UPON SALE

APN 034-312-030-9

TRANSFER TAX: \$00.00

"THIS TRANSACTION IS EXEMPT FROM THE REQUIREMENTS OF THE REVENUE AND TAXATION CODE, SECTION 480.3"

The Grantee Herein Was The Foreclosing Beneficiary.

The Amount Of The Unpaid Debt was \$1,293,657.39

The Amount Paid By The Grantee was \$945,000.00

Said Property Is In The City Of SAN MATEO, County of San Mateo

3p
"This instrument is being recorded as an
ACCOMMODATION ONLY, with no
Representation as to its effect upon title"

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

HSBC BANK, NA AS TRUSTEE OF SERIES 2007-OA3

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

As more fully described on said Deed of Trust.

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS** as Trustor, dated **03/22/2007** of the Official Records in the office of the Recorder of **San Mateo**, California under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on **04/03/2007**, instrument number **2007-050317** (or Book, Page) of Official records. Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

TRUSTEE'S DEED UPON SALE

Trustee's Deed
T.S.# **GM-172824-C**
Loan # **1440**
Title Order # **080134572-CA-MSI**

All requirements per California Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **03/10/2011**. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being **\$945,000.00**, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

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

Date: 4/11/11

Executive Trustee Services, LLC dba ETS Services, LLC
By: [Signature]
Derek Hudson, Authorized Officer

State of California } S.S.
County of Los Angeles }

On 4/11/11 before me, **Sally Beltran** Notary Public, personally appeared **Derek Hudson** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Signature] (Seal)
Sally Beltran



GM-172824-C

EXHIBIT "A"

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN
THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

C

Claim No. 112-114

RECORDING REQUESTED BY:

Fidelity National Title Company
Escrow No.: 12-335734-BG
Locality No.: CASH0000-0948-0003-
Title No.: 110145071
~~LS Title Company~~
When Recorded Mail Document
and Tax Statement To:
Mr. and Mrs. Julian Basler
801 Foothill Drive
San Mateo, CA 94402

2012-041989

10:08 am 03/29/12 DE Fee: 111.00
Count of Pages 2 SM
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder



APN: 034-312-030-9

SPACE ABOVE THIS LINE FOR RECORDERS
USE

GRANT DEED

The undersigned grantor(s) declare(s)
Documentary transfer tax is \$1,152.50 City Tax \$5,375.00

☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale,
Unincorporated Area ☒ City of San Mateo,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2004-QA3 who acquired title as HSBC Bank, NA as Trustee of Series 2007-QA3

hereby GRANT(S) to ^{/N} Julian Basler and Vanessa Love, husband and wife, as joint tenants

the following described real property in the City of San Mateo, County of San Mateo, State of California:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: February 29, 2012

State of Texas
County of Dallas
On February 29, 2012 before me,
Courtney Cowden Notary Public
(here insert name and title of the officer), personally appeared
Scott Buskirk

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

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

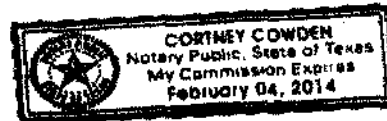
WITNESS my hand and official seal.

Signature Courtney Cowden (Seal)

HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2004-QA3 who acquired title as HSBC Bank, NA as Trustee of Series 2007-QA3

By: Scott Buskirk
GMAC Mortgage, LLC its attorney in fact

Scott Buskirk
INWITNESSED OFFICER



MAIL TAX STATEMENTS AS DIRECTED ABOVE

FD-213 (Rev. 12/07)
(Grant) (10-03) (Rev. 07-11)

GRANT DEED

D

Claim # 112-114

COPY

**CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION FOUR**

FERMIN SOLIS ANIEL et al.,
Plaintiffs and Appellants,
v.
ETS SERVICES LLC et al.,
Defendants and Respondents.

FILED

SEP 18 2012

Court of Appeal - First App. Dist.
DIANA HERBERT

By DEPUTY

~~A134461~~

San Mateo County Superior Court
Case Number CIV502857

BY THE COURT:

This court previously received notice that respondents, GMAC Mortgage LLC and ETS Services LLC filed petitions for bankruptcy in the United States Bankruptcy Court for the Southern District of New York, and that an automatic stay was in effect. On August 28, 2012, this court requested supplemental briefing from the parties addressing the effect of the stay on this appeal.

Having read and considered the parties' supplemental briefing, this court concludes that portions of this appeal are covered by the automatic stay provisions of 11 United States Code, section 362(a). In order to avoid a fragmented appeal, all proceedings in this appeal are stayed.

Appellants Fermin Aniel, et al., may seek relief from the automatic stay in the bankruptcy proceedings.

The parties are directed to immediately inform this court of any modification of the automatic stay that impacts the proceedings at issue in this appeal or any order lifting or dissolving the bankruptcy stay in its entirety.

Pursuant to First Appellate District Local Rule 12(c), counsel for respondent is required to serve and file quarterly status reports, apprising this court of the current status of the bankruptcy proceedings. The first of such status reports is due January 2, 2013.

SEP 18 2012

Ruvolo, P.J.

Date: _____

P.J.

E

claim # 112-114

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FOUR		Court of Appeal Case Number: A134461
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel in Pro Per 75 Tobin Clark Dr. Hillsborough, CA 94010 TELEPHONE NO.: 650-284-6417 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Pro Se		Superior Court Case Number: CIV502857
APPELLANT/PETITIONER: Fermin Solis Aniel et. al. RESPONDENT/REAL PARTY IN INTEREST: ETS Services, LLC et. al.		FOR COURT USE ONLY
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name): Fermin Solis Aniel and Erlinda Abibas Aniel

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

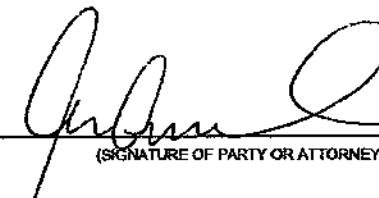
☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 5/8/12

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

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STATEMENT OF THE CASE

Plaintiffs and Appellants—FERMIN SOLIS ANIEL, and ERLINDA ABIBAS ANIEL—filed their COMPLAINT against Appellees—ETS SERVICES, LLC (“ETS”), GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION and GMAC MORTGAGE (“GMAC”), HSBC BANK, U.S.A. AS TRUSTEE FOR DALT 2007-AO3 (“HSBC”), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”), AND PITE DUNCAN, LLP (“PITE”), on February 02, 2011, in the Superior Court of the State of California, County of San Mateo. See Case number CIV502857. On March 03, 2011, Appellee, ETS, GMAC, HSBC, and MERS, filed a Demurrer to Appellants’ Complaint. On March 15, 2011, Appellee, PITE, filed a Demurrer to Appellants’ Complaint.

On May 25, 2011, Appellants filed an Opposition to Appellee’s, PITE, Demurrer to the Appellants’ Complaint. On May 26, 2011, Appellants filed an Opposition to Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer to the Appellants’ Complaint.

On June 02, 2011, Appellees, ETS, GMAC, HSBC, and MERS, filed a Reply in support for their Demurrer to the Appellants’ Complaint.

On June 08, 2011, the Court adopted its tentative ruling, and sustained Appellee’s, PITE, Demurrer to the Appellants’ Complaint without leave to amend. On June 09, 2011, the Court, after a hearing on the merits, adopted its tentative ruling, and sustained Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer without leave to amend.

On June 30, 2011, the Court filed its Order Sustaining Appellees’, ETS, GMAC, HSBC, and MERS, Demurrer to the Appellants’ Complaint without leave to amend. On July 18, 2011, the Court filed its Order Sustaining Appellee’s, PITE, Demurrer to Appellants’ Complaint without leave to amend. On December 06,

2011, the Court, during a Case Management Conference, ordered that the case be dismissed with prejudice. This served as a Final Judgment in the case.

On February 02, 2012, Appellants filed a Notice of Appeal to the Court's order to dismiss the case with prejudice on December 06, 2011. On February 02, 2012, the Court filed a Clerk's Notice of Filing of the Notice of Appeal. On February 08, 2012, Appellants filed a Notice of Designation of Record, electing to file an appendix under California Rule of Court, Rule 8.124.

STATEMENT OF APPEALABILITY

This appeal is from the order dismissing the case with prejudice of the Superior Court of California, County of San Mateo and is authorized by the California Civil Procedure Code § 581d.

STATEMENT OF THE FACTS

On or around March 22, 2007, Raul Estiva (now deceased) and Corazon Estiva (non-parties to this action) signed Deed of Trust, to the property located at 801 Foothill Drive, San Mateo, CA 94402. (AA8). The Deed of Trust was recorded on April 03, 2007 in the County of Recorders' Office in San Mateo. Under the Deed of Trust, the Lender was MortgageIT, Inc. (a non-party). (AA8). Under the Deed of Trust, MERS, acting solely as a nominee for Lender and Lender's successors and assigns, was named as the beneficiary under the Deed of Trust. (AA8). Fidelity National Title was named as the Trustee under the Deed of Trust. (AA28).

Appellants own a 50% interest in the property. (AA8). Appellants disclosed their interest in their Amended Schedule A-Real Property in their Bankruptcy Estate. Appellants' arrangement consisted of Raul Estiva refinancing the loan in 2007, and Appellants' making regular payments on the mortgage to the servicer,

GMAC. (AA8-AA9). Appellants' reported income received from rent from the subject property in their income tax return. (AA9). Appellants maintained the property, collected rent, and paid for the mortgages, hazard insurance, and property taxes. (AA9). On February 03, 2011, Corazon Estiva executed a Grant Deed that transferred interest in the Deed to the Appellants. (AA405).

On December 15, 2008, ETS, claiming to be merely an agent of MERS, executed a Notice of Default on the subject property. (AA43-AA44). In that Notice of Default, MERS, in its own name without identifying the Lender, claimed to be the beneficiary of the Deed of Trust. (AA43-AA44). MERS did not act as a nominee in the Notice of Default. (AA43-AA44). On the same day, December 15, 2008, MERS, in its own capacity and without identifying the Lender, executed a Substitution of Trustee, which identified ETS as the Substituted Trustee. (AA380). Both the Notice of Default and the Substitution of Trustee were recorded on the same day in San Mateo County on December 17, 2008. (AA43-AA44; AA380).

On May 26, 2009, Pite manufactured an Assignment of the Deed of Trust, transferring beneficial interest in the Deed of Trust from MERS, solely as nominee for MortgageIT, Inc., to HSBC. (AA9, AA10). The Assignment of the Deed was manufactured because Jeffrey Stephan, executed the document. (AA9, AA10). The Assignment of the Deed states that Jeffrey Stephan, a vice president of MERS, executed the Assignment of the Deed, and that Thomas P. Strain, a notary public, acknowledged the execution of the Assignment of the Deed. (AA9, AA10). Jeffrey Stephan is an infamous and admitted robo-signer, whose name has appeared in thousands of mortgage related documents. (AA9, AA10). The Assignment was recorded on July 16, 2008, while Appellants were in Bankruptcy and under the protection of the automatic stay. (AA9, AA10).

On December 28, 2010, ETS executed a Notice of Trustee Sale, which was recorded on December 31, 2010. (AA10). The subject property was eventually

C. THE COURT ERRED BY NOT GIVING APPELLANTS AN OPPORTUNITY TO AMEND THEIR COMPLAINT

In the event that the complaint is found to not state a cause of action, but there is a reasonable possibility that amendment can cure the defect, leave to amend must be granted. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38, 39).

The Superior Court determined that they were not convinced of Appellants' ownership interest in the subject property. Even if Appellants' Complaint was not sufficient to establish an ownership interest, Appellants should have had one more opportunity to amend their Complaint to establish a sufficient cause of action. If the Court was not convinced about the Appellants' interest in the property, Appellants could have amended their Complaint to establish more allegations to support their ownership interest, including declarations from Corazon Estiva, co-owner named in the Deed of Trust. Instead, the Court sustained Appellees' Demurrers without leave to amend. Appellants can prove its ownership interest in the property had they been given a chance to amend their Complaint.

CONCLUSION

The Superior Court erred in sustaining the demurrer without leave to amend and entering a judgment of dismissal. The Court should not have prevented Appellants from testing the sufficiency of their causes of action. The Court made no findings regarding the substantive basis of their causes of action. Appellants suffered an injury based on Appellees' conduct in foreclosing the property. Appellants should have been given an opportunity to continue their Complaint, and the Court should not have prevented them from recovery based on their names not appearing on the Deed of Trust or Promissory Note. Appellants' request attorney's fees and cost for this Appeal.

Respectfully submitted.

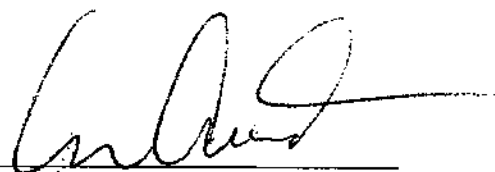
Dated: May 3, 2012



FERMIN SOLIS ANIEL

PRO SE APPELLANT

Dated: May 3, 2012



ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

Certificate of Compliance

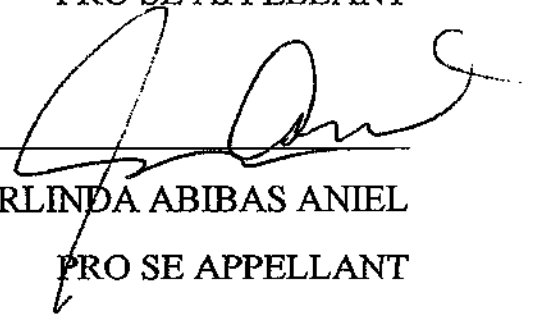
Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 2073 words, including footnotes. In making this certification, I have relied on the word count of the computer program, Microsoft Office 2008, used to prepare the brief.

Executed on May 03, 2012 at Hillsborough, California



FERMIN SOLIS ANIEL

PRO SE APPELLANT



ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over eighteen years of age and not a party to the within action. My address is

75 Tobin Clark Dr., Hillsborough, CA 94010

On May ~~4~~^{6³}, 2012, I served the following:

Appellants' Opening Brief

Certificate of Interested Parties or Entities

on the parties set forth on Exhibit A by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing. I caused such envelope, with postage thereon full prepaid, to be placed in the United States Mail at San Francisco, California, or personally delivered. The addresses to which each party was served are as set forth in Exhibit A.

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

Executed on May ~~4~~^{6³}, 2012 at San Mateo, California


Jason Aniel

EXHIBIT A
TO PROOF OF SERVICE

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(Four Copies)

Honorable Judge Joseph C. Scott
Southern Court, Dept. 25, Courtroom 2M
400 County Center
Redwood City, CA 94063

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

CHRISTOPHER L. PETERSON
Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

BRIAN S. WHITEMORE SEVERSON & WERSON, P.C. One Embarcadero Center, Suite 2600 San Francisco, California, 94111	Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALI 2007-A03, and Mortgage Electronic Registration Systems, Inc.
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F

Clavin # 112 - 114

CALIFORNIA COURT OF APPEAL

FOR THE FIRST APPELLATE DISTRICT – DIVISION FOUR

No. A134461

Fermin Solis Aniel and Erlinda Abibas Aniel

Appellants,

vs.

ETS Services, LLC, GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation
and GMAC Mortgage; HSBC bank, U.S.A as Trustee for DALT 2007-AO3;
Mortgage Electronic Registration Systems, Inc.; Pite Duncan, LLP

Appellee.

Civil Case No. CIV 502857

Appeal From the Superior Court of California,
County of San Mateo
Honorable Judge Joseph C. Scott

**APPELLANTS' REPLY BRIEF TO APPELLEE, PITE DUNCAN, LLP'S
RESPONDENT'S BRIEF**

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010
650-284-6417
Appellants In Pro Per

Court of Appeal First Appellate District

FILED

JUN 25 2012

Diana Herbert, Clerk

by _____ Deputy Clerk

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I. INTRODUCTION

Appellants—Fermin Solis Aniel and Erlinda Abibas Aniel—submit its Reply Brief to respond to the arguments made by Appellee, Pite Duncan, LLP (“Appellee”). Appellants only make two arguments in Reply to Appellee’s Brief. First, Appellants do have standing as alleged in their Complaint because they had a stake in the foreclosure based on their interest in the subject property. Second, Appellee’s filing of a Proof of Claim, where they claimed that GMAC, as servicer for HSBC, was the secured creditor to the Appellants’ debt further establishes Appellants have standing to assert claims against Appellee, who was directly involved in Appellants’ bankruptcy.

II. ARGUMENT

A. Appellants have a stake in the outcome of the foreclosure and having standing.

Appellee argues that because Appellants were not parties to the loan and deed of trust, they do not have standing to establish a claim. However, Appellee ignores the fact that Appellants alleged in their Complaint an interest in the subject property. Appellants’ Complaint is centered on violations made by the Appellee and the other Appellees that caused a direct injury to interest Appellants had in their Subject Property.

Appellee cites to the case of Banc of America Leasing & Cap., LLC v. 3 Arch Trustee Servs., Inc. (2009) 180 Cal.App.4th 1090, 1103, as the basis to rule that Appellants have no standing to assert a claim based on an interest in the Subject Property. However, the case also states that those with a stake in the outcome of the foreclosure can bring a claim against those who foreclosed the property. Id. At 1103 “*all parties to the sale transaction (i.e., those individuals with a ‘stake in the outcome’)* are deemed indispensable and must be joined in the set-aside action.” (Greenwald & Asimow, Cal. Practice Guide: Real Property Transactions, *supra*, ¶¶ 6:535.15 to 6:535.15a, p. 6-106 (rev. # 1, 2009), some italics omitted; see *Washington Mutual Bank v. Blechman* (2007) 157 Cal.App.4th 662, 665-668 [69 Cal.Rptr.3d 87].) In addition, a trustee's or beneficiary's fraudulent conduct during foreclosure proceedings can give rise to a tort action. (*South Bay, supra*, 72 Cal.App.4th at pp. 1121-1122.)”

Thus, Appellants, through its Complaint and its Opening Brief, establish their specific interest in the Subject Property. That interest was affected by the Appellee’s knowingly filing an assignment of the deed in order to file a false Proof of Claim during Appellants’ Bankruptcy. In addition to the arguments made in its Opening Brief, Appellants stand by their arguments that they have standing to pursue a claim against the Appellee based on their interest in the subject property which was adversely affected by Appellee’s conduct.

B. Appellants' Conduct During the Bankruptcy Shows Appellants had an Interest in the Subject Property and that Appellee are liable to Appellants for damages as a result of Appellee's actions during Appellants' Bankruptcy.

Appellee argues that they indeed objected to the Appellants' claim that they had an interest in the Subject Property based on an object to the Appellants' Chapter 11 reorganization. However, the sufficiency of Appellee's object to the Reorganization Plan was never proven or decided by the Bankruptcy Court because Appellants' converted their estate to a Chapter 7. However, Appellees did file a Proof of Claim on June 24, 2009, claiming that GMAC, as servicer for HSBC, was the secured creditor of the Subject Property. (AA284-AA311). Only the creditor may file a Proof of Claim, setting forth Creditors' claim against the estate. See Bankruptcy Rule 3001(a)-(b). When Appellee filed the Proof of Claim, they established that Appellants did have an interest in the property as scheduled in their Bankruptcy Schedules.

Appellee's action directly affected Appellants' Bankruptcy efforts as alleged in their Complaint. Regardless of whether Appellants' names were in the loan or deed of trust, Appellee's damaged Appellants, who are entitled to pursue their claims in a lawsuit. Should the Court deny Appellants' appeal against the Appellee solely based on Standing, it would deny Appellants' claims against the Appellee involving Appellants' Bankruptcy. Therefore, the Court should overrule

the trial courts' ruling that Appellants had no standing to pursue a claim against the Appellee.

C. Appellants should be allowed to amend their complaint to reflect plaintiffs' allegations and new facts.

Appellants' Complaint was their initial Complaint and they were never given an opportunity to amend their Complaint. As such, this Court should give Appellants' an opportunity to amend their Complaint.

III. CONCLUSION

The Trial Court erred in sustaining the demurrers without leave to amend because of a lack of standing, and later dismissing the entire complaint with prejudice based on a lack of standing. Its order should be vacated, the demurrers should be overruled, and the entire action be remanded.

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Respectfully submitted.

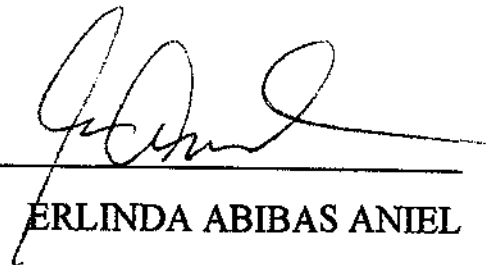
Dated: June 25, 2012



FERMIN SOLIS ANIEL

PRO SE APPELLANT

Dated: June 25, 2012



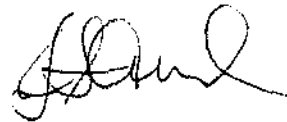
ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

Certificate of Compliance

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 777 words, including footnotes. In making this certification, I have relied on the word count of the computer program, Microsoft Office 2011, used to prepare the brief.

Executed on June 25, 2012, at Hillsborough, California



FERMIN SOLIS ANIEL

PRO SE APPELLANT



ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over eighteen years of age and not a party to the within action. My address is

75 Tobin Clark Dr., Hillsborough CA 94010

On June 25, 2012, I served the following:

**APPELLANTS' REPLY BRIEF TO APPELLEE, PITE DUNCAN, LLP'S
RESPONDENT'S BRIEF**

on the parties set forth on Exhibit A by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing. I cause such envelop, with postage thereon full prepaid, to be placed in the Unites States Mail Station at San Francisco, California. The address to which each party was served are as set forth in Exhibit A.

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

Executed on June 25, 2012, at San Mateo, California.



Jason Aniel

EXHIBIT A
TO PROOF OF SERVICE

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(Four Copies)

Honorable Judge Joseph C. Scott
Southern Court, Dept. 25, Courtroom 2M
400 County Center
Redwood City, CA 94063

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

Jillian A. Benbow
Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

M. Elizabeth Holt SEVERSON & WERSON, P.C. One Embarcadero Center, Suite 2600 San Francisco, California, 94111	Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, and Mortgage Electronic Registration Systems, Inc.
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Clavin # 112-114

CALIFORNIA COURT OF APPEAL
FOR THE FIRST APPELLATE DISTRICT – DIVISION FOUR

No. A134461

Fermin Solis Aniel and Erlinda Abibas Aniel

Appellants,

vs.

ETS Services, LLC, GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation
and GMAC Mortgage; HSBC bank, U.S.A as Trustee for DALT 2007-AO3;
Mortgage Electronic Registration Systems, Inc.; Pite Duncan, LLP

Appellee.

Civil Case No. CIV 502857

Appeal From the Superior Court of California,
County of San Mateo
Honorable Judge Joseph C. Scott

**APPELLANTS' REPLY BRIEF TO APPELLEES, ETS SERVICES, LLC,
GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION
AND GMAC MORTGAGE; HSBC BANK, U.S.A AS TRUSTEE FOR DALT
2007-AO3; AND MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC**

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010
650-284-6417
Appellants In Pro Per

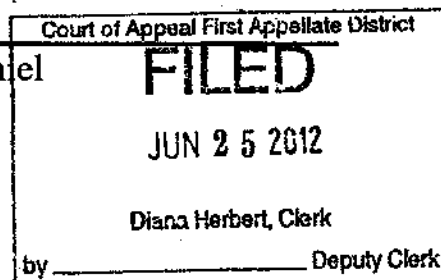


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I. INTRODUCTION

Appellants—Fermin Solis Aniel and Erlinda Abibas Aniel—submit its Reply Brief to respond to the arguments made by Appellees, ETS Services, LLC, GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation and GMAC Mortgage; HSBC bank, U.S.A as Trustee for DALT 2007-AO3; Mortgage Electronic Registration Systems, Inc. (“Appellees”). Appellants have established a claim for Wrongful Foreclosure, Fraud, a violation of the Rosenthal Act, and a violation of the UCL. Even if the Court determines that Demurrer of the Complaint was properly based on the lack of viable claims, and not solely based on Standing, then Appellants should be given leave to amend the Complaint because it was Plaintiffs’ initial Complaint that has not ever been amended, and Plaintiffs’ amended would cure any potential defects in the cause of action.

II. ARGUMENT

A. Appellants oppose Appellees’ Motion for Judicial Notice of Documents as the contents of the documents are hearsay offered to prove the truth of the matter asserted.

Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.

(Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 882.). "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) "Matters that are subject to judicial notice are listed in Evidence Code sections 451 and 452. A matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute. [Citation.]" (Fremont Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 113.) "Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (Joslin v. H.A.S. Ins. Brokerage (1986) 184 Cal.App.3d 369, 374.) While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein. (Love v. Wolf (1964) 226 Cal.App.2d 378, 403.) "When judicial notice is taken of a document, . . . the truthfulness and proper interpretation of the document are disputable." (StorMedia, Inc. v. Superior Court (1999) 20 Cal.4th 449, 457, fn. 9 (StorMedia).)

This standard also applies to mortgage related documents. "[T]he fact a court may take judicial notice of a recorded deed, or similar document, does not mean it may take judicial notice of factual matters stated therein. [Citation.] For example, the First Substitution recites that Shanley 'is the present holder of beneficial interest under said Deed of Trust.' By taking judicial notice of the First Substitution, the court does not take judicial notice of this fact, because it is

hearsay and it cannot be considered not reasonably subject to dispute.” (Poseidon Development, Inc. v. Woodland Lane Estates, LLC (2007) 152 Cal.App.4th 1106).

Thus, Appellants object to the Request for Judicial Notice, Exhibit “A” and Exhibit “B”, is so far as the contents contained within the documents taken as true.

B. Appellants filed an ex-parte request to have an order dismissing the case signed and entered by the Superior Court of San Mateo.

On June 20, 2012, Appellants submitted an ex-parte application in the Superior Court of San Mateo, requesting a signed order be entered by the Honorable Judge Robert D. Foiles, the Judge who entered the minutes order dismissing Appellants’ lawsuit against all Appellees with prejudice on December 06, 2011. Once the order is entered, the Court may review the Appellants’ appeal. *See State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1529 fn. 2 (“We invited the parties to submit supplemental letter briefs addressing whether this court had jurisdiction over the appeal, due to the lack of a judgment or an order of dismissal signed by the trial court. (Code Civ. Proc., § 581d; *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573 [129 Cal. Rptr. 3d 380].) The Fund responded by submitting a copy of a judgment signed by the trial court, as noted, on August 23, 2011. On our own motion, we augment the record on appeal with the judgment after demurrer, which was filed in the case of *F.D. DeLeon &*

Associates, Inc. v. WallDesign Incorporated, supra, No. 30-2009-00309793, on August 23, 2011. (Cal. Rules of Court, rule 8.155(a)(1)(A).))

C. Injunctive Relief is Proper in Appellants' causes of action for the Non-Judicial Foreclosure, Quiet Title, and the UCL as the Appellants filed their Complaint Prior to the Foreclosure of the Subject Property and Appellants have a right to set aside a non-judicial foreclosure.

Appellees argue that the fifth claim that seeks an injunction to set aside a non-judicial foreclosure on the Subject Property is moot because the sale took place on April 11, 2012, with the Trustee's Deed recorded on April 21, 2012. Appellees misapply the case they rely on in determining that the request for injunctive relief is improper. The facts in, *First Fed. Bank of California v. Fegan* (2005) 131 Cal.App.4th 798, involve a foreclosure involving a judgment lien executed on the Plaintiff. Appellants' case involves a non-judicial Trustee Sale and not an enforcement of a judgment lien.

Appellants have a right to set aside a Trustee's Sale. The Court in *Lona v. Citibank, n.a.* (2011) 202 Cal.App.4th 89, sets out the process where the former owner of a foreclosed property may challenge and set aside a completed Trustee's Sale. After a nonjudicial foreclosure sale has been completed, the traditional method by which the sale is challenged is a suit in equity to set aside the trustee's

sale. (Anderson v. Heart Federal Sav. & Loan Assn. (1989) 208 Cal.App.3d 202, 209-210 [256 Cal.Rptr. 180].) Generally, a challenge to the validity of a trustee's sale is an attempt to have the sale set aside and to have the title restored. (Onofrio v. Rice (1997) 55 Cal.App.4th 413, 424 [64 Cal.Rptr.2d 74] (Onofrio), citing 4 Miller & Starr, Cal. Real Estate (2d ed. 1989) Deeds of Trusts & Mortgages, § 9.154, pp. 507-508.). Id.

"It is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties." (*Lo v. Jensen* (2001) 88 Cal.App.4th 1093, 1097-1098 [106 Cal.Rptr.2d 443] (*Lo*), quoting *Bank of America etc. Assn. v. Reidy* (1940) 15 Cal.2d 243, 248 [101 P.2d 77]; see also *Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 700 [86 Cal.Rptr.2d 657].) Id.

Appellants' Complaint alleges that (at the time the Complaint was filed) the then impending Trustee's Sale (now completed Trustee's Sale) was wrongful, fraudulent, and illegal. Appellees' argument that the completion of the Trustee's sale makes Appellants' request for injunctive relief is without merit. The Court is well within its authority to set aside and reverse any Trustee Sale they deem as an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power

of sale in a mortgage or deed of trust. *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104. Therefore, Appellant's request for injunctive relief is proper and is not moot based on the completed Trustee's Sale.

Appellee's claims that the fourth cause of action for violation of the UCL is also moot because the unfair conduct has already been completed. Injunctive relief has no application to wrongs which have been completed [citation], absent a showing that past violations will probably recur. [Citation.]" (*People v. Toomey, supra*, 157 Cal. App. 3d at p. 20.). However, as alleged in the Appellants' complaint the Trustee's Sale had not occurred yet. Also, the subsequent unlawful detainer of the Tenant after the Complaint was filed was also unlawful conduct committed by the Appellees. Injunctive relief was proper when the Complaint was filed because each cause of action has a direct impact the cause of action for UCL. Once the Appellants' gain title back in the property and the Trustee's Sale is set aside, Appellees must be prevented from continuing their unlawful conduct like attempting to collect the debt, filing fraudulent documents, and wrongfully foreclosing the property. Past acts by the Appellees may be repeated if the Court set aside the Trustee's Sale. Therefore, an injunction against the Appellees for any future conduct involving the Subject Property is a proper claim for the Appellants.

The same argument applies to the cause of action of Quiet Title. Should the Court set the Trustee's Sale aside, and the Court declares that the Appellants' are

the rightful owners of the Subject Property, then Quiet Title is an appropriate cause of action in order to Quiet title against the Appellees and the parties that was granted title by the Appellees. The cause of action is not moot in that Appellants' have a right to challenge title of the Subject Property based on the conduct involving the foreclosure of the property.

D. Appellants' challenge the validity of the assignment serves as a basis to challenge the validity of the Debt.

Appellees argue that Appellants' allege that the Assignment was not validly assigned is not a basis to challenge the foreclosure. Appellees also argue that under *Fontenot* and *Herrera*, Appellants did not allege any prejudice. Both arguments are contradicted by the allegations made in the Appellants' Complaint. Appellants do not challenge the holdings made in *Fontenot* and *Herrera*. However, based on the allegations made in the Appellants' complaint, Appellants sufficiently alleged enough facts to challenge the foreclosure based on invalid assignments. Appellants' original Lender was MortgageIT. (AA8). Appellants' alleged that MortgageIT was already dissolved and not in business anymore by the time the foreclosure process was initiated. (AA8). Appellants also denied owing any money to the Appellees (AA14), and that Appellee filed a bogus assignment of the deed (AA15). Finally, Appellants alleged that the loan has been securitized and sold to different investors and that the investors for refinancing Appellants'

property have satisfied the debt. (AA16). These allegations support the requirement under *Fontenot* and *Herrera* that Appellants must challenge the validity of the debt and allege prejudice as a result. Appellants have satisfied those requirement based on their Complaint. The irregularities in the MERS assignment are allegations that prove that the foreclosure should not have taken place and that Appellants challenged the validity of the debt and alleged prejudice as a result of the foreclosure. Appellants' Complaint is not solely based on a lack of authority claim but allegations made about the improper nature of the foreclosure process that shows that the foreclosure should have been VOID because none of the Appellees were not the proper Lenders, Trustee, or Beneficiary that should have foreclosed the property. No entity should have foreclosed the property because the Appellees are strangers to the Appellants' transaction.

Appellees defend the practice of robo-signing in a footnote of their Responding Brief. Appellee argues that nothing prevents an individual from occupying positions with two companies at once. However, Appellee makes a narrow view of the robo-signing practice. Appellants alleged that robo-signer, Jeffrey Stephan, was not a MERS employee, but rather an employee of GMAC (AA14). While it may not be, per se, wrong to work for two different companies, falsely representing that one works for one company is wrong. Robo-signing also involves blindly executing and acknowledging documents where they have no

personal knowledge of the contents of the documents, the parties to the documents, or the legal consequences of the documents. Jeffrey Stephan admitted as such in his deposition that was attached in the Appellants' Complaint. (AA47-AA115). This is another allegation that proves that the Foreclosure is VOID.

E. Appellants' Rosenthal Act Claim Has Merit

Appellees argue that Appellants' Rosenthal Act fails because it is based on the flawed theory that the assignment was invalid. Appellees' arguments lack merit. First, Appellants' claim is that the assignment was VOID, meaning that an assignment never took place, and that there is no legal basis for an assignment. Also, for the reasons mentioned above, Appellants' have a viable claim under the fraudulent assignment of the deed.

Appellees argue that foreclosing a property is not an act of collecting a debt. However, a wrongful foreclosure, as alleged by the Appellants, is a basis of debt collection. Each and every Appellee became involved with the collection of the debt after it was defaulted (though as it turns out there was never a default against MortgageIT). Collecting on a supposed default debt is an act of debt collection. Further, once proven that the foreclosure was improper and VOID, Appellee cannot hide behind the claim that foreclosing a property is not an act of debt collection because Appellees conducted a wrongful foreclosure. Also, Plaintiffs'

allegations surround more than just the wrongful foreclosure of the property. An assignment of the deed, substitution of trustee, and notice of default, were all executed and recorded prior to the Trustee's Sale. These were all acts that may not have involved the foreclosure of the property. Appellants' at any time could have paid the amount demanded by the Appellees prior to the foreclosure, which would have prevented the foreclosure. Those documents are not attempts to enforce a valid obligation under the Note, but to attempt to collect money from the Plaintiffs. Appellee, ETS, was an agent of the alleged beneficiary, and attempted to collect a debt not in the role as a Trustee but in the role as an agent. These facts suggest that the Notice of Default was not an act of foreclosing the property but a demand of payment from the Appellants from a party not named in the Promissory Note.

Appellee also claims that Appellants were under no obligation to pay the Estiva's loan. However, as Appellants' alleged in their Complaint, Appellants possessed an interest in the property (AA9). Appellants disclosed income received from the property to the IRS and made payments on the mortgages, hazard insurance, and property taxes. *Id.* Although Appellants' names were not named on the loan documents or deed of trust, they had an obligation to pay on the loan or face a possible foreclosure by the original and true lender at the time. Thus, Appellants do qualify as a debtor in that they were obligated to pay the Estiva's loan under the agreement Appellants' made with Estivas.

Finally, Appellants' interest was a personal interest as they invested money into the property. Appellants were not in the business of renting homes or buying property. Appellants were investing their income in a property and rented the property in order to cover expenses in relation to the property. The nature of ownership by the Appellants was not a business debt as defined by the Rosenthal Act. Appellants were not a licensed business or businessmen, but individuals who invested money in a property.

F. Appellants Alleged a Viable Fraud Claim

Appellees argue that Appellants' fraud claim is based on a flawed theory. As stated previously, the VOID assignment of the deed is a valid allegation to challenge the validity of the debt.

Appellants did allege detrimental reliance. Appellees argue that Appellants should have modified the loan with the loan servicer, and that the true identity of the owner of the loan had no bearing on Appellants' Bankruptcy reorganization effort. That is not the case. In order to successfully reorganize a Bankruptcy Estate under Chapter 11, all secured creditors must approve the reorganization plan. A loan servicer is not a secured creditor. Thus, GMAC has no right to approve or deny a reorganization plan. Only the secured creditor may approve or object to a plan. Because of this fact, Appellants' allegation that none of the

Appellees were not in fact the secured creditor, caused an interference with Appellants' reorganization efforts.

Finally, Appellants' fraud allegations do not center merely on statements made during Appellants' Bankruptcy. At the heart of Appellants' fraud claim is a representation that the Appellees were the Secured Creditor, Lender, Beneficiary, and/or Trustee, and that money was owed by the Appellants. That representation was false. In reliance of those representations, Appellants could not modify the loan, reorganize the debt, and lost their property in a wrongful foreclosure. The allegations based on the Complaint were sufficient to establish a claim for fraud.

G. Because Appellants alleged that none of the Appellees should have foreclosed the property, tender of the amount is not proper at these early stages of pleading.

A tender may not be required where it would be inequitable to do so. See *Onofrio v. Rice* (1997) 55 Cal.App.4th 413, 424; see also *Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868, 876-878 [when new trustee has been substituted, subsequent sale by former trustee is void, not merely voidable, and no tender needed to set aside sale.] Specifically, "if the [plaintiff's] action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmation of the debt." *Onofrio v. Rice*, supra, 55 Cal.App.4th at p. 424.).

Further, where a trustee's sale is alleged to be void rather than voidable, or where it would be inequitable to impose a condition of tender, such a condition may not be required. See Miller & Starr, Cal. Real Estate (3d ed. 2003 rev.) § 10:212, pp. 685-686, and cases cited therein; Onofrio v. Rice (1997) 55 Cal.App.4th 413, 424.

Appellants in their Complaint alleged that none of the Appellee should have foreclosed the property. The Trustee's Sale was VOID not voidable. If the Appellants are required to Tender the full amount to the Appellees, they would be reaffirming the debt and the ownership of the debt. See Lona v. Citibank, n.a. (2011) 202 Cal.App.4th 89, 112 ("if the borrower's action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmation of the debt.")

H. Appellants should be allowed to amend their complaint to reflect Appellants' allegations and new facts.

Appellants' Complaint was their initial Complaint and they were never given an opportunity to amend their Complaint. As such, this Court should give Appellants' an opportunity to amend their Complaint.

III. CONCLUSION

The Trial Court erred in sustaining the demurrers without leave to amend because of a lack of standing, and later dismissing the entire complaint with

prejudice based on a lack of standing. Its order should be vacated, the demurrers should be overruled, and the entire action be remanded.

Respectfully submitted.

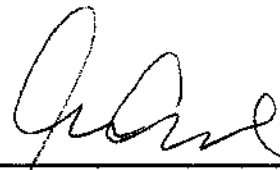
Dated: June 25, 2012



FERMIN SOLIS ANIEL

PRO SE APPELLANT

Dated: June 25, 2012



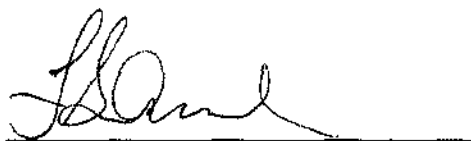
ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

Certificate of Compliance

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 3088 words, including footnotes. In making this certification, I have relied on the word count of the computer program, Microsoft Office 2008, used to prepare the brief.

Executed on June 28, 2012, at Hillsborough, California



FERMIN SOLIS ANIEL

PRO SE APPELLANT



ERLINDA ABIBAS ANIEL

PRO SE APPELLANT

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over eighteen years of age and not a party to the within action. My address is

75 Tobin Clark Dr., Hillsborough CA 94010

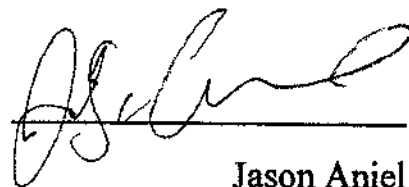
On June 25, 2012, I served the following:

**APPELLANTS' REPLY BRIEF TO APPELLEES, ETS SERVICES, LLC,
GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION
AND GMAC MORTGAGE; HSBC BANK, U.S.A AS TRUSTEE FOR DALIT
2007-AO3; AND MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC**

on the parties set forth on Exhibit A by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing. I cause such envelop, with postage thereon full prepaid, to be placed in the Unites States Mail Station at San Francisco, California. The address to which each party was served are as set forth in Exhibit A.

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

Executed on June 25, 2012, at San Mateo, California.



Handwritten signature of Jason Aniel in black ink, written over a horizontal line.

Jason Aniel

EXHIBIT A
TO PROOF OF SERVICE

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(Four Copies)

Honorable Judge Joseph C. Scott
Southern Court, Dept. 25, Courtroom 2M
400 County Center
Redwood City, CA 94063

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

Jillian A. Benbow
Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

M. Elizabeth Holt
SEVERSON & WERSON, P.C.
One Embarcadero Center, Suite 2600
San Francisco, California, 94111

**Attorneys for Defendant GMAC Mortgage,
LLC f/k/a GMAC Mortgage Corp. and
GMAC Mortgage, ETS Services, LLC,
HSBC Bank, U.S.A. as Trustee for DALT
2007-A03, and Mortgage Electronic
Registration Systems, Inc.**

H

Claims No. 112-114

A134461

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

FERMIN SOLIS ANIEL and ERLINDA ABIBAS ANIEL
Plaintiff and Appellants,

v.

ETS SERVICES, LLC, et al.,
Defendants and Respondents.

Superior Court Case No. CIV502857

Appeal from the Superior Court of California
County of San Mateo
Honorable Judge Joseph C. Scott

**DEFENDANT AND RESPONDENT
PITE DUNCAN, LLP'S
RESPONDENT'S BRIEF**

Jillian A. Benbow, CA SBN 246822
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
San Diego, CA 92117
Tel: (714) 285-2683
Fax: (714) 285-2668

Attorney for Defendant and Respondent
PITE DUNCAN, LLP

**Court of Appeal
State of California
First Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: A134461

Division Four

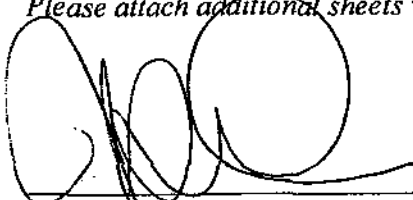
Case Name: Fermin Solis Aniel, et al. v. ETS Services, LLC, et al.

Please check the applicable box:

- ☐ There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d)(3).
- ☒ Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1. Pite Duncan, LLP	Defendant/Respondent
2. Steven Wayne Pite	Owner of more than 10% of Pite Duncan, LLP
3. John David Duncan	Owner of more than 10% of Pite Duncan, LLP
4.	

Please attach additional sheets with Entity or Person information if necessary.



Signature of Attorney/Party Submitting Form

Printed Name: Jillian A. Benbow

Address: 4375 Jutland Dr., Ste. 200, San Diego, CA 92117

State Bar No: 246822

Party Represented: Respondent Pite Duncan, LLP

**IF SUBMITTED AS A STAND-ALONE DOCUMENT, SUBMIT A SEPARATE PROOF OF SERVICE
ON ALL PARTIES WITH YOUR CERTIFICATE.**

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I. ISSUES PRESENTED

1. Was the trial court correct in ruling that as a matter of law, Appellants' Complaint failed to state a cause of action as to Pite Duncan, LLP ("Pite Duncan" or Respondent") because Appellants lacked standing?
2. Did the trial court abuse its discretion in sustaining Pite Duncan's Demurrer to Appellants' Complaint without leave to amend?

II. INTRODUCTION

Plaintiffs and Appellants' Fermin Solis Aniel and Erlinda Abibas Aniel (hereinafter, collectively "Appellants") brought this action challenging the enforcement of a loan secured by a Deed of Trust on real property to which Appellants were neither borrowers nor owners of the subject real property at the time the action commenced. In addition to bringing their action against Defendants/respondents GMAC Mortgage LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage ("GMAC"), ETS Services, LLC ("ETS"), HSBC Bank, U.S.A. as Trustee for DALT 2007-A03 ("HSBC") and Mortgage Electronic Registration Systems, Inc. ("MERS"), parties which had an interest in the loan secured by the Deed of Trust, Appellants also named Pite Duncan, a law firm with no interest in the loan or subject property, but instead, merely represented GMAC and HSBC in Appellants' prior bankruptcy action.

Considering the fact that Appellants' names did not appear on the promissory note or Deed of Trust securing the loan of which Appellants' complain, the trial court sustained Pite Duncan's Demurrer to the Complaint without leave to amend. Accordingly, this appeal concerns whether, as a matter of law, the trial court was correct in ruling Appellants' complaint failed to state a cause of action against Pite Duncan because Appellants lacked standing and whether the trial court abused its discretion in not granting leave to amend for a second time.

The trial court correctly ruled on the matters of law and acted well within the bounds of reason in not granting leave to amend. Appellants were

neither the borrowers under the loan that was the subject of the action nor owners of the subject property at any time prior to the commencement of this action. Under these circumstances, it was reasonable for the trial judge to sustain Pite Duncan's Demurrer without leave to amend and Judgment of Dismissal With Prejudice should be affirmed.

III. STATEMENT OF THE CASE

On or about February 2, 2011, Appellants filed a Complaint in the Superior Court, County of San Mateo, Case Number CIV502587 against GMAC, ETS, HSBC, MERS and Pite Duncan for: (1) Violation of the California Rosenthal Act; (2) Fraud (Misrepresentation); (3) Wrongful Foreclosure; (4) Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.); (5) Request for Injunctive Relief; and (6) Quiet Title. (Appellants' Appendix ("AA") AA1-120.) The Complaint alleged Respondents committed misconduct with regard to the recording of foreclosure notices and the transfer of the beneficial interest in the Deed of Trust securing the loan to which Appellants were not parties. (AA3-5.)

On or about March 15, 2011, Pite Duncan filed a Demurrer to the Complaint on the basis that Appellants failed to state facts sufficient to constitute causes of action against it. (AA124-360.) The Demurrer pointed out that Appellants lacked standing to bring any claims with regard to the Estivas' loan or the foreclosure of the subject property because Appellants were neither borrowers under the loan nor owners of any interest in the subject property prior to bringing the instant action. (AA132-133.) Additionally, Pite Duncan pointed out that Pite Duncan's actions taken as counsel for GMAC and HSBC in the Appellants' bankruptcy action were covered by the litigation privilege. (AA141-142.)

The hearing on Pite Duncan's Demurrer was held on June 8, 201, the Honorable Joseph C. Scott, presiding, at which Pite Duncan's Demurrer was sustained without leave to amend. (AA445-446.) In sustaining the Demurrer without leave to amend, the Court found that Appellants lacked standing as Appellants admitted in their Complaint that their names did not appear on the promissory note

or Deed of Trust at any point during the time the complained-of-activities took place. (AA445-446.) The Court was also not persuaded by Appellants' arguments that Appellants did not timely record their alleged 50% interest in the subject property because they wished to avoid paying taxes. (AA446.)

Respondents GMAC, ETS, HSBC and MERS also filed a Demurrer to Appellants' Complaint, which came for hearing on June 9, 2011. (AA447-448.) Respondents GMAC, ETS, HSBC and MERS' Demurrer was also sustained without leave to amend on grounds that Appellants' lacked standing. (AA448.)

Following the sustaining of Respondents GMAC, ETS, HSBC, MERS and Pite Duncan's Demurrers without leave to amend, on or about December 6, 2011, the Court dismissed the Appellants' action with prejudice. (AA449.) Appellants filed the Notice of Appeal on February 2, 2012. (AA450-452.)

IV. STATEMENT OF FACTS

1. The Loan and Subject Property

On or about August 18, 2006, non-parties to this litigation, Raul Estiva and Corazon Estiva (collectively, the "Estivas") purchased the real property located at 801 Foothill Drive, San Mateo, CA 94402 ("Subject Property"). (AA147-148.) In connection with their purchase, the Estivas took out two loans in the original principal amounts of \$975,000.00 and \$193,700.00, respectively. (AA150-168, 170-189.) On or about March 22, 2007, the Estivas refinanced the Subject Property with two new loans in the original principal amounts of \$1,000,000.00 and \$236,125.00, respectively. (AA187-207, 209-216.) The Estivas's \$1,000,000.00 loan is the loan at issue in the instant litigation. On or about March 22, 2007, the Estivas executed promissory note in the original principal amount of \$1,000,000.00 in favor of MortgageIt, Inc. ("MortgageIt"). (AA8) The Estivas's loan was secured by a Deed of Trust in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for MortgageIt recorded on or about April 3, 2007. (AA187-207)

On or about October 1, 2008, the Estivas defaulted on their obligations under the Deed of Trust by failing to make the monthly payment and a Notice of Default

and Election to Sell Under Deed of Trust was recorded on or about December 17, 2008. (AA8, 218-219.)

On or about December 15, 2008, Executive Trustee Services, LLC dba ETS Services, LLC ("ETS") was substituted as the trustee under the Estivas' Deed of Trust by a Substitution of Trustee recorded on or about December 17, 2008. (AA221.)

On or about May 26, 2009, the beneficial interest under the Deed of Trust was assigned from MERS to HSBC by an Assignment of Deed of Trust recorded July 16, 2009. (AA223.)

The Estivas's default continued unabated and on December 31, 2010 a Notice of Trustee's Sale was recorded. (AA225.)

On or about February 2, 2011, Corazon Estiva ("Corazon") recorded an Affidavit-Death of Joint Tenant following the death of Raul Estiva. (AA228-231.) After Corazon became the sole owner of the Subject Property, on or about February 3, 2011, Corazon transferred a partial interest in the Subject Property to Plaintiffs. (AA233-234.) Specifically, Corazon transferred a 1% interest in the Subject Property to Fermin Aniel and a 1% interest to Erlinda Aniel, as husband and wife. (AA233-234.) At no time prior to the recordation of the February 3, 2011 Grant Deed did Appellants have a recorded interest in the Subject Property.

2. Appellants' Bankruptcy

On or about February 25, 2009, Plaintiff filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of California, Case No. 09-30452-DM. On or about March 24, 2009, Plaintiffs amended their voluntary petition listing the Subject Property and 2007 loan in their schedules despite having no apparent, record ownership in the Subject Property or interest in the loan. (AA236-282.)

Pite Duncan was retained to represent GMAC and HSBC in the Plaintiffs' bankruptcy action. On or about June 24, 2009, Pite Duncan on behalf of GMAC filed a proof of claim in Plaintiffs' bankruptcy action. (AA284-311.)

On or about June 30, 2010, Plaintiffs filed a Disclosure Statement Described Chapter 11 Plain & Chapter 11 Reorganization Plan ("Plan") in their bankruptcy action. (AA313-338.) In the Plan, Plaintiffs claimed to own a 50% interest in the Subject Property with the Estivas and sought to have the Estivas's promissory note and Deed of Trust amended to include Plaintiffs as tenants in common with a partial ownership interest in the Subject Property. (AA323, 338.)

On or about July 28, 2010, Pite Duncan on behalf of HSBC filed an Objection to Confirmation of Chapter 11 Plan ("Objection"). (AA340-344) In the Objection, HSBC objected to Plaintiffs' Plan on grounds that Plaintiffs failed to demonstrate the Subject Property was property of the debtors' estate because the borrowers under the promissory note and Deed of Trust were not Plaintiffs, but instead were the Estivas. (AA341-342.) Moreover, HSBC objected on grounds that the Plaintiffs failed to provide any evidence indicating that legal title to the Subject Property was in Plaintiffs' names. (AA341-342) As a result, HSBC argued that HSBC's claim was not subject to modification in Plaintiffs' debtors' estate. (AA341-342.)

On or about July 30, 2010, Plaintiffs filed a motion to convert their bankruptcy case to a Chapter 7 case, which was granted on August 2, 2010. (AA345-347, 353-354.) Following the conversion of their case to Chapter 7, on or about November 2, 2010, the bankruptcy trustee abandoned certain assets of the bankruptcy estate, including the Subject Property and on or about December 2, 2010, Plaintiffs were discharged. (AA356-357,360.)

V. STANDARD OF REVIEW

The appellate court presumes that the judgment or order being appealed was decided correctly by the trial court. (Denham v. Superior Court (1970) 2 Cal.3d 557, 564; Walling v. Kimball (1941) 17 Cal.2d 364, 373.) The appellate court adopts all intendments and inferences necessary to affirm the judgment unless the record expressly contradicts them. Thus, unless the record affirmatively demonstrates the error, the appellate court presumes that the

evidence and findings support the judgment (Kompf v. Morrison (1946) 73 Cal.App.2d 284) and that the trial court based its decisions on appropriate findings and disregarded incorrect or insufficient ones. (Brewer v. Simpson (1960) 53 Cal.2d 567, 583.)

Generally, there are three separate standards of review for appeals. Questions of law are reviewed de novo; the trial court decision on the issue is immaterial. (Estate of Coate (1979) 98 Cal.App.3d 982, 986; Goddard v. South Bay Union High Sch. Dist. (1978) 79 Cal.App.3d 98, 105.) Sufficiency of the evidence is reviewed under the substantial evidence test: the lower court decision must be sustained if any substantial evidence supports the judgment. (Ellison v. Ventura Port Dist. (1978) 80 Cal.App.3d 574, 581; Petherbridge v. Prudential Sav. & Loan Ass'n (1978) 79 Cal.App.3d 509, 517.) A discretionary ruling is reviewed for abuse; if prejudicial abuse cannot be demonstrated, the ruling must be sustained. (Mission Imports, Inc. v. Superior Court (1982) 31 Cal.3d 921, 932.)

The errors complained of by Appellants relating to the trial court sustaining Pite Duncan's Demurrer as a matter of law is reviewed de novo. Whether the trial court abused its discretion in sustaining Pite Duncan's Demurrer to the Complaint without leave to amend is measured by the abuse of discretion standard. "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (Tudor Ranches, Inc. v. State Compensation Insurance Fund (1998) 65 Cal.App.4th 1422, 1432.) "Under both standards, the plaintiff bears the burden of demonstrating that the trial court erred." (Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 879 citing Pollack v. Lytle (1981) 120 Cal.App.3d 931, 939.)

VI. LEGAL DISCUSSION

A. THE TRIAL COURT CORRECTLY RULED THAT APPELLANTS FAILED TO STATE A CAUSE OF ACTION AGAINST PITE DUNCAN BECAUSE APPELLANTS LACKED STANDING.

Appellants contend the trial court erred in sustaining Pite Duncan's Demurrer to the Complaint without leave to amend based on Appellants' lack of standing. Appellants contend that despite Appellants' names not appearing on the promissory note and Deed of Trust, Appellants "established a cause fo action based on the Appellees [Respondents] attempts to wrongfully foreclose on the property. (Appellants' Opening Brief ("AOB"), p. 5.) Appellants contend that "[t]he focus should have been on Appellants' substantive case rather than whether only the Estivas have standing to sue the Appellees [Respondents]." (AOB, p. 5.) The trial court correctly ruled that Appellants lacked standing to bring any claims based on allegations of wrongful foreclosure because Appellants were not parties to the loan of which they complain.

A defendant may object to a plaintiff's lack of standing to sue by a general demurrer on the ground that the complaint does not state facts sufficient to constitute a cause of action by this plaintiff. (County of Fresno v Shelton (1998) 66 CA4th 996, 1009.) Code of Civil Procedure section 367 provides, "[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." (Code Civ. Proc. § 367.) The real party in interest is "the person possessing the right sued upon by reason of the substantive law." (Killian v. Millard (1991) 228 Cal.App.3d 1601, 1605.) Where the complaint states a cause of action in someone, but not the plaintiff, a demurrer will be sustained. (Killian v. Millard, supra, 228 Cal.App.3d at p. 1605.) "Judicial notice is the recognition and acceptance by the court, for use

by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (Poseidon Development, Inc. (2007) 152 Cal.App.4th, 1106, 1117.) "In determining the sufficiency of a complaint...a court will consider matters that may be judicially noticed." (Ibid.) "This includes recorded deeds." (Ibid.)

As a general rule, "only parties with an interest in the secured loan or in the real property security itself have standing to challenge or attempt to set aside a nonjudicial foreclosure sale." (Banc of America Leasing & Cap., LLC v. 3 Arch Trustee Servs., Inc. (2009) 180 Cal.App.4th 1090, 1103.) Appellants admit that they were not parties to the loan of which they complain foreclosure has been wrongfully instituted. (AA8-9.)

The Subject Property was purchased and encumbered by the Estivas, not Appellants. (AA147-148, 187-207.) Appellants were not borrowers under the loan secured by the Deed of Trust from which Plaintiffs' claims stem. Additionally, any interest in the subject property Appellants claim to hold was not even reflected in the chain of title until a Grant Deed transferring a 1% interest to Fernin Aniel and a 1% interest to Erlina Aniel was recorded on February 3, 2011, after Appellants' Complaint was filed and two months after Appellants' bankruptcy was discharged on December 2, 2010. (AA360.) Thus as established by documents subject to judicial notice, the only remaining borrower, Corazon Estivas, is the only person with standing to bring claims regarding the loan, Deed of Trust and standing of Respondents to initiate foreclosure.

Moreover, Appellants' contention that their discharged bankruptcy action established their standing to bring claims related to the Estivas' loan and subject property is unsupported by the record. Appellants' contention that "Appellees [Respondents] failed to challenge standing in the Bankruptcy Court" is not only belied by the record [HSBC filed an objection to

confirmation of Appellants' Chapter 11 Plan pointing out that Appellants failed to demonstrate any legal and equitable interest in the subject property] (AA341-342), but immaterial as Appellants converted their bankruptcy action from Chapter 11 to Chapter 7 and were discharged shortly thereafter. (AA353-354, 360.) Appellants fail to demonstrate that any ruling was made in the bankruptcy court adjudicating their right to bring claims regarding the Estivas' loan and subject property.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING LEAVE TO AMEND

"A trial court does not abuse its discretion when it sustains a demurrer without leave to amend if either (a) the facts and the nature of the claims are clear and no liability exists, or (b) it is probable from the nature of the defects and previous unsuccessful attempts to plead that the plaintiff cannot state a claim." (Cantu v. Resolution Trust Corp., 4 Cal.App.4th 857, 890 (1992) citing Kately v. Wilkinson (1983) 148 Cal.App.3d 576, 581.) The trial court was also well within its discretion not granting leave to amend the Complaint under both prongs of the Kately standard. Here, Appellants' Complaint concerns claims regarding a loan secured by a promissory note and Deed of Trust to which Appellants were not parties. Moreover, each of the claims alleged in the Complaint regarding the subject property and loan are not properly brought against Pite Duncan. Pite Duncan is a law firm that previously represented Co-defendants/respondents GMAC and HSBC in Appellants' bankruptcy action. Pite Duncan had no involvement with the loan that was the subject of Appellants' action or the foreclosure of the subject property aside from acting as legal counsel for GMAC and HSBC in Appellants' bankruptcy action. Given the nature of the defects, namely that Appellants were not parties to the

loan of which they complain, it is certainly probable that Appellants cannot state a claim. Under these circumstances, the trial court did not abuse its discretion in sustaining the Demurrer to the Complaint without leave to amend.

VII. CONCLUSION

For the reasons stated herein, Respondent Pite Duncan, LLP, respectfully request that this Court affirm the trial court's judgment dismissing Appellants' action with prejudice.

Dated: June 4, 2012



PITE DUNCAN, LLP

JILLIAN A. BENBOW
Attorneys for Respondent
Pite Duncan, LLP

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.208 of the California Rules of Court, Respondent Cal-Western Reconveyance Corporation, by the undersigned counsel, certifies that foregoing Respondent's Brief contains 2,884 words, including footnotes.

Dated: June 4, 2012


PITE DUNCAN, LLP

JILLIAN A. BENBOW

Attorneys for Respondent
Pite Duncan, LLP

Case No. A134461

DECLARATION OF SERVICE

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 1920 Main Street, Ste. 760, Irvine, CA 92614.

On June 4, 2012, I served the following document(s):

DEFENDANT AND RESPONDENT PITE DUNCAN, LLP'S RESPONDENT'S BRIEF

on the parties in this action addressed as follows:

Court of Appeal First Appellate District 350 McAllister St. San Francisco, CA 94102-4797 (Original plus 4 copies)	Supreme Court of California 350 McAllister St. San Francisco, CA 94102-4797 (4 copies)
Honorable Judge Joseph C. Scott Superior Court of California, County of San Mateo Southern Court, Dept 25, Courtroom 2M 400 County Center Redwood City, CA 94063	Fermin Solis Aniel, Erlinda Abibas Aniel 75 Torbin Clark Drive Hillsborough, CA 94010
Brian S. Whittmore Severson & Werson, P.C. One Embarcadero Center, Ste. 2600 San Francisco, CA 94111	

☒ **BY UNITED PARCEL SERVICE ("UPS"):** I placed a true copy in a sealed UPS envelope addressed as indicated above. I am familiar with the firm's practice of collection and processing correspondence for UPS delivery and that the documents served are deposited with UPS this date for overnight/priority delivery..

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

Executed this 4th day of June 2012, at Irvine, California.


Jillian A. Benbow

I

Claim No. 112-114

No. A134461

Prior Related Appeal: A132950

Court of Appeal

OF THE

State of California

First Appellate District, Division Four

FERMIN SOLIS ANIEL, et al.,

Plaintiffs and Appellants,

vs.

ETS SERVICES LLC, et al.,

Defendants and Respondents.

Respondents' Brief

Appeal from an Order of the San Mateo County Superior Court
(No. CIV502857) Sustaining a Demurrer With Prejudice
Honorable Joseph C. Scott, Judge

Service on the Attorney General and District Attorney Required; B&P Code, § 17209

Jan T. Chilton (State Bar No. 47582)
M. Elizabeth Holt (State Bar No. 263206)
SEVERSON & WERSON
A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, California 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

Attorneys for Defendants-Respondents

**ETS Services LLC; GMAC Mortgage LLC; HSBC Bank USA, N.A., as Trustee for
DALE 2007-OA3; and Mortgage Electronic Registration Systems, Inc.**

**Court of Appeal
State of California
First Appellate District, Division Four**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: A134461

Case Name: Fermin Solis Aniel, et al. v. ETS Services LLC, et al.

Please check the applicable box:

☐ There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208(d)(3).

☒ Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. HSBC Holdings PLC	Directly or indirectly owns 10% or more of HSBC Bank USA, N.A.
2. Ally Financial Inc.	Directly or indirectly owns 10% or more of GMAC Mortgage, LLC and Executive Trustee Services, LLC (which does business as ETS Services, LLC).
3. MERSCORP, Inc.	Owns 10% or more of Mortgage Electronic Registration Systems, Inc.

Please attach additional sheets with Entity or Person Information if necessary.

Signature of Attorney/Party Submitting Form

Printed Name: M. Elizabeth Holt

Address: Severson & Werson, A Professional Corporation
One Embarcadero Center, 26th Floor
San Francisco, CA 94111

State Bar No: 263206

Parties Represented: ETS Services LLC; GMAC Mortgage LLC;
HSBC Bank USA, N.A., as Trustee for DALT 2007-OA3; and
Mortgage Electronic Registration Systems, Inc.

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I.

INTRODUCTION

Even more than most, this pro per appeal from dismissal of a suit to avoid non-judicial foreclosure of home mortgage loan lacks merit.

As a threshold matter, the trial court has not yet entered a final appealable order or judgment. This appeal is therefore interlocutory and subject to immediate dismissal on this ground alone.

Moreover, the appeal is entirely lacking in merit. The Aniels'¹ claims to quiet title and for wrongful foreclosure, violation of Business and Professions Code section 17200 (the "UCL"), and injunctive relief are all moot. During this appeal, the foreclosure sale has been held and the property has been sold to a third person who is not a party to this litigation. Relief against the existing defendants will not prevent the sale. Quieting title against these defendants will accomplish nothing as they no longer claim any interest in the property.

The trial court correctly dismissed the Aniels' other two claims for violation of the Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"; Civ. Code, § 1788 et seq.) and fraud. The Aniels lack standing to bring those claims as they were not the borrowers whose loan was foreclosed, nor did they acquire any interest in the foreclosed property until the day after they filed this suit.

¹ Plaintiffs and appellants are Fermin Solis Aniel and Erlinda Abibas Aniel. Defendants and respondents are ETS Services LLC ("ETS"); GMAC Mortgage LLC ("GMACM"); HSBC Bank USA, N.A., as Trustee for DALT 2007-OA3 ("HSBC"); and Mortgage Electronic Registration Systems, Inc. ("MERS").

Moreover, the Rosenthal Act claim is meritless because that act does not apply to actions taken to foreclose a deed of trust nor to a non-consumer debt. The fraud claim is equally baseless. The Aniells did not and cannot allege detrimental reliance on defendants' alleged misidentification of the foreclosed loan's owner.

For these and the other reasons set forth below, the Court should dismiss the Aniells' suit.

II.

STATEMENT OF THE CASE

A. The Facts

In 2006, Raul and Corazon Estiva (the "Estivas") , who are not parties to this case, bought a house at 801 Foothill Drive in San Mateo (the "Foothill Drive property"). (AA 147.) A grant deed conveying the property to them was recorded on August 31, 2006. (*Ibid.*)

In 2007, the Estivas re-financed the Foothill Drive property with a \$1,000,000 loan from MortgageIT, Inc. (AA 9:1-3; 28 ¶ F.) The loan was secured by a first deed of trust, encumbering the Foothill Drive property and naming MortgageIT, Inc., as lender; Fidelity National Title as trustee; and MERS as beneficiary. (AA 27-41.) GMACM serviced the Estivas' loan. (AA 6:21-23.)

The Estivas defaulted, failing to pay their loan as agreed. In December 2008, MERS substituted ETS as trustee, in Fidelity National Title's place. (AA 221.) Acting as agent for MERS, ETS recorded a notice of default. (AA 43-44.)

The Estivas' default was not cured. So in March 2009, ETS recorded a notice of trustee's sale, scheduling the sale on April 13, 2009. (AA 393.) The trustee's sale was continued.

In May 2009, MERS assigned its interest in the Estivas' deed of trust to HSBC, in its capacity as trustee for DALT 2007-AO3. (AA 223.) Thereafter, MERS ceased to hold any interest in or to be involved with the Foothill Drive property.

Meanwhile, in February 2009, the Aniels had filed a bankruptcy petition. (AA 8:24.) In amended schedules they filed in the bankruptcy proceedings in September 2009, as in their complaint and opening brief, the Aniels claimed to own a 50% interest in the Foothill Drive property.² (AA 8:24–25, 400; A.O.B., 2.)

San Mateo County's Official Records do not bear out this claim. The Aniels were not named as grantees in the 2006 deed of the property to the Estivas. (AA 147.) They were not mentioned in the Estivas' note or deed of trust. (AA 9:1–3 [conceding that "plaintiffs' names were not on the deed"]; 28 ¶ F [deed of trust listing only the Estivas]). The Aniels did not appear of record on the Foothill Drive property until February 3, 2011—the day after this suit was filed—when a deed was recorded conveying to each Aniel a 1% interest in the property.³ (AA 233.)

² In their complaint in this case, the Aniels alleged that they kept tenants in the Foothill Drive property and "paid the regular payments of the mortgage to GMAC . . . disclosed this property in their income tax return . . . maintained the property and paid for the mortgages, hazard insurance, and property taxes." (AA 9:3–6; 10:17–18.)

³ The deed was signed by Corazon Estiva as sole grantor, her husband Raul having died sometime before. (See AA 228, 233.)

Not surprisingly, when the Aniels' bankruptcy was converted from a Chapter 13 to a Chapter 7, the newly appointed bankruptcy trustee abandoned the Foothill Drive property, thus allowing the foreclosure to proceed free of the otherwise applicable automatic stay. (AA 8:26–28.)

ETS recorded a new notice of trustee's sale in December 2010. (AA 395.) After several postponements, the trustee's sale was held on April 21, 2011, and the Foothill Drive property was sold to HSBC. (Request for Judicial Notice ("RJN"), Ex. A.) HSBC later conveyed the property to a third persons who are not parties to this lawsuit. (*Id.*, Ex. B.)

B. Procedural History

The Aniels filed this suit on February 2, 2011, the day before Corazon Estiva deeded them each a 1% interest in the property. (AA 1–120, 233.) The Aniels' complaint named as defendants the entities filing this brief as well as the Pite Duncan law firm, supposedly HSBC's "foreclosing attorneys." (*Ibid.*)

The complaint purports to allege six causes of action for (1) violation of the Rosenthal Act, (2) fraud; (3) wrongful foreclosure; (4) violation of the UCL; (5) injunctive relief; and (6) quiet title. (*Ibid.*)

The defendants demurred, raising among other objections, the Aniels' lack of standing to sue on the claims they alleged. (AA 372–388.)

At the hearing on the demurrer, the trial court asked Mrs. Aniel if it was true that she had not been named in any deed concerning the property before 2011. (RT 4:19–20.) Mrs. Aniel replied: "Yes. Legally, yes." (RT 4:21.) The court next asked: "You never signed a deed of trust, correct?" (RT 4:21–23.) Mrs. Aniel replied: "I never did at that time." (RT 4: 26.)

Based on these concessions, the trial court found that the Aniels “do not have standing.” (RT 5:2–3.)

The trial court also denied Mrs. Aniel’s request for leave to amend, stating: “You don’t have standing. If you don’t have standing to bring the Complaint, which is what I have found, there is no way that you could possibly make [sic: amend] it that would cure this fatal defect.” (RT 5:22–25.)

An order sustaining the demurrer without leave to amend was entered on June 20, 2011. (AA 447–448.) The Aniels appealed in August 2011, but that appeal was dismissed because no final judgment had yet been entered. (See No. A132950; RJN, Ex. C.) The Aniels filed a renewed notice of appeal on February 2, 2012. (AA 450–452.)⁴ The trial court, however, still has not entered any final, appealable judgment or order.

III.

STANDARD OF REVIEW

A. Orders Sustaining Demurrers Are Reviewed De Novo

This Court applies a de novo standard to review of an order sustaining a demurrer. The Court “independently evaluate[s] the complaint, construing it liberally, giving it a reasonable interpretation, reading it as a whole, and viewing its parts in context.” (*Burns v. Neiman Marcus Group, Inc.* (2009) 173 Cal.App.4th 479, 486.)

“If a proper ground for sustaining the demurrer exists, ‘this court will . . . affirm the demurrers even if the trial court relied on an improper

⁴ The Aniels also have a third pro se appeal pending in Division Four of this Court, Case No. A134396, which does not bear directly on this case.

ground, whether or not the defendants asserted the proper ground in the trial court.” (*Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal. App.4th 798, 806, disapproved on other grounds, *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, quoting *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 880 fn. 10.)

The trial court’s oral or written reasoning affords no basis for attacking an otherwise correct judgment. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1451.) “It is axiomatic that we review the trial court’s rulings and not its reasoning.” (*Coral Construction, Inc. v. City & County of San Francisco* (2010) 50 Cal.4th 315, 336, citations omitted.)

For this reason, it is insufficient for the Aniels to show merely that the trial court erred in finding that they lacked standing to bring their claims—the sole focus of their opening brief. Instead, the Aniels must establish that the dismissal was erroneous—that is, that they stated one or more viable claims.

[A] demurrer that is sustained on an erroneous ground will nevertheless be upheld on appeal if as a matter of law the complaint fails to state a cause of action. This is a variation of the rule that the appellate court reviews the trial court’s *decision* not its rationale.

(*Fox v. JAMDAT Mobile, Inc.* (2010) 185 Cal.App.4th 1068, 1079; citation omitted.)

As the opening brief does not discuss any of the Aniels’ claims or try to show why they alleged viable causes of action, the Aniels have waived or abandoned any claim of error in the sustaining of the demurrer to those claims. (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 241; *In re Marriage of Sheldon* (1981) 124 Cal.

App.3d 371, 381; *County of Sacramento v. Superior Court* (1971) 20 Cal. App.3d 469, 473.)

**B. Denial Of Leave To Amend Is Reviewed
For Abuse Of Discretion**

This Court reviews the trial court's denial of leave to amend for abuse of discretion. (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal. App.4th 737, 744.) "When a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. The burden of proving such reasonable possibility is squarely on the plaintiff." (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 992, citations and internal quotation marks omitted; see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

"To show abuse of discretion, plaintiff must show in what manner the complaint could be amended and how the amendment would change the legal effect of the complaint, i.e., state a cause of action." (*Buller v. Sutter Health, supra*, 160 Cal.App.4th at p. 992.)

IV.

**THIS APPEAL, LIKE ITS PREDECESSOR,
IS IMPERMISSIBLY INTERLOCUTORY**

This Court has already once dismissed the Aniels' appeal for lack of a final appealable order or judgment. (RJN, Ex. C.) As the Court noted at that time, "An appeal may only be taken after the trial court has entered a written order or judgment of dismissal. (See *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695.)" (*Ibid.*)

In between this Court's dismissal of the Aniels' earlier appeal and the current notice of appeal, the trial court still did not enter any such written order or judgment.⁵ This appeal is therefore interlocutory, and once again is subject to dismissal on the same grounds as before.

Should the Court nonetheless choose to examine the merits of the Aniels' appeal, defendants offer the following observations.

V.

THREE OF THE ANIELS' CLAIMS ARE MOOT

"[A]n appellate court will decide only actual controversies" "[A] live appeal may be rendered moot by events occurring after the notice of appeal was filed" (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 866; citations omitted.)

"[A] case is moot when it is 'impossible for the appellate court to grant the appellant effective relief.' " (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490, quoting *In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.)

The Aniels' fifth claim sought an injunction against non-judicial foreclosure on the Foothill Drive property. (AA 17:12–21:1.) The Aniels did not secure a preliminary injunction. A non-judicial foreclosure sale of the property was held on April 21, 2011. (RJN, Ex. A.) Because the sale has already been held, issuance at this point of the injunction the Aniels

⁵ On December 6, 2011, during this interim period, the trial court did enter a minute order stating that "the court orders this matter dismissed with prejudice." (AA 449.) The minute order, however, was unsigned, and does not suffice to confer appellate jurisdiction on this Court under section 581d of the Civil Code. (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1577–79 [rejecting unsigned minute order of dismissal as adequate under section 581d].)

sought would have no practical effect. For that reason as well, nothing would be achieved by this Court's reversal of the trial court's dismissal of the fifth cause of action. As to that cause of action, the Aniells' appeal is moot.

Because Fegen did not post an undertaking, the Property was sold pursuant to the trial court's order. Consequently, this court cannot fashion any order which would have the effect of ... preventing the sale of the Property, an event which has already occurred.

(*First Fed. Bank of California v. Fegen* (2005) 131 Cal.App.4th 798, 801; see also *Fernandez v. American Sav. & Loan Assn.* (1984) 159 Cal.App.3d 667, 672; *Vegas Diamond Properties, LLC v. FDIC* (9th Cir. 2012) 669 F.3d 933, 936 ("This action is moot because the activities sought to be enjoined have already occurred and can no longer be prevented."); *NBC-USA Housing, Inc., Twenty-Six v. Donovan* (D.C. Cir. 2012) 674 F.3d 869, 872-873.)

The Aniells' fourth cause of action for violation of the UCL is also moot insofar as it sought injunctive relief. "Injunctive relief is appropriate only when there is a threat of continuing misconduct." (*Madrid v. Perot Systems Corp.* (2005) 130 Cal.App.4th 440, 463; citation omitted.) Here, the Aniells alleged unfair competition in connection with the nonjudicial foreclosure of the Foothill Drive property under the Estivas' deed of trust. (AA 16:7-28.) Since the foreclosure sale has occurred, the deed of trust has been discharged. So, in the future, defendants cannot engage in the conduct that the Aniells alleged as unfair competition. "Injunctive relief has no application to wrongs which have been completed, absent a showing that past violations will probably recur." (*Id.*, at p. 465, quoting *People v. Toomey* (1984) 157 Cal.App.3d 1, 20.)

The Aniels' sixth cause of action to quiet title has also been rendered moot. HSBC, which bought the Foothill Drive property at the non-judicial foreclosure sale, has since then sold it to third persons who are not party to this lawsuit. (RJN, Ex. C.) Due to the foreclosure and later transfer to the third persons, the defendants to this lawsuit do not now claim any interest in the Foothill Drive property. So a decree quieting title against them would achieve nothing.

To achieve any effective relief, the Aniels would have to sue the third person who holds legal title to the property. The dismissal of this action does not prevent the Aniels from doing so. Nor will a reversal of the dismissal bring them any closer to their goal of being declared owners of the Foothill Drive property.

"A case is moot when the decision of the reviewing court 'can have no practical impact or provide the parties effectual relief.' 'When no effective relief can be granted, an appeal is moot and will be dismissed.' " (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal. App.4th 204, 214; citations omitted.)

The Aniels' fifth and sixth claims are now moot, as is their fourth insofar as it sought injunctive relief. There is no reason to consider the merits, if any, of those moot claims. The order dismissing them should be affirmed on the ground of mootness alone.

VI.

THE ANIELS STATED NO VIABLE CLAIM

A. The Central Fallacy Of The Aniels' Claims: The Deed Of Trust Was Validly Assigned

The gist of each of the Aniels' claims appears to be that MERS's assignment of the beneficial interest in the Estiva deed of trust to HSBC was invalid and so all subsequent steps in the foreclosure of that deed of trust were improper. (See AA 3:11–27, 4:20–27, 6:1–15, 9:15–10:8, 13:1–14, 14:6–13, 15:1–7, 15:19–21, 16:22–26, 17:13–23, 19:27–20:4.)

The claim is neither new nor valid. Similar claims were rejected in *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256 (“*Fontenot*”), and *Herrera v. Federal National Mortgage Assn.* (No. E052943; May 17, 2012) ___ Cal.App.4th ___, 2012 WL 1726950 (“*Herrera*”).

Here, as in each of the three cited cases, the deed of trust granted MERS the right to assign the deed of trust. (Compare AA 29 with *Herrera*, 2012 WL 1726950, at *5–6.) MERS need not demonstrate that it is authorized by the owner of the loan before exercising that right and assigning the deed of trust to another entity. (*Herrera*, 2012 WL 1726950, at *6.)

Furthermore, as *Herrera* and *Fontenot* point out, “the assignment of the debt (the promissory note), as opposed to the security (the DOT), commonly is not recorded, [so] the lender could have assigned the note to the beneficiary in an unrecorded document not disclosed to plaintiffs.” (*Id.*, at *7, citing *Fontenot*, 198 Cal.App.4th at p. 272.) “This is why in *Fontenot* the court rejected the plaintiff’s claim to set aside the foreclosure

as void based solely on the alleged invalidity of the MERS assignment of the note and DOT.” (*Herrera*, 2012 WL 1726950, at *7.)

[P]laintiff was required to allege that HSBC did not receive a valid assignment of the debt in any manner. Plaintiff rests her argument on the documents in the public record, but assignments of debt, as opposed to assignments of the security interest incident to the debt, are commonly not recorded. The lender could readily have assigned the promissory note to HSBC in an unrecorded document that was not disclosed to plaintiff. To state a claim, plaintiff was required to allege not only that the purported MERS assignment was invalid, but also that HSBC did not receive an assignment of the debt in any other manner. There is no such allegation.

(*Fontenot*, 198 Cal.App.4th at pp. 271–272; see also *Herrera*, 2012 WL 1726950, at *7.)

The Aniels’ complaint suffers from this same failing. The complaint criticizes MERS’s assignment of the deed of trust to HSBC,⁶ but it fails to

⁶ The Aniels’ criticisms of the assignment also lack merit. The burden is on the Aniels, not defendants, to produce evidence regarding whether MortgageIT transferred the note to HSBC. (Compare AA 4:21–24 with *Herrera*, 1726950, at *7.) The Aniels have not alleged any facts to show that MortgageIT did not transfer the note well before that company was dissolved, even if MERS’s assignment of the deed of trust came later. (See AA 8:9.) The assignment could be perfectly valid even if executed by “an infamous robo-signer.” (See AA 9:27–10:2, 14:6–13.) Assignments are not affidavits. They do not attest to the truth of any facts. Hence, “robo-signing” them is not improper. The signer was a GMAC employee, but could also be appointed a vice president of MERS for the purpose of executing documents such as the assignment. (AA 14:9–15.) Nothing prevents an individual from occupying positions with two companies at once. Assignment of the deed of trust did not violate the automatic stay in

allege any facts showing that the Estivas' promissory note was not transferred to HSBC, carrying with it the beneficial interest in the deed of trust. (See Civ. Code, § 2936.)

Furthermore, as both *Fontenot*, 198 Cal.App.4th at p. 272, and *Herrera*, 2012 WL 1726950, at *8, point out, even if there were something wrong with the assignment, the Aniels could not upset the foreclosure sale or otherwise state a claim without pleading facts to show that they were prejudiced by that defect. The Aniels cannot do so any more than Fontenot or Herrera could. "If MERS indeed lacked authority to make the assignment, the true victim was not [the Aniels] but the original lender, which would have suffered the unauthorized loss of a \$1 million promissory note." (*Fontenot*, 198 Cal.App.4th at p. 272; see also *Herrera*, 2012 WL 1726950, at *8–9.)

There is no merit to the Aniels' theory that they can escape foreclosure of the Estivas' defaulted loan due to supposed irregularities in MERS's assignment of the beneficial interest in the deed of trust to HSBC. Since that theory underlies each of the Aniels' claims, the trial court correctly sustained the demurrer to each of those claims and dismissed the Aniels' suit.

the Aniels' bankruptcy (see AA 9:9–14) because the stay only prevents acts to perfect or enforce debts or liens against the bankrupt debtor or his/her property, not the transfer between creditors of claims against the debtor. (*In re Halabi* (11th Cir.1999) 184 F.3d 1335, 1337; *In re Lieurance* (Bankr. D. Kan. 2011) 458 B.R. 757, 763–764, 766; *In re Bryant* (Bankr. S.D. Ga. 2011) 452 B.R. 876, 881–882.)

B. The Aniels' Rosenthal Act Claim Lacked Merit

The Aniels' Rosenthal Act claim (AA 11:23–13:20) is fatally flawed for several independent reasons.

First, it relies completely on the Aniels' theory that MERS's assignment is invalid,⁷ which as shown in the preceding section is incorrect.

Second, the Rosenthal Act, like the federal Fair Debt Collection Practices Act, applies only to debt collection activities. Foreclosing on a deed of trust is not debt collection; hence, acts taken in connection with a non-judicial foreclosure do not fall with the Rosenthal Act's scope.

[The] law is clear that foreclosing on a deed of trust does not invoke the statutory protections of the RFDCPA. [F]oreclosure pursuant to a deed of trust does not constitute debt collection under the RFDCPA. The conduct Plaintiff complains of concerns foreclosure related actions in connection with his residential mortgage. This conduct is not covered by the RFDCPA.

(*Sipe v. Countrywide Bank* (E.D. Cal. 2010) 690 F.Supp.2d 1141, 1151; citations and internal quotation marks omitted.)

Third, the Bankruptcy Code preempts the Rosenthal Act claim to the extent it is based on any action taken in the course of the Aniels' bankruptcy case. (See *Walls v. Wells Fargo Bank* (9th Cir. 2002) 276 F.3d 502, 510–511.)

⁷ The claimed violations of the Rosenthal Act are misrepresenting “the true owner of the Note and the Deed [of Trust],” claiming “an interest in the DEED [of Trust] through a fraudulent assignment,” submitting a “fraudulent, fabricated and bogus assignment of deed [of trust],” and attempting to foreclose without evidence of chain of title of note and deed of trust. (AA 12:24–13:14.)

Fourth, the Aniells owed no obligation to pay the Estivas' loan. They do not allege that defendants attempted to collect that loan from them. Hence, they were not "debtors" for purposes of the Rosenthal Act and cannot bring any claim under that Act. (See Civ. Code, §§ 1788.2(h), 1788.30(a).)

Finally, the Aniells did not live in the Foothill Drive property, but instead say they leased it to tenants. (AA 10:17–18, 22:7–8.) The Rosenthal Act protects only consumers and only with respect to debts they incur primarily for personal, family, or household purposes." (Civ. Code, § 1788.2(e).) With respect to this property and debt, the Aniells were acting as landlords, not consumers, and so cannot claim the Rosenthal Act's protections.

C. The Aniells Alleged No Viable Fraud Claim

The Aniells' fraud claim (AA 13:20–15:13) fails to state facts sufficient to constitute a cause of action for three reasons.

First, it is founded on the theory that MERS's assignment of the Estiva deed of trust to HSBC was invalid. (See AA 13:25–27, 14:6–15.) For the reasons stated above (pp. 10–12), that theory is incorrect. So the complaint fails to allege a misrepresentation—the first element of a fraud claim.

Second, the Aniells fails to allege actual and detrimental reliance. The Aniells aver only that not knowing the true owner of the Estivas' loan somehow "adversely affected Plaintiff's reorganization efforts" in the bankruptcy proceeding. (AA 14:2–5, 14:28–15:7.) They fail to say why a debt they did not owe would be involved in their reorganization efforts at all, much less how not knowing who really owned that loan interfered with

those efforts. If the Aniels wanted to modify the Estivas' loan, they would do so with that loan's servicer, GMACM, not directly with the loan's owner.

Third, any representations to the Aniels in the course of the bankruptcy were absolutely privileged under Civil Code section 47(b). So are the statements made in the notice of default and notice of sale. (Civ. Code, §2924(d).) None of those statements may form the basis of any tort claim. (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 960.) The Aniels do not and cannot allege any misrepresentation made outside those legally protected settings.

D. The Aniels Did Not Allege A Viable Wrongful Foreclosure Claim

The Aniels' wrongful foreclosure claim (AA 15:13–16:28) also failed to state a viable claim for at least two reasons.

First, like all the rest of the Aniels' claims, it was based on the false theory that MERS's assignment of the deed of trust to HSBC was invalid.⁸ (AA 15:19–21, 16:22–26.) For the reasons already stated, that theory is wrong.

Second, the Aniels did not allege tender as is required for a wrongful foreclosure claim. A defaulted borrower is "required to allege tender of the

⁸ The wrongful foreclosure claim also alleges that no valid substitution of trustee form was recorded making ETS the successor trustee under the Estivas' deed of trust. (AA 15:22–16:18.) In fact, a substitution of trustee form was recorded the same day as, and immediately before, the notice of default. (AA 218, 221.) The substitution was signed by MERS, who did not assign the beneficial interest in the deed of trust to HSBC for another seven months. (AA 223.)

amount of [the lender's] secured indebtedness in order to maintain any cause of action for irregularity in the sale procedure.” (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1109.) This tender rule applies to any cause of action that seeks redress from foreclosure.⁹ The tender rule is strictly enforced. (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 439.) Absent an alleged and actual tender, the complaint fails to state a viable cause of action.¹⁰ “Under California law, the ‘tender rule’ requires that as a precondition to challenging a foreclosure sale, or any cause of action implicitly integrated into the sale, the borrower must make a valid and viable tender of payment of the secured debt.”¹¹

An action to set aside a foreclosure sale, unaccompanied by an offer to redeem, does not state a cause of action which a court of equity recognizes. (*Karlsen v. American Sav. & Loan Assn.*, *supra*, 15 Cal.App.3d at p. 117.) “It would be futile to set aside a foreclosure sale on the technical

⁹ *Abdallah v. United Savings Bank*, *supra*, 43 Cal.App.4th at p. 1109 (affirming sustaining of demurrer without leave, and explaining that the tender rule applies to “any cause of action for irregularity in the sale procedure”); *U.S. Cold Storage v. Great Western Sav. & Loan Assn.* (1985) 165 Cal.App.3d 1214, 1225 (affirming judgment of nonsuit); *Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 579 (demurrer properly sustained without leave on claims of wrongful foreclosure, fraud, and negligence relating to defective notice not foreclosure sale).

¹⁰ *Karlsen v. American Sav. & Loan Assn.* (1971) 15 Cal.App.3d 112, 117120; *Abdallah v. United Savings Bank*, *supra*, 43 Cal.App.4th at p. 1109; 4 Miller & Starr, Cal. Real Estate (3d ed. 2003) § 10:212, pp. 653–654.

¹¹ *Montoya v. Countrywide Bank, F.S.B.* (N.D. Cal. 2009) 2009 WL 1813973, at *11 (citations omitted); *accord* *Odinma v. Aurora Loan Servs.* (N.D. Cal. 2010) 2010 WL 2232169, at *4–5; *Saldade v. Wilshire Credit Corp.* (E.D. Cal. 2010) 686 F.Supp.2d 1051, 1059–61; *Anaya v. Advisors Lending Group* (E.D. Cal. 2009) 2009 WL 2424037, at *10; *Alicea v. GE Money Bank* (N.D. Cal. 2009) 2009 WL 2136969, at *3.

ground that notice was improper, if the party making the challenge did not first make full tender and thereby establish his ability to purchase the property.”¹² “A cause of action ‘implicitly integrated’ with the irregular sale fails unless the trustor can allege and establish a valid tender.” (*Arnolds Management Corp. v. Eischen, supra*, 158 Cal.App.3d at p. 579.)

To circumvent the tender rule, the Aniels try to allege that ETS acted as trustee without having been substituted into that office under the Estivas’ deed of trust. But, as pointed out in footnote 8 above, the judicially noticeable, recorded substitution of trustee form refutes that assertion.

E. The Aniels Alleged No Viable UCL Claim

The Aniels’ UCL claim (AA 16:1–17:11) fails for the same reasons as the rest of the Aniels’ claims. It is based on the same faulty theory that MERS’s assignment of the Estivas’ deed of trust to HSBC was invalid. (See AA 16:13–28.)

Also, the Aniels fail to show that they are entitled to any relief under the UCL. As already explained (pp. 8–10), the Aniels cannot recover injunctive relief because they cannot show any threat that the allegedly unfair competitive activity will continue in the future. To be entitled to restitution, the Aniels must allege facts showing that the defendants “obtained something to which [they were] not entitled and the [the Aniels]

¹² *U.S. Cold Storage v. Great Western Sav. & Loan Assn., supra*, 165 Cal. App.3d at 1224; accord *Williams v. Countrywide Home Loans, Inc.* (N.D. Cal. 1999) 1999 WL 740375, at *2 (“The application of the ‘tender rule’ prevents ‘a court from uselessly setting aside a foreclosure sale on a technical ground when the party making the challenge has not established his ability to purchase the property.’”).

gave up something which [they were] entitled to keep.” (*Day v. AT&T Corp.* (1998) 63 Cal.App.4th 325, 340.)

The Aniels do not and cannot allege facts showing either of these requirements. HSBC received the property to which it was entitled upon foreclosure of the loan which neither the Estivas nor the Aniels had timely paid. The Aniels had no right to keep the Foothill Drive property without paying the loan outstanding against it.

VII.

CONCLUSION

For the reasons stated above, the Court should dismiss the appeal.

DATED: June 4, 2012

SEVERSON & WERSON
A Professional Corporation

By: _____
M. Elizabeth Holt

Attorneys for Defendants-Respondents
ETS Services LLC; GMAC Mortgage
LLC; HSBC Bank USA, N.A., as Trustee
for DALT 2007-OA3; and Mortgage
Electronic Registration Systems, Inc.

CERTIFICATE OF BRIEF LENGTH

[California Rules of Court, rule 8.204(c)(1)]

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the foregoing brief contains 6,232 words, as shown by the word count function of the computer program used to prepare the brief.

Dated: June 4, 2012

M. Elizabeth Holt

PROOF OF SERVICE
California Court of Appeal, First Appellate District, Division
Four
No. A134461
(San Mateo County Sup. Ct. Case No. CIV502857)

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy of **Respondents' Brief** on all interested parties in said case addressed as follows:

California Supreme Court
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(Four copies)

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

San Mateo County Superior Court
400 County Center
Redwood City, CA 94063
(Case No. CIV502857)

Stephen M. Wagstaffe
San Mateo County District
Attorney
400 County Center, 3rd Floor
Redwood City, CA 94063

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Drive
Hillsborough, CA 94010
In Pro Per

Peter J. Salmon
Pite Duncan LLP
4375 Jutland Drive, Suite 200
San Diego, CA 92117
*Attorneys for Defendant Pite
Duncan LLP*

☒ **BY MAIL:** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California on June __, 2012.

Sylvia Coleman

J

Claim # 112-114

1 FERMIN SOLIS ANIEL -IN PRO SE-
2 ERLINDA ABIBAS ANIEL
3 75 Tobin Clark Drive
4 Hillsborough, CA 94010
5 Phone: (650) 284 - 6417
6 Fax: (650) 571-582

(ENDORSED)
FILED
SAN MATEO COUNTY

FEB - 2 2011

Clerk of the Superior Court
By G. Lacey
DEPUTY CLERK

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN MATEO

9 FERMIN SOLIS ANIEL, an individual;
10 ERLINDA ABIBAS ANIEL, an individual;

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
15 GMAC MORTGAGE CORPORATION AND
16 GMAC MORTGAGE; HSBC BANK, U.S.A.
17 as Trustee for DALT 2007-A03;
18 MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS, INC.; PITE
20 DUNCAN, LLP; AND DOES 1-50 inclusive

21 Defendants

Case No.:

CIV 502857

VERIFIED COMPLAINT FOR:

- (1) VIOLATION OF THE CALIFORNIA ROSENTHAL ACT
- (2) FRAUD (MISREPRESENTATION)
- (3) WRONGFUL FORECLOSURE
- (4) UNFAIR COMPETITION LAW (Cal. Bus. & Prof. Code § 17200 et seq.)
- (5) REQUEST FOR INJUNCTIVE RELIEF
- (6) QUIET TITLE

DEMAND FOR JURY TRIAL

UNLIMITED CIVIL CASE (Exceeds \$25,000)

22 By this Complaint, Plaintiffs Erlinda Abibas Aniel, and Fermin Solis Aniel,
23 (collectively "Plaintiffs") does hereby allege for causes of action against Defendants GMAC
24 MORTGAGE, LLC F/K/A as GMAC Mortgage and GMAC Mortgage Corporation
25 ("GMAC"); ETS SERVICES, LLC ("ETS"); Mortgage Electronic Registration Systems, Inc.,
26 ("MERS"); HSBC BANK U.S.A. as TRUSTEE for DALT 2007-A03 ("HSBC"); PITE
27 DUNCAN, LLP ("Pite Duncan"); and DOES 1-50 inclusive plaintiffs (collectively
28 "Defendants") states, alleges, and avers that the following allegations and other factual

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel -Pro Se- 75 Tobin Clark Dr. Hillsborough, CA 94010		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">RECEIVED</div> <div style="font-size: 1.5em; font-weight: bold; margin: 10px 0;">FEB - 2 2011</div> <div style="font-size: 0.8em; margin: 10px 0;">CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY</div>	
TELEPHONE NO.: 650-284-6417 FAX NO.: ATTORNEY FOR (Name): Pro Se			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME:			
CASE NAME: Fermin Solis Aniel et al. v. ETS Services, LLC et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CIV 502857 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPWD (23) Non-P/DPWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): (6): Violation of CA Rosenthal Act, Fraud, Wrongful Foreclosure, etc.
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 Agreement. Defendants made a fraudulent conveyance during Plaintiffs' bankruptcy. The
2 subject property is part of plaintiffs' bankruptcy estates.

3 3. Defendants conduct involved fraud, deceit or deliberate or reckless disregard of
4 property rights and statutory requirements and resulted to substantial loss, or significant risk of
5 substantial loss to plaintiffs.

6 4. HSBC, in concert with MERS, willfully received the assignment of beneficial
7 interest while plaintiffs were in bankruptcy on May 26, 2009.

8 5. Pite Duncan willfully prepared the assignment of deed on May 26, 2009 in
9 concert with GMAC employee by the name of Jeffrey Stephan.

10 6. Pite Duncan willfully created the assignment of deed on May 26, 2009 and
11 recorded on July 17, 2009, knowing that the plaintiffs had a pending Chapter 11 case in
12 Bankruptcy Court as of February 25, 2009.

13 7. All the defendants were in concert to each other to defraud plaintiffs of their
14 property rights and stealing the subject property for profits.

15 8. ETS willfully recorded a notice of trustee sale without recording a notice of
16 default which violate the California Civil Code § 2924 et seq.

17 9. ETS willfully recorded notice of trustee sale, acting as a trustee without any
18 evidence of recorded substitution of trustee, in violations of Cal Civ. Code § 2934.

19 10. GMAC is in concert with other defendants to create and manufactured these
20 fraudulent documents in order to obtain a non-judicial foreclosure in California.

21 11. Pite Duncan falsely represented that assignment of deed assigned the beneficial
22 interest to HSBC as trustee for DALT 2007-A03, there is no evidence that MortgageIT, the
23 original lender, ever transferred the beneficial interest to HSBC, which was evidenced by Pite
24 Duncan not attaching any endorsement of the Note in their objection to plaintiffs
25 reorganization plan. MERS, as nominee of lender MortgageIt, is not authorized to assign any
26 assignment of deed because MERS is only an agent of lender MortgageIT. MERS' function is
27 only a mortgagee of record. Even if MERS could prove that it has authorization to assign or
28 transfer beneficiaries, MERS could be liable for violation of Cal. Civ. Code § 1095.

12. HSBC did not file any Proof of Claim in the bankruptcy Court as a secured creditor of plaintiffs' deed of trust and promissory note.

13. Defendants, while acting as beneficiaries, lenders and trustees, by use of the mail, and the means and instrumentalities of interstate commerce, directly or indirectly, engaged in acts practices or courses of business, which were fraudulent, deceptive, or manipulative. Defendants made untrue statements of material fact or omitted to state a material fact necessary to make the statement made, in the light of the circumstances under which they were made.

14. Defendants engaged in acts, practices or courses of business that were fraudulent, deceptive or manipulative with respect to the Defendants foreclosing on plaintiffs property. And unless enjoined, Defendants will continue to commit fraud and violate California Foreclosure Laws.

15. Defendants conducts could create a big havoc for plaintiffs' chain of title and would create a cloud of title on plaintiffs' property.

16. Plaintiffs are entitled to Quite Title against defendants because plaintiffs have claim ownership of the subject property at 801 Foothill Drive, San Mateo, California, 94402.

PARTIES

17. Plaintiffs' property is located at 801 FOOTHILL DRIVE, SAN MATEO, CA 94402 ("Property"). Legal description:

THE LAND REFERRED TO HEREIN BELOW IS
SITUATED IN THE CITY OF SAN MATEO, COUNTY OF
SAN MATEO, STATE OF CALIFORNIA, AND IS
DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT
CERTAIN MAP ENTITLED "FOOTHILL TERRACE"
FILED IN THE OFFICE OF THE RECORDER ON JUNE 10,
1946 IN BOOK 25 AT PAGE (S) 59.

JPN: 034-031-312-03

APN: 034-312-030

1 18. Plaintiffs are informed, believe, and allege that Defendant Pite Duncan is a law
2 firm "debt collector" whose main purpose is to create and manufactured an assignment of deed
3 and have Jeffrey Stephan executed the fraudulent assignment of deed of trust in concert with
4 MERS, GMAC, HSBC, and ETS to commit the fraud. Defendant Pite Duncan is a debt
5 collector law firm and a limited liability partnership with its principal office in San Diego,
6 California. Pite Duncan represented to the Bankruptcy Court that they were the attorneys for
7 secured creditor HSBC.

8 19. Defendant MERS is a separate corporation that is acting solely as a nominee
9 for lender and lender's successors and assigns. MERS is the beneficiary under this Security
10 Instrument of Plaintiffs deed of trust. MERS is "mortgagee of records" who keeps track of all
11 beneficiaries. MERS is a confidential computer registry utilized by Lenders to list and trade
12 mortgage loans on the secondary market while avoiding the legal requisites of recording
13 conveyance of said loans and deed of trust. Rather Defendant MERS is simply a shell
14 designed to obscure the identity of the true holder of the note. MERS is responsible for
15 creating thousand of fabricated and bogus assignment of deed allowing third parties to do the
16 dirty work for MERS.

17 20. Plaintiffs are informed, believe, and allege that Defendant ETS is a purported
18 foreclosure trustee and is a debt collector whose main purpose is to foreclose on Plaintiffs'
19 property and collect the debt by violating California foreclosure law. ETS is an affiliate of
20 GMAC under the name of Executive Trust Services dba: ETS Services, LLC at 2255 North
21 Ontario Street, Suite 400, Burbank California 91504-3120.

22 21. Defendant GMAC Mortgage, LLC F/K/A, GMAC MORTGAGE and GMAC
23 MORTGAGE CORPORATION, based in Pennsylvania, is a loan servicer for plaintiffs'
24 mortgage or a bill collector. When plaintiffs defaulted on a loan, GMAC became a debt
25 collector and hired third parties vendors such as law firm debt collectors and debt collector
26 companies such as ETS, who represented to be trustee on plaintiffs' deed of trust when it
27 failed to collect a defaulted amount.

28 22. Defendant HSBC is the alleged Beneficiary of the Deed of Trust and new
Lender under the Promissory Note by way of a fabricated and manufactured assignment of

1 deed created by Pite Duncan and executed by the infamous robo-signer, Jeffrey Stephan, an
2 alleged vice president of MERS, which is false because Jeffrey Stephan is an employee of
3 GMAC. Plaintiffs believe that this is a securitized Trust and Plaintiffs' loan is one of many
4 loans within this securitized trust.

5 23. Defendants sued as DOES 1 through 50 are presently unknown to Plaintiffs
6 and Plaintiffs therefore uses these fictitious names pursuant to Code of Civil Procedure §
7 474, on information and belief, each of the fictitious named Defendant is responsible for the
8 event and happenings recited in this Complaint, Plaintiffs will amend this complaint upon
9 ascertaining the identities and capacities of the Doe Defendants.

10 24. On information and belief, each of the Defendants is and at all relevant times
11 were, the agent, servant, employee or representative of each remaining Defendants. On
12 further information and belief, each of each Defendant, in doing the things alleged, was
13 acting within the course and scope of his/her or its authority as an agent, servant, employee
14 and/or representative of the remaining Defendant with the knowledge, permission, consent,
15 authorization and/or subsequent ratification of the remaining Defendants.

16 JURISDICTION AND VENUE

17 25. This Court has subject matter jurisdiction of this action. The Superior Court is
18 a court of general jurisdiction. See Cal. Civ. Pro. §410.10. Plaintiffs seek damages under the
19 California Rosenthal Act, Fraud. Misrepresentation, violation of Ca. Civ. Code § 2924 et
20 seq., wrongful foreclosure and unfair competition law, (Cal. Bus. & Prof. Code § 17200 et
21 seq.). Plaintiffs also seek declaratory judgment, temporary restraining order, permanent
22 injunction, and quiet title.

23 26. All of the Defendants have conducted business in the State of California,
24 which included, among others, recording documents and pursuing a non-judicial foreclosure
25 in this County.

26 27. Venue is proper in this County because Defendants violated laws in this State
27 of California that involve real property located in this County. See Cal. Civ. Pro. §395(a).

28 28. Declaratory relief is available pursuant to Cal. Civ. Pro. §1060.

FACTUAL ALLEGATIONS

Inception of the Plaintiffs' Loan

29. On or around March 22, 2007, Raul Estiva and Corazon Estiva, (non-parties to this action) signed a Deed of Trust. That Deed of Trust was recorded on April 03, 2007, in the County of Recorders Office in San Mateo. See Exhibit "A".

30. Under the Deed of Trust, the Original Lender was MortgageIT, Inc.

31. Under the Deed of Trust, MERS, is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the security instrument.

32. Plaintiffs allege and believe that MortgageIT has been dissolved.

33. Under the promissory note, MortgageIT is the lender.

Notice of Default

34. On December 17, 2008, ETS recorded a Notice of Default in San Mateo County Recorder's office. See Exhibit "B". The documents stated that "to find out the amount you must pay, or arrange to pay for payment to stop foreclosure, or your property is in foreclosure for any reason, contact Mortgage Electronic Registration Systems, Inc.

C/O ETS Services, LLC

2255 North Ontario Street Suite 400

Burbank, California 91504-3120

(818) 280-1800"

ETS claimed to act as an AGENT for Beneficiary. Neda Cayco, a Trustee Sale Officer, signed the Notice of Default. During this period of time, ETS had no evidence that ETS was in fact a trustee or an agent of beneficiary of MERS. ETS did not disclose that ETS was a debt collector attempting to collect a debt.

35. On February 25, 2009, plaintiffs filed a voluntary bankruptcy under Chapter 11. Plaintiffs owned a 50% interest of the subject property as disclosed on their Amended Schedule A-Real Property in the bankruptcy forms. Plaintiffs Chapter 11 converted to Chapter 7 on August 4, 2010 and plaintiffs were discharged on December 2, 2010. Bankruptcy trustee abandon plaintiffs' property on subject property on November 2, 2010. Plaintiffs had 50%

1 interest on the property with Raul Estiva (now deceased) and Corazon Estiva. Raul Estiva was
2 the one who took out the refinancing of the loan in 2007 with MortgageIT, Inc., which has
3 been dissolved. Although plaintiffs' names were not on the deed, plaintiffs paid the regular
4 payments of the mortgage to GMAC, who is a loan servicer/bill collector. Plaintiffs disclosed
5 this property in their income tax return. Plaintiffs maintained the property and paid for the
6 mortgages, hazard insurance, and property taxes. By late 2008, the mortgage payment
7 increased tremendously and the rent cannot sustain the mortgage payment. Since plaintiffs
8 have a 50% interest in the property, plaintiffs filed this action against all the defendants.

9 36. The assignment of deed transferring all beneficial interest to defendant HSBC
10 by MERS was in violation of the automatic stay because plaintiffs were still in bankruptcy at
11 the time the assignment of deed were executed and recorded. HSBC never request a motion
12 for relief from the automatic stay and only objected to plaintiffs' reorganization plan, which
13 Pite Duncan submitted on July 28, 2010. HSBC did not file any proof of claim in the
14 bankruptcy court neither proof of any chain of title to perfect the lien.

15 37. On July 28, 2010, Pite Duncan filed an objection to plaintiffs reorganization
16 plan and attached to its object: a promissory note, a deed of trust, an assignment of deed of
17 trust signed by robo-signer Jeffrey Stephan, and Broker Price Opinion. Pite Duncan's version
18 of the promissory note intentionally deleted the original loan numbers and the MERS MIN
19 numbers. Pite Duncan attempted to hide the true identity of all the investors, who bought the
20 promissory note. By hiding the identity of all the investors, the promissory note could be sold
21 and resold numerous times. In other words, if borrowers owe one million dollars on a note,
22 that million dollars note would be sold numerous times resulting in a big profit for lenders.
23 Plaintiffs' loan is under a securitized mortgages as Pite Duncan asserted that the secured
24 creditor is HSBC, who were in concert with all defendants to have Jeffrey Stephan, without
25 personal knowledge, execute the fabricated and manufactured assignment of deed and have it
26 acknowledged by a notary in the same office without the presence of Jeffrey Stephan.

26 Assignment of the Deed of Trust

27 38. On May 26, 2009, Pite Duncan manufactured an assignment of deed, which was
28 signed by Jeffrey Stephan, an infamous robo-signer, who executed the document as a MERS

1 vice president and acknowledged the document by a notary public by the name of Thomas P.
2 Strain. See Exhibit "C". The assignment of deed was recorded by First American Title
3 Company as an accommodation only that certain assignment of deed be mail to Pite Duncan at
4 4375 Jutland Drive P.O. Box 17933 San Diego, California 92117-0933, and recorded on July
5 16, 2009.

6 39. On May 26, 2009, MERS, without authority, executed and acknowledged an
7 assignment of deed through GMAC employee Jeffrey Stephan who signed under MERS as
8 vice president. See Exhibit "D", Jeffrey Stephan deposition.

9 **Substitution of Trustee**

10 40. The original trustee under the deed of trust is Fidelity National Title. None of
11 the defendants have any evidence that they have powers as a trustee under the deed of trust to
12 conduct a foreclosure sale.

13 **Notice of Trustee Sale**

14 41. On December 28, 2010, ETS executed a NOTICE OF TRUSTEE SALE and
15 recorded the document on December 31, 2010. ETS scheduled to have the subject property to
16 be auctioned January 27, 2011. See Exhibit "E".

17 42. On January 26, 2011, plaintiffs were only aware of the impending trustee sale
18 through their tenants.

19 43. On January 27, 2011, plaintiffs attended the auction sale but the sale was
20 postponed to February 9, 2011.

21 44. Plaintiffs assert that there is no substitution of trustee ever recorded in the
22 County San Mateo authorizing ETS to conduct the trustee sale or authorizing as a legal trustee.

23 45. ETS hurriedly recorded a Notice of Trustee Sale in order to profit from an
24 illegal foreclosure. ETS has no evidence that ETS is a trustee under the deed of trust. The
25 original trustee under the deed is Fidelity National Title. There is no evidence in the County of
26 Recorder's Office in San Mateo that the beneficiaries under the deed recorded a substitution of
27 trustee. Even if ETS could provide that evidence of a recorded substituted trustee, it has to
28 comply with Cal Civ. Code § 2924 et seq. in order to do non-judicial foreclosure in California.
ETS did not record a Notice of Default prior to recording a Notice of Trustee Sale. ETS failed

1 to comply with California Civil Code § 2924 et seq. Therefore, the notice of trustee sale is null
2 and void and has no legal effect as a matter of law. There is no evidence of recorded
3 substitution of trustee and notice of default ever recorded by defendant ETS in the County of
4 San Mateo where the property is located. The 2008 notice of default that was recorded has
5 been expired and did not meet the timeline of California foreclosure procedures.

6 46. Plaintiffs were injured in fact and lost money or property as a result of these
7 unlawful, unfair fraudulent business practices.

8 **MERS' Disclosure on Investor of Plaintiffs' Loan**

9 47. On June 16, 2010, MERS' Servicer ID disclosure stated that the investor is
10 HSBC Bank, USA as Trustee. However, it did not disclose specifically which Trust was
11 HSBC as trustee for? MERS disclosure mislead plaintiffs in discovering the real investor of
12 this complex security mortgages. See Exhibit "F". How did Pite Duncan arrive into conclusion
13 that the trust was under DALT 2007-A03 when MERS' disclosure did not identify the name of
14 the TRUST themselves?

15 48. Defendant HSBC as Trustee on information and belief handles many Trusts and
16 that all the Defendants in this action are in concert with one another to defraud Plaintiffs in
17 order to foreclose Plaintiffs property.

18 **Pite Duncan's Role in Plaintiffs' Loan.**

19 49. Pite Duncan, claiming to be hired by the secured creditor HSBC submitted an
20 objection to plaintiffs bankruptcy reorganization plan on July 28, 2010. There is no proof
21 that this debt collectors law firm Pite Duncan was ever hired by HSBC as secured creditor.
22 How could a competent law firm file an objection to plaintiffs reorganization plan when there
23 is no Proof of Claim filed in the bankruptcy court in order to perfect the lien?

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA ROSENTHAL ACT**

26 **(As Against ETS, GMAC, HSBC, PITE DUNCAN)**

27 50. Plaintiffs incorporate by reference paragraphs 1-49 each and every allegation
28 set forth above and herein.

1 b. claimed an interest in the DEED through a fraudulent assignment of
2 the Deed of Trust. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because,
3 for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ
4 Code § 1788.17.;

5 c. submitted fraudulent, fabricated and bogus assignment of deed This
6 is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above,
7 this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17;

8 d. Inflated amount of a debt, fraudulent, and false charges, which they
9 cannot explain. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for
10 reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ Code
11 § 1788.17

12 e. Attempting to foreclose on the property without any evidence or chain
13 of title that the Defendants had any interest in the promissory note and the deed of trust. This
14 is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above,
15 this action violates the FDCPA, this is also a violation of Cal Civ Code § 1788.17.

16 f. Defendant ETS made false and misleading statement to plaintiffs that
17 ETS is a trustee under then deed of trust, the fact is the original trustee of plaintiff deed is
18 Fidelity National Title.

19 54. Defendants' actions have caused Plaintiff actual damages, including, but not
20 limited to, severe emotional distress, their marriage, frustration, anger, anxiety, sleeplessness,
21 sadness and depression.

22 SECOND CAUSE OF ACTION

23 FRAUD

24 (As Against All Defendants)

25 55. Plaintiffs incorporate by reference paragraphs 1-55 each and every allegation
26 set forth above and herein.

27 56. Plaintiffs allege that the Defendants made false representations to the
28 Plaintiffs regarding material facts, including but not limited to, the true owner and holder of

1 the NOTE and DEED, true agents of the creditors, transfers of the deed of trust, notice of
2 default, and notice of trustee sale.

3 57. Plaintiffs relied on these representations of the owner, beneficiary, and
4 servicer of the loan, which cause the debt to rise on their property and now face losing the
5 property to a wrongful foreclosure.

6 58. Plaintiffs argue that all of the Defendants misrepresented to Plaintiffs the true
7 owner of the loan and to whom Plaintiffs' are indebted to, by assigning the debt to HSBC.
8 Plaintiffs, who denied they even owe money to these entities, could not possibly owe money to
9 HSBC. Jeffrey Stephan, an infamous robo-signer, who is working with GMAC, pretending to
10 act as vice president of MERS, signed the assignment of deed. Jeffery Stephan is not a vice
11 president of MERS, had no authorization to execute an assignment of deed, and falsely
12 executed the assignment of beneficial interest in the Plaintiffs' deed. This misrepresentation
13 by defendants constitutes a fraud.

14 59. Defendants conspired with each other by representing that Jeffrey Stephan is the
15 vice president of MERS, which is false. Jeffrey Stephan is an employee of GMAC.

16 60. A misrepresentation is fraudulent if the maker (1) knows or believes that the
17 matter is not as he represents it to be, (2) does not have the confidence in the accuracy of his
18 representation that he states or implied, and (3) knows that he does not have the basis for his
19 representation that he states or implied.

20 61. Pite Duncan committed "fraud upon the court" by filing an objection to
21 plaintiffs reorganization plan by stating that HSBC is the secured creditor when there is no
22 evidence to prove the HSBC was the secured creditor. Pite Duncan knowingly relied on false
23 information, like the assignment of the deed, in claiming HSBC was the secured creditor of
24 plaintiffs loan.

25 62. Pite Duncan violated the Trust by not complying with Pooling & Servicing
26 Agreement ("PSA") of the Trust, which must comply with its agreement on how to transfer the
27 loan so investors will not be subjected to Internal Revenue Services.

28 63. Plaintiffs relied on these misrepresentations when Plaintiffs filed for bankruptcy

1 in order to stop the foreclosure sale. Plaintiffs relied on Defendants' misrepresentations about
2 the owner of the loan during Plaintiffs' bankruptcy proceeding while Plaintiffs were
3 reorganizing their Chapter 11 Plan. Defendants' misrepresentations adversely affected
4 Plaintiffs' reorganization efforts. The truth is that Defendants never intended to give Plaintiffs
5 an opportunity to reorganize their Plan because these Defendants were in cohort by creating a
6 false and manufactured assignment of deed in order to collect a debt through the non-judicial
7 foreclosure process.

8 64. ETS knowingly filed a notice of trustee sale without filing a notice of default.

9
10 65. ETS knowingly claimed to be the trustee without any recorded substitution of
11 trustee. The original Trustee under the deed is Fidelity National Title.

12 66. This misrepresentation allowed ETS to continue with the foreclosure for non-
13 compliance of Ca. Civil Code 2924 et seq.

14 **THIRD CAUSE OF ACTION**

15 **WRONGFUL FORECLOSURE UNDER CAL CIV CODE §§ 2924a, 2934a**

16 **(As Against ETS, GMAC, HSBC, Pite Duncan, and MERS)**

17 67. Plaintiffs incorporate by reference paragraphs 1-66 each and every allegation set
18 forth above and herein.

19 66. Defendants recorded bogus assignments of Deed, executed by Jeffrey Stephan.
20 This assignment of the deed was an attempt to allow HSBC and ETS to foreclose the property
21 regardless of the fact they were not the original beneficiary and trustee of the deed.

22 67. Defendant ETS claiming to be the foreclosing trustee, was not authorized to act
23 as trustee at the time that it filed the Notice of Trustee Sale on the subject property. This is
24 violation of Cal Civ. Pro § 2934a(a)(1).

25 68. In order to initiate a non-judicial foreclosure in the State of California, trustees
26 should comply with Ca. Civ. Code § 2924, § 2934(a)(1). Only the beneficiary under the Deed
27 of Trust may execute a substitution of trustee. Recorded substitution of trustee becomes
28

1 effective and Notice of Default will be recorded after the recording a substitution of trustee.
2 See Cal Civ. Code § 2924a-2934a.

3 In addition according to Fannie Mae Release 98-06:

4 A trustee that is not the original named in the mortgage documents must not
5 submit the "notice of default" for recordation in connection with a non-judicial
6 foreclosure of a California property until after a "substitution of trustee" has
7 been recorded...If the "notice of default" names the new trustee, that trustee is
8 acting without power because under § 2934a of the California Civil Code it is
9 the filing of "substitution of trustee" that provides authority to the new trustee.
10 When a "substitution of trustee" is required in connection with non-judicial
11 foreclosures in California, a servicer should make sure that the trustees it uses
12 has the "substitution of trustee" recorded before the "notice of default" is
13 recorded.

14 69. In the instant case, the Notice of Trustee Sale was recorded on December 31,
15 2010, without first filing the Notice of Default. Then ETS made a fatal mistake in claiming to
16 act as a trustee without a recorded substitution of trustee. Therefore, for that reason as well,
17 the notice of trustee sale is of no legal effect and the foreclosure cannot lawfully occur as a
18 result of this defect.

19 70. Plaintiffs believe that their loan mortgage has been securitized and sold to
20 different investors and that the investors for refinancing Plaintiffs property have satisfied the
21 original lender MortgageIT.

22 71. MERS had no authority to assign the deed to HSBC as Trustee for DALT 2007-
23 A03, MERS as nominee for MortgageIT have no evidence to prove it act in behalf of
24 MortgageIT. MortgageIT has been dissolved prior to MERS transferring all the beneficial
25 interest to HSBC under plaintiffs deed of trust. MERS does not have any beneficial interest in
26 the promissory note.

27 72. For these reasons, Defendants did not properly follow the procedures set in Cal.
28 Civ. Code 2924a. Therefore, all previous actions and future actions are VOID.

FOURTH CAUSE OF ACTION
UNLAWFUL BUSINESS PRACTICES
(Against all Defendants)

73. Plaintiffs incorporate by reference paragraphs 1-72 each and every allegation set forth above and herein.

74. Plaintiff is informed and believes, and on that basis alleges, that Defendants have been engaged in, and continues to engage in, numerous acts and/or a pattern and practice of unfair competition within the State of California in violation of Business and Professions Code § 17200 et seq., proscribing deceptive business practices. Defendants undertook in the unfair and unlawful business practices in their dealing with the Plaintiffs engaging in the following acts:

a. Pite Duncan knowingly representing to the Plaintiffs that HSBC was the secured creditor by a way of a fraudulent assignment of the deed of trust. Pite Duncan requested and created the fraudulent assignment of the deed, which they recorded in the County of San Mateo.

b. GMAC knowingly allowed its employees at the time of the commission of the fraud, on MAY 26, 2009, Jeffrey Stephan executed an assignment of the deed of trust without any personal knowledge or authorization by MERS to sign such a document on MERS' behalf and acknowledged by a notary public by the name of Thomas P. Strain.

c. MERS, without any authority of authorization by its principal, MortgageIT, used a GMAC employee, Jeffery Stephan, to pretend to act as a vice president of MERS in executing an assignment of the deed of trust.

d. HSBC unjustly received beneficial interest in the deed of trust without any endorsement or possession of the original promissory note.

e. ETS wrongfully claims to act as the foreclosing trustee on the subject property without providing any evidence of a recorded substitution of trustee, a necessary document in order for ETS to attempt to conduct a trustee sale.

1 75. The above-described unlawful, unfair, negligent and fraudulent business
2 practices are an ongoing threat of injury to the Plaintiffs and the general public. Plaintiffs and
3 the general public continue to be financially harmed by such conduct and, unless restrained,
4 Defendant will continue to engage in such conduct.

5 76. Pursuant to California Business and Professions Code § 17203, Plaintiffs are
6 entitled to an order of this Court enjoining defendants from continuing to engage in unfair
7 competition, as defined in Business and Professions Code § 17200, in the State of California.
8 Plaintiffs and the general public will be irreparably harmed if such an order is not granted.

9 77. Defendants have been unjustly enriched at the expense of the Plaintiffs who
10 therefore are entitled to equitable restitution and disgorgement of profits realized by
11 Defendants in attempting to foreclose Plaintiffs' real property.

12 **FIFTH CAUSE OF ACTION**
13 **REQUEST FOR INJUNCTIVE RELIEF**

14 **(As to All Defendants)**

15 78. Plaintiffs incorporate by reference paragraphs 1-77 each and every allegation
16 set forth above and herein.

17 **INJUNCTION IS PROPER**

18 79. **INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE** because all the
19 documents were procured through means of misrepresentation, knowledge of falsity, and
20 intended to defraud Plaintiffs, which violates Cal Civ. Code §§ 2924 et seq. and 2934a, violates
21 the California Rosenthal Act, and constitutes Fraud.

22 **General Standard For Granting Preliminary Injunction**

23 80. The general test for determining whether the moving party is entitled to a
24 preliminary injunction is either a combination of (1) probable success on the merits and the
25 possibility of irreparable injury without such injunction, or (2) that serious questions are raised
26 and the balance of the hardship tips sharply in the moving party's favor. *California Cedar*
27 *products Co. v. Pine Mountain Corp.*, 724 F.2d 827, 830 (9th Cir. 1984); *Universal Life*
28

1 *Church, Inc. v. State* (1984) 158, Cal. App.3d 533, 536 (“a preliminary injunction may be
2 granted when the party seeking relief is likely to succeed on the merits of the action, or will
3 suffer irreparable injury if an injunction is not granted”); Code of Civil Proc. § 526. In general,
4 in order to obtain the equitable relief of an injunction, the Plaintiffs must show a significant
5 threat of “irreparable injury” and that legal remedies are “inadequate”. The greater the relative
6 hardship to the moving party, the less probability of success must be shown. *Arcamuzi v.*
7 *Continental Airlines, Inc.*, 819 F.2d 935,937 (9th Cir. 1987); *First Brands Corp. v. Fred*
8 *Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir. 1987).

9 **There Is A Strong Likelihood that Plaintiffs Will Prevail On The Merits**

10 81. Plaintiffs are able to present serious questions on the merits. Defendants are in
11 violation of California Civil Code §§ 2934, 2924 et seq. Under Cal Civil code § 2924, only the
12 trustee, mortgagee, or beneficiary, or any of their authorized agents may file and record a
13 Notice of Default. ETS filed and recorded a Notice of Default on December 17, 2008, twenty-
14 four months after Notice of Trustee Sale was recorded on December 31, 2010.

15 82. Therefore, “...without a valid notice of default, a foreclosure sale cannot
16 proceed...[t]he available, existing remedy is found in the ability of a court in section 2924g,
17 subdivision (c)(1)(A), to postpone the sale until there has been compliance with section
18 2923.5.” *Mabry v. Superior Court*, 185 Cal. App. 4th 208 at 223.

19 83. ETS claims to be acting as the Trustee. However, there is no substitution of
20 trustee recorded that substituted ETS as trustee. Under § 2934a(a)(1), “The trustee under a
21 trust deed...may be substituted by the recording in the county in which the property is located
22 of a substitution executed and acknowledged by (A) all the beneficiaries under the deed of
23 trust. (2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not
24 effective unless all the parties signing the substitution sign, under penalty of perjury, a separate
25 written document. ETS has no evidence of executed and recorded Substitution of Trustee.
26 Therefore, ETS has no authority to conduct a trustee sale of the property.

27 84. Also, only the beneficiaries under the deed of trust may substitute the trustee.
28 See Cal. Civ. Code § 2934a(a)(1)(a). HSBC’s only became the beneficiary under the Deed of

1 Trust through a fraudulent assignment of deed of trust, executed by Jeffery Stephan, who was
2 never a MERS employee. Even if the assignment of the deed of trust were valid, HSBC never
3 substituted the original trustee with ETS. Therefore, ETS lacks authority to conduct a trustee
4 sale.

5 85. ETS committed many violations against the Plaintiffs. Plaintiffs are able to
6 present serious allegations that have merit against the Defendants, which are likely to succeed
7 in those claims.

8 **Equity Support the Issuance of An Injunction**

9 86. The principles of equity apply to a foreclosure sale. Equity does not allow one
10 to take advantage of his own wrong nor will it assist in perpetration of fraud on another or the
11 public. Courts can set aside a foreclosure sale when there has been fraud, when the sale has
12 been improperly, unfairly, or unlawfully conducted, or when there has been such a mistakes
13 that it would be inequitable to let it stand. See e.g. *Bank of America National Trust and Savings*
14 *Ass'n v. Reidy* (1940) 15 Cal. 2d 243, 248; *Whitman v. Transtate Title Co.* (1985) 165 Cal.
15 App. 3d 312, 322-323.

16 87. With these equitable concepts in mind, it is clear from the evidence presented
17 that Defendants were not authorized to record an assignment of deed of trust and notice of
18 trustee sale in order to gain standing and be a real party in interest and to conduct a non-
19 judicial foreclosure on Plaintiffs' property. Defendants failed to comply with California Civil
20 Code §§ 2934(a)(1), (A), (B) and 2924 et seq. These failures and violations mandate that the
21 subject foreclosure process does not meet the requirements of California non-judicial
22 foreclosure. This foreclosure is, therefore, invalid, and an injunction preventing the
23 foreclosure should be issued.

24 **The Relative Hardship Weigh Heavily For Plaintiffs**

25 88. In this matter, the relative hardship to Plaintiffs is losing their rental property to
26 a pretender trustee, ETS, who did not comply with Ca. Civil Code 2924 et seq. by not filing a
27 notice of default. Plaintiffs also stand to lose the property based on a Fraudulent Assignment
28 of Deed from MERS, which was signed by infamous robo-signer Jeffrey Stephan, who had no

1 authority to signed in behalf of MERS. ETS and GMAC cannot proceed with a Trustee Sale.
2 This represents an irreparable injury because Plaintiffs invested all their hard earned money on
3 this rented property. However, these defendants did not contribute any penny towards the
4 Plaintiffs' refinancing the property. Plaintiffs spent money to remodel the property in order for
5 the tenants to live comfortably. The Defendants will get the Plaintiffs' property by using
6 fabricated documents to profits on this foreclosure proceeding by getting the house for FREE.
7 The loss of one's property due to foreclosure constitutes an irreparable injury. *Demarest v.*
8 *Quick Loan Fund. Inc.* 2009 WL 9403377 (C.D. Cal.); *Wrobel v. S.L. Pope & Associates*, 2007
9 WL 2345036 at 1 (S.D. Cal. 2007) ("losing one's home through foreclosure is an irreparable
10 injury"); *Bland v. Carone Family Trust*, 2007 WL 951344 at 2 (S.D. Cal. 2007). Numerous
11 courts have found this inquiry enough by itself to mandate preliminary injunctive relief. See
12 e.g. *Nichols v. Deutsche Bank National Trust Co.*, 2007 WL 4181111, at 2 (S. D. Cal. 2007);
13 *United Church of Med. Ctr. v. Med. Ctr. Commo'n* (7th Cir. 1982) 689 F.2d 693, 701; *Johnson*
14 *v. U.S Department of Agriculture*, supra at 789.

15 89. If Defendants are allowed to foreclose, Plaintiffs' tenants, who have five
16 children, will be wrongfully displaced because of the Defendants' misconduct and Fraud.
17 Plaintiffs' tenants will likely have a difficult time finding an alternative place to live. This
18 would be a burden for the community as a whole especially for the City of San Mateo.

19 90. In contrast, Defendants suffer nothing by preserving the status quo and allowing
20 Plaintiffs and their tenants to remain in the property until the matter is determined on the
21 merits. Indeed, inasmuch as Plaintiffs tenants continue to occupy and maintain the property, its
22 value will be preserved accordingly. In contrast, if the Plaintiffs property is foreclosed upon
23 and left vacant—as thousand of other properties in our community have—it will likely fall into
24 despair and decline in value.

25 **Exigent Circumstances Exist For TRO.**

26 91. As set forth above and in supporting Declarations, unless Defendants are
27 immediately enjoined from conducting the trustee sale that is set for February 9, 2011,
28 Plaintiffs will suffer immediate and irreparable damage in that Plaintiffs will lose their rental

1 property forever as a result of FRAUD.

2 **SIXTH CAUSE OF ACTION**

3 **QUIET TITLE**

4 **(As Against all Defendants)**

5 92. Plaintiffs incorporate by reference paragraphs 1-91 each and every allegation
6 set forth above and herein.

7 93. Plaintiffs, at all times relevant herein, were the owner and/or entitled to
8 possession of The Property along with the co-tenant/owners.

9 94. Plaintiffs are seeking to quiet title against Defendants' claim of right to
10 foreclosure and own the property with the following LEGAL DESCRIPTION:

11 THE LAND REFERRED TO HEREIN BELOW IS
12 SITUATED IN THE CITY OF SAN MATEO, COUNTY OF
13 SAN MATEO, STATE OF CALIFORNIA, AND IS
14 DESCRIBED AS FOLLOWS:

15 LOT 11, BLOCK 3, AS SHOWN ON THAT
16 CERTAIN MAP ENTITLED "FOOTHILL TERRACE"
17 FILED IN THE OFFICE OF THE RECORDER ON JUNE 10,
18 1946 IN BOOK 25 AT PAGE (S) 59.

19 JPN: 034-031-312-03

20 APN: 034-312-030


21 **DEMAND FOR JURY TRIAL AND PRAYER FOR DAMAGE AND FOR RELIEF**

22 WHEREFORE, plaintiffs respectfully pray for this court to enter a judgment in favor
23 of Plaintiffs on all causes of action against Defendants as follows:

- 24 1. That the foreclosure or attempted foreclosure of the subject property is
25 deemed illegal and void and the same be immediately and permanently
26 enjoined, and that Defendants are prevented from engaging in any sale,
27 transfer, conveyance action or any conduct adverse to Plaintiff's interest
28 therein;

2. That the action of all of the Defendants be determined to be unfair and deceptive practices in violation of California law and that this Court award all such relief to Plaintiffs as they may be entitled, including injunctive relief, treble damages and an award of cost;
3. For compensatory damages according to proof;
4. For punitive damages according to proof;
5. For an immediate, preliminary and permanent restraining order and injunction preventing Defendants or any of their agents or representative from taking any further action on the Subject Property.
6. For any other relief the Court may deem just and proper.

Dated: February 2, 2011


FERMIN SOLIS ANIEL
PRO SE PLAINTIFF

Dated: February 2, 2011


ERLINDA ABIBAS ANIEL
PRO SE PLAINTIFF

Verification

The undersigned, for herself declares:

I am one of the Plaintiffs in the above-entitled action. I have read the forgoing complaint, filed on February 2 2011, and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as those matter which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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



ERLINDA ABIBAS ANIEL

Appendix

Exhibits	# of Pages
A. Deed of Trust	15
B. Notice of Default	2
C. Assignment of the Deed of Trust	1
D. Jeffrey Stephan Deposition	69
E. Notice of Trustee Sale	2
F. MERS Disclosure	1

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 52108

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT, INC.
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

9565509
[Space Above This Line for Recording Data]

MIN: _____ *21P*

DEED OF TRUST

ORIGINAL

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 **MARCH 22, 2007** together with all Riders to this document.

(B) "Borrower" is
RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
MORTGAGEIT, INC.

Lender is a **CORPORATION**
organized and existing under the laws of **NEW YORK**
CALIFORNIA-Single Family-Purpose Mde/Freddie Mde UNIFORM INSTRUMENT (MERS)
CA71: 0701 (Page 1)

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EXHIBIT B

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Lender's address is
33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (810) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 22, 2007

The Note states that Borrower owes Lender
ONE MILLION AND NO /100

Dollars (U.S. \$ 1,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2037

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

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

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

<input checked="" 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"/> Biweekly Payment Rider
<input type="checkbox"/> 1-4 Family Rider		
<input type="checkbox"/> Other(s) [specify]		

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As

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(Page 2)

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EXHIBIT B

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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

of SAN MATEO

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF; APN: 034-312-030

which currently has the address of 801 FOOTHILL DRIVE

SAN MATEO

[City]

, California

94402

[Street]

[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 cancelling this Security Instrument.

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

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

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EXHIBIT B

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

[Handwritten signature]

assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such

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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall

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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and

rights under this Security Instrument, including protecting and/or assessing the value or use 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.

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

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EXHIBIT B

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third

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party that owes Borrower Miscellaneous Proceeds or the party against whom action is regard to Miscellaneous Proceeds.

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

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

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

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

Subject to the provisions of Section 15, 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

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EXHIBIT B

direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

19. **Borrower's Right to Reinstatement After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes

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EXHIBIT B

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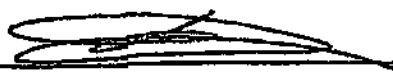
evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such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

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

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

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.

BORROWERS:



RAUL ESTIVA (Seal)
- Borrower



CORAZON ESTIVA (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF *San Mateo*

On *3/23/07*
personally appeared

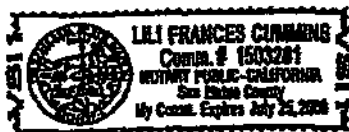
before me, *Lili Frances Cummins, Notary Public*

RAUL ESTIVA AND CORAZON ESTIVA

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

WITNESS my hand and official seal.

Lili Frances Cummins (Seal)



CMS : 02/00

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EXHIBIT B

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EXHIBIT “ B ”

2008-135231

09:25am 12/17/08 ND Fee: 12.00

Count of pages 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 8 0 1 3 5 2 3 1 A R *

RECORDING REQUESTED BY:

LSI TITLE COMPANY, INC.

WHEN RECORDED MAIL TO:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

TS No.: GM-172824-C

Loan No. 1440

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$13,579.22 as of 12/15/2008, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

C/O ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

TS NO.: GM-172824-C

LOAN NO.: [REDACTED] 1440

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 3/22/2007, executed by RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary, recorded 4/3/2007, as Instrument No. 2007-050317, in Book, Page, of Official Records in the Office of the Recorder of San Mateo County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including ONE NOTE FOR THE ORIGINAL sum of \$1,000,000.00; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus Impounds and/or advances which became due on 10/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 12/15/2008

ETS Services, LLC AS AGENT FOR
BENEFICIARY

BY: 

Neda Cayco
TRUSTEE SALE OFFICER

EXHIBIT “ C ”

**RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY**

RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.
Solely as Nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92117-0933

2009-094899

09:34am 07/16/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 9 0 0 9 4 8 9 9 A R *

APN:

00001-028478

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC BANK U.S.A. as Trustee for DALT 2007-AO3 all beneficial interest under that certain Deed of Trust dated March 22, 2007, executed by Raul Estiva and Corazon Estiva, husband and wife as joint tenants to Fidelity National Title, as trustee, for Mortgage Electronic Registration Systems, Inc., Solely as Nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007-050317 on April 3, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 5-26-09

Mortgage Electronic Registration Systems, Inc., Solely
as Nominee for Mortgageit, Inc.

By: _____

Its: _____

Jeffrey Stephan

Vice President

State of Pennsylvania)

County of Montgomery) ss.

On 5/26/09

Jeffrey Stephan before me, Thomas P. Strain, Notary Public, personally appeared name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Thomas P. Strain

Notary Public

(This Area for Official Notary Seal)

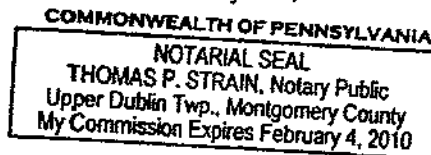


EXHIBIT C

AA46

EXHIBIT “ D ”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008 CA 040805XXXX MB

GMAC MORTGAGE, LLC,

Plaintiff,

-VS-

ANN M NEU A/K/A ANN MICHELLE
PEREZ; DOUGLAS WILLIAM NEU;
UNKNOWN TENANT (S) IN
POSSESSION OF THE SUBJECT
PROPERTY,
Defendants.

DEPOSITION OF JEFFREY STEPHAN

Thursday, December 10, 2009
1:00 p.m. - 2:30 p.m.

Conzor & Associates
1655 Palm Beach Lakes Blvd., Ste. 500
West Palm Beach, Florida 33401

Reported By:

Jamie Reynolds Bentley, Court Reporter
Notary Public, State of Florida
Conzor & Associates
1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401
(561) 682-0905

Ph. 561.682.0905 - Fax. 561.682.1771

1655 Palm Beach Lakes Blvd. Suite 500 - West Palm Beach, FL 33401

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 ALEJANDRA ARROYAVE, ESQ.

Lapin & Leichtling

4 225 Alahamra Circle

Suite 800

5 Coral Gables, Florida 33134

(305) 569-4100

6

7

8 On behalf of the Defendant:

9 CHRISTOPHER IMMEL, ESQ.

Ice Legal, P.A.

10 1975 Sansbury's Way

Suite 104

11 West Palm Beach, Florida 33411

(561) 798-5658

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- - -
I N D E X
- - -

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
JEFFREY STEPHAN				
BY MR. IMMEL	4			54

JEFFREY STEPHAN				
BY MS. ARROYAVE		51		

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P R O C E E D I N G S

- - -

Deposition taken before Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

THE COURT REPORTER: Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Thereupon,

(JEFFREY STEPHAN)

having been first duly sworn or affirmed, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. IMMEL:

Q. All right. We are here on GMAC Mortgage, LLC versus Neu. This is the deposition of Jeffrey Stephan. I'm sure your attorney has gone over things with you a little bit. But if you could just keep one thing in mind, to answer, not to simply nod your head or anything like that. We need for your answers to be clear for the court reporter that way.

A. Yes.

Q. Could you please state your name for the

1 record.

2 A. My name is Jeffrey Stephan.

3 Q. Okay. And who do you work for?

4 A. GMAC, LLC.

5 Q. And is there a difference between GMAC, LLC
6 and GMAC Mortgage, LLC?

7 A. GMAC, LLC -- I'm trying to think of the word
8 to use -- the most recent name.

9 Q. Okay.

10 A. It's GMCA Mortgage Corporation.

11 Q. Okay.

12 A. I'm not sure how you would word that.

13 Q. Okay. So are they -- does GMAC, LLC -- now
14 has that basically taken over these other entities --

15 A. Yes.

16 Q. -- that formerly existed?

17 A. Yes.

18 Q. So these entities no longer currently exist?

19 A. Right.

20 Q. Okay. And how long then have you been
21 employed by GMAC, LLC?

22 A. Five years.

23 Q. Okay. And prior to that, it was GMAC Mortgage
24 and GMAC Corporation?

25 A. That was as the whole five years.

1 Q. Oh, okay.

2 A. Yes.

3 Q. As the whole five years. And what is your
4 title?

5 A. I'm a team leader in the foreclosure
6 department.

7 Q. Okay. And what are your responsibilities?

8 A. I am the team lead of the document execution
9 unit.

10 Q. Okay.

11 A. And also the service transfer unit.

12 Q. And so what type of documents do you
13 ordinarily execute?

14 A. I execute on a daily basis assignments of
15 mortgage, affidavits of any type that might be needed,
16 deeds. Any type of the document that would need a
17 signature of an officer of GMAC.

18 Q. Okay. And who do you report to?

19 A. I report to Margie Kwiatkowski.

20 Q. Could you spell that?

21 A. Yes. It's K-W-I-A-T-A-N-O-W-S-K-I.

22 Q. Okay. And approximately how many employees
23 does GMAC Mortgage, LLC have?

24 A. I couldn't guess. I don't know.

25 Q. Sure. Okay. And as part of your

1 responsibilities, you execute assignments as a vice
2 president of MERS?

3 A. Yes, that's correct.

4 Q. And in executing affidavits as a vice
5 president, do you receive any compensation from MERS?

6 A. No.

7 Q. Have you had any training from MERS?

8 A. No.

9 Q. Okay. How many documents would you say you
10 sign on an average week as far as executing affidavits
11 and things of that nature?

12 A. It's very tough to estimate that to be honest
13 with you.

14 Q. In a given month, would that be easier to say
15 --

16 A. I would say --

17 Q. -- one hundred, 500?

18 A. -- in a month, my team brings to me
19 approximately, I'd say a round number of 10,000. That's
20 just an estimate, of course.

21 Q. Okay. And so, 10,000 your team brings to you.
22 How many people do you oversee?

23 A. A team of 13 people.

24 Q. Okay. Now, would these people be given the
25 duties of actually preparing the documents that you

1 ultimately sign and execute?

2 A. They would review the document that is given
3 to them through our computer systems.

4 Q. Okay.

5 A. So they don't actually prepare it per se.
6 They review it for the accuracy of what type of entity
7 I'm signing as.

8 Q. Okay. How many different entities do you sign
9 as?

10 MS. ARROYAVE: Objection: Form.

11 BY MR. IMMEL:

12 Q. Can you name what entities you sign --

13 A. I sign presently as MERS.

14 Q. Okay.

15 A. And under MERS as vice president or an
16 assistant secretary. Also, I sign for GMAC Mortgage.
17 And to be honest with you, it's too many entities for me
18 to actually quote under GMAC. But it is as a limited
19 signing officer.

20 Q. Okay. And earlier you stated that right now
21 it's GMAC, LLC.

22 A. Uh-huh.

23 Q. You do still currently sign documents as GMAC
24 Mortgage, LLC?

25 A. Yes, I do.

1 Q. Okay. And also as a corporation --

2 A. Yes.

3 Q. -- and some of the others that we've seen your
4 signature on?

5 A. Yes, I do.

6 Q. Okay. Where then does the information that
7 goes into the system that your team reviews --

8 A. Yes.

9 Q. -- where does that information come from?

10 A. The process that we use is -- and this is to
11 my knowledge -- a file is referred to a foreclosure
12 attorney stating exactly what entity would be needed
13 through the referral unit. And at that point, the
14 attorney receives the file to proceed with the
15 foreclosure. That foreclosure name is generated upon
16 GMAC supplying it on the referral. I'm not 100 percent
17 sure of what that process is.

18 Q. Okay.

19 A. The documentation, as you stated, that you're
20 asking about, is given to us after the attorney has been
21 instructed on what name to foreclose in.

22 Q. And who instructs the attorney as to what name
23 to foreclose it in?

24 A. It comes to our referral unit. Which is
25 another process to my knowledge.

1 Q. Okay. Approximately, if 10,000 are signed in
2 a given month, you know, on an average, how long would
3 you say you spend executing each one and actually
4 signing?

5 A. It's tough to say.

6 Q. Okay. Would it be accurate to say that when
7 these documents have been presented to you by your team
8 --

9 A. Uh-huh.

10 Q. -- you take the face value that they are --
11 they have been checked by your team?

12 A. That would be a correct statement, yes.

13 Q. So these documents wouldn't be actually
14 executed on your own personal knowledge?

15 A. Right.

16 Q. It would be based on knowledge that came
17 through --

18 A. Right.

19 Q. -- the chain --

20 A. I'm sorry.

21 MS. ARROYAVE: Can I interrupt just for a
22 second? I just want to make sure that he finishes
23 his question before you answer.

24 THE WITNESS: Sure. Sorry.

25

1 BY MR. IMMEL:

2 Q. Yes, yes, that's true, too.

3 So the information that your team obtains
4 isn't based on their personal knowledge either, it's
5 located within the computer networks?

6 MS. ARROYAVE: Objection: Form.

7 BY MR. IMMEL:

8 Q. The information on the documents that you
9 execute is stored within your data base?

10 A. No, somewhere else.

11 Q. No. Okay. The information then is that --
12 your team, they get that from a computer network that
13 you have, correct?

14 A. No.

15 Q. Where does your team get that information?

16 A. That information is first given to the
17 attorney to foreclose under which name as needed. If we
18 are stating some type of assignment, for example, the
19 attorney, to my knowledge, and I'm not 100 percent sure
20 of their process because I don't work for the attorney,
21 they would do a title check to verify what name the lien
22 is presently in.

23 Q. Okay.

24 A. At that point is when it would initial if an
25 assignment would be needed or not.

1 Q. So at the direction of the attorney, your team
2 creates these documents and then you execute them?

3 MS. ARROYAVE: Objection: Form.

4 BY MR. IMMEL:

5 Q. So your team executes documents at the request
6 of attorneys?

7 MS. ARROYAVE: Objecting: Form. You can
8 still answer it if you understand the question.

9 BY MR. IMMEL:

10 Q. Do you understand what I'm asking?

11 A. Yes, I understand what you're asking. My team
12 does not create any documents.

13 Q. These documents are then sent from the
14 attorney?

15 A. Yes.

16 Q. Okay. And you're -- so then the team that you
17 oversee --

18 A. Uh-huh.

19 Q. -- simply reviews them for accuracy?

20 A. That's correct.

21 Q. Okay. And how do they verify the information
22 is accurate?

23 A. They do not go into the system and verify the
24 information as accurate. We are relying on our attorney
25 network to ensure that they are asking for the correct

1 information.

2 Q. So the attorney creates these documents and
3 you are relying that the attorney is correct?

4 A. Yes.

5 MS. ARROYAVE: Objection: Form.

6 BY MR. IMMEL:

7 Q. Okay. And then they are required to be
8 notarized. Are they notarized in your office?

9 A. Yes.

10 Q. Is the notary present with you or is it down
11 the hall?

12 A. The notary is in the same department.

13 Q. Same department. Okay. Are they physically
14 present when you (sic) notarize this -- or when they
15 notarize and then you execute it?

16 A. No, they are not physically present. But I
17 will -- I do deliver them to the notary.

18 Q. All right.

19 A. And I wait for them to notarize it to hand
20 them back to my team.

21 Q. Okay. All right. What department then? You
22 said your department?

23 A. Right.

24 Q. And as part of their job responsibilities,
25 would notarizing be their sole responsibility, or do

1 they have other responsibilities?

2 A. They have other responsibilities.

3 Q. Are any of the members of your team, people
4 that also notarize documents that you execute?

5 A. Yes.

6 Q. Yes. Okay. Is there a job requirement that
7 certain employees become notaries?

8 A. I don't know.

9 Q. Okay. And what type of -- what level of a
10 type of employee would it typically be that is a notary?

11 A. I don't know that either.

12 Q. All right. Does the company pay for the
13 process of becoming a notary or the renewal fees?

14 A. Yes.

15 Q. Okay. If a notary feels that they are being
16 asked to notarize something that's done improperly, is
17 there a process which they can, you know, raise that to
18 anybody's attention?

19 A. I honestly don't know.

20 Q. You are not sure. Do you notarize any
21 assignments of mortgage or other documents yourself?

22 A. No.

23 Q. Are you a notary?

24 A. No.

25 Q. How are witnesses ordinarily chosen?

1 MS. ARROYAVE: Object: Form.

2 Chosen for what?

3 BY MR. IMMEL:

4 Q. The witnesses to, say, the assignments of the
5 mortgage, and the witnesses of things that you execute.

6 A. They are just chosen randomly.

7 Q. Chosen randomly. Okay. Approximately how
8 many days a week do you spend executing assignments,
9 affidavits, and the various documents that you execute?

10 A. Five.

11 Q. Five. Okay. Are there any specific days
12 where it's one day these types of documents, this type
13 of documents, or can it be just a mix?

14 A. It's a mix.

15 Q. Okay. Approximately how many documents would
16 you say are presented to you by your team at a given
17 time? Is it one at a time, or ten at a time?

18 A. It is done in bulk.

19 Q. Done in bulk.

20 A. I could not quote you the exact number.

21 Q. Okay. Going back to the signing officer as
22 Mortgage Electronic Registration Systems, you said that
23 you are -- you sign as both vice president and as an
24 assistant secretary?

25 A. That is correct.

1 Q. Is there any basis for one -- you sign as one
2 versus the other?

3 A. The majority of the time I sign as a vice
4 president. Most times we do not need an assistant
5 secretary, unless they are asking for a second signature
6 on any type of an affidavit or assignment.

7 Q. Okay. And, again, you are not paid by MERS.
8 Do you hold any other responsibilities with MERS that
9 would be consistent with having the title of a vice
10 president?

11 A. No.

12 Q. No. Okay. So you don't attend any board
13 meetings for MERS?

14 A. No.

15 Q. You don't report to the secretary of MERS or
16 any other people at MERS?

17 A. No.

18 Q. How did you become a MERS representative? Did
19 you request to be a vice president of MERS?

20 A. I received the responsibility as being the
21 team lead for document executing. It was assigned to me
22 by our legal area.

23 Q. Okay. All right. So your responsibilities as
24 a vice president of MERS to execute the assignments is
25 really your job perspective, or an aspect of your job at

1 GMAC Mortgage, LLC or GMAC, LLC?

2 A. That is correct.

3 Q. Okay. And you've never been to any MERS
4 offices or their headquarters?

5 A. No.

6 Q. Are you aware of why you were given the title
7 of vice president versus assistant secretary or...

8 A. No, I'm not aware of that.

9 Q. Okay. All right. I have here the assignment
10 of mortgage which you executed in this case.

11 A. Okay.

12 MR. IMMEL: I'll enter that as Exhibit A.

13 (Defendant's Exhibit Letter A was marked for
14 identification.)

15 MR. IMMEL: I have a copy for you, as well.

16 THE WITNESS: Thank you.

17 BY MR. IMMEL:

18 Q. In the top left-hand corner it says, Record
19 and return to offices of Marshall C. Watson.

20 Based on your earlier statements, it's
21 accurate to say that attorneys at Marshall C. Watson
22 created the information on this document?

23 MS. ARROYAVE: Objection: Form.

24 THE WITNESS: That would be correct.

25

1 BY MR. IMMEL:

2 Q. Okay. And who -- so an attorney chose the
3 date of the 4th day of March, 2009.

4 Can you tell me the date actually. Whether
5 that's the 3rd or the 5th of March.

6 A. To me it seems to be the 5th.

7 Q. Okay.

8 A. Actually, excuse me, let me change that. It
9 would have to be the 3rd, because the notary did it on
10 the 4th.

11 Q. Okay. And that is your signature on this
12 document?

13 A. That is correct.

14 Q. Okay. Is it commonplace then for the notary
15 to notarize a document the day after you've apparently
16 executed it?

17 MS. ARROYAVE: Objection: Form.

18 THE WITNESS: I would say, yes, it would be
19 common.

20 BY MR. IMMEL:

21 Q. Okay. So typically when you hand these off to
22 the notary, and then they kind of catch up?

23 A. Uh-huh. Yes.

24 Q. Okay. The witnesses, Heather Reinhart, do you
25 know her personally?

1 A. Yes, she is one of my employees.

2 Q. Is she on your team?

3 A. Yes.

4 Q. Is it possible that she would have been one of
5 the people who reviewed this for accuracy?

6 A. That is possible.

7 Q. And the other person appears to be Tyra
8 Wilks --

9 A. Wilson.

10 Q. Tyra Wilson. Okay. Is she also a member of
11 your team?

12 A. Yes.

13 Q. And you know her personally, as well?

14 A. Yes.

15 Q. The notary, Susan Turner, is she a member of
16 your team?

17 A. No, she is not.

18 Q. Do you know her personally?

19 A. Yes.

20 Q. It says here that you personally appeared
21 before her on the 4th day of March. Is it possible that
22 you executed then on the 3rd, and handed it to her and
23 then you weren't personally in front of her at the time
24 she notarized this?

25 A. I don't know. I can't recollect.

1 Q. All right. And how did you determine on this
2 to execute it to GMAC Mortgage, LLC?

3 MS. ARROYAVE: Objection: Form.

4 THE WITNESS: I'm not sure if I understand the
5 question.

6 BY MR. IMMEL:

7 Q. Okay. Did you have any say in the creation of
8 who MERS would assign this to?

9 A. No.

10 Q. No. Your attorney, the Law Office of Marshall
11 C. Watson, determined that?

12 A. No.

13 Q. No.

14 A. That is, as I stated earlier, when the
15 foreclosure referral goes out, the referral unit
16 determines what entity they should be foreclosing on.

17 Q. Okay. And the foreclosure referral unit that
18 you speak of, is that part of your department?

19 A. Yes.

20 Q. Okay. So would they have records that they
21 are able to refer to to determine who the new mortgagee
22 should be according to these assignments?

23 A. Yes.

24 Q. And who -- do you have a name of any person
25 that keeps those documents?

1 A. The team lead for that would be Brenda.

2 Q. Brenda?

3 A. Her last name is Staehle, S-T-A-E-H-L-E.

4 Q. Okay.

5 A. I think that's the way it's spelled.

6 Q. Can you tell me -- you really don't have any
7 knowledge or information as to who should be the
8 mortgagee? According to this document, you take it for
9 face value; is that correct?

10 MS. ARROYAVE: Objection: Form.

11 THE WITNESS: Can you explain that further?

12 BY MR. IMMEL:

13 Q. You take it for face value that GMAC Mortgage,
14 LLC is expected to be the mortgagee?

15 MS. ARROYAVE: Objection: Form.

16 BY MR. IMMEL:

17 Q. Who would have information who -- who MERS
18 should assign this to? Would it be you or Brenda
19 Staehle?

20 A. Brenda Staehle would be the individual or her
21 team to refer the files, and they determine what name
22 should be foreclosing in.

23 Q. Okay. So everything from that point on is
24 based on the presumption that her team has ascertained
25 those things to be correct?

1 A. That is correct.

2 MS. ARROYAVE: Objection: Form.

3 BY MR. IMMEL:

4 Q. All right. Okay. So on March 5th, 2009,
5 you're not aware --

6 A. I believe it's the 3rd.

7 Q. March 3rd. I'm sorry. March 3rd, 2009,
8 you're not aware of any physical transfer of the
9 mortgage?

10 A. Can you rephrase that? I'm not following.

11 Q. Are you aware of any reason why the assignment
12 of mortgage had to be executed on March 5th, 2009 -- or
13 the 3rd, 2009? I'm sorry.

14 A. We have a process that's set up with our
15 attorney network. And Marshall Watson is in that
16 attorney network. The file is referred to them with a
17 certain name to proceed with the foreclosure in. They
18 will pull title. And whatever they see title is in, in
19 order to proceed in the proper name, they need to get an
20 assignment. In this instance it's MERS to GMAC.

21 Q. Okay. Are the assignments supposed to be
22 completed prior to the filing of the foreclosure
23 lawsuit?

24 MS. ARROYAVE: Objection: Form.

25

1 BY MR. IMMEL:

2 Q. Are you aware if it's a company policy at
3 least?

4 A. I don't know.

5 Q. Okay. So as this assignment of mortgage, on
6 the face of it, transfers from Mortgage Electronic
7 Registration Systems as nominee for Mortgage Investors
8 Corporation to GMAC Mortgage, LLC on March 3rd, 2009,
9 would it be accurate to say that prior to that, this
10 assignment, Mortgage Electronic Registration Systems was
11 the mortgagee?

12 A. No.

13 Q. No. Okay. Why would that not be accurate to
14 say?

15 A. Mortgage Electronic Registration, to my
16 knowledge, is an origination entity to allow the passing
17 of assignments through performing loans to make it more
18 easier, I guess you would say, to transfer amongst
19 different companies. MERS does not own loans.

20 Q. They wouldn't own the loan. But they would
21 own the mortgage; is that correct?

22 MS. ARROYAVE: Objection: Form.

23 THE WITNESS: It's not correct, no.

24 BY MR. IMMEL:

25 Q. No. So they are the named mortgagee, so that

1 when the note is passed from entity to entity it doesn't
2 have to be rerecorded?

3 A. That is to my knowledge, yes.

4 Q. All right. On this it also says that MERS is
5 assigning the mortgage together with the note. I don't
6 know if you see that line there. It's right there
7 (indicating).

8 As you just stated, MERS has no interest in
9 the note ever; is that correct?

10 A. I honestly don't know.

11 Q. Oh, okay. As far as you're aware --

12 A. Yes.

13 Q. -- MERS doesn't --

14 A. As far as I'm aware. (Witness nods head.)

15 Q. Okay. Are you aware of whether that's common
16 language to exist in the assignments that you execute?

17 A. I honestly don't know.

18 Q. You're not sure. Okay. All right.

19 MR. IMMEL: And I have a copy of the first
20 page of the mortgage here. Which I'll enter as
21 Exhibit B.

22 (Defendant's Exhibit Letter B was marked for
23 identification.)

24 BY MR. IMMEL:

25 Q. If you will notice it says that the mortgagee

1 according to the mortgage is Mortgage Electronic
2 Registration Systems.

3 I believe it's right down there (indicating).

4 A. I disagree with that interpretation.

5 MS. ARROYAVE: Was there a question?

6 MR. IMMEL: Yes.

7 MS. ARROYAVE: What was the question?

8 BY MR. IMMEL:

9 Q. According to the mortgage, it says that MERS
10 is the mortgagee?

11 A. My interpretation, it says right in the same
12 paragraph, it says they are a nominee for the lender or
13 the lender successors.

14 Q. Right. Okay. They are the mortgagee as
15 nominee --

16 A. Uh-huh.

17 Q. -- for the lenders?

18 A. Yes.

19 Q. Okay. But they are a different entity from
20 the lender and lender successors and things?

21 A. Yes.

22 Q. Okay. What does nominee in that regards mean?

23 A. I don't know.

24 Q. Okay. We can move on from there.

25 I have here -- which I'll enter as Exhibit

1 C -- some discovery that we received from MERS.

2 (Defendant's Exhibit Letter C was marked for
3 identification.)

4 BY MR. IMMEL:

5 Q. And if you will turn to the second page. It
6 is the document entitled, Min Summary.

7 And have you ever seen these records before?

8 A. No, I have not.

9 Q. So in executing the assignments of mortgage on
10 behalf of MERS, do you consult any of MERS' records?

11 A. No.

12 Q. And you are not able to tell me what any of
13 these entries would then mean? This is the first time
14 you have seen this type of information?

15 A. In this format, yes.

16 Q. Okay. Have you seen this type of information
17 in other formats?

18 A. Some of it. I understand what they mean as
19 far as the acronyms in there.

20 Q. Okay. Based on your understanding, the
21 investor says -- the investor is identified as
22 Government National Mortgage Association - Ginnie Mae.
23 What does the word "investor" mean in MERS' acronym?
24 Are you aware?

25 A. I'm not sure how I can explain it. GMAC would

1 be the holder and the owner of the mortgage. GMAC would
2 be the investor who is in the organization that
3 contributed the fund. That's really the only way I can
4 explain the relationship of an investor and servicer.

5 Q. Okay.

6 A. But that's only to my knowledge. I mean, I
7 don't work in that fashion.

8 Q. Okay. So the servicer is supposed to take on
9 the day-to-day activities of administering the mortgage
10 of loan and collecting payments and so forth?

11 A. That would be correct.

12 Q. And they do that on behalf of the investor who
13 loaned the monies?

14 A. Yes.

15 Q. Okay. And any monies that are received from
16 the servicers, would they really be for the investor
17 then to pay him back the loan?

18 A. I don't know.

19 Q. Okay. And as custodian, also, that would mean
20 that they are in possession of the mortgage file,
21 essentially, the note and any other applicable
22 documents?

23 A. That's correct.

24 Q. Okay. All right. Where it has the pool
25 number and it is blacked out. Do you know what the pool

1 number refers to?

2 A. No, I don't.

3 Q. No. Okay. And what about the investor loan
4 number?

5 A. Yes, I understand what that is.

6 Q. And what would that relate to?

7 A. Every investor would have their own loan
8 number. The same as GMAC would have their own loan
9 number to classify the different files.

10 Q. Okay. And are you aware of how a mortgage
11 that has been securitized, a mortgage note that's been
12 securitized, would be reflected on something like this,
13 on this summary?

14 A. I am not familiar.

15 Q. You are not familiar. Okay. Are you aware of
16 anyone at GMAC Mortgage, LLC that has access to these
17 MERS documents and records?

18 A. No, I'm not.

19 Q. You are not aware. Okay. Are you aware of
20 anybody at GMAC that would have a responsibility to
21 update the MERS documentation?

22 A. No.

23 Q. Okay. So the various individuals at GMAC that
24 execute assignments on behalf of MERS have no
25 responsibility to update the MERS' system that they had

1 actually done those assignments or anything like that?

2 A. That would be correct.

3 Q. Okay. Are you aware then of how the MERS'
4 system is updated?

5 A. No.

6 Q. Okay. As a vice president, do you owe a
7 fiduciary duty to the original lender to ensure that the
8 mortgage is assigned to the proper entity?

9 MS. ARROYAVE: Objection: Form.

10 THE WITNESS: I actually don't understand your
11 question.

12 BY MR. IMMEL:

13 Q. Do you own any duty to the -- when you assign
14 these mortgages, you execute them as -- for MERS as
15 nominee for a particular entity, correct?

16 A. That would be correct.

17 Q. Do you owe any responsibility then to that
18 particular entity that MERS is nominee for to ensure
19 that the mortgage is transferred to the new correct
20 entity?

21 A. I don't know.

22 Q. Okay. All right.

23 MR. IMMEL: I have the corporate resolution
24 here. Which I'll enter it as Exhibit D.

25

1 (Defendant's Exhibit Letter D was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. Have you seen this document before?

5 A. Yes, I have.

6 Q. When was the first time you saw it?

7 A. I'm sorry, I can't say. I don't recollect.

8 Q. You're not sure. Is it fair to say it was
9 quite a while ago?

10 A. Yes.

11 Q. Did you have any role in creating it or
12 negotiating it?

13 A. No, I did not.

14 Q. No. Okay. The first paragraph says that you
15 are authorized to assign a lien of any mortgage loan
16 registered on the MERS register to the member.

17 Who would be the member according to this?
18 Would that be GMAC Mortgage, LLC?

19 A. I don't know.

20 Q. Okay. Assign the lien, in paragraph 2, of any
21 mortgage loan naming MERS as the mortgagee when the
22 member is also the current promissory note-holder, or if
23 the mortgage loan is registered on the MERS system, is
24 shown to be registered to the member.

25 When you are assigning liens, you already

1 stated that you don't consult with any of the MERS
2 records to determine whether or not it's registered to
3 who -- whoever?

4 MS. ARROYAVE: Objection: Form. Asked and
5 answered. Mischaracterization of prior testimony.

6 BY MR. IMMEL:

7 Q. Okay. You don't consult MERS system when
8 assigned these liens?

9 A. Yes.

10 MS. ARROYAVE: Asked and answered.

11 BY MR. IMMEL:

12 Q. All right. Okay. But is it fair to say that
13 you don't ascertain whether the member is the current
14 promissory note-holder when you assign the lien?

15 A. That would be correct.

16 Q. And you also don't know if the mortgage loan
17 is registered on the MERS system?

18 A. We are relying on our attorney network when
19 they check the title --

20 Q. Okay.

21 A. -- to verify what title it is presently in.
22 If it is MERS, we would sign for MERS.

23 Q. Okay.

24 MR. IMMEL: Exhibit E.

25

1 (Defendant's Exhibit Letter E was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. Here is the GMAC Mortgage, LLC certificate of
5 assistant secretary. Here you go.

6 And you are considered a limited signing
7 officer giving you basically the same responsibility as
8 a junior officer?

9 MS. ARROYAVE: Objection: Form.

10 THE WITNESS: I don't know if that's a correct
11 statement.

12 BY MR. IMMEL:

13 Q. Okay. Are you familiar with this document?

14 A. I have a copy of this document. Which to my
15 recollection means that next to my name it gives me the
16 authority to sign for GMAC and its entities as a limited
17 signing officer.

18 Q. Okay. In this case, you also filed an
19 affidavit of lost original document?

20 MS. ARROYAVE: Objection: Form.

21 BY MR. IMMEL:

22 Q. Okay. And you executed this document. Is
23 this your signature? Here is a copy of it.

24 MR. IMMEL: I'll enter this as Exhibit F, I
25 believe.

1 (Defendant's Exhibit Letter F was marked for
2 identification.)

3 THE WITNESS: Yes, that is my signature.

4 BY MR. IMMEL:

5 Q. Okay. And you signed this affidavit claiming
6 that at the time plaintiff was not presently in custody
7 or control of plaintiff or any of plaintiff's agents,
8 and that would be the note that was not in your -- their
9 custody or control?

10 A. Yes. Once again, we have a process in place
11 where if our attorney needs an original document, they
12 open up a request in our system. At that time, we have
13 another unit -- which is not located in Pennsylvania
14 where I am located -- contact custodians, contact their
15 own records, go to different investors. They do not do
16 an affidavit of this fashion unless they've exhausted
17 all efforts.

18 Q. Okay. Would it be fair to say that you're not
19 involved in any of those efforts?

20 A. That is fair to say.

21 Q. Okay. Why then do they ask you to execute the
22 affidavit of lost document -- lost original document?

23 A. They asked me to execute this for the
24 foreclosure department. Because after conversations
25 between the attorney and this other department, they

1 determine that it is not available. I am the
2 foreclosure team lead that handles document execution.

3 Q. Okay. So would it be accurate to say that the
4 department that actually searches for the lost note
5 would have a better understanding of why it's lost and
6 where the search occurred?

7 A. That is a fair statement.

8 Q. Okay. It says that the copy of said note
9 attached to the complaint is a true and correct and
10 substantial copy of the lost or destroyed note.

11 Do you review any documents before executing
12 the affidavits of lost original documents?

13 A. No, I do not. I review this. Let me change
14 this. Excuse me. I do review this. However, I do not
15 review any documents. I rely, once again, on my
16 attorney network who is requesting the document, and
17 communications between the departments to determine if
18 it's -- if a lost affidavit is needed.

19 Q. Okay. So the portion that sets claims in
20 paragraph 1: Affiant has custody and personal knowledge
21 of the account pertaining the original mortgage loan
22 instruments. Affiant has actual and personal knowledge
23 of the facts stated herein and is authorized to make
24 this affidavit. Would that be accurate?

25 A. Yes, that is accurate.

1 Q. You being the affiant have custody and
2 personal knowledge of the account pertaining to the
3 original mortgage loan instruments?

4 MS. ARROYAVE: Object to the form. Go ahead.

5 THE WITNESS: I do not have the specific
6 knowledge to this one account. But I understand
7 what the other department does in general to try to
8 locate these documents.

9 BY MR. IMMEL:

10 Q. Okay. All right. And so in this particular
11 case, the -- there was no note attached to the
12 complaint. You would have no way of ascertaining that
13 because you don't actually review?

14 A. That, once again, is determined by our
15 attorneys' office.

16 Q. Okay. I'm going to just -- I have a
17 substantial copy of the complaint. And just to show
18 that there is no note attached to it, that was the
19 original filing of the complaint.

20 You have never reviewed that, nor do you
21 review any other note to determine whether it is, in
22 fact, a true, correct and substantial copy of the lost
23 or destroyed note?

24 MS. ARROYAVE: Objection: Form.

25 THE WITNESS: Can you rephrase that for me? I

1 don't completely follow what you are saying.

2 BY MR. IMMEL:

3 Q. When you execute the affidavit of lost
4 original document, and make the claim that you've seen a
5 copy of the note that is attached and that's a
6 substantial copy, you really have no basis for making
7 that claim.

8 THE WITNESS: I'm still not following.

9 MS. ARROYAVE: Objection: Form.

10 BY MR. IMMEL:

11 Q. When the complaint in this case was filed,
12 there was no note attached to the complaint, correct?

13 A. From what you have just handed to me, there is
14 no note.

15 Q. Okay. Based on what I've provided you.

16 A. Yes.

17 Q. Do you normally review notes to make sure that
18 they are a true copy of the lost note?

19 MS. ARROYAVE: Objection: Form.

20 THE WITNESS: That is -- no, I do not. It is
21 not in my position.

22 BY MR. IMMEL:

23 Q. It's not in your position.

24 MR. IMMEL: All right. I guess I can enter
25 this a Exhibit G.

1 (Defendant's Exhibit Letter G was marked for
2 identification.)

3 BY MR. IMMEL:

4 Q. And going back, just for a second, to the lost
5 note affidavit. That is your signature?

6 A. Yes, that's correct.

7 Q. And your understanding is that the attorney
8 representing -- from your network drafts this?

9 A. That is correct.

10 Q. Okay.

11 MR. IMMEL: This is going to be Exhibit H.

12 (Defendant's Exhibit Letter H was marked for
13 identification.)

14 BY MR. IMMEL:

15 Q. This is a copy of the note filed after the
16 complaint in this case. I don't have the notice of
17 filing page.

18 Have you ever seen this document before?

19 A. I have seen these documents. I have not seen
20 this document.

21 Q. Okay. And this wouldn't have been the
22 document that you reviewed in executing the lost note
23 affidavit?

24 A. No. We do not -- once again, we do not review
25 the note. Our attorney determines that the note is not

1 available through our processes.

2 Q. Okay.

3 MR. IMMEL: This would be Exhibit I.

4 (Defendant's Exhibit Letter I was marked for
5 identification.)

6 BY MR. IMMEL:

7 Q. This is the newly found note. Here. And as
8 you can see, if you could compare the two notes, one has
9 a couple of additional endorsements. Whereas, the
10 previous one did not. Is that correct?

11 A. That is what I observe here, yes.

12 Q. Okay. In the review of the two notes and the
13 endorsements that are on them, have you seen this type
14 of situation before where one note that's been filed in
15 the case is partially endorsed and the other is a more
16 complete record of endorsements?

17 A. No, I have not.

18 Q. In following along the endorsements, can you
19 determine who was the last owner of the note prior to
20 your companies?

21 A. I'm sorry. Can you rephrase that for me?

22 Q. Can you determine who GMAC Mortgage, LLC has
23 acquired the mortgage note from?

24 A. The first endorsement I see here has a date.
25 It says, Mortgage Investor Corporation. It's signed on

1 February 27th, I believe, that's 2002.

2 Q. All right. And they were the original lender.
3 And then, as you can see, there is another endorsement
4 there to, I believe, GMAC Mortgage Corporation. And
5 there is also one GMAC Bank. Correct?

6 A. That is correct according to the observation
7 that I see on this document.

8 Q. So would you need an assignment from -- why do
9 you assign the MERS -- as a vice president of MERS, why
10 do you assign the MERS -- I'm sorry. Let me start over
11 there.

12 Why do you execute the assignment of mortgage
13 on behalf of MERS as nominee for the original lender and
14 not the last lender?

15 MS. ARROYAVE: Objection: Form.

16 THE WITNESS: Because as you stated, it's an
17 assignment of mortgage. It's not an assignment of
18 note.

19 BY MR. IMMEL:

20 Q. Right.

21 A. That's the only way I can answer that. The
22 mortgage itself, which we've both reviewed, states that
23 it's MERS as a nominee for Mortgage Investor
24 Corporation.

25 Q. Okay. So would you agree then that as the

1 note was transferred through these endorsements to new
2 note-holders and owners that MERS remained the
3 mortgagee?

4 MS. ARROYAVE: Objection: Form.

5 THE WITNESS: I wouldn't have that knowledge.

6 BY MR. IMMEL:

7 Q. Okay. It's your understanding that MERS does
8 not assign the mortgage every time the note is
9 transferred; is that correct?

10 MS. ARROYAVE: Objection: Form.

11 THE WITNESS: I wouldn't have that knowledge
12 either.

13 BY MR. IMMEL:

14 Q. Okay. All right. Do you know who would have
15 that knowledge?

16 A. No, I do not.

17 Q. Okay. All right.

18 MR. IMMEL: And we have here defendant's
19 request for production regarding the Jeffrey
20 Stephan documents. That will be Exhibit J.

21 (Defendant's Exhibit Letter J was marked for
22 identification.)

23 BY MR. IMMEL:

24 Q. Have you seen that document before?

25 A. I have not seen this document until recently

1 when I found out that I was coming here.

2 Q. Okay. And also we have the response to the
3 request for production regarding the Jeffrey Stephan
4 document.

5 MR. IMMEL: That will be marked as Exhibit K.
6 (Defendant's Exhibit Letter K was marked for
7 identification.)

8 BY MR. IMMEL:

9 Q. I'm going to direct you to paragraph 5 where
10 there has been an objection based on our request for all
11 MERS system documents, records, computer data, or other
12 MERS information reviewed by Jeffrey Stephan prior to
13 executing the assignment of mortgage filed in this case
14 to determine the proper SNE.

15 It's been objected to as vague and ambiguous
16 and improperly presumes that plaintiff has custody or
17 control over any MERS system documents.

18 As a MERS vice president, you don't have
19 access to any MERS system documents?

20 A. No, I do not.

21 Q. Okay.

22 A. I do not work for MERS.

23 Q. Okay. And so you don't actually review any
24 documents prior to executing the assignment of mortgage?

25 MS. ARROYAVE: Asked and answered.

1 BY MR. IMMEL:

2 Q. Okay. And are there any -- do you receive any
3 letters, e-mails, or other correspondence from other
4 departments that have given you any instruction on any
5 of the documents which you execute?

6 A. No.

7 Q. No. And in paragraphs -- request No. 7, as
8 far as the search for the lost note, you didn't actually
9 partake in that search. So you are not aware of any of
10 the locations searched, other than by other people?

11 A. That's correct.

12 Q. Do you know who those people would be that
13 searched for the note?

14 A. There is a team that's in our Minnesota
15 office. I am not familiar with who would actually
16 search for the said document.

17 Q. What is the name of that team? Do you know
18 the name of that team?

19 A. I don't have a formal name for them. I call
20 them document control. But that's my own name for them.

21 Q. Okay. All right. You said that the attorneys
22 representing you prior in this case only ask you to
23 execute the lost note affidavit after a substantial
24 effort has occurred?

25 MS. ARROYAVE: Objection. That goes into the

1 attorney-client privilege.

2 BY MR. IMMEL:

3 Q. As far as you understand, a substantial search
4 for the lost note has already occurred by various people
5 within your team, other teams within GMAC at the request
6 of the attorneys?

7 A. Within GMAC the lost note affidavit or lost
8 instrument affidavit would not be executed until
9 everything has been exhausted.

10 Q. Okay. Is it common for a lost note affidavit
11 to be executed and then later the note to be found?

12 A. I don't know.

13 Q. You're not sure. Okay. Earlier you were
14 mentioning that now you work for GMAC, LLC; is that
15 correct?

16 A. That is correct.

17 Q. And you still execute documents as GMAC
18 Mortgage, LLC limited signing officers, as well?

19 A. That's the same thing you just stated.

20 Q. Right. One they dropped the name -- the
21 mortgage from the name, and one they haven't; is that
22 correct?

23 A. No.

24 Q. No.

25 A. One they dropped corporation and changed it to

1 LLC.

2 Q. Oh, okay.

3 A. They became a limited liability company.
4 That's what LLC stands for.

5 Q. Okay. You said that there was an -- initially
6 there was a referral from the referral department to the
7 attorneys?

8 A. That would be correct.

9 Q. Do you ever review any of those documents in
10 your duties as executing these other documents?

11 A. No.

12 Q. So I'm going to turn to the -- this is the
13 note of authenticity ownership interrogatories limited
14 answers. Here you are.

15 MR. IMMEL: That will be Exhibit L.

16 (Defendant's Exhibit Letter L was marked for
17 identification.)

18 BY MR. IMMEL:

19 Q. Do you know, I think, it is Juan A. Aquirre?

20 A. I do not know him. But I am familiar with his
21 name.

22 Q. Okay. Are you familiar with his duties? He's
23 a senior litigation analyst.

24 A. Yes.

25 Q. Do you know if he's a senior litigation

1 analyst for GMAC Mortgage, LLC, or are there other
2 entities that he works for?

3 A. I honestly do not know.

4 Q. Okay. Would he be part of the document team
5 in Minnesota that may find a note?

6 A. No.

7 Q. No. Okay. Would he be somebody, do you know,
8 if in his duties he's somebody that searches for lost
9 documents?

10 A. No.

11 Q. Okay.

12 MS. ARROYAVE: Is that, no, you don't know?

13 THE WITNESS: No. He does not do that.

14 BY MR. IMMEL:

15 Q. He doesn't do that. Do you know what his
16 duties are?

17 A. As it states here, he is a senior litigation
18 analyst. I'm not sure of what his exact
19 responsibilities would be.

20 Q. Okay. But searching for lost documents
21 wouldn't be one of his responsibilities, more than
22 likely?

23 A. No, it would not be.

24 Q. Okay. And here are plaintiff's amended
25 answers. Okay.

1 MR. IMMEL: I'll mark it as Exhibit M.

2 (Defendant's Exhibit Letter M was marked for
3 identification.)

4 BY MR. IMMEL:

5 Q. It asks to identify all persons and/or
6 entities who are the current beneficial owners of, or
7 who have a beneficial or equitable interest in the
8 promissory note. And Federal National Mortgage
9 Association has been identified, Fannie Mae.

10 Are you aware -- and then if you look at No.
11 3, it says, Please identify all person and/or entities
12 who are current legal owners of, or who have legal
13 interest in the promissory note.

14 A. I don't have the same affidavit you have.

15 Q. Okay. Defendant's note. Do you have the
16 mortgage loan?

17 A. That's the mortgage loan.

18 Q. Okay.

19 MS. ARROYAVE: What has been introduced? Has
20 this set of interrogatory been --

21 MR. IMMEL: Yes.

22 MS. ARROYAVE: But not the other?

23 MR. IMMEL: No. This was also entered,
24 correct?

25 THE COURT REPORTER: I think it was the last

1 one.

2 BY MR. IMMEL:

3 Q. So if you look at paragraphs 2 and 3, can you
4 explain to me why Fannie Mae would have the beneficial
5 or equitable interest in the promissory note, based on
6 your understanding?

7 MS. ARROYAVE: Objection. It calls for a
8 legal conclusion.

9 THE WITNESS: No, I can't.

10 BY MR. IMMEL:

11 Q. And earlier when we discussed the MERS
12 documentation where Ginnie Mae was identified as the
13 investor, would it be fair to say that the beneficial or
14 equitable interest would actually lie with the person
15 who made the loan?

16 MS. ARROYAVE: Objection. It calls for a
17 legal conclusion.

18 THE WITNESS: I don't have that knowledge.

19 BY MR. IMMEL:

20 Q. Okay. And based on the MERS documentation
21 that I presented to you earlier, where the investor was
22 identified as Ginnie Mae. In paragraph 5 here, they are
23 identifying Fannie Mae as the investor.

24 Do you have any understanding of -- as to why
25 those two things would --

1 A. No, I don't.

2 Q. -- there would be a discrepancy there? Okay.

3 All right.

4 And going back to the mortgage loan ownership
5 and the interrogatories one more time. Can you explain
6 why one entity would have the beneficial interest and
7 another entity would have a legal interest --

8 MS. ARROYAVE: Objection. It calls for a
9 legal conclusion.

10 BY MR. IMMEL:

11 Q. -- based on your company's protocols?

12 A. I don't have that knowledge.

13 Q. Okay. GMAC Mortgage owns some loans and
14 services other; is that correct?

15 A. To my knowledge that would be a correct
16 statement.

17 Q. Okay. Do they -- and then in other instances,
18 they both own loan and service the loan?

19 A. That would be a fair statement.

20 Q. Okay. Is it possible that GMAC Mortgage is
21 the servicer for this loan and another entity -- whether
22 it be Fannie Mae, Ginnie Mae, or any other entity --
23 perhaps is the owner and GMAC is just the servicer?

24 A. That's possible. But I'm not familiar enough
25 to say yes or no.

1 Q. Okay. All right. I'm just going to go over
2 the notice of taking the deposition duces tecum.

3 (Defendant's Exhibit Letter N was marked for
4 identification.)

5 BY MR. IMMEL:

6 Q. All right. This is -- and just for the
7 record, Exhibit A, if you would turn to that. This is a
8 list of the documents that we requested that you bring.
9 A request for production. And you provided some of them
10 earlier.

11 I just wanted to go over it and see if you
12 brought any of these documents today, or if you were
13 just relying on what was produced in the request for
14 production. Okay?

15 The deponent's most recent curriculum vitae?

16 A. I didn't feel I needed to bring that. That's
17 personal.

18 Q. Okay. You actually provided the corporate
19 resolution for MERS and for GMAC. You presented the
20 list of certifying officers. And the MERS system
21 documents records, you already stated that you don't
22 have any access.

23 Your team brings you the documents. And you
24 don't receive any direct communication from the
25 attorneys that draft them?

1 A. The only type of communication I would receive
2 from an attorney is if a document is late in being
3 returned.

4 Q. Okay. All right. And it would be fair to say
5 that your primary responsibility is to create and
6 execute these documents, not to actually do any of the
7 underlying duties of ascertaining specific knowledge or
8 information about them, correct?

9 MS. ARROYAVE: Objection: Form. Asked and
10 answered.

11 THE WITNESS: And the answer to that would be,
12 no.

13 MR. IMMEL: All right. I think that's most of
14 it. Just let me have on second to review, but I
15 think that's most of it. All right. I think that
16 should do it for today.

17 Thank you very much for traveling here.

18 MS. ARROYAVE: I have a few questions.

19 MR. IMMEL: Yeah. I'm sorry about that.

20 MS. ARROYAVE: You can't have all of the fun.
21 Can I look at the exhibits?

22 CROSS (JEFFREY STEPHAN)

23 BY MS. ARROYAVE:

24 Q. I'm going to show you what has been previously
25 marked as Defendant's Exhibit C to your deposition.

1 Do you have any knowledge of how this document
2 is created?

3 A. No.

4 Q. Do you have any knowledge as to whether the
5 information in this document is accurate?

6 A. No.

7 Q. Do you know how this is prepared?

8 A. No.

9 Q. Okay. Let me show you what has been
10 previously marked as Defendant's Exhibit A to your
11 deposition. It is the assignment of mortgage.

12 The information that is used to prepare this
13 mortgage is kept in GMAC Mortgages' business records; is
14 that correct?

15 A. Yes.

16 Q. And these business records from where this
17 information came from were created by persons in GMAC
18 Mortgage, employees of GMAC Mortgage, right?

19 A. Yes.

20 Q. And the information was entered into the
21 computer system by these GMAC Mortgage employees at the
22 time that they became aware of the information?

23 A. Yes.

24 Q. And they had a business duty to enter the
25 information into the computer system; is that correct?

1 A. Yes.

2 Q. And this information, these business records
3 are kept within the course and scope of GMAC's regularly
4 conducted business activities; is that correct?

5 A. I'm going to say yes.

6 Q. Okay. I'm going to show you what has been
7 previously marked as Defendant's Exhibit F to your
8 deposition. And it's the affidavit of lost original
9 document.

10 Is the information you used to prepare this
11 lost original document kept in GMAC Mortgages' business
12 records?

13 A. I don't understand the question.

14 Q. Okay. The information in the lost original
15 document, is that -- GMAC Mortgage is the owner and
16 holder of the note, correct?

17 A. Yes.

18 Q. Is that information kept within the course and
19 scope of GMAC's business records?

20 A. Yes.

21 Q. And the information in GMAC's business records
22 are entered by persons with knowledge of the information
23 that GMAC is the owner of the note?

24 MR. IMMEL: Objection: Leading.

25 THE WITNESS: Can you rephrase it? I'm not

1 sure if I follow what you are saying.

2 BY MS. ARROYAVE:

3 Q. The business records that GMAC has regarding
4 whether it is the original -- whether it is the owner of
5 the note, was entered by persons that have personal
6 knowledge of whether GMAC is the owner of the note; is
7 that correct?

8 A. I honestly don't know. I do not work in those
9 departments.

10 Q. Okay.

11 MS. ARROYAVE: I have nothing further.

12 REDIRECT (JEFFREY STEPHAN)

13 BY MR. IMMEL:

14 Q. I would just ask: The assignment of the
15 mortgage and the information on it, this is not created
16 by anyone at -- this specific document isn't actually
17 created by a member or a worker for GMAC Mortgage, it is
18 actually created by the attorney?

19 A. Yes.

20 Q. Okay. So the attorney would have to be
21 relying on business records of GMAC Mortgage in forming
22 this?

23 A. That would be correct.

24 Q. Okay. And as to the lost note, this too is
25 created by the attorney, correct?

1 A. That is correct.

2 Q. Okay.

3 MR. IMMEL: All right. That does it.

4 MS. ARROYAVE: That's it.

5 MR. IMMEL: All right. Thank you.

6 MS. ARROYAVE: We will read.

7 THE COURT REPORTER: Okay.

8 (Witness excused.)

9 (Deposition was concluded.)

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CERTIFICATE OF OATH

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, the undersigned authority, certify that Jeffrey
Stephan personally appeared before me and was duly
sworn. Dated the 10th day of December, 2009.

Dated this 22nd day of December, 2009.

Jamie Reynolds Bentley



Jamie Reynolds Bentley, Court Reporter
Notary Public - State of Florida
My Commission Expires: 7/20/2013
My Commission No.: DD 453053

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH


I, Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 22nd day of December, 2009.



Jamie Reynolds Bentley, Court Reporter

1 DATE: December 31, 2009
2 TO: Jeffrey Stephan
3 IN RE: GMAC Mortgage, LLC vs Ann M. Neu, Michelle Perez,
Douglas William

4
5 CASE NO.: 50 2008 CA 040805XXXX MB

6 Please take notice that on Thursday, the 10th
7 of December, 2009, you gave your deposition in the
8 above-referred matter. At that time, you did not
9 waive signature. It is now necessary that you sign
10 your deposition.

11 Please call our office at the below-listed
12 number to schedule an appointment between the hours
13 of 9:00 a.m. and 4:30 p.m., Monday through Friday,
14 at the Consor & Associates office located nearest
15 you.

16 If you do not read and sign the deposition
17 within a reasonable time, the original, which has
18 already been forwarded to the ordering attorney, may
19 be filed with the Clerk of the Court. If you wish
20 to waive your signature, sign your name in the blank
21 at the bottom of this letter and return it to us.

22 Very truly yours,

23
24 _____
25 Jamie Reynolds Bentley, Court Reporter
Consor & Associates
1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401

26 I do hereby waive my signature.

27 _____
28 Jeffrey Stephan

29 I do hereby waive my signature:

30 Cc: Via transcript: Chrisopher Immel, Esquire
31 File copy

C E R T I F I C A T E

- - -

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ____ day of _____,
2009.

JEFFREY STEPHAN

1 E R R A T A S H E E T

2 IN RE: GMAC MORTGAGE, LLC VS ANN M. NEU, MICHELLE PEREZ,
DOUGLAS WILLIAM3 CR: JAMIE REYNOLDS BENTLEY
4 DEPOSITION OF: JEFFREY STEPHAN
5 TAKEN: 12/10/09

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18 Please forward the original signed errata sheet to this
office so that copies may be distributed to all parties.

19

20 Under penalty of perjury, I declare that I have read my
deposition and that it is true and correct subject to any
changes in form or substance entered here.

21

22 DATE: _____

23

24 SIGNATURE OF DEPONENT: _____

25

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Ph. 561.682.0905 - Fax. 561.682.1771

1655 Palm Beach Lakes Blvd., Suite 500 - West Palm Beach, FL 33401

AA115

EXHIBIT “ E “

RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. GM-172824-C
Loan No. 1440

Investor No. 0481

2010-163953

8:41 am 12/31/10 NT Fee: 18.00

Count of Pages 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* R 0 0 0 1 1 1 3 0 9 2 *

T.S. No. GM-172824-C
Loan No. 1440

Investor No. 0481

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/22/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Recorded 4/3/2007 as Instrument No. 2007-050317 in Book , page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 1/27/2011 at 1:00 PM

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California

Property Address is purported to be: 801 FOOTHILL DRIVE
SAN MATEO, California 94402-0000

APN #: 034-312-030-9

The total amount secured by said instrument as of the time of initial publication of this notice is **\$1,274,601.00**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Pursuant to California Civil Code §2923.54 the undersigned, on behalf of the beneficiary, loan servicer or authorized agent, declares as follows:

- [1] The mortgage loan servicer has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.53 that is current and valid on the date the notice of sale is filed;
- [2] The timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or 2923.55.

T.S. No. **GM-172824-C**
Loan No. **1440**
Investor No. **4814**

Date: **12/28/2010**

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3128
Sale Line: 714-730-2727


Leanna Petersen, TRUSTEE SALE OFFICER

EXHIBIT “ F “



Process Loans, Not Paperwork™

Record matched your search:

IN: [REDACTED] 569-6	Note Date: 03/22/2007	MIN Status: Active
Servicer: <u>GMAC Mortgage, LLC</u>		Phone: (800) 766-4622
Waterloo, IA		
Lessor: <u>HSBC Bank USA as Trustee</u>		Phone: (212) 525-1592
New York City, NY		

Click to Search

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1 PETER J. SALMON (SBN 174386)
CHRISTOPHER L. PETERSON (SBN 215069)
2 JILLIAN A. BENBOW (SBN 246822)
PITE DUNCAN, LLP
3 4375 JUTLAND DRIVE, SUITE 200
P.O. BOX 17935
4 SAN DIEGO, CA 92177-0935
TELEPHONE: (858) 750-7600
5 FACSIMILE: (619) 590-1385

6 Attorneys for Defendant PITE DUNCAN, LLP

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO

10 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
GMAC MORTGAGE CORPORATION AND
15 GMAC MORTGAGE; HSBC BANK, U.S.A.
as Trustee for DALT 2007-AO3;
16 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PITE
17 DUNCAN, LLP AND DOES 1-50 inclusive,

18 Defendants.

Case No. CIV502857

NOTICE OF DEMURRER AND
DEMURRER TO COMPLAINT

Date: May 3, 2011

Time: 9:00 a.m.

Dept.: LM, Dept 25

19 TO PLAINTIFFS FERMIN SOLIS ANIEL and ERLINDA ABIBAS ANIEL, IN PRO
20 PER, AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on May 3, 2011, at 9:00 a.m., or as soon thereafter as the
22 matter may be heard, in Department LM, Dept. 25, of the above entitled court, located at 400 County
23 Center Road, Redwood City, California, the Court will hear the Demurrer of Defendant PITE
24 DUNCAN, LLP ("Pite Duncan"), Plaintiffs FERMIN SOLIS ANIEL and ERLINDA ABIBAS
25 ANIEL's Complaint.

26 This Demurrer is brought pursuant to California Code of Civil Procedure Section 430.10 on
27 the grounds that the Complaint does not state facts sufficient to constitute causes of action.

28 ///

1 This Demurrer is based on this Notice, the Demurrer and Memorandum of Points and
2 Authorities, the Request for Judicial Notice, Complaint, and upon such other and further matters as
3 the court may judicially notice, including all pleadings and papers on file herein.

4 **Demurrer to First Cause of Action**

- 5 1. The cause of action fails to state facts sufficient to state a cause of action.
- 6 2. The cause of action is uncertain because the cause of action fails to identify the nature
7 of the claim and the parties affected thereby.
- 8 3. The cause of action is uncertain because it does not identify what acts, if any, were
9 taken by Pite Duncan.

10 **Demurrer to Second Cause of Action**

- 11 1. The cause of action fails to state facts sufficient to state a cause of action.
- 12 2. The cause of action is uncertain because the cause of action fails to identify the nature
13 of the claim and the parties affected thereby.
- 14 3. The cause of action is uncertain because it does not identify what acts, if any, were
15 taken by Pite Duncan.

16 **Demurrer to Third Cause of Action**

- 17 1. The cause of action fails to state facts sufficient to state a cause of action.
- 18 2. The cause of action is uncertain because the cause of action fails to identify the nature
19 of the claim and the parties affected thereby.
- 20 3. The cause of action is uncertain because it does not identify what acts, if any, were
21 taken by Pite Duncan.

22 **Demurrer to Fourth Cause of Action**

- 23 1. The cause of action fails to state facts sufficient to state a cause of action.
- 24 2. The cause of action is uncertain because the cause of action fails to identify the nature
25 of the claim and the parties affected thereby.
- 26 3. The cause of action is uncertain because it does not identify what acts, if any, were
27 taken by Pite Duncan.

28 ///

1 **Demurrer to Fifth Cause of Action**

2 1. The cause of action fails to state facts sufficient to state a cause of action.

3 2. The cause of action is uncertain because the cause of action fails to identify the nature
4 of the claim and the parties affected thereby.

5 3. The cause of action is uncertain because it does not identify what acts, if any, were
6 taken by Pite Duncan.

7 **Demurrer to Sixth Cause of Action**

8 1. The cause of action fails to state facts sufficient to state a cause of action.

9 2. The cause of action is uncertain because the cause of action fails to identify the nature
10 of the claim and the parties affected thereby.

11 3. The cause of action is uncertain because it does not identify what acts, if any, were
12 taken by Pite Duncan.

13
14 Dated: March 14, 2011

PITE DUNCAN, LLP

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16
17 CHRISTOPHER L. PETERSON
JILLIAN A. BENBOW
Attorneys for Defendant PITE DUNCAN, LLP
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19
20
21
22
23
24
25
26
27
28

1 PETER J. SALMON (SBN 174386)
CHRISTOPHER L. PETERSON (SBN 215069)
2 JILLIAN A. BENBOW (SBN 246822)
PITE DUNCAN, LLP
3 4375 JUTLAND DRIVE, SUITE 200
P.O. BOX 17935
4 SAN DIEGO, CA 92177-0935
TELEPHONE: (858) 750-7600
5 FACSIMILE: (619) 590-1385

6 Attorneys for Defendant PITE DUNCAN, LLP

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN MATEO

10 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
GMAC MORTGAGE CORPORATION AND
15 GMAC MORTGAGE; HSBC BANK, U.S.A.
as Trustee for DALT 2007-AO3;
16 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PITE
17 DUNCAN, LLP AND DOES 1-50 inclusive,

18 Defendants.

Case No. CIV502857.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO COMPLAINT

Date: May 3, 2011
Time: 9:00 a.m.
Dept.: LM, Dept 25

19
20 Defendant PITE DUNCAN, LLP ("Pite Duncan" or the "law firm") hereby submits the
21 following memorandum of points and authorities in support of its Demurrer to the Complaint of
22 Plaintiffs FERMIN SOLIS ANIEL and ERLINDA ABIBAS ANIEL:

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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12	<u>Cortez v. Purolator Air Filtration Prod. Co.</u> (2000) 23 Cal.4th 163, 179-181	11
13	<u>County of Fresno v. Shelton</u> (1998) 66 CA4th 996, 1009	4
14	<u>Evans v. City of Berkeley</u> (2006) 38 Cal.4th 1, 6 quoting <u>Joslin, supra</u> at 375.)	3
15	<u>Franz v. Blackwell</u> (1987) 189 Cal.App.3d 91, 94	3
16	<u>Gil v. Bank of America Nat. Ass'n.</u> (2006) 138 Cal.App.4th 1371	7
17	<u>Goad v. MCT Group</u> (S.D. Cal. 2009) 2009 WL 4730905 *3	7
18	<u>Guessous v. Chrome Hearts, LLC</u> (2009) 179 Cal.App.4th 1177, 1187	12
19	<u>Ines v. Countrywide Home Loans, Inc.</u> (S.D. Cal. 2008) 2008 WL 4791863 at *3	6
20	<u>In re Chaussee</u> (9 th Cir. BAP399 B.R. 225, 237-238, 241, 245 & n.21	6, 7
21	<u>Joslin v. H.A.S. Ins. Brokerage</u> (1986) 184 Cal.App.3d 369, 374-375	3
22	<u>Karlsen v. American Sav. & Loan Assn.</u> (1971) 15 Cal.App.3d 112, 117	12
23	<u>Kately v. Wilkinson</u> (1983) 148 Cal.App.3d 576, 581	4
24	<u>Khoury v. Maly's of Calif., Inc.</u> (1993) 14 Cal.App.4th 612, 619	11
25	<u>Korean Am. Legal Advocacy Found. v. City of Los Angeles</u> (1994) 23 Cal.App.4th 376, 397 .	12
26	<u>Lawrence v. Bank of America</u> (1985) 163 Cal.App.3d 431, 436	4
27	<u>Lazar v. Superior Court</u> (1996) 12 Cal.4th 631, 645	8, 9
28	<u>Lewis v. Linn</u> (1962) 209 Cal.App.2d 394, 399	13

1	<u>Lewis v. Superior Court</u> (1994) 30 Cal.App.4th 1850, 1866	12
2	<u>Major v. Miraverde Homeowners Ass'n</u> (1992) 7 Cal.App.4th 618, 623	12
3	<u>Morgan v. AT & T Wireless Services, Inc.</u> (2009) 177 Cal.App.4th 1235, 1254-55, 1262 ..	8, 11
4	<u>Neal v. Juarez</u> , 2007 WL 2140640, at *8 (S.D.Cal. July 23, 2007)	9
5	<u>Pantoja v. Countrywide</u> (E.D. Cal. 2009) 640 F.Supp.2d 1177, 1186	9
6	<u>Pittman v. Barclays Capital Real Estate, Inc.</u> (S.D. Cal. 2009) 2009 WL 1108889 at*3	6
7	<u>Poseidon Development, Inc.</u> 152 Cal.App.4th at 1117	4
8	<u>Puttkuri v. Recontrust Co.</u> (S.D. Cal. 2009) 2009 WL 32567 at *2	6, 9
9	<u>Robinson Helicopter Co., Inc. v. Dana Corp.</u> (2004) 34 Cal.4th 979, 993	8
10	<u>Rubin v. Green</u> (2003) 4 Cal.4th 1187, 1201-1203	14
11	<u>Rubio v. Capital One Bank (USA), N.A.</u> (C.D.Cal. 2008) 572 F.Supp.2d 1157, 1168	11
12	<u>Sackwett v. Wyatt</u> (1970) 32 Cal.App.3d 592, 603	4
13	<u>Sacramento Brewing Co. v. Desmond, Miller & Desmond</u> (1999) 75 Cal.App.4th 1082, 1089	13
14	<u>Saldate v. Wilshire Credit Corp.</u> (E.D.Cal. 2010) 2010 WL 582074 *10	10, 11
15	<u>Serrano v. Priest</u> (1971) 5 Cal.3d 584, 591.)	3
16	<u>Stafford v Ballinger</u> (1962) 199 Cal.App.2d 289, 294-295	12
17	<u>Stormedia, Inc. v. Superior Court</u> (1999) 20 Cal.4th 449, 457	3
18	<u>Tarmann v. State Farm Mut. Auto. Ins. Co.</u> (1991) 2 Cal.App.4th 153, 157	9
19	<u>Walls v. Wells Fargo Bank, N.A.</u> (9th Cir.2002) 276 F.3d 502, 510-511	7
20	<u>Webb v. Smart Document Solutions, LLC</u> (9th Cir. 2007) 499 F.3d 1078, 1082.	11
21	<u>Wilhelm v. Pray, Price, Williams & Russell</u> (1986) 186 Cal.App.3d 1324, 1332	7, 8
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23	<u>STATUTES</u>	
24	Business & Professions Code § 17200	14
25	Business & Professions Code § 17203	10
26	Civil Code § 47	7
27	Civil Code § 1788	5
28	Civil Code § 1788.2(b)-(c)	6

1	Civil Code § 1788.2(c)	5, 6
2	Civil Code § 1788(e)	6, 7
3	Civil Code § 1788.2(f)	6
4	Civil Code § 1788.30	5
5	Civil Code § 2924	9
6	Civil Procedure Code § 430.10(e)	3
7	Civil Procedure Code § 430.30(a)	3
8	Civil Procedure Code § 761.020	12

9
10 **OTHER**

11	Miller & Starr, California Real Estate (3rd Ed 1989) 10 Deeds of Trust § 10:212, pp. 658-659	12
12	Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group) ¶7:60 ...	4

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1 **I. INTRODUCTION**

2 Pite Duncan is a law firm that was retained by Defendants GMAC Mortgage, LLC
3 ("GMAC") and HSBC BANK, U.S.A. as Trustee for DALT 2007-AO3 ("HSBC") in connection
4 with Plaintiffs' bankruptcy action. (Comp. ¶35.) Pite Duncan had no involvement with the loan that
5 is the subject of this action or the pending foreclosure aside from acting as legal counsel for GMAC
6 and HSBC in Plaintiffs' bankruptcy action. Accordingly, Plaintiffs may not assert any cause of
7 action against Pite Duncan that would entitle them to relief.

8 Moreover, Plaintiffs lack standing to challenge the enforcement of the loan secured by the
9 Deed of Trust because Plaintiffs were neither borrowers nor owners of the property at the time
10 alleged wrongdoing occurred. As such, Pite Duncan's demurrer should be sustained without leave
11 to amend.

12 **II. STATEMENT OF FACTS**

13 1. The Loan and Subject Property

14 On or about August 18, 2006, non-parties to this litigation, Raul Estiva and Corazon Estiva
15 purchased the real property located at 801 Foothill Drive, San Mateo, CA 94402 ("Subject
16 Property"). (Request for Judicial Notice ("RJN"), Ex. A.) In connection with their purchase, the
17 Estivas took out two loans in the original principal amounts of \$975,000.00 and \$193,700.00,
18 respectively. (RJN Exs. B, C.)

19 On or about March 22, 2007, the Estivas refinanced the Subject Property with two new loans
20 in the original principal amounts of \$1,000,000.00 and \$236,125.00, respectively. (RJN, Exs. D, E.)
21 The Estivas's \$1,000,000.00 loan is the loan at issue in the instant litigation. On or about March 22,
22 2007, the Estivas executed promissory note in the original principal amount of \$1,000,000.00 in
23 favor of MortgageIt, Inc. ("MortgageIt"). (Comp. ¶33.) The Estivas's loan was secured by a Deed
24 of Trust in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for
25 MortgageIt recorded on or about April 3, 2007. (RJN, Ex. D.)

26 On or about October 1, 2008, the Estivas defaulted on their obligations under the Deed of
27 Trust by failing to make the monthly payment and a Notice of Default and Election to Sell Under
28 Deed of Trust was recorded on or about December 17, 2008. (RJN, Ex F.) (Comp. ¶ 34.)

1 On or about December 15, 2008, Executive Trustee Services, LLC dba ETS Services, LLC
2 ("ETS") was substituted as the trustee under the Estivas' Deed of Trust by a Substitution of Trustee
3 recorded on or about December 17, 2008. (RJN, Ex. G.)

4 On or about May 26, 2009, the beneficial interest under the Deed of Trust was assigned from
5 MERS to HSBC by an Assignment of Deed of Trust recorded July 16, 2009. (RJN, Ex. H.)

6 The Estivas's default continued unabated and on December 31, 2010 a Notice of Trustee's
7 Sale was recorded. (RJN, Ex. I.)

8 On or about February 2, 2011, Corazon Estiva ("Corazon") recorded an Affidavit-Death of
9 Joint Tenant following the death of Raul Estiva. (RJN, Ex. J.) After Corazon became the sole
10 owner of the Subject Property, on or about February 3, 2011, Corazon transferred a partial interest
11 in the Subject Property to Plaintiffs. (RJN, Ex. K.) Specifically, Corazon transferred a 1% interest
12 in the Subject Property to Fermin Aniel and a 1% interest to Erlinda Aniel, as husband and wife.
13 (RJN, Ex. K.) At no time prior to the recordation of the February 3, 2011 Grant Deed did Plaintiffs
14 have a recorded interest in the Subject Property.

15 2. Plaintiffs' Bankruptcy

16 On or about February 25, 2009, Plaintiff filed a voluntary petition for Chapter 11 bankruptcy
17 in the United States Bankruptcy Court for the Northern District of California, Case No. 09-30452-
18 DM. On or about March 24, 2009, Plaintiffs amended their voluntary petition listing the Subject
19 Property and 2007 loan in their schedules despite having no apparent, record ownership in the
20 Subject Property or interest in the loan. (RJN, Ex. L.)

21 Pite Duncan was retained to represent GMAC and HSBC in the Plaintiffs' bankruptcy action.
22 On or about June 24, 2009, Pite Duncan on behalf of GMAC filed a proof of claim in Plaintiffs'
23 bankruptcy action. (RJN, Ex. M.)

24 On or about June 30, 2010, Plaintiffs filed a Disclosure Statement Described Chapter 11
25 Plain & Chapter 11 Reorganization Plan ("Plan") in their bankruptcy action. (RJN, Ex. N.) In the
26 Plan, Plaintiffs claimed to own a 50% interest in the Subject Property with the Estivas and sought
27 to have the Estivas's promissory note and Deed of Trust amended to include Plaintiffs as tenants in
28 common with a partial ownership interest in the Subject Property. (RJN, Ex. N at p. 7, p. 26.)

1 On or about July 28, 2010, Pite Duncan on behalf of HSBC filed an Objection to
2 Confirmation of Chapter 11 Plan ("Objection"). (RJN, Ex. O). In the Objection, HSBC objected
3 to Plaintiffs' Plan on grounds that Plaintiffs failed to demonstrate the Subject Property was property
4 of the debtors' estate because the borrowers under the promissory note and Deed of Trust were not
5 Plaintiffs, but instead were the Estivas. (RJN, Ex. O at p. 1-2.) Moreover, HSBC objected on
6 grounds that the Plaintiffs failed to provide any evidence indicating that legal title to the Subject
7 Property was in Plaintiffs' names. (RJN, Ex. O at p. 2.) As a result, HSBC argued that HSBC's
8 claim was not subject to modification in Plaintiffs' debtors' estate. (RJN, Ex. O at p. 2.)

9 On or about July 30, 2010, Plaintiffs filed a motion to convert their bankruptcy case to a
10 Chapter 7 case, which was granted on August 2, 2010. (RJN, Ex. P.) (Comp. ¶35.) Following the
11 conversion of their case to Chapter 7, on or about November 2, 2010, the bankruptcy trustee
12 abandoned certain assets of the bankruptcy estate, including the Subject Property and on or about
13 December 2, 2010, Plaintiffs were discharged. (RJN, Exs. Q, R.)

14 III. LEGAL STANDARD

15 A demurrer may be sustained where "the pleading does not state facts sufficient to constitute
16 a cause of action." Cal. Civ. Proc. Code § 430.10(e). When ruling on a demurrer, the court looks
17 to the face of the complaint, the exhibits attached to the complaint, and upon matters of which the
18 Court may take judicial notice. (Franz v. Blackwell (1987) 189 Cal.App.3d 91, 94.) For the purpose
19 of testing the sufficiency of each cause of action, the demurrer admits the truth of all material facts
20 set forth in the pleading, i.e., all ultimate facts alleged, but does not admit contentions, deductions
21 or conclusions of fact or law. (Serrano v. Priest (1971) 5 Cal.3d 584, 591.)

22 Moreover, the Court need not accept as true factual allegations contradicted by matters of
23 public record, or other judicially noticeable facts. (Cal. Civ. Proc. Code § 430.30(a); Joslin v. H.A.S.
24 Ins. Brokerage (1986) 184 Cal.App.3d 369, 374-375; Stormedia, Inc. v. Superior Court (1999) 20
25 Cal.4th 449, 457.) As such, "a complaint otherwise good on its face is subject to demurrer when
26 facts judicially noticed render it defective." [Citation.] (Evans v. City of Berkeley (2006) 38 Cal.4th
27 1, 6 quoting Joslin, supra at 375.)

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1 Where it is apparent that the essential defects of the complaint cannot be cured by
2 amendment, the demurrer should be sustained without leave to amend. (Sackwett v. Wyatt (1970)
3 32 Cal.App.3d 592, 603.) Leave to amend should be denied where the facts are not in dispute and
4 the nature of the claim is clear, but no liability exists under substantive law. (Lawrence v. Bank of
5 America (1985) 163 Cal.App.3d 431, 436.)

6 Finally, "it is not an abuse of discretion to sustain a demurrer without leave to amend if either
7 '(a) the facts and the nature of the claims are clear and no liability exists, or (b) it is probable from
8 the nature of the defects and previous unsuccessful attempts to plead that the plaintiff cannot state
9 a claim.'" (Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 890 citing Kately v.
10 Wilkinson (1983) 148 Cal.App.3d 576, 581.)

11 III. ARGUMENT

12 A. Plaintiff's Claims do not Properly Belong to Plaintiffs.

13 "If plaintiff's lack of standing to sue appears on the face of the complaint or from matters
14 judicially noticeable, a general demurrer lies for failure to state a cause of action in this plaintiff
15 (although a cause of action is stated in favor of someone else)." (Weil & Brown, Cal. Practice
16 Guide: Civil Procedure Before Trial (The Rutter Group) ¶7:60, citing County of Fresno v. Shelton
17 (1998) 66 CA4th 996, 1009.) "Judicial notice is the recognition and acceptance by the court, for use
18 by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an
19 issue in the action without requiring formal proof of the matter." (Poseidon Development, Inc.,
20 supra, 152 Cal.App.4th at 1117.) "In determining the sufficiency of a complaint...a court will
21 consider matters that may be judicially noticed." (Ibid.) "This includes recorded deeds." (Ibid.)

22 The Subject Property was purchased and encumbered by the Estivas, not Plaintiffs. (RJN,
23 Exs. A-E.) Plaintiffs were not borrowers under the loan secured by the Deed of Trust from which
24 Plaintiffs' claims stem. (RJN Ex. D.) Additionally, any interest in the Subject Property Plaintiffs
25 claim to hold was not even reflected in the chain of title until after this action was filed when a Grant
26 Deed transferring a 1% interest to Fermin Aniel and a 1% interest to Erlina Aniel was recorded on
27 February 3, 2011. (RJN Ex. K.) Rather, by virtue of their bankruptcy Plan, prior to their motion to
28 convert the action from Chapter 11 to Chapter 7, Plaintiffs sought an amendment of the Estivas's

1 promissory note and Deed of Trust to include Plaintiffs as partial obligors under the loan and co-
2 owners of the Subject Property. No such amendment was made however, because Plaintiffs
3 converted their bankruptcy action to Chapter 7 and were discharged shortly thereafter.

4 Thus as established by the Grant Deed and Deed of Trust, which are the subject of judicial
5 notice, Corazon Estivas is the only person with standing to bring claims regarding the loan, Deed
6 of Trust and standing of Defendants to initiate foreclosure. Thus, each of Plaintiffs' claims
7 integrated with allegations improprieties with the Estivas's loan and foreclosure of the Deed of Trust
8 fail as a matter of law.

9 **B. Plaintiffs may not State a Claim for Violation of the Rosenthal Act.**

10 Plaintiffs claim that Defendants are debt collectors who engaged in unfair debt collection
11 practices by "misrepresent[ing] to Plaintiffs who the true owner of the Note and Deed [of Trust],"
12 "claiming an interest in the Deed [of Trust] through a fraudulent assignment of the Deed of Trust"
13 and "attempting to foreclose on the property without any evidence or chain of title that Defendants
14 had any interest in the promissory note and deed of trust." (Comp. ¶52-53.) Plaintiffs claim that
15 there is no proof that Pite Duncan was ever hired by HSBC as a secured creditor." (Comp. ¶49.)

16 First, as detailed above, Plaintiffs lack standing to bring any cause of action challenging the
17 enforcement of the Estivas's loan and Deed of Trust because Plaintiffs were not parties to loan nor
18 the Deed of Trust. (RJN, Ex. D.)

19 Second, even if Plaintiffs had standing, Plaintiffs' claim would fail because Plaintiffs may
20 not state a claim under the Rosenthal Act. The California Rosenthal Act is generally a state
21 codification of the Federal Fair Debt Collection Practices Act ("RFDCPA"). (See Cal. Civ. Code §
22 1788, et seq.) A threshold issue in any claim for violation of the RFDCPA is whether the
23 defendant(s) are "debt collectors" as defined by the statute. (Castaneda v. Saxon Mortgage Services,
24 Inc. (E.D. Cal. 2009) 687 F.Supp.2d 1191, 1197 see also Cal. Civ. Code § 1788.30.) Pursuant to
25 section 1788.2(c), a "debt collector" is "any person who, in the ordinary course of business,
26 regularly, on behalf of himself or herself or others, engages in debt collection." (Id.) (quoting the
27 statute) (emphasis added). Thus, to state facts constituting a cause of action under the RFDCPA, it
28 is essential for Plaintiffs to demonstrate that Pite Duncan — a law firm that represented GMAC and

1 HSBC in Plaintiffs' bankruptcy proceeding — is also somehow a "debt collector" as defined by the
2 RFDCPA.

3 Plaintiffs fail to establish that Pite Duncan fits within the definition of a "debt collector"
4 within the meaning of RFDCPA, nor do they plead any actions taken by Pite Duncan that are alleged
5 to constitute debt collection. Section 1788.2, however, consists of a detailed definition of a debt
6 collector, including several terms of art that are separately defined — and the definition shows that
7 Pite Duncan is not a "debt collector". The term "debt collection" is defined as relating only to
8 "consumer debts." Cal. Civ. Code § 1788.2(b)-(c). "Consumer debt" is defined to mean money,
9 property or their equivalent, due or owing "by reason of a Consumer Credit Transaction." Cal. Civ.
10 Code § 1788.2(f). "Consumer Credit Transaction" is separately defined as "a transaction . . . in
11 which property, services or money is acquired on credit" by the borrower from the lender. Cal. Civ.
12 Code § 1788.2(e). Conspicuously absent in this detailed framework of definitions is the concept of
13 security instruments such as deeds of trust. (See Civ. Code § 1788.2(e)-(f); Pittman v. Barclays
14 Capital Real Estate, Inc. (S.D. Cal. 2009) 2009 WL 1108889 at*3; (dismissing plaintiff's mortgage-
15 related RDFCPA claim for failing to "invoke statutory protections"); Ines v. Countrywide Home
16 Loans, Inc. (S.D. Cal. 2008) 2008 WL 4791863 at *3 (stating plaintiff's mortgage debt claim did not
17 fall within the meaning of RFDCPA); Castaneda, supra, at 1197.) Accordingly, "foreclosure
18 pursuant to a deed of trust does not constitute debt collection under the RFDCPA." (Castaneda,
19 supra, at 1197 (collecting cases); see also Puttkuri v. Recontrust Co. (S.D. Cal. 2009) 2009 WL
20 32567.)

21 Even farther removed is the concept of a law firm representing a creditor in a bankruptcy
22 proceeding. The only actions Pite Duncan are alleged to have undertaken are preparing an
23 Assignment of Deed of Trust which was executed by MERS as nominee for the Estivas's original
24 lender and filing an objection to Plaintiffs' Chapter 11 Plan on behalf of HSBC.¹ The filing of a
25 proof of claim under the Bankruptcy Code is not the collection of debt under the RFDCPA. (In re
26

27
28 ¹ Plaintiffs erroneously claim that Defendants GMAC and HSBC failed to file a proof of claim prior
to filing an objection to Plaintiffs' Chapter 11 Plan however, documents subject to judicial notice
reflect that proof of claim was filed on June 24, 2009. (RJN, Ex. M.)

1 Chaussee (9th Cir. BAP399 B.R. 225, 241 & n.21; Walls v. Wells Fargo Bank, N.A. (9th Cir.2002)
2 276 F.3d 502, 510-511; Goad v. MCT Group (S.D. Cal. 2009) 2009 WL 4730905 *3.) Plaintiffs
3 only remedy for addressing any alleged violation premised on actions taken during Plaintiffs'
4 bankruptcy, including the filing of a proof of claim or objection to a Chapter 11 Plan, rests under the
5 Bankruptcy Code, not the RFDCPA. (In re Chaussee, supra at 237-238, 245.)

6 In addition, the RFDCPA only applies to credit acquired "primarily for personal, family or
7 household purposes." (Cal. Civ. Code § 1788.2(e).) Here, and in Plaintiffs' Chapter 11 Plan,
8 Plaintiffs admit that the Subject Property was a business investment used for rental purposes.
9 (Comp. ¶35, "the rent cannot sustain the mortgage payment.")

10 Finally, even if the RFDCPA applied to foreclosures (which it does not), even if it applied
11 to loans for rental property (which it does not) and even if Plaintiffs' claims were not precluded by
12 the Bankruptcy Code (which they are), Plaintiffs have not alleged a single act by Pite Duncan which
13 constitutes debt collection activity within the meaning of the Act. Moreover, as discussed below,
14 all Pite Duncan's actions related to Plaintiffs' bankruptcy action were privileged under Civil Code
15 section 47.

16 **C. Plaintiffs' Cause of Action for Fraud Fails.**

17 In their second cause of action, Plaintiffs contend that Defendants made false representations
18 regarding "true owner and holder" of the promissory note and Deed of Trust "by assigning the debt
19 to HSBC." (Comp. ¶¶55, 57.) Plaintiffs further contend that the individual who executed the
20 Assignment of Deed of Trust was not authorized to execute the assignment. (Comp. ¶58.) Finally,
21 Plaintiffs contend that Pite Duncan "'committed fraud upon the court' by filing an objection to
22 plaintiffs [sic] reorganization plan by stating that HSBC is was the secured creditor." (Comp. ¶61.)

23 In California, fraud claims must be plead with specificity. (Gil v. Bank of America Nat.
24 Ass'n. (2006) 138 Cal.App.4th 1371.) The facts and circumstances that constitute the fraud "must
25 be plead with specificity in order to give notice to the defendant and to furnish him or her with
26 definite charges." (Id. citing Committee on Children's Television, Inc. v. General Foods Corp.
27 (1983) 35 Cal.3d 197, 216; see also Wilhelm v. Pray, Price, Williams & Russell (1986) 186
28 Cal.App.3d 1324, 1332 (Fraud must be alleged with a high degree of specificity, and therefore,

1 general, vague, or conclusory allegations are not sufficient to constitute a cause of action).) It is well
2 settled that fraud actions are subject to a stricter pleading standard because they involve a serious
3 attack on an individual defendant's character. (See Committee on Children's Television, supra.) "The
4 pleading of fraud, however, is also the last remaining habitat of the common law notion that a
5 complaint should be sufficiently specific that the court can weed out nonmeritorious actions on the
6 basis of the pleadings. Thus the pleading should be sufficient 'to enable the court to determine
7 whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'"

8 (Id.)

9 The elements which must be alleged to plead a fraud cause of action are '(a)
10 misrepresentation (false representation, concealment or nondisclosure); (b) knowledge of falsity (or
11 "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting
12 damage.' " (Agricultural Ins. Co. v. Superior Court (1999) 70 Cal.App.4th 385, 402.) "If a fraud
13 claim is based upon failure to disclose, and the duty to disclose arises from the making of
14 representations that were misleading or false, those allegations should be described." (Id., citing
15 Morgan v. AT & T Wireless Services, Inc. (2009) 177 Cal.App.4th 1235, 1262.)

16 Every element of the cause of action for fraud must be alleged in full, factually and
17 specifically. The policy of liberal construction of pleading will not be invoked to sustain a pleading
18 defective in any material respect. (Wilhelm, supra.) "In drafting the complaint, '(a) [g]eneral
19 pleading of the legal conclusion of "fraud" is insufficient; the facts constituting the fraud must be
20 alleged. (b) Every element of the cause of action for fraud must be alleged in the proper manner (i.e.
21 factually and specifically), and the policy of liberal construction of the pleadings ... will not
22 ordinarily be invoked to sustain a pleading defective in any material respect.' [Citations]"
23 (Committee on Children's Television, supra.) To constitute a cause of action for fraud, Plaintiff
24 must set forth specific allegations of ultimate facts that "show how, when, where, to whom, and by
25 what means the representations were tendered." (Lazar v. Superior Court (1996) 12 Cal.4th 631, 645;
26 Robinson Helicopter Co., Inc. v. Dana Corp. (2004) 34 Cal.4th 979, 993.) Finally, when asserting
27 fraud against an entity such as Pite Duncan, plaintiffs must also specifically allege the names of the
28 persons, their authority to speak, to whom they spoke, what they said or wrote, and when it was said

1 or written. (Lazar, supra at 645; Tarmann v. State Farm Mut. Auto. Ins. Co. (1991) 2 Cal.App.4th
2 153, 157.)

3 As with Plaintiffs' RFDCPA claim, Plaintiffs' lack standing to bring this claim regarding
4 enforcement of the loan because Plaintiffs were not parties to the loan or Deed of Trust. Moreover,
5 since the alleged misconduct giving rise to Plaintiffs' fraud claim occurred during Plaintiffs'
6 bankruptcy case, Plaintiffs' fraud claim is precluded by the Bankruptcy Code. Further, as detailed
7 below, Pite Duncan's actions taken in the bankruptcy action are privileged.

8 Plaintiffs also fail to generally state a fraud claim against Pite Duncan because Plaintiffs
9 have not identified any way in which Pite Duncan's representations to the Bankruptcy Court were
10 false. Plaintiffs complain that Pite Duncan committed fraud upon the Bankruptcy Court by filing
11 an objection to Plaintiffs' Chapter 11 Plan stating that HSBC was the secured creditor without
12 providing proof that HSBC was the secured creditor. Plaintiffs fail however to demonstrate that the
13 law firm is required to provide any such proof to them. Moreover, any such issues with the proof
14 of claim or Objection to Plaintiffs' Plan should have been raised by Plaintiffs in their bankruptcy
15 action, not this separately-filed action.

16 Additionally, Plaintiffs claim that Defendants generally committed fraud by making false
17 representations regarding true owner and holder of the promissory note and Deed of Trust fail
18 because a lender is not required to possess the original note to proceed with nonjudicial foreclosure.
19 The holder in due course/presentment argument has been roundly rejected by the Courts interpreting
20 California law. Under California law, there is no requirement for the production of an original
21 promissory note prior to initiation of a nonjudicial foreclosure." (Pantoja v. Countrywide (E.D. Cal.
22 2009) 640 F.Supp.2d 1177,1186, citing Civil Code §2924; Putkkuri, supra at *2; Candelo, supra
23 at *4 (E.D.Cal. Dec. 23, 2008).) "Therefore, the absence of an original promissory note in a
24 nonjudicial foreclosure does not render a foreclosure invalid." (Pantoja, supra, citing Neal v. Juarez,
25 2007 WL 2140640, at *8 (S.D.Cal. July 23, 2007).) Moreover, Plaintiffs plead no facts to support
26 their baseless allegation that the Assignment of the Deed of Trust from MERS to HSBC is invalid
27 because it was signed by an individual alleged to not have authorization to execute documents on
28 behalf of MERS.

1 Because Plaintiffs have not identified any false representations made by Pite Duncan, and
2 have likewise failed to allege any facts to establish the other elements of a fraud claim, Plaintiffs'
3 cause of action fails and Pite Duncan's demurrer should be sustained without leave to amend.

4 **D. Plaintiffs' Wrongful Foreclosure Claim Fails.**

5 Plaintiffs direct their third cause of action for wrongful foreclosure against all named
6 Defendants, including Pite Duncan, despite the fact that the law firm is not now, nor has it ever been
7 advancing the foreclosure of the Subject Property. As with Plaintiffs' prior causes of action relating
8 to the enforcement of the loan and foreclosure of the Deed of Trust, Plaintiffs lack standing to bring
9 the instant cause of action for wrongful foreclosure because Plaintiffs are not parties to the Deed of
10 Trust or borrowers under the subject loan.

11 Plaintiffs' cause of action asserts factual allegations relating to the recording of Notices by
12 ETS, and the assignment of the Deed of Trust involving MortgageIt, MERS, and HSBC. (Comp.
13 ¶¶66-72.) Pite Duncan is not mentioned directly in the allegations supporting this cause of action.
14 Because Pite Duncan's only alleged involvement in this case is as counsel for GMAC and HSBC
15 in Plaintiffs' bankruptcy action, and not in pursuing the nonjudicial foreclosure of the Subject
16 Property, Plaintiffs' wrongful foreclosure claim fails.

17 **E. Plaintiffs' Claim for Unlawful Business Practices Fails.**

18 Plaintiffs' cause of action for violation of California's Unfair Competition Law ("UCL"),
19 Cal. Bus. & Prof. Code § 17200 *et seq.*, is based on reiterations of the same allegations contained
20 the remaining causes of action in Plaintiffs' first amended complaint. (Comp. ¶¶ 102-107.) First,
21 Plaintiffs' claim under the UCL fails for lack of standing. "Private plaintiffs may ... prosecute
22 actions under the unfair competition law, but their remedies are limited to orders for injunctions and
23 restitution." (Clark v. Superior Court (2009) 174 Cal.App.4th 82, 90.) Specifically, § 17203
24 provides in pertinent part:

25 Any person who engages, has engaged, or proposes to engage in unfair competition
26 may be enjoined in any court of competent jurisdiction. The court may make such
27 orders or judgments ... as may be necessary to restore to any person in interest any
28 money or property, real or personal, which may have been acquired by means of such
unfair competition.

///

1 Absent here are facts of Plaintiffs' money or property lost due to a UCL violation and dismissal is
2 warranted on this basis alone. (See Saldade v. Wilshire Credit Corp. (E.D.Cal. 2010) 2010 WL
3 582074 *10 (dismissing UCL claim based on bare allegation that plaintiff suffered "various damages
4 and injuries according to proof at trial" as insufficient allegation of plaintiff's standing). This is
5 especially true since Plaintiffs' allegations forming the basis of the UCL claim relate to the alleged
6 unenforceability of a loan and Deed of Trust that Plaintiffs are not parties to.

7 Second, Plaintiffs have not alleged any wrongdoing by Pite Duncan which would be deemed
8 a violation of the UCL. Unfair competition is defined to include "unlawful, unfair or fraudulent
9 business practice and unfair, deceptive, untrue or misleading advertising." (Id. citing Blank v.
10 Kirwan (1985) 39 Cal.3d 311, 329.)

11 "A plaintiff alleging unfair business practices under these statutes [UCL] must state with
12 reasonable particularity the facts supporting the statutory elements of the violation." (Id. citing
13 Khoury v. Maly's of Calif., Inc. (1993) 14 Cal.App.4th 612, 619.) If "a plaintiff seeks to show a
14 UCL violation of otherwise unlawful acts, the UCL claim is only as good as the underlying claim
15 or claims." (Webb v. Smart Document Solutions, LLC (9th Cir. 2007) 499 F.3d 1078, 1082.)
16 "Where a plaintiff cannot state a claim under the 'borrowed' law, she cannot state a UCL claim
17 either." (Rubio v. Capital One Bank (USA), N.A. (C.D.Cal. 2008) 572 F.Supp.2d 1157, 1168.)
18 Further, a court may consider equitable defenses in deciding whether to grant the remedy sought by
19 a UCL plaintiff, including laches. (Cortez v. Purolator Air Filtration Prod. Co. (2000) 23 Cal.4th
20 163, 179-181.)

21 For these reasons, Plaintiffs' UCL claim fails as there is no predicate violation of antitrust
22 law. To state a proper claim for unfair business practices, a plaintiff must plead that "(1) the
23 consumer injury is substantial, (2) the injury is not outweighed by any countervailing benefits to
24 consumers or competition, and (3) the injury is one that consumers themselves could not reasonably
25 have avoided." (Morgan v. AT & T Wireless Svcs., Inc., 177 Cal.App.4th 1235, 1254-55, 99
26 Cal.Rptr.3d 768 (2009) (citation omitted).) Plaintiff s do not allege the existence of any of these
27 elements, nor can they. As detailed above, Pite Duncan's only involvement with Plaintiffs was as
28 counsel for GMAC and HSBC in Plaintiffs' bankruptcy action. Moreover, since the alleged

1 misconduct giving rise to Plaintiffs' UCL claim occurred during Plaintiffs' bankruptcy case,
2 Plaintiffs' UCL claim is precluded by the Bankruptcy Code.

3 **F. Plaintiffs' Cause of Action for Injunctive Relief Fails Because Injunctive Relief is a**
4 **Remedy, not a Cause of Action.**

5 In California, there is no "cause of action" for "injunctive relief" as it is a remedy, not a cause
6 of action. (Guessous v. Chrome Hearts, LLC (2009) 179 Cal.App.4th 1177, 1187; Major v.
7 Miraverde Homeowners Ass'n (1992) 7 Cal.App.4th 618, 623; Korean Am. Legal Advocacy Found.
8 v. City of Los Angeles (1994) 23 Cal.App.4th 376, 397.) Moreover, an attempt to enjoin a trustee's
9 sale serves as an equitable remedy, and, thus, anyone seeking to enjoin the foreclosure sale is
10 required to do equity before the court will exercise its equitable powers; i.e., to get equity, one must
11 do equity. (Miller & Starr, California Real Estate (3rd Ed 1989) 10 Deeds of Trust § 10:212, pp.
12 658-659; see also Arnold's Management Corp. v. Eisen (1984) 158 Cal.App.3d 575, 577 and Karlsen
13 v. American Sav. & Loan Assn. (1971) 15 Cal.App.3d 112, 117.)

14 Finally, even if this "cause of action" were allowed to remain in Plaintiffs' complaint, it is
15 not properly directed at Pite Duncan because Pite Duncan is not the party taking the actions that
16 Plaintiffs seek to enjoin. Instead, the foreclosure is being conducted by ETS, on behalf of the
17 beneficiary of the Deed of Trust. Accordingly, there is not basis to enjoin Pite Duncan, whose only
18 involvement with this case is as legal counsel for the creditor in Plaintiffs' bankruptcy case.

19 **G. Plaintiffs' Claim for Quiet Title Fails.**

20 To state a claim for quiet title, the pleading must (1) be verified; (2) describe the property that
21 is subject to the action; (3) state the title of the plaintiff as to which a determination is sought; (4)
22 state the adverse claims against which a determination is sought; (5) state the date as of which the
23 determination is sought; and (6) contain a prayer for the determination of the title of the plaintiff
24 against the adverse claims. (See Cal. Civ. Proc. Code § 761.020; see also Lewis v. Superior Court
25 (1994) 30 Cal.App.4th 1850, 1866.) In addition to the foregoing, an essential element of a quiet title
26 action is that the plaintiff have legal title to the property. (See Lewis, supra at 1866; Stafford v
27 Ballinger (1962) 199 Cal.App.2d 289, 294-295.)

28 ///

1 In the present case, Plaintiffs have alleged their cause of action to quiet title against "All
2 Defendants" even though not all of the Defendants are asserting an interest in the Subject Property.
3 In particular, Pite Duncan does not assert, and has never asserted, that it has an interest in the Subject
4 Property adverse to any interest Plaintiffs may have. Pite Duncan is not the beneficiary under the
5 Deed of Trust, so it is not the party pursuing the foreclosure. Similarly, Plaintiffs are also not the
6 trustors under the Deed of Trust making Plaintiffs claim to quiet title questionable since Corazon
7 Estivas, the owner of a 98% interest in the Subject Property does not appear to be challenging the
8 foreclosure or seeking to quiet title. Because Pite Duncan does not have an adverse interest in the
9 Subject Property, it is not a proper Defendant for this cause of action.

10 **H. Pite Duncan's Communications Were Privileged.**

11 Additionally, on this demurrer, it is requested that the Court take judicial notice of the fact
12 that Pite Duncan, LLP was counsel for GMAC and HSBC in Plaintiffs' bankruptcy action at the time
13 the alleged events comprising Plaintiffs' complaint occurred. The Court can take judicial notice of
14 this fact on demurrer pursuant to Code of Civil Procedure, section 430.30(a). Therefore, a privilege
15 applies.

16 California has codified the "litigation privilege" at Civil Code section 47, subdivision (b),
17 providing that "a 'publication or broadcast' made as part of a 'judicial proceeding' is privileged."
18 (See Action Apartment Ass'n, Inc. v. City of Santa Monica (2007) 41 Cal.4th 1232, 1251.) This
19 privilege is absolute in nature, applying "to all publications, irrespective of their maliciousness." (*Id.*
20 at 1241.) The privilege applies to any communication (1) made in judicial or quasi-judicial
21 proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the
22 litigation; and (4) that have some connection or logical relation to the action. (*Id.*) The
23 communication for which privilege is sought must have a logical relation to the judicial proceeding.
24 (Sacramento Brewing Co. v. Desmond, Miller & Desmond (1999) 75 Cal.App.4th 1082, 1089.)
25 However, "the privilege should be denied only where it is so palpably irrelevant to the subject matter
26 of the action that no reasonable person can doubt its irrelevancy." (*Id.* citing Lewis v. Linn (1962)
27 209 Cal.App.2d 394, 399.) "The principal purpose of the privilege is to afford litigants and
28 witnesses the utmost freedom of access to the courts without fear of being harassed subsequently by

1 derivative tort actions.” (Action Apartment, supra citations omitted.)

2 The California Supreme Court in Action Apartment noted that while the privilege originally
3 served to limit an individual’s potential liability for defamation, it has since been extended to apply
4 to other torts. (Id. at pp. 1241-1242.) Indeed, the litigation privilege has since been held “to
5 immunize defendants from tort liability based on theories of abuse of process [citations], intentional
6 infliction of emotional distress [citations], intentional inducement of breach of contract [citations],
7 intentional interference with prospective economic advantage [citation], negligent misrepresentation
8 [citation], invasion of privacy [citation], negligence [citation] and fraud [citations].” (Id., citations
9 omitted.) The privilege has also been held to apply to suits to enjoin tortious conduct and to suits
10 alleging interference with contract and related claims, including claims of unfair competition statute
11 (Bus. & Prof.Code, § 17200 et seq.). (See Rubin v. Green (2003) 4 Cal.4th 1187, 1201-1203
12 (plaintiff may not “plead around” privilege barrier by relabeling the nature of the action).)

13 The actions undertaken by Pite Duncan were all done in the course of a judicial proceeding.
14 The judicial proceeding was the bankruptcy action filed by Plaintiffs. As such, all activity done by
15 Pite Duncan is covered under the litigation privilege. As a result, the demurrer to the complaint by
16 Pite Duncan should be sustained, without leave to amend. Plaintiffs have failed to allege any facts
17 to support any claim toward Pite Duncan. Judicial notice establishes that Pite Duncan was simply
18 brought in to this action because it was counsel for creditors in the Plaintiffs’ bankruptcy proceeding.
19 There simply are no grounds for a suit against Pite Duncan.

20 V. CONCLUSION

21 For the foregoing reasons, Pite Duncan respectfully requests its demurrer be sustained
22 without leave to amend.

23
24 Dated: March 14, 2011

25
26 
27 PITE DUNCAN, LLP

28 CHRISTOPHER L. PETERSON
JILLIAN A. BENBOW
Attorneys for Defendant PITE DUNCAN, LLP

1 PETER J. SALMON (SBN 174386)
CHRISTOPHER L. PETERSON (SBN 215069)
2 JILLIAN A. BENBOW (SBN 246822)
PITE DUNCAN, LLP
3 4375 JUTLAND DRIVE, SUITE 200
P.O. BOX 17935
4 SAN DIEGO, CA 92177-0935
TELEPHONE: (858) 750-7600
5 FACSIMILE: (619) 590-1385

6 Attorneys for Defendant PITE DUNCAN, LLP

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN MATEO

10 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
GMAC MORTGAGE CORPORATION AND
15 GMAC MORTGAGE; HSBC BANK, U.S.A.
as Trustee for DALT 2007-AO3;
16 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PITE
17 DUNCAN, LLP AND DOES 1-50 inclusive,

18 Defendants.

Case No. CIV502857

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER TO
COMPLAINT

Date: May 3, 2011

Time: 9:00 a.m.

Dept.: LM, Dept 25

19
20 Defendant PITE DUNCAN respectfully requests that the Court take judicial notice pursuant
21 to Evidence Code §§ 452 and 453; Evans v. City of Berkeley, 38 Cal.4th 1, 6 (2006); and Evans v.
22 California Trailer Court, Inc., 28 Cal.App.4th 540 (1994) (holding that the Court may take judicial
23 notice of documents recorded at the County Recorder's Office) of the following documents in
24 support of her Demurrer to Plaintiffs FERMIN SOLIS ANIEL and ERLINDA ABIBAS ANIEL's
25 Complaint:

26 **Exhibit A:** The Grant Deed recorded on August 31, 2006 in the Official Records of San
27 Mateo County, California as Instrument No. 2006-131429.

28 ///

1 **Exhibit B:** The Deed of Trust recorded on August 31, 2006 in the Official Records of San
2 Mateo County, California as Instrument No. 2006-131430.

3 **Exhibit C:** The Deed of Trust recorded on August 31, 2006 in the Official Records of San
4 Mateo County, California as Instrument No. 2006-131431.

5 **Exhibit D:** The Deed of Trust recorded on April 3, 2007 in the Official Records of San
6 Mateo County, California as Instrument No. 2007-050317.

7 **Exhibit E:** The Deed of Trust recorded on April 3, 2007 in the Official Records of San
8 Mateo County, California as Instrument No. 2007-050318.

9 **Exhibit F:** The Notice of Default and Election to Sell recorded on December 17, 2008 in
10 the Official Records of San Mateo County, California as Instrument No. 2008-135231.

11 **Exhibit G:** The Substitution of Trustee recorded on December 15, 2008 in the Official
12 Records of San Mateo County, California as Instrument No. 2008-135230.

13 **Exhibit H:** The Assignment of Deed of Trust recorded on July 16, 2009 in the Official
14 Records of San Mateo County, California as Instrument No. 2009-094899.

15 **Exhibit I:** The Notice of Trustee's Sale recorded on December 31, 2010 in the Official
16 Records of San Mateo County, California as Instrument No. 2010-163953.

17 **Exhibit J:** The Affidavit-Death of Joint Tenant recorded on February 2, 2011 in the Official
18 Records of San Mateo County, California as Instrument No. 2011-014002.

19 **Exhibit K:** The Grant Deed recorded on February 3, 2011 in the Official Records of San
20 Mateo County, California as Instrument No. 2011-014606.

21 **Exhibit L:** The Voluntary Petition Amended filed March 24, 2009 in the Plaintiffs'
22 Bankruptcy Action in United States Bankruptcy Court for the Northern District of California, Case
23 No. 09-30452-DM.

24 **Exhibit M:** The Proof of Claim filed June 24, 2009 by Pite Duncan on behalf of GMAC
25 Mortgage, LLC, in the Plaintiffs' Bankruptcy Action in United States Bankruptcy Court for the
26 Northern District of California, Case No. 09-30452-DM.

27 **Exhibit N:** The Disclosure Statement Described Chapter 11 Plan & Chapter 11
28 Reorganization Plan filed June 30, 2010 in the Plaintiffs' Bankruptcy Action in United States

1 Bankruptcy Court for the Northern District of California, Case No. 09-30452-DM.

2 **Exhibit O:** The Objection to Confirmation of Chapter 11 Plan filed by Pite Duncan on behalf
3 of HSBC Bank, U.S.A. as Trustee for DALT 2007, on July 28, 2010 in the Plaintiffs' Bankruptcy
4 Action in United States Bankruptcy Court for the Northern District of California, Case No. 09-
5 30452-DM.

6 **Exhibit P:** The Order Granting Motion to Convert to Chapter 7 entered August 2, 2010 in
7 Plaintiffs' Bankruptcy Action in United States Bankruptcy Court for the Northern District of
8 California, Case No. 09-30452-DM.

9 **Exhibit Q:** The Order Authorizing Abandonment of Property entered November 2, 2010 in
10 Plaintiffs' Bankruptcy Action in United States Bankruptcy Court for the Northern District of
11 California, Case No. 09-30452-DM.

12 **Exhibit R:** The Order Discharging Debtors entered December 2, 2010 in Plaintiffs'
13 Bankruptcy Action in United States Bankruptcy Court for the Northern District of California, Case
14 No. 09-30452-DM.

15
16 Dated: March 14, 2011

PITE DUNCAN, LLP

17
18
19 CHRISTOPHER L. PETERSON
JILLIAN A. BENBOW
Attorneys for Defendant PITE DUNCAN, LLP
20
21
22
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24
25
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27
28

EXHIBIT A

RECORDING REQUESTED BY:

Fidelity National Title Company
Escrow No.: 06-9003850-LC
Locate No.: CAFNT0941-0938-0007-0009564464
Title No.: 06-9564464-BD

**When Recorded Mail Document
and Tax Statement To:**

Mr. and Mrs. Raul M. Estiva
2 Ulloa Street
San Francisco, CA 94127

2006-131429

FIDELITY NATIONAL TITLE
08:00am 08/31/06 DE Fee: 10.00
Count of pages 2 SM
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



APN: 034-312-030

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

2p
8

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$1,430.00 City Tax \$6,500.00

- ☐ computed on full value of property conveyed, or
- ☐ computed on full value less value of liens or encumbrances remaining at time of sale,
- ☐ Unincorporated Area City of San Mateo,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Kenneth L. Prager and Lucita Prager, husband and wife

hereby **GRANT(S)** to Raul Estiva and Corazon Estiva, husband and wife as Joint Tenants

the following described real property in the City of San Mateo, County of San Mateo, State of California:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: August 18, 2006

STATE OF CALIFORNIA

COUNTY OF

ON Aug. 23, 2006 before me,

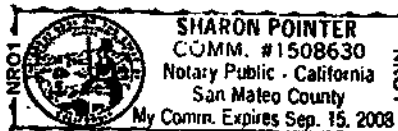
Sharon Pointer, Notary Public

personally appeared Kenneth L. Prager and Lucita Prager

Kenneth L. Prager
KL Prager
Kenneth L. Prager

Lucita prager
Lucita Prager

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



Witness my hand and official seal.

Signature Sharon Pointer (Seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

FD-213 (Rev 7/96)
(grant)(06-06)

GRANT DEED

AA147

Escrow No.: 06-9003850-LC
Locate No.: CAFNT0941-0938-0007-0009564464
Title No.: 06-9564464-BD

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 11, Block 3, as shown on that certain Map entitled "FOOTHILL TERRACE, SAN MATEO, CALIFORNIA", filed in the office of the recorder of the County of San Mateo, State of California, on June 10, 1946 in Book 25 of Maps at page(s) 59.

Joint Plant No: 034-031-312-03A

EXHIBIT B

Recording Requested By:
Bear Stearns Residential
Mortgage Corporation
Return To:
Bear Stearns Residential
Mortgage Corporation
9201 E. Mountain View Road,
Suite 210
Scottsdale, Arizona 85258

Prepared By:
1241 E Dyer Road, Suite 110
Santa Ana, CA 92705

2006-131430

FIDELITY NATIONAL TITLE
08:00am 08/31/06 DT Fee: 61.00
Count of pages 19
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



[Space Above This Line For Recording Data]

DEED OF TRUST

MIN [REDACTED] 25215

19p
BP

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 August 25, 2006 together with all Riders to this document.

(B) "Borrower" is Raul Estiva and Corazon Estiva, husband and wife as joint tenants

Borrower's address is 1881 Earl Avenue, San Bruno, CA 94066

. Borrower is the trustor under this Security Instrument.

(C) "Lender" is Bear Stearns Residential Mortgage Corporation

Lender is a Corporation
organized and existing under the laws of The State of Delaware

[REDACTED] 4350

[REDACTED] 4350

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3005 1/01

VMP -6A(CA) (0207)

Page 1 of 15

Initials: R.M.E.

VMP MORTGAGE FORMS - (800)521-7291

Lender's address is 1241 E Dyer Road, Suite 110, Santa Ana, CA 92705

(D) "Trustee" is Fidelity National Title

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated August 25, 2006

The Note states that Borrower owes Lender Nine Hundred Seventy Five Thousand And Zero/100 Dollars

(U.S. \$975,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than September 01, 2036

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

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

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

<input checked="" 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"/> Other(s) [specify]

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

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

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

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

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

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

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

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VHP-6A(CA) (0207)

Page 2 of 15

Initials: *RME*

4350
Form 3005 1/01

AA151

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

County of
[Type of Recording Jurisdiction]

SAN MATEO
[Name of Recording Jurisdiction]

See Legal Description Attached

Parcel ID Number: 034-312-030
801 Foothill Drive
San Mateo
("Property Address"):

which currently has the address of

[Street]
[City], California 94402 [Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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WHP-6A(CA) (0207)

Page 3 of 15

Initials: R.M.E.

4350
Form 3005 1/01

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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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.

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.

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

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

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

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

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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.

Witnesses:

Raul Estiva (Seal)
-Borrower

Corazon Estiva (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

State of California
County of San Francisco

} ss.

On August 27, 2006 before me,

CAROLYN CHAN, Notary Public
personally appeared

Raul Estiva and Corazon Estiva

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

WITNESS my hand and official seal.



(Seal)

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ADJUSTABLE RATE RIDER

(12-month average yield on actively traded US Treasury Securities - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 25th day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Bear Stearns Residential Mortgage Corporation ("Lender") located at 1241 E Dyer Road, Suite 110, Santa Ana, CA 92705 of the same date and covering the property described in the Security Instrument and located at:

801 Foothill Drive, San Mateo, CA 94402
[Property Address]

1881 Earl Avenue, San Bruno, CA 94066
[Borrower's Current Address]

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS NOTE ALLOWS MONTHLY RATE CHANGES AND ANNUAL PAYMENT CHANGES. THIS NOTE ALLOWS ME TO CAP MY PAYMENTS. THIS NOTE MAY REQUIRE UNPAID INTEREST TO BE ADDED TO LOAN PRINCIPAL AND REQUIRE ME TO PAY ADDITIONAL INTEREST ON THE UNPAID INTEREST (NEGATIVE AMORTIZATION).

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 1.750%. The Note also provides for a change in the initial rate to an adjustable interest rate and changes to payments, as follows:

4. ADJUSTABLE INTEREST RATE

(A) Interest Rate Change Dates

The interest rate I will pay will change on the 1st day of December, 2006, and the adjustable interest rate I will pay may change on that day every month thereafter. The date on which my interest rate changes is called an "Interest Rate Change Date."

(B) The Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding Three And Thirty Seven Hundredths percentage points (3.375%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Interest Rate Change Date.

(D) Limits on Interest Rate Changes

My interest rate will never be greater than 9.950%. My interest rate will never be lower than 3.375%.

(E) Effective Date of Changes

My new interest rate will become effective on each Interest Rate Change Date.

5. PAYMENT CHANGES

(A) Payment Change Dates

My monthly payment may change as required by Section 5(B) below beginning on the 1st day of October, 2007, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 5(D) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount the Note Holder will accept for my monthly payment. If the Minimum Payment is not sufficient to cover the amount of the interest due then any accrued but unpaid interest will be added to Principal and will accrue interest at the rate then in effect. This practice is known as negative amortization. I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 5(D) below.

(B) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the Maturity Date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment."

Unless Section 5(D), 5(E) or 5(F) apply, the amount of my new monthly payment on a Payment Change Date will not exceed my prior monthly payment by more than 7.5%. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 5(D) or 5(E) below require me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment or to select an alternate payment amount as described in Section 5(F) below.

(C) Additions to My Unpaid Principal

Because my monthly payment amount changes less frequently than the interest rate, and because the monthly payment is subject to the 7.5% Payment Cap described in Section 5 (B), my monthly payment could be less than or greater than the amount of interest owed each month. For each month that my monthly payment is less than the interest owed, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2 or Section 4, above. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment to interest before Principal

(D) Limit on My Unpaid Principal; Increased Minimum Payment

My unpaid Principal can never exceed the Maximum Limit equal to 115 percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. If on any payment due date I would exceed the Maximum Limit by paying my Minimum Payment, my monthly payment will be adjusted to the Full Payment. My new monthly payment until the next Payment Change Date will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

This means that my monthly payment may change more frequently than annually. Payment changes required under this Section will not be limited by the 7.5% Payment Cap described in Section 5(B), above.

(E) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(F) Additional Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options (the "Payment Options"). I will be eligible to select one of the Payment Options if it results in a larger monthly payment than my regular Minimum Payment. I may be given the following Payment Options:

(i) Interest Only Payment: Pay only the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Fully Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.

(iii) 15 Year Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

(G) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my Minimum Payment before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

Raul Estiva

(Seal)
-Borrower

Corazon Estiva

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Title No. 06-9564464-BD
Locate No. CAFNT0941-0938-0007-0009564464

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 11, Block 3, as shown on that certain Map entitled "FOOTHILL TERRACE, SAN MATEO, CALIFORNIA", filed in the office of the recorder of the County of San Mateo, State of California, on June 10, 1946 in Book 25 of Maps at page(s) 59.

Joint Plant No: 034-031-312-03A

APN: 034-312-030

EXHIBIT C

This document was prepared by **MATTHEW NOWAKOWSKI** National C
6750 Miller Road Brecksville, OH 44141
Please return this document after recording to:
NCB, CLS BRECKSVILLE
DOCUMENTATION, LOCATOR 7120
6750 MILLER ROAD
BRECKSVILLE, OH 44141

2006-131431

FIDELITY NATIONAL TITLE
08:00am 08/31/06 DT Fee: 28.00
Count of pages 8
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



State of California

Space Above This Line For Recording Data

DEED OF TRUST
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is August 25, 2006 and the parties, their addresses and tax identification numbers, if required, are as follows:
TRUSTOR: RAUL ESTIVA and Corazon Estiva, husband and wife

1881 EARL AVE SAN BRUNO, California 94066

☒ If checked, refer to the attached Addendum incorporated herein, for additional Trustors, their signatures and acknowledgments.

TRUSTEE: National City Bank

LENDER: NATIONAL CITY BANK

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:
SEE ATTACHED EXHIBIT

The property is located in San Mateo at 801 FOOTHILL DR
(County) **SAN MATEO** California **94402**
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 193,700.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
- A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (Include items such as borrowers' names, note or contract amounts, interest rates (whether variable), maturity dates, etc.)

Maturity Date: 8/25/2021

CALIFORNIA - DEED OF TRUST (NOT FOR FNMA, FHLMC, FHA OR VA USE)

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- B. All future advances from Lender to Trustor or other future obligations of Trustor to Lender under any promissory note, contract or guaranty, or other evidence of debt executed by Trustor in favor of Lender after this Security Instrument if this Security Instrument is specifically referenced on the evidence of other debt. If more than one person signs this Security Instrument, each Trustor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Trustor, or any one or more Trustor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
- D. Performance of every obligation in this Security Instrument (including any subsequent instrument amending this Security Instrument) and any instrument now or later evidencing or securing any indebtedness secured by this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Trustor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
- 6. **WARRANTY OF TITLE.** Trustor warrants that Trustor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Trustor also warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Trustor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Trustor receives from the holder.
 - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
- 8. **CLAIMS AGAINST TITLE.** Trustor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Trustor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Trustor's payment. Trustor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Trustor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Trustor may have against parties who supply labor or materials to maintain or improve the Property.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
- 10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Trustor will keep the Property in good condition and make all repairs that are reasonably necessary. Trustor shall not commit or allow any waste, impairment, or deterioration of the Property. Trustor will keep the Property free of noxious weeds and grasses. Trustor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Trustor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Trustor will notify Lender of all demands, proceedings, claims, and actions against Trustor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Trustor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Trustor will in no way rely on Lender's inspection.
- 11. **AUTHORITY TO PERFORM.** If Trustor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Trustor appoints Lender as attorney in fact to sign Trustor's name or pay any amount necessary for performance. Lender's right to perform for Trustor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's

other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

- 12. ASSIGNMENT OF LEASES AND RENTS.** Trustor irrevocably assigns, grants, and conveys, to Trustee, in trust for the benefit of Lender as additional security all the right, title and interest in the following (all referred to as Property): existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases); and rents, issues and profits (all referred to as Rents). In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Trustor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Trustor may collect, receive, enjoy and use the Rents so long as Trustor is not in default.

Upon default, Trustor will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Trustor agrees that this Security Instrument is immediately effective between Trustor and Lender and effective as to third parties on the recording of this Assignment. This Security Instrument will remain effective during any statutory redemption period until the Secured Debts are satisfied. As long as this Assignment is in effect, Trustor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants.

- 13. LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Trustor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Trustor will perform all of Trustor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
- 14. DEFAULT.** Trustor will be in default if any party obligated on the Secured Debt fails to make payment when due. Trustor will be in default if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
- 15. REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Trustor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Trustor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.

If Lender elects to foreclose by exercise of the power of sale, Lender will declare the entire Secured Debts due and payable by delivering to Trustee in this Security Instrument and any evidence of the Secured Debts, receipts and evidence of expenditures made and secured, as Trustee requires. When the legally prescribed time passes after Trustee or Lender duly records a notice of default, the Trustee, Lender or other person authorized to take the sale will give a notice of sale as required by law and will cause the Property to be sold at the time and place fixed in the notice of sale. Lender may rescind any notice of default at any time before the Property's sale. Rescission will occur when Lender executes and records a notice of rescission that cancels any prior notice of default and any related acceleration of the Secured Debts. Lender's rescission will not waive any default then existing or subsequently occurring or preclude Lender exercising its remedies, including the power of sale, at another time.

The Property can be sold as a whole or in separate parcels and in any order that Trustee decides. The Property will be sold to the highest bidder for cash in lawful money of the United States, payable at sale time. The Property can be sold to anyone, including Trustor, Trustee or Lender. Trustee may postpone the sale of any part of the Property by public announcement at the time and place of this sale and afterwards at the time fixed by the preceding postponement. Upon any sale of the Property, Trustee will make and deliver a special or limited warranty deed that conveys the property sold to the purchaser or purchasers. Under this special or limited warranty deed, Trustee will covenant that Trustee has not caused or allowed a lien or an encumbrance to burden the Property and that Trustee will specially warrant and defend the Property's title to the purchaser or purchasers at the sale against all lawful claims and demand of all persons claiming by, through or under Trustee. The deed's recital of facts will be conclusive proof of the truthfulness of these facts.

The proceeds from the Property's sale will be applied to the sale expenses, Trustee's expenses, Lender's attorneys' fees due on Trustor's default, sums that Trustee or Lender paid for procuring a title search of the Property's title subsequent to the execution of this Security Instrument, all outstanding amounts due under this Security Instrument and the remainder to anyone legally entitled to the remaining amounts due.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Trustor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

16. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Trustor agrees to pay all of Lender's expenses if Trustor breaches any covenant (including, but not limited to, advances and expenses as described in the **AUTHORITY TO PERFORM** and **INSURANCE** sections) in this Security Instrument. Trustor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Trustor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Trustor agrees to pay for any recordation costs of such release.
17. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Trustor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Trustor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Trustor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Trustor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Trustor shall immediately notify Lender in writing as soon as Trustor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
18. **CONDEMNATION.** Trustor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Trustor authorizes Lender to intervene in Trustor's name in any of the above described actions or claims. Trustor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
19. **INSURANCE.** Trustor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Trustor subject to Lender's approval, which shall not be unreasonably withheld. If Trustor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Trustor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Trustor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Trustor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Trustor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Trustor. If the Property is acquired by Lender, Trustor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Trustor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Trustor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Trustor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Trustor's obligations under this Security Instrument and Lender's lien status on the Property.
22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Trustor signs this Security Instrument but does not sign an evidence of debt, Trustor does so only to mortgage Trustor's interest in the Property to secure payment of the Secured Debt and Trustor does not agree to be personally liable on the Secured Debt. Trustor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Trustor's consent. Such a change will not release Trustor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Trustor and Lender.
23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
24. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
25. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one trustor will be deemed to be notice to all trustors. Lender and Trustor request that copies of any notice of default or notice of sale under a superior instrument be sent to Lender and Trustor at the addresses listed in the DATE AND PARTIES section.
26. **WAIVERS.** Except to the extent prohibited by law, Trustor waives all appraisement or marshalling of assets relating to the Property.
27. **STATEMENT OF OBLIGATION.** Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.
28. **SPOUSE'S SEPARATE PROPERTY.** Any Trustor who is a married person expressly agrees that recourse may be had against his or her separate property.

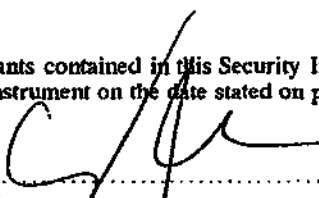
29. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- ☐ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Trustor grants to Lender a security interest in all goods that Trustor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- ☐ **Riders.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
- ☐ Condominium Rider ☐ Planned Unit Development Rider ☐ Other
- ☐ **Additional Terms.**

SIGNATURES: By signing below, Trustor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Trustor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) 
RAUL ESTIVA

(Date)

(Signature) 
Corazon Estiva

(Date)

ACKNOWLEDGMENT:

(Individual)

STATE OF

On this 27th day of August 2007, a notary public, personally appeared

COUNTY OF

San Francisco

before me


CAROLYN CHAN

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

WITNESS my hand and official seal.



Signature


Name (typed or printed)

My commission expires:

6/8/07

REQUEST FOR FULL RECONVEYANCE

To Trustee:

The undersigned is the holder of the note or notes secured by this Deed of Trust, which was recorded in the office of the Recorder of _____ County, State of California, in book _____, page _____ of official records. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: _____

Assessor's Identification Number _____

SIGNATURE ADDENDUM TO SECURITY INSTRUMENT

Definition: "Security Instrument." The Deed of Trust, Mortgage, Trust Deed, Deed to Secure Debt or Security Deed given to secure the debt to the Lender of the same date.

Mortgagor(s)/Borrower(s) on Security Instrument:
RAUL ESTIVA

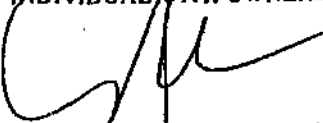
Property Address:
**801 FOOTHILL DR
SAN MATEO California 94402**

Lender: **National City Bank**

Lender Reference Number: **5235**

ADDITIONAL SIGNATURES: By signing below, Grantor(s) / Mortgagor(s) / Trustor(s) / Settlor(s) agrees to the terms and covenants contained in the Security Instrument and in any attachments. Grantors(s) / Mortgagor(s) / Trustor(s) / Settlor(s) also acknowledges receipt of a copy of the Security Instrument.

**NON-APPLICANT SPOUSE, OR NON-APPLICANT
INDIVIDUAL WITH OWNERSHIP INTEREST IN PROPERTY: ADDITIONAL BORROWERS**



CORAZON ESTIVA

Date

Date

Date

Date

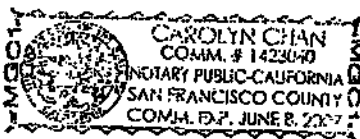
Date

ACKNOWLEDGMENT:

STATE OF CA, COUNTY OF San Francisco } ss.
On this 27th day of August before me Carolyn Chan
a notary public, personally appeared Corazon Estiva

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

WITNESS my hand and official seal:



(seal)

Signature

Name (typed or printed)

My commission expires:

6/8/07

SIGNADD1 (4/2006)

AA176

Title No. 06-9564464-BD
Locate No. CAFNT0941-0938-0007-0009564464

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 11, Block 3, as shown on that certain Map entitled "FOOTHILL TERRACE, SAN MATEO, CALIFORNIA", filed in the office of the recorder of the County of San Mateo, State of California, on June 10, 1946 in Book 25 of Maps at page(s) 59.

Joint Plant No: 034-031-312-03A

APN: 034-312-030

This document was prepared by **MATTHEW NOWAKOWSKI** National City
6750 Miller Road Brecksville, OH 44141
Please return this document after recording to:

NCB, CLS BRECKSVILLE
DOCUMENTATION, LOCATOR 7120
6750 MILLER ROAD
BRECKSVILLE, OH 44141

2007-050318

FIDELITY NATIONAL TITLE
08:00am 04/03/07 DT Fee: 28.00
Count of pages 8
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



* 2 0 0 7 0 0 5 0 3 1 8 A R *

State of California

Space.

DEED OF TRUST

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is March 27, 2007

The parties and their addresses are:

TRUSTOR: **RAUL ESTIVA** and Corazon Estiva, husband and wife

801 FOOTHILL DR SAN MATEO, California 94402

☒ If checked, refer to the attached Addendum incorporated herein, for additional Trustors, their signatures and acknowledgments.

TRUSTEE: **National City Bank**

LENDER: **NATIONAL CITY BANK**

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:
SEE ATTACHED EXHIBIT

The property is located in San Mateo

(County)

at

801 FOOTHILL DR SAN MATEO California 94402

(Address)

(City)

(ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 236,125.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
- A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (Include items such as borrowers' names, note or contract amounts, interest rates (whether variable), maturity dates, etc.)

Maturity Date: 3/27/2022

CALIFORNIA - DEED OF TRUST (NOT FOR FNMA, FHLMC, FHA OR VA USE)

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VMP 19-C165(CA) (0505)

Page 1 of 5

- B. All future advances from Lender to Trustor or other future obligations of Trustor to Lender under any promissory note, contract or guaranty, or other evidence of debt executed by Trustor in favor of Lender after this Security Instrument if this Security Instrument is specifically referenced on the evidence of other debt. If more than one person signs this Security Instrument, each Trustor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Trustor, or any one or more Trustor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
- D. Performance of every obligation in this Security Instrument (including any subsequent instrument amending this Security Instrument) and any instrument now or later evidencing or securing any indebtedness secured by this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Trustor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
- 6. **WARRANTY OF TITLE.** Trustor warrants that Trustor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Trustor also warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Trustor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Trustor receives from the holder.
 - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
- 8. **CLAIMS AGAINST TITLE.** Trustor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Trustor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Trustor's payment. Trustor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Trustor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Trustor may have against parties who supply labor or materials to maintain or improve the Property.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
- 10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Trustor will keep the Property in good condition and make all repairs that are reasonably necessary. Trustor shall not commit or allow any waste, impairment, or deterioration of the Property. Trustor will keep the Property free of noxious weeds and grasses. Trustor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Trustor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Trustor will notify Lender of all demands, proceedings, claims, and actions against Trustor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Trustor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Trustor will in no way rely on Lender's inspection.
- 11. **AUTHORITY TO PERFORM.** If Trustor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Trustor appoints Lender as attorney in fact to sign Trustor's name or pay any amount necessary for performance. Lender's right to perform for Trustor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's

other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

- 12. ASSIGNMENT OF LEASES AND RENTS.** Trustor irrevocably assigns, grants, and conveys, to Trustee, in trust for the benefit of Lender as additional security all the right, title and interest in the following (all referred to as Property): existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases); and rents, issues and profits (all referred to as Rents). In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Trustor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Trustor may collect, receive, enjoy and use the Rents so long as Trustor is not in default.

Upon default, Trustor will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Trustor agrees that this Security Instrument is immediately effective between Trustor and Lender and effective as to third parties on the recording of this Assignment. This Security Instrument will remain effective during any statutory redemption period until the Secured Debts are satisfied. As long as this Assignment is in effect, Trustor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants.

- 13. LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Trustor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Trustor will perform all of Trustor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
- 14. DEFAULT.** Trustor will be in default if any party obligated on the Secured Debt fails to make payment when due. Trustor will be in default if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
- 15. REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Trustor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Trustor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.

If Lender elects to foreclose by exercise of the power of sale, Lender will declare the entire Secured Debts due and payable by delivering to Trustee in this Security Instrument and any evidence of the Secured Debts, receipts and evidence of expenditures made and secured, as Trustee requires. When the legally prescribed time passes after Trustee or Lender duly records a notice of default, the Trustee, Lender or other person authorized to take the sale will give a notice of sale as required by law and will cause the Property to be sold at the time and place fixed in the notice of sale. Lender may rescind any notice of default at any time before the Property's sale. Rescission will occur when Lender executes and records a notice of rescission that cancels any prior notice of default and any related acceleration of the Secured Debts. Lender's rescission will not waive any default then existing or subsequently occurring or preclude Lender exercising its remedies, including the power of sale, at another time.

The Property can be sold as a whole or in separate parcels and in any order that Trustee decides. The Property will be sold to the highest bidder for cash in lawful money of the United States, payable at sale time. The Property can be sold to anyone, including Trustor, Trustee or Lender. Trustee may postpone the sale of any part of the Property by public announcement at the time and place of this sale and afterwards at the time fixed by the preceding postponement. Upon any sale of the Property, Trustee will make and deliver a special or limited warranty deed that conveys the property sold to the purchaser or purchasers. Under this special or limited warranty deed, Trustee will covenant that Trustee has not caused or allowed a lien or an encumbrance to burden the Property and that Trustee will specially warrant and defend the Property's title to the purchaser or purchasers at the sale against all lawful claims and demand of all persons claiming by, through or under Trustee. The deed's recital of facts will be conclusive proof of the truthfulness of these facts.

The proceeds from the Property's sale will be applied to the sale expenses, Trustee's expenses, Lender's attorneys' fees due on Trustor's default, sums that Trustee or Lender paid for procuring a title search of the Property's title subsequent to the execution of this Security Instrument, all outstanding amounts due under this Security Instrument and the remainder to anyone legally entitled to the remaining amounts due.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Trustor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

16. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Trustor agrees to pay all of Lender's expenses if Trustor breaches any covenant (including, but not limited to, advances and expenses as described in the **AUTHORITY TO PERFORM** and **INSURANCE** sections) in this Security Instrument. Trustor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Trustor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Trustor agrees to pay for any recordation costs of such release.

17. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Trustor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B. Except as previously disclosed and acknowledged in writing to Lender, Trustor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Trustor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Trustor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Trustor shall immediately notify Lender in writing as soon as Trustor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

18. CONDEMNATION. Trustor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Trustor authorizes Lender to intervene in Trustor's name in any of the above described actions or claims. Trustor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

19. INSURANCE. Trustor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Trustor subject to Lender's approval, which shall not be unreasonably withheld. If Trustor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Trustor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Trustor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Trustor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Trustor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Trustor. If the Property is acquired by Lender, Trustor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Trustor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Trustor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Trustor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Trustor's obligations under this Security Instrument and Lender's lien status on the Property.
22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Trustor signs this Security Instrument but does not sign an evidence of debt, Trustor does so only to mortgage Trustor's interest in the Property to secure payment of the Secured Debt and Trustor does not agree to be personally liable on the Secured Debt. Trustor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Trustor's consent. Such a change will not release Trustor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Trustor and Lender.
23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
24. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
25. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one trustor will be deemed to be notice to all trustors. Lender and Trustor request that copies of any notice of default or notice of sale under a superior instrument be sent to Lender and Trustor at the addresses listed in the DATE AND PARTIES section.
26. **WAIVERS.** Except to the extent prohibited by law, Trustor waives all appraisal or marshalling of assets relating to the Property.
27. **STATEMENT OF OBLIGATION.** Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.
28. **SPOUSE'S SEPARATE PROPERTY.** Any Trustor who is a married person or registered domestic partner expressly agrees that recourse may be had against his or her separate property.

29. OTHER TERMS. If checked, the following are applicable to this Security Instrument:

- ☐ Line of Credit. The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- ☐ Construction Loan. This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- ☐ Fixture Filing. Trustor grants to Lender a security interest in all goods that Trustor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- ☐ Riders. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
- ☐ Condominium Rider ☐ Planned Unit Development Rider ☐ Other
- ☐ Additional Terms.

SIGNATURES: By signing below, Trustor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Trustor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) [Signature] 3/23/07 (Date) (Signature) [Signature] 3/23/07 (Date)

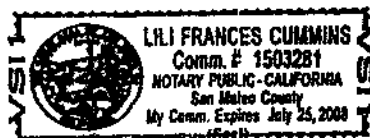
RAUL ESTIVA

ACKNOWLEDGMENT:

(Individual) STATE OF California COUNTY OF San Mateo } ss.
On this 23 day of March, 2007, before me Lili Frances Cummins
a notary public, personally appeared Raul Estiva and Corazon Estiva

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

WITNESS my hand and official seal.



Signature

[Signature]
Name (typed or printed)

My commission expires: July 25, 2008

REQUEST FOR FULL RECONVEYANCE

To Trustee:

The undersigned is the holder of the note or notes secured by this Deed of Trust, which was recorded in the office of the Recorder of _____ County, State of California, in book _____, page _____ of official records. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: _____

Assessor's Identification Number _____

SIGNATURE ADDENDUM TO SECURITY INSTRUMENT

Definition: "Security Instrument." The Deed of Trust, Mortgage, Trust Deed, Deed to Secure Debt or Security Deed given to secure the debt to the Lender of the same date.

Mortgagor(s)/Borrower(s) on Security Instrument:
RAUL ESTIVA

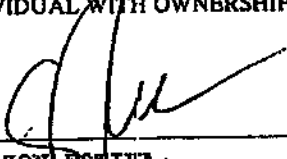
Property Address:
**801 FOOTHILL DR
SAN MATEO California 94402**

Lender: **National City Bank**

Lender Reference Number: **[REDACTED] 5140**

ADDITIONAL SIGNATURES: By signing below, Grantor(s) / Mortgagor(s) / Trustor(s) / Settlor(s) agrees to the terms and covenants contained in the Security Instrument and in any attachments. Grantors(s) / Mortgagor(s) / Trustor(s) / Settlor(s) also acknowledges receipt of a copy of the Security Instrument.

**NON-APPLICANT SPOUSE, OR NON-APPLICANT
INDIVIDUAL WITH OWNERSHIP INTEREST IN PROPERTY: ADDITIONAL BORROWERS**

 5/23/07 _____
CORAZON ESTIVA Date Date

Date Date

Date

ACKNOWLEDGMENT:

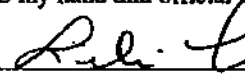
STATE OF California, COUNTY OF San Mateo } ss.
On this 23rd day of March before me Lili Frances Cummins
a notary public, personally appeared Corazon Estiva

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



(seal)

WITNESS my hand and official seal:

Signature 
Name (typed or printed): _____

My commission expires:

July 25, 2008

SIGNADD1 (4/2/06)

Title No. 06-9565509-A-BD
Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

EXHIBIT D


RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 52108

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT, INC.
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

9565509
[Space Above This Line for Recording Data]

MIN: **9056** **5696**

2007-050317
FIDELITY NATIONAL TITLE
08:00am 04/03/07 DT Fee: 67.00
Count of pages 21
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder

* 2 0 0 7 0 0 5 0 3 1 7 A R *

DEED OF TRUST

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 **MARCH 22, 2007** together with all Riders to this document.

(B) "Borrower" is
RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
MORTGAGEIT, INC.

Lender is a **CORPORATION**
organized and existing under the laws of **NEW YORK**
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
CA71 : 07/01 (Page 1)

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Lender's address is
33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 22, 2007

The Note states that Borrower owes Lender

ONE MILLION AND NO / 100

Dollars (U.S. \$ 1,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2037

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. s2601 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

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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

of SAN MATEO

[Name of Recording Jurisdiction]

[Type of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF; APN: 034-312-030

which currently has the address of 801 FOOTHILL DRIVE

SAN MATEO

[City]

, California

94402

[Street]

[Zip Code]

("Property Address"):

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

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

[Handwritten signature]

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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such

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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall

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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and

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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.

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

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

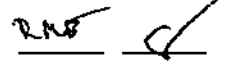
If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third



party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes

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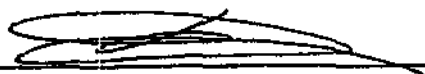
evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such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

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

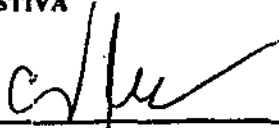
25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by section 2943 of the Civil Code of California.

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.

BORROWERS:



RAUL ESTIVA (Seal)
- Borrower



CORAZON ESTIVA (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

0056

[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF *San Mateo*

On *3/23/07* before me, *Lili Frances Cummins, Notary Public*
personally appeared
RAUL ESTIVA AND CORAZON ESTIVA

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

WITNESS my hand and official seal.

Lili Frances Cummins (Seal)



Date: MARCH 22, 2007

Loan # 9056
Mln #: 5696

FLEX PAY FIXED/ADJUSTABLE RATE RIDER
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)- Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 22ND day of MARCH, 2007 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to MORTGAGEIT, INC.

(“Lender”) of the same date and covering the property described in the Security Instrument and located at:

801 FOOTHILL DRIVE, SAN MATEO, CALIFORNIA 94402
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 6.875 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

3. PAYMENTS

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 3,613.11 . This amount is a FORTY FIVE AND NO / 100 percent (45.000 %) reduction of the payment amount that will be sufficient to repay the unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate set forth in Section 2. This amount may change.

(C) Payment Changes

My monthly payment will remain the same until MAY, 2012 , the month after the first Change Date, and will not change again until after I have made my 120th scheduled monthly payment unless it is required to change in accordance with Section 4(F) below.

Indymac Bank Flex Pay 1 Yr LIBOR Fixed/Adjustable Rate Rider - Multistate

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If I have made less than 120 scheduled monthly payments, my new monthly payment will be in an amount equal to a **FORTY FIVE AND NO / 100** percent (**45.000** %) reduction of the "Full Payment." This limitation will not apply under the circumstances described in Section 4(F). The Full Payment is the amount of the monthly payment that would be sufficient to repay the unpaid balance that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments.

If I have made 120 or more scheduled monthly payments, my new monthly payment will be in an amount equal to the Full Payment.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **APRIL, 2012**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in The Wall Street Journal. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND 75 / 100** percentage points (**2.750** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875** % or less than **2.750** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875** %.

(E) Additions to My Unpaid Balance

If I have made less than 120 scheduled monthly payments, on any monthly payment date the amount of my monthly payment could be less than the interest portion of the Full Payment. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid balance. The Note Holder will also accrue interest on the amount of this difference to my unpaid balance each month. The interest rate on the interest added to the balance will be the rate required by Section 4(C) above.

(F) Limit on My Unpaid Balance: Increased Monthly Payment

My unpaid balance can never exceed a maximum amount equal to one hundred **FIFTEEN** percent (**115** %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments until I have made 120 scheduled monthly payments, the addition of unpaid interest to my unpaid balance under Section 4(E) above could cause my unpaid balance to exceed that maximum. In that event, on the date that the payment of my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment equal to the interest only portion of the Full Payment if I have made less than 120 scheduled monthly payments.

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(G) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(H) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

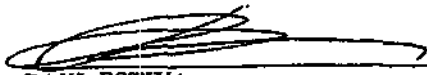
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee

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to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.



RAUL ESTIVA (Seal)
-Borrower



CORAZON ESTIVA (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

9056

(Seal)

-Borrower

(Seal)

-Borrower

8480998 (0605)

FAND# 8480998-5 Rev. 10-09-06

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06/06

AA206

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3. AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

Rue
✓

EXHIBIT E

This document was prepared by **MATTHEW NOWAKOWSKI** National City Bank
6750 Miller Road Brecksville, OH 44141
Please return this document after recording to:

NCB, CLS BRECKSVILLE
DOCUMENTATION, LOCATOR 7120
6750 MILLER ROAD
BRECKSVILLE, OH 44141

2007-050318

FIDELITY NATIONAL TITLE
08:00am 04/03/07 DT Fee: 28.00
Count of pages 8
Recorded in Official Records
County of San Mateo
Warren Stocum
Assessor-County Clerk-Recorder



State of California

Space

DEED OF TRUST

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is March 27, 2007

The parties and their addresses are:

TRUSTOR: **RAUL ESTIVA** and Corazon Estiva, husband and wife

801 FOOTHILL DR SAN MATEO, California 94402

☒ If checked, refer to the attached Addendum incorporated herein, for additional Trustors, their signatures and acknowledgments.

TRUSTEE: **National City Bank**

LENDER: **NATIONAL CITY BANK**

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:
SEE ATTACHED EXHIBIT

The property is located in San Mateo at _____
(County)

801 FOOTHILL DR **SAN MATEO** , California **94402**
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 236,125.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
- A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (Include items such as borrowers' names, note or contract amounts, interest rates (whether variable), maturity dates, etc.)

Maturity Date: 3/27/2022

- B. All future advances from Lender to Trustor or other future obligations of Trustor to Lender under any promissory note, contract or guaranty, or other evidence of debt executed by Trustor in favor of Lender after this Security Instrument if this Security Instrument is specifically referenced on the evidence of other debt. If more than one person signs this Security Instrument, each Trustor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Trustor, or any one or more Trustor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
- D. Performance of every obligation in this Security Instrument (including any subsequent instrument amending this Security Instrument) and any instrument now or later evidencing or securing any indebtedness secured by this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Trustor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
- 6. **WARRANTY OF TITLE.** Trustor warrants that Trustor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Trustor also warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Trustor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Trustor receives from the holder.
 - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
- 8. **CLAIMS AGAINST TITLE.** Trustor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Trustor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Trustor's payment. Trustor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Trustor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Trustor may have against parties who supply labor or materials to maintain or improve the Property.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
- 10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Trustor will keep the Property in good condition and make all repairs that are reasonably necessary. Trustor shall not commit or allow any waste, impairment, or deterioration of the Property. Trustor will keep the Property free of noxious weeds and grasses. Trustor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Trustor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Trustor will notify Lender of all demands, proceedings, claims, and actions against Trustor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Trustor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Trustor will in no way rely on Lender's inspection.
- 11. **AUTHORITY TO PERFORM.** If Trustor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Trustor appoints Lender as attorney in fact to sign Trustor's name or pay any amount necessary for performance. Lender's right to perform for Trustor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's

other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

- 12. ASSIGNMENT OF LEASES AND RENTS.** Trustor irrevocably assigns, grants, and conveys, to Trustee, in trust for the benefit of Lender as additional security all the right, title and interest in the following (all referred to as Property): existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases); and rents, issues and profits (all referred to as Rents). In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Trustor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Trustor may collect, receive, enjoy and use the Rents so long as Trustor is not in default.

Upon default, Trustor will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Trustor agrees that this Security Instrument is immediately effective between Trustor and Lender and effective as to third parties on the recording of this Assignment. This Security Instrument will remain effective during any statutory redemption period until the Secured Debts are satisfied. As long as this Assignment is in effect, Trustor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants.

- 13. LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Trustor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Trustor will perform all of Trustor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
- 14. DEFAULT.** Trustor will be in default if any party obligated on the Secured Debt fails to make payment when due. Trustor will be in default if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
- 15. REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Trustor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Trustor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.

If Lender elects to foreclose by exercise of the power of sale, Lender will declare the entire Secured Debts due and payable by delivering to Trustee in this Security Instrument and any evidence of the Secured Debts, receipts and evidence of expenditures made and secured, as Trustee requires. When the legally prescribed time passes after Trustee or Lender duly records a notice of default, the Trustee, Lender or other person authorized to take the sale will give a notice of sale as required by law and will cause the Property to be sold at the time and place fixed in the notice of sale. Lender may rescind any notice of default at any time before the Property's sale. Rescission will occur when Lender executes and records a notice of rescission that cancels any prior notice of default and any related acceleration of the Secured Debts. Lender's rescission will not waive any default then existing or subsequently occurring or preclude Lender exercising its remedies, including the power of sale, at another time.

The Property can be sold as a whole or in separate parcels and in any order that Trustee decides. The Property will be sold to the highest bidder for cash in lawful money of the United States, payable at sale time. The Property can be sold to anyone, including Trustor, Trustee or Lender. Trustee may postpone the sale of any part of the Property by public announcement at the time and place of this sale and afterwards at the time fixed by the preceding postponement. Upon any sale of the Property, Trustee will make and deliver a special or limited warranty deed that conveys the property sold to the purchaser or purchasers. Under this special or limited warranty deed, Trustee will covenant that Trustee has not caused or allowed a lien or an encumbrance to burden the Property and that Trustee will specially warrant and defend the Property's title to the purchaser or purchasers at the sale against all lawful claims and demand of all persons claiming by, through or under Trustee. The deed's recital of facts will be conclusive proof of the truthfulness of these facts.

The proceeds from the Property's sale will be applied to the sale expenses, Trustee's expenses, Lender's attorneys' fees due on Trustor's default, sums that Trustee or Lender paid for procuring a title search of the Property's title subsequent to the execution of this Security Instrument, all outstanding amounts due under this Security Instrument and the remainder to anyone legally entitled to the remaining amounts due.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Trustor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

16. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Trustor agrees to pay all of Lender's expenses if Trustor breaches any covenant (including, but not limited to, advances and expenses as described in the **AUTHORITY TO PERFORM** and **INSURANCE** sections) in this Security Instrument. Trustor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Trustor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Trustor agrees to pay for any recordation costs of such release.

17. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Trustor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B. Except as previously disclosed and acknowledged in writing to Lender, Trustor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Trustor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Trustor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Trustor shall immediately notify Lender in writing as soon as Trustor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

18. CONDEMNATION. Trustor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Trustor authorizes Lender to intervene in Trustor's name in any of the above described actions or claims. Trustor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

19. INSURANCE. Trustor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Trustor subject to Lender's approval, which shall not be unreasonably withheld. If Trustor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Trustor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Trustor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Trustor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Trustor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Trustor. If the Property is acquired by Lender, Trustor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Trustor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Trustor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Trustor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Trustor's obligations under this Security Instrument and Lender's lien status on the Property.
22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Trustor signs this Security Instrument but does not sign an evidence of debt, Trustor does so only to mortgage Trustor's interest in the Property to secure payment of the Secured Debt and Trustor does not agree to be personally liable on the Secured Debt. Trustor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Trustor's consent. Such a change will not release Trustor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Trustor and Lender.
23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
24. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
25. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one trustor will be deemed to be notice to all trustors. Lender and Trustor request that copies of any notice of default or notice of sale under a superior instrument be sent to Lender and Trustor at the addresses listed in the DATE AND PARTIES section.
26. **WAIVERS.** Except to the extent prohibited by law, Trustor waives all appraisal or marshalling of assets relating to the Property.
27. **STATEMENT OF OBLIGATION.** Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.
28. **SPOUSE'S SEPARATE PROPERTY.** Any Trustor who is a married person or registered domestic partner expressly agrees that recourse may be had against his or her separate property.

29. OTHER TERMS. If checked, the following are applicable to this Security Instrument:

- ☐ Line of Credit. The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- ☐ Construction Loan. This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- ☐ Fixture Filing. Trustor grants to Lender a security interest in all goods that Trustor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- ☐ Riders. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
- ☐ Condominium Rider ☐ Planned Unit Development Rider ☐ Other
- ☐ Additional Terms.

SIGNATURES: By signing below, Trustor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Trustor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

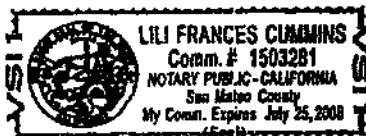
(Signature) [Signature] (Date) 3/23/07 (Signature) [Signature] (Date) 3/23/07
RAUL ESTIVA

ACKNOWLEDGMENT:

(Individual) STATE OF California, COUNTY OF San Mateo } ss.
On this 23 day of March, 2007, before me Lili Frances Cummins
a notary public, personally appeared Raul Estiva and Carazon Estiva

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

WITNESS my hand and official seal.



Signature [Signature] Name (typed or printed)

My commission expires: July 25, 2008

REQUEST FOR FULL RECONVEYANCE

To Trustee:

The undersigned is the holder of the note or notes secured by this Deed of Trust, which was recorded in the office of the Recorder of _____ County, State of California, in book _____, page _____ of official records. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated:

Assessor's Identification Number

SIGNATURE ADDENDUM TO SECURITY INSTRUMENT

Definition: "Security Instrument." The Deed of Trust, Mortgage, Trust Deed, Deed to Secure Debt or Security Deed given to secure the debt to the Lender of the same date.

Mortgagor(s)/Borrower(s) on Security Instrument:

RAUL ESTIVA

Property Address:

801 FOOTHILL DR
SAN MATEO California 94402

Lender:

National City Bank

Lender Reference Number:

6140

ADDITIONAL SIGNATURES: By signing below, Grantor(s) / Mortgagor(s) / Trustor(s) / Settlor(s) agrees to the terms and covenants contained in the Security Instrument and in any attachments. Grantors(s) / Mortgagor(s) / Trustor(s) / Settlor(s) also acknowledges receipt of a copy of the Security Instrument.

NON-APPLICANT SPOUSE, OR NON-APPLICANT
INDIVIDUAL WITH OWNERSHIP INTEREST IN PROPERTY: ADDITIONAL BORROWERS


CORAZON ESTIVA

3/23/07
Date

Date

Date

Date

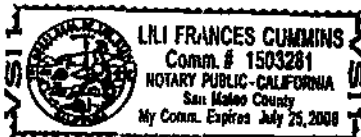
Date

ACKNOWLEDGMENT:

STATE OF California, COUNTY OF San Mateo } ss.
On this 23rd day of March before me Lili Frances Cummins
a notary public, personally appeared Corazon Estiva

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

WITNESS my hand and official seal:



(seal)

Signature


Name (typed or printed):

My commission expires:

July 25, 2008

SIGNADD1 (4/2006)

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

EXHIBIT F

2008-135231

09:25am 12/17/08 ND Fee: 12.00

Count of pages 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 8 0 1 3 5 2 3 1 A R *

RECORDING REQUESTED BY:

LSI TITLE COMPANY, INC.

WHEN RECORDED MAIL TO:

ETS Services, LLC

2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No. : GM-172824-C . Loan No.: 1440

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$13,579.22 as of 12/15/2008, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

C/O ETS Services, LLC

2255 North Ontario Street, Suite 400

Burbank, California 91504-3120

(818) 260-1600 phone

TS NO.: GM-172824-C

LOAN NO.: [REDACTED] 1440

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **3/22/2007**, executed by **RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, as beneficiary, recorded **4/3/2007**, as Instrument No. **2007-050317**, in Book, Page, of Official Records in the Office of the Recorder of **San Mateo County, California** describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$1,000,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus Impounds and/or advances which became due on **10/1/2008** plus late charges, and all subsequent installments of principal, interest, balloon payments, plus Impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 12/15/2008

**ETS Services, LLC AS AGENT FOR
BENEFICIARY**BY: **Neda Cayco
TRUSTEE SALE OFFICER**

EXHIBIT G

RECORDING REQUESTED BY:

2008-135230

09:25am 12/17/08 ST Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 8 0 1 3 5 2 3 0 A R *

LSI TITLE COMPANY, INC.

ETS Services, LLC
 2255 North Ontario Street, Suite 400
 Burbank, California 91504-3120
 (818) 260-1600

TS NO : GM-172824-C
 LOAN NO : [REDACTED] 1440

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 3/22/2007 and recorded on 4/3/2007 as Instrument No. 2007-050317, in Book , Page of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated : 12/15/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.


 Rosalie Solano, ASSISTANT SECRETARY

State of California} ss.
 County of Los Angeles }

On 12/15/2008 before me, Dee C. Ortega Notary Public, personally appeared Rosalie Solano who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)
 Dee C. Ortega

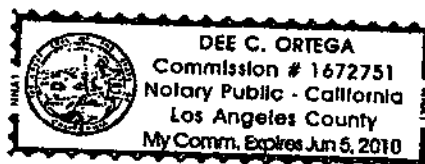


EXHIBIT H

AA222

15.
**RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY**

RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.
Solely as Nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92117-0933

2009-094899

09:34am 07/16/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



APN:

00001-028478

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC BANK U.S.A. as Trustee for DALT 2007-AO3 all beneficial interest under that certain Deed of Trust dated March 22, 2007, executed by Raul Estiva and Corazon Estiva, husband and wife as joint tenants to Fidelity National Title, as trustee, for Mortgage Electronic Registration Systems, Inc., Solely as Nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007-050317 on April 3, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 5-26-09

Mortgage Electronic Registration Systems, Inc., Solely
as Nominee for Mortgageit, Inc.

By:

Its:

Jeffrey Stephan
Vice President

State of Pennsylvania)
County of Montgomery) ss.
On 5/26/09 before me, Thomas P. Strain - Notary Public

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

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

WITNESS my hand and official seal.

Thomas P. Strain
Notary Public

(This Area for Official Notary Seal)

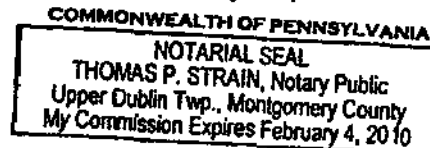


EXHIBIT I

2010-163953

RECORDING REQUESTED BY
ETS Services, LLC

8:41 am 12/31/10 NT Fee: 18.00
Count of Pages 2
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder

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



T.S. No. GM-172824-C
Loan No. 1440

Investor No. 0481

1572

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/22/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Recorded 4/3/2007 as Instrument No. 2007-050317 in Book , page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 1/27/2011 at 1:00 PM

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California

Property Address is purported to be: 801 FOOTHILL DRIVE
SAN MATEO, California 94402-0000

APN #: 034-312-030-9

The total amount secured by said instrument as of the time of initial publication of this notice is **\$1,274,601.00**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Pursuant to California Civil Code §2923.54 the undersigned, on behalf of the beneficiary, loan servicer or authorized agent, declares as follows:

- [1] The mortgage loan servicer has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.53 that is current and valid on the date the notice of sale is filed;
- [2] The timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or 2923.55.

T.S. No. GM-172824-C
Loan No. [REDACTED] 440
Investor No. [REDACTED] 4814

Date: 12/28/2010

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3128
Sale Line: 714-730-2727



Leanna Petersen, TRUSTEE SALE OFFICER

EXHIBIT J

Recording requested by:

CORAZON ESTIVA

And when recorded, mail to:

CORAZON ESTIVA

2 ULLOA ST.

SAN FRANCISCO, CA 94127

2011-014002

2:41 pm 02/02/11 AD Fee: 36.00

Count of Pages 4

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 1 3 1 9 9 6 *

AFFIDAVIT - DEATH OF JOINT TENANT

State of California)

) ss.

County of San Francisco)

I, CORAZON ESTIVA, of legal age, being first duly sworn, deposes and says:

1. RAUL ESTIVA, the decedent mentioned in the attached certified copy of Certificate of Death, is the same person as RAUL ESTIVA named as one of the parties in that certain deed dated MARCH 27, 2007 and executed by

RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS to

RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS as

Joint Tenants, recorded on APRIL 3, 2007, as Instrument No. 2005-050317, in Book/Reel xx, Page/Image cc, of Official Records of SAN MATEO County, California, covering the following described property situated in SAN MATEO County, California:

Assessor's Parcel No. APN-034-312-030

Dated

(SIGNATURE)

2-1-11

State of California

County of San Mateo

Subscribed and sworn to (or affirmed) before me on this 1st day of

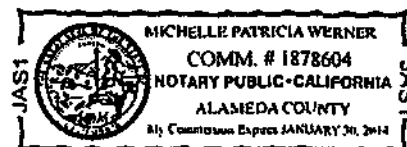
February, 20 11, by Corazon Gopez Estiva

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Date: 2/1/11

Notary Signature

NOTARY SEAL



State: California

County: San Mateo

Doc Type: Document - Year.DocID

Description: 2011.14002

Page: 2

The page you requested is a Vital Record and is not available online. Data Tree is committed to the privacy and protection of our customers and consumers. We are in the process of voluntarily restricting access to all pages that contain Vital Record information. We believe that such efforts reflect best practices to enhance and improve corporate responsibility, as well as to provide a valuable service to our customers and consumers.

If you have questions regarding this message, please contact:

**Data Tree Customer Service Help Desk
1-800-708-8463**

State: California

County: San Mateo

Doc Type: Document - Year.DocID

Description: 2011.14002

Page: 3

The page you requested is a Vital Record and is not available online. Data Tree is committed to the privacy and protection of our customers and consumers. We are in the process of voluntarily restricting access to all pages that contain Vital Record information. We believe that such efforts reflect best practices to enhance and improve corporate responsibility, as well as to provide a valuable service to our customers and consumers.

If you have questions regarding this message, please contact:

Data Tree Customer Service Help Desk
1-800-708-8463

Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

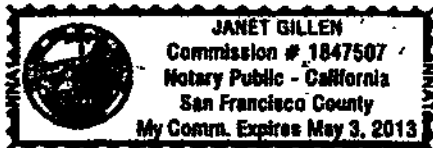
EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030



Janet Gillen, Notary Public
1/27/11

EXHIBIT K

Recording requested by:
ERLINDA A. ANIEL

2011-014606

2:17 pm 02/03/11 DE Fee: 18.00
Count of Pages 2 SM
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder

And when recorded, mail this deed and tax
statements to.

ERLINDA A. ANIEL
75 LOUIN CLARK DR.
HILLSBOROUGH, CA 94010



GRANT DEED

TRA: _____

APN: 034-312-030

CITY OF SAN MATEO REAL PROPERTY CONVEYANCE TAX	
AMOUNT OF TAX DUE COMPUTED ON TOTAL VALUE OF THE CONSIDERATION	
Declarant's Signature (or Agent)	Firm Name

DOCUMENTARY TRANSFER TAX \$	19.80
EXEMPTION (R&T CODE)	
EXPLANATION	
Signature of Declarant or Agent determining tax	

For a valuable consideration, receipt of which is hereby acknowledged,

COHAZON G. ESTIVA, UNMARRIED WOMAN

hereby grant(s) to

1 ERMIN S. ANIEL 1% INTEREST, ERLINDA A. ANIEL 1% INTEREST AS HUSBAND AND WIFE AND
COHAZON G. ESTIVA WITH 98% INTEREST AS TENANCY IN COMMON

the following real property in the City of SAN MATEO, County of SAN MATEO
California:

SEE ATTACHED LEGAL Description.

Date: 2-3-11

(Signature of declarant)

Date: _____

(Signature of declarant)

State of California

County of San Francisco

On February 3, 2011, before me, Natalia Orsuela personally appeared Cohaizon G. Estiva, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary



Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

EXHIBIT L

B1 (Official Form 1) (01/08)

United States Bankruptcy Court						Voluntary Petition AMENDED	
Name of Debtor (if individual, enter Last, First, Middle): ANIEL, FERMIN SOLIS				Name of Joint Debtor (Spouse) (Last, First, Middle): ANIEL ERLINDA ABIBAS			
All Other Names Used by the Debtor in the last 8 years (include married, maiden, and trade names):				All Other Names Used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): ERLINDA JOSE ABIBAS			
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):				Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):			
Street Address of Debtor (No. and Street, City, and State): 75 TOBIN CLARK DRIVE HILLSBOROUGH, CA 94010				Street Address of Joint Debtor (No. and Street, City, and State): 75 TOBIN CLARK DRIVE HILLSBOROUGH, CA 94010			
County of Residence or of the Principal Place of Business: UNITED STATES				County of Residence or of the Principal Place of Business: UNITED STATES			
Mailing Address of Debtor (if different from street address): 75 TOBIN CLARK DRIVE HILLSBOROUGH, CA 94010				Mailing Address of Joint Debtor (if different from street address): 75 TOBIN CLARK DRIVE HILLSBOROUGH, CA 94010			
Location of Principal Assets of Business Debtor (if different from street address above):							
Type of Debtor (Form of Organization) (Check one box.) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) See Exhibit D on page 2 of this form. <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)		Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).		Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 Nature of Debts (Check one box.) <input checked="" type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or house- hold purpose." <input type="checkbox"/> Debts are primarily business debts.			
Filing Fee (Check one box.) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (Applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.				Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D) <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D) Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owned to insiders or affiliates) are less than \$2,190,000. Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).			
Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.							THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000							
Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion							
Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion							

B1 (Official Form 1) (01/08)

Page 2

Voluntary Petition (This page must be completed and filed in every case)		Name of Debtor(s): ANIEL, FERMIN & ERLINDA	
All Prior Bankruptcy Case Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Name of Debtor:		Case Number:	Date Filed:
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b). <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> <u>/s/ Sydney Jay Hall</u> Sydney Jay Hall </div> <div> March 3, 2009 Date </div> </div>	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input checked="" type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box.) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.) <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="margin-left: 40px;"> (Name of landlord that obtained judgment) _____ (Address of landlord) _____ </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgement for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(1)).			

B1 (Official Form 1) (01/08)

Page 3

<p>Voluntary Petition (This page must be completed and filed in every case)</p>	<p>Name of Debtor(s): ANIEL, FERMIN & ERLINDA</p>
<p>Signatures</p>	
<p>Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p>[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under Chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X <u>/s/ Fermin A. Aniel</u> Signature of Debtor</p> <p>X <u>/s/ Erlinda Aniel</u> Signature of Joint Debtor</p> <p>_____ Telephone Number (If not represented by attorney) March 3, 2009 Date</p>	<p>Signature of a Foreign Representative</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.</p> <p><input type="checkbox"/> Pursuant to § 1511 of title 11, United States Code, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p> <p>_____ Date</p>
<p>Signature of Attorney*</p> <p>X <u>/s/ SYDNEY JAY HALL</u> SYDNEY JAY HALL, Esq. Printed Name of Attorney for Debtor(s) LAW OFFICE OF SYDNEY JAY HALL Firm Name 1308 BAYSHORE HIGHWAY, SUITE 220 Address BURLINGAME, CA 94010</p> <p><u>(650) 3421830</u> Telephone Number March 3, 2009 Date</p> <p>* In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</p>	<p>Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notice and information required under 11 U.S.C. 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 198 is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.)(Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____</p> <p>_____ Date</p> <p>Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.</p>
<p>Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>_____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>	

Exhibit "A"

[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit "A" shall be completed and attached to the petition.]

EXHIBIT "A" TO VOLUNTARY PETITION

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is .

2. The following financial data is the latest available information and refers to the debtor's condition on .

a. Total assets \$ _____

b. Total debts (including debts listed in 2.c., below) \$ _____

				Approximate number of holders	
c. Debt securities held by more than 500 holders.					
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$	_____	_____
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$	_____	_____
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$	_____	_____
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$	_____	_____
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$	_____	_____
d. Number of shares of preferred stock				_____	_____
e. Number of shares of common stock				_____	_____

Comments, if any:

3. Brief description of debtor's business:

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:

B6 Summary (Official Form 6 - Summary) (12/07)

UNITED STATES BANKRUPTCY COURTIn Re: ANIEL, FERMIN & ERLINDA
DebtorCase No. 09-30452
(if known)Chapter 11**AMENDED
SUMMARY OF SCHEDULES**

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	2	\$8,020,000.00		
B - Personal Property	Yes	5	\$133,799.00		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	3		\$8,760,000.00	
E - Creditors Holding Unsecured Priority Claims	Yes	2			
F - Creditors Holding Unsecured Nonpriority Claims	Yes	5		\$242,882.25	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			20,333.07
J - Current Expenditures of Individual Debtor(s)	Yes	1			14,258.00
TOTAL		22	\$8,153,799.00	\$9,002,882.25	

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA Case No. 09-30452
Debtor (if known)
Chapter 11

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)(whether disputed or undisputed)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	20,333.07
Average Expenses (from Schedule J, Line 18)	14,258.00
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" COLUMN		\$1,424,006.25
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column.		
4. Total from Schedule F		\$242,882.25
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		\$1666888.50

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

DECLARATION CONCERNING DEBTOR(S) SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of sheets (total shown on summary page plus 2), and that they are true and correct to the best of my knowledge, information, and belief.

March 3, 2009

Date

/s/ Fermin A. Aniel

Signature of Debtor

March 3, 2009

Date

/s/ Erlinda Aniel

Signature of Joint Debtor

* * * * *

DECLARATION AND SIGNATURE OF BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section; and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social-Security No. (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person or partner who signs this document.

Address

X

Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of Title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

* * * * *

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary of schedules, consisting of sheets (total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date

Signature of Authorized Individual

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. § 152 and 3571.

Official Form 6A (12/07)

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452

Debtor

(if known)

**AMENDED
SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint or Community". If the debtor holds no interest in real property, write "None" under "Description and Location of Property".

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim".

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption	Amount of Secured Claim
75 TOBIN CLARK DRIVE HILLSBOROUGH, CA 94010	Fee simple	C	2,550,000.00	\$2,550,000.00
833 CLEARFIELD DRIVE MILLBRAE, CA 94030	Fee simple	H	1,200,000.00	\$1,599,366.00
1061 SYCAMORE D RIVE MILLBRAE, CA 94030	Fee simple	J	1,070,000.00	\$1,219,000.00
3 FAIRMONT DRIVE DALY CITY, CA 94015	Fee simple	J	650,000.00	\$713,996.36

Official Form 6A (12/07)

(Part 1) Pg 363 of 586

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452**Debtor**

(if known)

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption	Amount of Secured Claim
418 PERSIA AVE. SAN FRANCISCO, CA 94112	Fee simple	C	510,000.00	\$772,000.00
1881 EARL AVENUE SAN BRUNO, CA 94066	Fee simple	C	740,000.00	\$900,000.00
801 FOOTHILL DRIVE SAN MATEO CA 94022	Fee simple	C	1,300,000.00	\$1,350,000.00
	Fee simple			
	Fee simple			
	Fee simple			
	Fee simple			
	Fee simple			
	Fee simple			
Total			\$8,020,000.00	

Official Form 6B (12/07)

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452

Debtor

(if known)

**AMENDED
SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None". If additional space is needed in any category, attach a separate sheet properly identified with the same case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint or Community". If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state the person's name and address under "Description and Location of Property". If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, CD's, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses or cooperatives.		CITIBANK CHECKING [REDACTED] 0141 CITIBANK CHECKING [REDACTED] CITIBANK SAVINGS	C	\$549.00 \$450.00 \$1,300.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		FURNITURES, COMPUTER, RUGS & FURNISHINGS, PIANO	C	\$10,000.00

In Re: ANIEL, FERMIN & ERLINDA

Case No. 09-30452

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.		WATCH AND JEWELRY	C	\$10,000.00
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X		C	
10. Annuities. Itemize and name each issuer.	X		C	
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars.	X			
12. Interest in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		THRIFT & SAVINGS PLAN	I	\$30,000.00
		FEDERAL RETIREMENT USPS		\$63,000.00

Official Form 6B (12/07)

In Re: ANIEL, FERMIN & ERLINDA

Case No. 09-30452

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.		SAVINGS BOND	C	\$1,500.00
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in real estate of a decedent, death benefit plan, life insurance policy, or trust.	X			

In Re: ANIEL, FERMIN & ERLINDA

Case No. _____

09-30452

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
21. Other contingent or unliquidated claims of every nature, including tax refunds, counter-claims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		LEXUS 1999 RX300 MERCEDES 2003 ML500	C	\$7,000.00 \$10,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			

In Re: ANIEL, FERMIN & ERLINDA Case No. 09-30452
Debtor (if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
Total				\$88,299.00

Official Form 6C (12/07)

(Part 1) Pg 369 of 586

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452

Debtor

(if known)

**AMENDED
SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor claims the exemptions to which debtor is entitled under:
(Check one box)☒ Check if debtor claims a homestead exemption that exceeds
\$136,875.

- ☒ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption

In Re: ANIEL, FERMIN & ERLINDA Case No. 09-30452
 Debtor (if known)

**AMENDED
 SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

Creditor's Name and Mailing Address Including Zip Code	Codebtor Husband, Wife, Joint, or Community	Date Claim was Incurred, Nature of Lien, and Description and Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
██████████ 8492 GMAC 3451 HAMMOND AVE. WATERLOO, IA 59704	C	JUNE 4, 2007 DEED OF TRUST (1ST LIEN) VALUE \$ 2,550,000.00	X	X	X	2,000,000.00	63,840.37
██████████ 8492 WASHINGTON MUTUAL PO BOX 78065 PHOENIX, ARIZONA 85062-8065	H	JUNE 4, 2007 HELOC VALUE \$	X	X	X	500,000.00	10,663.10
Account Number: ██████████ 0531 AURORA LOAN SERVICES 2617 COLLEGE PARK DRIVE NE, 69363-1706	H	NOVEMBER 23, 2005 DEED OF TRUST (1ST LIEN) VALUE \$	X	X	X	1,000,000.00	36,894.78
Subtotal (Total of this page)						\$3,500,000.00	\$111,398.25
Total (Use only on last page)							

(Report also on
Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

2 continuation sheets attached

Official Form 6D (12/07)

(Part 1) Pg 371 of 586

In Re: ANIEL, FERMIN & ERLINDA

Case No. _____

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code	Codebtor Husband, Wife, Joint, or Community	Date Claim was Incurred, Nature of Lien, and Description and Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
██████████ 3409 INDYMAC FEDERAL BANK PO BOX 4045 KALAMAZOO, MICHIGAN 49003	C	JULY 2005 HELOC VALUE \$	X	X	X	250,000.00	250,000.00
Account Number: PRIVATE ZENAIDA FLORES C/O PROPERTY SERVICES 1499 BALTIMORE HIWAY 126 BURLINGAME, 94010	H	DEED OF TRUST 2ND LOAN VALUE \$ 1,200,000.00	X	X	X	247,000.00	950.00
Account Number: ██████████ 1153 EMC PO BOX 619063 DALLAS, TX 75261-9063	H	OCTOBER 2006 DEED OF TRUST VALUE \$ 1,070,000.00	X	X	X	1,000,000.00	45,000.00
Account Number: ██████████ 5183 NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981	H	FEBRUARY 2006 HELOC VALUE \$ 170,000.00	X	X	X	180,000.00	180,000.00
Account Number: ██████████ 5580 AHMSI PO BOX 631730 IRVING, TX 75063-1730	C	APRIL 2007 DEED OF TRUST 1ST LOAN VALUE \$ 510,000.00	X	X	X	676,000.00	30,000.00
Account Number: ██████████ 5390 NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981	C	APRIL 2007 HELOC VALUE \$ 510,000.00	X	X		75,000.00	75,000.00
Account Number: ██████████ 5212 COUNTRYWIDE PO BOX 10219 VANNUYS, CA 91410-0219	C	FEBRU DEED OF TRUST VALUE \$ 650,000.00	X	X	X	497,000.00	21,168.00
Subtotal (Total of this page)						\$2,925,000.00	\$602,118.00
Total (Use only on last page)							

(Report also on
Summary of
Schedules.)(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)Sheet no. 1 of 2 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

Official Form 6D (12/07)

In Re: ANIEL, FERMIN & ERLINDA

Case No. _____

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred, Nature of Lien, and Description and Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
Account Number: [REDACTED] 0505 CITIBANK PO BOX 790110 MS 504A ST. LOUIS, MO 63179-0110	C	FEBRUARY 2006 HELOC VALUE \$ 650,000.00	X	X	X	223,000.00	223,000.00
Account Number: [REDACTED] 8053 LITTON LOAN SERVICING 4828 LOOP CENTRAL DRIVE HOUSTON, TX 77081	X J	AUGUST 9, 2 006 1ST LOAN VALUE \$ 740,000.00	X	X	X	712,500.00	83,990.00
Account Number: UNKNOWN BANK OF AMERICA NC4-105-03-14 4161 PIEDMONT PARKWAY GREENSBOROUGH, NC 27410	X J	AUGUST 9, 2006 HELOC VALUE \$ 740,000.00	X	X	X	142,500.00	142,500.00
Account Number: [REDACTED] 440 GMAC 2711 NORTH HUSKELL AVE. DALLAS, TEXAS 75201	X C	MARCH 22, 2007 DEED OF TRUST 1ST LIEN VALUE \$ 1,300,000.00	X	X	X	1,021,000.00	25,000.00
Account Number: UNKNOWN NATIONAL CITY PO BOX 856153 LOUSEVILLE, KENTUCKY 40285-6153	X C	APRIL 2, 2007 HELOC VALUE \$	X	X	X	236,000.00	236,000.00
Account Number:		VALUE \$					
Account Number:		VALUE \$					
Account Number:		VALUE \$					
Subtotal (Total of this page)						\$2,335,000.00	\$710,490.00
Total (Use only on last page)						\$8,760,000.00	\$1,424,006.25

(Report also on
Summary of
Schedules.)(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)Sheet no. 2 of 2 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452

Debtor

(if known)

AMENDED

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of this petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 or 13 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,425* deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTR, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

Official Form 6F (12/07)

In Re: ANIEL, FERMIN & ERLINDA
DebtorCase No. 09-30452
(if known)**AMENDED
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts filing a case under chapter 7, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

Creditor's Name and Mailing Address Including Zip Code, and Account Number	Codebtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
735 PATELCO 156 SECOND STREET SAN FRANCISCO, CA 94105	H	FEBRUARY 2004 CREDIT CARD				\$20,316.00
4210 CITIBANK PO BOX 183113 COLUMBUS, OHIO 43218-3113	H	OCTOBER 2007 CREDIT CARD				\$33,000.00
3725 BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102	H	FEBRUARY 2006 CREDIT CARD				\$32,000.00
7320 MARRIOT REWARD -CHASE PO BOX 15123 WILMINGTON, DE 19850-5123	H	FEBRUARY 2006 CREDIT CARD				\$5,000.00
Subtotal						\$90,316.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						

4 continuation sheets attached

In Re: ANIEL, FERMIN & ERLINDA

Case No.

09-30452

Debtor		(if known)			Amount of Claim
Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	
7307 CHASE - UNITED MILEAGE PO BOX 15298 WILMINGTON, DE 19850-5298	H	FEBRUARY 2006 CREDIT CARD			\$10,283.00
Account Number: 6660 NEIMAN MARCUS PO BOX 729080 TEXAS 75372-9080	H	JULY 4, 2004 CREDIT CARD			\$5,277.00
9251 WASHINGTON MUTUAL PO BOX 660487 DALLAS, TX 75266-0487	W	JUNE 1999 CREDIT CARD			10,500.00
1694 SEARS PO BOX 6937 THE LAKE, NEVADA 88901-6937	W	SEPTEMBER 2006 CREDIT CARD			3,300.00
9209 BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102	W	OCTOBER 2006 CREDIT CARD			16,500.00
7511 HOME DEPOT PO BOX 6028 THE LAKE, NV 89901-6028	W	JULY 2005 CREDIT CARD			6,400.00
9820 MACY'S PO BOX 6938 THE LAKE, NV 88901-6938	W	MARCH 2004 CREDIT CARD			857.00
Subtotal					\$53,117.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)					

Sheet no. 1 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re: ANIEL, FERMIN & ERLINDA

Case No. _____

09-30452

Debtor		(if known)			Amount of Claim	
Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	
██████████ 9028 WASHINGTON MUTUAL PO BOX 660433 DALLAS, TX 752660433	W	JUNE 2000 CREDIT CARD				4,007.25
██████████ 4740 LOWE'S PO BOX 530914 ATLANTA, GA 30353-0914	W	APRIL 2003 CREDIT CARD				4,000.00
██████████ 1924 BLOOMINGDALE'S VISA PO BOX 689194 DES MOINES, IA 50368-9194	W	DECEMBER 2005 CREDIT CARD				4,040.00
██████████ 781 CITICARDS PO BOX 6406 THE LAKE, NV 88901-6406	W	NOVEMBER 2007 CREDIT CARD				5,300
██████████ 974 BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726	W	OCTOBER 2006 CREDIT CARD				14,500.00
██████████ 0778 BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726	W	MAY 2005 CREDIT CARD				17,100.00
██████████ 6281 BLOOMINGDALE PO BOX 183083 COLUMBUS, OH 43218-3083	W	JUNE 2007 CREDIT CARD				3,900.00
Subtotal						\$52,847.25
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						

Sheet no. 2 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452

Debtor		(if known)			Amount of Claim	
Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated		Disputed
1541 UNITED MILEAGE PLUS PO BOX 94014 PALATINE, IL 60094-4014	W	NOVEMBER 2005 CREDIT CARD				5,800.00
4447 CITI BUSINESSCARD PO BOX 6408 THE LAKE, NV 88901-8408	W	NOVEMBER 2007 CREDIT CARD				11,000.00
2181 BAILEY BANK & BIDDLE PROCESSING CENTER DES MOINES, IA 50364-0001	W	JUNE 2003 CREDIT CARD				6,200.00
281 BLOOMINGDALE PO BOX 18303 COLUMBUS, OH 43218-3083	W	DECEMBER 2005 CREDIT CARD				4,300.00
239 SAKS FIFTH PO BOX 60151 CITY OF INDUSTRY, CA 91716-0151	W	JULY 2007 CREDIT CARD				1,400.00
2487 SAKS FIFTH VISA PO BOX 60102 CITY OF INDUSTRY, CA 9176-0100	W	JULY 2007 CREDIT CARD				5,600.00
Account Number: MACY'S PO BOX 6938 THE LAKE, NV 88901-6938	W	MARCH 2004 CREDIT CARD				2,300.00
Subtotal						\$36,600.00
Total						

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.)

Sheet no. 3 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re: ANIEL, FERMIN & ERLINDACase No. 09-30452

Debtor		(if known)			Amount of Claim	
Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated		Disputed
<div>7700</div> <div>DISCOVER CARD</div> <div>PO BOX 15316</div> <div>WILLMINGTON, DELAWARE 19850</div>	H	JANUARY 1995 CREDIT CARD				5,620.00
<div>Account Number: 9028</div> <div>WASHINGTON MUTUAL</div> <div>PO BOX 660487</div> <div>DALLAS, TX 75266-0487</div>	W	JUNE 1999 CREDIT CARD				4,382.00
Account Number:						
Account Number:						
Account Number:						
Account Number:						
Account Number:						
Account Number:						
Account Number:						
Subtotal						\$10,002.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						\$242,882.25

Sheet no. 4 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

**AMENDED
SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

Name and Mailing Address of Codebtor	Name and Mailing Address of Creditor
MARC JASON ANIEL 75 TOBIN CLARK DRIVE HILLBOROUGH, CA 94010	AMHSI P.O. BOX 631730 IRVING, TX 75063-1730
	NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981
RAUL ESTIVA & CORZON ESTIVA 2 ULLOA STREET SAN FRANCISCO, CA 94107	GMAC 3451 HAMMOND AVE WATTEBLOO, IA 59704
	NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981
	LITTON LOAN SERVING 4828 LOOP CENTRAL DRIVE HOUSTON, TX 77081
	BANK OF AMERICA 4161 PIEDMONT PARKWAY GREENSBOROUGH, NC 27410

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

AMENDED
SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse".

1. Rent or home mortgage payment (include lot rented for mobile home)	\$	7,503.00
a. Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b. Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
2. Utilities: a. Electricity and heating fuel	\$	549.00
b. Water and sewer	\$	239.00
c. Telephone	\$	167.00
d. Other GARBAGE	\$	65.00
3. Home maintenance (repairs and upkeep)	\$	545.00
4. Food	\$	1,000.00
5. Clothing	\$	0
6. Laundry and dry cleaning	\$	30.00
7. Medical and dental expenses	\$	50.00
8. Transportation (not including car payments)	\$	100.00
9. Recreation, clubs and entertainment, newspapers, magazines	\$	50.00
10. Charitable contributions	\$	0
11. Insurance (not deducted from wages or included in home mortgage payments)		
a. Homeowner's or renters	\$	400.00
b. Life	\$	180.00
c. Health	\$	243.00
d. Auto	\$	200.00
e. Other	\$	
12. Taxes (not deducted from wages or included in home mortgage payments)	\$	
Specify:		
13. Installment payments: (In chapter 11, 12 or 13 cases, do not list payments to be included in the plan)		
a. Auto	\$	837.00
b. Other	\$	
c. Other	\$	
14. Alimony, maintenance, and support paid to others	\$	
15. Payments for support of additional dependents not living at your home	\$	2,000.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	100.00
17. Other	\$	
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17.)	\$	14,258.00
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: INCREASED EXPENSES WHEN SON WENT ABROAD TO STUDY		
20. STATEMENT OF MONTHLY NET INCOME		
a. Average monthly income from Line 15 of Schedule I	\$	19,691.07
b. Average monthly expenses from Line 18 above	\$	12,968.00
c. Monthly net income (a. minus b.)	\$	6,723.07

FORM 7. STATEMENT OF FINANCIAL AFFAIRS
UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA Case No. 09-30452
 Debtor (if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfer and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Questions 1-18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19-25. If the answer to an applicable question is "None", mark the box labeled "None". If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

None ☐ 1. Income from employment or operation of business

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Amount	Source
57,660.00	2008 - POSTAL SERVICE
7,284.00	2008 - SOCIAL SECURITY DISABILITY
63,000.00	2007 - POSTAL SERVICE
7,116.00	2007 - SOCIAL SECURITY DISABILITY
62,795.47	2006 - POSTAL SERVICE
6,888.00	2006 - SOCIAL SECURITY DISABILITY

2. Income other than from employment (or operation of business) (Part 1) Pg 383 of 586

None ☐ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Amount	Source
47,994.00	YEAR 2007 ADMINISTRATIVE FEES
272,538.00	YEAR 2006 ADMINISTRATIVE FEES
7500.00	YEAR 2008 ADMINISTRATIVE FEES

3. Payments to creditors

None ☐ a. Individual or joint debtor(s) with primarily consumer debts: List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, [except for a debt on account of a domestic support obligation,] made within 90 days immediately preceding the commencement of this case. Indicate with an * any payments that were made to the creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor	Dates of Payments	Amount Paid	Amount Still Owing
CHEVRON	2/1/09	394.00	0
OSH	2/1/09	100.00	505.00
NEIMAN MARCUS	2/1/09	115.00	2,000.00

None ☐ b. Debtor whose debts are not primarily consumer debts: List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor	Dates of Payments/ Transfers	Amount Paid or Value of Transfers	Amount Still Owing
ZENaida FLORES C/O PROPERTY SERVICES 1499 BALTIMORE HIWAY 126 BURLINGAME, CA 94010	2/1/09	950.00	245,000.00

None ☒ c. All debtors: List all payment made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor and Relationship to Debtor	Date of Payment	Amount Paid	Amount Still Owning
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4. Suits and administrative proceedings, executions, garnishments and attachments

None ☒ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Caption of Suit and Case Number	Nature of Proceeding	Court or Agency and Location	Status or Disposition
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None ☒ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Person for Whose
Benefit Property was Seized

Date of
Seizure

Description and
Value of Property

5. Repossessions, foreclosures and returns

None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of
Creditor or Seller

Date of Repossession,
Foreclosure Sale,
Transfer or Return

Description and Value
of Property

6. Assignments and receiverships

(Part 1) Pg 386 of 586

- None ☒ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address
of AssigneeDate of
AssignmentTerms of Assignment
or Settlement

- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address
of CustodianName and Location of Court
Case Title & Number

Date of Order

Description and
Value of Property

None ☒ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Person or Organization	Relationship to Debtor, if any	Date of Gift	Description and Value of Gift
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8. Losses

None ☒ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Description and Value of Property	Description of Circumstances and, if Loss was Covered in Whole or in Part by Insurance, Give Particulars.	Date of Loss
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9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

Name and Address of Payee	Date of Payment, Name of Payor if other than Debtor	Amount of Money or Description and Value of Property
ATTY. SYDNEY JAY HALL 1308 BAYSHORE HIGHWAY, STE 200 BURLINGAME, CA 94010	10/1/2008	\$1,000.00
	02/1/2009	\$1,000.00
MILLER LAW GROUP 260 SHERIDAN AVE #208 PALO ALTO, CA 94309	02/07/2009	\$1,500.00
	03/2009	\$2,800.00

- None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Transferee, Relationship to Debtor	Date	Describe Property Transferred and Value Received
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- None ☒ b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

Name of Trust or Other Device	Date(s) of Transfer(s)	Amount of Money or Description and Value of Property or Debtor's Interest in Property
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11. Closed financial accounts

- None ☒ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Institution	Type of Account, Last Four Digits of Account Number, and Amount of Final Balance	Amount and Date of Sale or Closing
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12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Bank or Other Depository	Names and Addresses of those with Access to Box or Depository	Description of Contents	Date of Transfer or Surrender, if any
CITIBANK	MARC JASON DANIEL FERMIN ANIEL	IMPORTANT DOCUMENTS PERSONAL EFFECT	N/A

13. Setoffs

None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor	Date of Setoff	Amount of Setoff
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14. Property held for another person

None ☐ List all property owned by another person that the debtor holds or controls.

Name and Address of Owner	Description and Value of Property	Location of Property
CORAZON ESTIVA RAUL ESTIVA #2 ULLOA ST. SAN FRANCISCO, CA 94127	740,000.00 1,300,000.00	1881 EARL AVE SAN BRUNO CA, 94066 801 FOOTHILL DRIVE SAN MATEO CA, 94402
MARC JASON ANIEL 75 TOBIAN CLARK DR HILLSBOROUGH, CA 94010	510,000.00	418 PERSIA AVENUE SAN FRANCISCO, CA 94112

15. Prior address of debtor

None ☐ If the debtor has moved within the three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

Address	Name Used	Dates of Occupancy
1061 SYCAMORE DRIVE MILLBRAE CA 94030		MAY 2003
75 TOBIN CLARK HILLSBOROUGH CA 94010		JUNE 2005 - PRESENT

16. Spouses and former spouses

None ☒ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

Name

17. Environmental information

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law.

Site Name and Address	Name and Address of Governmental Unit	Date of Notice	Environmental Law
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- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

Site Name and Address	Name and Address of Governmental Unit	Date of Notice	Environmental Law
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- None ☒ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

Name and Address of Governmental Unit	Docket Number	Status or Disposition
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18. Nature, location and name of business

- None ☒ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was a self-employed in a trade, profession, or other activity either full- or part-time within the six-years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

Name, Address, Last Four Digits of Soc. Sec. No.
Complete EIN or Other Taxpayer ID. No.

Nature of Business

Beginning and
Ending Dates

- None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

Name

Address

In re ANIEL, FERMIN & ERLINDA
 Debtor(s)

Case Number: _____
 (If known)

AMENDED
CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedule I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

STATEMENT OF CURRENT MONTHLY INCOME													
<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>c. <input checked="" type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>													
			<p>Column A Debtor's Income</p>	<p>Column B Spouse's Income</p>									
Gross wages, salary, tips, bonuses, overtime, commissions.			5,000.00	642.00									
<p>Net income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 55%;">816.66</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>700.00</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	816.66	b.	Ordinary and necessary business expenses	700.00	c.	Business income	Subtract Line b from Line a	116.66	
a.	Gross receipts	816.66											
b.	Ordinary and necessary business expenses	700.00											
c.	Business income	Subtract Line b from Line a											
<p>Net rental and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 55%;">15,650.00</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>500.00</td> </tr> <tr> <td>c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	15,650.00	b.	Ordinary and necessary operating expenses	500.00	c.	Rent and other real property income	Subtract Line b from Line a	15,150.00	
a.	Gross receipts	15,650.00											
b.	Ordinary and necessary operating expenses	500.00											
c.	Rent and other real property income	Subtract Line b from Line a											
Interests, dividends, and royalties.			35.00										
Pension and retirement income.													
<p>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse if Column B is completed.</p>													
<p>Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 20%;">Debtor</td> <td style="width: 40%;">Spouse</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor	Spouse								
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor	Spouse											

9	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" data-bbox="186 315 1079 388"> <tr> <td>a.</td> <td></td> <td></td> </tr> <tr> <td>b.</td> <td></td> <td></td> </tr> </table>	a.			b.				
a.									
b.									
10	<p>Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</p>	20,301.66	642.00						
11	<p>Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.</p>	20,943.66							

<p>I declare under penalty of perjury that the information provided in this statement is true and correct. (If this is a joint case, both debtors must sign.)</p>					
12	<table> <tr> <td>Date: <u>March 3, 2009</u></td> <td>Signature: <u>/s/ Fermin A. Aniel</u></td> </tr> <tr> <td>Date: <u>March 3, 2009</u></td> <td>Signature: <u>/s/ Erlinda Aniel</u></td> </tr> </table>	Date: <u>March 3, 2009</u>	Signature: <u>/s/ Fermin A. Aniel</u>	Date: <u>March 3, 2009</u>	Signature: <u>/s/ Erlinda Aniel</u>
Date: <u>March 3, 2009</u>	Signature: <u>/s/ Fermin A. Aniel</u>				
Date: <u>March 3, 2009</u>	Signature: <u>/s/ Erlinda Aniel</u>				

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

VERIFICATION OF CREDITOR MATRIX

The above named debtor(s), or debtor's attorney if applicable, do hereby certify under penalty of perjury that the attached Master Mailing List of creditors, consisting of 3 sheet(s) is complete, correct and consistent with the debtor's schedules pursuant to Local Bankruptcy Rules and I/we assume all responsibility for errors and omissions.

March 3, 2009

Date

Signature of Attorney

/s/ Fermin A. Aniel

Signature of Debtor

/s/ Erlinda Aniel

Signature of Joint Debtor

Signature of Authorized Individual

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

VERIFICATION OF MAILING LIST

The Debtor(s) certifies that the attached mailing list (only one option may be selected per form):

- ☐ is the first mail matrix in this case.
- ☒ adds entities not listed on previously filed mailing list(s).
- ☐ changes or corrects name(s) and address(es) on previously filed mailing list(s).
- ☐ deletes name(s) and address(es) on previously filed mailing list(s).

The above named Debtor(s) hereby verify that the attached list of creditors is true and correct.

March 3, 2009

Date

/S/ SYDNEY JAY HALL

/s/ Fermin A. Aniel

Signature of Debtor

/s/ Erlinda Aniel

Signature of Joint Debtor

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

Chapter 11

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim who may be contacted.	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff.	Amount of claim [if secured also state value of security]
1 CITIBANK PO BOX 183113 COLUMBUS, OHIO 43218-3113				\$33,000.00
2 BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102				\$32,000.00
3 PATELCO 156 SECOND STREET SAN FRANCISCO, CA 94105				\$20,316.00
4 BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726				17,100.00

	(1) Name of creditor and complete mailing address including zip code	(2) Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim who may be contacted.	(3) Nature of claim (trade debt, bank loan, government contract, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff.	(5) Amount of claim [if secured also state value of security]
5	BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102				16,500.00
6	BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726				14,500.00
7	CITI BUSINESSCARD PO BOX 6408 THE LAKE, NV 88901-8408				11,000.00
8	WASHINGTON MUTUAL PO BOX 660487 DALLAS, TX 75266-0487				10,500.00
9	CHASE - UNITED MILEAGE PO BOX 15298 WILMINGTON, DE 19850-5298				\$10,283.00
10	HOME DEPOT PO BOX 6028 THE LAKE, NV 89901-6028				6,400.00
11	BAILEY BANK & BIDDLE PROCESSING CENTER DES MOINES, IA 50364-0001				6,200.00
12	UNITED MILEAGE PLUS PO BOX 94014 PALATINE, IL 60094-4014				5,800.00

	(1) Name of creditor and complete mailing address including zip code	(2) Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim who may be contacted.	(3) Nature of claim (trade debt, bank loan, government contract, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff.	(5) Amount of claim [if secured also state value of security]
13	SAKS FIFTH VISA PO BOX 60102 CITY OF INDUSTRY, CA 9176-0100				5,600.00
14	CITICARDS PO BOX 6406 THE LAKE, NV 88901-6406				5,300
15	NEIMAN MARCUS PO BOX 729080 TEXAS 75372-9080				\$5,277.00
16	MARRIOTT REWARD -CHASE PO BOX 15123 WILMINGTON, DE 19850-5123				\$5,000.00
17	BLOOMINGDALE PO BOX 18303 COLUMBUS, OH 43218-3083				4,300.00
18	BLOOMINGDALE'S VISA PO BOX 689194 DES MOINES, IA 50368-9194				4,040.00
19	WASHINGTON MUTUAL PO BOX 660433 DALLAS, TX 752660433				4,007.25
20	LOWE'S PO BOX 530914 ATLANTA, GA 30353-0914				4,000.00

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION**

I, the undersigned authorized agent of the corporation named as the Debtor
in this case, declare under penalty of perjury that I have read the foregoing "List of
Creditors Holding 20 Largest Unsecured Claims" and that it is true and correct to the best
of my knowledge, information and belief.

Date

X

Signature of Authorized Individual

Printed Name and Title

K

Claim No. 112-114

EXHIBIT M

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT		Northern District of California	PROOF OF CLAIM
Name of Debtor: Fernin Solis Aniel and Erlinda Aribas Aniel		Case Number: 09-30452-DM	
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): GMAC MORTGAGE, LLC, as a servicing agent for HSBC BANK U.S.A. as Trustee for DALT 2007-AQ3, its successors and/or assigns		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____	
Name and address where notices should be sent: 4375 Jutland Drive, Suite 200; P.O. Box 17933 San Diego, CA 92177-0933 Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Name and address where payment should be sent (if different from above): GMAC Mortgage, LLC 3451 Hammond Ave. Waterloo, IA 50702 Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
1. Amount of Claim as of Date Case Filed: \$ <u>1,105,196.75</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____	
2. Basis for Claim: <u>MONEY LOANED</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____	
3. Last four digits of any number by which creditor identifies debtor: <u>*****1440</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____	
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: 801 Foothill Drive, San Mateo, CA 94402 Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>59,856.46</u> Basis for perfection: _____ Amount of Secured Claim: \$ <u>1,105,196.75</u> Amount Unsecured: \$ _____		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____	
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____	
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____	
Date: 06/24/2009 /s/ Todd R Reilly		Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. _____ _____	
		FOR COURT USE ONLY	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

PROOF OF CLAIM BREAKDOWN SHEET

IN RE: ANIEL, FERMIN SOLIS & ERLINDA ARIBAS
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

CASE NO. 09-30452-DM

**CREDITOR: GMAC MORTGAGE, LLC, as a servicing agent for HSBC BANK U.S.A. as
Trustee for DALT 2007-AO3,**

Payments

10/1/08 – 12/1/08 @ \$3,613.11 x 3	\$10,839.33
1/1/09 – 2/1/09 @ \$7,347.22 x 2	\$14,694.44
Accrued Late Charges	\$1,083.90
Escrow Shortage	\$30,057.72
Broker Price Opinion Advance	\$83.00
Property Inspections	\$33.75
Foreclosure Fees and Costs	\$2,764.32
Post-Petition Bankruptcy Attorneys' Fees and Costs ¹	\$300.00
Total Arrears	\$59,856.46

Outstanding Balance as of February 25, 2009 **\$1,105,196.75**

¹ Please be on notice that these fees include the post-petition preparation and filing of this Proof of Claim; obtaining and reviewing the Chapter 11 Plan; and the preparation, filing and service of a Request for Courtesy Notice to monitor this bankruptcy. These post-petition fees are included in the Proof of Claim so that the subject loan is current upon completion of the Plan. If the Debtor(s) object to these fees being included in the Proof of Claim, please contact Steven Pite at (800) 500-8757 in order to have these fees and costs removed from the Proof of Claim.

RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.
Solely as Nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92117-0933

APN:

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC BANK U.S.A. as Trustee for DALT 2007-AO3 all beneficial interest under that certain Deed of Trust dated March 22, 2007, executed by Raul Estiva and Corazon Estiva, husband and wife as joint tenants to Fidelity National Title, as trustee, for Mortgage Electronic Registration Systems, Inc., Solely as Nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007-050317 on April 3, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 5-26-09

Mortgage Electronic Registration Systems, Inc., Solely
as Nominee for Mortgageit, Inc.

By:

Its:

Jeffrey Stephan
Vice President

State of Pennsylvania)

County of Montgomery) ss.

On 5/26/09 before me, Thomas P. Strain

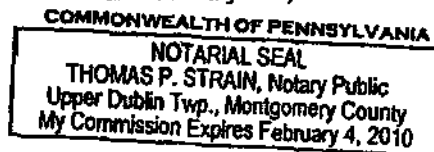
Jeffrey Stephan who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument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

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

WITNESS my hand and official seal.

Thomas P. Strain
Notary Public

(This Area for Official Notary Seal)



RECORD AND RETURN TO:
MORTGAGEIT, INC.
1330 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 53598

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERICK BAUTISTA
MORTGAGEIT, INC.
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

9565509
[Space Above This Line for Recording Data]

MIN: [REDACTED] 5696 *218*

2007-050317

FIDELITY NATIONAL TITLE
08:00am 04/03/07 DT Fee: 67.00
Count of pages 21
Recorded in Official Records
County of San Mateo
Warren Stocum
Assessor-County Clerk-Recorder



* 2 0 0 7 0 0 5 0 3 1 7 A R *

DEED OF TRUST

ORIGINAL

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 MARCH 22, 2007 together with all Riders to this document.

(B) "Borrower" is

RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
MORTGAGEIT, INC.

Lender is a CORPORATION
organized and existing under the laws of NEW YORK
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
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R.M.O. Enter 3005 1/11

Lender's address is

33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 22, 2007

The Note states that Borrower owes Lender

ONE MILLION AND NO / 100

Dollars (U.S. \$ 1,000,000.00) plus interest. Borrower has promised to pay this debt

in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2037

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

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

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

<input checked="" 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"/> Biweekly Payment Rider
<input type="checkbox"/> 1-4 Family Rider		
<input type="checkbox"/> Other(s) [specify]		

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As

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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

of SAN MATEO

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF; APN: 034-312-030

which currently has the address of 801 FOOTHILL DRIVE

SAN MATEO

[City]

, California

94402

[Street]

[Zip Code]

("Property Address"):

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such

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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall

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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and.

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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.

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

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

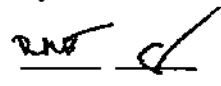
In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third

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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstatement After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes

CAB: 07/01

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RHS ✓

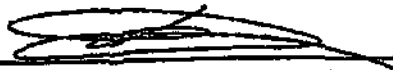
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evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property,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

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

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

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.
BORROWERS:



(Seal)
- Borrower
RAUL ESTIVA



(Seal)
- Borrower
CORAZON ESTIVA

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF *San Mateo*

On *3/23/07* before me, *Lili Frances Cummins, Notary Public*
personally appeared
RAUL ESTIVA AND CORAZON ESTIVA

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

WITNESS my hand and official seal.

Lili Frances Cummins (Seal)



CAS: 02/03

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Date: MARCH 22, 2007

Following the receipt of this Note, the Lender hereby certifies that the Note is a true and correct copy of the original.

Loan # 00000000
Mln #: 5696

FLEX PAY/FIXED/ADJUSTABLE RATE NOTE
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)-Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MARCH 22, 2007
(Date)

SAN MATEO
(City)

CALIFORNIA
(State)

801 FOOTHILL DRIVE, SAN MATEO, CALIFORNIA 94402
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 1,000,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is MORTGAGEIT, INC.

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

I understand that Lender may transfer this Note. 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 6.875 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on MAY 1, 2007

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on APRIL 1, 2037, 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

P.O. BOX 780

WATERLOO, IA 50704-0780

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 3,613.11. This amount is a FORTY FIVE AND NO /100 percent (45.000 %) reduction of the payment amount that will be sufficient to repay the unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate set forth in Section 2. This amount may change.

IndyMac Bank FlexPay 1 Yr. LIBOR Fixed Adjustable Rate Note - Multistate
8480990 (0607)
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(C) Payment Changes

My monthly payment will remain the same until MAY 1, 2012, the month after the first Change Date, and will not change again until after I have made my 120th scheduled monthly payment unless it is required to change in accordance with Section 4(F) below.

If I have made less than 120 scheduled monthly payments, my new monthly payment will be in an amount equal to FORTY FIVE AND NO / 100 percent (45.000 %) reduction of the "Full Payment." This limitation will not apply under the circumstances described in Section 4(F). The Full Payment is the amount of the monthly payment that would be sufficient to repay the unpaid balance that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments.

If I have made 120 or more scheduled monthly payments, my new monthly payment will be in an amount equal to the Full Payment.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of APRIL, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 75 / 100 percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.875 %.

(E) Additions to My Unpaid Balance

If I have made less than 120 scheduled monthly payments, on any monthly payment date the amount of my monthly payment could be less than the interest portion of the Full Payment. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid balance. The Note Holder will also accrue interest on the amount of this difference to my unpaid balance each month. The interest rate on the interest added to the balance will be the rate required by Section 4(C) above.

(F) Limit on My Unpaid Balance: Increased Monthly Payment

My unpaid balance can never exceed a maximum amount equal to one hundred FIFTEEN percent (115 %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments until I have made 120 scheduled monthly payments, the addition of unpaid interest to my unpaid balance under Section 4(E) above could cause my unpaid balance to exceed that maximum. In that event, on the date that the payment of my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment equal to the interest only portion of the Full Payment if I have made less than 120 scheduled monthly payments.

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(G) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(H) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. 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 this Note.

I may make a full Prepayment or partial Prepayments without paying any 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. 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 that 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.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

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

(B) Default

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

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that 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.

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(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.

8. 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.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given 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.

9. 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.

10. 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.

11. 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 that might result if I do not keep the promises that 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 read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

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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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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



RAUL ESTIVA

(Seal)

- Barrister

[Sign Original Only]

8480990 (0607)

FAND# 8480990-6 Rev. 10-25-06

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Form 5683 07/06



1. DEBTOR(S) RAUL ESTIVA

Address 501 FOOTHILL DR
SAN MATEO, California 94402

1. DEFINITIONS AND GENERAL TERMS. "You" or "your" means the undersigned Debtors. "We", "our" or "us" means National City Bank, 6750 Miller Road, Brooklyn, Ohio 44141, and its successors and assigns. "Note" means this promissory note and security agreement and all related attachments and addenda. "Loan" means the loan evidenced by this Note. Property means the real estate securing the payment of this Note described in Section 4. "Disclosure Statement" means the separate federal truth-in-lending disclosure statement of even date provided to you, the terms of which are incorporated by reference in this Note. Disclosures in the Disclosure Statement are contract terms. You agree that we are making this Loan directly to you. The Section headings of this Note are a table of contents and not contract terms.

3. PROMISSORY NOTE. For value received, you, intending to be legally bound, jointly and severally promise to pay to our order the principal sum of \$ 225,125.00, which includes a prepaid finance charge of \$ 128.00, plus interest from the date of this Note on the principal sum outstanding and other sums owed under this Note at the per annum rate of 6.125%, payable as described in the payment schedule in the Disclosure Statement. You agree that all past due and unpaid charges owed, including past due interest, may be capitalized and own interest by adding them to the principal balance of this Note. Interest will be computed on a simple interest basis based upon a 365-day year, but calculated on actual days. Accordingly, your payment history would affect the amount you will pay under this Note.

4. PROPERTY. 501 FOOTHILL DR
SAN MATEO, California 94402

5. DISBURSMENT OF PROCEEDS. You authorize us to disburse all proceeds of this Loan by check, draft, electronic transfer or in such other form or manner as we choose in our sole discretion.

6. LATE CHARGE; RETURNED INSTRUMENT CHARGE; DEFERRAL CHARGE; DOCUMENT REQUEST CHARGE. If all or any portion of any monthly payment is not received within 10 days after it is due and we do not accelerate the entire balance owing under this Note, you agree to pay a late charge. This late charge will be the greater of 10% of the unpaid monthly payment or \$40. If any check, draft, negotiable order of withdrawal, or other similar instrument is returned to us unpaid for any reason, you agree to pay a returned instrument charge. This returned instrument charge will be \$25. If we, in our sole discretion, permit you to defer any payment(s) you agree to pay a deferred charge for each payment deferred. If you request copies of any documents related to this Loan, you agree to pay a document request charge for the service of providing copies. This document request charge will be \$6 per copy. We will not charge you for documents we are required to provide you by law.

7. INSURANCE. You are required to insure the Property with this Loan is paid in full or we will the Property. You have the risk of loss of the Property and will be responsible for its loss or damage. You agree to obtain primary insurance coverage (including furnishings) existing coverage from any insurer you want that is acceptable to us, provided that the insurer is authorized to do business in the state or jurisdiction where the Property is located or is an eligible surplus lines carrier, in the following types and amounts with us listed as loss payer: (a) fire, "all risk" perils and flood insurance required by law; and (b) all other insurance required by applicable law. You must keep the Property fully insured against loss or damage on terms which are acceptable to us to the extent permitted by law. All insurance proceeds we receive (including a refund of premium) may in our option reduce the indebtedness of this Note or be used to repair or replace the Property. If the Property is destroyed, you must still pay to whatever you own under this Note. If you fail to maintain the required insurance, we may at our sole option obtain coverage at your expense which we believe are necessary to protect our interests in the Property. You agree to pay the expense of such insurance on demand or agree that we may add such expense to this Loan. You acknowledge that insurance we purchase may cost substantially more than insurance you could purchase. Failure of your insurer to pay a claim, or any part of a claim, will mean you do not have the insurance required by this Note. You also agree to us any other insurance proceeds related to the Note or our interest in the Property. You must promptly provide us with evidence of insurance and proof of payment of insurance premiums upon our request, and all policies must provide us with a minimum of 10 days prior notice of cancellation or material change in coverage. Our mailing address for purposes of this Section is: P.O. Box 91296, Cleveland, OH 44101-0331. You irrevocably authorize us as your agent and on your behalf, which authorization will survive your incompetence, to negotiate, settle and release any claim under your insurance or under any insurance with a third party insurer related to the Property, and to receive and sign all related papers and documents on your behalf including checks, drafts and other items payable to you.

8. PREPAYMENT. You may voluntarily prepay the principal sum of this Note in part at any time. If you voluntarily prepay the principal sum of this Note in full, you agree to pay a voluntary prepayment charge which will be equal to the greater of 6% of the principal balance at the time of prepayment or \$ 0.00. You will only be charged this voluntary prepayment charge during the first 0 months of this Note. If we accelerate the entire balance owing under this Note due to your default, you agree to pay an involuntary prepayment charge which will be equal to 1.50%. No portion of the prepaid finance charge described in Section 3 will be refunded. Subject to Section 3, you authorize us to apply all prepaid sums to the indebtedness of this Note in any manner we elect.

9. SECURITY AGREEMENT. To the extent permitted by law you grant us a security interest and waive all applicable property exemptions and homestead rights (unless the Property is located in Texas) in the following property to secure performance of your obligations under this Note and (except for the Property if it is a principal residence) your obligations under any other agreement with us or our affiliates: (a) the Property including all equipment, parts, accessories and personal property which is a fixture of the Property except "household goods" as defined by 11 C.F.R. 217.12(d) unless purchased with the proceeds of this Loan. If we have a prior lien on your principal residence as security for future obligations, we waive such security as to this Note only; (b) presents and unearned proceeds of any Property insurance; (c) all of your deposit accounts with us or our affiliates (except individual retirement accounts); and (d) automobiles, replacements, products and proceeds of the foregoing. Our security interest will be a purchase money security interest if any of the foregoing are purchased with the proceeds of this Loan. You agree that we are not a fiduciary with respect to our security interest. You further agree that we may at any time apply proceeds and unearned premiums and credits of any Property insurance to reduce the indebtedness of this Note, even if you are in default. Upon our request, you will deliver any documents that are necessary for us to perfect our security interest. You will defend at your expense our security interest in the Property. To the extent permitted by law, you agree to pay all actual costs incurred to release our interest in the Property.

10. PROPERTY MAINTENANCE AND USE. You will promptly pay all fees, fines, and taxes related to this Loan and the Property. You will maintain the Property in good condition except for ordinary wear and tear, and keep it free from all liens, encumbrances, fines and adverse claims. You will make all needed repairs. You will not make any changes to the Property that will decrease its value or decrease its functionality without our prior written consent. You will permit us to inspect the Property at a time which is reasonably convenient. If you do not do any of the foregoing, we may do so at our sole option and add the costs to this Loan or require you to provide us with additional collateral. You will not use, or permit others to use, the Property: (a) in violation of any law; (b) contrary to the provisions of any insurance policies covering the Property or in a manner that would invalidate any warranty or (c) for any business, commercial or agricultural purpose unless this Loan is explicitly for such a purpose.

NHEFN1 (07/03)



FRNOTE-MULTI-V1_1

11. **DEFAULT AND REMEDIES.** You will be in default under this Note if: (a) you fail to make any payment or pay other amounts owing under this Note when due; (b) you fail to keep any of your agreements under this Note or under any other agreement with us or our affiliates; (c) a bankruptcy petition is filed by or against you; (d) you have provided false or misleading information to us; (e) you die or are declared incompetent or incapacitated; (f) the Property or any other property for which we or our affiliates possess a security interest is lost, stolen, destroyed, deteriorated by us to be unseizable for use, seized, impounded or threatened with, or subject to, levy, attachment, condemnation, forfeiture or other administrative or judicial proceedings; or (g) you are in default on any obligation that is secured by a lien on the Property. If you are in default, in addition to any other rights and remedies we have under law and subject to any right you may have to cure your default, we may do any of the following: (aa) accelerate the entire balance owing under this Note after any demand or notice which is required by law, which entire balance will be immediately due and payable; (ab) demand that you vacate the Property and make it available to us at a time which is reasonably convenient; You agree to comply with such demand; (ac) sell, lease, or otherwise dispose of the Property; Our disposal of the Property will not release you from any of your obligations and you will pay us any balance owing under this Note; (ad) recover all expenses related to installing, building, preparing for sale and selling the Property and reasonable collection costs, attorney's fees (unless you are a resident of New Hampshire, in which case we may not recover our attorney's fees from you) and legal expenses as permitted by 11 U.S.C. 506 and applicable state law; and/or (ae) repossess any of your deposit accounts with us or our affiliates (except individual retirement accounts) without demand or notice.

12. **PROPERTY CONDITION.** You agree that with respect to any Property: (a) it is free from all material defects, in proper operating order and fit for all intended purposes; (b) that our making this Loan was based in part upon the value and condition of them as represented by you; (c) we did not directly or indirectly offer, sell or provide it to you; and (d) we are not a seller, supplier, merchant or warrantor. Accordingly, except for specific rights afforded by state law, any claims relating to the Property, including any defect or warranty related to it, are not our responsibility.

13. **ADDITIONAL AGREEMENTS.** You agree that: (a) you may not sell or assign this Note, the Property or any of its benefits or obligations without our prior written consent. We own this Note and may assign this Note or any of its benefits or obligations at any time without your consent; (b) this Note is between you and us and except for successors or assigns as provided by this Note, this Note will not confer any rights upon any third party; (c) our rights and remedies in this Note are not exclusive; (d) we may waive or destroy the enforceability of our rights under this Note without waiving or otherwise affecting such rights; (e) the provisions of this Note are only to the extent permitted by applicable law. Any part of this Note which cannot be enforced will be void, but the remaining parts will remain in effect; (f) you waive notice of dishonor, protest, presentment, demand for payment (subject to any right you may have to cure your default), waiver, delay and all other notices or demands in connection with this Note; (g) you waive all defenses relating to impairment of remittance or collateral, and we can change any term of this Note, release any collateral or release any obligor by agreeing with any one party without notifying or releasing any other party; (h) we can correct errors in this Note as permitted by 11 U.S.C. 1640 upon notice to you even if they are without notice and you agree to be bound by such corrections. Upon our request, you will promptly re-execute this Note to correct errors in this Note. You can change any term of this Note only in a writing signed by us; (i) the Bank is a national bank located in Ohio and Bank's decision to make this Loan to you was made in Ohio. Therefore, this Note shall be governed by and construed in accordance with (1) Federal laws and regulations including but not limited to 12 USC § 85 and (2) the laws of Ohio, to the extent Ohio laws are not preempted by Federal laws or regulations, and without regard to conflict of law principles; (j) this Note describes all agreements between you and us with respect to the Loan and there are no other agreements. An electronic or optically imaged reproduction of this Note or any other document related to your Loan constitutes an original document and may be relied on as if by all parties to the same extent as an original; (k) except as otherwise required by law, we are not subject to suit any action or other correspondence to you by first class mail to your last known address indicated on our records; (l) you will provide us with 15 days prior written notice of any change in any information contained in your application including a change in your name or address. Except as otherwise specified, all notices and payments to us must be sent to P.O. Box 5700, Cleveland, OH 44101-0570, or such other place as we may designate. Our failure or delay in providing you billing statements or other payment instructions will not relieve you of your obligations under this Note; (m) all payments must be in lawful money of the United States; (n) if you are a natural person you are competent to enter into this Note and if you are other than a natural person, the person signing on behalf of you represents that they are authorized to enter into and execute this Note; (o) we will not be responsible for any personal items in or on vacated Property. We will make a reasonable effort to return such items to you or have you return them to us provided you notify us within 5 business days of our taking possession and within such items. Even if you notify us, you consent to us any personal items not returned from us within 10 business days of our taking possession; (p) we may accept late payments or partial payments without losing any of our rights. If your payment is marked with the words "Paid in Full" or similar language, you must send your payment to National City, 6794 Miller Road, Rockville, Ohio 44141, Locust No. 7187. If your payment is made to any other address, we may accept the payment without losing any of our rights; (q) our application of your payments to other payments will be deemed reasonable unless another method is required by law, in which case that method will be deemed reasonable; (r) this Note will be binding and have to the benefit of you and us and our respective successors and assigns; (s) except as otherwise prohibited by law, Bank may provide to others, including but not limited to, consumer credit reporting agencies, information about our transactions and experiences with you. Also, Bank and its affiliates (collectively "National City") may share with each other all information about you for the purpose, among other things, of evaluating credit applications or offering products and services that National City believes may be of interest to you. Under the Fair Credit Reporting Act there is certain credit information that cannot be shared about you unless you are a borrower; (t) you tell National City by writing to National City Corporation, Attention: Office of Consumer Privacy, P.O. Box 4068, Independence, MO 64060. You must include your name, address, account number and social security number; (u) the annual IFS Form 1098 will be issued only to the first borrower listed on this Note at origination and the designation of a borrower as first cannot be changed retroactively; (v) we are authorized to sign on your behalf any document required to enforce our interests under this Note; (w) disclosures included in this Note but not required by law are not an admission or waiver of rights by us; (x) all notices under this Note regarding our consent are at our sole discretion, and such consent may be withheld for any reason; (y) our typewritten name in Section 2 will constitute our signature for purposes of this Note; (z) we have an established business relationship with you, and unless otherwise prohibited by law, National City may contact you to offer you products and services that National City deems may be of interest to you. Such contact are not restricted, and National City may contact you with an automated dialing and messaging device or by fax, email or other form of electronic communication and we may monitor telephone calls with you to ensure quality service; (aa) you will pay all fees we charge you in connection with this Loan including those indicated on any Good Faith Estimate or HUD-1/RESPA provided in connection with this Loan, which will be enforceable to the extent permitted by law; (ab) all amounts owed under this Note will be without relief from valuation and appraisement laws; (ac) if this Loan is not for a consumer purpose or you are not a natural person, you are not entitled to any rights afforded consumers under applicable law or regulations; and (ad) in this Note, the term "affiliate" means current and former affiliates of National City Bank, including, but not limited to, the following National City Corporation subsidiaries: National City Home Loan Services, Inc., First Franklin Financial Corporation, Madison Bank and Trust Company and National City Mortgage Co.

14. **ADDITIONAL NOTICES.** The following notices are given by Bank only to the extent not inconsistent with 12 U.S.C. Section 85 and related regulations and opinions, and/or the choice of law provision set forth herein (with respect to which Bank expressly reserves all rights). You acknowledge receipt of the following notices before becoming obligated. For purposes of the immediately following Notice to Originate, "bank" means us.

NHEPRN1A (04/05)



FRVOTE-MULTI-V1_2

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The bank can collect this debt from you without first trying to collect from the borrower (and after proper notice to you if you are a "cosigner" as defined by Illinois or Michigan law). The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages (where you receive wages in North Carolina, Pennsylvania, South Carolina or Texas) etc. If this debt is ever in default, that debt may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

NOTICE TO ALL SIGNERS

You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a consumer credit reporting agency if you fail to fulfill the terms of your credit obligations. If you believe that we have information about you that is inaccurate or that we have reported or may report to a credit reporting agency information about you that is inaccurate, please notify us of the specific information that you believe is inaccurate by writing to National City, P.O. Box 54382, Cleveland, Ohio 44161, Attn: Credit Review Disputes, Letter 7113.

If the Property is located in California: Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contest for the creation of, any lien, encumbrance, transfer or sale of the Property.

If the Property is located in Colorado: The dollar amount of the finance charge disclosed to you for this credit transaction is based upon your payments being received by us on the date payments are due. If your payments are received after the due date, even if received before the date a late fee applies, you may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of principal. This is due to the accrual of daily interest until a payment is received.

If the Property is located in Florida: Florida Documentary Stamp Tax in the amount required by law has been paid or will be paid directly to the Department of Revenue, and Florida Documentary Stamps have been placed on the taxable instruments as required by Chapter 201, Florida Statutes.

If the Property is located in Iowa (this is a consumer credit transaction) or Kansas: **NOTICE TO CONSUMER:** 1. Do not sign this paper (agreement) before you read it. 2. You are entitled to a copy of this paper (agreement). 3. You may prepay the unpaid balance at any time and in accordance with law you will not be entitled to receive a refund of unearned charges. 4. If you prepay the unpaid balance, you may have to pay a prepayment penalty.

If the Property is located in Iowa and the principal amount of this Loan exceeds \$20,000: **IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

If the Property is located in Maryland: We elect Subtitle 10, Credit Greater Closed End Credit Provisions, of Title 12 of the Commercial Law Article of the Annotated Code of Maryland.

If the Property is located in Minnesota: If the amount of this Loan is \$100,000 or more, we elect Minn. Stat. § 334.01.

If the Property is located in Missouri: Our agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (borrower) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

If the Property is located in New York: **YOU SHOULD CHECK WITH YOUR LEGAL ADVISOR AND WITH OTHER MORTGAGE LIEN HOLDERS AS TO WHETHER ANY PRIOR LIENS CONTAIN ACCELERATION CLAUSES WHICH WOULD BE ACTIVATED BY A JUNIOR ENCUMBRANCE.**

DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW, YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT.

If the Property is located in North Dakota: **THIS OBLIGATION MAY BE THE BASIS FOR A PERSONAL ACTION AGAINST THE PROMISOR OR PROMISSORS IN ADDITION TO OTHER REMEDIES ALLOWED BY LAW.**

If the Property is located in Oregon: **NOTICE TO THE BORROWER:** Do not sign this loan agreement before you read it. The loan agreement provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.

If the Property is located in Texas: **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

If the Property is located in Vermont: **NOTICE TO CO-SIGNER:** YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

If the Property is located in Wisconsin: **NOTICE TO CUSTOMER:** (a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED. (b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES. (c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN. (d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU WILL NOT BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.


NHEFAN3 (07/04)



FRNOTE-MULTI-V1_3

15. SIGNATURES. YOU HAVE READ AND AGREE TO ALL PROVISIONS OF THIS NOTE INCLUDING THOSE ON PAGES 1 THROUGH 3 AND IN THE DISCLOSURE STATEMENT WHICH IS INCORPORATED HEREIN BY REFERENCE. (1) DO NOT SIGN THIS NOTE BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES TO BE FILLED IN. (2) YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS NOTE BEFORE YOU SIGN IT. BY SIGNING THIS NOTE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND RECEIVED A COMPLETED COPY OF THIS ENTIRE NOTE BEFORE SIGNING IT ON THE DATE SHOWN ON PAGE 1. SEE PAGES 1, 2 AND 3 AND THE DISCLOSURE STATEMENT FOR ADDITIONAL IMPORTANT TERMS AND CONDITIONS.

RAUL ESTIVA
Type or print name of Debtor


Debtor's signature

Type or print name of Debtor

X _____
Debtor's signature

Type or print name of Debtor

X _____
Debtor's signature

Type or print name of Debtor

X _____
Debtor's signature

FOR MICHIGAN GUARANTORS ONLY: Guaranty Agreement. For value received, you the undersigned guarantors jointly, severally and unconditionally guarantee the payment of all sums owing under this Note when due and the performance by the Debtor of all promises contained in this Note. Upon default, we may proceed against any of you without first proceeding against any Debtor. The liability of each of you will be primary and will not be affected by any settlement, release, extension, renewal or modification of this Note whether or not by operation of law. Each of you voluntarily and knowingly waives all rights to any demands, proceedings, notices and defenses of any kind or nature you might have in connection with this Guaranty. Each of you agrees to pay all expenses including reasonable attorneys' fees incurred by us if we have to enforce this Guaranty. Each of you acknowledges that you have read and agree to all terms of this Guaranty, Note and Disclosure Statement prior to signing below.

Type or print name of Guarantor

X _____
Guarantor's signature

Type or print name of Guarantor

X _____
Guarantor's signature

*201 National City Corporation

NHEFRM4 (07/04)



FRNOTE-MULTI-V1_4

EXHIBIT N

1 **FERMIN SOLIS ANIEL AND -IN PRO SE-**
2 **ERLINDA ABIBAS ANIEL**
3 **75 Tobin Clark Drive**
4 **Hillsborough, CA 94010**
5 **Phone: (650) 284 - 6417**
6 **Fax: (650) 571-5829**
7 **Bootsaniel1952@yahoo.com**

8 **Plaintiffs In Pro Per**
9 **FERMIN SOLIS ANIEL AND ERLINDA ABIBAS ANIEL**

FILED

JUN 30 2010

**UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

In Re:

FERMIN SOLIS ANIEL AND

ERLINDA ABIBAS ANIEL

Debtor

Case No.: 09-30452 DM

**In a Case under Chapter 11 of the Bankruptcy
Code
(11 U.S.C. § 1101 et seq.)**

**DISCLOSURE STATEMENT
DESCRIBED CHAPTER 11 PLAN &
CHAPTER 11 REORGANIZATION PLAN**

Disclosure Statement Hearing

Date: July 15, 2010

Time: 1:30 p.m.

Ctrm: 22

235 Pine Street

San Francisco, CA 94104-2791

Confirmation Plan Hearing

Date: July 29, 2010

Time: 10:00 a.m.

Ctrm: 22

235 Pine Street

San Francisco, CA 94104-2791

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INTRODUCTION

Fermin Solis Aniel and Erlinda Abibas are the debtors in a Chapter 11 bankruptcy case. They are Debtors representing themselves as Pro Se. On February 25, 2009, Debtors ("ANIEL") commenced a bankruptcy case by filing their voluntary Chapter 11 petition under the United States Bankruptcy Code ("Code"), 11 U.S.C. § 101 et seq. Chapter 11 allows the Debtors, and under some circumstances, creditors and other parties in interest, to propose a plan of reorganization ("PLAN"). The Plan may provide for the Debtors to reorganize by continuing to operate, to liquidate by selling asset of the estates, or a combination of both. The Debtors are the party proposing the Plan sent to you in the same envelope as this document.

**THE DOCUMENT YOU ARE READING IS THE DISCLOSURE
STATEMENT FOR THE ENCLOSED PLAN.**

This is a reorganizing plan. In other words, the Debtors seek to accomplish the payment under the Plan by: (a) a reduction of secured claims to current value of assets securing such claims, or "stripping down" such claims; and (2) with respect to certain secured claims, reducing the interest rate. Those changes in Debtors' secured claims will make Debtors payments on those claims feasible, within Debtors current income. To the extent that the Plan "strips down" a secured claim, it makes an unsecured claim of the excess or remaining claim amount. Debtors will pay a very small percentage, or no percentage, of that excess unsecured claim. The Effective Date of the proposed Plan is **September 10, 2010**. Debtors propose this Plan in good faith, however, the Proof of Claims filed by alleged secured creditors must be the party in interest to secured such payment. If secured creditors named does not match the MERS Servicer ID, which was implemented on June 15, 2010, as to meet the requirement of the Helping Families Save Their Home Act of 2009 by using information entered on the MERS System to generate a Notice of New Creditors when a Transfer of Beneficial Rights (TOB) was completed. If the alleged attorneys who filed their Proof of Claim on behalf of the secured creditors are based on Fraud, Debtors will exercise their rights to file a lawsuit against the penetrators of alleged fraud and deception in a non-bankruptcy court. If, based on MERS Servicer

1 ID, the investors of Debtors' mortgage is different from the Proof of Claim, those secured
2 creditors will not be entitled to any payments under § 502(a) of the Bankruptcy Code (11
3 U.S.C. § 502, which states that a claim, proof of which has been filed "is deemed allowed,
4 unless a party in interest...object." Since the genesis of Debtors' bankruptcy, Debtors
5 have vigorously challenged the proof of claims filed by the attorneys of alleged secured
6 creditors as to their standing to file a proof of claim and their standing to file a motion for
7 Relief from Automatic Stay. Unfortunately, the court summarily granted all of this in
8 favor for the alleged creditors. Debtors hoped, during the course of their bankruptcy, that
9 the alleged creditors or their attorneys not hurriedly ask the court for relief from stay in
10 order to foreclose. Instead the court, without justification, encouraged these attorneys to
11 file fraudulent documentations such as a copy of bogus assignment of deed, substitution
12 of trustee, false testimony, allonge, a copy of note and deed, and naming the incorrect
13 secured creditors. Debtors believe that the court is so prejudice and bias against the
14 Debtors for not being able to obtain counsel to represent them and litigating the case Pro
15 Se. No matter what Debtors try to argue with the judge, it does not matter because the
16 law was never applied to Debtor's case. The following properties have been granted
17 Relief from Stay are as follows:

18 1. **1881 Earl Ave. San Bruno, Ca 94066.** This property was foreclosed on January
19 5, 2010. Debtors have a pending case in Federal Court in Northern District of
20 California—Oakland Division for Fraud, Violation of FDCPA, Violation of California
21 Rosenthal Act, Wrongful Foreclosure, Declaratory Relief, Request for Injunctive Relief,
22 Quiet Title and Violation of 12 U.S.C §2605 against Litton Loan Servicing, LP, Quality
23 Loan Service, Corp., and MERS, Inc. Debtors demanded a jury trial and seek punitive
24 and compensatory damages against the defendants.

25 2. **833 Clearfield Dr. Millbrae, Ca 94030.** This property was foreclosed on April
26 14, 2010. Debtors have a pending case in Federal District of the Northern District of
27 California—San Francisco Division for Fraud, Violation of FDCP, Violation of
28 California Rosenthal Act, Wrongful Foreclosure, Declaratory Relief, Request For
Injunctive Relief, and Quiet Title. Debtors demanded a jury trial and seek damages
against Aurora Loan Services, LLC, MERS, Inc., Quality Loan Service, Corp., and
McCarthy & Holthus, LLP.

1 **3. 418 Persia Avenue, San Francisco Ca 94112.** The court granted Relief from
2 Stay on December 31, 2009, in part. The December order provided that Debtors had a
3 right to assert their substantive standing defense to their motion for reconsideration, but
4 Debtors must provide adequate protection of Creditor's asserted security interest pending
5 resolution of the issue. Debtors objected the Adequate Protection Order order because
6 Debtors believe that the attorneys for alleged secured creditor pursuing the relief from the
7 stay are debt collectors that have no standing and not the real party in interest to bring the
8 motion for relief from stay. This property was scheduled for auction June 21, 2010, but
9 Debtors inquired and were informed that T.D Service Company postponed the sale to
10 July 21, 2010. This property will be a subject to a lawsuit in due time. Defendants in the
11 impending case are unknown at this time as Debtors concluded the investigation.
12 Debtors intend to file Causes of Action that include; Fraud, Fraud upon the court,
13 Violation of RICO Act, Violation of FDCPA, Violation of the California Rosenthal Act,
14 etc.

15 **4. 3 Fairmont Dr. Daly City, Ca 94015.** The court granted relief from stay on
16 August 6, 2009. Debtors asserted their rights in regards to "standing" and real party in
17 interest when objecting to the motion for relief from stay. Debtors will file a lawsuit in
18 due time against BAC Loan Home Servicing, LP, for misleading the Debtors in regards
19 to their response in the Qualified Written Request that BAC Loan Home Servicing is the
20 owner of Debtors' mortgage. To the contrary in face, MERS Services ID information
21 reported as June 15, 2010, does not mention BAC as the owner of the loan.

22 **5. 1061 Sycamore Dr. Millbrae, Ca 94030.** The court granted Relief from Stay.
23 Debtors refused the Adequate Protection Order because of the "standing and real party in
24 interest" issue, and the fraudulent documentation. Debtors will also file lawsuit against
25 EMC, NDEX West LLC., McCarthy & Holthus, and other unknown defendants, who
26 conspired with each other to defraud the debtors.

27 **6. 75 Tobin Clark Dr, Hillsborough, Ca 94010.** This is Debtors' principal
28 residence. The Proof of Claim has been amended four times and yet GMAC Mortgage,
LLC, was not able to reconcile the inflated debt amount and cannot explain those
amounts. Very typical strategies for debt collectors are to inflate such amount. This is
another ploy by the attorneys of alleged secured creditor to delay Debtors' reorganization

1 plan. Debtors still objected to the Proof of Claims, filed by GMAC, a sub-servicer who is
2 also a debt collector, as well as Pite Duncan, who is affiliated with a Prommis Solutions,
3 Inc., and a debt collector. The QWR response from GMAC Mortgage, LLC that Debtors'
4 received on January 25, 2010, disclosed that HSBC BANK U.S.A. as Trustee at 452 Fifth
5 Ave currently owns the loan in question. New York, NY 10018, phone number 1-212
6 525-2418. It goes on to state that GMAC admitted that they were a sub-servicer instead
7 of the servicer as noted in their record to the court. However, Debtors spoke to certain
8 employees of HSBC Bank last January 2010, after Debtors received the QWR. In fact,
9 the court heard the hearing for status conference on January 14, 2010, Debtors already
10 told the court about the calls Debtors made to HSBC. Yet again, the Judge ignored it
11 completely. The name of the HSBC employee is Mariane and she told Debtors on June
12 21, 2010, the phone number that was provided by GMAC is her direct line and that
13 HSBC Bank is in New York. Debtors gave Mariane the address of HSBC and Mariane
14 confirmed that it was the right address yet she could not find a Trust under the name
15 "DALT 2007-OA5." Mariane took Debtors' name and the property address to find out if
16 any trust matched to HSBC'S different Trust. Unfortunately, Debtors' name was
17 negative, which means that even it is on different Trust, Debtors' name could still come
18 up if HSBC Bank was indeed the Trustee as GMAC Mortgage, LLC had claimed. This is
19 again another misrepresentation by GMAC to hide the true creditors so Debtors could not
20 effectively accomplish their Plan. GMAC will be subjected to a lawsuit in due time
21 along with other unknown defendants, who were in cohort with GMAC.

22 7. 801 Foothill Drive, San Mateo, Ca 94402. Debtors own a 50% ownership
23 interest with Corazon Estiva and Raul Estiva (deceased). The status of Raul Estiva's
24 estate is unknown at this time. Debtors provided a death certificate of Raul Estiva to
25 GMAC, who is also servicing the loan.

26 When Debtors filed for Chapter 11, their only means of hope was to keep their
27 properties and reorganized under this Plan. The alleged secured creditors, through the
28 services of debt collection law firms, rushed to file their Motion for Relief in the court
without giving Debtors a breathing space to reorganize. The court summarily granted all
the motions without any consideration of Debtors' due process right to be heard. Under
the 5th Amendment of the United States Constitution, No Person shall be deprived of life,

1 Liberty, or Property without due process of law. Under the 7th amendment, "The right of
2 a jury trial shall be preserved." The Court also forgot to follow the Federal Rules of
3 Evidence, knowing that the Debtors acted in good faith in representing themselves as Pro
4 Se in their bankruptcy case. Instead, Debtors uncovered all the fraudulent documents that
5 filtered in the court. If these so called secured creditors really have standing, why would
6 they have to file fraudulent documents in order to foreclose? Why would they have to
7 inflate the amount owed by a debtor and not provide any reasons? It is because a loan
8 servicer can pocket the late fees and would not be subjected to investors' guidelines.
9 Loan Servicers encourage homeowners to default because it is a business for them so
10 they can keep the late fees. Katherine Porter has discussed this in her testimony in the
11 Senate Committee, which the court has a copy of as provided by Debtors in regards to the
12 misconduct of Bankruptcy court that is fueling the foreclosure crisis.

13 **A. Purpose of this Document**

14 This Disclosure Statement summarizes what is in the Plan, and tells you certain
15 information relating to the Plan and the process the Court follows in determining whether
16 or not to confirm the Plan.

17 **READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO
18 KNOW ABOUT:**

- 19 (1) WHO CAN VOTE OR OBJECT;
20 (2) WHAT THE TREATMENT OF YOUR CLAIM IS (i.e., what your claim
21 will receive if the Plan is confirm), AND HOW THIS TREATMENT COMPARES
22 TO WHAT YOUR CLAIM WOULD RECEIVED IN LIQUIDATION;
23 (3) THE HISTORY OF THE DEBTORS AND SIGNIFICANT EVENTS
24 DURING THE BANKRUPTCY;
25 (4) WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER
26 OR NOT TO CONFIRM THE PLAN;
27 (5) WHAT IS THE EFFECT OF CONFIRMATION, AND
28 (6) WHETHER THIS PLAN IS FEASIBLE

1 This Disclosure Statement cannot tell you everything about your rights. You should
2 consider consulting your own lawyer to obtain more specific advice on how this Plan will
3 affect you and what is the best course of action for you.

4 Be sure to read the Plan as well as the Disclosure Statement. If there are any
5 inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will
6 govern.

7 The court requires a Disclosure Statement to contain "adequate information"
8 concerning the Plan. The Bankruptcy Court ("Court") has yet approve this document as
9 an adequate Disclosure Statement containing enough information to enable the parties
10 affected by the Plan to make an informed judgment about the Plan.

11 **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

12 THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS
13 DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN
14 ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER
15 CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTORS
16 AND ON ALL CREDITORS AND INTEREST HOLDERS IN THIS CASE.

17 **1. Time and Place of the Confirmation Hearing**

18 The hearing where the Court will determine whether or not to confirm the Plan will
19 take place on

20 **JULY 29, 2010 AT 10:00 A.M.**

21 In Courtroom 22, United Bankruptcy Court, Northern District of California, 235 Pine
22 Street, San Francisco, Ca 94104.

23 **2. Deadline For Voting For or Against the Plan**

24 If you are entitled to vote, it is in your own best interest to timely vote on the
25 enclosed ballot and return this ballot to Debtors' address at the address set forth at the top
26 left corner of the cover page of this document.

27 Your ballot must be received by

28 **JULY 28, 2010 AT 9:00 A.M.**

Or it will not be counted.

1 **3. Deadline for Objecting to the confirmation of the Plan**

2 Objection to the confirmation of the Plan must be filed with the court and served
3 upon Debtors address set forth at the top left corner of the cover page of this document by
4 JULY 29, 2010 at 9:00 A.M.

5 **4. Identity of Person to Contact for further Information about the Plan**

6 Any interested party desiring further information about the plan should contact
7 Debtors, whose complete contact information appears on the cover page of this disclosure
8 statement, at the top left corner.

9 The financial data relied upon in formulating the Plan is based on historical
10 information from Debtors' books and records and financial statements prepared by
11 Debtors. As to current market values, the Plan is based on NDCdata.com used by
12 Appraisers to get the comparable sales within the neighborhood where the property is
13 located. The information contained in this Disclosure Statement is provided by the
14 Debtors except as otherwise stated. The Debtors represent that everything stated in the
15 disclosure Statement is true to the best of their knowledge. The Court has not yet
16 determined whether or not the Plan is confirmable and makes no recommendation as to
17 whether or not you should support or oppose the Plan.

18 **II. BACKGROUND**

19 **A. Description and History of the Debtors' Business**

20 Debtors started acquiring real properties in the late 1990's, borrowing the equity from
21 the properties as the market would allow and used that equity to purchased more
22 properties. Debtor, Fermin Solis Aniel, is working as a Federal employee for 27 years
23 and as self employed for more than 15 years by mainly referring clients for the real estate
24 market.

25 When the real estate market fell apart, so did the cash flow required to service the
26 debt on all of Debtors' rented properties. Their mortgage payment increased and the
27 value of their properties significantly decreased. Debtors tried their very best to seek a
28 loan modification prior to filing the bankruptcy, but were turn down by all the loan

servicers. The Chapter 11 was filed on the day before two of the Debtors properties were set to be foreclosed. Detailed of Debtor's properties are these:

Address	Type	Space/ Land (in Sq. Ft)	Income/ Mo.	Debtors' Interest
75 Tobin Clark Dr. Hillsborough, Ca 94010	SFR	4260	No Income	Joint Tenancy w/ Son (50% Interest)
418 Persia Ave. San Francisco, Ca 94112	SFR	1700	\$2000.00	Joint Tenancy w/ Son (50% Interest)
1061 Sycamore Dr. Millbrae, Ca 94030	SFR	2490	\$3500.00	100% Interest
3 Fairmont Dr. Daly City, Ca 94015	SFR	1900	\$2800.00	100% Interest
801 Foothill Dr. San Mateo, Ca 94402	SFR	2400	\$3800.00	50% Interest with Estivas
833 Clearfield Dr. Millbrae, Ca 94030 (Foreclosed on April 19, 2010, with Pending Lawsuit)	SFR	3300	None at this time	100% Interest
1881 Earl Ave. San Bruno, Ca 94066 (Foreclosed on January 5, 2010, with Pending Lawsuit)	SFR	2300	None at this time	50% Interest

During the course of Debtors' business, they engaged mainly in managing their rental properties.

B. Principals/Affiliates of Debtors Business: The Estivas for the two mentioned subject properties and Son.

C. Management of the Debtors before or after the Bankruptcy: The Debtors alone.

D. Events Leading to Chapter 11 Filing

Here is a brief summary of the circumstances that led to the filing of this Chapter 11 case:

During the time when Debtors bought their properties during the high peak of the real estates frenzy, some of Debtors' properties where bought in "as is conditions" or "fixer-uppers", which needed overhaul repairs in order to be in a livable condition. Some properties took a year to remodel and the majority of Debtors' money was spent to fix

1 some of the Debtors' properties. Debtors accumulated a lot of debt by borrowing from
2 credit cards in hopes that they could refinance once the property repairs were completed
3 to set off the expenses. Debtors started to borrow some money from their friends and
4 family to sustain the remodeling job of their properties and started using their children's
5 credit cards to continue to fund for the negative amortization from the rents. Debtors
6 used the funds for their children's college education in hopes that Debtors could
7 refinance until everything is settled. But the more Debtors went deeper into debt, the
8 more they realized that it has to be stop because there is no way the Debtors could catch
9 up to their losses. In mid 2008, the truth kicked in, the lenders stopped lending money to
10 refinance the properties and Debtors learned the hard way. Debtors sought to modify
11 their mortgages in order to lower their mortgage, but unfortunately it was not in the best
12 interest for the loan servicers to help the homeowners because defaulted mortgages were
13 good for the loan servicers business. Loan Servicer keeps the late fees paid by the
14 borrowers. Loan servicers could also benefit from the credit default swaps that they took
15 to insure insurance company would pay the defaulted mortgages. So, the best way to end
16 the agony of Debtors' financial crisis was to file for bankruptcy in order for them to
17 reorganize.

18 **E. Significant Event During the Bankruptcy occurred during the case:**

19 The following is a chronological list of events that have occurred during this case:

20 **1. Bankruptcy Proceedings**

21 (See attached Exhibit "H").

22 Debtors did not employ any professional counsel or any professional accountant in
23 this Chapter 11 case.

24 **2. Other Legal Proceedings**

25 In addition to proceedings discussed above, the Debtors has been the Plaintiffs in
26 each of the following nonbankruptcy, federal court proceedings:
27
28

1 a) Court: United States District Court of Northern California – San
2 Francisco Division. Case number: CV: 10-1042 JSW.

3 Against: Aurora Loan Services, LLC, MERS, Inc., Quality Loan
4 Service, Corp., and McCarthy & Holthus , LLP.

5 b) Court: United States District Court of Northern California-
6 Oakland Division. Case number: CV: 10-0951 SBA

7 Against: Litton Loan Servicing, LP, Quality Loan Service, Corp.,
8 and MERS. Inc.

9
10 c) Debtor Erlinda Abibas Aniel also has a claim against the driver who rear
11 ended her while driving in the freeway on May 21, 2010. Mrs. Aniel was given a claim
12 number of her auto insurance, which is # 0168455871. Mrs. Aniel is in Chiropractic
13 treatment and doctor care. The personal injury damage is unknown at this time.

14 **3. Recovery of Preferential or Fraudulent Transfers**

15 Nothing is estimated to be realized from the recovery of fraudulent and preferential
16 transfer.

17 **4. Procedure Implemented to Resolve Financial Problems**

18 To attempt to fix the problem that led to the bankruptcy filing, Debtors have
19 implemented the following procedures:

20 a) **Income:** Debtors will look for extra income by looking for another part time
21 job.

22 b) **Income:** Debtors will actively pursue and obtain a tenant for the vacant
23 room in their in-law house.

24 c) **Income:** Debtors expect a personal injury settlement from Mrs. Aniel's
25 claims against the driver that caused her the injury through the driver's auto insurance.
26 The settlement could add to cash available for plan implementation.

27 d) **Income:** Debtors will increase the rent for tenants once a year, since debtors
28 have not increase any rent for the pass few years.

1 e) **Income:** Debtors will pursue to look for tenants for vacant rooms in one of
2 Debtors' rental house.

3 f) **Expenses:** Debtors will try to lower their expenses by not planning any major
4 repair on their rental properties for the next five years.

5 h) **Cash Accumulation:** By August 31, 2010, Debtors project about \$35,000.00
6 on their "DIP" bank account for plan purposes.

7 **5. Current and Historical Financial Conditions.**

8 The identity and fair market value of the estate's assets are listed in the following
9 table. The market value stated for each asset is not verified by a professional appraiser.
10 Debtors based this value through NDCdata.com, any objection by the creditors may ask
11 the court to Value the Property.

12 Debtors owns the following properties:

ADDRESS	CITY/STATE	CURRENT VALUE
75 Tobin Clark Dr	Hillsborough , Ca 94010	\$2,434,000.00
3 Fairmont Dr.	Daly City, Ca 94015	\$558,000.00
1061 Sycamore Dr	Millbrae, Ca 94030	\$907,000.00
418 Persia Ave	San Francisco, Ca 94112	\$458,000.00
801 Foothill Dr	San Mateo, Ca 94402	\$947,000.00
833 Clearfield Dr.	Millbrae, Ca 94030	Foreclosed
1881 Earl Ave.	San Bruno, Ca 94066	Foreclosed

21 The Debtor's current financial condition, including receipt from all sources and the
22 last monthly statement on June 18, 2009, were filed in the court.
23

24 **III. SUMMARY OF THE PLAN OF REORGANIZATION**

25 **A. What Creditors and Interest Holders Will Received Under The Proposed**
26 **Plan.**

27 As required by the Bankruptcy Code, the Plan classifies claims and interests in
28 various classes according to their right to priority. The Plan states whether each class of

1 claims or interest is impaired or unimpaired. The Plan provides the treatment each class
2 will receive.

3 **B. Unclassified Claim**

4 Certain types of classes are not placed into voting classes; instead they are
5 unclassified. They are not considered impaired and they do not vote on the Plan because
6 they are automatically entitled to specific treatment provided to them in the Bankruptcy
7 Code. As such, the proponent has not placed the following claims in a class.

8 **1. Administrative Expenses:**

9 Administrative expenses are claims for cost or expenses of administering the Debtors'
10 Chapter 11 case that are allowed under code § 507(a)(1). The code requires that all
11 administrative claims be paid on the effective date of the Plan, unless a particular
12 claimant's agree to different treatment. In the present case, Debtors did not use any
13 professional attorneys and accountants to execute this Plan. So there were no
14 administrative expenses to be paid except for expenses acquired during the pendency of
15 this case and payment for the U.S. Trustee, which the amount is unknown at this time, but
16 must be paid in full on the Effective date. Debtors are on time paying their quarterly
17 payment during the pendency of their case.

18 **2. Priority Tax Claims**

19 Priority tax claims are certain unsecured income, employment, and other taxes
20 described by code § 507(a)(8). Bankruptcy code § 1129(a)(9)(c) requires that each
21 holder of such a § 507(a)(8) priority tax claim received the present value of such claim in
22 deferred cash payment, over a period not exceeding five (5) years from the date of filing
23 of the petition in this case, which was February 25, 2009.

24 The following list all the Debtors § 507(a)(8) priority tax claims and their treatment
25 under the Plan:
26
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Description	Amount	Treatment
Name: City and County of San Francisco, Ca Type: Property Tax	\$9,261.18 (plus 10% penalty fee of \$926.12)	Pymt interval: monthly Pymt amt: \$185.32 Begin Date: upon confirmation End Date: 60 months after confirmation Interest: 3.5% Total Payment: \$11,119.20
Name: Internal Revenue Service Type: 1041 Bankruptcy Estate	\$9,753.00 (plus 25% penalty fee of \$2,425.38)	Pymt interval: Lump Sum Pymt amt: \$12,438.25 Begin Date: 07/15/2010 End Date: 07/15/2010 Interest: None Total Payment: \$12,438.25
Name: California Franchise Tax Board Type: State Tax	\$979.00 (plus 25% penalty fee of \$244.75)	Pymt interval: Lump Sum Pymt amt: \$1,223.75 Begin Date: 07/15/2010 End Date: 07/15/2010 Interest: None Total Payment: \$1,223.75

C. Classified Claims and Interest

1. Classes of Secured Claims

Secured claims are claims secured by liens on property of the estate. The following charts list all classes containing Debtors' secured pre-petition claims and their treatment under this Plan:

Class #	Description	Unimpaired	Impaired	Treatment
1	<p>Secured Claim of: GMAC Mortgage, LLC., sub-servicing agent for HSBC Bank, as Trustee for DALT 2007-OA5. LN No: [REDACTED] 8492</p> <p>Collateral description: 75 Tobin Clark Dr. Hillsborough, CA 94010</p> <p>Collateral Value: \$ 2,434,000.00</p> <p>Priority of Secured Interest: FIRST</p> <p>Principal Owed: \$2,087,000.00 including property tax paid by GMAC Mortgage for 2007, 2008, 2009, and 2010.</p> <p>Pre-Petition arrears: Unknown</p> <p>Pre-Petition arrears: Unknown</p>	No	Yes	<p>Number One Secured but will become general unsecured because GMAC Mortgage, LLC as a sub-servicer on this secured loan did not fully disclose the investor of this secured loan. All their amended Proof of Claims were inflated, and the Debtors are unable to verify the actual correct amount of the Debtors debt. Debtors cannot verify the actual real investor on this secured loan under HSBC Bank as Trustee on GMAC's Qualified Written Request response to Debtors on January 25, 2009. Debtors' inquiry through HSBC Bank N.A. as Trustee resulted in HSBC Bank N.A. not being the Trustee for DALT 2007-OA5 as per Proof of Claim as secured creditor. Mariane told Debtors that HSBC does not have a Trust under DALT 2007-OA5. The name of the Trust did not belong to HSBC Bank as Trustee. Since the beginning of Debtors' bankruptcy, GMAC and</p>

1				their Attorneys are not in Compliance with their Proof of Claim amount and the true investor and secured creditors. Full disclosure must be followed in order not to be affected on the treatment of this Plan.
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8				Treatment of Lien: Discharged
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Class #	Description	Unimpaired	Impaired	Treatment
2	Secured Claim of: Washington Mutual. LN No: [REDACTED] 8492 Collateral Description: 75 Tobin Clark Dr. Hillsborough Ca 94010 Collateral Value: \$2,434,000.00 Priority of Security Interest: HELOC Amount Owed: \$500,000.00 Pre-Petition Arrears: Unknown Post-Petition Arrears: Unknown	No	Yes	This claim is not secured because it attaches to no collateral value. It is junior to claim that itself is under-secured. Further this claim is a nonrecourse claim. Accordingly, under this plan, Debtors shall pay nothing on this claim. Treatment of Claim: Discharged.

Class #	Description	Unimpaired	Impaired	Treatment
3	Secured Claim of: BAC Home Loan Servicing, LP LN No: [REDACTED] 5212 Collateral Description: 3 Fairmont Dr. Daly City, Ca 94015 Collateral Value: \$558,000.00 Priority of Security Interest: FIRST Amount Owed: \$487,000.00 Pre-Petition Arrears: Unknown Post-Petition Arrears: Unknown	No	Yes	Discharged.

Class #	Description	Unimpaired	Impaired	Treatment
4	Secured Claim of: Citibank LN No: [REDACTED] 0505 Collateral Description: 3 Fairmont Dr. Daly City, Ca 94015 Collateral Value: \$558,000.00 Priority of Security Interest: HELOC Amount Owed: \$223,000.00 Pre-Petition Arrears: Unknown Post-Petition Arrears: Unknown	No	Yes	<p>This claim is not secured because it attaches to no collateral value. It is junior to claim that itself is under-secured. Further this claim is a nonrecourse claim. Accordingly, under this plan, Debtors shall pay nothing on this claim.</p> <p>Treatment of Claim: Discharged.</p> <p>Effective Date: Upon Confirmation</p>

Class #	Description	Unimpaired	Impaired	Treatment
5	<p>Secured Claim of: EMC Mortgage Corp. LN No: [REDACTED] 163</p> <p>Collateral Description: 1061 Sycamore Dr. Millbrae, CA 94030 Collateral Value: \$907,000.00</p> <p>Priority of Security Interest: FIRST</p> <p>Amount Owed: \$1,000,000.00</p> <p>Pre-Petition Arrears: Unknown</p> <p>Post-Petition Arrears: Unknown</p>	No	Yes	<p>Discharged. This secured claim serviced by EMC Mortgage Corporation did disclose, through their bogus assignment of deed, that the loan was transferred to Wells Fargo Bank, N.A. as Trustee for the Certification of Structured Asset Mortgage Investment 11, Inc, Bearn Sterns Mortgage Funding Trust 2006-AR5 Mortgage Pass-Through Certificates Series, 2006-AR5.</p> <p>This Trust does not exist. Debtors cannot find this Trust, with Wells Fargo as Trustee, under the Security Exchange Commission registration Edgar filers.</p>

Class #	Description	Unimpaired	Impaired	Treatment
6	<p>Secured Claim of: National City LN No: [REDACTED] 5183</p> <p>Collateral Description: 1061 Sycamore Drive. Millbrae, CA 94030 Collateral Value: \$907,000.00</p> <p>Priority of Security Interest: HELOC</p> <p>Amount Owed: \$155,000.00</p> <p>Pre-Petition Arrears: Unknown</p> <p>Post-Petition Arrears: Unknown</p>	No	Yes	<p>This claim is not secured because it attaches to no collateral value. It is junior to claim that itself is under-secured. Further this claim is a nonrecourse claim. Accordingly, under this plan, Debtors shall pay nothing on this claim.</p> <p>Treatment of Claim: Discharged.</p>

Class #	Description	Unimpaired	Impaired	Treatment
7	<p>Secured Claim of: American Home Mortgage Servicing, Inc. is the loan servicer of this loan. Attorneys for secured creditor, McCarthy & Holthus, LLP., claim that the secured creditors is Deutsche Bank National Trust Company as Trustee for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, and the servicing Agent, American Home Mortgage Servicing, Inc. LN No: [REDACTED] 5585. The Proof of Claim states the Secured Creditor is AHMSI.</p> <p>Collateral Description: 418 Persia Ave, San Francisco, Ca 94112 Collateral Value: \$458,000.00</p> <p>Priority of Security Interest: FIRST</p> <p>Amount Owed: \$676,000.00</p> <p>Pre-Petition Arrears: Unknown</p> <p>Post-Petition Arrears: Unknown</p>	No	Yes	<p>Discharged. Stated the wrong investors to this Property as identified by their attorneys. The Trust also does not exist nor is registered under the Security Exchange Commission.</p> <p>Treatment of Claim: Discharged.</p>

Class #	Description	Unimpaired	Impaired	Treatment
8	<p>Secured Claim of: National City LN No: [REDACTED] 5390</p> <p>Collateral Description: 418 Persia Ave. San Francisco, Ca 94112</p> <p>Collateral Value: \$458,000.00</p> <p>Priority of Security Interest: HELOC</p> <p>Amount Owed: \$72,000.00</p> <p>Pre-Petition Arrears: Unknown</p> <p>Post-Petition Arrears: Unknown</p>	No	Yes	<p>This claim is not secured because it attaches to no collateral value. It is junior to claim that itself is under-secured. Further this claim is a nonrecourse claim. Accordingly, under this plan, Debtors shall pay nothing on this claim.</p> <p>Treatment of Claim: Discharged.</p>

Class #	Description	Unimpaired	Impaired	Treatment
9	Secured Claim of: GMAC Mortgage, LLC LN No: [REDACTED] 1440 Collateral Description: 801 Foothill Drive, San Mateo, Ca 94402 Collateral Value: \$947,000.00 Priority of Security Interest: FIRST Amount Owed: \$1,000,000.00 Pre-Petition Arrears: Unknown Post-Petition Arrears: Unknown Secured Claim: \$947,000.00	No	Yes	<u>Stage One</u> Begin date: 09/25/2010 End date: 09/25/2015 Payment Monthly: \$1,578.34 Payment interest: 2% interest only for 60 months (based on the collateral value \$947,000.00) Total Payments: \$94,700.04 <u>Stage Two</u> Begin date: 09/25/2015 End date: 08/25/2045 Pymt interval/amt: Amortized over 30 yrs @ 3.00% interest and principal of \$3992.55. Total Payment: \$1,437, 318.00 Deed of Trust and Note will be amended to name the Debtors—Fermin Solis Aniel and Erlinda Abibas Aniel—and Corazon Estiva as Tenancy in Common with 25% ownership interest for Fermin Solis

EXHIBIT O

1 CASPER J. RANKIN (CA SBN 249196)
ANNE W. HAMANN (CA SBN 254327)
2 STEFANIE A. SCHIFF (CA SBN 265382)
PITE DUNCAN LLP
3 4375 Jutland Drive, Suite 200
P.O. Box 17933
4 San Diego, CA 92177-0933
Telephone: (858) 750-7600
5 Facsimile: (619) 590-1385

6 Attorneys for HSBC BANK U.S.A. AS TRUSTEE FOR DALT 2007-AO3

7
8 **UNITED STATES BANKRUPTCY COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION**

10 In re

Case No. 09-30452-DM

11 FERMIN SOLIS ANIEL AND ERLINDA
12 ARIBAS ANIEL,

Chapter 11

13 **OBJECTION TO CONFIRMATION OF**
14 **CHAPTER 11 PLAN**

Debtors.

15 HSBC BANK U.S.A. as Trustee for DALT 2007-AO3¹ (hereinafter "Creditor"), secured
16 creditor of the above-entitled Debtors, Fermin Solis Aniel and Erlinda Aribas Aniel (hereinafter
17 "Debtors"), hereby objects to the Chapter 11 Plan filed by Debtors in the above-referenced matter.

18 The basis of the objection is stated below:

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28 ¹ This Objection to Confirmation of Chapter 11 Plan shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

I.

STATEMENT OF FACTS

1. On or about March 22, 2007, Raul Estiva and Corazon Estiva (collectively, the "Borrowers"), for valuable consideration, made, executed and delivered to MortgageIT, Inc. ("Lender") a Promissory Note in the principal sum of \$1,000,000.00 (the "Note"). Pursuant to the Note, Borrowers are obligated to make monthly principal and interest payments. Thereafter, the Borrowers defaulted under the terms of the Note and are contractually due for October 1, 2008. A copy of the Note is attached hereto as **exhibit A** and incorporated herein by reference.

2. On or about March 22, 2007, Borrowers made, executed and delivered to Lender a Deed of Trust (the "Deed of Trust") granting Lender a security interest in certain real property located at 801 Foothill Drive, San Mateo, California 94402 (hereinafter the "Subject Property"), which is more fully described in the Deed of Trust. The Deed of Trust was recorded on April 3, 2007, in the official records of the San Mateo County Recorder's office. A copy of the Deed of Trust is attached hereto as **exhibit B** and incorporated herein by reference.

3. Subsequently, Lender's beneficial interest in the Deed of Trust was sold, assigned and transferred to Creditor. A true and correct copy of the Corporation Assignment of Deed of Trust evidencing the Assignment of the Deed of Trust to Creditor is attached hereto as **exhibit C** and incorporated herein by reference.

4. Creditor is unaware of the manner in which Debtors acquired an interest in the Subject Property. However, the Debtors list the Subject Property in their Bankruptcy Schedules.

Creditor now objects to the Chapter 11 Plan filed herein by the Debtors.

II.

ARGUMENT

A. THE DEBTORS HAVE FAILED TO DEMONSTRATE THE SUBJECT PROPERTY IS PROPERTY OF THE DEBTORS' BANKRUPTCY ESTATE

Property of a bankruptcy estate is defined by Section 541 of the Bankruptcy Code, which provides that the commencement of a bankruptcy case creates an estate that is comprised of "all legal

1 or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. §
2 541(a)(1).

3 As previously discussed, Raul Estiva and Corazon Estiva are the Borrowers under the Note
4 and Deed of Trust. Accordingly, the Borrowers have the legal obligation to perform under the Note
5 and Deed of Trust, not the Debtors. The Debtors have failed to provide any evidence indicating legal
6 title to the Subject Property is in their name. Accordingly, the Subject Property is not property of the
7 Debtors’ bankruptcy estate as the Debtors have no legal or equitable interest in the Subject Property.
8 As a result, Creditor’s claim is not subject to modification in the Debtors’ Chapter 11 Plan. Based on
9 the foregoing, the confirmation of the Debtors’ Chapter 11 Plan should be denied or, alternatively,
10 the Plan should be amended to address the foregoing.
11

12 **B. THE DEBTORS’ PLAN PROPOSES TO REDUCE CREDITOR’S CLAIM BELOW**
13 **THE FAIR MARKET VALUE OF THE SUBJECT PROPERTY**

14 11 U.S.C. §1123(b)(5) provides that a plan may modify the rights of holders of secured
15 claims, other than a claim secured only by a security interest in real property that is the Debtors’
16 principal residence. 11 U.S.C. § 506(a) provides that an allowed claim of a creditor secured by a
17 lien on property in which the estate has an interest...is a secured claim to the extent of the value of
18 such creditor’s interest in the estate’s interest in such property.
19

20 The Debtors’ Plan proposes to reduce Creditor’s allowed secured claim to a secured value of
21 \$947,000.00. However, Debtors have failed to provide any admissible evidence regarding the value
22 of the Subject Property. As of January 1, 2010, Creditor maintains that the value of the Subject
23 Property was approximately \$1,100,000.00 as evidenced by a Broker Price Opinion. A true and
24 correct copy of the Broker Price Opinion is attached hereto as **exhibit D** and incorporated herein by
25 reference. As a result, the Debtors’ Plan fails to comply with 11 U.S.C. Section 506(a) as it
26 proposes to cram down Creditor’s claim below the fair market value of the Subject Property.
27
28

1 Accordingly, the court must deny confirmation of the Debtors' Plan or, in the alternative, require the
2 Debtors to amend the Plan to remedy the above referenced defects.

3 **C. THE DEBTORS' PLAN ATTEMPTS TO REDUCE THE INTEREST RATE PAID ON**
4 **CREDITOR'S CLAIM WITHOUT IMPLEMENTING THE PRIME-PLUS**
5 **FORMULA**

6 In the case of Till v. SCS Credit Corp., 541 U.S. 465, (2004), the Supreme Court adopted
7 a two-part "prime-plus" formula for determining the proper interest rate a debtor should pay on a
8 secured claim that complies with the "cram down" provisions of the Bankruptcy Code. The
9 Supreme Court in Till stated that:

10 "the approach begins by looking to the national prime rate, reported
11 daily in the press, which reflects the financial market's estimate of the
12 amount a commercial bank should charge a creditworthy commercial
13 borrower to compensate for the opportunity costs of the loan, the risk
14 of inflation, and the relatively slight risk of default. Because bankrupt
15 debtors typically pose a greater risk of nonpayment than solvent
16 commercial borrowers, the approach then requires a bankruptcy court
17 to adjust the prime rate accordingly. The appropriate size of that risk
18 adjustment depends, of course, on such factors as the circumstances of
19 the estate, the nature of the security, and the duration and feasibility of
20 the reorganization plan." Id. at 478-479.

21 In discussing the "prime-plus" interest rate calculation, the Supreme Court went on to
22 explain that in starting from a concededly *low* estimate and adjusting *upward*, the evidentiary
23 burden is placed squarely on the creditors, who are likely to have readier access to any
24 information absent from the debtor's filing. Id. at 479.

25 In the present case, the Debtors propose paying a 2% interest rate on Creditor's secured
26 claim over the next 10 years. Subsequently, the Debtors propose paying a 3% interest rate over the
27 following 30 years. However, Creditor maintains that if the appropriate "prime-plus" formula is
28 used, as proscribed in the Till case, the calculated interest rate to be paid by the Debtors will be
significantly higher. In addition, Creditor recognizes that as required in the Till case, the burden of
proof for establishing the higher interest rate falls on the creditor, and as a result, Creditor is
prepared

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to offer expert testimony at an evidentiary hearing in order to establish the appropriate interest rate to be paid by the Debtors, if the parties are unable to agree to a resolution of the applicable interest rate on Creditor's secured claim. Accordingly, the court must deny confirmation of the Debtors' Plan or, in the alternative, require the Debtors to amend the Plan to remedy the above referenced defects.

WHEREFORE, Creditor respectfully requests:

1. That confirmation of the Debtors' Chapter 11 Plan be denied;
2. That Debtors' case be dismissed or converted to a Chapter 7; and
3. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: 7/28/2010

PITE DUNCAN LLP

/s/ Stefanie A. Schiff CA SBN 265382
Attorneys for HSBC BANK U.S.A. AS TRUSTEE
FOR DALT 2007-AO3

(Part 1) Pg 466 of 586
Entered on Docket

August 04, 2010
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: August 02, 2010

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Bankruptcy Case
	)	No. 09-30452DM
FERMIN SOLIS ANIEL and ERLINDA)	
ABIBAS ANIEL,	)	Chapter 11
)	
Debtor.)	

ORDER GRANTING MOTION TO CONVERT TO CHAPTER 7

On July 30, 2010, Debtors filed a motion to convert this case to Chapter 7. As all requisites of 11 U.S.C. § 1112(a) have been satisfied, it is hereby

ORDERED that the above captioned case be converted to Chapter 7.

END OF ORDER

COURT SERVICE LIST

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010

HSBC Bank USA, National Association as
Trustee for DALT2007-OA5
c/o Anne Hamann
4375 Jutland Dr., Ste. 200
San Diego, CA 92177

JP Morgan Chase Bank, N.A.
National City
P.O. Box 94982
Cleveland, OH 44101

Notice Recipients

District/Off: 0971-3

User: mwalker

Date Created: 8/4/2010

Case: 09-30452

Form ID: pdfec

Total: 4

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Fermin Solis Aniel	75 Tobin Clark Drive	Hillsborough, Ca 94010	
jdb	Erlinda Abibas Aniel	75 Tobin Clark Drive	Hillsborough, Ca 94010	
cr	HSBC Bank USA, National Association as Trustee for	DALE 2007-OA5	Pite Duncan, LLP	c/o Anne
	Hamann	4375 Jutland Drive Suite 200	San Diego, CA 92177	
	JP Morgan Chase Bank, N.A.	National City	PO Box 94982	Cleveland, OH 44101

TOTAL: 4

(Part 1) Pg 469 of 586

Entered on Docket

November 02, 2010

GLORIA L. FRANKLIN, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: November 02, 2010

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	)	Bankruptcy Case
	)	No. 09-30452DM
FERMIN SOLIS ANIEL and ERLINDA)	
ABIBAS ANIEL,	)	Chapter 7
)	
Debtors.)	

ORDER AUTHORIZING ABANDONMENT OF PROPERTY

Debtors filed a motion to compel the trustee to abandon certain properties listed below on October 12, 2010. The court set the motion for hearing on November 12, 2010, at 10:00 A.M.

On October 29, 2010, the trustee filed her response, indicating that based upon her business judgment and her assessment that administration of the subject assets would not benefit the estate, she did not oppose Debtors' motion.

No purpose would be served by having a hearing on an unopposed motion and the court agrees with the trustee as to the lack of benefit to the estate in retaining the subject assets. Accordingly, the scheduled hearing on November 12, 2010, is dropped from calendar, and the following assets are ABANDONED to Debtors:

Real Property:

833 Clearfield Dr., Millbrae, California 94030
1061 Sycamore Dr., Millbrae, California 94030

1 418 Persia Ave., San Francisco, California 94112
2 3 Fairmont Dr., Daly City, California 94015
3 75 Tobin Clark Dr., Hillsborough, California 94010
4 1881 Earl Ave., San Bruno, California 94066
5 801 Foothill Dr., San Mateo, California 94402

6 Pending Lawsuits:

7 Aniel v. Aurora Loan Services, LLC, et al.,
8 Case Number 10-1042JSW

9 Aniel v. Litton Loan Services, et al.,
10 Case Number 10-0951SBA

11 Aniel v. EMC Mortgage Corporation, et al.,
12 Case Number: CIV 499323

13 **END OF ORDER**
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COURT SERVICE LIST

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010

Notice Recipients

District/Off: 0971-3

User: mwalker

Date Created: 11/2/2010

Case: 09-30452

Form ID: pdfec

Total: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Fermin Solis Aniel	75 Tobin Clark Drive	Hillsborough, Ca 94010
jdb	Erlinda Abibas Aniel	75 Tobin Clark Drive	Hillsborough, Ca 94010

TOTAL: 2

EXHIBIT P

Entered on Docket

August 04, 2010

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: August 02, 2010

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
FERMIN SOLIS ANIEL and ERLINDA) No. 09-30452DM
ABIBAS ANIEL,) Chapter 11
Debtor.)

ORDER GRANTING MOTION TO CONVERT TO CHAPTER 7

On July 30, 2010, Debtors filed a motion to convert this case to Chapter 7. As all requisites of 11 U.S.C. § 1112(a) have been satisfied, it is hereby

ORDERED that the above captioned case be converted to Chapter 7.

END OF ORDER

COURT SERVICE LIST

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010

HSBC Bank USA, National Association as
Trustee for DALT2007-OA5
c/o Anne Hamann
4375 Jutland Dr., Ste. 200
San Diego, CA 92177

JP Morgan Chase Bank, N.A.
National City
P.O. Box 94982
Cleveland, OH 44101

EXHIBIT Q

AA355

(Part 1) Pg. 477 of 586
Entered on Docket

November 02, 2010

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: November 02, 2010

*Dennis Montali*DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	) Bankruptcy Case
	) No. 09-30452DM
FERMIN SOLIS ANIEL and ERLINDA)
ABIBAS ANIEL,	) Chapter 7
)
Debtors.)

ORDER AUTHORIZING ABANDONMENT OF PROPERTY

Debtors filed a motion to compel the trustee to abandon certain properties listed below on October 12, 2010. The court set the motion for hearing on November 12, 2010, at 10:00 A.M.

On October 29, 2010, the trustee filed her response, indicating that based upon her business judgment and her assessment that administration of the subject assets would not benefit the estate, she did not oppose Debtors' motion.

No purpose would be served by having a hearing on an unopposed motion and the court agrees with the trustee as to the lack of benefit to the estate in retaining the subject assets. Accordingly, the scheduled hearing on November 12, 2010, is dropped from calendar, and the following assets are ABANDONED to Debtors:

Real Property:

833 Clearfield Dr., Millbrae, California 94030
1061 Sycamore Dr., Millbrae, California 94030

1 418 Persia Ave., San Francisco, California 94112
2 3 Fairmont Dr., Daly City, California 94015
3 75 Tobin Clark Dr., Hillsborough, California 94010
4 1881 Earl Ave., San Bruno, California 94066
5 801 Foothill Dr., San Mateo, California 94402

6 Pending Lawsuits:

7 Aniel v. Aurora Loan Services, LLC, et al.,
8 Case Number 10-1042JSW

9 Aniel v. Litton Loan Services, et al.,
10 Case Number 10-0951SBA

11 Aniel v. EMC Mortgage Corporation, et al.,
12 Case Number: CIV 499323

13 **END OF ORDER**
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COURT SERVICE LIST

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010

EXHIBIT R

Form CA0057

**UNITED STATES BANKRUPTCY COURT
Northern District of California (San Francisco)**

In re:

Fermin Solis Aniel
75 Tobin Clark Drive
Hillsborough, Ca 94010

Erlinda Abibas Aniel
aka Erlinda Jose Abibas
75 Tobin Clark Drive
Hillsborough, Ca 94010

Debtor(s)

Debtor/Joint Debtor Social Security Number(s):

xxx-xx-3120

xxx-xx-2668

Case Number: 09-30452 DM 7

Chapter: 7

DISCHARGE OF DEBTOR

It appearing that the debtor(s) is/are entitled to a discharge, **IT IS ORDERED:**
The debtor(s) is/are granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 12/2/10

By the Court:

Dennis Montali
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Doc # 263

ENDORSED FILED
SAN MATEO COUNTY

MAY 25 2011

Clerk of the Superior Court
By S. Payrot
DEPUTY CLERK

FERMIN SOLIS ANIEL -IN PRO SE-
ERLINDA ABIBAS ANIEL AND
75 Tobin Clark Drive
Hillsborough, CA 94010
Phone: (650) 284-6417
Fax: (650) 571-5829

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual;

Case No.: CIV 502857

Plaintiffs,

v.

ETS SERVICES, LLC, a California Limited
Liability Corporation; GMAC MORTGAGE,
LLC F/K/A GMAC MORTGAGE
CORPORATION AND GMAC MORTGAGE;
HSBC BANK, U.S.A as Trustee for DALT
2007-AO3; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC; PITE
DUNCAN, LLP; AND DOES 1- 50 inclusive.

**OPPOSITION TO DEFENDANT, PITE
DUNCAN, LLP, DEMURRER
PLAINTIFFS' COMPLAINT**

Date: June 8, 2011
Time: 9:00 a.m.
Dept: LM

Complaint filed: February 02, 2011

Defendants

I. INTRODUCTION

Plaintiffs, Erlinda Abibas Aniel and Fermin Solis Aniel, hereby oppose to Defendants,
Pite Duncan, LLP ("Pite Duncan"), Demurrer to the Plaintiffs' Complaint.

Defendant argues that Plaintiffs lack standing to have viable claims because Plaintiffs
do not have a 50% interest in the property. However, the facts prove that Plaintiffs do have a

1 50% interest in the property and have title under a properly executed Grant Deed. Also,
2 Plaintiffs have made allegations that Pite Duncan, a debt collector, played a crucial role in the
3 wrongful foreclosure of the Plaintiffs' property. Namely, Pite Duncan requested and accepted
4 a fabricated Assignment of Deed for the purposes of proving standing to object to the
5 Plaintiffs' reorganization and to wrongfully foreclose the property. Pite Duncan's actions
6 resulted in a broken chain of title, which prevented Plaintiffs from selling the property or
7 receiving a loan modification because the owner of the loan is in question.
8

9 II. LEGAL STANDARD 10

11 A demurrer to a complaint tests only the legal sufficiency of the allegations. It does
12 not test their truth, the plaintiffs' ability to prove them, or the possible difficulty in making
13 such proof." Saunders v. Superior Court, (1994), 27 Cal. App. 4th 832, 840. A general
14 demurrer admits the truth of all material allegations in the complaint and all reasonable
15 inferences which can be drawn there from. Alcorn v. Anbro Engineering, Inc. (1970) 2 Cal.3d
16 493, 496. If the plaintiff can state a cause of action under any possible legal theory, the
17 demurrer should be overruled. Von Batsch v. American Dist Telegraph Co. (1985) 175
18 Cal.App.3d 1111, 1117.
19

20
21 The sole issue raised by a general demurrer is whether the facts pleaded state a valid
22 cause of action, not whether they are true. Thus, no matter how unlikely or improbable,
23 plaintiff's allegations must be accepted as true for the purpose of ruling on the demurrer. See
24 Del E. Webb Corp. v. Structural Materials Co. (1981), 123 Cal.App.3d 593, 604. Further, in
25 ruling on a demurrer, the trial court must accept as true all material facts properly pleaded in
26 plaintiff's petition, disregarding only conclusions of law and allegations contrary to judicially
27 noticed facts. Burt v. Co. of Orange (2004) 120 Cal.App.4th 273.
28

1 **III. STATEMENT OF RELEVANT FACTS**

2 On June 24, 2009, Todd R. Reilly, an unknown agent for one of the Defendants,
3 executed a Proof of Claim, which confirmed Plaintiffs' interest in the property. The Proof of
4 Claim stated that all notices be sent to "4375 Jutland Drive, Suite 200, P.O Box 17933. San
5 Diego, CA 92177-0933." Although Pite Duncan was not named in the Proof of Claim, the
6 address is the office address of Pite Duncan. Also, Pite Duncan claimed that HSBC as Trustee
7 for DALT 2007-AO3 ("HSBC"). The Assignment of Deed was acknowledged by Thomas P.
8 Strain, who certified "under PENALTY OF PERJURY under the laws of the State of
9 California that the foregoing paragraph is true and correct." Thomas P. Strain, as a
10 Pennsylvanian Notary Public, acknowledged the document in Pennsylvania and not in
11 California. This was a violation of California law as only a Notary Public in California may
12 certify under the penalty of perjury under the laws of State of California. Therefore, this
13 Assignment of Deed is a product of fraud and should be declared VOID.
14
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16

17 On July 16, 2009, Pite Duncan received and recorded an Assignment of Deed from
18 MERS, as nominee for MortgageIT, to HSBC. This recordation took place after Pite Duncan
19 claimed that HSBC was the Secured Creditor in the Proof of Claim. Pite Duncan requested the
20 manufactured Assignment of Deed, which was signed by Jeffrey Stephan, an infamous robo-
21 signer, who executed the document as a Vice President of MERS.
22

23 On July 28, 2010, Pite Duncan filed an objection to Plaintiffs reorganization plan and
24 attached to its object: a Promissory Note, a Deed of Trust, an Assignment of Deed of Trust
25 signed by robo-signer Jeffrey Stephan, and Broker Price Opinion. Pite Duncan's intentionally
26 deleted the original loan numbers of Deed of Trust and in the Promissory Note. Pite Duncan
27 attempted to hide the true identity of all the investors, who bought the Promissory Note.
28

1 Plaintiffs' loan is under a securitized mortgages as Pite Duncan asserted that the secured
2 creditor is HSBC, who were in concert with all the defendants to have Jeffrey Stephan, without
3 personal knowledge, executed the fabricated and manufactured assignment of deed and have it
4 acknowledged by a notary public in the State of Pennsylvania while it had been certified the
5 assignment of deed under the Penalty of Perjury under the laws of the State of California.
6

7 **IV. ARGUMENT**

8 **A. Plaintiffs do have standing as they have equitable and legal interest in the** 9 **Property.**

10
11 Defendants claim that Plaintiffs have no interest in the property and cannot challenge a
12 foreclosure of the property. Defendants even claim that Plaintiffs' have misled its interest in
13 the property. However, the facts prove otherwise. Plaintiffs do have a 50% interest in the
14 subject property. Although Plaintiffs' were not named in the Promissory Note or the Deed of
15 Trust at the time Plaintiffs and Raul and Corazon Estiva purchased the property, Plaintiffs'
16 collected monthly rent from the Tenants, paid the mortgage payments, paid half of the income
17 to the Estivas, disclosed the rental income in their annual income tax report, paid for repairs,
18 and attempted to reorganize the debt in the Bankruptcy court under Chapter 11.
19
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21 Also, on February 03, 2011, Plaintiffs and Corazon Estiva executed a grant deed,
22 purporting, on record, a one percent interest in the Deed of Trust. Plaintiffs only recorded a
23 one percent interest in Deed in order to not pay the City of San Mateo Transfer tax because
24 Plaintiffs had already paid \$6,500.00 in transfer tax to the City of San Mateo when the Plaintiff
25 purchased the property in November 2006. Therefore, not only has Plaintiffs established a
26 50% interest in the subject property; Plaintiffs' names also appear in the chain of title.
27
28 Therefore, Defendants cannot claim that Plaintiffs' have no interest in the property. Even if

1 Plaintiffs have no interest in the Property, Pite Duncan's representations were directed at the
2 Plaintiffs when Defendant filed a Proof of Claim in Plaintiffs' Bankruptcy, sent Plaintiffs an
3 Assignment of the Deed, and objected to Plaintiffs' Reorganization Plan. Therefore, those
4 actions still resulted in Fraud by the Defendant.
5

6 **B. Plaintiffs do have a Fraud claim against Pite Duncan.**

7
8 Defendants claim that Plaintiffs have not met the minimum threshold to sustain a Fraud
9 claim against Pite Duncan. However, that argument is without merit based on the Plaintiffs'
10 complaint.

11 Plaintiffs alleged in their complaint that Pite Duncan requested and manufactured the
12 Assignment of Deed sometime around May 26, 2009, which was the execution date. See P's
13 Compl. ¶ 38. Plaintiffs were able to allege that Jeffrey Stephan is an employee of GMAC. See
14 P's Comp. ¶ 58. GMAC used their employee, Jeffrey Stephan, to execute an Assignment of
15 Deed that assigned interest in the Deed of Trust to HSBC. Pite Duncan represented that Jeffrey
16 Stephan was a Vice President of MERS and authorized to assign beneficial interest (MERS as
17 a nominee for the original Lender, MortgageIT). GMAC knew at the time the Assignment of
18 Deed was executed that Jeffrey Stephan was a GMAC employee and not a MERS Vice
19 President. Pite Duncan knew that this information was false yet accepted the Assignment of
20 Deed and submitted to the Bankruptcy Court and the Plaintiffs in their objection to Plaintiffs'
21 reorganization. Plaintiffs made these allegations in its complaint. Because of Pite Duncan's
22 misrepresentation, HSBC was able to gain beneficial interest in the Deed of Trust and continue
23 with the foreclosure of the subject property.
24
25
26

27 Pite Duncan created a fraudulent Proof of Claim. On June 24, 2009, a certain Todd R.
28 Reilly, an unknown agent of one of the Defendants, claimed that HSBC was the secured

1 creditor of the loan. The "robo-signing" of affidavits and all other foreclosure documents
2 served to cover up the fact that the Defendants cannot demonstrate the facts required to
3 conduct a lawful foreclosure. Plaintiffs alleged that the individuals that signed each document
4 are in fact "Robo-Signers" who were paid just to prepare and sign off on documents without
5 reviewing them as the law requires. In the instant case, Jeffrey Stephan, an admitted robo-
6 signer, executed an Assignment of Deed, claiming to act as an agent of MERS, and assigning
7 interest in the Deed to HSBC. If it turns out that these robo-signers did indeed sign off on the
8 Plaintiff's loan and all documents recorded, without review, they committed FRAUD by
9 claiming knowledge of a financial matter of which they had no personal knowledge. Pite
10 Duncan initiated this process when it became the debt collector for the GMAC, the loan
11 servicer. Pite Duncan knew that Jeffrey Stephan was not a Vice President of MERS but was
12 rather an employee of GMAC.
13
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16 **C. Plaintiffs do have a claim under the UCL.**

17 Defendant argues that Plaintiffs lack standing to state a claim under the Unfair
18 Competition Law because they were not named in the Deed of Trust or Promissory Note.
19 However, Plaintiffs continue to allege a 50% interest in the Property. Plaintiffs can prove that
20 it invested a substantial amount of money to maintain and secure the property. This property
21 was disclosed in their Bankruptcy Schedules. At these early stages of the proceedings,
22 Defendant cannot claim Plaintiffs lack any interest without the Court giving Plaintiffs an
23 opportunity to prove its interest. Once proven, Plaintiffs will undoubtedly have standing to
24 pursue the claim. As it stands now, Plaintiffs' allegations of ownership should be enough to
25 satisfy standing to make its claim against Defendant for violations of the Unfair Competition
26 Law.
27
28

1 willing to amend their complaint to reflect the new facts and allegation made in this
2 opposition.
3

4 **V. CONCLUSION**

5 Pite Duncan initiated the fraudulent foreclosure of the Plaintiffs' property. Pite Duncan
6 initially filed the Proof of Claim misrepresenting HSBC as the Secured Creditor. It request and
7 received a manufactured Assignment of the Deed in order to properly object to the Plaintiffs'
8 reorganization plan and to allow its Client to foreclose a property they had no interest in.
9 Plaintiffs made these allegations in its complaint and if taken as true do have a claim for Pite
10 Duncan for Fraud and violations of the UCL. Therefore, Plaintiffs request that the Court deny
11 Pite Duncan's Demurrer and allow Plaintiffs to prove its allegations.
12
13
14

15 Respectfully submitted.
16

17 Dated: May 24 2011
18

19 
20 FERMIN SOLIS ANIEL
21 PRO SE PLAINTIFF

22 Dated: May 24 2011
23

24 
25 ERLINDA ABIBAS ANIEL
26 PRO SE PLAINTIFF
27
28

PROOF OF SERVICE BY MAIL (C.C.P 1013a, 2015.5)

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I, Jason Aniel, declare as follows:

I am over the age of eighteen years and am not a party to the within entitled action; my address is 75 Tobin Clark Drive. Hillsborough, California 94010.

On May 25, 2011, I served the following:

OPPOSITION TO DEFENDANT, PITE DUNCAN, LLP, DEMURRER PLAINTIFFS' COMPLAINT

on the interested parties in said action by first class mail, postage prepaid, addressed as follows:

CHRISTOPHER L. PETERSON
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

Attorneys for Defendant PITE DUNCAN, LLP

BRIAN S. WHITTEMORE
SEVERSON & WERSON, P.C.
One Embarcadero Center, Suite 2600
San Francisco, California, 94111

Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, and Mortgage Electronic Registration Systems, Inc.

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

Executed on May 25, 2011, at San Mateo County, California.

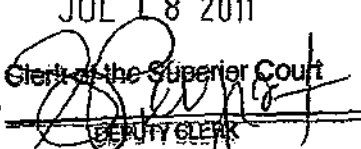

Jason Aniel

1 PETER J. SALMON (SBN 174386)
CHRISTOPHER L. PETERSON (SBN 215069)
2 JILLIAN A. BENBOW (SBN 246822)
PITE DUNCAN, LLP
3 4375 JUTLAND DRIVE, SUITE 200
P.O. BOX 17935
4 SAN DIEGO, CA 92177-0935
TELEPHONE: (858) 750-7600
5 FACSIMILE: (619) 590-1385

6 Attorneys for Defendant PITE DUNCAN, LLP

FILED
SAN MATEO COUNTY

JUL 18 2011

Clerk of the Superior Court
By  DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN MATEO

10 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
GMAC MORTGAGE CORPORATION AND
15 GMAC MORTGAGE; HSBC BANK, U.S.A.
as Trustee for DALT 2007-AO3;
16 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PITE
17 DUNCAN, LLP AND DOES 1-50 inclusive,

18 Defendants.

Case No. CIV502857

[PROPOSED] ORDER ON
DEFENDANT PITE DUNCAN, LLP'S,
DEMURRER TO COMPLAINT

Date: June 8, 2011
Time: 9:00 a.m.
Dept.: LM, Dept 25

19 TO PLAINTIFFS FERMIN SOLIS ANIEL and ERLINDA ABIBAS ANIEL, IN PRO
20 PER, AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on June 8, 2011 at 9:00 a.m. in Department 25 of the
22 above-referenced Court, Defendant PITE DUNCAN, LLP's, Demurrer was heard by the Court. The
23 Court having considered the pleadings and arguments submitted in support of and in opposition to
24 the Demurrer, and good cause appearing, adopted its tentative ruling as the order of the Court as
25 follows:

26 1. The Demurrer to Complaint by Defendant PITE DUNCAN, LLP is SUSTAINED
27 WITHOUT LEAVE TO AMEND as to all causes of action on the grounds that Plaintiffs lack
28 standing. [County of Fresno v. Shelton (1998) 66 Cal.App.4th 996, 1009]. The allegations of the

1 Complaint admit that Plaintiffs' names did not appear on the promissory note or Deed of Trust at
2 any point during the time the complained-of activities took place. The Court is not persuaded by
3 Plaintiffs' argument that they did not properly or timely record their alleged 50% interest because
4 they wished to avoid paying taxes.

5 2. Defendant's Request for Judicial Notice is GRANTED as to Exhibits P, Q, and R.
6 Judicial notice is taken of the fact that Exhibits A through K were recorded in the Official Records
7 of the County of San Mateo, and that Exhibits L through O were filed in Plaintiffs' bankruptcy action
8 in United States Bankruptcy Court for the Northern District of California, Case No. 09-30452-DM,
9 but not as to the truth of any matters asserted therein

10
11
12 Dated: June 28, 2011


JUDGE OF THE SUPERIOR COURT

1 Aniel v. ETS Services, LLC, et al
Superior Court of California County of San Mateo
2 Case No(s). CIV502857

3 **DECLARATION OF SERVICE**

4 I, the undersigned, declare: I am, and was at the time of service of the papers herein referred
to, over the age of 18 years, and not a party to this action. My business address is 4375 Jutland
5 Drive, Suite 200, P.O. Box 17935, San Diego, CA 92177-0935.

6 On June 14, 2011, I served the following document(s):

7 **[PROPOSED] ORDER ON DEFENDANT PITE DUNCAN, LLP'S**
DEMURRER TO COMPLAINT;

8 **[PROPOSED] JUDGMENT**

9 on the parties in this action addressed as follows:

10
11 Fermin Solis Aniel, Erlinda Abibas Aniel
75 Torbin Clark Drive
Hillsborough, CA 94010
12 *Plaintiffs in pro per*

John B. Sullivan, Edward R. Buell
Brian S. Whittemore
Severson & Werson
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
13 *Attorneys for Defendants GMAC Mortgage,*
14 *LLC, ETS Services, LLC, HSBC Bank, U.S.A.*
15 *as Trustee for DALT 2007-A03 and Mortgage*
Electronic Registration Systems, Inc.

16 X **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am
17 readily familiar with the firm's practice of collection and processing correspondence for
mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course
18 of business. I am aware that on motion of party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit for mailing
in affidavit.

19 **BY CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed as indicated
20 above via certified mail, return receipt requested.

21 **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the
22 above-described document(s). I verified transmission with a confirmation printed out by the
facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and
mailed as indicated above.

23 **BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope
24 addressed as indicated above. I am familiar with the firm's practice of collection and
processing correspondence for Federal Express delivery and that the documents served are
25 deposited with Federal Express this date for overnight delivery.

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

27 Executed this 14th day of June 2011, at San Diego, California.

28

CRYSTAL HANLEY

1 JOHN B. SULLIVAN (State Bar No. 96742)
EDWARD R. BUELL III (State Bar No. 240494)
2 SEVERSON & WERSON
A Professional Corporation
3 One Embarcadero Center, Suite 2600
San Francisco, CA 94111
4 Telephone: (415) 398-3344
Facsimile: (415) 956-0439

5 Attorneys for Defendants
6 GMAC Mortgage, LLC f/k/a GMAC
Mortgage Corp. and GMAC Mortgage, ETS
7 Services, LLC, HSBC Bank, U.S.A. as
Trustee for DALT 2007-A03, Mortgage
8 Electronic Registration Systems, Inc.
(erroneously named herein as Mortgage
9 Electronic Systems, Inc.)

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN MATEO

12 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

13 Plaintiffs,

14 vs.

15 ETS SERVICES, LLC, a California Limited
16 Liability Corporation; GMAC MORTGAGE,
LLC F/K/A GMAC MORTGAGE
17 CORPORATION AND GMAC MORTGAGE;
HSBC BANK, U.S.A. as Trustee for DALT
18 2007-A03; MORTGAGE ELECTRONIC
SYSTEMS, INC.; PITE DUNCAN, LLP;
19 AND DOES 1-50 inclusive,

20 Defendants.

Case No.: CIV 502857

**NOTICE OF DEMURRER AND
DEMURRER OF ETS SERVICES, LLC,
GMAC MORTGAGE, LLC, HSBC
BANK, U.S.A., AND MERS TO
PLAINTIFFS' VERIFIED COMPLAINT**

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion

21
22 TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

23 PLEASE TAKE NOTICE that on Thursday, June 9, 2011, at 9:00 a.m. in the Law and
24 Motion Department of the above-entitled Court, located at 400 County Center, Redwood City,
25 California, defendants GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC
26 Mortgage ("GMACM"), ETS Services, LLC ("ETS"), HSBC Bank, U.S.A. as Trustee for DALT
27 2007-A03 ("HSBC") and Mortgage Electronic Registration Systems, Inc. ("MERS") (collectively
28

1 referred to as "Moving Defendants") will and hereby do demur to the complaint filed by plaintiffs
2 Fermin Solis Aniel and Erlinda Abibas Aniel ("Plaintiffs").

3 The demurrer is made pursuant to California Code of Civil Procedure ("CCP") §430.10
4 (e) on grounds that the pleading does not state facts sufficient to constitute a cause of action
5 against Moving Defendants.

6 Said motion will be based upon this notice of demurrer, the demurrer, memorandum of
7 points and authorities, the accompanying request for judicial notice, on the pleadings and papers
8 on file in this action, and on such evidence as may be presented at a hearing.

9 DATED: March 7, 2011

SEVERSON & WERSON
A Professional Corporation

10
11 By: 

Edward R. Buell III

Attorneys for Defendants
GMAC Mortgage, LLC f/k/a GMAC Mortgage
Corp. and GMAC Mortgage, ETS Services,
LLC, HSBC Bank, U.S.A. as Trustee for DALI
2007-A03, Mortgage Electronic Registration
Systems, Inc. (erroneously named herein as
Mortgage Electronic Systems, Inc.)

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19 **DEMURRER**

20 Moving Defendants hereby demur to the complaint filed in this action on the following
21 grounds:

22 1. The first cause of action for "Violation of the California Rosenthal Act" fails to
23 state facts sufficient to constitute a cause of action against GMACM, ETS or HSBC. (CCP
24 §430.10(e)). Plaintiffs do not seek relief under this claim against demurring defendant MERS.

25 2. The second cause of action for "Fraudulent Misrepresentation" fails to state facts
26 sufficient to constitute a cause of action against any of the Moving Defendants. (CCP
27 §430.10(e)).
28

1 3. The third cause of action for "Wrongful Foreclosure" fails to state facts sufficient
2 to constitute a cause of action against any of the Moving Defendants. (CCP §430.10(e)).

3 4. The fourth cause of action for "Unfair Competition Law (Cal. Bus. & Prof. Code
4 §17200 et seq.) " fails to state facts sufficient to constitute a cause of action against any of the
5 Moving Defendants. (CCP §430.10(e)).

6 5. The fifth cause of action for "Injunctive Relief" fails to state facts sufficient to
7 constitute a cause of action against any of the Moving Defendants. (CCP §430.10(e)).

8 6. The sixth cause of action for "Quiet Title" fails to state facts sufficient to
9 constitute a cause of action against any of the Moving Defendants. (CCP §430.10(e)).

10
11 DATED: March 7, 2011

SEVERSON & WERSON
A Professional Corporation

12
13 By: 
14

Edward R. Buell III

15 Attorneys for Defendants
16 GMAC Mortgage, LLC f/k/a GMAC Mortgage
17 Corp. and GMAC Mortgage, ETS Services,
18 LLC, HSBC Bank, U.S.A. as Trustee for DALI
19 2007-A03, Mortgage Electronic Registration
20 Systems, Inc. (erroneously named herein as
21 Mortgage Electronic Systems, Inc.)
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17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF SAN MATEO

19 FERMIN SOLIS ANIEL, an individual;
20 ERLINDA ABIBAS ANIEL, an individual;

21 Plaintiffs,

22 vs.

23 ETS SERVICES, LLC, a California Limited
24 Liability Corporation; GMAC MORTGAGE,
25 LLC F/K/A GMAC MORTGAGE
26 CORPORATION AND GMAC MORTGAGE;
27 HSBC BANK, U.S.A. as Trustee for DALT
28 2007-A03; MORTGAGE ELECTRONIC
SYSTEMS, INC.; PITE DUNCAN, LLP;
AND DOES 1-50 inclusive,

Defendants.

Case No.: CIV 502857

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER OF ETS SERVICES, LLC,
GMAC MORTGAGE, LLC, HSBC
BANK, U.S.A., AND MERS TO
PLAINTIFFS' VERIFIED COMPLAINT**

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion

I. INTRODUCTION

Plaintiffs Fermin Solis Aniel and Erlinda Abibas Aniel ("Plaintiffs") have filed the instant action in an attempt to stop the pending foreclosure sale of the real property located at 801 Foothill Drive, San Mateo, California (the "Property"). However, unlike most foreclosure delay lawsuits similar to this, this action does not seek to prevent the sale of Plaintiffs' residence, but rather an investment property in which their interest is unclear at best. Specifically, Plaintiffs are not the borrowers under the loan secured by the deed of trust on the Property and, consequently,

1 have absolutely no standing to challenge the valid sale by defendants.

2 The Complaint in this particular lawsuit is a list of irrelevant factual allegations and legal
3 conclusions, none of which even come close to meeting minimum pleading requirements.
4 Plaintiffs lack standing to raise any claims related to the loan, deed of trust or foreclosure process
5 as they were admittedly not parties to the loan. For the reasons more fully explained below,
6 Plaintiffs have not, and cannot, state a single valid legal claim and, as a result, the demurrer of
7 defendants GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage
8 ("GMACM"), ETS Services, LLC ("ETS"), HSBC Bank, U.S.A. as Trustee for DALT 2007-A03
9 ("HSBC") and Mortgage Electronic Registration Systems, Inc. ("MERS") (collectively referred
10 to as "Moving Defendants") should be sustained without leave to amend.

11 **II. STATEMENT OF RELEVANT FACTS**

12 On March 22, 2007, Raul Estiva and Corazon Estiva ("Estivas" or "Borrowers") obtained
13 a loan from MortgageIT in the amount of one million (\$1,000,000) dollars (the "Loan") that was
14 secured by a deed of trust ("DOT") on the real property located at 801 Foothill Drive, San Mateo,
15 California (the "Property"). (Complaint ¶¶ 16, 29 and Ex. A). Plaintiffs' names were not on the
16 deed and they were not co-borrowers on the note. (Complaint ¶35). In other words, Plaintiffs
17 admittedly were not parties to and have no interest in the Loan.

18 The Estivas fell behind on their payments and, as a result, on December 17, 2008, a
19 Notice of Default was recorded as Document No. 2008-135231. (Complaint ¶ 34, Ex. B). Prior
20 to recording the NOD, on December 17, 2008, defendant ETS Services, LLC ("ETS") recorded a
21 Substitution of Trustee ("SOT") in the San Mateo County Recorder's Office as Document No.
22 2008-135230. (Request for Judicial Notice ("RJN") Ex. 1). The Estivas failed to cure the default
23 and, as a result, a Notice of Trustee's Sale ("NOS-1") was recorded on March 20, 2009 in the San
24 Mateo County Recorder's Office as Document No. 2009-031269. (RJN Ex. 2). The sale was
25 continued and a second Notice of Trustee's Sale ("NOS-2") was recorded on December 31, 2010
26 in the San Mateo County Recorder's Office as Document No. 2010-163953. (RJN Ex. 3).

27 According to the Complaint, Plaintiffs filed a Chapter 11 Bankruptcy Petition in February
28 of 2009. (Complaint ¶35). Plaintiffs listed on their amended schedules that they held a 50%

1 interest in the Property¹. (*Id.*, RJN Ex.4). The Chapter 11 was converted to a Chapter 7 on
2 August 4, 2010 and Plaintiffs were discharged on December 2, 2010. (*Id.*). Prior to the
3 discharge, the Bankruptcy Trustee abandoned the Property on November 2, 2010, thereby
4 removing it from the Bankruptcy Estate and the protections of the automatic stay. (*Id.*).

5 The NOS-2 set the sale of the Property for January 27, 2011. (Complaint ¶41, Exhibit E).
6 Plaintiffs, who were allegedly only aware of the sale through their tenants², attended the auction
7 on January 27, 2011; at the auction the sale was postponed and continued to February 9, 2011.
8 (Complaint ¶¶ 42 and 43).

9 On February 3, 2011, a Grant Deed was recorded with the San Mateo County Recorder's
10 Office as Document No. 2011-014606 which purported to transfer a 1% interest in the Property to
11 each of the Plaintiffs. (RJN Ex. 5). This deed is in stark contrast to Plaintiffs' allegations and
12 statements under penalty of perjury on their Bankruptcy Schedules that they held a 50% interest
13 in the Property. Moreover, the transfer did not occur in early 2009 as indicated by Plaintiffs (*See*
14 Complaint ¶35; RJN Ex. 4, Pg. 3), but rather about two months ago, on the same date as Plaintiffs
15 filed the instant action and two months after the Bankruptcy was discharged. In other words, it is
16 clear that Plaintiffs did not have an interest in the Property during the pendency of their
17 Bankruptcy as their purported interest arose (if at all) on February 3, 2011.

18 III. LEGAL ARGUMENT

19 A. GROUNDS FOR A DEMURRER

20 A demurrer tests the legal sufficiency of a pleading as to whether the plaintiffs have
21 adequately plead the alleged causes of action. Pursuant to California Code of Civil Procedure
22 ("CCP") §430.30, a demurrer is proper when any ground for an objection to the pleading "appears
23

24 ¹ Plaintiffs have provided no support for their interest in the Property other than their
25 conclusive statement. They even failed to include a copy of their schedules wherein they
26 allegedly indicated their interest. Regardless however, simply claiming an interest in property on
a Bankruptcy schedule does not create an interest in Property.

27 ² Plaintiffs were not provided notice as they are not parties to the Loan or Deed of Trust
28 and therefore the foreclosing defendants were not required to provide them with notice. The
tenants received notice as they reside in the Property and the defendants, following applicable
law, provided the requisite notice on the Property.

1 on the face thereof, or from any matter of which the court is required to or may take judicial
2 notice.” Conclusory averments and conclusions of law do not constitute a statement of fact upon
3 which relief may be granted. (*Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415;
4 *Smith v. Busniewski* (1952) 115 Cal.App.2d 124.)

5 The Court in *Blank v. Kirwan*, (1985) 39 Cal.3d 311, 318, held that “We treat the
6 demurrer as admitting all material facts properly pleaded, but not contentions, deductions or
7 conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.”
8 (*citing Serrano v. Priest* (1971) 5 Cal.3d 584, 591). Additionally, a complaint that refers
9 generally to “defendants” does not state a claim. (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823,
10 829.)

11 **B. IN PRO PER LITIGANTS ARE HELD TO THE SAME STANDARDS AND RESTRICTIVE**
12 **PROCEDURAL RULES AS ATTORNEYS**

13 The law in California is quite clear that an in pro per litigant is held to the same standards
14 and restrictive procedural rules as an attorney. (*See Wantuch v. Davis* (1995) 32 Cal.App.4th
15 786, 795 (“In propria persona litigants are entitled to the same, but no greater, rights than
16 represented litigants.”), and *Barton v. New United Motor Manufacturing, Inc.* (1996) 43
17 Cal.App.4th 1200, 1210 (“[S]uch a party is to be treated like any other party.”)). The Court in
18 *Lawrence v. Superior Court (Oppenheim)* (1988) 206 Cal.App.3d 611, 619, held that “all litigants
19 should be held to a generally applicable procedural rule, whether or not they are aware of it.” A
20 different rule, “generally requiring or permitting exceptional treatment of parties who represent
21 themselves, would lead to a quagmire in the trial courts, and would be unfair to the other parties
22 to the litigation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.) Based on the foregoing,
23 Plaintiffs are obligated to follow the rules of the Court and the rules of the State of California
24 regardless of whether or not they are or were represented by a licensed attorney.

25 **C. PLAINTIFFS LACK STANDING TO FILE A CLAIM BASED ON THE LOAN**

26 Plaintiffs admit that they were not parties to the Loan and have made no allegations that
27 they ever assumed the Loan. (Complaint ¶35 “plaintiff’s names were not on the deed ...”).
28 Moreover, Plaintiffs’ purported interest in the Property – a Grant deed transferring a 1% interest

1 to each Fermin Aniel and Erlinda Aniel – did not occur until February 3, 2011. (RJN Ex. 5).
2 More specifically, the purported transfer did not occur until two months after Plaintiffs’
3 Bankruptcy was discharged, thereby rendering any and all arguments regarding the Bankruptcy
4 invalidating the foreclosure sale process as meritless. In addition, Plaintiffs’ claims that they
5 owned a 50% interest in the Property as early as February 2009 (*see* Complaint ¶35, and RJN Ex.
6 4 – Bankruptcy schedules) are not only inaccurate, but improper and a blatant misrepresentation
7 to this Court and the United States Bankruptcy Court.

8 In addition, it is black letter law in California that a plaintiff challenging any irregularity
9 in a foreclosure sale must tender the amount due. (*See Abdallah v. United Savings Bank*, 43 Cal.
10 App. 4th 1101, 1109 -1110 (Ct. App. 1996). (“[A]ppellants are required to allege tender of the
11 amount of [the] secured indebtedness in order to maintain any cause of action for irregularity in
12 the sale procedure... and they failed to do so.”)). Without such a tender, there is no standing to
13 sue. (*Id.*). Thus, the tender rule bars not only a “wrongful foreclosure” claim, but all causes of
14 action that are “implicitly integrated” with the sale. (*Arnolds Management Corp. v. Eischen*, 158
15 Cal. App. 3d 575, 579 (Ct. App. 1984) (affirming sustaining of demurrer without leave to amend
16 on claims of fraud and negligence, as well as wrongful foreclosure, relating to defective notice of
17 foreclosure sale). *See also Karlsen v. American Sav. & Loan Ass’n*, 15 Cal. App. 3d 112, 121
18 (Ct. App. 1971) (holding plaintiff’s claims for breach of oral agreement, for an accounting, and
19 for constructive trust fail because plaintiff never made a valid tender.)).

20 Further, “[t]he rules which govern tender are strict and are strictly applied... The tenderer
21 must do and offer everything that is necessary on his part to complete the transaction, and must
22 fairly make his purpose known without ambiguity, and the act of tender must be such that it needs
23 only acceptance by the one to whom it is made to complete the transaction.” (*Nguyen v. Calhoun*,
24 105 Cal. App. 4th 428, 439 (Ct. App. 2003)). Here, Plaintiffs do not allege any tender at all,
25 much less an unambiguous tender. They cannot, therefore, challenge the foreclosure process.
26 Moreover, because all of the other claims are integrated with their allegations of an irregular
27 foreclosure, they lack standing to bring those. As a result, the demurrer to all of Plaintiffs’ claims
28 should be sustained on this basis alone.

1 Based on the foregoing, it is clear that Plaintiffs have no interest in the Loan. Moreover,
2 they have, at best, a questionable interest in the Property and have failed to plead the ability or
3 even willingness to tender the amounts due. Consequently, Plaintiffs lack standing to raise any
4 claim based on the Loan or Deed of Trust. As each of Plaintiffs' six claims are based on the
5 enforcement of the Loan or Deed of Trust, each of their claims fails as a matter of law and there is
6 no manner in which they can amend their pleading to overcome this fatal defect. Consequently,
7 the demurrer must be sustained without leave to amend and the Moving Defendants should be
8 dismissed from the action with prejudice.

9 Plaintiffs' lack of standing is a fatal defect to each of their six claims which simply cannot
10 be overcome with additional pleading. However, as more fully explained below, each of their six
11 claims are also insufficiently plead and fail on the merits.

12 **D. PLAINTIFFS' CLAIM FOR VIOLATION OF ROSENTHAL ACT FAILS AS PLEAD**

13 Numerous courts have held that proceeding against a secured property on a mortgage is
14 not a debt collection activity and, therefore, foreclosures are not subject to the Rosenthal Act.
15 See, e.g., *Putkkuri v. Recontrust Co.*, 2009 WL 32567, *2 (S.D. Cal. 2009) ("The Complaint fails
16 to state a claim under the [Rosenthal Act] because Plaintiff challenges the lawfulness of
17 foreclosure proceedings on her home pursuant to a deed of trust."); *Ines v. Countrywide Home*
18 *Loans, Inc.*, 2008 WL 4791863, *3 (S.D. Cal. 2008) ("The Court finds that the Complaint arises
19 out of the allegedly unlawful foreclosure on Plaintiff's property pursuant to a deed of trust, which
20 does not fall within the meaning of the [Rosenthal Act].").

21 In addition, the Rosenthal Act does not apply to this loan, which was for a rental property.
22 The Rosenthal Act only applies to credit acquired "primarily for personal, family, or household
23 purposes." Cal. Civ. Code § 1788.2(e). Plaintiffs admit that the Property was a rental and not
24 their primary residence or the residence of the Estivas. (See Complaint ¶42 ("plaintiffs were only
25 aware of the impending trustee sale through their tenants.")). Since the Loan was a business
26 investment for rental purposes, the Rosenthal Act simply does not apply.

27 Finally, Plaintiffs were not parties to the Loan. Consequently, there is no way in which
28 Moving Defendants could have violated the Rosenthal Act as Plaintiffs were not the debtors

1 under the Loan. Put differently, Moving Defendants have not tried to collect a debt from
2 Plaintiffs because there is no debt owed by Plaintiffs to Moving Defendants. As a result, there
3 cannot be a violation of the Rosenthal Act.

4 Based on the foregoing, the Rosenthal Act simply does not apply. There is no manner in
5 which Plaintiffs can amend this claim to overcome its deficiencies. Therefore the demurrer
6 should be sustained without leave to amend.

7 **E. PLAINTIFFS' CLAIM FOR FRAUD FAILS AS PLEAD**

8 Under well-established California law, "general pleading of the legal conclusion of fraud
9 is insufficient." (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.)
10 Instead, "every element of the cause of action for fraud must be alleged in full, factually and
11 specifically, and the policy of liberal construction of pleading will not usually be invoked to
12 sustain a pleading that is defective in any material respect." (*Ibid.*). "The requirement of
13 specificity in a fraud action against a corporation requires the plaintiff to allege the names of the
14 persons who made the allegedly fraudulent representations, their authority to speak, to whom they
15 spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mut.*
16 *Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

17 Plaintiffs have failed to meet this minimum threshold. The Complaint fails to state the
18 who, what or when allegations required when pleading fraud against a corporation. Instead,
19 Plaintiffs have attempted to plead a cause of action with conclusive statements against
20 "defendants" in general. As a result, the claim is insufficiently plead as a matter of law and the
21 demurrer must be sustained.

22 **F. PLAINTIFFS' CLAIM FOR WRONGFUL FORECLOSURE FAILS AS PLEAD**

23 In addition to lack of standing to challenge the sale (based both on lack of privity and
24 failure to tender as discussed above) this claim is completely without merit. The basis of
25 Plaintiffs' claim is that ETS did not have the authority to act as the Trustee and carry out the
26 foreclosure process. This, along with Plaintiffs' allegations that the foreclosure was not properly
27 conducted, are simply wrong.

28

1 The gravamen of Plaintiffs' argument is based on their inaccurate allegation that a SOT
2 was never recorded. (See Complaint ¶69 ("ETS made a fatal mistake in claiming to act as a
3 trustee without a recorded substitution of trustee)). However, an SOT substituting ETS in as the
4 Trustee was recorded on December 17, 2008 prior to recording the NOD. (See RJN Ex. 1 and
5 Complaint Ex. B). Consequently, as of December 17, 2008, ETS had the authority, as the
6 Trustee, to initiate and complete the foreclosure pursuant to the terms of the Deed of Trust and
7 California Civil Code §2924 *et seq.* As a result, Plaintiffs' entire argument regarding wrongful
8 foreclosure is without merit.

9 Plaintiffs also argue that MERS had no authority to assign the deed. Plaintiffs are simply
10 wrong. No California statute or case law prohibits a lender from designating its nominee as
11 beneficiary of the deed of trust securing its loan. Furthermore, under the terms of the Deed of
12 Trust, MERS was the beneficiary, acting as nominee for the lender or the lender's successors and
13 assigns. (Complaint Ex. B, Page 2). Plaintiffs advance no cogent reason and cite no authority
14 prohibiting MERS from acting in that capacity. As the beneficiary, MERS has full authority to
15 assign its beneficial interest in the Loan to any party, including HSBC. Therefore, this argument
16 is similarly without merit.

17 Based on the foregoing, as well as Plaintiffs' complete lack of standing, this claim must be
18 dismissed without leave to amend.

19 **G. PLAINTIFFS' CLAIM FOR VIOLATION OF B&P CODE §17200 FAILS AS PLEAD**

20 Plaintiffs have failed to establish a predicate act or violation of law to support their
21 §17200 claim. "A Court may not allow plaintiff to plead around an absolute bar to relief simply
22 by recasting the cause of action as one for unfair competition." (*Chabner v. United of Omaha*
23 *Life Ins. Co.*, 225 F.3d 1042, 1048 (9th Cir. 2000).) In other words a B&P §17200 claim cannot
24 be used to plead around deficiencies in other possible causes of action³. This is what Plaintiffs
25

26
27 ³ See *Glenn K. Jackson Inc. v. Roe*, 273 F.3d 1192, 1203 (9th Cir. 2001) (dismissing UCL
28 claim where underlying negligence and fraud claims were insufficient as a matter of law); see
also *Krantz v. BT Visual Images, L.L.C.*, 89 Cal.App.4th 164, 178 (2001) (the viability of a UCL
claim stands or falls with the antecedent substantive causes of action)

1 are attempting with the fourth cause of action. Consequently, since all of the predicate claims fail
2 as a matter of law for the reasons stated herein, the §17200 claim is also without merit.

3 In addition, since the passage of Proposition 64 in November 2004, plaintiffs only have
4 standing to challenge a business practice under the UCL if they have (1) “suffered injury in fact”
5 and (2) “lost money or property as a result of” the unfair competition he challenges. (Cal. Bus. &
6 Prof. Code, § 17204; *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal.4th 223, 227
7 (2006)). “The phrase ‘as a result’ in its plain and ordinary sense means ‘caused by’ and requires a
8 showing of causal connection or reliance on the alleged [unfair competition].” (*Hall v. Time, Inc.*,
9 158 Cal.App.4th 847, 855 (2008)). Plaintiffs have not alleged that they have suffered any injury
10 in fact, that they were damaged by the alleged acts of Moving Defendants, or that they have lost
11 any money or property – especially based on their lack of standing as discussed above.
12 Consequently, Plaintiffs also lack standing under §17200.

13 As a result, the fourth cause of action fails as a matter of law and the demurrer should be
14 sustained without leave to amend.

15 **H. PLAINTIFFS’ CLAIM FOR INJUNCTIVE RELIEF FAILS AS PLEAD**

16 Injunctive relief is not a cause of action. It is a remedy that must be tethered to some
17 independent legal duty owed by the defendant to the plaintiff. (*McDowell v. Watson*, 59
18 Cal.App.4th 1155, 1159 (1997); *Cox Commc’ns PCS, L.P. v. City of San Marcos*, 204 F.Supp.2d
19 1272, 1283 (S.D.Cal.2002)). The injunctive relief claim, therefore, cannot stand on its own. As
20 already shown, plaintiffs’ other claims are defective. Consequently, there is nothing to support
21 plaintiffs’ request for an injunction, and the demurrer to this claim, too, should be sustained
22 without leave to amend.

23 **I. PLAINTIFFS’ CLAIM FOR QUIET TITLE FAILS AS PLEAD**

24 A cause of action for quiet title requires (1) a legal description of the property, (2) the title
25 of plaintiff and the basis of the title, (3) the adverse claims to the title, (4) the date as of which the
26 determination is sought, and (5) a prayer for determination of the title of the plaintiff as against
27 the adverse claim. (CCP §761.020). The Complaint fails to satisfy each these elements.
28

1 Plaintiffs' purported interest in the Property did not arise until February 3, 2011. (RJN
2 Ex. 5). On this point alone, Plaintiffs cannot seek to quiet title to the Property prior to that date.
3 Though the foreclosure sale has not been completed, the Loan was entered into with the Estivas in
4 2007, the NOD was recorded in December of 2008, and the NOS-2 was recorded in December
5 2010. All of these took place well in advance of Plaintiffs gaining an interest in the Property.
6 Consequently, any interest obtained by Plaintiffs in the Property would be subject to the valid lien
7 created by the Deed of Trust.

8 Plaintiffs have failed to allege the basis of their title (their allegations on this point are
9 misleading and inaccurate), the adverse claim of defendants (to that of Plaintiffs), or the date as of
10 which the determination is sought. Instead they seek to stop the foreclosure sale under the guise
11 of a quiet title claim. No matter how it is construed, the claim is woefully inadequate and fails as
12 plead. Therefore, the demurrer should be sustained without leave to amend.

13 **IV. CONCLUSION**

14 Plaintiffs lack standing to bring this action under all of the theories plead. Moreover, each
15 claim is independently deficient and subject to a demurrer. For the foregoing reasons, the
16 demurrer should be sustained and GMAC, ETS, HSBC and MERS should be dismissed from this
17 action with prejudice.

18
19 DATED: March 7, 2011

SEVERSON & WERSON
A Professional Corporation

20
21 By: 
22

Edward R. Buell III

23 Attorneys for Defendants
24 GMAC Mortgage, LLC f/k/a GMAC Mortgage
25 Corp. and GMAC Mortgage, ETS Services,
26 LLC, HSBC Bank, U.S.A. as Trustee for DALT
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3 SEVERSON & WERSON
4 A Professional Corporation
5 One Embarcadero Center, Suite 2600
6 San Francisco, CA 94111
7 Telephone: (415) 398-3344
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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN MATEO

14 FERMIN SOLIS ANIEL, an individual;
15 ERLINDA ABIBAS ANIEL, an individual,,

16 Plaintiffs,

17 vs.

18 ETS SERVICES, LLC, a California Limited
19 Liability Corporation; GMAC MORTGAGE,
20 LLC F/K/A GMAC MORTGAGE
21 CORPORATION AND GMAC MORTGAGE;
22 HSBC BANK, U.S.A. as Trustee for DALT
23 2007-A03; MORTGAGE ELECTRONIC
24 SYSTEMS, INC.; PITE DUNCAN, LLP;
25 AND DOES 1-50 inclusive,

26 Defendants.

Case No.: CIV 502857

**PROOF OF SERVICE RE DEMURRER
OF ETS SERVICES, LLC, GMAC
MORTGAGE, LLC, HSBC BANK,
U.S.A., AND MERS TO PLAINTIFFS'
VERIFIED COMPLAINT**

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion

PROOF OF SERVICE

Aniel vs. ETS Services, et al.

San Mateo County Superior Court Case No. CIV 502857

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following documents:

NOTICE OF DEMURRER AND DEMURRER OF ETS SERVICES, LLC, GMAC MORTGAGE, LLC, HSBC BANK, U.S.A., AND MERS TO PLAINTIFFS' VERIFIED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; and REQUEST FOR JUDICIAL NOTICE IN SUPPORT THEREOF

on all interested parties in said case addressed as follows:

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Drive
Hillsborough, CA 94010

In Pro Per

Tel: 650-284-6417
Fax: 650-571-5829

☒ (BY MAIL) By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on March 7, 2011.


Kathi de Leon

1 JOHN B. SULLIVAN (State Bar No. 96742)
EDWARD R. BUELL III (State Bar No. 240494)
2 SEVERSON & WERSON
A Professional Corporation
3 One Embarcadero Center, Suite 2600
San Francisco, CA 94111
4 Telephone: (415) 398-3344
Facsimile: (415) 956-0439

5 Attorneys for Defendants
6 GMAC Mortgage, LLC f/k/a GMAC
Mortgage Corp. and GMAC Mortgage, ETS
7 Services, LLC, HSBC Bank, U.S.A. as
Trustee for DALT 2007-A03, Mortgage
8 Electronic Registration Systems, Inc.
(erroneously named herein as Mortgage
9 Electronic Systems, Inc.)

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN MATEO

12 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

13 Plaintiffs,

14 vs.

15 ETS SERVICES, LLC, a California Limited
16 Liability Corporation; GMAC MORTGAGE,
LLC F/K/A GMAC MORTGAGE
17 CORPORATION AND GMAC MORTGAGE;
HSBC BANK, U.S.A. as Trustee for DALT
18 2007-A03; MORTGAGE ELECTRONIC
SYSTEMS, INC.; PITE DUNCAN, LLP;
19 AND DOES 1-50 inclusive,

20 Defendants.
21
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Case No.: CIV 502857

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER OF ETS
SERVICES, LLC, GMAC MORTGAGE,
LLC, HSBC BANK, U.S.A., AND MERS
TO PLAINTIFFS' VERIFIED
COMPLAINT**

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion

Pursuant to Evidence Code section 452(h), which allows the Court to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," defendants GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage ("GMACM"), ETS Services, LLC ("ETS"), HSBC Bank, U.S.A. as Trustee for DALT 2007-A03 ("HSBC") and Mortgage Electronic Registration Systems, Inc. ("MERS") (collectively referred to as "Moving Defendants") request that the Court take judicial notice of the following recorded documents, because they are official public records, duly recorded in the Official Records of San Mateo County, the contents and authenticity of which "cannot be reasonably controverted." (See *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549 ("[t]he court may take judicial notice of recorded deeds").)

Exhibit 1: The Substitution of Trustee recorded December 17, 2008, which was recorded with the San Mateo County Recorder's Office as Document 2008-135230. A true and correct copy of said Substitution of Trustee is attached hereto as Exhibit 1.

Exhibit 2: The Notice of Trustee's Sale ("NOS-1") recorded March 20, 2009, which was recorded with the San Mateo County Recorder's Office as Document 2009-031269. A true and correct copy of said NOS-1 is attached hereto as Exhibit 2.

Exhibit 3: The Notice of Trustee's Sale ("NOS-2") recorded December 31, 2010, which was recorded with the San Mateo County Recorder's Office as Document 2010-163953. A true and correct copy of said NOS-2 is attached hereto as Exhibit 3.

Exhibit 4: Pursuant to Evidence Code §452(d), which allows the Court to take judicial notice of "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States," Moving Defendants request that this Court take judicial notice of the following documents from the United States Bankruptcy Court, the contents and authenticity of which cannot be reasonably controverted. The Bankruptcy Schedules filed by Plaintiffs in their Chapter 11 (later converted to Chapter 7) Bankruptcy in the United States Bankruptcy Court, Northern District of California, Case No. 09-bk-30452. A true and correct copy of the Schedules is attached hereto as Exhibit 4.

1 **Exhibit 5:** The Grant Deed recorded February 3, 2011 purporting to transfer a 1%
2 interest in the subject property to each of the Plaintiffs, which was recorded with the San Mateo
3 County Recorder's Office as Document 2011-014606. A true and correct copy of said Grant
4 Deed is attached hereto as Exhibit 5.

5 DATED: March 7, 2011

SEVERSON & WERSON
A Professional Corporation

By: 

Edward R. Buell III

Attorneys for Defendants
GMAC Mortgage, LLC f/k/a GMAC Mortgage
Corp. and GMAC Mortgage, ETS Services,
LLC, HSBC Bank, U.S.A. as Trustee for DALT
2007-A03, Mortgage Electronic Registration
Systems, Inc. (erroneously named herein as
Mortgage Electronic Systems, Inc.)

EXHIBIT 1

RECORDING REQUESTED BY:

2008-135230

09:25am 12/17/08 ST Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



LSI TITLE COMPANY, INC.

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

TS NO : GM 172824-C
LOAN NO : 1440

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 3/22/2007 and recorded on 4/3/2007 as Instrument No. 2007-050317, in Book, Page of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated : 12/15/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.


Rosalie Solano, ASSISTANT SECRETARY

State of California) ss.
County of Los Angeles }

On 12/15/2008 before me, Dee C. Ortega Notary Public, personally appeared Rosalie Solano who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature


Dee C. Ortega

(Seal)

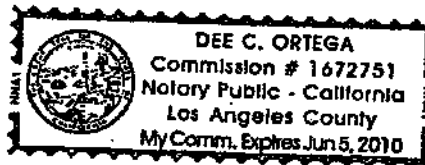


EXHIBIT 2

RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. GM-172824-C
Loan No. 1440

2009-031269

09:24am 03/20/09 NT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 9 0 0 3 1 2 6 9 A R *

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/22/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Recorded 4/3/2007 as Instrument No. 2007-050317 in Book, page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 4/13/2009 at 1:00 PM

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California

Property Address is purported to be: 801 FOOTHILL DRIVE
SAN MATEO, California 94402-0000

APN #: 034-312-030-9

The total amount secured by said instrument as of the time of initial publication of this notice is \$1,110,157.53, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Date: 3/18/2009

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
Sales Line: 714-730-2727

Omar Solizano, TRUSTEE SALE OFFICER

EXHIBIT 3

2010-163953

8:41 am 12/31/10 NT Fee: 18.00
Count of Pages 2
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. GM-172824-C
Loan No. 440

Investor No. 0481

1572

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/22/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Recorded 4/3/2007 as Instrument No. 2007-050317 in Book , page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 1/27/2011 at 1:00 PM

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California

Property Address is purported to be: 801 FOOTHILL DRIVE
SAN MATEO, California 94402-0000

APN #: 034-312-030-9

The total amount secured by said instrument as of the time of initial publication of this notice is **\$1,274,601.00**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Pursuant to California Civil Code §2923.54 the undersigned, on behalf of the beneficiary, loan servicer or authorized agent, declares as follows:

- [1] The mortgage loan servicer has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.53 that is current and valid on the date the notice of sale is filed;
- [2] The timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or 2923.55.

T.S. No. GM-172824-C
Loan No. [REDACTED] 1440
Investor No. [REDACTED] 814

Date: 12/28/2010

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3126
Sale Line: 714-730-2727


Meanna Petersen, TRUSTEE SALE OFFICER

EXHIBIT 4

FILED
AUG 31 2009

B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

In re Aniel, Fermin & Erlinda
Debtor

Case No. 09-30452

Amended

Chapter 11

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	YES	2	\$ 5,310,825.00		
B - Personal Property	YES	4	\$ 304,983.00		
C - Property Claimed as Exempt	YES	2			
D - Creditors Holding Secured Claims	YES	4		\$ 8,718,000.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	NO			\$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims	NO			\$ 242,882.25	
G - Executory Contracts and Unexpired Leases	NO				
H - Codebtors	NO				
I - Current Income of Individual Debtor(s)	NO				\$ 20,333.07
J - Current Expenditures of Individual Debtors(s)	NO				\$ 14,258.00
TOTAL		12	\$ 5,615,808.00	\$ 8,960,882.25	

B6A (Official Form 6A) (12/07)

In re Aniel, Fermin & Erlinda
Debtor

Case No. 09-30452
(If known)

Amended

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
75 Tobin Clark Drive Hillsborough, CA 94010 Single Family Residence [Debtors own 1/2 Int. in Property]	Joint Tenants	J	1,275,000.00 <i>(ONE-HALF INTEREST OF FAIR AS OF MARCH 2,550,000.00)</i>	1,250,000.00
833 Clearfield Drive Millbrae, CA 94030 Single Family Resident [Fermin Aniel only Debtor on Title]	Joint Tenants	J	1,200,000.00	1,500,000.00
1061 Sycamore Drive Millbrae, CA 94030 Single Family Residence	Joint Tenants	J	910,825.00	1,200,000.00
3 Fairmont Drive Daly City, CA 94015 Single Family Residence	Joint Tenants	J	550,000.00	702,000.00

Total▶ 4,035,825.00
(Report also on Summary of Schedules.)

B6A (Official Form 6A) (12/07)

In re Aniel, Fernin & Erlinda
Debtor

Case No. 09-30452

(If known)

Amended SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
418 Persia Avenue San Francisco, CA 94112	Joint Tenants	J	255,000.00	374,000.00
Single Family Residence			(ONE-HALF INTEREST OF FMV AS OF MARCH 510,000.00)	748,000.00
1881 Earl Avenue San Bruno, CA 94066	Joint Tenants	J	370,000.00	422,500.00
Single Family Residence			(ONE-HALF INTEREST OF FMV AS OF MARCH 740,000.00)	845,000.00
801 Foothill Drive San Mateo, CA 94022	Joint Tenants	J	650,000.00	612,500.00
Single Family Residence			(ONE-HALF INTEREST OF FMV AS OF MARCH 1,300,000.00)	1,225,000.00
Total▶			1,275,000.00	

(Report also on Summary of Schedules.)

B 6B (Official Form 6B) (12/07)

In re Aniel Fermin & Erlinda
Debtor

Case No. 09-30452
(If known)

Amended SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.		See Attached	C	2,299.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Furnitures, Computer, Rugs, Piano Location: In debtor's primary residence	C	10,000.00
5. Books, pictures and other art objects; antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothing	C	1,700.00
7. Furs and jewelry.		Watch and Jewelry	C	10,000.00
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Farmer Insurance Life Insurance [736.21 - W] AllState Insurance Life Ins. [0.00 - W]	W	1,336.21
10. Annuities. Itemize and name each issuer.	X	Industrial Alliance Pacific Life Ins.[H - 600.00]		
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			

B 6B (Official Form 6B) (12/07) - Cont.

In re Aniel Fermin & Erlinda
Debtor

Case No. 09-30452
(If known)

Amended
SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Erlinda Thrift & Savings Plan CSRS- Civil Service Retirement System	H	30,000.00
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.		Negotiable Instrument U.S. Savings Bond Series EE	C	1,500.00
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.		CA Tax Refund	J	198.00
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		Claim against Lenders for TILA	C	200,000.00

In re: Aniel, Fermin & Erfinda

Case No. 09-30452

Schedule B - Personal Property

Item #2

Name of Bank	Account	Balance
Citibank Checking Account	0141 C	549.00
Cibank Checking Account	6486 W	450.00
Citibank Savings Account	8831 J	1,300.00
Total:		2,299.00

B 68 (Official Form 68) (12/07) - Cont.

In re Aniel Fermin & Erlinda
Debtor

Case No. 09-30452
(If known)

Amended
SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		1999 Lexus RX 300 [9,000.00] 2003 Mercedes ML500 [10,000.00]	C	37,950.00
26. Boats, motors, and accessories.	X	2006 Mercedes R350 [28,950.00]		
27. Aircraft and accessories.				
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
Total				\$ 304,983.00

(Include amounts from any continuation
sheets attached. Report total also on
Summary of Schedules.)

B 6C (Official Form 6C) (12/07)

In re Aniel, Fermin & Erlinda
Debtor

Case No. 09-30452
(If known)

Amended

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

- ☐ 11 U.S.C. § 522(b)(2)
☒ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds \$136,875.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
75 Tobin Clark Drive Hillsborough, CA 94010	704.710;740.720;704.730	175,000.00	1,275,000.00
Single Family Residence [Debtors own 1/2 Interest]			
Checking & Savings Acct	703.140(b)(5)	1,100.00	2,299.00
Furnitures, Computer, Rugs, Piano	703.140(b)(3)	10,000.00	10,000.00
Location: In debtors possession			
Clothing [In debtors possession]	703.140(b)(3)	1,700.00	1,700.00
Watch and Jewelry [In debtors possession]	703.140(b)(4)	1,350.00	10,000.00
ERISA Thrift & Savings Plan	11 U.S.C. 522	30,000.00	30,000.00
CSRS - Civil Service Retirement System			
Negotiable Instrument US Svgs Bond Series EE	703.140(b)(5)	1,500.00	1,500.00

B 6D (Official Form 6D) (12/07)

In re Aniel, Fermin & Erlinda
Debtor

Case No. 09-30452

(If known)

Amended
SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. <u>3492</u> GMAC 3451 Hammond Ave Waterloo, IA 59704	J	DOT: 6/4/07 Loan: 6/4/07 75 Tobin Clark Dr Hillsborough, CA VALUE \$ 2,550,000.00	X	X	X	2,000,000.00	0.00
ACCOUNT NO. <u>0531</u> Washington Mutual P.O. Box 78065 Phoenix, AZ 85062-8065	H	DOT: 6/4/07 Loan: 6/4/07 75 Tobin Clark Dr Hillsborough, CA VALUE \$ 2,550,000.00	X	X	X	500,000.00	0.00
ACCOUNT NO. <u>3378</u> Aurora Loan Services 2617 College Park Dr NE 69363-1706	H	DOT: 11/2/05 Loan: 11/2/05 833 Clearfield Dr Millbrae, CA 9403 VALUE \$ 1,200,000.00	X	X	X	1,000,000.00	0.00
Subtotal ▶ (Total of this page)						\$ 3,500,000.00	\$ 0.00
Total ▶ (Use only on last page)						\$	\$

continuation sheets
attached

(Report also on Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

B 6D (Official Form 6D) (12/07) - Cont.

2

In re Aniel, Fermin & Erlinda
Debtor

Case No. 09-30452

(if known)

Amended
SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. [REDACTED] 3409 Indymac Federal Bk P O Box 4045 Kalamazoo, MI 49003		H	DOT: 11/2/05 2nd HELOC: 7/05 833 Clearfield Dr Millbrae, CA 94030 VALUE \$ 1,200,000.00	X	X	X	250,000.00	50,000.00
ACCOUNT NO. PRIVATE Zenaida Flores c/o Property Services 1499 Bayshore Hwy 126 Burlingame, CA 94010		H	DOT: 11/2/05 3rd Loan: PRIVATE 833 Clearfield Dr Millbrae, CA 94030 VALUE \$ 1,200,000.00	X	X	X	250,000.00	250,000.00
ACCOUNT NO. [REDACTED] 153 EMC P O Box 619063 Dallas, TX 75261-9063		H	DOT: 10/3/06 Loan: 10/3/06 1061 Sycamore Dr Millbrae, CA 94030 VALUE \$ 910,825.00	X	X	X	1,045,000.00	134,175.00
ACCOUNT NO. [REDACTED] 183 National City L007180 P O Box 94991-44101 Cleveland, OH 08981		H	DOT: 10/3/06, 2nd Chgd off 11/08 1061 Sycamore Dr Millbrae, CA 94030 VALUE \$ 910,825.00	X	X	X	155,000.00	155,000.00
ACCOUNT NO. [REDACTED] 5580 AHMSI P O BOX 631730 Irving, TX 75063-1730		J	DOT: 4/17/07 Loan: 04/07 418 Persia Avenue San Francisco, CA VALUE \$ 510,000.00	X	X	X	676,000.00	162,000.00
Sheet no. <u>2</u> of <u>4</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (s) ▶ (Total(s) of this page)	\$ 2,376,000.00
							Total(s) ▶ (Use only on last page)	\$ 751,175.00
							(Report also on Summary of Schedules.)	(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

B 6D (Official Form 6D) (12/07) -- Cont.

2

In re Aniel, Fermin & Erlinda
Debtor

Case No. 09-30452

(if known)

Amended
SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBETOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. [REDACTED] 5390 National City L007180 P O Box 94991-44101 Cleveland, OH 08981		J	DOT: 4/17/07 2nd HELOC: 4/07 418 Persia Avenue San Francisco, CA VALUE \$ 510,000.00	X	X	X	72,000.00	0.00
ACCOUNT NO. [REDACTED] 1440 GMAC 2711 North Haskell Ave Dallas, TX 75201	X	J	DOT: 3/22/07 Loan: 3/22/07 801 Foothill Drive San Mateo, CA VALUE \$ 1,300,000.00	X	X	X	1,000,000.00	0.00
ACCOUNT NO. UNK National City P O Box 856153 Louisville, KY 40285-6153	X	J	DOT: 3/22/07 2nd Heloc: 4/2/07 801 Foothill Dr San Mateo, CA VALUE \$ 1,300,000.00	X	X	X	223,000.00	0.00
ACCOUNT NO. [REDACTED] 6212 Countrywide P O Box 10219 Van Nuys, CA 91410 Orig. A/C 47976492		J	DOT: 2/23/04 Loan: 02/04 3 Fairmont Drive Daly City, CA 94015 VALUE \$ 650,000.00	X	X	X	497,000.00	0.00
ACCOUNT NO. [REDACTED] 0505 Citibank MS 504A P O Box 790110 St Louis, MO 63179		J	DOT: 2/23/04, 2nd Charged off 02/06 3 Fairmont Drive Daly City, CA 9401 VALUE \$ 650,000.00	X	X	X	205,000.00	52,000.00
Sheet no. <u>3</u> of <u>4</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims							\$ 1,997,000.00	\$ 124,000.00
Subtotal (s) ▶ (Total(s) of this page)							\$	\$
Total(s) ▶ (Use only on last page)							\$	\$

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

H 6D (Official Form 6D) (12/07) - Cont.

2

In re Aniel, Fernin & Eriinda
Debtor

Case No. 09-30452

(if known)

Amended
SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBATOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. [REDACTED] 3053 Lifton Loan Servicing 4828 Loop Central Dr Houston, TX 77081	X	J	DOT: 08/02/06 Loan: 08/09/06 1881 Earl Avenue San Bruno, CA VALUES \$ 740,000.00	X	X	X	712,500.00	0.00
ACCOUNT NO. Bank of America NC4-105-03-14 4181 Piedmont Pwy Greensborough, NC 27410	X	J	DOT: 08/02/06 2nd HELOC 8/9/06 1881 Earl Avenue San Bruno, CA VALUES \$ 740,000.00	X	X	X	132,500.00	105,000.00
ACCOUNT NO. VALUES \$								
ACCOUNT NO. VALUES \$								
ACCOUNT NO. VALUES \$								
Sheet no. <u>4</u> of <u>4</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims	Subtotal (s) ▶ (Total(s) of this page)						\$ 845,000.00	\$ 105,000.00
	Total(s) ▶ (Use only on last page)						\$ 8,718,000.00	\$ 980,175.00

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

EXHIBIT 5

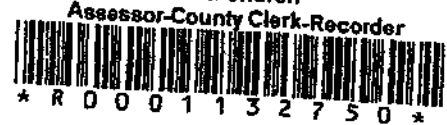
Recording requested by:
ERLINDA A ANILL

2011-014606

2:17 pm 02/03/11 DE Fee: 18.00
Count of Pages 2 SM
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder

And when recorded, mail this deed and tax
statements to.

ERLINDA A. ANILL
75 TOWIN CLARK DR.
HILLSBOROUGH, CA 94010



GRANT DEED

TRA: _

APN. 034-312-030

CITY OF SAN MATEO REAL PROPERTY CONVEYANCE TAX	
AMOUNT OF TAX DUE COMPUTED ON TOTAL VALUE OF THE CONSIDERATION	
Declarant's Signature (or Agent)	Firm Name

DOCUMENTARY TRANSFER TAX \$	19.00
EXEMPTION (R&T CODE)	
EXPLANATION	
Signature of Declarant or Agent determining tax	

For a valuable consideration, receipt of which is hereby acknowledged.

CORAZON G. ESTIVA, UNMARRIED WOMAN

hereby grant(s) to
ERMIN S. ANIEL 1% INTEREST, ERLINDA A. ANIEL 1% INTEREST AS HUSBAND AND WIFE AND
CORAZON G. ESTIVA WITH 98% INTEREST AS TENANCY IN COMMON
the following real property in the City of SAN MATEO, County of SAN MATEO
California:

SEE ATTACHED LEGAL Description.

Date: 2-3-11
(Signature of declarant)
Date: _____
(Signature of declarant)

State of California

County of San Francisco

On February 20, 2011, before me, Natalia Ormuela personally appeared Corazon G. Estiva who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary



FILE NO. 00-000000-0000
Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

ENDORSED FILED
SAN MATEO COUNTY

MAY 26 2011

Clerk of the Superior Court
By S. Peyrot
DEPUTY CLERK

1 FERMIN SOLIS ANIEL -IN PRO SE-
2 ERLINDA ABIBAS ANIEL AND
3 75 Tobin Clark Drive
4 Hillsborough, CA 94010
5 Phone: (650) 284-6417
6 Fax: (650) 571-5829

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN MATEO

9 FERMIN SOLIS ANIEL, an individual;
10 ERLINDA ABIBAS ANIEL, an individual;

Case No.: CIV 502857

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a California Limited
14 Liability Corporation; GMAC MORTGAGE,
15 LLC F/K/A GMAC MORTGAGE
16 CORPORATION AND GMAC MORTGAGE;
17 HSBC BANK, U.S.A as Trustee for DALT
18 2007-AO3; MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS, INC; PITE
20 DUNCAN, LLP; AND DOES 1- 50 inclusive.

21 Defendants

22 **OPPOSITION TO DEFENDANT'S, ETS**
23 **SERVICES, LLC, A CALIFORNIA**
24 **LIMITED LIABILITY CORPORATION;**
25 **GMAC MORTGAGE, LLC F/K/A**
26 **GMAC MORTGAGE CORPORATION**
27 **AND GMAC MORTGAGE; HSBC**
28 **BANK, U.S.A AS TRUSTEE FOR DALT**
2007-AO3; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC,
DEMURRER PLAINTIFFS'
COMPLAINT

Date: June 9, 2011
Time: 9:00 a.m.
Dept: LM

Complaint filed: February 02, 2011

29 **I. INTRODUCTION**

30 Plaintiffs, Erlinda Abibas Aniel and Fermin Solis Aniel, hereby oppose to Defendants,
31 ETS Services, LLC ("ETS"), GMAC Mortgage. LLC ("GMAC"), HSBC Bank, U.S.A., as
32 Trustee for DALT 2007-AO3 ("HSBC"), and Mortgage Electronic Registration Systems, Inc
33 ("MERS"), Demurrer to the Plaintiffs' Complaint.

34 **II. LEGAL STANDARD**

1 A demurrer to a complaint tests only the legal sufficiency of the allegations. It does not
2 test their truth, the plaintiffs' ability to prove them, or the possible difficulty in making such
3 proof." Saunders v. Superior Court, (1994), 27 Cal. App. 4th 832, 840. A general demurrer
4 admits the truth of all material allegations in the complaint and all reasonable inferences which
5 can be drawn there from. Alcorn v. Anbro Engineering, Inc. (1970) 2 Cal.3d 493, 496. If the
6 plaintiff can state a cause of action under any possible legal theory, the demurrer should be
7 overruled. Von Batsch v. American Dist Telegraph Co. (1985) 175 Cal.App.3d 1111, 1117.

8
9 The sole issue raised by a general demurrer is whether the facts pleaded state a valid
10 cause of action, not whether they are true. Thus, no matter how unlikely or improbable,
11 plaintiff's allegations must be accepted as true for the purpose of ruling on the demurrer. See
12 Del E. Webb Corp. v. Structural Materials Co. (1981), 123 Cal.App.3d 593, 604. Further, in
13 ruling on a demurrer, the trial court must accept as true all material facts properly pleaded in
14 plaintiff's petition, disregarding only conclusions of law and allegations contrary to judicially
15 noticed facts. Burt v. Co. of Orange (2004) 120 Cal.App.4th 273.

16 17 18 **III. ARGUMENT**

19 **A. Plaintiffs do have standing as they have equitable and legal interest in the** 20 **Property.**

21
22 Defendants claim that Plaintiffs have no interest in the property and cannot challenge a
23 foreclosure of the property. Defendants even claim that Plaintiffs' have misled its interest in the
24 property. However, the facts prove otherwise. Plaintiffs do have a 50% interest in the subject
25 property. Although Plaintiffs' were not named in the Promissory Note or the Deed of Trust at
26 the time Plaintiffs and Raul and Corazon Estiva purchased the property, Plaintiffs' collected
27 monthly rent from the Tenants, paid the mortgage payments, paid half of the income to the
28

1 Estivas, disclosed the rental income in their annual income tax report, paid for repairs, and
2 attempted to reorganize the debt in the Bankruptcy court under Chapter 11.

3
4 Also, on February 03, 2011, Plaintiffs and Corazon Estiva executed a grant deed,
5 purporting, on record, a one percent interest in the Deed of Trust. Plaintiffs only recorded a one
6 percent interest in the Deed in order not to pay the City of San Mateo Transfer tax because
7 Plaintiffs had already paid \$6,500.00 in transfer tax to the City of San Mateo when the Plaintiff
8 purchased the property in November 2006. Therefore, not only has Plaintiffs established a 50%
9 interest in the subject property; Plaintiffs' names also appear in the chain of title. Therefore,
10 Defendants cannot claim that Plaintiffs' have no interest in the property.

11
12 In Defendants' Demurrer, they only question Plaintiffs' standing as it pertains to the
13 wrongful foreclosure. However, even if Plaintiffs have no interest in the loan (which they do
14 have interest in the loan), Defendants are still liable for the other causes of actions that injured
15 the Plaintiffs.

16
17 **B. Plaintiffs do have a Fraud claim against GMAC.**

18
19 Defendants claim that Plaintiffs have not met the minimum threshold to sustain a Fraud
20 claim against GMAC. However, that argument is without merit based on the Plaintiffs'
21 complaint.

22 Plaintiffs were able to allege that Jeffrey Stephan is an employee of GMAC. See P's
23 Comp. ¶ 58. GMAC used their employee, Jeffrey Stephan, to execute an Assignment of Deed
24 that assigned interest in the Deed of Trust to HSBC. GMAC is only the loan servicer that
25 collects Plaintiffs' monthly payments to satisfy the debt on the mortgage. On May 26, 2009,
26 GMAC represented to the Plaintiffs that Jeffrey Stephan was a Vice President of MERS and was
27 authorized to assign beneficial interest to HSBC. GMAC knew at the time the Assignment of
28

1 Deed was executed that Jeffrey Stephan was a GMAC employee and not a MERS Vice
2 President. This was a clear misrepresentation by GMAC. Plaintiffs made these allegations in its
3 complaint. Because of GMAC's misrepresentation, HSBC was able to gain beneficial interest in
4 the Deed of Trust and continue with the foreclosure of the subject property.
5

6 **C. Plaintiffs do have a Fraud claim against HSBC.**

7 Like its agent, GMAC, HSBC played a major factor in the fraudulent scheme to
8 wrongfully foreclose Plaintiffs' property. Plaintiffs made these allegations in its Complaint.
9 HSBC represented to the Plaintiffs that they held beneficial interest in the Deed of Trust through
10 an Assignment of the Deed, where MERS, as nominee of MortgageIT, assigned beneficial
11 interest to HSBC. This representation was false and HSBC knew it was false. HSBC knew that
12 the Jeffrey Stephan was not a MERS Vice President and had no personal knowledge or authority
13 to execute an Assignment of the Deed in favor of HSBC.
14
15

16 Additionally, HSBC is a securitized trust. In a securitized trust, a specific procedure
17 must be followed in order to comply with the UCC and the Pooling Service Agreement. An
18 assignment of beneficial interest in the deed from MERS, as nominee for MortgageIT, to HSBC
19 violated the procedures under the PSA. HSBC knew that the PSA was not followed at the time
20 HSBC gained beneficial interest in the Deed of Trust. As a result, HSBC was able to wrongfully
21 foreclose on the property. Plaintiffs were damaged by losing their interest in the subject property
22 to an entity that had no interest nor should it have gained a windfall of profits in a foreclosure.
23
24

25 **D. Plaintiffs do have a Fraud claim against MERS.**

26 Plaintiffs were able to allege with specificity MERS' fraud against the Plaintiffs.
27 Plaintiffs alleged that the Assignment of Deed, a dated document, shows that Jeffrey Stephan
28 was a Vice President of MERS. MERS knew that information to be false at the time they made

1 that representation to the Plaintiffs through the Assignment of the Deed. In fact, Jeffrey Stephan
2 is a robo-signer and an employee of GMAC. Jeffrey Stephan was never a Vice President of
3 MERS. This misrepresentation lead to HSBC foreclosing the subject property.
4

5 The Assignment of Deed was acknowledged by Thomas P. Strain, a Pennsylvanian
6 Notary Public, who certified "under PENALTY OF PERJURY under the laws of the State of
7 California that the foregoing paragraph is true and correct." This was a violation of California
8 law as only a Notary Public in California may certify under the penalty of perjury under the laws
9 of State of California.
10

11 Additionally, MERS represented to the Plaintiffs that they substituted ETS as the
12 foreclosing trustee. However, MERS knew that representation to be false because MERS, in its
13 own capacity and not as a nominee for the Lender, cannot substitute the Trustee. This
14 misrepresentation lead to ETS filing a Notice of Trustee Sale and conducting a Trustee Sale.
15 Plaintiffs were damaged in that they lost their interest in the subject property. These
16 misrepresentations are based on fraudulent execution of the documentations Defendants
17 submitted to the Plaintiffs, County of San Mateo, and the Bankruptcy Court. These documents
18 alone are enough to satisfy the specificity requirement for fraud.
19
20

21 **E. Plaintiffs do have a Fraud claim against ETS.**

22 Like the other Defendants, most of the misrepresentations are contained in
23 documentations submitted by the Defendants. ETS represented that they were the foreclosing
24 Trustee because a Substitution of Trustee was executed on their behalf. However, MERS in its
25 own capacity could not substitute the Trustee. ETS knew this information but instead went
26 ahead and sent a Notice of Default and conducted a Trustee Sale. ETS' action directly resulted
27
28

1 in the wrongful foreclosure of the subject property. ETS was never the Trustee of the Plaintiffs'
2 Deed of Trust and should have never been allowed to conduct a Trustee Sale.

3
4 **F. Defendants Wrongfully Foreclosed Plaintiffs' Property and the Trustee's**
5 **Deed Upon Sale, the Substitution of Trustee and the Assignment of Deed should be declared**
6 **VOID.**

7 Plaintiffs have pled enough sufficient allegation and maintain a claim for wrongful
8 foreclosure. First, the Substitution of Trustee is VOID. The Substitution of Trustee should also
9 be declared void because MERS, in its own name and without disclosing whom MERS was
10 acting as a nominee for, wrongfully substituted ETS as the foreclosing trustee. Although MERS
11 may have the right, as a nominee, to transfer, assign, or grant beneficial interest in the Deed of
12 Trust, and to substitute the Trustee, MERS never proved that they were given authority by the
13 original lender and beneficiary, MortgageIt. Under the terms of the Deed of Trust, MERS,
14 acting solely as the nominee for the Lender, MortgageIT was the beneficiary under the Deed of
15 Trust.
16
17

18 Only the beneficiary under the Deed of Trust may substitute the Trustee. See Cal. Civ.
19 Code § 2934a(a)(1)(A). When an attorney in fact or a nominee executes an instrument
20 transferring an estate in real property, he must subscribe the name of his principal to it, and his
21 own name as attorney in fact. See Cal Civ. Code §1095. Noncompliance with this section
22 renders a deed void. *Puccetti v. Girola* 20 Cal 2d 574 (1942). "The purpose of Civ Code, §
23 1095, providing that when an attorney in fact executes an instrument transferring an estate in
24 real property he must subscribe the name of his principal to it and his own name as attorney in
25 fact, is to protect the owner of landed property and to insure the proper method of passing title;
26
27 the specific requirements of the statute must be followed, or else a deed is void; and nothing
28

1 less than a written signature as explicitly provided by the terms of the statute will suffice.”
2 *Hodge v. Hodge* 257 Cal App 2d 31, 64 (1967, Cal App 5th Dist). A nominee is one
3 designated to act for another as his/her representative in a rather limited sense. The word
4 “nominee” connotes the delegation of authority to the nominee in a representative capacity
5 only, and does not connote the transfer or assignment to the nominee of any property in or
6 ownership of the rights of the person nominating him/her. *Mortgage Electronic Registration*
7 *Systems, Inc. v. Rees*, 2003 Conn. Super. LEXIS 2437 (Conn. Superior Ct. September 4, 2003).
8

9
10 In the instant case, MERS, in its own name and without disclosing the Lender, executed
11 a Substitution of Trustee, substituting ETS as the foreclosing Trustee. This transfer of interest
12 does not comply with Cal. Civ. Code § 2934a(a)(1)(A) because MERS, in its own capacity, is
13 not the beneficiary under the Deed of Trust. Therefore, because the execution of the
14 Substitution of Trustee is unlawful, its legal effect should be void and the subsequent Notice of
15 Trustee Sale and Trustee’s Deed Upon Sale should also be declared VOID.
16

17 Also, assuming that HSBC, a securitized trust, is in fact the Lender of Plaintiffs’
18 mortgage, the chain of title assigning the beneficial rights in the Deed violated the Securitized
19 Trust’s Pooling and Servicing Agreement (“PSA”), which is contained in every Securitized
20 Trust.
21

22 In a securitized Trust, it is required to establish the unbroken chain of transfers, deliveries
23 and acceptances of the mortgage note from the Originator to the Sponsor to the Depositor and
24 finally to the Trust. This requires a series of true sales and transfers pursuant to the mandatory
25 transfer rules of the PSA.
26

27 The Trust has no authority to claim beneficial interest or any interest in the mortgage note
28 unless there has been a complete and unbroken chain of assignments to the Trust pursuant to the

1 strict terms of the PSA. The fact that an assignment may or may not have to be recorded to
2 maintain perfection is not relevant to the requirements of the PSA that there be an unbroken
3 chain of assignments to the Trustee of the Trust, which in this case is HSBC.
4

5 The documents signed by Debtor at the time of origination are comprised of real estate
6 instruments. The notes and deeds of trust must be properly assigned and endorsed to the named
7 Trust, generally in the following sequence:

- 8 a. Assignment and Endorsement from Originator to Sponsor;
- 9 b. Assignment and Endorsement from Sponsor to Depositor;
- 10 c. Assignment and Endorsement from Depositor to the Trust.
- 11
- 12

13 The assignments mentioned above, must all be in conformance with the strict rules and
14 time frame of the PSA, as well as the requirements of Articles 3 and 9 of the Uniform
15 Commercial Code with respect to the mortgage notes.

16 In the instant case, the chain of title does not follow the strict requirements of the PSA.
17 The chain of title of the beneficial interest in the Deed of Trust was from MortgageIT to HSBC.
18 That did not follow the requirements under the PSA of the securitized trust. As such, the court
19 must declare the Assignment of the Deed void as it violated the requirements of the PSA.
20

21 The "robo-signing" of affidavits and all other foreclosure documents served to cover up
22 the fact that the Defendants cannot demonstrate the facts required to conduct a lawful
23 foreclosure. Plaintiffs are informed and believe and thereon alleges that the individuals that
24 signed each document are in fact "Robo-Signers" who were paid just to prepare and sign off on
25 documents without reviewing them as the law requires. In the instant case, Jeffrey Stephan, an
26 admitted robo-signer, executed an Assignment of Deed, claiming to act as an agent of MERS,
27
28

1 and assigning interest in the Deed to HSBC. If it turns out that these robo-signers did indeed
2 sign off on the Plaintiff's loan and all documents recorded, without review, they committed
3 FRAUD by claiming knowledge of a financial matter of which they had no personal knowledge.
4 Therefore, because the documents Defendants needed to legally foreclose the property are
5 products of fraud and signed by Robo-Signers, who have no knowledge of the legal effect of the
6 documents, they sign and are not a legal representative of the entity they sign on their behalf, the
7 Assignment of the Deed should be declared VOID.
8

9
10 **G. Plaintiffs should not have to Tender the Full Amount at this early stages of**
11 **pleading.**

12 Plaintiffs argue that they are not required to tender the full amount when there is a clear
13 defect in the foreclosure process. The court in *Mabry v. Superior Court*, 185 Cal.App.4th 208
14 (2010) held that the borrower need not tender the full amount in order to prevent a foreclosure.
15 A defective notice of default prevents any foreclosure from occurring regardless of whether the
16 borrower tendered the amount due on the obligation. Therefore, because the Plaintiffs have
17 alleged violations of California Foreclosure law prevents the borrowers from tendering the
18 amount due on the obligation. Plaintiffs also dispute the amount of debt owed and cannot in
19 good faith offer an inflated amount to Tender the amount due.
20

21
22 **H. Plaintiffs have pled a claim for a violation of B&P §17200.**

23 Defendants argue that Plaintiffs lack a claim under the B&P §17200 because their other
24 claim for fraud is defective. However, as stated above, Plaintiffs do have a claim for fraud and
25 the Defendants' fraud is how they conduct business for all defaulted mortgages. Also,
26 Defendants claims that Plaintiffs' have not pled any injury in fact. However, the subject
27 property was foreclosed and Plaintiffs' lost their interest in the property and cannot sell, lease, or
28

1 remodel the property. Plaintiffs' lose their investment. Thus, Plaintiffs have pled an injury in
2 fact.

3
4 **I Plaintiffs have a claim for Quiet Title against the Defendants**

5 The Defendants have made a claim on the subject property that was adverse to the
6 Plaintiffs' claim. Plaintiffs met all the requirements in its Complaint. Plaintiffs have an interest
7 in the Deed of Trust through a Grant Deed. Defendants' claims to the subject property should be
8 declared void. Therefore, only Corazon Estiva, the estate of Raul Estiva, and the Plaintiffs have
9 proper title on the subject property.
10

11 **J. Plaintiffs should be allowed to amend its Complaint.**

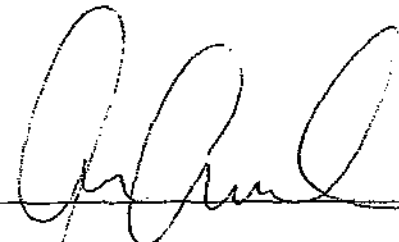
12 Plaintiffs and Defendants have disputed many of the facts of the complaint. Plaintiffs
13 are aware that they have alleged new facts and allegations in this opposition. Plaintiffs are
14 willing to amend their complaint to reflect the new facts and allegation made in this opposition.
15

16 **IV. CONCLUSION**


17 Based on the Plaintiffs' Points and Authorities, Plaintiffs respectfully PRAY that the
18 Court DENY the Defendants' Demurrer in its entirety and allow Plaintiffs to prove their
19 allegations.
20

21 Respectfully submitted.

22 Dated: May 25 2011

23
24
25
26
27 

28 ERLINDA ABIBAS ANIEL
PRO SE PLAINTIFF



FERMIN SOLIS ANIEL
PRO SE PLAINTIFF

PROOF OF SERVICE BY MAIL (C.C.P 1013a, 2015.5)

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I, Jason Aniel, declare as follows:

I am over the age of eighteen years and am not a party to the within entitled action; my address is 75 Tobin Clark Drive. Hillsborough, California 94010.

On May 26 2011, I served the following:

OPPOSITION TO DEFENDANT'S, ETS SERVICES, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION; GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION AND GMAC MORTGAGE; HSBC BANK, U.S.A AS TRUSTEE FOR DALT 2007-A03; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, DEMURRER PLAINTIFFS' COMPLAINT

on the interested parties in said action by first class mail, postage prepaid, addressed as follows:

CHRISTOPHER L. PETERSON Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

BRIAN S. WHITEMORE
SEVERSON & WERSON, P.C.
One Embarcadero Center, Suite 2600
San Francisco, California, 94111

Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, and Mortgage Electronic Registration Systems, Inc.

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

Executed on May 26, 2011, at San Mateo County, California.


Jason Aniel

1 JOHN B. SULLIVAN (State Bar No. 96742)
EDWARD R. BUELL III (State Bar No. 240494)
2 SEVERSON & WERSON
A Professional Corporation
3 One Embarcadero Center, Suite 2600
San Francisco, CA 94111
4 Telephone: (415) 398-3344
Facsimile: (415) 956-0439

5 Attorneys for Defendants
6 GMAC Mortgage, LLC f/k/a GMAC
Mortgage Corp. and GMAC Mortgage, ETS
7 Services, LLC, HSBC Bank, U.S.A. as
Trustee for DALT 2007-A03, Mortgage
8 Electronic Registration Systems, Inc.
(erroneously named herein as Mortgage
9 Electronic Systems, Inc.)

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN MATEO

12 FERMIN SOLIS ANIEL, an individual;
13 ERLINDA ABIBAS ANIEL, an individual,

14 Plaintiffs,

15 vs.

16 ETS SERVICES, LLC, a California Limited
Liability Corporation; GMAC MORTGAGE,
17 LLC F/K/A GMAC MORTGAGE
CORPORATION AND GMAC MORTGAGE;
18 HSBC BANK, U.S.A. as Trustee for DALT
2007-A03; MORTGAGE ELECTRONIC
SYSTEMS, INC.; PITE DUNCAN, LLP;
19 AND DOES 1-50 inclusive,

20 Defendants.

Case No.: CIV 502857

**REPLY IN SUPPORT OF DEMURRER
OF ETS SERVICES, LLC, GMAC
MORTGAGE, LLC, HSBC BANK,
U.S.A., AND MERS TO PLAINTIFFS'
VERIFIED COMPLAINT**

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion

21
22 **I. INTRODUCTION**

23 Plaintiffs Fermin Solis Aniel and Erlinda Abibas Aniel ("Plaintiffs") are proceeding in pro
24 per in and attempt to delay the nonjudicial foreclosure of an investment property. Defendants
25 GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC,
26 HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, Mortgage Electronic Registration Systems,
27 Inc. ("Defendants") respectfully submit their Reply. The instant demurrer comes after Plaintiffs'
28 March 17, 2011 *ex parte* motion to set aside and cancel the trustee sale, which was properly

1 denied by this court. Plaintiffs then hastily filed a noticed Motion for Default and to Set Aside
2 Trustee Sale which was argued by the parties and denied by this court on May 20, 2011.

3 In fact, Plaintiffs' complaint is replete with conclusory allegations that are wholly
4 discredited by judicially notable title documents filed in support of Defendants' demurrer and
5 recorded in San Mateo County's Official Records. Plaintiffs admittedly raise a whole host of new
6 facts in their opposition which nevertheless fail to the inherent deficiencies raised in Defendants'
7 moving papers. However, this court should not allow the motion procedure to serve as a vehicle
8 for Plaintiffs to revise their complaint.

9 Plaintiffs concede that they were not record owners of the Property for a majority of the
10 foreclosure process. In fact, Plaintiffs were not listed on the chain until February 3, 2011, when
11 they recorded a Grant Deed evidencing a 1% interest, not a 50% interest as they contend in their
12 opposition. Although Plaintiffs attempt to clarify that they only recorded a 1% interest to avoid
13 the tax consequences of assuming a 50% interest, the fact remains that they were not record
14 owners during the foreclosure process and not entitled to any of the notice provisions set forth in
15 Civil Code 2924 *et. seq.* Plaintiffs concede that they were not parties to the promissory note nor
16 were they included in the deed of trust when borrowers Raul and Corizon Estiva purchased the
17 Property. Thus, Plaintiffs were not record owners of the Property and the allegation that
18 Defendants' in any way infringed on their bankruptcy rights by pursuing this foreclosure is
19 meritless.

20 Plaintiffs were neither party to the note and deed of trust, nor were their purported interest
21 in the property recorded until after Plaintiffs contend the assignment of deed was recorded on
22 May 26, 2009. Nevertheless, Plaintiffs aver a 50% interest in the property but can only point to a
23 suspect Grant Deed recorded on February 3, 2011 and *after* they were discharged from
24 bankruptcy on December 2, 2010.

25 For this, and for the additional deficiencies discussed below, this Court should sustain
26 Defendants' demurrer in its entirety.

27 ///

28 ///

1 **III. LEGAL ARGUMENT**

2 **A. PLAINTIFFS LACK STANDING TO FILE A CLAIM BASED ON THE LOAN**

3 Plaintiffs admit that they were not parties to the Loan and have made no allegations that
4 they ever assumed the Loan. (Complaint ¶35 “plaintiff’s names were not on the deed ...”).
5 Moreover, Plaintiffs’ purported interest in the Property – a Grant deed transferring a 1% interest
6 to each Fermin Aniel and Erlinda Aniel – did not occur until February 3, 2011. (RJN Ex. 5).
7 More specifically, the purported transfer did not occur until two months after Plaintiffs’
8 Bankruptcy was discharged, thereby rendering any and all arguments regarding the Bankruptcy
9 invalidating the foreclosure sale process as meritless. In addition, Plaintiffs’ claims that they
10 owned a 50% interest in the Property as early as February 2009 (*see* Complaint ¶35, and RJN Ex.
11 4 – Bankruptcy schedules) are not only inaccurate, but improper and a blatant misrepresentation
12 to this Court and the United States Bankruptcy Court.

13 *Plaintiffs Concede they Have Not Tendered.* In addition, it is black letter law in
14 California that a plaintiff challenging any irregularity in a foreclosure sale must tender the amount
15 due. (*See Abdallah v. United Savings Bank*, 43 Cal. App. 4th 1101, 1109 -1110 (Ct. App. 1996).
16 (“[A]ppellants are required to allege tender of the amount of [the] secured indebtedness in order
17 to maintain any cause of action for irregularity in the sale procedure... and they failed to do
18 so.”)). Without such a tender, there is no standing to sue. (*Id.*). Thus, the tender rule bars not
19 only a “wrongful foreclosure” claim, but all causes of action that are “implicitly integrated” with
20 the sale. (*Arnolds Management Corp. v. Eischen*, 158 Cal. App. 3d 575, 579 (Ct. App. 1984)
21 (affirming sustaining of demurrer without leave to amend on claims of fraud and negligence, as
22 well as wrongful foreclosure, relating to defective notice of foreclosure sale). *See also Karlsen v.*
23 *American Sav. & Loan Ass’n*, 15 Cal. App. 3d 112, 121 (Ct. App. 1971) (holding plaintiff’s
24 claims for breach of oral agreement, for an accounting, and for constructive trust fail because
25 plaintiff never made a valid tender.)).

26 Further, “[t]he rules which govern tender are strict and are strictly applied... The tenderer
27 must do and offer everything that is necessary on his part to complete the transaction, and must
28 fairly make his purpose known without ambiguity, and the act of tender must be such that it needs

1 only acceptance by the one to whom it is made to complete the transaction.” (*Nguyen v. Calhoun*,
2 105 Cal. App. 4th 428, 439 (Ct. App. 2003)). Here, Plaintiffs do not allege any tender at all,
3 much less an unambiguous tender. They cannot, therefore, challenge the foreclosure process.
4 Moreover, because all of the other claims are integrated with their allegations of an irregular
5 foreclosure, they lack standing to bring those. As a result, the demurrer to all of Plaintiffs’ claims
6 should be sustained on this basis alone.

7 Based on the foregoing, it is clear that Plaintiffs have no interest in the Loan. Moreover,
8 they have, at best, a questionable interest in the Property and have failed to plead the ability or
9 even willingness to tender the amounts due. Consequently, Plaintiffs lack standing to raise any
10 claim based on the Loan or Deed of Trust. As each of Plaintiffs’ six claims are based on the
11 enforcement of the Loan or Deed of Trust, each of their claims fails as a matter of law and there is
12 no manner in which they can amend their pleading to overcome this fatal defect. Consequently,
13 the demurrer must be sustained without leave to amend and the Moving Defendants should be
14 dismissed from the action with prejudice.

15 Plaintiffs’ lack of standing is a fatal defect to each of their six claims which simply cannot
16 be overcome with additional pleading. However, as more fully explained below, each of their six
17 claims are also insufficiently plead and fail on the merits.

18 **B. PLAINTIFFS’ CLAIM FOR VIOLATION OF ROSENTHAL ACT FAILS AS PLEAD**

19 Plaintiffs do not contest the demurrer to the cause of action for violation of the Rosenthal
20 Act and Defendants refer the Court to its moving papers. The failure of Plaintiff to oppose the
21 demurrer to this cause of action can be deemed a tacit admission that the arguments raised in the
22 moving papers are meritorious. Accordingly, this court should sustain Defendants’ demurrer to
23 the first cause of action for violation of the Rosenthal Act without leave to amend.

24 **C. PLAINTIFFS’ CLAIM FOR FRAUD FAILS AS PLEAD**

25 Plaintiffs’ second cause of action attempts to allege that an alleged employee
26 (“Employee”) engaged in fraud by executing an assignment of deed. “ ‘The elements of fraud,
27 which gives rise to the tort action for deceit, are (a) misrepresentation (false representation,
28 concealment, or nondisclosure); (b) knowledge of falsity (or “scienter”); (c) intent to defraud, i.e.,

1 to induce reliance; (d) justifiable reliance; and (e) resulting damage.’ ” *Lazar v. Superior Court*,
2 12 Cal.4th 631, 638 (1996).

3 Each element of a fraud claim must be pleaded with particularity; general and conclusory
4 allegations do not suffice.¹ “This particularity requirement necessitates pleading *facts* which
5 ‘show how, when, where, to whom, and by what means the representations were tendered.’ ”
6 *Lazar*, 12 Cal.4th at 645 (emphasis in original; citation omitted). Plaintiffs fail to plead with the
7 requisite particularity the required elements.

8 Most fundamentally, plaintiffs do not allege that they actually or justifiably relied on
9 Employee’s alleged misrepresentation to their detriment. “[T]o state a viable [fraud] claim, it is
10 not enough to claim a fraudulent act; the fraudulent act must have caused harm. ‘The causation
11 aspect of actions for damage for fraud and deceit involves three distinct elements: (1) actual
12 reliance, (2) damage resulting from such reliance, and (3) right to rely or justifiable reliance.’ ”
13 *Panoutsopoulos v. Chambliss*, 157 Cal.App.4th 297, 308 (2007) (citations omitted).

14 “[A]ctual reliance occurs only when the plaintiff reposes confidence in the truth of the
15 relevant representation, and acts upon this confidence.” *Buckland v. Threshold Enterprises, Ltd.*,
16 155 Cal.App.4th 798, 808 (2007). “It is not enough that, without belief in its truth ...,” the
17 plaintiff claims to have relied on the representation. “[S]pecific pleading is necessary to
18 ‘establish a complete causal relationship’ between the alleged misrepresentations and the harm
19 claimed to have resulted therefrom.”² Here, the assignment of deed was recorded on July 16,
20 2009 (Compl, Ex. C) and Plaintiffs concede they had no record interest in the property until
21 February 3, 2011. (RJN, Ex. 5.) There can be no actual reliance given these facts.

22 Even if plaintiffs had alleged actual reliance, their fraud claim would still be insufficient.
23 “Besides actual reliance, plaintiff must also show ‘justifiable’ reliance, i.e., circumstances were
24 such to make it reasonable for plaintiff to accept defendant’s statements without an independent
25

26 ¹ *Lazar*, 12 Cal.4th at 645; *Philipson & Simon v. Gulsvig*, 154 Cal.App.4th 347, 361
27 (2007).

28 ² *Mirkin v. Wasserman*, 5 Cal.4th 1082, 1092 (1993) (citations omitted); accord: *Pulver v.*
Avco Fin. Servs., 182 Cal.App.3d 622, 640 (1986).

1 inquiry or investigation.”³ “[O]ne ‘should not be permitted to blindly rely upon statements of ...
2 [others] when means of correct information [i]s at hand.’ ” *Kahn v. Lischner*, 128 Cal.App.2d
3 480, 490 (1954). A party that “could have ascertained the truth through the exercise of
4 reasonable diligence” cannot establish justifiable reliance.⁴

5 Finally, plaintiff suffered no damages as a result of the alleged misrepresentation. Fraud
6 is not actionable absent damage.⁵ Plaintiffs plead no out-of-pocket loss or other actual damage
7 that may be recompensed in a fraud action.⁶

8 While plaintiffs may lose the property to foreclosure, that loss did not occur because of
9 Employee’s representations. “Assuming, arguendo, a claimant’s reliance on the actionable
10 misrepresentation, no liability attaches if the damages sustained were otherwise inevitable or due
11 to unrelated causes.” *Kruse v. Bank of America*, 202 Cal.App.3d 38, 60-61 (1988).

12 Plaintiffs did not lose their property to foreclosure because of any action by the Employee.
13 Rather, plaintiffs may suffer loss of their property because they defaulted, and thus the
14 foreclosure was lawfully commenced. Plaintiffs’ obvious confusion regarding the Employee’s
15 For all of these reasons, plaintiffs’ fraud claim should be dismissed.

16 **D. PLAINTIFFS’ CLAIM FOR WRONGFUL FORECLOSURE FAILS AS PLEAD**

17 In the first place, judicially noticeable documents establish that the Defendants here were
18 authorized to initiate and conduct nonjudicial foreclosure under the Deed of Trust. The rules that
19 govern nonjudicial foreclosure under a deed of trust are set forth in the Civil Code at section 2924
20 *et seq.* Under California law, “Civil Code sections 2924 through 2924k provide a comprehensive

21 ³ *Wilhelm v. Pray, Price Williams & Russell* (1986) 186 Cal.App.3d 1324, 1332 (emphasis
22 in original); accord: *Philipson & Simon v. Gulsvig, supra*, 154 Cal.App.4th at p. 361.

23 ⁴ *Brookwood v. Bank of America*, 45 Cal.App.4th 1667, 1674 (1996) (citations omitted);
24 *Bishop Creek Lodge v. Scira*, 46 Cal.App.4th 1721, 1736 (1996) (party who is actually aware of
25 circumstances indicating defendants’ representation may be false has a duty to investigate the
26 matter before relying on representation).

27 ⁵ Cal. Civ. Code, § 1709; *Committee on Children’s Television, Inc. v. General Foods*
28 *Corp.*, 35 Cal.3d 197, 219, 220 (1983); *Auerbach v. Great Western Bank*, 74 Cal.App.4th 1172,
1184-86 (1999).

⁶ Cal. Civ. Code, § 3343; see *Lazar*, 12 Cal.4th at 644-46; *Green Wood Ind. Co. v.*
Forceman Int’l Dev’t Group, Inc., 156 Cal.App.4th 766, 774 (2007).

1 framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale
2 contained in a deed of trust.” (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830; *see also I.E.*
3 *Assocs. v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285 (“The statutory provisions regulating
4 the nonjudicial foreclosure of deeds of trust are contained in [Civil Code] sections 2924-2924i.
5 These provisions cover every aspect of exercise of the power of sale contained in a deed of
6 trust.”).) Under Civil Code § 2924(a)(1), a “trustee, mortgagee or beneficiary or any of their
7 authorized agents” (emphasis added) may conduct the foreclosure process. Under Civil Code
8 section 2924b(4), a “person authorized to record the notice of default or the notice of sale”
9 includes “an agent for the mortgagee or beneficiary, an agent of the named trustee, any person
10 designated in an executed substitution of trustee, or an agent of that substituted trustee” (emphasis
11 added.)

12 The gravamen of Plaintiffs’ argument is based on their inaccurate allegation that a SOT
13 was never recorded. (*See* Complaint ¶69 (“ETS made a fatal mistake in claiming to act as a
14 trustee without a recorded substitution of trustee)). However, an SOT substituting ETS in as the
15 Trustee was recorded on December 17, 2008 prior to recording the NOD. (*See* RJN Ex. 1 and
16 Complaint Ex. B). Consequently, as of December 17, 2008, ETS had the authority, as the
17 Trustee, to initiate and complete the foreclosure pursuant to the terms of the Deed of Trust and
18 California Civil Code §2924 *et seq.* As a result, Plaintiffs’ entire argument regarding wrongful
19 foreclosure is without merit.

20 ***The Deed was Properly Assigned.*** Under California law, a new trustee can be substituted
21 by the “mortgagee, beneficiary or their agents.” (Civ. Code § 2934a(d).) This substitution can
22 take place up to the time the Notice of Sale is recorded—it does not have to be done before the
23 Notice of Default is recorded. (Civ. Code § 2934a(c).) Plaintiffs fail to plead any facts to
24 establish or even allege a good faith basis for the contention under their Second and Third Causes
25 of Action that the Employee was not an agent of MERS as of May 26, 2009. As the United States
26 District Court for the Western District of Washington explained recently:

27 There is simply nothing deceptive about using an agent to execute a
28 document, and this practice is commonplace in deed of trust
actions. *See, e.g., Russell v. Lundberg*, 120 P.3d 541, 544 (Utah

1 Ct.App.2005) (“[I]t appears to be accepted practice for [deed of
2 trust] trustees to use third parties to perform foreclosure activities”).

3 (*Bain v. Metropolitan Mortg. Group Inc.*, (W.D. Wash. Mar. 11, 2010, No. C09-0149-JCC) 2010
4 WL 891585 at *6.)

5 Similarly, Plaintiffs offer no facts to support—or even to establish a good faith basis for—
6 their bare legal contention under their second cause of action that Jeffrey Stephan, who executed
7 the Assignment of Deed of Trust on May 26, 2009, was not an agent of MERS with the authority
8 to execute on MERS’s behalf.

9 And in either case, Plaintiffs cannot show that the question of who executed a Substitution
10 or an Assignment makes any difference whatsoever to the propriety of the foreclosure
11 proceedings here, or that they were harmed in any way by Mr. Stephan’s executing those
12 documents rather than someone else.

13 “A nonjudicial foreclosure sale is presumed to have been conducted regularly and fairly;
14 one attacking the sale must overcome this common law presumption “by pleading and proving an
15 improper procedure and the resulting prejudice.” (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76,
16 86 n.4 (quoting (Miller & Starr, CAL. REAL ESTATE (3d ed.2000) § 10:211, p. 679).) Because
17 Plaintiffs have not shown prejudice resulting from any purported defect in execution, their
18 contentions regarding defective execution cannot support any claims. Plaintiffs do not challenge
19 Defendants’ contention that the loan is in default and admit that they previously filed for
20 bankruptcy on February 25, 2009 on their payments and in fact filed for bankruptcy under the
21 Note. (Compl. ¶ 35.) Their default authorized the “trustee, mortgagee or beneficiary or any of
22 their authorized agents” (Civ. Code § 2924(a)(1)) to initiate and conduct nonjudicial foreclosure
23 proceedings. Plaintiffs do not allege that they relied on any representations with regard to any
24 agent’s authority to execute a Substitution or Assignment—or that they were not at risk of
25 foreclosure anyway by the fact of their default on payments. Their bare assertions regarding Mr.
26 Stephan support no cause of action. Based on the foregoing, as well as Plaintiffs’ complete lack
27 of standing, this claim must be dismissed without leave to amend.

28 ///

E. PLAINTIFFS' CLAIM FOR VIOLATION OF B&P CODE §17200 FAILS AS PLEAD

Based on the foregoing, Plaintiffs have failed to establish a predicate act or violation of law to support their §17200 claim. "A Court may not allow plaintiff to plead around an absolute bar to relief simply by recasting the cause of action as one for unfair competition." (*Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1048 (9th Cir. 2000).) In other words a B&P §17200 claim cannot be used to plead around deficiencies in other possible causes of action⁷. This is what Plaintiffs are attempting with the fourth cause of action. Consequently, since all of the predicate claims fail as a matter of law for the reasons stated herein, the §17200 claim is also without merit.

In addition, since the passage of Proposition 64 in November 2004, plaintiffs only have standing to challenge a business practice under the UCL if they have (1) "suffered injury in fact" and (2) "lost money or property as a result of" the unfair competition he challenges. (Cal. Bus. & Prof. Code, § 17204; *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal.4th 223, 227 (2006)). "The phrase 'as a result' in its plain and ordinary sense means 'caused by' and requires a showing of causal connection or reliance on the alleged [unfair competition]." (*Hall v. Time, Inc.*, 158 Cal.App.4th 847, 855 (2008)). Plaintiffs have not alleged that they have suffered any injury in fact, that they were damaged by the alleged acts of Moving Defendants, or that they have lost any money or property – especially based on their lack of standing as discussed above. Consequently, Plaintiffs also lack standing generally and also under §17200.

As a result, the fourth cause of action fails as a matter of law and the demurrer should be sustained without leave to amend.

F. PLAINTIFFS' CLAIM FOR INJUNCTIVE RELIEF FAILS AS PLEAD

Injunctive relief is not a cause of action. It is a remedy that must be tethered to some independent legal duty owed by the defendant to the plaintiff. (*McDowell v. Watson*, 59 Cal.App.4th 1155, 1159 (1997); *Cox Commc'ns PCS, L.P. v. City of San Marcos*, 204 F.Supp.2d

⁷ See *Glenn K. Jackson Inc. v. Roe*, 273 F.3d 1192, 1203 (9th Cir. 2001) (dismissing UCL claim where underlying negligence and fraud claims were insufficient as a matter of law); see also *Krantz v. BT Visual Images, L.L.C.*, 89 Cal.App.4th 164, 178 (2001) (the viability of a UCL claim stands or falls with the antecedent substantive causes of action)

1 1272, 1283 (S.D.Cal.2002)). The injunctive relief claim, therefore, cannot stand on its own. As
2 already shown, plaintiffs' other claims are defective. Consequently, there is nothing to support
3 plaintiffs' request for an injunction, and the demurrer to this claim, too, should be sustained
4 without leave to amend.

5 **G. PLAINTIFFS' CLAIM FOR QUIET TITLE FAILS AS PLEAD**

6 A cause of action for quiet title requires (1) a legal description of the property, (2) the title
7 of plaintiff and the basis of the title, (3) the adverse claims to the title, (4) the date as of which the
8 determination is sought, and (5) a prayer for determination of the title of the plaintiff as against
9 the adverse claim. (CCP §761.020). The Complaint fails to satisfy each these elements and the
10 Complaint is wholly conclusory.

11 Plaintiffs' purported interest in the Property did not arise until February 3, 2011. (RJN
12 Ex. 5). On this point alone, Plaintiffs cannot seek to quiet title to the Property prior to that date.
13 Though the foreclosure sale has not been completed, the Loan was entered into with the Estivas in
14 2007, the NOD was recorded in December of 2008, and the NOS-2 was recorded in December
15 2010. All of these took place well in advance of Plaintiffs gaining an interest in the Property.
16 Consequently, any interest obtained by Plaintiffs in the Property would be subject to the valid lien
17 created by the Deed of Trust.

18 **IV. CONCLUSION**

19 Plaintiffs lack standing to bring this action under all of the theories plead. Moreover, each
20 claim is independently deficient and subject to a demurrer. For the foregoing reasons, the
21 demurrer should be sustained and GMAC, ETS, HSBC and MERS should be dismissed from this
22 action with prejudice and the new facts alleged in the opposition should be stricken.

23 DATED: March 7, 2011

SEVERSON & WERSON
A Professional Corporation

24 By: 

Brian S. Whittemore

25 Attorneys for Defendants
26 GMAC Mortgage, LLC f/k/a GMAC Mortgage
27 Corp. and GMAC Mortgage, ETS Services,
28 LLC, HSBC Bank, U.S.A. as Trustee for DALI
2007-A03, Mortgage Electronic Registration
Systems, Inc. (erroneously named herein as
Mortgage Electronic Systems, Inc.)

PROOF OF SERVICE

Aniel vs. ETS Services, et al.

San Mateo County Superior Court Case No. CIV 502857

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

REPLY IN SUPPORT OF DEMURRER OF ETS SERVICES, LLC, GMAC MORTGAGE, LLC, HSBC BANK, U.S.A., AND MERS TO PLAINTIFFS' VERIFIED COMPLAINT

on all interested parties in said case addressed as follows:

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Drive
Hillsborough, CA 94010

In Pro Per

Tel: 650-284-6417
Fax: 650-571-5829

Peter J. Salmon
Pite Duncan LLP
4375 Jutland Drive, Suite 200
San Diego, CA 92117

Attorneys for Defendant Pite Duncan LLP

Tel: (858) 750-7600
Fax: (619) 590-1385
e-mail: psalmon@piteduncan.com

☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

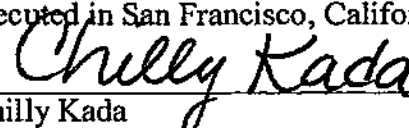
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on June 2, 2011.


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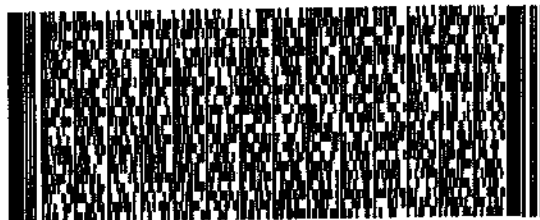
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SHIP TO: (858) 750-7600
Peter J. Salmon, Esq.
Pite Duncan LLP
4375 JUTLAND DR STE 200

SAN DIEGO, CA 92117

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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

1

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN MATEO

3 --oOo--

4

5 FERMIN SOLIS ANIEL,

6 Plaintiff,

7 vs.

8 ETS SERVICES, LLC, et al.,

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Defendant.

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19 A P P E A R A N C E S:

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FOR THE PLAINTIFF: PRO/PER

21

22

FOR THE DEFENDANT: BRIAN S. WHITTEMORE, ESQUIRE

23

24

REPORTED BY: JOCELYNE FAKHOURI,
Official Court Reporter
CSR #11420

25

26

COPY

CASE NO. CIV 502857

P R O C E E D I N G S

JUNE 9, 2011

--oOo--

THE COURT: Line nine, Fermin Solis Aniel
versus ETS Services, LLC.

MR. WHITTEMORE: Good morning, Your Honor.
Brian Whittemore for the moving defendants.

THE COURT: Your name, please?

MS. ANIEL: Good morning, Your Honor. My
name is Erlinda Aniel. I'm the plaintiff.

THE COURT: All right. I take it, you
requested the appearance?

MS. ANIEL: Yes, Your Honor.

THE COURT: Your comments, please?

MS. ANIEL: My comment on the tentative
ruling is that this property was already determined by
the -- this property is part of bankruptcy estate when
I file my Chapter 11. Okay.

So, the bankruptcy -- trustee of the
bankruptcy already recognized that I have interest in
this subject property.

THE COURT: This property wasn't referenced
in your bankruptcy petition, was it?

MS. ANIEL: It was, Your Honor.

MR. WHITTEMORE: Your Honor, what happened
here, even if it was referenced in the bankruptcy

1 petition, it was converted to, I believe, a Chapter 7.
2 And the property was removed from that bankruptcy
3 estate. I believe is how it went.

4 MS. ANIEL: Yeah, it was. It was. Okay.
5 The judge converted from 11 to 7, and they discharged
6 my 8 million. Okay. That is on my property. Means
7 that I'm not personally liable for the debt.

8 Because on my reorganization plan, I put it
9 all unsecured. Because they cannot -- they cannot
10 determine who is the real owner of the note of my
11 property's loan. That is why the judge, okay, let's
12 convert it. And then, the trustee of the bankruptcy
13 court abandoned it. Because most of my property under
14 water.

15 So, I don't understand that. It is part of
16 my DIP account means that debtor is in possession.
17 That this property I have interest -- how do you call
18 it? I have legal interest.

19 THE COURT: Well, it was unrecorded
20 initially. And then, some time after, I believe after
21 the bankruptcy was concluded, then a one-percent
22 interest was recorded.

23 MS. ANIEL: Yes, Your Honor. The reason I
24 cannot -- we cannot grant deed the property in my name
25 legally because I was still under bankruptcy. That is
26 violation of transfer. Okay. You cannot reconvey any

1 property. Because it was already disclosed it is part
2 of my bankruptcy estate.

3 So, after I was discharged -- and the legal
4 interest of that is -- I already have. Because it was
5 foreclosed after I had grant deed.

6 THE COURT: All right. Mr. Whittemore.

7 MR. WHITTEMORE: Your Honor, the bankruptcy
8 is moot in this case. The property was found to be
9 removed from the bankruptcy estate, and the bankruptcy
10 is now discharged. So, why plaintiff is bringing up
11 the bankruptcy now is sort of a mystery to me.

12 It doesn't change the fact that all of these
13 purported irregularities happened well before plaintiff
14 had any interest in the note and deed of trust if they
15 had any at all. And she simply lacks standing here.

16 MS. ANIEL: Your Honor, my bankruptcy was
17 already discharged as of December 4th.

18 THE COURT: Let's forget about the bankruptcy
19 for a moment. You never appeared on the deed until
20 2011, correct?

21 MS. ANIEL: Yes. Legally, yes.

22 THE COURT: You never signed a deed of trust,
23 correct?

24 MS. ANIEL: Yes. Yes, Your Honor.

25 THE COURT: Yes, you never did?

26 MS. ANIEL: Yes, I never did at that time.

1 THE COURT: Tentative ruling of the Court is
2 adopted as its order. Court finds you do not have
3 standing.

4 MS. ANIEL: Okay. Your Honor, is there any
5 way I could ask for leave to add Corazon Estiva so that
6 standing could be moot?

7 THE COURT: Add who?

8 MS. ANIEL: Corazon Estiva, the one who is my
9 partner.

10 THE COURT: That would be up to her if she
11 chooses to bring the action. Not to you.

12 Tentative ruling of the Court is adopted as
13 its order.

14 Mr. Whittemore, I'll ask that you prepare a
15 written order consistent with the Court's ruling,
16 submit it to Ms. Aniel for approval as to form and
17 content and then on to the Court.

18 MR. WHITTEMORE: Will do.

19 MS. ANIEL: Your Honor, can I say something?
20 Your Honor, is there any way you could just amend the
21 Complaint? I mean, you know, can I?

22 THE COURT: You don't have standing. If you
23 don't have standing to bring the Complaint, which is
24 what I have found, there is no way that you could
25 possibly make it that would cure this fatal defect.

26 MR. WHITTEMORE: Thank you, Your Honor.

1 THE COURT: Tentative ruling is adopted.

2

3 (End of proceedings.)

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN MATEO

3 --oOo--

4
5 FERMIN SOLIS ANIEL,)
6 Plaintiff,)
7 vs.) CASE NO. CIV 502857,
8 ETS SERVICES, LLC, et al.,) REPORTER'S
9 Defendant.) CERTIFICATE
10)

11 STATE OF CALIFORNIA) SS.
12 COUNTY OF SAN MATEO)
13

14 I, Jocelyne Fakhouri, Official Court
15 Reporter of the Superior Court of the State of
16 California, County of San Mateo, do hereby certify that
17 pages 1 through 6, comprise a true, accurate and
18 correct transcript of the proceedings that I reported
19 in Department 25, on June 9, 2011, in front of
20 Honorable Joseph C. Scott, Judge, in the matter of the
21 above-entitled cause.

22
23 Dated: August 26, 2011

24 JOCELYNE FAKHOURI
25 CSR #11420

26 JOCELYNE FAKHOURI, CSR #11420

1 PETER J. SALMON (SBN 174386)
CHRISTOPHER L. PETERSON (SBN 215069)
2 JILLIAN A. BENBOW (SBN 246822)
PITE DUNCAN, LLP
3 4375 JUTLAND DRIVE, SUITE 200
P.O. BOX 17935
4 SAN DIEGO, CA 92177-0935
TELEPHONE: (858) 750-7600
5 FACSIMILE: (619) 590-1385

6 Attorneys for Defendant PITE DUNCAN, LLP

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO

10 FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,

11 Plaintiffs,

12 v.

13 ETS SERVICES, LLC, a Limited Liability
14 Company; GMAC MORTGAGE, LLC F/K/A
GMAC MORTGAGE CORPORATION AND
15 GMAC MORTGAGE; HSBC BANK, U.S.A.
as Trustee for DALT 2007-AO3;
16 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; PITE
17 DUNCAN, LLP AND DOES 1-50 inclusive,

18 Defendants.

Case No. CIV502857

NOTICE OF RULING ON
DEFENDANT PITE DUNCAN, LLP'S,
DEMURRER TO COMPLAINT

Date: June 8, 2011

Time: 9:00 a.m.

Dept.: LM, Dept 25

19 TO PLAINTIFFS FERMIN SOLIS ANIEL and ERLINDA ABIBAS ANIEL, IN PRO
20 PER, AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on June 8, 2011 at 9:00 a.m. in Department 25 of the
22 above-referenced Court, Defendant PITE DUNCAN, LLP's, Demurrer was heard by the Court. The
23 Court having considered the pleadings and arguments submitted in support of and in opposition to
24 the Demurrer, and good cause appearing, adopted its tentative ruling as the order of the Court as
25 follows:

26 1. The Demurrer to Complaint by Defendant PITE DUNCAN, LLP is SUSTAINED
27 WITHOUT LEAVE TO AMEND as to all causes of action on the grounds that Plaintiffs lack
28 standing. [County of Fresno v. Shelton (1998) 66 Cal.App.4th 996, 1009]. The allegations of the

1 Complaint admit that Plaintiffs' names did not appear on the promissory note or Deed of Trust at
2 any point during the time the complained-of activities took place. The Court is not persuaded by
3 Plaintiffs' argument that they did not properly or timely record their alleged 50% interest because
4 they wished to avoid paying taxes.

5 2. Defendant's Request for Judicial Notice is GRANTED as to Exhibits P, Q, and R.
6 Judicial notice is taken of the fact that Exhibits A through K were recorded in the Official Records
7 of the County of San Mateo, and that Exhibits L through O were filed in Plaintiffs' bankruptcy action
8 in United States Bankruptcy Court for the Northern District of California, Case No. 09-30452-DM,
9 but not as to the truth of any matters asserted therein

10
11
12 Dated: June 8, 2011


PITE DUNCAN, LLP

JULIAN A. BENBOW
Attorneys for Defendant PITE DUNCAN,
LLP

1 JOHN B. SULLIVAN (State Bar No. 96742)
2 EDWARD R. BUELL III (State Bar No. 240494)
3 BRIAN S. WHITTEMORE (State Bar No. 241631)
4 SEVERSON & WERSON
5 A Professional Corporation
6 One Embarcadero Center, Suite 2600
7 San Francisco, CA 94111
8 Telephone: (415) 398-3344
9 Facsimile: (415) 956-0439

10 Attorneys for Defendants
11 GMAC Mortgage, LLC f/k/a GMAC
12 Mortgage Corp. and GMAC Mortgage, ETS
13 Services, LLC, HSBC Bank, U.S.A. as
14 Trustee for DALT 2007-A03, Mortgage
15 Electronic Registration Systems, Inc.
16 (erroneously named herein as Mortgage
17 Electronic Systems, Inc.)

FILED
SAN MATEO COUNTY

JUN 30 2011

Clerk of the Superior Court

By [Signature]
DEPUTY CLERK

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

FERMIN SOLIS ANIEL, an individual;
ERLINDA ABIBAS ANIEL, an individual,,

Plaintiffs,

vs.

ETS SERVICES, LLC, a California Limited
Liability Corporation; GMAC MORTGAGE,
LLC F/K/A GMAC MORTGAGE
CORPORATION AND GMAC MORTGAGE;
HSBC BANK, U.S.A. as Trustee for DALT
2007-A03; MORTGAGE ELECTRONIC
SYSTEMS, INC.; PITE DUNCAN, LLP;
AND DOES 1-50 inclusive,

Defendants.

Case No.: CIV 502857

~~PROPOSED~~ ORDER SUSTAINING
DEMURRER TO PLAINTIFFS'
COMPLAINT WITHOUT LEAVE TO
AMEND

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion
Judge: Hon. Joseph C. Scott

Defendants GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage,
ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, Mortgage Electronic

1 Registration Systems, Inc.. ("Moving Defendants") filed a demurrer to Plaintiffs Fermin Solis
2 Aniel and Erlinda Abibas Aniel's Complaint on June 9, 2011 (the "Demurrer").

3 The Demurrer came on regularly for hearing on June 9, 2011, at 9:00 a.m, before this
4 Court in the Law and Motion Department, the Honorable Joseph C. Scott, presiding. Brian S.
5 Whittemore appeared on behalf of Moving Defendants. Plaintiff Erlinda A. Aniel appeared on
6 behalf of Plaintiffs.


7 After full consideration of the written submissions of the parties, all other matters
8 presented to the Court, and good cause appearing,

9 **IT IS HEREBY ORDERED** that the Demurrer to the Complaint is sustained as to all
10 causes of action without leave to amend as to all causes of action on the grounds that Plaintiffs
11 lack standing. (*County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.) The allegations
12 of the Complaint admit that Plaintiffs' names did not appear on the promissory note or Deed of
13 Trust at any point during the time the complained-of activities took place.

14 Moving Defendants' Request for Judicial Notice is GRANTED insofar as the documents
15 for which judicial notice is sought were recorded in the Official Records of the County of San
16 Mateo or filed in the United States Bankruptcy Court, but not as to the truth of any matters
17 asserted therein.

18 **IT IS SO ORDERED.**

19
20
21 DATED: June 20, 2011

22
23 
24 Judge of the Superior Court

25 Approved as to form:

26
27 By: 
28 Erlinda Aniel
Plaintiff in Pro Per

Minute Orders

[Home](#) [Complaints/Parties](#) [Actions](#) [Minutes](#) [Pending Hearings](#) [Case Report](#) [Images](#)

Case Type:

Case Number:

Case CIV502857 - FERMIN SOLIS ANIEL VS ETS SERVICES, LLC ET AL

Action:

CASE MANAGEMENT CONFERENCE

12/06/2011 - 9:00 AM DEPT. 21

HONORABLE ROBERT D. FOILES, JUDGE PRESIDING. CLERK: CHERYL LYSSAND COURT REPORTER: CINDY DEL ROSARIO

ERLINDA ABIBAS ANIEL PRESENT IN PRO PER.

ATTORNEY(S): BRIAN WITTEMORE APPEARED BY COURTCALL ON BEHALF OF DEFENDANTS ETS SERVICES, LLC; GMAC MORTGAGE, LLC; HSBC BANK; AND MERS.

THERE WAS NO APPEARANCE BY OR ON BEHALF OF PLAINTIFF FERMIN SOLIS ANIEL.

THERE WAS NO APPEARANCE BY OR ON BEHALF OF DEFENDANT PITE DUNCAN, LLP.

BASED ON THE DEMURRERS SUSTAINED WITHOUT LEAVE TO AMEND BY JUDGE SCOTT AS TO ALL DEFENDANTS, THE

COURT ORDERS THIS CASE DISMISSED.

CASE DISMISSED.

THE COURT ORDERS THIS MATTER DISMISSED WITH PREJUDICE.

ENTERED BY C LYSSAND ON 12/06/11.

- 13 -

APP-002

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel in Pro Per 75 Tobin Clark Dr. Hillsborough, CA 94010 TELEPHONE NO.: 650-284-6417 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Pro Se		FOR COURT USE ONLY ENDORSED FILED SAN MATEO COUNTY FEB 02 2012 Clerk of the Superior Court By <u>Alexandrina Ortega</u> DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Redwood City Courthouse		
PLAINTIFF/PETITIONER: Fermin Solis Aniel et. al. DEFENDANT/RESPONDENT: ETS Services, LLC et. al.		
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)		CASE NUMBER: CIV502857
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. NOTICE IS HEREBY GIVEN that (name):

appeals from the following judgment or order in this case, which was entered on (date):

- ☐ Judgment after jury trial
- ☐ Judgment after court trial
- ☐ Default judgment
- ☐ Judgment after an order granting a summary judgment motion
- ☐ Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
- ☐ Judgment of dismissal after an order sustaining a demurrer
- ☐ An order after judgment under Code of Civil Procedure section 904.1(a)(2)
- ☐ An order or judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
- ☒ Other (describe and specify code section that authorizes this appeal):

Minutes Order on 12-06-11 Case Management Conference. Cal. CCP Code § 581d

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

Date:

2/1/12

Fermin Solis Aniel and Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

APP-002

CASE NAME:

Fermin Solis Aniel et. al. v. ETS Services, LLC et. al

CASE NUMBER:

CIV502857

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

☒ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My residence or business address is (specify):

75 Tobin Clark Dr.
Hillsborough, CA 94010

3. I mailed or personally delivered a copy of the Notice of Appeal/Cross-Appeal (Unlimited Civil Case) as follows (complete either a or b):

a. ☒ Mail. I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope and

(a) ☒ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(b) ☐ placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served: See Attached for List of Persons to be Served

(b) Address on envelope:

See Attached

(c) Date of mailing:

(d) Place of mailing (city and state): San Mateo, California

b. ☐ Personal delivery. I personally delivered a copy as follows:

(1) Name of person served:

(2) Address where delivered:

(3) Date delivered:

(4) Time delivered:

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

Date: 2-2-12

Jason Aniel

(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

PROOF OF SERVICE LIST

**CHRISTOPHER L. PETERSON
LLP**

Attorneys for Defendant PITE DUNCAN,

**PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935**

**BRIAN S. WHITEMORE
SEVERSON & WERSON, P.C.
One Embarcadero Center, Suite 2600
San Francisco, California, 94111**

**Attorneys for Defendant GMAC
Mortgage, LLC f/k/a GMAC Mortgage
Corp. and GMAC Mortgage, ETS
Services, LLC, HSBC Bank, U.S.A. as
Trustee for DALT 2007-A03, and
Mortgage Electronic Registration
Systems, Inc.**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

ENDORSED FILE!
SAN MATEO COUNTY

FEB 02 2012

Fermin Solis Aniel, et.al.
Plaintiff/Appellant

CASE NUMBER: CIV502857

Clerk of the Superior Court
By Alexandrina Ortega
DEPUTY CLERK

Vs.

NOTICE OF FILING OF APPEAL

ETS Services, LLC, et.al.
Defendant/Respondent

Notice is hereby given that a NOTICE OF APPEAL was filed in the above action on 02/02/12, from the Judgment ordered/ entered on 12/06/11.

DATED: February 2, 2012

JOHN C. FITTON,
Clerk of the
Superior Court

By: Alex Ortega
Deputy Clerk

AFFIDAVIT OF MAILING

I declared under penalty of perjury that on the above stated date, I deposited in the United States Post Office mail box at Redwood City, California, a true copy of the above notice, enclosed with the proper and necessary postage prepaid, and addressed to the Court of Appeal, First Appellate District 350 McAllister Street, San Francisco, California 94102.

Fermin Solis Aniel & Erlinda Abibas Aniel
75 Tobin Clark Drive
Hillsborough, CA 94010

Christopher Peterson; Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, CA 92177-0935

Brian Whittemore; Severson & Werson, P.C.
One Embarcadero Center, Suite 2600
San Francisco, CA 94111

Executed on February 2, 2012, at Redwood City, California.

JOHN C. FITTON, Clerk of the
Superior Courts

By: Alex Ortega
Deputy Clerk

APP-003

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fermin Solis Aniel and Erlinda Abibas Aniel in Pro Per 75 Tobin Clark Dr. Hillsborough, CA 94010 TELEPHONE NO.: 650-284-6417 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY ENDORSED FILED SAN MATEO COUNTY FEB 08 2012 Clerk of the Superior Court By <u>Alexandrina Ortega</u> DEPUTY CLERK	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Redwood City Courthouse			
PLAINTIFF/PETITIONER: Fermin Solis Aniel et. al. DEFENDANT/RESPONDENT: ETS Services, LLC et. al.			
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		Superior Court Case Number: CIV502857	
RE: Appeal filed on (date): 02/02/2012		Court of Appeal Case Number (if known): A134461	
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.			

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior (check a, b, c, d, or e and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(?) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. ☐ A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

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CASE NAME: Aniel et. al v. GMAC Mortgage, LLC et al.

CASE NUMBER: A134461

b. ☒ WITH the following record of the oral proceedings in the superior court:

(1) ☐ A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.)
I have (check all that apply):

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).

(c) ☐ Attached the reporter's written waiver of a deposit for (check either (i) or (ii)):

(i) ☐ all of the designated proceedings.

(ii) ☐ part of the designated proceedings.

(d) ☒ Attached a certified transcript under rule 8.130(b)(3).

(2) ☐ An agreed statement. (Check and complete either (a) or (b) below.)

(a) ☒ I have attached an agreed statement to this notice.

(b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

(3) ☐ A settled statement under rule 8.137. (You must attach the motion required under rule 8.137(a) to this form.)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a, above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. Required documents. The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

(1) Notice of appeal

(2) Notice designating record on appeal (this document)

(3) Judgment or order appealed from

(4) Notice of entry of judgment (if any)

(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)

(6) Ruling on one or more of the items listed in (5).

(7) Register of actions or docket (if any)

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CASE NAME: Aniel et. al v. GMAC Mortgage, LLC et al.	CASE NUMBER: A134461
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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. Additional documents. (If you want any documents from the superior court proceeding in addition to the items listed in a. above to be included in the clerk's transcript, you must identify those documents here.)

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed)

Document Title and Description	Date of Filing
--------------------------------	----------------

(8)

(9)

(10)

(11)

(12)

☐ See additional pages.

- c. Exhibits to be included in clerk's transcript.

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

Exhibit Number	Description	Admitted (Yes/No)
----------------	-------------	-------------------

(1)

(2)

(3)

(4)

(5)

☐ See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

- a. I request that the reporters provide (check one):

(1) ☐ My copy of the reporter's transcript in paper format.

(2) ☐ My copy of the reporter's transcript in computer-readable format.

(3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

APP-003

CASE NAME: Aniel et. al v. GMAC Mortgage, LLC et al.

CASE NUMBER: A134461

Proceedings.

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings).

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
(1) 6/9/11	LM	Partial 9 am	Hearing on ETS et. al Demurrer	FARHOURI
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				

☐ See additional pages.

c. The proceedings designated in 5b ☐ include ☐ do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date:

2/7/12

Erlinda Abibas Aniel

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

PROOF OF SERVICE (Court of Appeal) <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	FOR COURT USE ONLY
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.	
Case Name: Fermin Aniel et. al. v. ETS Service, LLC et. al.	
Court of Appeal Case Number: A134461	
Superior Court Case Number: CIV502857	

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My ☒ residence ☐ business address is (specify):
75 Tobin Clark Drive, Hillsborough, CA 94010
3. I mailed or personally delivered a copy of the following document as indicated below (fill in the name of the document you mailed or delivered and complete either a or b):

a. ☒ **Mail.** I mailed a copy of the document identified above as follows:

(1) I enclosed a copy of the document identified above in an envelope or envelopes and

(a) ☒ deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

(b) ☐ placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

(2) Date mailed:

(3) The envelope was or envelopes were addressed as follows:

(a) Person served:

(i) Name: **See Attached**

(ii) Address:

(b) Person served:

(i) Name:

(ii) Address:

(c) Person served:

(i) Name:

(ii) Address:

☒ Additional persons served are listed on the attached page (write "APP-009, Item 3a" at the top of the page).

(4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state):

APP-009

CASE NAME: Fermin Aniel et. al. v. ETS Service, LLC et. al.

CASE NUMBER: A134461

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: 2/8/12

Jason Aniel

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

APP-009, ITEM 3B

CHRISTOPHER L. PETERSON

**Attorneys for Respondent/Defendant
PITE DUNCAN, LLP**

PITE DUNCAN, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, California, 92177-0935

**BRIAN S. WHITTEMORE
SEVERSON & WERSON, P.C.
One Embarcadero Center, Suite 2600
San Francisco, California, 94111**

**Attorneys for Respondents/Defendants
GMAC Mortgage, LLC f/k/a GMAC
Mortgage Corp. and GMAC Mortgage,
ETS Services, LLC, HSBC Bank, U.S.A.
as Trustee for DALT 2007-A03, and
Mortgage Electronic Registration
Systems, Inc.**

Alphabetical Index for Appellants' Appendix

Alphabetical Index

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Designation of Record	02/08/12	Vol. II, AA454
ETS, et al. Demurrer	03/07/11	Vol. II, AA372
ETS, et. al. Request for Judicial Notice	03/07/11	Vol. II, AA387
Hearing Transcript re: ETS, et. al Demurrer	06/09/11	Vol. II, AA438
Notice of Appeal	02/02/12	Vol. II, AA450
Opposition to ETS, et. al. Demurrer	05/26/11	Vol. II, AA414
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ETS, et. al. Request for Judicial Notice	03/07/11	Vol. II, AA387
Pite Duncan Demurrer	03/15/11	Vol. I, AA121
Pite Duncan Request for Judicial Notice	03/15/11	Vol. I, AA143
Opposition to Pite Duncan Demurrer	05/25/11	Vol. II, AA361
Opposition to ETS, et. al. Demurrer	05/26/11	Vol. II, AA414
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Notice of Appeal	02/02/12	Vol. II, AA450
Clerk's Notice	02/02/12	Vol. II, AA453
Designation of Record	02/08/12	Vol. II, AA454

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over eighteen years of age and not a party to the within action. My address is

75 Tobin Clark Dr., Hillsborough, CA 94010

On May ⁰³~~4~~, 2012, I served the following:

Appellants' Appendix Vol. I

Appellants' Appendix Vol. II

on the parties set forth on Exhibit A by placing a copy thereof in a sealed envelope with postage fully prepaid thereon for collection and mailing. I caused such envelope, with postage thereon full prepaid, to be placed in the United States Mail at San Francisco, California, or personally delivered. The addresses to which each party was served are as set forth in Exhibit A.

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

Executed on May ⁰³~~4~~, 2012 at San Mateo, California

A handwritten signature in black ink, appearing to read 'J. Aniel', is written over a horizontal line.

Jason Aniel

EXHIBIT A
TO PROOF OF SERVICE

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
(Four Copies)

Honorable Judge Joseph C. Scott
Southern Court, Dept. 25, Courtroom 2M
400 County Center
Redwood City, CA 94063

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

CHRISTOPHER L. PETERSON
Attorneys for Defendant PITE DUNCAN, LLP
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, California, 92177-0935

BRIAN S. WHITEMORE SEVERSON & WERSON, P.C. One Embarcadero Center, Suite 2600 San Francisco, California, 94111	Attorneys for Defendant GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, and Mortgage Electronic Registration Systems, Inc.
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Aniel Diligence Response

RESCAP

JUL 17 2013

MORRISON | FOERSTERTo: _____
By: KT**Claim Information**

Claim Number	416
Basis of Claim Explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you must provide copies of any and all documentation that you believe supports the basis for your claim.	See Attached

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number:		
[REDACTED] 11373 [REDACTED] 84923 [REDACTED] 4254		
Address of property related to the above loan number:		
75 Tobin Clark Dr.		
City:	State:	ZIP Code:
Hillsborough	CA	94010

Additional resources may be found at - <http://www.kccllc.net/rescap>

Residential Capital, LLC P.O. Box 385220 Bloomington, MN 55438

Claim Number: 416
Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel
Type: CC

Attachment

Proofs of Claim 416 and 417

Securitization of the Loan

Debtors were involved in an attempt to securitize the Note into the HSBC Bank, USA, National Association as Trustee for DALT2007-OA5 trust ("DALT2007-OA5"). In order for the Creditor's Note to be a part of the HBSC trust, the entities involved were required to follow various agreements and established laws, including the Trust Agreement that govern the creation of the Trust. Creditors allege the entities involved in the attempted securitization of the Creditors' Note failed to adhere to the requirements of the Trust. As a result, Creditors' Note was not part of the DALT-2007-AO5 asset/res. This became more apparent when on or around September of 2009, Erlinda Abibas Aniel called HSBC Bank, the trustee of the Trust, to confirm that her Note was in fact in the alleged Trust. A representative of HSBC Bank, named "Marianne", informed Erlinda Abibas Aniel that her subject property, loan number, her name, and the property address was no where to be found in their database, and that HSBC did not have that subject property in their records.

The Note was supposed to be properly securitized as a mortgage-backed security that is "pooled" together into the DALT-2007-OA5. The trust is regulated by New York Trust Laws. The Note was not securitized and that the Trustee of the Trust, DALT-2007-AO5, has no legal, equitable, or monetary interest in the Promissory Note such that it can demand payment from the Creditors. Further, after reviewing the PSA, chain of title, recorded documents, and other documents, the Note and the Deed were not properly conveyed to the DALT-2007-AO5 because (1) the beneficial interest in the Creditors'

Note and Deed were not effectively assigned, granted, or transferred to the Sponsor or Depositor (who were supposed to convey the Note and Deed into the Trust) prior to the closing date of the Trust and (2) HSBC failed to perfect the title to the Note and Deed by not strictly following the requirements of the PSA and other law, regulations, and agreements that govern the DALT-2007-AO5. An assignment of beneficial interest in the Deed and endorsement of the Note after the closing date of the trust was a violation of the PSA.

Wrongful Foreclosure Attempt and Fraudulent Documentation

On or around August 08, 2009, “Janine Yamoah”, a purported “ Assistant Secretary” for MERS, executed a purported Assignment of the Deed of Trust. The Assignment alleges that for “value received” MERS granted, assigned, and transferred to HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest in the Deed, **together with the Note** “the money due and to become due thereon with interests, and all rights accrued or to accrue under said Deed of Trust.” Creditors allege that no such transfer ever occurred and that “Janine Yamoah” had no corporate authority to assign the Note and Deed to HSBC and was not an employee of MERS, but is an employee of GMAC and a robo-signer.

On or around August 2, 2010, Fermin Solis Aniel and Erlinda Abibas Aniel’s bankruptcy case was converted to a Chapter 7, on their own motion. On or around December 2, 2010, the Bankruptcy Court fully discharged the obligation to pay on the any debt on the subject property. On or around January 5, 2011, Erlinda Abibas Aniel and Fermin Solis Aniel, credit report disclosed that no debt was owed on the subject property.

On or around February 01, 2011, "Mira Smoot", a purported "Authorized Officer" for HSBC, executed a purported Assignment of the Deed of Trust. The Assignment alleges that for **"value received"** HSBC granted, assigned, and transferred to GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION all beneficial interest in the Deed, **together with the Note** "the money due and to become due thereon with interests, and all rights accrued or to accrue under said Deed of Trust." Creditors allege that no such transfer ever occurred and that "Mira Smoot" had no corporate authority to assign the Note and Deed to GMAC and was not an employee of HSBC, but is an employee of GMAC and a robo-signer. Also, the cut off date on this Trust was July 30, 2007. HSBC could not move or transfer asset in the Trust after the cut off date because it would be a violation of the PSA and be subject to taxation under REMIC. The Document was recorded on February 9, 2011.

Sometime after February 9, 2011, GMAC associated account number "0713288492" as the loan in relation to the subject property. This account number is different from the account number on the Deed of Trust. Based on this information, Creditors are unsure what loan GMAC was attempting to collect because the account number is different from the account number on the Deed and the Note.

In the Notice of Default, ETS, as required by Federal and California law, sent Creditors a "Debt Validation Notice" along with the Notice of Default. In that Notice, ETS represented to the Creditors that \$516,041.70 was owed to GMAC, the creditor of the loan, and that any dispute of the debt or the debt amount should be in writing and mailed to ETS within thirty (30) of receiving the Notice of Debt Validation or else ETS would assume that the debt was valid. Upon receipt of a letter disputing the debt, ETS

promised that they would obtain and mail to the Creditors a verification of the debt. On or around May 10, 2012, which was less than 30 days after receiving the notice of debt validation, Creditor, Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified mail, to ETS, disputing the validity of the debt that was claimed to be owed to GMAC. Mrs. Aniel request a proper accounting of the debt and the standing for which GMAC can demand that amount from the Creditors. ETS never responded to the notice of Creditors' dispute of the debt as they promised and were required to do under Federal and California law.

GMAC's fraudulent actions claiming to be the Creditor of the Loan

Despite the fact that GMAC is attempting to foreclose the subject property, HSBC as Trustee for DALT-2007-OA5 is still claiming interest in the subject property. Currently, HSBC discloses, in its required monthly Remittance report, that they own the subject property under loan number "0115634254." Under this report, HSBC AS TRUSTEE FOR DALT2007-OA5 is purporting that loan number under the loan is "0115634254." *Id.* The loan number purported by HSBC AS TRUSTEE FOR DALT2007-OA5 is different from the loan number disclosed by Defendants in the Notice of Trustee Sale, which was "0713288492." Finally, GMAC, as subsidiary of Residential Capital, LLC, filed for bankruptcy on May 14, 2012. See Case number 12012932, U.S. Bankruptcy Court, Southern District of New York. GMAC in its schedules list property they have an ownership interest in. No where in their schedules do they list the subject property or the underlying loan obligation as owned by GMAC as a beneficiary or noteholder. GMAC misrepresented HSBC's continued interest in the subject property on

the Notice of Trustee's Sale. GMAC also fraudulently uses multiple account numbers on the same loan.

GMAC admits to this fact in its declaration regarding its motion for relief from the automatic. GMAC employee, Peter Knapp, declared that the noteholder was still purportedly HSBC, whereas GMAC, as a servicer, obtained beneficial interest in the deed of trust for the sole purpose of foreclosing the property. Thus, HSBC is still claiming an interest in the subject property. However, at the same time GMAC is claiming to be the secured creditor when it attempted to foreclose the property and when it filed for a motion for relief from stay without filing a Proof of Claim. See *In Re: Marc Jason Aniel*, 12-33117, Doc. 47. GMAC admits that it does not have any interest, legal or equitable, in the Promissory Note. GMAC purported employee, Peter Knapp, declared that HSBC still holds the Note and that GMAC is only the servicer of the loan. This supplemental declaration directly contradicts the statements made in the Assignment of the Deed of Trust, where GMAC purports to have obtained beneficial interest, for value, together with the Note, in the Deed of Trust. However, as it turns out, GMAC has no interest in the Promissory Note and is not entitled to payment under the Promissory Note. In summary, HSBC purports to be the noteholder of the promissory note (the document that creates the obligation to pay), while a recorded assignment of the deed of trust purports that GMAC, for value, is the beneficiary of the deed of trust (the document that creates a secured interest in the obligation and the power to conduct a non-judicial foreclosure). Clearly, a separation of the note and deed has taken place with regards to the subject property. Without the possession or rights of the promissory note, GMAC cannot enforce any secured interest in the deed and foreclose the property. See *Carpenter v. Longan*, 83

U.S. 271, 274-75 (1872) "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."); *Orman v. North Alabama Assets Co.*, 204 F. 289, 293 (N.D. Ala. 12 1913); *Rockford Trust Co. v. Purtell*, 183 Ark. 918 (1931); *In re Vargas*, 396 B.R. 511, 516, (E.D. Wash. 2008). This also applies to the deed of trust. "The deed and note must be held together because the holder of the note is only entitled to repayment, and does not have the right under the deed to use the property as a means of satisfying repayment." *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011). "Conversely, the holder of the deed alone does not have a right to repayment and, thus, does not have an interest in foreclosing on the property to satisfy repayment." *Id.*

The Nevada Supreme Court, which like California also allows for non-judicial foreclosures, held that the Note and the Deed of Trust are inseparable:

Considered a form of mortgage in Nevada, the deed of trust does not convey title so as to allow the beneficiary to obtain the property without foreclosure and sale, but is considered merely a lien on the property as security for the debt, subject to the laws on foreclosure and sale. *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 298-99, 183 P.3d 895, 901-02 (2008); *Orr v. Ulyatt*, 23 Nev. 134, 140, 43 P. 916, 917-18 (1896). To enforce the obligation by nonjudicial foreclosure and sale, "[t]he deed and note must be held together because the holder of the note is only entitled to repayment, and does not have the right under the deed to use the property as a means of satisfying repayment." *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011). "Conversely, the holder of the deed alone does not have a right to repayment and, thus,

does not have an interest in foreclosing on the property to satisfy repayment." *Id.*; see also *Leyva v. National Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1279-80 (2011) (recognizing that the note and the deed of trust must be held by the same person to foreclose under NRS Chapter 107)....to have standing to foreclose, the current beneficiary of the deed of trust and the current holder of the promissory note must be the same. *Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 254-256 (Nev. 2012)

In this case, assuming that GMAC was assigned beneficial interest in the Deed of Trust, it does not have standing or authority to foreclose the property because GMAC is not the holder of the promissory note. GMAC's recordation of the assignment of the deed created a cloud on the title where HSBC as Trustee for DALT-2007-OA5 is the holder of the promissory note and GMAC is purporting that it is the beneficiary of the deed of trust. As a result, GMAC, without interest in the promissory note, cannot foreclose the property through the use of the Deed of Trust because it has no right to repayment of the debt. GMAC cannot make a demand for payment. GMAC's authority to foreclose was predicated on the assumption that it was the creditor of the loan (as GMAC claimed in the Debt Validation letter sent to the Creditors that it was the creditor). As it turns out, the evidence proves that HSBC is still claiming an interest in the property as the note-holder and GMAC is merely a loan servicer without any legal rights to the obligation of repayment.

GMAC is not the owner of the loan, holder of the Note, and beneficiary of the Deed of Trust. GMAC did not pay value for the Note and Deed to the party that previously owned the loan. GMAC is not the noteholder of the promissory note.

Therefore, without a legal, equitable, or enforceable claim to the obligation of the debt, GMAC is not secured with a mortgage on the subject property.

GMAC admits they are not the holder of the Note. GMAC admits that it has no right to enforce the Note. Creditors deny the authenticity, validity and authority to make any indorsements that appear on the original note. Creditors deny the validity and authority not to have the indorsement that were required to be signed or stamped upon the Note, pursuant to the terms of the Securitization Documents, including the lack thereof. It is legally impossible for GMAC to ever have obtained ownership of the Loan, Note, and Deed of Trust. It is also legally and factually impossible for GMAC to have a perfected lien and be a Secured Creditor. It is also a legal impossibility for GMAC to be the holder of the Note. Throughout the foreclosure attempt and motion for relief from stay, GMAC has reclaimed to by the Movant and beneficiary entitled to payment of the debt and has not present any evidence of any agency relationship with HSBC.

Damages

Because of this fraud, Erlinda Abibas Aniel, suffered tremendous health problems such as high blood pressure, diabetes, anxiety, and depression. Her husband retired suddenly from work because he lost hope in his real estate investment. Erlinda and Fermin are now estranged. She has suffered an unexplained weight gain because of this burden that has been placed on her fighting these thieves attempting to steal her home through the use of fabricated documentations.

Because of GMAC's actions, Marc Jason Aniel was forced to file for bankruptcy in order to protect his interest. GMAC's actions against him and his family have hindered Marc Jason Aniel's career as a young attorney.

The Proof of Claim supports an unliquidated amount based on the wrongful foreclosure attempt, damaged credit rating, fraud, misconduct in the bankruptcy court and district court, and misconduct in the state court and recorder's office of San Mateo County.

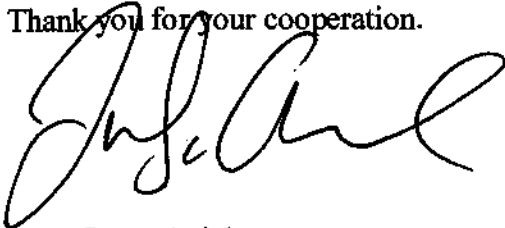
The case is still currently pending in the United States District Court for the Northern District of California, Oakland Division.

Supporting Documentation

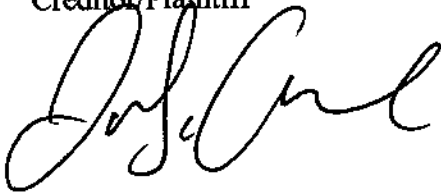
The following documentation supports my claim.

- a. Attachment One and Two for Proof of Claims 416 and 417
- b. Complaint filed in the United States District Court with Exhibits
- c. Adversary Complaint filed in the Bankruptcy Court with Exhibits
- d. Credit Report

Thank you for your cooperation.



Marc Jason Aniel
75 Tobin Clark Drive
Hillsborough, CA 94010
650-814-9478
Creditor/Plaintiff



Marc Jason Aniel (CA BN: 282466)
205 De Anza Blvd. #144
San Mateo, CA 94402
650-814-8478
Attorney for Fermin Solis Aniel and Erlinda Abibas Aniel

Dated: July 11, 2013

A

Attachment 1

Proof of Claim

This Proof of Claim is being filed concurrently with the Proof of Claim against debtor, GMAC MORTGAGE, LLC AKA GMAC MORTGAGE CORPORATION (case number: 12-12032 (MG)). EXECUTIVE TRUSTEE SERVICES, LLC and GMAC MORTGAGE LLC AKA GMAC MORTGAGE CORPORATION are jointly and severely liable for the amount recoverable in the pending lawsuit.

ERLINDA ABIBAS ANIEL, FERMIN SOLIS ANIEL, AND MARC JASON ANIEL, AS PLAINTIFFS, AGAINST GMAC MORTGAGE, LLC; EXECUTIVE TRUSTEE SERVICES, LLC., DBA ETS SERVICES, LLC; AND DOES 1 THROUGH 50.

Aniel et al. v. GMAC MORTGAGE, LLC et al.
United States District Court
For the Northern District of California
Oakland Division
Case Number: C 12-04201 SBA
Filed on: August 09, 2012

Subject Property Address: 75 Tobin Clark Drive, Hillsborough, CA 94010

A. Description of Claims

Claims arising from the following causes of action:

- (1) Wrongful Foreclosure (Violation of Civil Code § 2923.5 2924 et. Seq.)
- (2) Violation of 15 U.S.C. § 1692, et seq.
- (3) Violation of 12 U.S.C. § 2605
- (4) Set aside and Cancel Trustee's Sale
- (5) Declaratory Relief
- (6) Quiet Title
- (7) Fraudulent Concealment
- (8) Violation of California Rosenthal Act
- (9) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et. Seq.)

B. History of the Lawsuit

ETS Service executed and recorded a Notice of Trustee's Sale, which is scheduled on August 27, 2012, at 1:00 p.m. at Marshall Street, Redwood City, CA 94063.

On August 9, 2012, the claimants filed a civil action in the United States District Court for the Northern District of California for equitable and legal relief for wrongful foreclosure, violation of 15 U.S.C. § 1692 et seq., violation of 12 U.S.C. §

2605, setting aside and canceling the Trustee's Sale, Declaratory Relief, Quiet Title, Fraudulent Concealment, Violation of California Rosenthal Act, Violation of the Unfair Competition Law. See attached verified complaint as exhibit "A". Claimants alleged that neither GMAC nor ETS have any interest in the loan, and that the loan that is secured by the subject property was not disclosed as an asset for the Debtors' estate. However, Debtors are attempting to be unjustly enriched if they proceed with the Trustee's Sale through the use of fabricated documents like the Assignment of the Deed, Substitution of Trustee, notice of default, and notice of trustee sale. Each and every document Debtors, or their agents, have executed and recorded are VOID and have no legal effect. Therefore, the attempted foreclosure of the subject property is VOID and has no legal effect. Claimants have filed a Temporary Restraining Order enjoining the scheduled Trustee's Sale and an order to show cause of why a Preliminary Injunction should not be filed against Debtors.

C. Indemnifications Claims:

1. The Claimants have been damaged by virtue of Debtors' attempt to sell the property while the case is still pending. Without limiting the generality of the foregoing, the Claimants have incurred, and will continue to incur significant legal expenses enforcing and defending against the Debtors' improper foreclosure of the claimants' subject property.
2. Pursuant to the Governing Documents and applicable laws, Debtors' entities are liable to the Claimants for indemnification against any losses, claims, expenses or damages including legal fees and related cost, arising out of and based upon any breaches of any representation warranty or covenant made by the Debtor or any affiliates of the Debtors in the Governing Documents.
3. Based upon the foregoing, a claim is asserted in an unliquidated amount on account of Debtors' indemnification obligation arising from fraud, wrongful foreclosure, violation of federal law, unlawful business practice, and governing documents. As of this date of this Proof of Claim, the Claimants has incurred expenses of a unliquidated amount which is unknown at this time in connection with filing the civil actions against Debtors and its affiliates GMAC Mortgage, LLC, and Executive Trustee Services, LLC. Such expenses and indemnification obligation continue to accrue.

D. Miscellaneous

1. By executing and filing this Proof of Claim, Claimants do not waive any right to any security or any right or rights with respect to any claim that Claimants have.
2. To the knowledge of the signatory hereto, the claim is not subject to any set off or counterclaims, and no judgment has been rendered on this claim or the lawsuit.

3. Claimant reserves its right to amend and/or supplement this Proof of Claim and to assert any and all other claims of whatever kind or nature it has, or may have, that come to Claimants' attention or arises after filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims or rights.
4. Nothing contained in this Proof of Claim shall be deemed or construed as:
 - a. A waiver of, or other limitation on, any right or remedies of Claimants.
 - b. A consent by Claimants to this jurisdiction of the Court or any other court in respect to proceedings, if any.
 - c. A waiver or release of, or any limitation on Claimants' right to a trial by jury in this Court or any court in any proceeding.
 - d. A waiver or release of, or any other limitation on, Claimants' right to seek a withdrawal of the reference with respect to any matter, including any matter relating to this Proof of Claim or
 - e. A waiver of release of, or any other limitation on Claimants' right to assert that any portion of the claim asserted herein are entitled to treatment as priority claims, including under Section 503(b) and Section 507(a)(1) of the bankruptcy code.

Attachment 2

Total Item Breakdown

1.	Value of Real Estate Property -	Unliquidated (approx. \$3,500,000.00)
2.	Legal Damages suffered under Claimants' claims	Unliquidated (approx. \$2,500,000.00)
3.	Legal Expenses incurred - during the pending case	Unliquidated
	Totals	Unliquidated (approx. \$6,000,000.00 plus expenses)

B

Marc Jason Aniel (SBN: 282466)
LAW OFFICES OF MARC JASON ANIEL
205 De Anza Blvd. #144
San Mateo, CA 94402
Phone: 650-814-9478
Fax: 650-571-5829
Email: mj_aniel@me.com

FILED
2
AUG - 9 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorney for Plaintiffs, Fermin Solis Aniel and Erlinda Abibas Aniel
Plaintiff, Marc Jason Aniel, in Pro Per

UNITED STATES DISTRICT COURT

DMR

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 12 4201

ERLINDA ABIBAS ANIEL, an individual;
FERMIN SOLIS ANIEL, an individual;
MARC JASON ANIEL, an individual

Case No.:

COMPLAINT FOR:

Plaintiffs,

v.

GMAC MORTGAGE, LLC; EXECUTIVE
TRUSTEE SERVICES, LLC., DBA ETS
SERVICES, LLC; AND DOES 1 THROUGH
50.

Defendants

- (1) WRONGFUL FORECLOSURE
(VIOLATION OF CIVIL CODE §
2923.5 2924 ET. SEQ.)
- (2) VIOLATION OF 15 U.S.C. § 1692,
ET SEQ.
- (3) VIOLATION OF 12 U.S.C. § 2605
- (4) SET ASIDE AND CANCEL
TRUSTEE'S SALE
- (5) DECLARATORY RELIEF
- (6) QUIET TITLE
- (7) FRAUDULENT CONCEALMENT
- (8) VIOLATION OF CALIFORNIA
ROSENTHAL ACT
- (9) VIOLATION OF THE UNFAIR
COMPETITION LAW (CAL. BUS.
& PROF. CODE §§ 17200 ET. SEQ.)

DEMAND FOR JURY TRIAL

I. COMPLAINT

COMES NOW Plaintiffs, Erlinda Abibas Aniel and Fermin Solis Aniel, by way of their
Attorney, and Plaintiff, Marc Jason Aniel, in Pro Per, complain of the above-named

1 Defendants, demand a jury trial, and allege that the following allegations and other factual
2 contentions have evidentiary support or, where specifically identified as being pled "on
3 information and belief" are likely have evidentiary support after a reasonable opportunity for
4 further investigation or discovery as follows:

5 **II. STATEMENT OF THE CASE**

6 1. This lawsuit arises from: (i) Defendants' attempt to wrongfully foreclose the
7 property through fraudulent documentations containing false and contradictory information;
8 (ii) Defendants' continued attempt to collect debt that the Plaintiffs do not owe; (iii)
9 Defendants' concealment of relevant information regarding Plaintiffs' loan; (iv) Defendants'
10 violations of Federal and State law; and (v) Defendant's continuing tortuous conduct intent to
11 deprive Plaintiffs of their rights, described below.

12 2. This action seeks remedies for the foregoing improper activities, including the
13 wrongful foreclosure of the Plaintiffs' property, fraudulent concealment of important
14 information and actions involving the Plaintiffs' property, which resulted in devastating losses
15 and damages by Plaintiffs, which includes, but is not limited to, lost of their property, lost
16 value in their property, lost income, and lost equity in the property.

17 4. It has become all too clear now that millions of homes that were foreclosed since
18 the Mortgage crisis in 2008 were in violation of California Law and were done through
19 fraudulent documentation. Robo-signing, false pleadings, false recorded documents, and debt
20 collectors did many other unlawful business practices in order to take advantage of the non-
21 judicial foreclosure laws of California.

22 5. As a result, more and more debt collectors involved in wrongful foreclosures have
23 paid for their actions. In 2008, Bear Stearns Companies, LLC, and its subsidiary EMC
24 Mortgage Corporation agreed on a settlement to pay \$28 million to settle with Federal Trade
25 Commission for unlawful Mortgage Servicing and Debt Collection Practices. See FTC File
26 No. 0623031. Attorney Generals for Forty-Nine States and the District of Columbia in the
27 United States reached a \$26 Billion settlement with Bank of America, JPMorgan Chase, Wells
28 Fargo, Citigroup and Ally Financial. The U.S. District Court for the District of Columbia

1 approved the settlement over foreclosure process abuses. The settlement arises from multiple
2 abuse of servicing of loans and the foreclosure process. Since most loan were sold in the
3 secondary market, servicer and debt collectors covered up their acts by routinely forging, back-
4 dating fabricated documents at county recorder officers and state and federal courts across the
5 country. Furthermore, the debt collectors employed "robo-signers," who signed hundred of
6 thousands (if not millions) of documents and affidavits without any knowledge of the
7 underlying mortgages. (See CNNMoney Article, "Court approves \$26 billion foreclosure
8 settlement," available at: [http://money.cnn.com/2012/04/06/real_estate/mortgage-](http://money.cnn.com/2012/04/06/real_estate/mortgage-settlement/index.htm)
9 [settlement/index.htm](http://money.cnn.com/2012/04/06/real_estate/mortgage-settlement/index.htm)).

10 6. Despite their admission and attempts to settle based on their wrongful conduct, debt
11 collectors continue to this day using fraudulent documents recorded in the County Recorder's
12 office in order to wrongfully foreclose properties.

13 7. In 2007, Defendant, GMAC Mortgage, LLC (hereinafter "GMAC"), attempted, but
14 failed to assign or transfer Plaintiffs' Promissory Note to HSBC Bank, USA, National
15 Association as Trustee for DALT2007-OA5. As such, GMAC has no authority to collect on
16 the Note and enforce the Deed of Trust. Despite this fact, Defendant, GMAC, and its agents,
17 attempted to collect on this Note and enforce the Deed of Trust with the knowledge that they
18 have no legal right to do so. In addition to violating the Fair Debt Collection Practices Act and
19 the Real Estate Settlement Procedures Act, Defendants knowingly concealed their lack of an
20 enforceable security interest by fabricating and recording false documents in the San Mateo
21 County Recorder's Office. Defendants' conduct is not only unfair and fraudulent, but also
22 constitutes a violation of the California Penal Code section 532(f)(a)(4) (which prohibits any
23 person from filing a document related to a mortgage loan transaction with the county
24 recorder's office, which that person knows to contain a deliberate misstatement.) Through this
25 action, Plaintiffs seeks damages resulting from Defendants' unlawful conduct and a declaratory
26 judgment establishing that Defendants have failed to substantiate a perfected security interest
27 in the Note and the Deed of Trust. Simply put, Defendants have no legal, equitable, or
28 pecuniary interest in the Note and the Deed of Trust.

1 8. In the alternative, if the Court finds that GMAC does have an enforceable security
2 interest in the Note and the Deed of Trust, Defendants did not follow proper non-judicial
3 foreclosure process in California. Defendants did not engage in certain communications and
4 contacts, or attempt to engage in such communications and contacts with Plaintiffs to help
5 them avoid foreclosure on the Subject Property, and that GMAC was required to conduct these
6 communications and contacts prior to filing the Notice of Default against the Plaintiffs.
7 Defendants were in violation of California Civil Procedure §§ 2923.5 and 2936a(b). Also, if
8 the Court determines that the HSBC Bank did have a valid interest in the loan, that it was fully
9 satisfied by the government bailouts and insurance payments. Defendant, GMAC, is
10 attempting to double dip on the debt of the loan by attempting to foreclose the property.

11 **III. JURISDICTION AND VENUE**

12 9. This Court has original jurisdiction over the claims in this action based on 28
13 U.S.C. §§ 1331, 1343, 2201, 2202, 15 U.S.C. § 1692, and 12 U.S.C. § 2605 which confer
14 original jurisdiction on the federal district courts in suits to address the Defendants' violation
15 of federal law.

16 10. This Court also has supplemental jurisdiction over the pendant state law claims
17 because they form part of the same case or controversy under Article III of the United States
18 Constitution, pursuant to 28 U.S.C. § 1367.

19 11. This Court has original jurisdiction over the claims in this action based on 28
20 U.S.C. 1332, which confers original jurisdiction on federal district court in suits between
21 complete diverse citizens that involve an amount in controversy in excess of \$75,000.00.

22 12. The unlawful conduct, illegal practices, and acts complained of and alleged in this
23 Complaint were all committed in the Northern District of California and involved real property
24 that is located in the Northern District of California. Therefore, venue properly lies in this
25 District, pursuant to 28 U.S.C. § 1391(b).

26 **IV. PARTIES**

27 13. Plaintiff, ERLINDA ABIBAS ANIEL, is now and at all times mentioned herein, an
28 individual residing in the State of California, who owns and lives in real property commonly

1 acquirer of an entire business, and each Defendant performed or has sought to benefit from the
2 tortious acts set further herein for its own monetary gain and as a party of a common plan
3 developed and carried with the other Defendants or as successor-in-interest to the business that
4 did the foregoing.

5 20. Plaintiffs allege that each of the wrongful acts or omissions described below was
6 performed either by each Defendant herein, named or unnamed, or ratified and adopted by
7 each Defendant after its occurrence.

8 21. Further, those Defendants that did not actively perform the acts or omissions
9 described in this Complaint did affirmatively aid and abet the other Defendants in the
10 performance of such acts of omissions, before, during or after the fact.

11 22. Finally, each Defendant herein, named or unnamed, did knowingly derive some
12 form of profit or benefit from the acts and omissions described herein.

13 23. Any allegation about acts of any corporate or other business Defendants means the
14 corporation or other business did the acts alleged through its officers, directors, employees,
15 agents, and/or representatives while they were acting within the actual or ostensible scope of
16 their authority.

17 24. All Defendants agreed to work together in the conspiracy and/or joint enterprise
18 described in this Complaint based upon an express agreement among all Defendants to
19 wrongfully foreclose the subject property, collect the debt through a Trustee Sale, and profit on
20 the eventual sale of the foreclosed property described herein. Accordingly, each Defendant,
21 named or unnamed, should be held liable for the acts and omissions of all other Defendants
22 with respect to the causes of action set forth below.

23 25. Each of the Defendants herein, named or unnamed, was the agent of each of the
24 other Defendants herein, named or unnamed, and thereby participated in all of the wrongdoing
25 set forth below. Thus, each such Defendant is responsible for the acts, events, and
26 concealment of every other such Defendant as set forth below.

FACTUAL ALLEGATIONS

1
2 26. On or around June 4, 2007, Erlinda Abibas Aniel executed a Promissory Note
3 (herein "Note") in favor of MortgageIT, Inc. for the refinance of the subject property.

4 27. On or around June 4, 2007, Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc
5 Jason Aniel executed a Deed of Trust in favor of MortgageIT, Inc., to secure the Promissory
6 Note that was executed on the same day by Erlinda Abibas Aniel. In the Deed of Trust,
7 MortgageIT, Inc. was disclosed as the Lender. Mortgage Electronic Registration Systems, Inc.
8 was disclosed as the beneficiary, solely in its capacity as a nominee for the Lender. Fidelity
9 National Title was disclosed as the Trustee. See Exhibit "A".

10 28. On information and belief, Plaintiffs allege that prior to them signing the Note and
11 Deed, MortgageIT had already agreed to sell her loan to another entity or entities. And that
12 shortly after the origination of her Loan, MortgageIT did in fact sell her loan to another entity
or entities.

13 29. Securitization is the process whereby mortgage loans were made and then turned
14 into negotiable securities sold to Wall Street. Loans were funded, packaged together and sold
15 to Wall Street, or at least that was the way it was explained. The reality is much different.
16 Wall Street (Wall Street Investment Banks) decided that loan securitization was a new
17 methodology whereby they could lure investors into buying subprime and other loans as new
18 investment vehicle. This would provide the investor with a good Rate of Return on
19 investments, while providing Wall Street with a new methodology of generating commissions.
20 It has generally been assumed that theses funds consisted of Wall Street's own funds, but that
is far from the truth. The methodology for Securitization is:

21 a. Wall Street promoted the Investment Vehicles and received AAA ratings on
22 them. They went to investors, and sold them on the idea. The investors then put up the
23 money for the loans.

24 b. Wall Street created pooling agreements where they defined in the agreements
25 the loans that they would accept for each investment vehicle. They executed
26

1 agreements with the lenders and then immediately issued warehouse lines of credit to
2 the lenders.

3 c. Lenders then let brokers know the loan parameters to meet the pooling
4 agreement guidelines and the brokers went out and found the borrowers.

5 d. Wall Street took all the loans, packaged them up and sold them as bonds and
6 other security instruments to other investors, i.e. Pension Funds, and paid off original
7 investors or reissued new lines of credit, and earned commissions on both ends.

8 e. The process was repeated time and time again

9 f. The reality is that the reported lender on the Deed of Trust was NOT the
10 actual lender. The actual lender who lent the money was the Wall Street investment
11 Bank. They simply rented the license of the lender, so that they would not run afoul of
12 banking regulations and/or avoid liability and tax issues.

13
14 30. Plaintiffs allege that these unknown entities and Defendants were involved in an
15 attempt to securitize their Note into the HSBC Bank, USA, National Association as Trustee for
16 DALT2007-OA5 trust ("HSBC"). In order for the Plaintiffs' Note to be a part of the HBSC
17 trust, the entities involved were required to follow various agreements and established laws,
18 including the Trust Agreement that govern the creation of the Trust. Plaintiffs allege the
19 entities involved in the attempted securitization of the Plaintiffs' Note failed to adhere to the
20 requirements of the Trust. As a result, Plaintiffs' Note was not part of the DALT-2007-AO5
21 asset/res. This became more apparent when on or around September of 2009, Erlinda Abibas
22 Aniel called HSBC Bank, the trustee of the Trust, to confirm that her Note was in fact in the
23 alleged Trust. A representative of HSBC Bank, named "Marianne", informed Erlinda Abibas
24 Aniel that her subject property, loan number, her name, and the property address was no where
25 to be found in their database, and that HSBC did not have that subject property in their records.

26 31. This fatal defect renders Defendants third-party strangers to the underlying debt
27 obligation without the power or right to demand payment, declare default, negotiate the loan,
28

1 and foreclose the subject property. Although Defendants were aware of this fact, they have
2 and continue to act as if they have authority to demand payment, declare default, negotiate the
3 loan, and foreclose on their property. Plaintiffs specifically dispute this fact.

4 32. Plaintiffs' information and belief is based on (1) a title report and analysis of the
5 Property's County records; (2) An independent forensic loan audit mortgage compliance
6 analysis report on the subject property; (3) direct written and oral communication with
7 Defendants; (4) Plaintiffs' research, experience, and extensive review of depositions, case law,
8 amicus briefs, correspondence, news articles, reports, other complaints, and publicly available
9 securitization documents and practices; (5) HSBC's Pooling and Servicing Agreement
10 ("PSA").

11 33. Based on the findings, Plaintiffs believe and thereon alleges that her Note was
12 supposed to be properly securitized as a mortgage-backed security that is "pooled" together
13 into the DALT-2007-OA5. The trust is regulated by New York Trust Laws. Plaintiffs allege
14 that the Note was not securitized and that the DALT-2007-AO5 has no legal, equitable, or
15 monetary interest in the Promissory Note such that it can demand payment from the Plaintiffs.
16 Further, after reviewing the PSA, chain of title, recorded documents, and other documents, the
17 Note and the Deed were not properly conveyed to the DALT-2007-AO5 because (1) the
18 beneficial interest in the Plaintiffs' Note and Deed were not effectively assigned, granted, or
19 transferred to the Sponsor or Depositor (who were supposed to convey Plaintiffs' Note and
20 Deed into the Trust) prior to the closing date of the Trust and (2) HSBC failed to perfect the
21 title to the Note and Deed by not strictly following the requirements of the PSA and other law,
22 regulations, and agreements that govern the DALT-2007-AO5. An assignment of beneficial
23 interest in the Deed and endorsement of the Note after the closing date of the trust was a
24 violation of the PSA.

25 34. Plaintiffs allege that the Note was endorsed after the closing date of the DALT-
26 2007-AO5, which was on July 31, 2007. This date was established in the PSA and is the date
27 by which all of the Notes had to be transferred into the DALT-2007-AO5 in order for the Note
28 to be part of the trust res.

1 35. The true investor or lender was subsequently bailed out by the U.S. Government or
2 through insurance providers who fully satisfied the investor's investment in the loan or the
3 Trust.

4 36. Conscious they lacked any beneficial interest in the Plaintiffs' loan, Defendants
5 deceptive acts began on or around October 2008, when Plaintiffs sought a loan modification.

6 37. On or around October 2008, under the belief that there was debt on her property
7 and that she still owed money to MortgageIT, Plaintiffs, with the help of a Law Office, sought
8 a loan modification. Plaintiffs contacted GMAC, the servicer of the loan, and their agent
9 "David" instructed Plaintiffs to submit an application with certain financial forms to the
10 GMAC lost mitigation department. Plaintiffs submitted a loan modification application
11 package at the request of GMAC. After Plaintiffs submitted its application, they were not
12 contacted or informed of any decision.

13 38. On or around December 2008, Erlinda Abibas Aniel, on her own, spoke to a
14 GMAC representative by the name of "Jacob". This agent informed Ms. Aniel that GMAC did
15 receive the application, but that it was an application for a "Short Sale" and not a loan
16 modification. "Jacob" promised to change the request from a "Short Sale" to a loan
17 modification and promised that as long as Plaintiffs were in default of the mortgage, they
18 would be approved of a loan modification.

19 39. Plaintiffs have never received any response in relation to their loan modification
20 application from GMAC.

21 40. On September 25, 2008, ETS, claiming to be an agent for the beneficiary, executed
22 a Notice of Default, and then recorded that Notice of Default on September 29, 2008. In that
23 Notice of Default, ETS demanded \$29,905.26 be paid to MERS in order to cure the default.
24 There were several issues with this Notice of Default. See Exhibit "B". First, it disclosed that
25 MERS was the beneficiary of the Deed and is entitled to payments of the default amount.
26 While MERS was named as a beneficiary it was only authorized to act solely in its capacity as
27 a nominee for the Lender, and not on its own powers. Also, MERS is merely a registration
28 system and is not entitled to any payments on the mortgage or any default amount. Second,

1 ETS purposefully mislead the Plaintiffs to believe that they were the agent for the beneficiary
2 (MERS). This was not true. ETS was a debt collector with the purpose of collecting a debt on
3 this property. ETS could not be a Trustee and an agent for the beneficiary because that would
4 be a violation of California's Civil Code §2934, where a Trustee must remain neutral. The
5 truth is, and Plaintiffs allege this truth, ETS was not the Trustee or the agent of the beneficiary
6 but rather a debt collecting company with no legal, equitable, or enforceable interest in the
7 Deed.

8 41. On September 25, 2008, and on the same day the Notice of Default was executed,
9 MERS executed another Substitution of Trustee. See Exhibit "C". Rosalie Solano, claiming to
10 be an assistant secretary for MERS, in its own capacity without authorization from the Lender,
11 executed a Substitution of Trustee in favor of ETS. Christine Gomez-Schwab, California a
12 notary public, acknowledged the document. The document was recorded on September 29,
13 2008, which was the same day the Notice of Default was recorded.

14 42. On December 30, 2008, Christine Gomez-Schwab, a Trustee Sale Officer, executed
15 a Notice of Trustee Sale on the subject property, which the sale was scheduled on January 26,
16 2009. See Exhibit "D". Ms. Gomez-Schwab is the same individual that notarized and
17 acknowledged the September 25, 2008 Substitution of Trustee.

18 43. On February 25, 2009, Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
19 filed for Bankruptcy under Chapter 11.

20 44. On or around August 08, 2009, "Janine Yamoah", a purported " Assistant
21 Secretary" for MERS, executed a purported Assignment of the Deed of Trust. See Exhibit "E".
22 The Assignment alleges that for "value received" MERS granted, assigned, and transferred to
23 HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest
24 in the Deed, together with the Note "the money due and to become due thereon with interests,
25 and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no such
26 transfer ever occurred and that "Janine Yamoah" had no corporate authority to assign
27 Plaintiffs' Note and Deed to HSBC and was not an employee of MERS, but is an employee of
28 GMAC and a robo-signer.

1 45. On or around September 09, 2009, Katherine L. Johnson, an attorney for GMAC,
2 submitted a Proof of Claim to the U.S. Bankruptcy Court where they purported that HSBC was
3 the Secured Creditor, and that the debt on the loan was \$2,218,509.71, which was \$218,509.71
4 more than the original loan amount of \$2,000,000.00. Plaintiffs objected to the Proof of Claim.

5 46. On or around August 2, 2010, Plaintiffs' bankruptcy case was converted to a
6 Chapter 7, on their own motion. On or around December 2, 2010, the Bankruptcy Court fully
7 discharged the obligation to pay on the any debt on the subject property. On or around January
8 5, 2011, Plaintiffs'—Erlinda Abibas Aniel and Fermin Solis Aniel—credit report disclosed that
9 no debt was owed on the subject property. On or around February 4, 2011, Plaintiffs'
10 bankruptcy case was closed.

11 47. On or around February 01, 2011, "Mira Smoot", a purported "Authorized Officer"
12 for HSBC, executed a purported Assignment of the Deed of Trust. See Exhibit "F". The
13 Assignment alleges that for "value received" HSBC granted, assigned, and transferred to
14 GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION all beneficial
15 interest in the Deed, together with the Note "the money due and to become due thereon with
16 interests, and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no
17 such transfer ever occurred and that "Mira Smoot" had no corporate authority to assign
18 Plaintiffs' Note and Deed to GMAC and was not an employee of HSBC, but is an employee of
19 GMAC and a robo-signer. Also, the cut off date on this Trust was July 30, 2007. HSBC
20 could not move or transfer asset in the Trust after the cut off date because it would be a
21 violation of the PSA and be subject to taxation under REMIC. The Document was recorded on
22 February 9, 2011.

23 48. Sometime after February 9, 2011, GMAC associated account number
24 "0713288492" as the loan in relation to the subject property. This account number is different
25 from the account number on Plaintiffs' Deed of Trust. Based on this information, Plaintiffs are
26 unsure what loan GMAC was attempting to collect because the account number is different
27 from the account number on the Plaintiffs' Deed.
28

1 49. On or around June 27, 2011, Lizeth Chavez, a Trustee Sale Officer, purported a
2 Notice of Recession of a Notice of Default. The document was recorded on July 1, 2011. See
3 Exhibit "G".

4 50. In an attempt to clear the title defects on the property, on or around March 15,
5 2012, Plaintiff, Erlinda Abibas Aniel, mailed a letter requesting a Deed of Full Reconveyance
6 on the subject property from MortgageIT, the originator of the loan. MortgageIT made no
7 response to the request.

8 51. Based on information and belief, Plaintiffs thus allege that in retaliation for the
9 request for a Deed of Full Reconveyance, on or around April 21, 2012, Dee Ortega, a Trustee
10 Sale Officer for ETS, as an agent for the beneficiary and not the Trustee purported a Notice of
11 Default on the subject property. See Exhibit "H". The Notice of Default purported that
12 Plaintiffs owed \$516,041.70 in a default amount. Plaintiffs allege that they do not owe any
13 money on the property. The document was recorded on April 27, 2012.

14 52. The Notice of Default also purported that Dee Ortega declared that the "beneficiary
15 or its authorized agent declared that they have complied with California Civil code Section
16 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower
17 as required by California Civil Code Section 2923.5." Plaintiffs allege that no such contact
18 was ever made by any of the Defendants, or their authorized agents, to the Plaintiffs in order to
19 seek alternatives to a foreclosure. No contact was made because none of the Defendants have
20 an enforceable interest in the property to offer such alternatives to a foreclosure. The
21 declaration of compliance was not acknowledge or sworn under penalty of perjury cannot be
22 deemed as a true statement.

23 53. Prior to the execution of a purported Notice of Default, on or around April 5, 2012,
24 Marcell G. Pace, a purported "authorized officer" of GMAC, purported a substitution of
25 trustee, where the new trustee would be ETS. See Exhibit "I". Plaintiffs allege that no
26 substitution ever took place, and that the substitution has no legal effect because GMAC has no
27 legal, equitable, or enforceable interest in the subject property to substitute ETS as the Trustee.
28 The document was recorded on April 27, 2012, which was the same day the Notice of Default
was recorded.

1 54. In the alternative, even if the Substitution did take place, ETS was not properly
2 substituted under California law. Plaintiffs allege that no notice of the substitution was ever
3 sent to any of the original beneficiary or any entity that was entitled to receive notice of the
4 Notice of Default. Under California Civil Procedure Section 2934(a)(b):

5 "If the substitution is executed, but not recorded, prior to
6 or concurrently with the recording of the notice of default, the
7 beneficiary or beneficiaries or their authorized agents shall cause
8 notice of the substitution to be mailed prior to or concurrently with
9 the recording thereof, in the manner provided in Section 2924b, to
10 all persons to whom a copy of the notice of default would be
11 required to be mailed by the provisions of Section 2924b. An
12 affidavit shall be attached to the substitution that notice has been
13 given to those persons and in the manner required by this
14 subdivision."

15 ETS never sent any such notice of the substitution of trustee and did not attached any affidavit
16 of mailing in its recording of the Substitution of Trustee.

17 55. In the Notice of Default, ETS, as required by Federal and California law, sent
18 Plaintiffs a "Debt Validation Notice" along with the Notice of Default. See Exhibit "J". In that
19 Notice, ETS represented to the Plaintiffs that \$516,041.70 was owed to GMAC, the creditor of
20 the loan, and that any dispute of the debt or the debt amount should be in writing and mailed to
21 ETS within thirty (30) of receiving the Notice of Debt Validation or else ETS would assume
22 that the debt was valid. Upon receipt of a letter disputing the debt, ETS promised that
23 they would obtain and mail to the Plaintiffs a verification of the debt. On or around May 10,
24 2012, which was less than 30 days after receiving the notice of debt validation, Plaintiff,
25 Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified mail, to ETS, disputing the
26 validity of the debt that was claimed to be owed to GMAC. Mrs. Aniel request a proper
27 accounting of the debt and the standing for which GMAC can demand that amount from the
28 Plaintiffs. ETS never responded to the notice of Plaintiffs' dispute of the debt as they promised
and were required to do under Federal and California law.

56. On or around July 27, 2012, Ileanna Peterson, a Trustee Sale Officer of ETS,
purported a Notice of Trustee Sale on the subject property. See Exhibit "K". In that Notice,
ETS scheduled a Trustee's Sale on the lien of the subject property for August 27, 2012. ETS

1 purported that the total debt on the property under the Deed was \$2,856,811.25, which is
2 \$856,811.25 more than the original loan amount of \$2,000,000.00. ETS also identified the
3 subject property by the wrong Accessory's Parcel Number (APN). ETS purported that the
4 APN number was 038-352-040-0. However, Plaintiffs allege that the APN number under the
5 Deed is 038-352-040. The document was recorded on August 1, 2012.

6 57. Defendants' failure to provide any information regarding Plaintiffs' note at issue in
7 this case supports Plaintiffs' allegations that their Note was not properly transferred to
8 DALT2007-OA5, and as such, never transferred its interest to GMAC, such that Defendants
9 can enforce Plaintiffs' obligation and/or collect Plaintiffs' mortgage payments.

10 58. Plaintiffs made payments based on the allegedly improper, inaccurate and
11 fraudulent representations of the Plaintiffs' account.

12 59. Plaintiffs' credit and credit score were severely damaged.

13 60. The title to the Plaintiffs' home has been slandered, clouded, and its salability has
14 been rendered unmarketable.

15 61. Defendants' wrongful acts include (but are not limited to) the following: (i)
16 attempting to collect an unenforceable debt upon the Plaintiffs, (ii) falsely claiming money was
17 due from the Plaintiffs, (iii) creating false reasons to charge Plaintiffs fees, (iv) instituting a
18 foreclosure proceeding, (v) issuing wrongful Notices of Default to Plaintiffs, (vi) by refusing to
19 respond, in any way, to Plaintiffs' communications or communications made for Plaintiffs by
20 their private and public representatives, (vii) issuing wrongful Assignment of the Deed of Trust
21 and Substitution of Trustee, (viii) issuing wrongful Notice of Trustee Sale, and (iv) violating
22 California Civil Procedure Section 2924 et seq., 2923.5, and 2934a(b).

23 62. Based on information and belief, the holder of all legal rights to the Plaintiffs' loan
24 is unknown by the Plaintiffs and, more importantly, by any of the Defendants. None of the
25 Defendants are the Lender of the loan. None of the Defendants are the Beneficiaries of the
26 loan. None of the Defendants are the Trustee of the loan. On or around May 14, 2012, both
27 GMAC and ETS filed for Bankruptcy under Chapter 11. Based on information and belief,
28

1 Plaintiffs allege that neither GMAC nor ETS scheduled the Subject Property as part of their
2 bankruptcy estate or as an asset of their estate.

3 **FIRST CAUSE OF ACTION**
4 **Wrongful Foreclosure**
5 **(Violation of Civil Code §§ 2923.5 2924 et. seq.)**
6 **(AGAINST ALL DEFENDANTS)**

7 63. Paragraphs 1 through 62 and the paragraphs following this cause of action are
8 incorporated by reference as though fully set forth herein.

9 64. Plaintiffs allege that they do not owe any money to any of the Defendants.
10 Plaintiffs further allege that they do not owe any money or debt to any Lender, owner, or
11 beneficiary in relation to the Subject Property. Whoever was owed money from the loan
12 transaction involving the Plaintiffs was paid off and fully satisfied long before any of the
13 Defendants claimed ownership of the loan.

14 65. Defendants have scheduled the subject property to be foreclosed on August 27,
15 2012, in the County of San Mateo. Even if Defendants postpone the Trustee's Sale,
16 Defendants fully intend to collect on the debt by foreclosing the property.

17 66. Plaintiffs allege that at times mentioned herein the Subject Property was their
18 owner-occupied residence and that Plaintiff was a member of the class of persons protected
19 under Civil Code §§ 2923.5 and 2924. Plaintiff alleges further that at all times mentioned
20 herein Defendants had a duty to comply with foreclosure avoidance and workout plan
21 requirements of Civil Code §2923.5.

22 67. Plaintiffs allege further that Civil Code § 2923.5 expressly required GMAC to
23 engage in certain communications and contacts, or attempt to engage in such communications
24 and contacts with Plaintiffs to help them avoid foreclosure on the Subject Property, and that
25 GMAC and ETS were required to conduct these communications and contacts prior to filing
26 the Notice of Default against the Plaintiffs.

27 68. Defendants falsely claimed that they contacted or attempted to contact Plaintiffs in
28 compliance with Civil Code § 2923.5 prior to filing the 2012 Notice of Default against the
Plaintiffs. Plaintiffs allege further that, at all times prior to the Defendants' filing of the initial

1 notice of default on or about April 23, 2012, Plaintiffs were fully available to meet with
2 GMAC or its authorized representative to assess Plaintiffs' financial condition and explore
3 options for Plaintiffs to avoid foreclosure.

4 69. Because Defendants are not the holders of the Note or the Deed and are not
5 operating under a valid power of sale under the Deed, the Defendants do not have the right to
6 proceed with the foreclosure.

7 70. The burden of proving an assignment or interest in the loan falls upon the party
8 asserting the rights thereunder. In an action by an alleged assignee to enforce an assigned
9 right, the evidence must not only be sufficient to establish the fact of assignment when that fact
10 is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and
11 convincing to protect an obligor from any further claim by the primary obligee. Defendants
12 failed to do so and improperly foreclosed by reason of lack of proof that they had the right to
13 proceed.

14 71. In California, the assignment of a note generally carries with it an assignment of
15 the mortgage (Cal. Civ. Code § 2936), it is still required in California that the holder of the
16 Note or person operating with authority from that holder be the foreclosing party and that the
17 mortgage not have been assigned away from the note.

18 72. HSBC did not perfect its interest in the property when Defendants attempted to
19 securitize the loan. The Assignment of the Deed took place after the DALT-2007-AO5 Cut off
20 date, and thus the Assignment did not take place because it would have been in violation of the
21 Trust PSA. Indeed, Defendants do not have a legal, equitable, or enforceable interest in the
22 Note, and the Assignment of the Deed is VOID.

23 73. As described above, the Defendants conspired to conceal information regarding the
24 dischargability of the loan, and fraudulently executed and recorded documents in order to
25 foreclose the property.

26 74. The foreclosure was wrongful for each of the following reasons, independent of
27 any of the other following reasons: (1) the beneficial interest in the Plaintiffs' Note and Deed
28 were not effectively assigned, granted, or transferred to the Sponsor or Depositor (who were

1 supposed to convey Plaintiffs' Note and Deed into the Trust) prior to the closing date of the
2 Trust; (2) HSBC failed to perfect the title to the Note and Deed by not strictly following the
3 requirements of the PSA and other law, regulations, and agreements that govern the DALT-
4 2007-AO5. An assignment of beneficial interest in the Deed and endorsement of the Note after
5 the closing date of the trust was a violation of the PSA; (3) Defendants used Robo-Signers to
6 execute foreclosure documents; (4) failing to respond to Plaintiffs' debt validation request after
7 receiving the Notice of Default; (5) GMAC's violation Cal. Civ. Pro. § 2923.5; and (6) ETS'
violation of Cal. Civ. Pro § 2936a(b).

8 75. As a result of the foreclosure, Plaintiffs were dispossessed of their property and lost
9 income related to the use of the property. Plaintiffs were further dispossessed of the value of
10 their property and the potential appreciation thereof.

11 76. Defendants thereby acted outrageously and persistently with actual malice in
12 performing the acts alleged in this cause of action. Accordingly, Plaintiffs are entitled to
13 exemplary and punitive damages in a sum according to proof and to such other relief as is set
14 forth below in the section captioned Prayer for Relief, which is by this referenced, incorporated
15 herein.

16 **SECOND CAUSE OF ACTION**
17 **Fair Debt Collection Practices Act**
(Violation of 15 U.S.C. § 1692, et seq.)
18 **(AGAINST ALL DEFENDANTS)**

19 77. Paragraphs 1 through 66 and the paragraphs following this cause of action are
20 incorporated by reference as though fully set forth herein.

21 78. Defendant GMAC, and its agent Defendant, ETS, have attempted to collect
22 Plaintiffs' debt obligation and thus is a debt collector pursuant to the Federal Debt Collection
23 Practices Act ("FDCPA"). "The term 'debt collector' means any person who uses any
24 instrumentality of interstate commerce or the mails in any business the principal purpose of
25 which is the collection of any debts, or who regularly collects or attempts to collect, directly or
26 indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

27 79. Federal law prohibits the use of "any false, deceptive, or misleading representation
28 or means in connection with the collection of any debt...[including] the false representation

1 of...the character, amount, or legal status of any debt...or [t]he threat to take any action that
2 cannot legally be taken..." 15 U.S.C. §1692(2)(A), (5).

3 80. Defendants attempt to collect on the Note under false pretenses, namely that HSBC
4 was the creditor and subsequently GMAC was assigned the Plaintiffs' debt when in fact they
5 were not.

6 81. GMAC, in its capacity as the Plaintiffs' servicer, acted in manner to mislead
7 Plaintiffs that HSBC and eventually GMAC had authority to demand payment and authority to
8 modify the loan.

9 82. As alleged herein, Plaintiffs' Note was not properly transferred to HSBC, who
10 GMAC purports to have been the assignee of HSBC's interest in the Note and Deed, seek to
11 use their agent, ETS, to collect a paid-off mortgage payments, collect on the Trustee's Sale,
12 and engage in other unlawful collection practices.

13 83. On information and belief, HSBC did not have a perfected security interest in the
14 Plaintiffs' Note such that they can enforce Plaintiffs' obligation, collect on the debt, or transfer
15 its interest to GMAC.

16 84. Plaintiffs allege that GMAC falsely represented the status of their debt and
17 Defendants' ability to enforce the Plaintiffs' obligation on the debt, in which they have no
18 pecuniary, equitable, or legal interest.

19 85. The conduct described above by GMAC, was malicious because Defendants knew
20 that they were not acting on behalf of the current beneficiary of the Note and Mortgage.
21 However, despite such knowledge, Defendants continued to demand and collect Plaintiffs'
22 mortgage payments.

23 86. On information and belief, Plaintiffs allege that Defendants engaged and is
24 engaging in a pattern and practice of defrauding Plaintiffs, in that during the entire life of the
25 loan, Defendants failed to properly credit payments made, incorrectly calculate interest on the
26 account, failed to accurately debit fees, and added unnecessary foreclosure fees and attorney
27 fees, to the point that a purported \$856,811.25 in additional fees and debt was added onto the
28 original debt amount of \$2,000,000.00.

1 87. On information and belief, at all times material, Defendants had, and have, actual
2 knowledge that Plaintiffs' account had inaccurate statements, but that Plaintiffs would rely on
3 those statements based on Defendants' inaccurate account.

4 88. The foregoing acts and omission of each and every Defendant and their agents
5 constitute numerous and multiple violations of the FDCPA including, but not limited to, each
6 and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq., with
7 respect to the Plaintiffs.

8 89. Plaintiffs could not have reasonably known of the existence of a claim for violation
9 of 15 U.S.C. § 1692(e) because Defendant fraudulently concealed the fact that they were not
10 entitled to enforce Plaintiffs' debt obligation and that they were falsely requesting to the
11 Plaintiffs that they still owed a debt to GMAC.

12 90. As a result of each and every Defendants' violation of the FDCPA, Plaintiffs are
13 entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an
14 amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); reasonable attorneys' fees and
15 cost pursuant to 15 U.S.C. § 1692k(a)(3); and declaratory relief, from each an every Defendant
16 herein.

17 91. Plaintiffs suffered damages as a result of Defendants' fraud in the following ways:
18 (1) multiple parties may seek to enforce their debt obligation, if there is still one that exist; (2)
19 title to their home has been clouded and its salability has been rendered unmarketable, as any
20 buyer of the Plaintiffs' home will find themselves in legal limbo, unable to know whether they
21 can safely buy Plaintiffs' home or get title insurance; (3) Plaintiffs paid the wrong party for an
22 undetermined amount of time and overpaid in interest; (4) Plaintiffs are unable to determine if
23 they sent their mortgage payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and
24 Erlinda Abibas Aniel—credit score have been damages; (6) they expect significant funds to
25 cover the cost of attorneys' fees and related cost.

26 **THIRD CAUSE OF ACTION**
27 **Violation of RESPA**
28 **(Violation of 12 U.S.C. § 2605)**
(AGAINST ALL DEFENDANTS)

1 92. Paragraphs 1 through 91 and the paragraphs following this cause of action are
2 incorporated by reference as though fully set forth herein.

3 93. Plaintiffs' loan is a federally regulated mortgage loan and is subject to the federal
4 Real Estate Settlement Procedures Act and its implementing regulation, and the Dodd-Frank
5 Act.

6 94. On or around May 10, 2012, which was less than 30 days after receiving the notice
7 of debt validation, Plaintiff, Erlinda Abibas Aniel, sent a written dispute, by U.S. Post Certified
8 mail, to the debt ETS claimed was owed to GMAC. Mrs. Aniel request a proper accounting of
9 the debt and the standing for which GMAC can demand that amount from the Plaintiffs.

10 95. On information and belief, ETS received the Debt Validation letter on or around
11 May 15, 2012.

12 96. The Debt Validation request contained information to enable ETS and GMAC to
13 identify the Plaintiffs' loan including the borrower's name, loan number, and property address.
14 Also, the debt validation request contained requests for information of the loan, specifically the
15 identity and contact information of the creditor of the Plaintiffs' Note, a complete loan history,
16 accumulated late fees and charges, and information about the validity of the debt purported to
17 be owed to GMAC.

18 97. On information and belief, ETS and GMAC never acknowledged receipt of the
19 Plaintiffs' Debt Validation letter within five (5) days of receipt of the letter, as required by
20 section 1463(c) of the Dodd-Frank Act.

21 98. Because the loan is subject to RESPA and the Dodd-Frank Act, all Defendants
22 were required to comply with section 1463 of the Dodd-Frank Act.

23 99. Defendants violated 12 U.S.C. § 2605 and are subject to statutory damages, civil
24 liability, penalties, attorneys' fees, and actual damage. 12 U.S.C. § 2605.

25 100. The actual pecuniary damages include, but are not limited to, the over calculation
26 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
27 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
28

1 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
2 in an amount to be proven at trial.

3 101. As a direct and proximate result of the violations of RESPA and Dodd-Frank Act
4 by ETS and GMAC, Plaintiffs have suffered actual pecuniary damages including but not
5 limited to statutory damages, civil liability, and attorneys' fees, in an amount to be proven at
6 trial.

7 102. As a result of Defendants' violation of 12 U.S.C. § 2605, RESPA, and the Dodd-
8 Frank Act, Plaintiffs have been damaged in the following ways: (1) multiple parties may seek
9 to enforce their debt obligation, if there is still one that exist; (2) title to their home has been
10 clouded and its salability has been rendered unmarketable, as any buyer of the Plaintiffs' home
11 will find themselves in legal limbo, unable to know whether they can safely buy Plaintiffs'
12 home or get title insurance; (3) Plaintiffs paid the wrong party for an undetermined amount of
13 time and overpaid in interest; (4) Plaintiffs are unable to determine if they sent their mortgage
14 payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
15 credit score have been damages; (6) they expect significant funds to cover the cost of
16 attorneys' fees and related cost.

17 **FOURTH CAUSE OF ACTION**
18 **Set Aside Trustee's and/or Cancel Trustee's Sale**
19 **(AGAINST ALL DEFENDANTS)**

20 103. Paragraphs 1 through 102 and the paragraphs following this cause of action are
21 incorporated by reference as though fully set forth herein.

22 104. Plaintiffs allege that do not owe any money on this debt and property. Any
23 money that was owed in the Deed was fully satisfied when the originator, MortgageIT, sold the
24 loan to unknown entities, which are currently fully satisfied of any money they paid.

25 105. Plaintiffs allege that they do not owe any money to any of the Defendants because
26 none of the Defendants have legal, equitable, or an enforceable right to collect payment from
27 the Plaintiffs.

28 106. Plaintiffs are not required to Tender because a tender amount would constitute a
reaffirmation of the debt, which Plaintiffs deny they have debt. A Tender is not required when

1 owner's action attacks the validity of the underlying debt because tender would constitute and
2 affirmation of the debt. *Sacci v. Mortgage Electronic Registration Systems, Inc.*, No. CV 11-
3 1658 AHM, 2011 WL 2533029 at *16 (C.D. Cal June 24, 2011) citing *Onofrio v. Rice*, 55 Cal.
4 App. 4th 413, 424 (1997).

5 107. The Trustee Sale conducted by ETS is improper for several reasons. Defendants
6 did not follow Cal. Civ. Code §2924. Under Cal Civ. Code § 2924(a)(1), only the trustee,
7 mortgagee, or beneficiary, or any of their authorized agents must first file a Notice of Default.
8 The beneficiary, trustee, mortgagee, or any of their authorized agents did not file the Notice of
9 Default that was recorded on April 27, 2012, in the County of San Mateo. Defendant, ETS,
10 falsely claimed to be the authorized agent for the beneficiary, GMAC, who claimed ownership
11 of the debt. In reality, GMAC had no interest in the loan because the Assignment from HSBC
12 to GMAC was VOID. Therefore, because the Notice of Default was not in compliance with
13 §2924(a)(1), the Trustee's Sale was also not in compliance with § 2924 et. seq., and must be
14 canceled and set aside by the Court.

15 108. The Trustee's Sale is also unlawful and must be set aside and canceled because
16 Defendant, ETS, does not have any legal right to be a Trustee.

17 109. Defendants' fraudulent acts in creating these foreclosure documents, using Robo-
18 Signers to blindly execute and record the documents, are also reasons why the Trustee's Sale
19 should never take place, be set aside, or canceled.

20 110. If none of the Defendants, who are attempting to foreclose the property, have any
21 legal interest in the Note and Deed, then the Court is within its power to set aside and cancel
22 the Trustee's Sale.

23 111. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such
24 further relief as is set forth below in the section captioned Prayer for Relief, which is by this
25 reference incorporated herein

26 112. In the alternative, even if Defendants can foreclose the property, they did not
27 follow proper procedure of California non-judicial law.
28

1 113. Plaintiffs allege that at times mentioned herein the Subject Property was their
2 owner-occupied residence and that Plaintiff was a member of the class of persons protected
3 under Civil Code §§ 2923.5 and 2924. Plaintiff alleges further that at all times mentioned
4 herein Defendants had a duty to comply with foreclosure avoidance and workout plan
5 requirements of Civil Code §2923.5.

6 114. Plaintiffs allege further that Civil Code § 2923.5 expressly required GMAC to
7 engage in certain communications and contacts, or attempt to engage in such communications
8 and contacts with Plaintiffs to help them avoid foreclosure on the Subject Property, and that
9 GMAC and ETS were required to conduct these communications and contacts prior to filing
10 the Notice of Default against the Plaintiffs.

11 115. Defendants falsely claimed that they contacted or attempted to contact Plaintiffs
12 in compliance with Civil Code § 2923.5 prior to filing the 2012 Notice of Default against the
13 Plaintiffs. Plaintiffs allege further that, at all times prior to the Defendants' filing of the initial
14 notice of default on or about April 23, 2012, Plaintiffs were fully available to meet with
15 GMAC or its authorized representative to assess Plaintiffs' financial condition and explore
16 options for Plaintiffs to avoid foreclosure.

17 116. Second, ETS was not properly substituted under California law. Plaintiffs allege
18 that no notice of the substitution was ever sent to any of the original beneficiary or any entity
19 that was entitled to receive notice of the Notice of Default. Under California Civil Procedure
20 Section 2934(a)(b):

21 "If the substitution is executed, but not recorded, prior to
22 or concurrently with the recording of the notice of default, the
23 beneficiary or beneficiaries or their authorized agents shall cause
24 notice of the substitution to be mailed prior to or concurrently with
25 the recording thereof, in the manner provided in Section 2924b, to
26 all persons to whom a copy of the notice of default would be
27 required to be mailed by the provisions of Section 2924b. An
28 affidavit shall be attached to the substitution that notice has been
given to those persons and in the manner required by this
subdivision."

ETS never sent any such notice of the substitution of trustee and did not attached any affidavit
of mailing in its recording of the Substitution of Trustee. The Substitution was also in

1 violation of the covenants under the Deed of Trust, where only the Lender may substituted the
2 Trustee and not the beneficiary. Under covenant 24 of the Deed of Trust, "[l]ender, at its
3 option, may from time to time appoint a successor trustee to any Trustee appointed hereunder b
4 an instrument executed and acknowledged by Lender and recorded in the office of the
5 Recorder of the country in which the Property is located." In this case, the Lender did not
6 substitute the Trustee.

7 117. The Court has a right to set aside or stay any Trustee's Sale that is in violation of
8 Cal. Civ. Code §§ 2923.5 and 2936a(b).

9 **FIFTH CAUSE OF ACTION**
10 **Declaratory Relief**
11 **(AS AGAINST ALL DEFENDANTS)**

12 118. Paragraphs 1 through 117 and the paragraphs following this cause of action are
13 incorporated by reference as though fully set forth herein.

14 119. Section 2201(a) of Title 28 of the United States Code states, "[i]n a case of actual
15 controversy within its jurisdiction...any court of the United States, upon the filing of an
16 appropriate pleading, may declare the rights and other legal relations of any interested party
17 seeking such declaration, whether or not further relief is or could be sought. Any such
18 declaration shall have the force and effect of a final judgment or decree and shall be reviewable
19 as such.

20 120. Plaintiffs allege that GMAC does not have a secured or unsecured legal,
21 equitable, or pecuniary interest in the lien evidence by the Deed of Trust and that is purported
22 assignment has no value and is VOID since the Deed of Trust has been paid off fully.

23 121. On February 2011, GMAC claimed they were assigned and transferred a secured
24 enforceable interest in, and perfected lien against the Plaintiffs' Note and Deed.

25 122. Thus, the competing allegations made by the Plaintiffs and the Defendants, above,
26 establish that a real and actual controversy exists as to the respective right of the parties to this
27 matter, including ownership of the property.
28

1 123. Plaintiffs request that the Court make a finding and issue appropriate orders
2 stating that none of the named Defendants or Doe Defendants, have any right or interest in
3 Plaintiffs' Note, Deed of Trust, or the subject Property which authorizes them, in fact or as
4 matter of law, to collect Plaintiffs' mortgage payments or enforce the terms of the Note or
Deed of Trust in any manner whatsoever.

5 124. Plaintiffs request that the Court declare that none of the Defendants are the
6 Beneficiary, Trustee, or Lender of the Plaintiffs' loan.

7 125. Plaintiffs will suffer prejudice if the Court does not determine the rights and
8 obligations of the parties because Plaintiffs will be denied the right to conduct discovery and
9 have Defendants' claims verified by a custodian of records who has personal knowledge of the
10 loan and all transactions related to it.

11 126. Due to the actual case and controversy regarding competing claims and
12 allegations, it is necessary that the Court declare the actual rights and obligation of the parties
13 and make a determination as to whether Defendants' claims against Plaintiffs are enforceable
14 and whether they are secured or unsecured by any right title, or interest in Plaintiffs' Property.

15 127. Furthermore, the conduct of Defendants, and/or one or more of the Doe
16 Defendants, and each of them, as herein described, was so malicious and contemptible that it
17 would be looked down upon and despised by ordinary people. Plaintiffs are therefore entitled
18 to punitive damages in an amount appropriate to punish Defendants and to deter other from
engaging in similar conduct.

19 **SIXTH CAUSE OF ACTION**
20 **Quiet Title**
21 **(AGAINST ALL DEFENDANTS)**

22 128. Paragraphs 1 through 127 and the paragraphs following this cause of action are
23 incorporated by reference as though fully set forth herein.

24 129. Plaintiffs, at all times relevant herein, were the owner and/or entitled to
25 possession of the property. The subject property is further described as the following "Legal
26 Description":

1 "Lot 15, as shown on that certain Map entitled, "TOBIN CLARK ESTATES UNIT
2 NO. TWO, SAN MATEO COUNTY, CALIFORNIA", filed in the Office of the Recorder of
3 the County of San Mateo, State of California on June 25, 1976 in Book 91 of Maps at Pages 17
4 and 18. APN: 038-352-040"

5 130. Plaintiffs' title to the property is Fee Simple.

6 131. Plaintiffs are credibly informed and believe that these non-real parties in interest
7 Defendants make some claim adverse to Plaintiffs. Defendant, GMAC, currently possess an
8 adverse interest in Plaintiffs' subject property through a fraudulent Assignment of the Deed.
9 Defendant, ETS, currently possess an adverse interest in the subject property through a
10 fraudulent Substitution of Trustee. Their claimed interests in the Title of the Property create a
cloud on title in California. Quiet Title is the remaining option.

11 132. Plaintiffs seek a determination that Plaintiffs are the sole owners of the subject
12 property free from any adverse interest held by the Defendants, or anyone unknown entity
13 claiming an adverse interest in the subject property.

14 133. WHEREFORE, Plaintiffs PRAY that the Court orders that all adverse claims
15 against the subject property, commonly known as 75 Tobin Clark Drive, Hillsborough,
16 California, 94010, are quieted.

17 **SEVENTH CAUSE OF ACTION**
18 **Fraudulent Concealment**
19 **(AGAINST ALL DEFENDANTS)**

20 134. Paragraphs 1 through 133 and the paragraphs following this cause of action are
21 incorporated by reference as though fully set forth herein.

22 135. Defendants had exclusive knowledge not accessible to the Plaintiffs of material
23 facts pertaining to its foreclosure practices. Defendants are fully aware that they do not have a
24 legal, equitable, or enforceable interest in the Note and Deed. Yet, they continue to mislead
25 the Plaintiffs about the status of their debt, attempt to collect the debt, and to foreclose the
26 property.

1 136. ETS, willfully, with intent, in concert with the other Defendants, refuse to
2 disclose an accounting of the alleged debt that the Plaintiffs owe to GMAC. ETS refused to
3 disclose the address and location of the current Lender and the validity of the debt. ETS knows
4 that GMAC and HSBC do not and did not have a legal, equitable, and enforceable interest in
5 the Note and Deed, but has yet still filed a Notice of Default and attempted to collect the debt.

6 137. GMAC, willfully, with intent, in concert with the other Defendants, refused to
7 disclose that HSBC did not perfect its security interest in the Property. Instead, GMAC
8 continues to purport that Plaintiffs owe money to GMAC, and that GMAC is a Beneficiary
9 entitled to foreclose the property.

10 138. GMAC, willfully, with intent, in concert with the other Defendants, told the
11 Plaintiffs that they would be approved for a loan modification as long as they stopped making
12 payments on the mortgage because GMAC had authority to modify the loan, knowing that they
13 did not have any authority to modify the loan and that HSBC had no legal, equitable, or
14 enforceable interest in the Note and Deed.

15 139. Each and every Defendant knew that their actions were wrong and intended to
16 mislead the Plaintiffs. As described herein, there deception was essential to their overall plan
17 for unjust enrichment through the wrongful foreclosure of the property. Defendants stood to
18 receive an unjust enrichment without having any interest in the property.

19 140. As a proximate and actual result of the foregoing concealment by Defendants,
20 Plaintiffs are faced with an impending Trustee's Sale, and the potential lost of their property.
21 Should the foreclosure take place, Plaintiffs will have suffered grave damages by depriving
22 them use of their property, income from the property, depriving them access to equity lines of
23 credit, value from the property, and harm to their credit reports.

24 141. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs
25 damages arise from this Cause of Action include loss of equity in their property, costs and
26 expenses related to protecting their interest in the property, reduced credit score, as well as fees
27 and costs, including, without limitation, attorney's fees and costs.

1 142. The actual pecuniary damages include, but are not limited to, the over calculation
2 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
3 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
4 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
5 in an amount to be proven at trial.

6 143. As a direct and proximate result of the Defendants' Fraud, Plaintiffs have suffered
7 actual pecuniary damages including but not limited to statutory damages, civil liability, and
8 attorneys' fees, in an amount to be proven at trial.

9 144. As a result of Defendants' Fraud, Plaintiffs have been damaged in the following
10 ways: (1) multiple parties may seek to enforce their debt obligation, if there is still one that
11 exist; (2) title to their home has been clouded and its salability has been rendered
12 unmarketable, as any buyer of the Plaintiffs' home will find themselves in legal limbo, unable
13 to know whether they can safely buy Plaintiffs' home or get title insurance; (3) Plaintiffs paid
14 the wrong party for an undetermined amount of time and overpaid in interest; (4) Plaintiffs are
15 unable to determine if they sent their mortgage payments to the right party; (5) Plaintiffs—
16 Fermin Solis Aniel and Erlinda Abibas Aniel—credit score have been damages; (6) they expect
17 significant funds to cover the cost of attorneys' fees and related cost.

18 145. To this day, Defendants are under the false belief that they own the loan, which
19 was sold to an unknown investor years ago. Defendants acted outrageously and persistently
20 with actual malice in performing the acts alleged herein and continue to do so. Accordingly,
21 Plaintiffs are entitled to exemplary and punitive damages in a sum according to proof and to
22 such other relief as is set forth below in the section captioned Prayer for Relief, which is by this
23 reference incorporated herein.

24 **EIGHTH CAUSE OF ACTION**
25 **Violation of California Rosenthal Act**
26 **(As Against all Defendants)**

27 146. Plaintiffs incorporate by reference paragraphs 1-145 each and every allegation
28 set forth above and herein.

147. To establish a violation of the California Rosenthal Act:

1 (1) the plaintiffs are a natural person who is harmed by violations of the
2 California Rosenthal Act. Cal Civ. Code § 1788.2(g).

3 (2) involves a "debt", which means money, property or their equivalent which
4 is due or owing or alleged to be due or owing from a natural person to another person.
5 Cal Civ. Code § 1788.2(d). Here, the debt is a discharged mortgage loan.

6 (3) the defendant collecting the debt is a "debt collector", which is "any person
7 who, in the ordinary course of business, regularly, on behalf of himself or herself or
8 others, engages in debt collection." Cal Civ. Code § 1788.2(c) because they are not in
9 the lending business but rather in collecting on defaulted mortgage loans by
10 demanding inflated amounts or creating fraudulent documents in order to collect a
11 debt.

12 (4) the defendant has violated, by act or omission, a provision of the
13 California Rosenthal Act.

14 148. Based on information and belief, Plaintiffs allege that GMAC is a Debt
15 Collector. GMAC is in the business of servicing the loan, which includes receiving payments
16 and demanding payment from borrowers.

17 149. Based on information and belief, Plaintiffs allege that Defendant, ETS, in its
18 alleged role as an agent of the beneficiary, is a debt collector. Defendant, ETS is a debt
19 collector because they warned the Plaintiffs that they were a debt collector in the Notice of
20 Trustee's Sale. Defendant, ETS, is also a debt collector because their interest in the debt
21 occurred after the debt was purported in default.

22 150. Defendants violated the Act when in attempting to collect the debt they:

23 a. GMAC misrepresented to Plaintiffs the owner of the Note and the
24 Deed when it claimed that HSBC was the owner of the loan and subsequently GMAC was
25 the owner of the loan. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l).
26 Because, for reasons stated above, this action violates the FDCPA, this is also a violation of
27 Cal Civ. Code § 1788.17;
28

1 b. ETS falsely claimed Plaintiffs owed \$856,811.25 to GMAC. This is a
2 violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this
3 action violates the FDCPA, this is also a violation of Cal Civ. Code § 1788.17;

4 c. Defendants submitted and recorded fraudulent, fabricated and bogus
5 Notice of Default. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because,
6 for reasons stated above, this action violates the FDCPA, this is also a violation of Cal Civ.
7 Code § 1788.17;

8 d. Defendants falsified the amount due, falsely claimed HSBC and later
9 GMAC was the owner of the loan, and refused to explain or breakdown the charges on the
10 account. This is a violation of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons
11 stated above, this action violates the FDCPA, this is also a violation of Cal Civ. Code §
12 1788.17;

13 e. Defendant attempting to enforce an interest in the property when they
14 had no legal, equitable, or enforceable interest in the property. See ¶ 39-46. This is a violation
15 of Cal Civ. Code §§ 1788.13(i), (k) and (l). Because, for reasons stated above, this violates
16 the FDCPA, this is also a violation of Cal Civ. Code § 1788.17;

17 f. Making false, deceptive, or misleading representation or means in
18 connection with the collection of any debt. 15 U.S.C § 1692e:

19 g. Making false representations or using deceptive means to collect or
20 attempt to collect on any debt, U.S.C. § 1692e(10); and

21 h. Making unfair or using unconscionable means to collect or attempt to
22 collect any debt, 15 U.S.C. § 1692f.

23 151. Pursuant to California Civil Code §§ 1788.30 and 1788.17, Plaintiffs are entitled
24 to recover actual damages sustained as a result of Defendants for violations of the Rosenthal
25 Act. Such damages include, without limitation, monetary losses and damages, and emotional
26 distress suffered, which damages are in an amount to be proven at trial. In addition, pursuant
27 to Cal. Civil Code §§ 1788.30 and 1788.17, Plaintiffs are entitled to recover penalties of at
28 least \$1000.00 per violation as provided for in the act.

1 152. Pursuant to Cal. Civ. Code §§ 1788.30 and 1788.17, Plaintiffs are entitled to
2 recover all attorneys' fees, and cost incurred in the bringing of this action.

3 153. The actual pecuniary damages include, but are not limited to, the over calculation
4 and overpayment of interest on Plaintiffs' loan, the cost of repairing Plaintiffs credit, the
5 reduction and/or elimination of Plaintiffs' credit limits, costs associated with removing the
6 cloud on their Property title and setting aside the trustee's sale, and attorneys' fees and costs,
in an amount to be proven at trial.

7 154. As a direct and proximate result of the violations of Rosenthal Act by ETS and
8 GMAC, Plaintiffs have suffered actual pecuniary damages including but not limited to
9 statutory damages, civil liability, and attorneys' fees, in an amount to be proven at trial.

10 155. As a result of Defendants' violation of the Rosenthal Act, Plaintiffs have been
11 damaged in the following ways: (1) multiple parties may seek to enforce their debt obligation,
12 if there is still one that exist; (2) title to their home has been clouded and its salability has been
13 rendered unmarketable, as any buyer of the Plaintiffs' home will find themselves in legal
14 limbo, unable to know whether they can safely buy Plaintiffs' home or get title insurance; (3)
15 Plaintiffs paid the wrong party for an undetermined amount of time and overpaid in interest;
16 (4) Plaintiffs are unable to determine if they sent their mortgage payments to the right party;
17 (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—credit score have been damages;
18 (6) they expect significant funds to cover the cost of attorneys' fees and related cost.

19 **NINTH CAUSE OF ACTION**
20 **Violation of the Unfair Competition Law**
(Cal. Bus. & Prof. Code §§ 17200 et. sq.)
21 **(AGAINST ALL DEFENDANTS)**

22 156. Paragraphs 1 through 155 and the paragraphs following this cause of action are
23 incorporated by reference as though fully set forth herein.

24 157. Defendants have engaged in unfair, unlawful, and fraudulent business practices in
25 the State of California, as set forth above.

26 158. The California Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200 et. Seq.,
27 ("UCL") defines unfair competition to include any "unlawful" or "deceptive" business act or

1 practice. The UCL authorizes this Court to issue whatever orders or judgment may be
2 necessary to prevent unfair or unlawful practices, or to "restore to any person-in-interest any
3 money or Property, real or personal, which may have been acquired by means of such unfair
4 competition" *Id.*

5 159. GMAC's conduct, for the reasons stated herein, is in direct violation of 15 U.S.C.
6 § 1692, et seq., Cal Civ. Code §§ 2924 et seq., and 2923.5.

7 160. ETS' conduct, for the reasons stated herein, is in direct violation of 12 U.S.C. §
8 2605, Cal Civ. Code §§ 2924 et seq., and 2934a(b).

9 161. Defendants are in direct violation of Cal. Penal Code § 532(f)(a)(4).

10 162. Defendants failed to disclose the principal for which documents were being
11 executed and recorded in violation of Cal. Civ. Code section 1095.

12 163. Also, All of the Defendants' acts and practices alleged herein are unlawful
13 business practices for the following reasons, independent of any of the other following reasons:
14 (1) because Defendants do not have any legal, equitable, or enforceable interest the Note or the
15 Deed, (2) because Defendants cannot surmount their burden of demonstrating they own the
16 Note or have a power of attorney with respect thereto, (3) Defendants used Robo-Signers to
17 execute purported foreclosure documents, (4) GMAC falsely claiming to be the owner of the
18 Loan (5) failing to respond to Plaintiffs' debt validation request after receiving the Notice of
19 Default; (6) accepting and demanding payments from debts that were non-existent; (7) acted as
20 beneficiary without the legal authority to do so.

21 164. Defendants facilitated, aided, and abetted the illegal, deceptive, and unlawful
22 enforcement of Plaintiffs' Note and Deed and engaged in other illegal debt collection activities.

23 165. GMAC, in its role as servicer, had been acting in a manner to mislead Plaintiffs
24 into believe HSBC was the owner of the loan and subsequently GMAC was the owner of the
25 loan.

26 166. As alleged herein, Plaintiffs' Note was not properly transferred to HSBC, who
27 sought to foreclose the property, collect the debt, and later transferred its interest to GMAC, in
28 order for GMAC to collect on the debt.

1 167. On information and belief, HSBC and GMAC did not and do not have a perfected
2 security interest in the Plaintiffs' Note such they can enforce Plaintiffs' obligation and/or
3 foreclose the property.

4 168. On information and belief, ETS refused to disclose what lien they are foreclosing
5 the subject property. In the Notice of Sale, ETS warns potential bidders that they may or may
6 not be bidding on a first or second lien and not the subject property, and that the winning
bidder may suffer legal consequences in bidding on the lien.

7 169. Defendants willfully, with knowledge of the wrongdoing, maliciously executed
8 and recorded foreclosure documents in order to wrongfully foreclose the property. Defendants
9 are merely debt collectors attempting to collect a debt. Defendants, fully verse in California
10 non-judicial laws, take advantage of the lack of proof required by non-judicial foreclosures by
11 establishing these practices. This conduct was malicious because Defendants knew that they
12 were not acting on behalf of the current beneficiary of the Note and Deed. However, despite
13 such knowledge, Defendants continued to make demands for payment.

14 170. As more fully described above, Defendants' acts and practices are unlawful. This
15 conduct is ongoing and continues to this date.

16 171. As a result, Plaintiffs, along with millions of homeowners, suffer the
17 consequences of losing their homes to entities, who did not put a single dollar into the
18 property. Plaintiffs' lose irreplaceable value in their property, and may have to relocate and
19 lose their home as a result of these practices. Based on information and beliefs, Defendants'
20 benefits in their wrongful conduct does not come close to outweighing the prejudice suffered
21 by the Plaintiffs and consumers in California. This conduct is ongoing and continues to this
date.

22 172. Accordingly, Plaintiffs are entitled to exemplary and punitive damages in a sum
23 according to proof and to such other relief as is set forth below in the section captioned Prayer
24 for Relief, which is by this reference incorporated herein.

25 173. Plaintiffs are entitled to restitution pursuant to UCL § 17203. Defendants violated
26 several laws including UCL § 17200 et seq. and must be required to disgorge all profits related

1 to their unfair, unlawful, and deceptive business practices. Defendants have been unjustly
2 enriched, by collecting payments that they are not entitle to, and should be required to make
3 restitution to the Plaintiffs and other California consumers who have bee harmed, and/or be
4 enjoined from continuing in such practices pursuant to Cal. Bus. Prof. Code §§ 17203 and
17204.

5 174. As a direct and proximate cause of the actions of the Defendants, and each of
6 them, state above, Plaintiffs were injured in that a cloud has been placed upon the title to the
7 Plaintiffs' Property and Defendants have failed to remove this from Plaintiffs' title.

8 175. Plaintiffs request the Court to issue an order compelling GMAC, ETS, and any
9 other Defendant claiming an interest in and to the Subject Property to take any and all action
10 necessary to remove the cloud they have placed upon this title and an order enjoining such
11 Defendants from taking such action again in the future.

12 176. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover
13 their reasonable attorney's fees, cost, and expenses incurred in bringing this action.

14 177. As a result of Defendants' violations of Cal. Bus. and Prof. Code section 17200 et
15 seq., Plaintiffs have been damaged in the following ways: (1) multiple parties may seek to
16 enforce their debt obligation, if there is still one that exist; (2) title to their home has been
17 clouded and its salability has been rendered unmarketable, as any buyer of the Plaintiffs' home
18 will find themselves in legal limbo, unable to know whether they can safely buy Plaintiffs'
19 home or get title insurance; (3) Plaintiffs paid the wrong party for an undetermined amount of
20 time and overpaid in interest; (4) Plaintiffs are unable to determine if they sent their mortgage
21 payments to the right party; (5) Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel—
22 credit score have been damages; (6) they expect significant funds to cover the cost of
attorneys' fees and related cost.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as
25 follows:
26
27
28

1 1. General, special, compensatory, and exemplary damages according to proof but
2 no less than \$6,000,000.00, against all Defendants

3 2. Statutory relief according to proof.

4 3. Restitution relief according to proof.

5 4. Temporary, preliminary, and permanent injunctive relief restraining Defendants,
6 their agents, or employees from continuing or initiating any action against the Property and
7 enjoining Defendants, their agents, or employees from doing during the pendency of this
8 matter.

9 5. On all causes of action, for cost of suit herein;

10 6. On all causes of action, for pre-judgment and post-judgment interest;

11 7. On all causes of action for which attorney's fees may be awarded pursuant to
12 statute, or otherwise, reasonable attorney's fees;

13 8. For declaratory judgment finding that Defendant do not have any legally
14 cognizable rights as to Plaintiffs, the Subject Property, the Note, the Deed, or any other matter
15 based on contract or any of the documents prepared by Defendants, tenders to and executed by
16 Plaintiffs;

17 9. For an order compelling Defendants to remove any instrument, including the
18 Assignment of the Deed, which does or could not be construed as constituting a cloud upon
19 Plaintiffs' title to the property; and

20 10. On all causes of action, for such other and further relief as this Court may deem
21 just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs—Fermin Solis Aniel, Erlinda Abibas Aniel, and Marc Jason Aniel—hereby
24 demand a trial by jury on all claims.

25 Dated: August 8, 2012

1 LAW OFFICES OF MARC JASON ANIEL

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5 _____
6 MARC JASON ANIEL

7 Attorney for Plaintiffs—Fermin Solis Aniel and Erlinda Abibas Aniel
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9

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11 _____
12 MARC JASON ANIEL

13 Plaintiff in Pro Per
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Verification

The undersigned, for herself declares:

I am one of the Plaintiffs in the above-entitled action. I have read the forgoing Complaint, and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as those matter which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

ERLINDA ABIBAS ANIEL

Table of Contents

Exhibit	# of Pages
A. Deed of Trust	15
B. Notice of Default 2008	2
C. Substitution of Trustee 2008	1
D. Notice of Trustee Sale 2009	1
E. Assignment of the Deed 2009	1
F. Assignment of the Deed 2011	1
G. Notice of Recession 2011	1
H. Notice of Default 2012	2
I. Substitution of Trustee 2012	1
J. Debt Validation Notice	1
K. Notice of Trustee's Sale 2012	2

EXHIBIT “ A “

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 53562

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD, SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

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3137

4632

2007-088561

01:24pm 06/06/07 DT Fee: 67.00

Count of pages 21

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 7 0 0 8 5 6 1 A R *

DEED OF TRUST

2/p

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 JUNE 4, 2007 together with all Riders to this document.

(B) "Borrower" is

FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

MORTGAGEIT, INC.

Lender is a **CORPORATION**

organized and existing under the laws of **NEW YORK**
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
CA71 : 07/01

(Page 1)

2008 JUN 10
[Signature]

1137

Lender's address is
33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is not a party to 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, Michigan 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated JUNE 4, 2007.
The Note states that Borrower owes Lender
TWO MILLION AND NO / 100

Dollars (U.S. \$ 2,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037

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

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

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

<input checked="" 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"/> Biweekly Payment Rider
<input type="checkbox"/> 1-4 Family Rider		
<input type="checkbox"/> Other(s) [specify]		

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

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

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

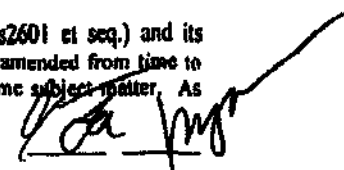
(M) "Escrow Items" means those items that are described in Section 3.

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As



137
used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

of SAN MATEO

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. 838-352-048

which currently has the address of 75 TOBIN CLARK DRIVE

[Street]

HILLSBOROUGH 64036 64036

, California

94010

("Property Address"):

[City]

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the Property, 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 powers, 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 cancelling this Security Instrument.

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal, interest on, the late charges, 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 such check is drawn upon an institution whose deposits are insured by a federal agency, instantaneously, or cash; or (d) wire transfer.

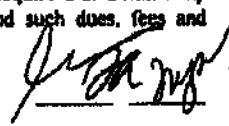
Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 45. Lender may return any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights, remedies or privileges to its rights to receive such payment or partial payments in the future, but Lender is not obligated to apply such payment 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 payments 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 required 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 becomes due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments [], and to the extent that each payment can be paid in full. To the extent that any amount 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 amount due on the Note and then to the principal of 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 obtain 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



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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

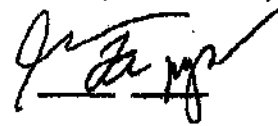
The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by or defends against enforcement of the lien in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such



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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 obtain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

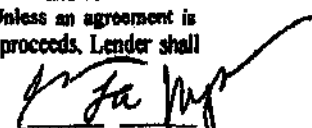
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property. If the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall



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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

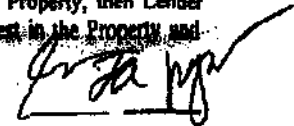
6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall maintain the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender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

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

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

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



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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.

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

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third

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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

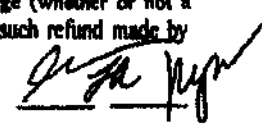
12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower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

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

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

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

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



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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those



1137

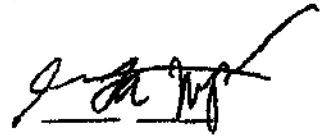
conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but 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 Breach. 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 explained 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 that is required 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 of Borrower will continue 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 or the member of a class) that arises from the same parties and the same payments to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not



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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the ineffectiveness of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may exercise the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

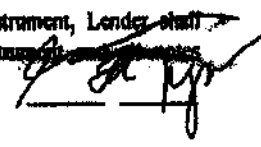
If Lender invokes the power of sale, Lender shall execute on cause Trustee to execute and deliver to the Trustee a deed conveying the Property to the Trustee. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes.

CA83:07/01

(Page 13)



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

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

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by section 2942 of the Civil Code of California.

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.


BORROWERS:



ERLINDA ANIEL (Seal)
- Borrower



FERMIN ANIEL (Seal)
- Borrower



MARCASON ANIEL (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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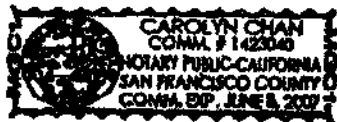
STATE OF CALIFORNIA

COUNTY OF San Mateo

On June 4, 2007 before me, Carolyn Chan, Notary Public,
personally appeared
ERLINDA ANIEL AND FERMIN ANIEL AND MARC JASON ANIEL

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

WITNESS my hand and official seal.




Carolyn Chan (Seal)

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

WHEN RECORDED MAIL TO:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

2008-108477

09:04am 03/05/15 ND Fee: 12.00

Count of pages 2

Recorded in Official Records

County of San Mateo

Warren Stocum

Assessor-County Clerk-Recorder



TS No.: GM-164802-C

Loan No.: 2492

OFFICIALS OF THE COUNTY OF SAN MATEO

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$29,905.26 as of 9/25/2008, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

C/O ETS Services, LLC

2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1800 phone

TS NO.: GM-164802-C

LOAN NO.: [REDACTED] 0482

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 6/4/2007, executed by FERNAN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary, recorded 6/6/2007, as Instrument No. 2007-088561, in Book , Page , of Official Records in the Office of the Recorder of San Mateo County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including ONE NOTE FOR THE ORIGINAL sum of \$2,000,000.00 ; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

installment of Principal and interest plus impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 9/26/2008

ETS Services, LLC AS AGENT FOR
BENEFICIARY

BY: Anabel Mardros

Anabel Mardros
TRUSTEE SALE OFFICER

EXHIBIT “ C “

(Page 1 of 1)

9. RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 250-1600

2008-108476
09:04am 09/25/08 ST Fee: 9.00
Count of pages 1
Recorded in Official Records
County of San Mateo
Warren Stocum
Assessor-County Clerk-Recorder



TS NO : GM-184602-C
LOAN NO : 3492

— SPACE ABOVE THIS LINE FOR RECORDERS USE —

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 6/4/2007 and recorded on 6/8/2007 as instrument No. 2007-088561, in Book, Page of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided.

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 9/25/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.



Rosalia Solano, ASSISTANT SECRETARY

State of California) ss.
County of Los Angeles }

On 9/25/2008 before me, Christine Gomez-Schwab Notary Public, personally appeared Rosalia Solano who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature


Christine Gomez-Schwab

(Seal)

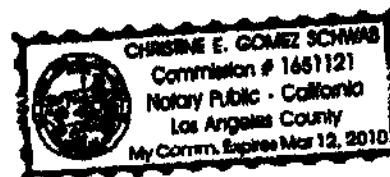


EXHIBIT “ D ”

EXHIBIT “ E ”

**RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.,
solely as nominee for Mortgageit, Inc.**

RECORDED MAIL TO:
Pine Duncan, LLP
4375 Jindand Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933

4263507

APN: 03E-352-040

1-026976

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest under that certain Deed of Trust dated June 4, 2007, executed by Fermin Aniel, and Erlinda Aniel, Husband and Wife and Marc Jason Aniel, A Single man, all as joint tenants, to Fidelity National Title as trustee, for Mortgage Electronic Registration Systems, Inc., solely as nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007008561, on June 8, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 12-12-20

**Mortgage Electronic Registration Systems, Inc., solely
as nominee for Mortgagor, Inc.**

By: Yasmine Hancock
In: James James ASSISTANT SECRETARY


State of PA
County of Montgomery }

On 12/11/97 before me, Robert J. Senn personally appeared Janice J. Senn who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

WITNESS my hand and official seal.


Notary Public

(This Area for Official Notary Seal)

NATIONAL SEAL
ZACHARY Y STREET
SECURITY PUBLIC
UPPER CIRCLE IN TWO HUNDRETH CITY
Mr Commissioner Expires Mar 7, 2013

ATTORNEY TH. P. NOLLE

EXHIBIT “ F ”

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

Requested and Prepared by:
ETS Services, LLC

When Recorded Mail To:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

2011-016800

11:18 am 02/08/11 AT Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 1 3 5 6 8 7 *

Loan No.: 9875
TS NO: GM-164602-C

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to:

GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION

all beneficial interest under that certain Deed of Trust dated: 6/4/2007 executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor(s), to FIDELITY NATIONAL TITLE, as Trustee, and recorded as Instrument No. 2007-088561, on 6/8/2007, in Book XX, Page XX of Official Records, in the office of the County Recorder of San Mateo County, California together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

DATE: February 4, 2011

HSBC Bank USA, National Association as Trustee
for DALT2007-OA5

Mira Smoot
Mira Smoot
Authorized Officer

State of Pennsylvania) ss.
County of Montgomery)

On FEB 4 2011 before me, Mary Lynch Notary Public, personally appeared Mira Smoot who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Mary Lynch (Seal)

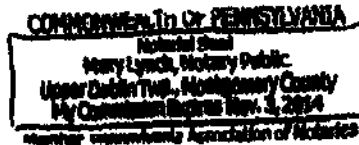


EXHIBIT “ G ”

2011-074586

2:00 pm 07/01/11 NR Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120

Loan No.: [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. No.: GM-164602-C

038-352-040

NOTICE OF RESCISSION OF NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is duly appointed Trustee under a Deed of Trust dated 06/04/2007, executed by "FERMIN ANIEL" AND "ERLINDA ANIEL", HUSBAND AND WIFE AND "MARC JASON ANIEL", A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGEIT, INC., as Beneficiary, recorded 06/08/2007, as Instrument No. 2007-088561, in book XX, page XX, of Official Records in the Office of the Recorder of San Mateo County, California describing land therein as more fully described on the above referenced deed of trust.

said obligations including one note for the sum of \$2,000,000.00.

Whereas, the present beneficiary under that certain Deed of Trust herein above described, heretofore delivered to the Trustee thereunder written Declaration of Default and Demand for Sale; and Whereas, Notice was heretofore given of breach of obligations for which said Deed of Trust is security and of election to cause to be sold the property therein described; and Whereas, a Notice of Default was recorded on the day and in the book and page set forth below:

Notice was recorded on 09/29/2008 in the office of the Recorder of San Mateo County, California, Instrument No. 2008-108477, in Book /, of Official Records.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN that the present Beneficiary and/or the Trustee, does hereby rescind, cancel and withdraw said Declaration of Default and Demand for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default—past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall nowise jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.

Dated: Jun 27, 2011

ETS Services, LLC

By: [Signature]
Lizeth Chavez, TRUSTEE SALE OFFICER

EXHIBIT “ H ”



RECORDING REQUESTED BY:
FIRST AMERICAN TITLE

WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC
dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
APN: 038-352-040-0

2012-058861

10:33 am 04/27/12 ND Fee: 18.00

Count of Pages 2

Recorded in Official Records

County of San Mateo

Mark Church

Assessor/County Clerk-Recorder



* R 0 0 0 1 3 9 8 0 5 0 *

TS No.: CA1200053706

Loan No.: 0492

SPACE ABOVE THIS LINE FOR RECORDING USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION.

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$516,041.70 as of Apr 21, 2012, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,

GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation).
GIO Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.865.3932 phone

2p/ac

TS NO.: CA1200053786

LOAN NO.: [REDACTED] 38492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 08/04/2007, executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC., as beneficiary, recorded 08/08/2007, as Instrument No. 2007-088861, in Book XX, Page XX, of Official Records in the Office of the Recorder of San Mateo County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including ONE NOTE FOR THE ORIGINAL sum of \$2,000,000.00; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5

Dated: Apr 21, 2012

ETS Services, LLC as Agent for Beneficiary



BY: _____

Dee Ortega
TRUSTEE SALE OFFICER

EXHIBIT "I"

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE

Executive Trustee Services, LLC
2256 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.555.3832

2012-058860

10:33 am 04/27/12 ST Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



TS NO : CA1200043786
LOAN NO : 2482

SPACE ABOVE THIS LINE FOR RECORDING'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERNIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") AS NOSENEE FOR MORTGAGE, INC. was the original Beneficiary under that certain Deed of Trust dated 08/04/2007 and recorded on 08/08/2007 as Instrument No. 2007-058861, in Book XX, Page XX of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 4-5-12

GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

Marcell G. Pace

Marcell G. Pace
Authorized Officer

State of Pennsylvania
County of Montgomery

} ss.

On April 5, 2012
Marcell G. Pace

Christine Morales

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

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

that the foregoing paragraph is

WITNESS my hand and official seal.

Signature *Christine Morales* (Seal)
Christine Morales

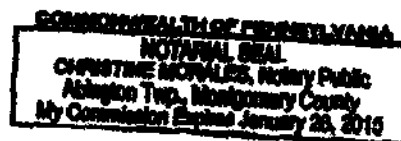


EXHIBIT “J”

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

Date: Apr 30, 2012

T.S. Number: CA1200053786
Loan Number: [REDACTED] 3492

DEBT VALIDATION NOTICE

1. The enclosed document relates to a debt owed to the current creditor:
GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

You may send us a written request for the name and address of the original creditor, if different from the current creditor, and we will obtain and mail the information to you.

2. **As of 04/21/2012, the total delinquency owed was \$516,041.70, but this amount will increase until the delinquency has been fully cured.**
3. **As of 04/30/2012, the amount required to pay the entire debt in full was \$2,117,458.81, but this amount will increase daily until the debt has been fully paid.**
4. **You may dispute the validity of this debt, or any portion thereof, within thirty (30) days after receiving this notice. Otherwise, we will assume that the debt is valid.**
5. **If you notify us in writing that you dispute all or any portion of this debt within thirty (30) days after receiving this notice, we will obtain and mail to you verification of the debt, or a copy of any judgement against you.**

**WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION
WE OBTAIN WILL BE USED FOR THAT PURPOSE**



EXHIBIT “K”

AND WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120

T.S. No. CA1200053786
Loan No. [REDACTED] 8482
Insurer No. [REDACTED] 1264

SPACE ABOVE THIS LINE FOR RECORDER'S Use

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 08/04/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Recorded 08/08/2007 as Instrument No. 2007-088561 in Book XX, page XX of Official Records in the office of the Recorder of San Mateo County, California

Date of Sale: 08/27/2012 at 01:00 P.M.

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, CA 94061

Property Address is purported to be: 75 TOBIN CLARK DRIVE
HILLSBOROUGH, CA 94010

APN #: 038-352-040-0

The total amount secured by said instrument as of the time of initial publication of this notice is \$2,856,811.25, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 714-730-2727 or visit this Internet web site address www.lpsasap.com for information regarding the sale of this property, using the file number assigned to this case file number CA1200053786. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

Date: 07/27/2012

**Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
Sale Line: 714-730-2727**

Ileana Petersen, TRUSTEE SALE OFFICER

C

1 Marc Jason Aniel (SBN: 282466)
2 75 TOBIN CLARK DRIVE
3 HILLSBOROUGH, CA 94010
4 Phone: 650-814-9478
5 Fax: 650-571-5829
6 Email: mj_aniel@me.com

7 DEBTOR IN PRO SE

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 In the Matter of

11 MARC JASON ANIEL,
12 Debtor.

13 MARC JASON ANIEL,
14 DEBTOR AND PLAINTIFF

15 vs.

16 GMAC MORTGAGE, LLC f/k/a GMAC
17 MORTGAGE CORPORATION

CHAPTER 11

Case No. 12-33117-DM

Petition Filing Date: November 01, 2012

**COMPLAINT TO DETERMINE THE
EXTENT AND VALIDITY OF LIEN ON
REAL PROPERTY, FOR QUIET TITLE,
FOR DECLARATORY RELIEF TO
DETERMINE THE HOLDER OF THE
NOTE, AND A CONDITIONAL ACTION
FOR AN ACCOUNTING**

Jury Trial Demanded

Honorable Judge Dennis Montali

19 COMES NOW, Marc Jason Aniel, Debtor and Plaintiff, files this Complaint to
20 Determine the Extent and Validity of Lien on Real Property, for Quiet Title, for Fees and Costs,
21 for Declaratory Relief, Return of adequate protection payments, and a Conditional Action for an
22 Accounting, and presents unto the Court as follows:
23

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157; 1334; 1652;
26 2201; FRCP 57, and B.R. 7001(1), (2), and (9), et seq. Pursuant to B.R. 3007(b), FRCP 57; an
27 Objection to Claim may be included in an Adversary Proceeding. However, as of the date this
28

1 Complaint is filed, no Proof of Claim has been filed in this case. Venue is appropriate in this
2 district pursuant to 28 U.S.C. §1408 and 1409.

3 2. This adversary proceeding is a core proceeding as defined at 28 U.S.C. §157(b)(2)(b)
4 and (b)(2)(K) in that it is an action to determine the nature, extent and validity of a lien on
5 property evidenced by a deed of trust, and the allowance or disallowance of a claim. To the
6 extent this proceeding is determined to be a non-core proceeding, Plaintiff consents to the entry
7 of final orders or judgment by the bankruptcy court.

8 **PARTIES**

9 3. Plaintiff is an individual, and debtor of the within-captioned bankruptcy case, having
10 filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on November 01,
11 2012 ("the Bankruptcy Case").

12 4. Defendant, GMAC MORTGAGE, LLC, f/k/a GMAC MORTGAGE
13 CORPORATION can be served through its Bankruptcy attorney of record, Adam N. Barasch,
14 Esq., of SEVERSON & WERSON, A Professional Corporation, at the address of One
15 Embarcadero Center, Suite 2600 San Francisco, California 94111.

16 5. The Property in question for this case (herein "subject property") is Plaintiff's
17 residence and has the following legal description:

18 6. "Lot 15, as shown on that certain Map entitled, "TOBIN CLARK ESTATES UNIT
19 NO. TWO, SAN MATEO COUNTY, CALIFORNIA", filed in the Office of the Recorder of the
20 County of San Mateo, State of California on June 25, 1976 in Book 91 of Maps at Pages 17 and
21 18. APN: 038-352-040"

22 **FACTUAL BACKGROUND**

23 7. On or around June 4, 2007, Erlinda Abibas Aniel executed a Promissory Note (herein
24 "Note") in favor of MortgageIT, Inc. for the refinance of the subject property.

25 8. On or around June 4, 2007, Erlinda Abibas Aniel, Fermin Solis Aniel, and Plaintiff,
26 Marc Jason Aniel, executed a Deed of Trust in favor of MortgageIT, Inc., to secure the
27 Promissory Note that was executed on the same day by Erlinda Abibas Aniel. In the Deed of
28 Trust, MortgageIT, Inc. was disclosed as the Lender. Mortgage Electronic Registration

1 Systems, Inc. was disclosed as the beneficiary, solely in its capacity as a nominee for the
2 Lender. Fidelity National Title was disclosed as the Trustee. See Exhibit "A".

3 9. On information and belief, Plaintiff alleges that prior to them signing the Note and
4 Deed, MortgageIT had already agreed to sell her loan to another entity or entities. And that
5 shortly after the origination of her Loan, MortgageIT did in fact sell her loan to another entity or
6 entities.

7 10. Plaintiff alleges that these unknown entities and Defendant were involved in an
8 attempt to securitize their Note into the HSBC Bank, USA, National Association as Trustee for
9 DALT2007-OA5 trust ("HSBC"). In order for the Note to be a part of the HSBC trust, the
10 entities involved were required to follow various agreements and established laws, including the
11 Trust Agreement that govern the creation of the Trust. Plaintiff alleges the entities involved in
12 the attempted securitization of the Plaintiffs' Note failed to adhere to the requirements of the
13 Trust. Under the DALT2007-OA5 Pooling and Servicing agreement, "PSA", "[t]he Depositor
14 at the Closing Date is the owner of the Loans and the other property being conveyed by it to the
15 Trustee for inclusion in the Trust Fund..." See Exhibit "B" page 7 of 149.¹ Under the "PSA",
16 the closing date was July 31, 2007. *Id* at page 27 of 149. Under 2.7 of the "PSA", it states that
17 all parties to the Trust must follow the "PSA". *Id* at page 63 of 149 ("The Depositor does hereby
18 establish, pursuant to the further provisions of this Agreement and the laws of the State of New
19 York, an express trust to be known, for convenience, as "Deutsche Alt-A Securities Mortgage
20 Loan Trust, Series 2007-OA5" and does hereby appoint HSBC Bank USA, National
21 Association as Trustee in accordance with the provisions of this Agreement.").

22 Furthermore, Section 2.8 of the "PSA", "Purpose and Powers of the Trust" states:

23 The purpose of the common law trust, as created hereunder, is to
24 engage in the following activities:

25 (b) acquire and hold the Loans and the other assets of the Trust
26 Fund and the proceeds therefrom;

27 (c) to issue the Certificates sold to the Depositor in exchange for
28 the Loans;

¹ The "PSA" is available online at

<http://www.sec.gov/Archives/edgar/data/1407106/000116231807000776/mo777exhibit41.htm>.

Plaintiffs have attached the cited pages of the PSA in its Motion for Leave of Reconsideration Exhibit "B". Should the Court require the entire document of its review in paper form, Plaintiffs can provide the Court with the entire document at the Court's earliest request.

(d) to make payments on the Certificates;

(e) to engage in those activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and

(f) subject to compliance with this Agreement, to engage in such other activities as may be required in connection with conservation of the Trust Fund and the making of distributions to the Certificateholders.

The trust is hereby authorized to engage in the foregoing activities. The Trustee shall not cause the trust to engage in any activity other than in connection with the foregoing or other than as required or authorized by the terms of this Agreement while any Certificate is outstanding, and this Section 2.8 may not be amended without the consent of the Certificateholders evidencing 51% or more of the aggregate Voting Rights of the Certificates. *Id* at 63-64 of 149.

11. As a result, Plaintiffs' Note was not properly transferred to the DALT-2007-AO5 asset/res. This became more apparent when on or around September of 2009, Erlinda Abibas Aniel called HSBC Bank, the trustee of the Trust, to confirm that her Note was in fact in the alleged Trust. A representative of HSBC Bank, named "Marianne", informed Erlinda Abibas Aniel that her subject property, loan number, her name, and the property address was no where to be found in their database, and that HSBC did not have that subject property in their records.

12. This fatal defect renders Defendant as third-party strangers to the underlying debt obligation without the power or right to demand payment, declare default, negotiate the loan, file any Proof of Claim, and foreclose the subject property. Although Defendant was aware of this fact, they have and continue to act as if they have authority to demand payment, declare default, negotiate the loan, and foreclose on their property. Plaintiff specifically disputes this fact.

13. Based on the findings, the Note and the Deed were not properly conveyed to the DALT-2007-AO5 because (1) the beneficial interest in the Plaintiffs' Note and Deed were not effectively assigned, granted, or transferred to the Sponsor or Depositor (who were supposed to convey Plaintiffs' Note and Deed into the Trust) prior to the closing date of the Trust and (2) HSBC failed to perfect the title to the Note and Deed by not strictly following the requirements of the PSA and other law, regulations, and agreements that govern the DALT-2007-AO5 when assigning the Deed of Trust. An assignment of beneficial interest in the Deed and endorsement of the Note after the closing date and not in compliance with the guidelines of the trust assignment was a violation of the PSA.

1 14. Plaintiff alleges that the Note was purportedly endorsed after the closing date of the
2 DALT-2007-AO5, which was on July 31, 2007. This date was established in the PSA and is the
3 date by which all of the Notes had to be transferred into the DALT-2007-AO5 in order for the
4 Note to be part of the trust res.

5 15. On or around February 25, 2009, Plaintiff's parents and co-owners of the subject
6 real property, Fermin Solis Aniel and Erlinda Abibas Aniel, filed for Bankruptcy under Chapter
7 11. See Case number 09-30452 DM. The case has since been converted to Chapter 7 and closed
8 on February 02, 2011.

9 16. On or around August 08, 2009, "Janine Yamoah", a purported "Assistant Secretary"
10 for MERS, executed a purported Assignment of the Deed of Trust. See Exhibit "C". The
11 Assignment alleges that for "value received" MERS granted, assigned, and transferred to HSBC
12 Bank USA, National Association as Trustee for DALT2007-OA5 all beneficial interest in the
13 Deed, together with the Note "the money due and to become due thereon with interests, and all
14 rights accrued or to accrue under said Deed of Trust." Plaintiff alleges that no such transfer
15 ever occurred and that "Janine Yamoah" had no corporate authority to assign Plaintiffs' Note
16 and Deed to HSBC and was not an employee of MERS, but was an employee of GMAC and a
17 robo-signer.

18 17. HSBC as Trustee filed a Proof of Claim in this Court in relation to Fermin Solis
19 Aniel and Erlinda Abibas Aniel's bankruptcy case on September 14, 2009, and amended twice
20 on March 25, 2010, and May 21, 2010. On October 09, 2009, Fermin Solis Aniel and Erlinda
21 Abibas Aniel, filed an objection to HSBC's Proof of Claim, which was later amended on
22 October 13, 2009. See In Re: Aniel, 09-30452 DM, Doc. 78 and 80. The Aniels objected to
23 HSBC's standing as a Secured Creditor to the subject property and objected to HSBC's
24 purported secured debt amount. HSBC responded to Fermin Solis Aniel and Erlinda Abibas
25 Aniel's objection on November 13, 2009. See In Re: Aniel, 09-30452 DM, Doc. 90. HSBC
26 provided documents in support of its purported standing as the secured creditor and the
27 purported secured debt.

28 18. On December 18, 2009, the Bankruptcy Court held a hearing and denied the Aniels
their objection to the Proof of Claim with the exception of the disputed charges claimed by

1 HSBC. The Aniels were required to file and serve by January 15, 2010, an opposition to the
2 charges and another status conference would be held on January 29, 2010.

3 19. On January 29, 2010, the Bankruptcy Court held another Status conference in
4 regards to the Aniels' objection to HSBC's proof of claim. The Bankruptcy Court required
5 Counsel for HSBC to amend its claim within 30 days. The Bankruptcy Court also required
6 Counsel to file a declaration establishing that HSBC is the holder of the note. The Aniels were
7 required to amend the objection on March 15, 2010. A continued status conference was
8 scheduled March 26, 2010.

9 20. On March 24, 2010, HSBC filed a supplement declaration in support of their
10 opposition to the Aniels' objection to HSBC's Proof of Claim.

11 21. On March 26, 2010, the Bankruptcy Court held another Status conference hearing
12 and ordered that the Aniels and HSBC provide statement what discovery would be taken, what
13 witnesses would be called, what would be presented and what facts will be proven at trial.

14 22. On April 23, 2010, the Bankruptcy Court held another Status conference hearing,
15 where they required HSBC to file a declaration regarding the whereabouts of the original note
16 and a declaration that explained why the proof of claim did not include the original endorsement
17 by May 06, 2010. The Bankruptcy court required HSBC to amend its proof of claim by May 06,
18 2010, and was to serve the Aniels with a copy. Aniels were to respond to the amended proof of
19 claim and the declarations by May 20, 2010. A continued status conference would be held on
20 May 27, 2010, which was later continued to June 10, 2010.

21 23. On May 21, 2010, HSBC amended its Proof of Claim, attempting to comply with
22 the Bankruptcy Court's request. On June 01, 2010, the Aniels objected to the supplemental
23 documents and the amended Proof of Claim. On June 02, 2010, HSBC filed supplemental
24 documents, purported an indorsment of the Note in blank, and an Assignment of the Deed.

25 24. On June 10, 2010, in a hearing, the Court overruled the Aniels' objection to HSBC's
26 Proof of Claim to its standing. The Court determined that because HSBC brought the original
27 Note with the endorsement that purports that HSBC owns the note, and purported an
28 Assignment of the Deed of Trust, it has standing to file a Proof of Claim as the secured creditor.

25 25. On or around July 30, 2010, the Aniels converted their case to a chapter 7. On or
26 around November 02, 2010, the Chapter 7 Trustee abandoned the subject property on the

1 request of the Aniels because the subject property had no value. Since November 02, 2010, the
2 subject property has risen in market value and the second mortgage creditor, Chase Bank,
3 subsequently removed the second mortgage debt and removed the second lien on the subject
4 property.

5 26. On or around December 2, 2010, the Bankruptcy Court fully discharged the
6 obligation to pay any debt on the subject property. On or around January 5, 2011, Erlinda
7 Abibas Aniel and Fermin Solis Aniel—credit report disclosed that no debt was owed on the
8 subject property. On or around February 4, 2011, the Aniels' bankruptcy case was closed.

9 27. On or around February 01, 2011, "Mira Smoot", a purported "Authorized Officer"
10 for HSBC, executed a purported Assignment of the Deed of Trust. See Exhibit "D". The
11 Assignment alleges that for "value received" HSBC granted, assigned, and transferred to
12 GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION all beneficial
13 interest in the Deed, together with the Note "the money due and to become due thereon with
14 interests, and all rights accrued or to accrue under said Deed of Trust." Plaintiffs allege that no
15 such transfer ever occurred and that "Mira Smoot" had no corporate authority to assign
16 Plaintiffs' Note and Deed to GMAC and was not an employee of HSBC, but she is or was an
17 employee of GMAC and a robo-signer. Also, the cut off date on this Trust was July 31, 2007.
18 HSBC could not move or transfer asset in the Trust after the cut off date because it would be a
19 violation of the PSA and be subject to taxation under REMIC. The Document was recorded on
20 February 9, 2011. GMAC also did not obtain any endorsement of the Note prior to or
21 concurrently with the assignment of the Deed of Trust. GMAC admits that HSBC purports an
22 interest in the Note and that GMAC has no legal, equitable, or enforceable right under the note.

23 28. Sometime after February 9, 2011, GMAC associated account number
24 "0713288492" as the loan number in relation to the subject property. This account number is
25 different from the account number on Plaintiff's Deed of Trust and the Note on the subject
26 property.

27 29. On or around April 21, 2012, Dee Ortega, a Trustee Sale Officer for ETS, as an
28 agent for GMAC and purported Substituted Trustee, purported a Notice of Default on the
subject property. See Exhibit "E". The Notice of Default purported that Plaintiffs owed
\$516,041.70 in a default amount. Plaintiffs allege that they do not owe any money on the

1 property. The document was recorded on April 27, 2012. The notice of default purports that
2 GMAC, and GMAC only, was entitled to payment as the beneficiary of the Deed of Trust.
3 Nowhere in the notice of default does it purport HSBC as the creditor or holder of the note.

4 30. On or around July 27, 2012, Ileanna Peterson, a Trustee Sale Officer of ETS,
5 purported a Notice of Trustee Sale on the subject property. See Exhibit "F". In that Notice,
6 ETS scheduled a Trustee's Sale on the lien of the subject property for August 27, 2012. ETS
7 purported that the total secured debt on the property under the Deed was \$2,856,811.25, which
8 is \$856,811.25 more than the original loan amount of \$2,000,000.00, and likely included the
9 amount under the second deed of trust. GMAC, not as a loan servicer but as the purported
10 creditor and beneficiary, has since continued and attempted to foreclose the subject property.

11 31. Despite the fact that GMAC is attempting to foreclose the subject property, HSBC
12 as Trustee for DALT-2007-OA5 is still claiming interest in the subject property. Currently,
13 HSBC discloses, in its required monthly Remittance report, that they own the subject property
14 under loan number "0115634254." See Exhibit "G". Under this report, HSBC AS TRUSTEE
15 FOR DALT2007-OA5 is purporting that loan number under Plaintiffs' loan is "0115634254."
16 *Id.* The loan number purported by HSBC AS TRUSTEE FOR DALT2007-OA5 is different
17 from the loan number disclosed by Defendants in the Notice of Trustee Sale, which was
18 "0713288492." Finally, GMAC, as subsidiary of Residential Capital, LLC, filed for bankruptcy on
19 May 14, 2012. See Case number 12012932, U.S. Bankruptcy Court, Southern District of New
20 York. GMAC in its schedules list property they have an ownership interest in. No where in
21 their schedules do they list the subject property or the underlying loan obligation as owned by
22 GMAC as a beneficiary or noteholder. GMAC clearly misrepresented HSBC's continued
23 interest in the subject property on the Notice of Trustee's Sale.

24 32. GMAC admits to this fact in its declaration regarding its motion for relief from the
25 automatic stay (See Doc. 77). GMAC employee, Peter Knapp, declared that the noteholder was
26 still purportedly HSBC, whereas GMAC, as a servicer, obtained beneficial interest in the deed
27 of trust for the sole purpose of foreclosing the property.

28 33. Thus, HSBC is still claiming an interest in the subject property. However, at the
same time GMAC is claiming to be the secured creditor when it attempted to foreclose the
property and when it filed for a motion for relief from stay without filing a Proof of Claim. See

1 In Re: Marc Jason Aniel, 12-33117, Doc. 47. GMAC admits that it does not have any interest,
2 legal or equitable, in the Promissory Note. GMAC purported employee, Peter Knapp, declared
3 that HSBC still holds the Note and that GMAC is only the servicer of the loan. See Knapp
4 declaration. This supplemental declaration directly contradicts the statements made in the
5 Assignment of the Deed of Trust, where GMAC purports to have obtained beneficial interest,
6 for value, together with the Note, in the Deed of Trust. See Exhibit "H". However, as it turns
7 out, GMAC has no interest in the Promissory Note and is not entitled to payment under the
8 Promissory Note. In summarize, HSBC purports to be the noteholder of the promissory note
9 (the document that creates the obligation to pay), while a recorded assignment of the deed of
10 trust purports that GMAC, for value, is the beneficiary of the deed of trust (the document that
11 creates a secured interest in the obligation and the power to conduct a non-judicial foreclosure).
Clearly, a separation of the note and deed has taken place with regards to the subject property.

12 34. GMAC, purporting to be the Movant, without standing, filed a Motion for Relief
13 from Stay. GMAC did not identify itself as the servicer or agent on behalf of HSBC, but rather
14 as the Movant, in its own capacity as the beneficiary. GMAC purport that the Plaintiff owned
15 them money as the Movant. This Court required Plaintiff to make two adequate protection
16 payments of \$7,500.00. GMAC agreed that if the Court determines that GMAC was not
entitled to payment, that they would return the adequate protection payments.

17 **COUNT 1**

18 **DETERMINATION OF EXTENT AND VALIDITY OF LIEN AND QUIET TITLE**
19 **WITH CORRESPONDING INJUNCTIVE RELIEF**

20 35. Plaintiff seeks a determination of the extent and validity of a lien on Real Property
21 pursuant to B.R. 7001(2), which provides for an adversary proceeding "to determine the
22 validity, priority, or extent of a lien or other interest in property." In this regard, essentially
23 GMAC asserted itself as the Secured Creditor/lien holder, holder of the Promissory Note, and
24 beneficiary under the Deed of Trust. Plaintiff seeks a determination that GMAC does not hold
25 any secure claim on the property as a beneficiary because it is not the noteholder of the note,
26 which is held by HSBC. Plaintiff also seeks a determination that HSBC holds an unsecured
27 claim against Erlinda Aniel because HSBC purported to assign the deed (without the note) to
28 GMAC for the purposes of foreclosing the property.

1 36. The basis for the determination of the extent and validity of the lien claim in
2 California State law is the Quiet Title Statute, Code Civ. Proc. §760.020, et seq. "An action may
3 be brought under this chapter to establish title against adverse claims to real or personal
4 property or any interest therein." Plaintiff is the co-owner of the Property and therefore has
5 standing to bring such action. GMAC is a party that claims an interest, in the form of a
6 purported lien claim that is adverse to Plaintiff's claim to clear title. This lien claim was
7 recorded in the County of San Mateo under an Assignment of the Deed of Trust.

8 37. A quiet title complaint and judgment encompasses the right to a recordable
9 judgment that effectively removes cloud upon title, and clears title for any subsequent purchaser
10 of the property. Plaintiff alleges that the following documents create a cloud upon title that
11 should be removed by the terms of the judgment in this case:

12 A. Deed of Trust, recorded on June 08, 2007. Document number 2007-088561.

13 B. Substitution of Trustee, recorded on September 29, 2008. Document number 2008-
14 108476.

15 C. Notice of Trustee Sale, recorded on January 02, 2009.

16 D. Assignment of the Deed of Trust, recorded on September 21, 2009. Document
17 number 2009-125757.

18 E. Assignment of the Deed of Trust, recorded on February 09, 2011. Document
19 number 2011-016800.

20 F. Notice of Default, recorded on April 27, 2012. Document number 2012-058861.

21 G. Substitution of Trustee, recorded on April 27, 2012. Document number 2012-
22 058860.

23 H. Notice of Trustee's Sale, recorded August 1, 2012. Document number 2012-108599.

24 38. Upon information and belief, GMAC is not the owner of the loan, holder of the
25 Note, and beneficiary of the Deed of Trust. GMAC did not pay value for the Note and Deed to
26 the party that previously owned the loan. GMAC is not the noteholder of the promissory note.
27 Therefore, without a legal, equitable, or enforceable claim to the obligation of the debt, GMAC
28 is not secured with a mortgage on the subject property.

39. GMAC admits they are not the holder of the Note. GMAC admits that it has no
right to enforce the Note. Plaintiff denies the authenticity, validity and authority to make any

1 indorsements that appear on the original note. Plaintiff denies the validity and authority not to
2 have the indorsement that were required to be signed or stamped upon the Note, pursuant to the
3 terms of the Securitization Documents, including the lack thereof. Because Plaintiff has denied
4 these matters in the pleadings, GMAC has the burden of proof on each of these allegations.

5 40. Upon information and belief, it is legally impossible for GMAC to ever have
6 obtained ownership of the Loan, Note, and Deed of Trust. It is also legally and factually
7 impossible for GMAC to have a perfected lien and be a Secured Creditor. It is also a legal
8 impossibility for GMAC to be the holder of the Note. Throughout the foreclosure attempt and
9 motion for relief from stay, GMAC has reclaimed to by the Movant and beneficiary entitled to
10 payment of the debt and has not present any evidence of any agency relationship with HSBC.

11 41. Because of GMAC's false statement regarding its ownership of the loan, Plaintiff
12 will have a difficult time selling the subject property as part of its anticipated Chapter 11
13 reorganization plan. Only the Bankruptcy Court may determine the validity of the adverse
14 claims in order to clear title.

15 42. Despite GMAC admitting it has no legal, equitable, or enforceable interest in the
16 Note, a recorded Assignment of the Deed of Trust was recorded in the County of San Mateo,
17 which GMAC has used as evidence of its interest as the beneficiary of the trust and noteholder
18 with standing to foreclose. However, without the possession or rights of the promissory note,
19 GMAC may not enforce any secured interest in the deed and foreclose the property. See
20 *Carpenter v. Longan*, 83 U.S. 271, 274-75 (1872) "The note and mortgage are inseparable; the
21 former as essential, the latter as an incident. An assignment of the note carries the mortgage
22 with it, while an assignment of the latter alone is a nullity."); *Orman v. North Alabama Assets*
23 *Co.*, 204 F. 289, 293 (N.D. Ala. 12 1913); *Rockford Trust Co. v. Purtell*, 183 Ark. 918 (1931).
24 Thus, at the very minimum, both GMAC and HSBC hold unperfected claims against the real
25 property. "The deed and note must be held together because the holder of the note is only
26 entitled to repayment, and does not have the right under the deed to use the property as a means
27 of satisfying repayment." *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039
28 (9th Cir. 2011). "Conversely, the holder of the deed alone does not have a right to repayment
and, thus, does not have an interest in foreclosing on the property to satisfy repayment." *Id.*

1 43. Therefore, Plaintiff seeks a determination of the validity of the lien on the subject
2 property that GMAC is not secured creditor and that HSBC has an unperfected interest in the
3 subject property. Plaintiff also seeks that it deny any claim made GMAC or HSBC under 11
4 USC § 502(b)(2).

5 **COUNT II**

6 **DECLARATORY RELIEF**

7 44. A Complaint for Declaratory Relief, pursuant to B.R. 7001(9), can provide the same
8 relief as is available to Plaintiff pursuant to B.R. 7001(1), (2), and (7), because it provides that a
9 declaratory judgment can include any of the relief available in any other type of adversary
10 proceeding. It provides that an adversary proceeding includes "a proceeding to obtain a
11 declaratory judgment relating to any of the foregoing, "i.e., the adversary proceeding types
12 delineated in B.R. 7001(1) through (8)." Plaintiff seeks declaratory relief, such as is necessary
13 to provide the same relief available pursuant to the California Quiet Title Statute and B.R.
14 7001(2) and (7).

15 45. Plaintiff alleges that he holds an interest in the Property free and clear of any
16 interest of GMAC, in that the lien evidenced by the Deed of Trust has no value since it is
17 wholly unsecured, and that accordingly, the Deed of Trust is null and void.

18 46. Plaintiff seeks declaratory ruling, determined by the Court, as is necessary to carry
19 out the purposes and intent of the relief request in this Complaint.

20 47. Plaintiff seeks declaratory rulings pertaining to the documents recorded that
21 constitute a cloud upon Plaintiff's title. Plaintiff seeks a declaratory ruling as to GMAC's
22 standing to enforce the Note, GMAC's standing as a Secured Creditor, and its standing as a
23 beneficiary under the Deed of Trust. This determination by the Court is crucial to Plaintiff's
24 efforts to sell the subject property as part of Plaintiff's reorganization plan, free of any adverse
25 claims by the Defendant. GMAC did not and cannot legally claim to be the Note holder, or
26 Owner of the loan. Since, under Cal. Civ. Code § 2936, assignment of the debt secured by a
27 mortgage carries with it the security, and cannot be assigned independently thereof, GMAC
28 cannot legally be the Note holder or owner of the loan. Finally, even if the transfer did occur, it
would still not be valid as it would have taken place after the cut off date identified in the PSA.

48. Plaintiff request declaratory rulings that:

- A. GMAC is not the owner of the Loan and Note.
- B. GMAC is not the holder of Note;
- C. GMAC has no right to enforce the Note;
- D. Determine the authenticity, validity and authority to make any indorsement on the original Note.
- E. GMAC has no legal, enforceable, or equitable security interest in the Property.
- F. No party owns a perfected lien on the subject property.
- G. No successor party to GMAC can be the owners of the Note and the Deed.
- H. GMAC is not the Secured Creditor.

49. An actual controversy exists between Plaintiff and Defendants with regard to the validity, nature and extent of their interests in the Property.

50. It is necessary that this Court declare the actual rights and obligations of the parties and make a determination as to the validity, nature and extent of Defendant's interest in the Property.

CONTINGENT CLAIM III SHOULD HSBC AS TRUSTEE FOR DALT-2007-OA5 BE DETERMINED AS THE UNSECURED CREDITOR FOR ACCOUNTING.

51. The Bankruptcy Court spent several months determining the validity of HSBC's Proof of Claim. If, contrary to information and belief, it is proven that the Note had been successfully pooled into the DALT-2007-OA5 trust and in accordance to the PSA, New York law, and Uniform Commercial Code, and that HSBC still claims ownership of the Note and is the current Beneficial Interest holder in the Deed of Trust, then HSBC should show cause as to why it allowed its purported servicer, GMAC, to purport beneficial interest in the Deed of Trust on February 01, 2011, and subsequently attempt to foreclose the property without notifying Plaintiff that HSBC was still the owner of the loan and it was acting as an authorized agent for HSBC, and show cause as why their interest in the Plaintiff's subject property is not unsecured.

52. Plaintiff also seeks proper accounting as to all the debts HSBC may claim is due by the Plaintiff and the co-debtor/owners. Specifically, Plaintiff requests the following accounting:

1. All payments made to Lender since the inception of the loan.
2. All missed payments.
3. Who received each payment before and after HSBC "purchased" the loan?

1 4. All late fees

2 5. All property tax payments.

3 52. Plaintiff also dispute the secured amount purported by GMAC. In GMAC's motion
4 for relief from stay, they claim that the total debt on the property is \$2,887,367.46. See Doc 47-
5 1; 47-2; 47-11. However in a previous declaration made by Russell Calhoun, a purport GMAC
6 employee, in a District Court matter, on September 12, 2012, claimed that the total debt was
7 \$2,051,922.93 plus about \$145,272.35. See Exhibit "I". In another contradicting statement,
8 GMAC sent a debt validation notice, as required by law, to the Plaintiff on April 30, 2012. In
9 that statement, GMAC purports it's the creditor that is owed the money, and that the total
10 amount of the entire debt was \$2,117,458.81. See Exhibit "J". These three vastly difference
11 amount within 8 months of each other present a serious question to the legitimate amount of
12 debt claimed by GMAC. Thus, Plaintiff request proper accounting of the claim debt owned by
13 the purport creditor, GMAC.

14 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

15 1. That the Court determine the nature and extent and validity of Defendant's interest in
16 the real property located at 75 Tobin Clark Drive, Hillsborough California;

17 2. That the Court determine that the amount of the lien secured by the Deed of Trust is
18 zero;

19 3. That the Court determines that any claim owed to GMAC by Plaintiff is wholly
20 unsecured;

21 4. That the Court determines that the Deed of Trust is null and void;

22 5. That the Court disallows any Proof of Claim and Secured Interest by Defendant.

23 6. That Defendant is directed to take all actions necessary to have the security interest
24 released and removed from the mortgage book in the County of San Mateo.

25 7. That Defendant returns all adequate protection payments Plaintiff made to Defendant.

26 7. For costs of suit incurred herein; and

27 8. For such other and further relief as the court deems just and proper.
28

1 Respectfully submitted.

2
3 Dated: February 14, 2013

/s/ Marc Jason Aniel

4 Marc Jason Aniel
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CERTIFICATE OF SERVICE

I certify that I am employed in the County of San Mateo, California, am over the age of eighteen years and not a party to the within action. My home address is 75 Tobin Clark Drive, CA 94010.

I hereby certify that a copy of the foregoing

COMPLAINT TO DETERMINE THE EXTENT AND VALIDITY OF LIEN ON REAL PROPERTY, FOR QUIET TITLE, FOR DECLARATORY RELIEF TO DETERMINE THE HOLDER OF THE NOTE, AND A CONDITIONAL ACTION FOR AN ACCOUNTING

was served on February 14, 2013, by first class mail, or ECF service, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Burlingame, California addressed as follows:

SEVERSON & WERSON

Adam N. Barasch, Esq.

One Embarcadero Center, Suite 2600

San Francisco, California 94111.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this February 14, 2013 at San Mateo, California.

/s/ Marc Jason Aniel

Marc Jason Aniel

EXHIBIT “ A ”

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1355 DENING WAY, 3RD FLOOR
MIDDLETON, WI 53662

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD, SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

(Space Above This Line for Recording Data)

MTH

94520

2007-088561

01:24pm 03/05/07 DT Fee: 67.00

Count of pages 21

Recorded in Official Records

County of San Mateo

Warren Station

Assessor-County Clerk-Recorder



* 2 0 0 7 0 0 0 8 5 6 1 A R *

DEED OF TRUST

dp

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 JUNE 4, 2007 together with all Riders to this document.

(B) "Borrower" is

FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

MORTGAGEIT, INC.

Lender is a CORPORATION

organized and existing under the laws of NEW YORK
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
CA71 : 07/01 (Page 1)

[Signature]

137
Lender's address is
23 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a national electronic system for recording and tracking mortgage and deed information. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 4, 2007.
The Note states that Borrower owes Lender
TWO MILLION AND NO /100

Dollars (U.S. \$ 2,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037

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

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

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

<input checked="" 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"/> Biweekly Payment Rider
<input type="checkbox"/> 1-4 Family Rider		
<input type="checkbox"/> Other(s) [specify]		

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

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

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

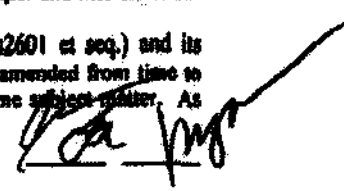
(M) "Screw Items" means those items that are described in Section 3.

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As



used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with agreed-upon title, the following described property located in the COUNTY

[Type of Recording Jurisdiction]

of SAN MATEO

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. 438-352-047

which currently has the address of 75 TOWN CLARK DRIVE

[Street]

HILLSBOROUGH

California

94010

[("Property Address")]

[City]

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all encroachments, 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 title to legal interests in the Property as nominee for Lender and Lender's successors and assigns, and that it is 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, refinancing and converting the Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the undivided fee simple interest in the right to grant and convey the Property and that the Property is unencumbered, except the encumbrances of record. Borrower warrants and will defend generally against all claims, demands, suits, 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.

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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 and interest on the Note, together with any prepayment charges and late charges due under the Note. Borrower shall also pay to Lender all 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, cashier's check, or cashier's check payable to order of Lender; or (d) any other instrument which is insured by a federal agency, immediately, or within a reasonable period of time.

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 provided in Section 15. Lender may return any payment or other instrument if the payment or other instrument is insufficient to bring the Note current. Lender may accept any payment or partial payment instrument to bring the Note current, but Lender may not accept any payment or partial payment instrument to bring the Note current if such payment or partial payment instrument is not applied to the Note 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 Note 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 provided by this Security Instrument.

2. **Application of Payments on Payments.** 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) payments due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it becomes due. Any remaining amounts shall be applied first to interest due on any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments [and to the extent that each payment is paid in full. To the extent that any amount remains 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 delinquent payments and then to the principal balance of 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. **Escrow 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



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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

4. **Charges-Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can obtain priority over this Security Instrument, household 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 within 30 days of Lender's option to prevent the enforcement of the lien while those proceedings are pending, but only until such



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proceedings are concluded; or (c) secures from the holder of the lien an agreement assigning to Lender subrogating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can create 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.

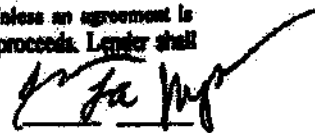
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not impaired. 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



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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

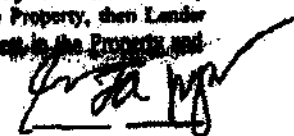
6. ~~Occupancy.~~ Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the acquisition of the Property, and shall remain in continuous occupancy as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless unusual circumstances exist which are beyond Borrower's control.

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

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

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information in connection with the Loan) or made such representations, including, but not limited to, representations regarding 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 attach 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



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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 attorney's 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.

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

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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. ~~Application of Miscellaneous Proceeds; Particulars.~~ All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third

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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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



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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

14. 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.

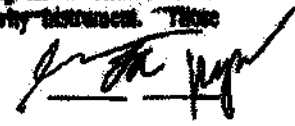
17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

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 Reinstatement After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. These



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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, instrumentally 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 Default. 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 also handles delinquencies and foreclosures. The Loan Servicer's obligations under this Security Instrument and applicable Law. There also might be one or more changes of the Loan Servicer assigned to take care 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 necessary for Borrower to continue with a notice of default of the Note. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the servicer of the Note, the mortgagee's servicing obligations to Borrower will continue with the Loan Servicer or be transferred to a successor Loan Servicer and are not limited by the Note's provisions unless otherwise provided by the applicable law.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (of either an individual or the holder of the Note) or a state that arises from the other party's claims, 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 time as 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 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 modification given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not



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

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

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

20. 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 13 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to accelerate after acceleration and the right to bring a court action to enforce the provisions of a default or any other default of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment of the sums secured by this Security Instrument without further demand, and may enforce the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 20, including, but not limited to, reasonable attorney's fees and costs of this evidence.

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

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

21. Recovery. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to recover the Property and shall surrender this Security Instrument to Trustee.

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

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

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2924 of the Civil Code of California.

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.

BORROWERS:



ERLINDA ANIEL (Seal)
- Borrower



FERMIN ANIEL (Seal)
- Borrower



MARCO ANTON ANIEL (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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(Space Below This Line for Acknowledgment)

STATE OF CALIFORNIA

COUNTY OF San Mateo

On June 4, 2007 before me, Carolyn Chan, Notary Public
personally appeared
ERLINDA ANIEL AND FERMIN ANIEL AND MARC JASON ANIEL.

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

WITNESS my hand and official seal.



 (Seal)
Carolyn Chan

Exhibit “B”

EX-4.1 2 m0777exhibit41.htm POOLING AND SERVICING AGREEMENT

EXECUTION VERSION

ACE SECURITIES CORP.,

as Depositor,

WELLS FARGO BANK, N.A.

as Master Servicer and Securities Administrator,

CLAYTON FIXED INCOME SERVICES INC.,

as Credit Risk Manager,

and

HSBC BANK USA, NATIONAL ASSOCIATION

as Trustee

POOLING AND SERVICING AGREEMENT

Dated as of July 1, 2007

Mortgage Pass-Through Certificates

Series 2007-OA5

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This Pooling and Servicing Agreement, dated and effective as of July 1, 2007 (this "Agreement"), is executed by and among ACE Securities Corp., as depositor (the "Depositor"), Wells Fargo Bank, N.A., as master servicer (the "Master Servicer") and as securities administrator (the "Securities Administrator"), Clayton Fixed Income Services Inc., as credit risk manager (the "Credit Risk Manager"), and HSBC Bank USA, National Association, as trustee (the "Trustee"). Capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to such terms in Article I hereof.

PRELIMINARY STATEMENT

The Depositor at the Closing Date is the owner of the Loans and the other property being conveyed by it to the Trustee for inclusion in the Trust Fund. The Trust Fund will consist of a segregated pool of assets comprised of the Loans and certain other assets. On the Closing Date, the Depositor will acquire the Certificates from the Trust Fund as consideration for its transfer to the Trust Fund of the Loans and certain other assets and will be the owner of the Certificates. The Depositor has duly authorized the execution and delivery of this Agreement to provide for the conveyance to the Trustee of the Loans and the issuance to the Depositor of the Certificates representing in the aggregate the entire beneficial ownership of the Trust Fund. All covenants and agreements made by the Depositor, the Master Servicer, the Securities Administrator and the Trustee herein with respect to the Loans and the other property constituting the Trust Fund are for the benefit of the Holders from time to time of the Certificates. The Depositor, the Master Servicer, the Securities Administrator and the Trustee are entering into this Agreement, and the Trustee is accepting the trust created hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

The Certificates issued hereunder, other than the Class CE, Class XS-1, Class XS-2, Class P and Class R Certificates, have been offered for sale pursuant to a Prospectus Supplement dated July 30, 2007 to a Prospectus dated June 11, 2007 (together, the "Prospectus"). The Trust Fund created hereunder is intended to be the "Trust" as described in the Prospectus and the Certificates are intended to be the "Certificates" described therein.

The Securities Administrator shall elect that each of REMIC I, REMIC II and REMIC III, be treated as a REMIC under Section 860D of the Code. Any inconsistencies or ambiguities in this Agreement or in the administration of this Agreement shall be resolved in a manner that preserves the validity of such REMIC elections. The assets of REMIC I shall include the Loans (exclusive of the Class XS-1 Excess Servicing Fee and the Class XS-2 Excess Servicing Fee), the accounts (other than the Collateral Accounts, the Reserve Fund, the Carryover Reserve Fund, the Class A-1A Swap Account and the Certificate Swap Account), any REO Property, and any proceeds of the foregoing. The REMIC I Regular Interests shall constitute the assets of REMIC II. The REMIC II Regular Interests shall constitute the assets of REMIC III (the "Master REMIC"). The Class R Certificate shall represent ownership of the sole class of residual interest in each REMIC formed hereby. For purposes of satisfying Treasury regulation Section 1.860G-1(a)(4)(iii), the "latest possible maturity date" for each regular interest created hereby shall be the 36th month following the latest maturity date of any Loan held in the Trust on the Closing Date.

REMIC I:

The following table sets forth the designations, principal balances, and interest rates for each interest in REMIC I, each of which (other than the R-I interest) is hereby designated as a regular interest in REMIC I (the "REMIC I Regular Interests"):

the aggregate Scheduled Principal Balance of the Loans as of the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period) and (B) the excess, if any, of, the aggregate Scheduled Principal Balance of the Loans as of the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period) over the OC Floor.

Class M-7 Principal Distribution Amount: The Class M-7 Principal Distribution Amount for any Distribution Date is an amount equal to the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates after taking into account the payment of the Senior Principal Distribution Amount on the Distribution Date, (ii) the Certificate Principal Balance of the Class M-1 Certificates after taking into account the payment of the Class M-1 Principal Distribution Amount on the Distribution Date, (iii) the Certificate Principal Balance of the Class M-2 Certificates after taking into account the payment of the Class M-2 Principal Distribution Amount on the Distribution Date, (iv) the Certificate Principal Balance of the Class M-3 Certificates after taking into account the payment of the Class M-3 Principal Distribution Amount on the Distribution Date, (v) the Certificate Principal Balance of the Class M-4 Certificates after taking into account the payment of the Class M-4 Principal Distribution Amount on the Distribution Date, (vi) the Certificate Principal Balance of the Class M-5 Certificates after taking into account the payment of the Class M-5 Principal Distribution Amount on the Distribution Date, (vii) the Certificate Principal Balance of the Class M-6 Certificates after taking into account the payment of the Class M-6 Principal Distribution Amount on the Distribution Date and (viii) the Certificate Principal Balance of the Class M-7 Certificates immediately prior to the Distribution Date over (y) the lesser of (A) the product of (i) 98.750%, with respect to any Distribution Date prior to the Distribution Date in August 2013, and 99.000% with respect to any Distribution Date on or after the Distribution Date in August 2013 and (ii) the aggregate Scheduled Principal Balance of the Loans as of the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period) and (B) the excess, if any, of, the aggregate Scheduled Principal Balance of the Loans as of the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period) over the OC Floor.

Class P Certificates: The Class P Certificates, and designated as such on the face thereof in substantially the form attached hereto as Exhibit A-5.

Class R Certificate: The Certificate designated as "Class R" on the face thereof in substantially the form attached hereto as Exhibit A-7, which has been designated as the sole Class of "residual interests" in each REMIC formed hereby pursuant to Section 2.4.

Class R Certificateholder: The registered Holder of the Class R Certificate.

Clearing Agency: An organization registered as a "clearing agency" pursuant to Section 17A of the Securities and Exchange Act of 1934, as amended, which initially shall be the Depository.

Closing Date: July 31, 2007.

Code: The Internal Revenue Code of 1986, as amended.

breach or violation of any indenture or other agreement or instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it, which materially and adversely affects or, to the Master Servicer's knowledge, would in the future materially and adversely affect, (x) the ability of the Master Servicer to perform its obligations under this Agreement or (y) the business, operations, financial condition, properties or assets of the Master Servicer taken as a whole;

(iv) The Master Servicer does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant made by it and contained in this Agreement;

(v) No litigation is pending against the Master Servicer that would materially and adversely affect the execution, delivery or enforceability of this Agreement or the ability of the Master Servicer to perform any of its other obligations hereunder in accordance with the terms hereof,

(vi) There are no actions or proceedings against, or investigations known to it of, the Master Servicer before any court, administrative or other tribunal (A) that might prohibit its entering into this Agreement, (B) seeking to prevent the consummation of the transactions contemplated by this Agreement or (C) that might prohibit or materially and adversely affect the performance by the Master Servicer of its obligations under, or validity or enforceability of, this Agreement; and

(vii) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Master Servicer of, or compliance by the Master Servicer with, this Agreement or the consummation by it of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the Closing Date.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 2.5 shall inure to the benefit of the Trustee, the Depositor, the Certificateholders and the NIMS Insurer, if any.

Section 2.6 [Reserved].

Section 2.7 Establishment of the Trust.

The Depositor does hereby establish, pursuant to the further provisions of this Agreement and the laws of the State of New York, an express trust to be known, for convenience, as "Deutsche Alt-A Securities Mortgage Loan Trust, Series 2007-OA5" and does hereby appoint HSBC Bank USA, National Association as Trustee in accordance with the provisions of this Agreement.

Section 2.8 Purpose and Powers of the Trust.

(a) The purpose of the common law trust, as created hereunder, is to engage in the following activities:

(b) acquire and hold the Loans and the other assets of the Trust Fund and the proceeds therefrom;

- (c) to issue the Certificates sold to the Depositor in exchange for the Loans;
- (d) to make payments on the Certificates;
- (e) to engage in those activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and
- (f) subject to compliance with this Agreement, to engage in such other activities as may be required in connection with conservation of the Trust Fund and the making of distributions to the Certificateholders.

The trust is hereby authorized to engage in the foregoing activities. The Trustee shall not cause the trust to engage in any activity other than in connection with the foregoing or other than as required or authorized by the terms of this Agreement while any Certificate is outstanding, and this Section 2.8 may not be amended without the consent of the Certificateholders evidencing 51% or more of the aggregate Voting Rights of the Certificates.

Section 2.9 Tax Status and Reporting for Class XS-1 and Class XS-2 Certificates.

The Securities Administrator shall treat the portion of the Trust Fund in respect of the assets distributable to the Class XS-1 and Class XS-2 Certificates as a WHFIT that is a WHMT. The Securities Administrator shall report as required under the WHFIT Regulations to the extent such information as is reasonably necessary to enable the Securities Administrator to do so is provided to the Securities Administrator on a timely basis. For this purpose, the Securities Administrator may assume that the DTC is the only middleman listed as the registered holder for the related securities. The Securities Administrator shall not be liable for any tax reporting penalties that may arise under the WHFIT Regulations as a result of the Depositor incorrectly determining the status of the portion of the Trust Fund in respect of the assets distributable to the Class XS-1 and Class XS-2 Certificates as a WHFIT.

The Securities Administrator shall report required WHFIT information using the accrual method. The Securities Administrator shall make available WHFIT information to certificate holders annually. In addition, the Securities Administrator shall not be responsible or liable for providing subsequently amended, revised or updated information to any certificate holder, unless requested by the certificate holder.

The Securities Administrator shall not be liable for failure to meet the reporting requirements of the WHFIT Regulations nor for any penalties thereunder if such failure is due to: (i) the lack of reasonably necessary information being provided to the Securities Administrator, (ii) incomplete, inaccurate or untimely information being provided to the Securities Administrator or (iii) the inability of the Securities Administrator, after good faith efforts, to alter its existing information reporting systems to capture information necessary to fully comply with the WHFIT Regulations for the 2007 calendar year. Each owner of a class of securities representing, in whole or in part, beneficial ownership of an interest in a WHFIT, by acceptance of its interest in such class of securities, will be deemed to have agreed to provide the Securities Administrator with information regarding any sale of such securities, including the price, amount of proceeds and date of sale. Absent receipt of such information, and unless informed otherwise by the Depositor, the Securities Administrator may assume there is no secondary market trading of WHFIT interests.

To the extent required by the WHFIT Regulations, the Securities Administrator shall use reasonable efforts to publish on an appropriate website the CUSIPs for the Certificates that represent ownership of a

EXHIBIT "C"

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY
RECORDING REQUESTED BY:

Mortgage Electronic Registration Systems, Inc.,
solely as nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pia Demora, LLP
4373 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933

2009-125757

08:34am 03/21/09 AT Fee: \$0.00

Recorded in Official Records
County of San Mateo
Western Station
Assessor-County Clerk-Recorder



3507

APN: 036-332-040

ASSIGNMENT OF DEED OF TRUST

1-026976

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC Bank USA, National Association as Trustee for DALT2007-QA5 all beneficial interest under that certain Deed of Trust dated June 4, 2007, executed by Fernan Aniel, and Erlinda Aniel, Husband and Wife and Marc Jason Aniel, A Single man, all as joint tenants, to Fidelity National Title as trustee, for Mortgage Electronic Registration Systems, Inc., solely as nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007002561, on June 8, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 3-24-09

Mortgage Electronic Registration Systems, Inc., solely
as nominee for Mortgageit, Inc.

By: Vernon Yanez
Its Trusted Agent

State of PA
County of Montgomery

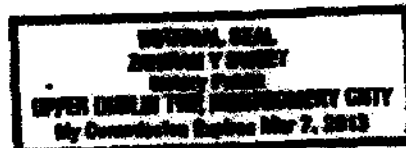
On 3-24-09 before me, Mahesh Y. Desai Notary Public
Vernon Yanez who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Mahesh Y. Desai
Notary Public

(This Area for Official Notary Seal)



ATTORNEY TO SP. Note.

EXHIBIT - D -

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

Requested and Prepared by:
ETS Services, LLC

When Recorded Mail To:
ETS Services, LLC
2286 North Ontario Street, Suite 400
Burbank, California 91504-3120

2011-016800

11:18 am 02/04/11 AT Fee: 18.00

Count of Pages: 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 1 3 3 6 8 7 *

Loan No.: 9375 3482
TS NO: GM-164802-C

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to:

GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION

all beneficial interest under that certain Deed of Trust dated: 8/4/2007 executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor(s), to FIDELITY NATIONAL TITLE, as Trustee, and recorded as Instrument No. 2007-088861, on 8/6/2007, in Book XX, Page XX of Official Records, in the office of the County Recorder of San Mateo County, California together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

DATE: February 4, 2011

HSBC Bank USA, National Association as Trustee
for DAL72807-OAS

Mira Smoot
Authorized Officer

State of Pennsylvania ss.
County of Montgomery

On FEB 01 2011 before me, Mary Lynch Notary Public, personally appeared Mira Smoot who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Mary Lynch (Seal)



EXHIBIT "E"

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE

Executive Trustee Services, LLC
2288 North Ontario Street, Suite 400
Burbank, CA 91504-9128
800.885.3932

2012-058860

10:33 am 04/27/12 ST Fee: 18.00
Count of Pages: 1
Recorded in Official Records
County of San Mateo
Book Church



TS NO: CA18023708
LOAN NO: 3482

SUBSTITUTION OF TRUSTEE

WHEREAS, FERRIN ANEL AND ERLINE ANEL, HUSBAND AND WIFE MARC JASON ANEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustee, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("EMRS") AS NOMINEE FOR MORTGAGEIT, INC. was the original Beneficiary under that certain Deed of Trust dated 08/04/2007 and recorded on 08/08/2007 as instrument No. 2007-080801, in Book XX, Page XX of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes Executive Trustee Services, LLC d/b/a ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 4-5-12

GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

Marcell G. Pace

Marcell G. Pace
Authorized Officer

State of Pennsylvania
County of Montgomery

} ss.

on April 5, 2012

before me,

Christine Morales

Notary Public, personally appeared

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

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

that the foregoing paragraph is

WITNESS my hand and official seal.

Signature *Christine Morales* (Seal)

Christine Morales

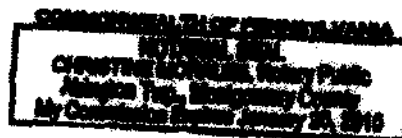


EXHIBIT “ F ”

RECORDING REQUESTED BY (Part 2) Pg 145 of 183

Executive Trustee Services, LLC dba ETS Services, LLC

AND WHEN RECORDED MAIL TO:

Executive Trustee Services, LLC dba ETS Services, LLC

2355 North Ontario Street, Suite 400

Burbank, CA 91504-9120

T.S. No. CA1200053786

Loan No. 9482

Insurer No. 4284

SPACE ABOVE THIS LINE FOR RECORDERS USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 08/04/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Recorded 08/08/2007 as Instrument No. 2007-088661 in Book XX, page XX of Official Records in the office of the Recorder of San Mateo County, California

Date of Sale: 08/27/2012 at 01:00 P.M.

Place of Sale: At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, CA 94061

Property Address is purported to be: **75 TOBIN CLARK DRIVE
HILLSBOROUGH, CA 94010**

APN #: 035-352-040-0

The total amount secured by said instrument as of the time of initial publication of this notice is \$2,886,011.25, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

EXHIBIT " G "

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

18-Sep-2012 12:37:34PM

Certificateholder Distribution Summary

Class	CUSIP	Record Date	Certificate Pass-Through Rate	Beginning Certificate Balance	Interest Distribution	Principal Distribution	Current Realized Loss	Ending Certificate Balance	Total Distribution	Cumulative Realized Losses
A-1A	25150XAA0	09/24/2012	0.43550 %	67,115,601.78	23,545.46	273,764.93	0.00	66,841,836.85	297,310.39	0.00
A-1B	25150XAR3	09/24/2012	0.45550 %	45,703,691.00	16,770.08	186,425.62	0.00	45,517,265.38	203,195.70	0.00
A-2	25150XAB8	09/24/2012	0.53550 %	47,007,767.48	20,277.98	191,744.96	0.00	46,816,022.53	212,022.94	0.00
A-3	25150XAC6	09/24/2012	0.63550 %	25,420,101.99	13,013.33	103,738.15	(12,113.17)	25,328,477.01	116,751.48	2,812,109.39
M-1	25150XAD4	09/24/2012	1.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	6,826,319.29
M-2	25150XAE2	09/24/2012	1.48550 %	0.00	0.00	0.00	0.00	0.00	0.00	3,659,000.00
M-3	25150XAF9	09/24/2012	1.73550 %	0.00	0.00	0.00	0.00	0.00	0.00	2,440,000.00
M-4	25150XAG7	09/24/2012	2.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	2,430,546.85
M-5	25150XAH5	09/24/2012	3.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	2,439,000.00
M-6	25150XAJ1	09/24/2012	3.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	2,684,000.01
M-7	25150XAK8	09/24/2012	3.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	2,683,000.01
CE	25150XAL6	08/31/2012	0.00000 %	76,630.16	0.00	0.00	0.00	274,277.14	0.00	0.00
XS-1	25150XAM4	08/31/2012	0.00000 %	0.00	44,301.79	0.00	0.00	0.00	44,301.79	0.00
XS-2	25150XAN2	08/31/2012	0.00000 %	0.00	5,906.86	0.00	0.00	0.00	5,906.86	0.00
P	25150XAP7	08/31/2012	0.00000 %	100.00	0.00	0.00	0.00	100.00	0.00	0.00
R	25150XAQ5	08/31/2012	0.00000 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Totals				185,323,892.41	123,815.50	755,673.66	(12,113.17)	184,777,978.91	879,489.16	25,973,975.55

As Master Servicer, Wells Fargo Bank, N.A. has independently calculated collateral information based on loan level data received from external parties, which may include the Servicers, Issuer and other parties to the transaction. Wells Fargo Bank, N.A. expressly disclaims any responsibility for the accuracy or completeness of information furnished to it by those third parties.

All Record Dates are based upon the governing documents and logic set forth as of closing.

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

18-Sep-2012 12:37:34PM

Principal Distribution Statement

Class	Original Face Amount	Beginning Certificate Balance	Scheduled Principal Distribution	Unscheduled Principal Distribution	Accretion	Realized Loss	Total Principal Reduction	Ending Certificate Balance	Ending Certificate Percentage	Total Principal Distribution
A-1A	165,000,000.00	67,115,601.78	0.00	273,764.93	0.00	0.00	273,764.93	66,841,836.85	0.40510204	273,764.93
A-1B	112,360,000.00	45,703,691.00	0.00	186,425.62	0.00	0.00	186,425.62	45,517,265.38	0.40510204	186,425.62
A-2	115,566,000.00	47,007,767.48	0.00	191,744.96	0.00	0.00	191,744.96	46,816,022.53	0.40510204	191,744.96
A-3	69,340,000.00	25,420,101.99	0.00	103,738.15	0.00	(12,113.17)	91,624.98	25,328,477.01	0.36527945	103,738.15
M-1	6,830,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
M-2	3,659,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
M-3	2,440,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
M-4	2,439,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
M-5	2,439,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
M-6	2,684,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
M-7	2,683,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
CE	2,448,181.09	76,630.16	0.00	0.00	0.00	0.00	0.00	274,277.14	0.11203303	0.00
XS-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
XS-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
P	100.00	100.00	0.00	0.00	0.00	0.00	0.00	100.00	1.00000000	0.00
R	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00000000	0.00
Totals	487,888,281.09	185,323,892.41	0.00	755,673.66	0.00	(12,113.17)	743,560.49	184,777,978.91	0.37873010	755,673.66

NOTE: Accretion amount also includes Net Negative Amortization, if applicable.

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

18-Sep-2012 12:37:34PM

Principal Distribution Factors Statement

Class	Original Face Amount	Beginning Certificate Balance	Scheduled Principal Distribution	Unscheduled Principal Distribution	Accretion	Realized Loss	Total Principal Reduction	Ending Certificate Balance	Ending Certificate Percentage	Total Principal Distribution
A-1A	165,000,000.00	406.76122291	0.00000000	1.65918139	0.00000000	0.00000000	1.65918139	405.10204152	0.40510204	1.65918139
A-1B	112,360,000.00	406.76122286	0.00000000	1.65918138	0.00000000	0.00000000	1.65918138	405.10204147	0.40510204	1.65918138
A-2	115,566,000.00	406.76122285	0.00000000	1.65918142	0.00000000	0.00000000	1.65918142	405.10204152	0.40510204	1.65918142
A-3	69,340,000.00	366.60083631	0.00000000	1.49607946	0.00000000	(0.17469239)	1.32138708	365.27944924	0.36527945	1.49607946
M-1	6,830,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-2	3,659,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-3	2,440,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-4	2,439,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-5	2,439,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-6	2,684,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-7	2,683,000.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
CE	2,448,181.09	31.30085446	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	112.03302775	0.11203303	0.00000000
XS-1	0.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
XS-2	0.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
P	100.00	1000.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	1000.00000000	1.00000000	0.00000000
R	0.00	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000

NOTE: Accretion amount also includes Net Negative Amortization, if applicable.

NOTE: All classes per \$1,000 denomination.

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

18-Sep-2012 12:37:34PM

Interest Distribution Statement

Class	Accrual Dates	Accrual Days	Current Certificate Rate	Beginning Certificate/ Notional Balance	Current Accrued Interest	Payment of Unpaid Interest Shortfall(1)	Current Interest Shortfall(1)	Non-Supported Interest Shortfall	Total Interest Distribution	Remaining Unpaid Interest Shortfall(1)	Ending Certificate/ Notional Balance
A-1A	08/27/12 - 09/24/12	29	0.43550 %	67,115,601.78	23,545.46	0.00	0.00	0.00	23,545.46	0.00	66,841,836.85
A-1B	08/27/12 - 09/24/12	29	0.45550 %	45,703,691.00	16,770.08	0.00	0.00	0.00	16,770.08	0.00	45,517,265.38
A-2	08/27/12 - 09/24/12	29	0.53550 %	47,007,767.48	20,277.98	0.00	0.00	0.00	20,277.98	0.00	46,816,022.53
A-3	08/27/12 - 09/24/12	29	0.63550 %	25,420,101.99	13,013.33	0.00	0.00	0.00	13,013.33	0.00	25,328,477.01
M-1	N/A	N/A	1.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
M-2	N/A	N/A	1.48550 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
M-3	N/A	N/A	1.73550 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
M-4	N/A	N/A	2.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
M-5	N/A	N/A	3.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	987.45	0.00
M-6	N/A	N/A	3.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	522.44	0.00
M-7	N/A	N/A	3.23550 %	0.00	0.00	0.00	0.00	0.00	0.00	378.06	0.00
CE	N/A	N/A	0.00000 %	76,630.16	0.00	0.00	0.00	0.00	0.00	0.00	274,277.14
XS-1	N/A	N/A	0.00000 %	0.00	0.00	0.00	0.00	0.00	44,301.79	0.00	0.00
XS-2	N/A	N/A	0.00000 %	0.00	0.00	0.00	0.00	0.00	5,906.86	0.00	0.00
P	N/A	N/A	0.00000 %	100.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00
R	N/A	N/A	0.00000 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Totals					73,606.85	0.00	0.00	0.00	123,815.50	1,887.95	

(1) Amount also includes Coupon Cap or Basis Risk Shortfalls, if applicable.

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

18-Sep-2012 12:57:34PM

Interest Distribution Factors Statement

Class	Original Face Amount	Current Certificate Rate	Beginning Certificate/ Notional Balance	Current Accrued Interest	Payment of Unpaid Interest Shortfall(1)	Current Interest Shortfall(1)	Non- Supported Interest Shortfall	Total Interest Distribution	Remaining Unpaid Interest Shortfall(1)	Ending Certificate/ Notional Balance
A-1A	165,000,000.00	0.43550 %	406.76122291	0.14269976	0.00000000	0.00000000	0.00000000	0.14269976	0.00000000	405.10204152
A-1B	112,360,000.00	0.45550 %	406.76122286	0.14925311	0.00000000	0.00000000	0.00000000	0.14925311	0.00000000	405.10204147
A-2	115,566,000.00	0.53550 %	406.76122285	0.17546666	0.00000000	0.00000000	0.00000000	0.17546666	0.00000000	405.10204152
A-3	69,340,000.00	0.63550 %	366.60083631	0.18767421	0.00000000	0.00000000	0.00000000	0.18767421	0.00000000	365.27944924
M-1	6,830,000.00	1.23550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-2	3,659,000.00	1.48550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-3	2,440,000.00	1.73550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-4	2,439,000.00	2.23550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
M-5	2,439,000.00	3.23550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.40485855	0.00000000
M-6	2,684,000.00	3.23550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.19464978	0.00000000
M-7	2,683,000.00	3.23550 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.14090943	0.00000000
CE	2,448,181.09	0.00000 %	31.30085446	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	112.03302775
XS-1	0.00	0.00000 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
XS-2	0.00	0.00000 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000
P	100.00	0.00000 %	1000.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	1000.00000000
R	0.00	0.00000 %	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000	0.00000000

(1) Amount also includes Coupon Cap or Basis Risk Shortfalls, if applicable.

NOTE: All classes per \$1,000 denomination.

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

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Certificateholder Account Statement

Beginning Balance	0.00
Deposits	
Payments of Interest and Principal	1,031,241.71
Reserve Funds and Credit Enhancements	0.00
Proceeds from Repurchased Loans	0.00
Servicer Advances	206,884.76
Gains & Subsequent Recoveries (Realized Losses)	(126,097.10)
Prepayment Penalties	0.00
Swap/Cap Payments	0.00
Total Deposits	1,112,029.37
Withdrawals	
Swap Payments	3,784.57
Reserve Funds and Credit Enhancements	0.00
Reimbursement for Servicer Advances	219,660.69
Total Administration Fees	9,094.95
Payment of Interest and Principal	879,489.16
Total Withdrawals (Pool Distribution Amount)	1,112,029.37
Ending Balance	0.00

Total Prepayment/Curtailment Interest Shortfall	0.00
Servicing Fee Support	0.00
Non-Supported Prepayment/Curtailment Interest Shortfall	0.00

Gross Servicing Fee*	7,705.01
Credit Risk Management Fee - Clayton Fixed Income	1,389.94
Supported Prepayment/Curtailment Interest Shortfall	0.00
Total Administration Fees	9,094.95

*Servicer Payees include: BANK OF AMERICA, N.A.; GMAC MORTGAGE, LLC

Servicer Advances are calculated as delinquent scheduled principal and interest.

Account Name	Beginning Balance	Current Withdrawals	Current Deposits	Ending Balance
Carryover Reserve Fund-Wells Fargo Bank, N.A.	0.00	0.00	0.00	0.00
Reserve Fund-Wells Fargo Bank, N.A.	0.00	0.00	0.00	0.00
Supplemental Interest Trust-Wells Fargo Bank, N.A.	0.00	0.00	0.00	0.00
Account Name		Funds In (A)	Funds Out (B)	Net Amount (A - B)
Class A-1A Swap Account-Deutsche Bank AG		23,545.46	27,330.03	(3,784.57)
Certificate Swap Payment-Deutsche Bank AG		0.00	0.00	0.00

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Collateral Statement

Group	Total
Collateral Description	Mixed ARM
Weighted Average Coupon Rate	3.238352
Weighted Average Net Rate	3.188461
Weighted Average Pass-Through Rate	2.854351
Weighted Average Remaining Term	327
Principal and Interest Constant	633,906.30
Beginning Loan Count	284
Loans Paid in Full	1
Ending Loan Count	283
Beginning Scheduled Balance	185,323,892.42
Ending Scheduled Balance	184,777,978.91
Actual Ending Collateral Balance	187,939,973.70
Scheduled Principal	164,859.43
Unscheduled Principal	412,127.15
Negative Amortized Principal	(31,073.07)
Scheduled Interest	500,119.94
Servicing Fees	7,705.01
Master Servicing Fees	0.00
Trustee Fee	0.00
FRY Amount	0.00
Special Hazard Fee	0.00
Other Fee	51,598.77
Pool Insurance Fee	0.00
Spread 1	0.00
Spread 2	0.00
Spread 3	0.00
Net Interest	440,816.16
Realized Loss Amount	126,097.10
Cumulative Realized Loss	51,119,512.02
Percentage of Cumulative Losses	10.4777
Prepayment Penalty Waived Amount	0.00
Prepayment Penalty Waived Count	0
Prepayment Penalty Paid Amount	0.00
Prepayment Penalty Paid Count	0
Special Servicing Fee	0.00

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Additional Reporting - Deal Level

One-Month LIBOR	0.235500%
Three-Month Rolling Delinquency Average	25.404955%
Credit Enhancement Percentage	0.443933%
Net WAC Rate Carryover Amount (A1A)	0.00
Net WAC Rate Carryover Amount (A1B)	0.00
Net WAC Rate Carryover Amount (A2)	0.00
Net WAC Rate Carryover Amount (A3)	0.00
Net WAC Rate Carryover Amount (M1)	0.00
Net WAC Rate Carryover Amount (M2)	0.00
Net WAC Rate Carryover Amount (M3)	0.00
Net WAC Rate Carryover Amount (M4)	0.00
Net WAC Rate Carryover Amount (M5)	987.45
Net WAC Rate Carryover Amount (M6)	522.44
Net WAC Rate Carryover Amount (M7)	378.06
Net WAC Rate Carryover Amount (Agg)	1,887.95
Interest Carry Forward Amount (A1A)	0.00
Interest Carry Forward Amount (A1B)	0.00
Interest Carry Forward Amount (A2)	0.00
Interest Carry Forward Amount (A3)	0.00
Interest Carry Forward Amount (M1)	0.00
Interest Carry Forward Amount (M2)	0.00
Interest Carry Forward Amount (M3)	0.00
Interest Carry Forward Amount (M4)	0.00
Interest Carry Forward Amount (M5)	0.00
Interest Carry Forward Amount (M6)	0.00
Interest Carry Forward Amount (M7)	0.00
Interest Carry Forward Amount (Agg)	0.00
Net Monthly Excess Cashflow	0.00
Extra Principal Distribution Amount	286,390.31
Overcollateralization Increase Amount	197,646.97
Overcollateralization Amount	274,277.14
Overcollateralization Deficiency Amount	2,165,164.27
Overcollateralization Reduction Amount	0.00
Required Overcollateralization Amount	2,439,441.41

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Additional Reporting - Deal Level

Stepdown Occurred	NO
Trigger Event Occurred	YES
Delinquency Trigger	
Trigger Result	Fail
Threshold Value	0.016561%
Calculated Value	25.992887%
Cumulative Loss Trigger	
Trigger Result	Fail
Threshold Value	1.029167%
Calculated Value	10.467633%

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Delinquency Status

DELINQUENT			BANKRUPTCY			FORECLOSURE			REO			TOTAL		
No. of Loans	Actual Balance		No. of Loans	Actual Balance		No. of Loans	Actual Balance		No. of Loans	Actual Balance		No. of Loans	Actual Balance	
			0-29 Days	4	2,078,041.99	0-29 Days	0	0.00	0-29 Days	0	0.00	0-29 Days	4	2,078,041.99
30 Days	10	5,543,375.54	30 Days	0	0.00	30 Days	0	0.00	30 Days	0	0.00	30 Days	10	5,543,375.54
60 Days	4	2,165,612.52	60 Days	0	0.00	60 Days	0	0.00	60 Days	0	0.00	60 Days	4	2,165,612.52
90 Days	3	1,625,043.96	90 Days	0	0.00	90 Days	0	0.00	90 Days	0	0.00	90 Days	3	1,625,043.96
120 Days	1	904,128.79	120 Days	0	0.00	120 Days	3	1,284,428.16	120 Days	0	0.00	120 Days	4	2,188,556.95
150 Days	2	1,577,993.82	150 Days	0	0.00	150 Days	2	1,517,718.19	150 Days	0	0.00	150 Days	4	3,095,712.01
180+ Days	2	2,332,482.42	180+ Days	5	2,981,735.17	180+ Days	41	30,612,833.42	180+ Days	3	1,210,408.63	180+ Days	51	37,137,459.64
22	14,148,637.05		9	5,059,777.16		46	33,414,979.77		3	1,210,408.63		80	53,833,802.61	
No. of Loans	Actual Balance		No. of Loans	Actual Balance		No. of Loans	Actual Balance		No. of Loans	Actual Balance		No. of Loans	Actual Balance	
			0-29 Days	1.413428 %	1.105695 %	0-29 Days	0.000000 %	0.000000 %	0-29 Days	0.000000 %	0.000000 %	0-29 Days	1.413428 %	1.105695 %
30 Days	3.533569 %	2.949546 %	30 Days	0.000000 %	0.000000 %	30 Days	0.000000 %	0.000000 %	30 Days	0.000000 %	0.000000 %	30 Days	3.533569 %	2.949546 %
60 Days	1.413428 %	1.152289 %	60 Days	0.000000 %	0.000000 %	60 Days	0.000000 %	0.000000 %	60 Days	0.000000 %	0.000000 %	60 Days	1.413428 %	1.152289 %
90 Days	1.060071 %	0.864661 %	90 Days	0.000000 %	0.000000 %	90 Days	0.000000 %	0.000000 %	90 Days	0.000000 %	0.000000 %	90 Days	1.060071 %	0.864661 %
120 Days	0.353357 %	0.481073 %	120 Days	0.000000 %	0.000000 %	120 Days	1.060071 %	0.683425 %	120 Days	0.000000 %	0.000000 %	120 Days	1.413428 %	1.164498 %
150 Days	0.706714 %	0.839626 %	150 Days	0.000000 %	0.000000 %	150 Days	0.706714 %	0.807555 %	150 Days	0.000000 %	0.000000 %	150 Days	1.413428 %	1.647181 %
180+ Days	0.706714 %	1.241078 %	180+ Days	1.766784 %	1.586536 %	180+ Days	14.487633 %	16.288623 %	180+ Days	1.060071 %	0.644040 %	180+ Days	18.021201 %	19.760277 %
7.773852 %	7.528274 %		3.180212 %	2.692230 %		16.254417 %	17.779602 %		1.060071 %	0.644040 %		28.268551 %	28.644147 %	

Current Period Class A Insufficient Funds

0.00

Principal Balance of Contaminated Properties

0.00

Periodic Advance

206,884.76

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180+ Delinquency Summary

Days Delinquent	Summary		
	Number Of Loans	Outstanding Actual Balance(\$)	Percentage Of Balance(%)
180 - 209	2	1,147,990.99	0.611
210 - 239	3	1,958,819.20	1.042
240 - 269	1	531,783.80	0.283
270 - 299	2	1,414,029.24	0.752
300 - 329	2	987,519.10	0.525
330 - 359	3	2,808,646.21	1.494
360 - 389	1	903,649.44	0.481
420 - 449	1	619,088.87	0.329
450 - 479	2	1,170,994.76	0.623
480 - 509	1	825,041.73	0.439
510 - 539	1	864,787.83	0.460
570 - 599	1	1,735,410.87	0.923
600 - 629	1	890,161.78	0.474
660 - 689	3	1,438,098.82	0.765
690 - 719	2	1,905,686.35	1.014
720 - 749	1	252,905.08	0.135
750 - 779	3	1,850,571.86	0.985
780 - 809	1	1,592,478.81	0.847
960 - 989	1	588,732.21	0.313
1020 - 1049	1	555,775.93	0.296
1110 - 1139	2	1,686,506.03	0.897
1140 - 1169	2	978,540.10	0.521
1200 - 1229	2	1,127,862.44	0.600
1230 - 1259	1	891,153.71	0.474
1290 - 1319	1	271,216.81	0.144
1350 - 1379	3	2,228,296.13	1.186
1380 - 1409	1	300,553.48	0.160
1440 - 1469	1	587,971.88	0.313
1470 - 1499	3	3,462,990.22	1.843
1560 - 1589	1	950,057.03	0.506
1620 - 1649	1	610,138.93	0.325
Total	51	37,137,459.64	19.760

This report includes all loans greater than 180 days delinquent regardless of status (REO, Foreclosure, Bankruptcy)

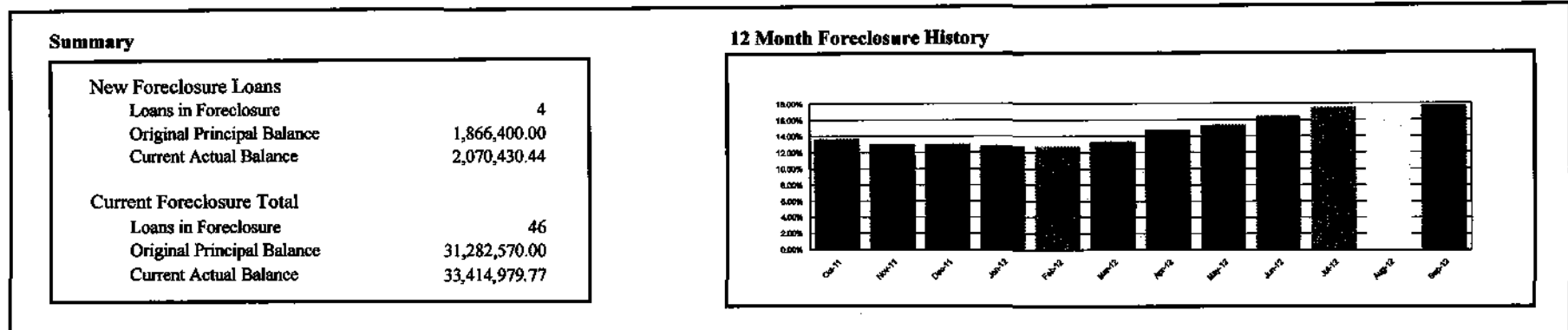
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Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

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Foreclosure Detail - All Mortgage Loans in Foreclosure during Current Period



Foreclosure Loan Detail - All Mortgage Loans in Foreclosure during Current Period

Group	Loan Number	Month Loan Entered FC	First Payment Date	State	LTV at Origination	Original Principal Balance	Current Actual Balance	Paid To Date	Months Delinquent	Current Loan Rate	Approximate Delinquent Interest
Summary	3888	Sep-2012	01-Dec-2006	CA	80.00	660,000.00	736,886.01	01-Jun-2010	25	3.000%	49,159.71
Summary	4534	Jan-2011	01-Jan-2007	WA	78.21	438,000.00	447,389.94	01-Jun-2010	25	1.000%	9,377.00
Summary	2269	Apr-2011	01-Dec-2006	CA	75.00	1,200,000.00	1,316,637.59	01-Jun-2009	37	4.250%	193,770.04
Summary	0684	Feb-2011	01-Jan-2007	CA	80.00	600,000.00	666,295.91	01-Jun-2010	25	4.398%	67,052.81
Summary	4548	Jul-2012	01-Mar-2007	CA	80.00	560,000.00	619,088.87	01-May-2011	14	2.950%	24,061.92
Summary	1671	Sep-2012	01-Dec-2006	SC	95.00	180,400.00	193,100.19	01-Mar-2012	4	3.875%	3,696.84
Summary	1801	Oct-2010	01-Dec-2006	DC	70.00	1,470,000.00	1,592,478.81	01-May-2010	26	3.625%	135,489.94
Summary	9162	Jul-2012	01-Feb-2007	CA	66.21	463,500.00	505,603.41	01-Jan-2012	6	3.500%	11,787.02
Summary	7712	Sep-2009	01-Mar-2007	MA	70.00	770,000.00	821,294.23	01-Mar-2009	40	3.375%	106,313.49
Summary	3053	Jun-2011	01-Feb-2007	HI	80.00	584,000.00	630,746.59	01-Aug-2010	23	4.000%	52,698.02
Summary	7151	Aug-2011	01-May-2007	CT	79.27	432,000.00	502,003.65	01-Apr-2011	15	2.000%	10,422.30
Summary	2635	Jun-2012	01-Apr-2007	HI	68.63	1,260,000.00	1,274,939.76	01-Aug-2010	23	1.250%	31,239.61
Summary	3003	Jul-2011	01-Apr-2007	FL	80.00	556,800.00	594,826.09	01-May-2009	38	3.625%	75,955.20
Summary	5901	Dec-2011	01-Jul-2007	MD	77.38	650,000.00	715,507.97	01-Sep-2010	22	3.250%	45,546.69
Summary	1399	Jun-2009	01-Jun-2007	FL	75.00	840,000.00	891,153.71	01-Feb-2009	41	4.000%	138,158.73
Summary	0830	Aug-2012	01-Jul-2007	CA	77.64	999,950.00	976,326.69	01-Dec-2011	7	5.400%	39,042.77
Summary	6373	Jun-2012	01-Jul-2007	CA	55.55	555,500.00	551,806.13	01-Feb-2012	5	3.000%	9,480.60
Summary	6476	Apr-2012	01-Jul-2007	CA	80.00	472,000.00	531,783.80	01-Nov-2011	8	3.875%	26,578.97
Summary	0683	Jun-2012	01-Jul-2007	CA	70.00	875,000.00	921,982.94	01-Oct-2011	9	2.813%	23,365.59
Summary	859	Feb-2012	01-Jul-2007	CA	65.00	1,495,000.00	1,694,565.03	01-Aug-2011	11	3.875%	121,239.92
Summary	254	Apr-2012	01-Aug-2007	CA	62.50	2,000,000.00	2,051,922.93	01-Jun-2008	49	3.875%	656,954.44
Summary	3350	May-2012	01-Jul-2007	CA	70.00	805,000.00	965,912.06	01-Feb-2012	5	2.550%	14,170.73
Summary	7123	Jun-2011	01-Jul-2007	CA	80.00	780,000.00	864,787.83	01-Feb-2011	17	3.875%	90,471.94
Summary	521	Aug-2008	01-Jul-2007	FL	75.00	922,500.00	950,057.03	01-Mar-2008	52	3.898%	209,277.03

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Foreclosure Loan Detail - All Mortgage Loans in Foreclosure during Current Period

Group	Loan Number	Month Loan Entered FC	First Payment Date	State	LTV at Origination	Original Principal Balance	Current Actual Balance	Paid To Date	Months Delinquent	Current Loan Rate	Approximate Delinquent Interest
Summary	9707	Apr-2012	01-Jul-2007	CA	80.00	404,000.00	431,479.22	01-Dec-2011	7	3.375%	10,784.18
Summary	7656	Dec-2010	01-Jul-2007	FL	95.00	285,000.00	300,553.48	01-Sep-2008	46	4.250%	58,362.76
Summary	3467	Sep-2009	01-Jul-2007	FL	90.00	364,500.00	383,714.01	01-May-2009	38	4.000%	53,629.82
Summary	3514	Mar-2012	01-Aug-2007	CA	58.83	500,050.00	533,365.95	01-Sep-2011	10	3.875%	34,223.38
Summary	3567	Aug-2012	01-Jul-2007	CA	80.00	440,000.00	501,897.02	01-Mar-2012	4	3.875%	13,461.75
Summary	3588	Mar-2010	01-Jul-2007	FL	95.00	346,750.00	369,868.44	01-Jun-2009	37	4.125%	52,170.16
Summary	9442	Jul-2012	01-Aug-2007	CA	80.00	688,000.00	642,387.58	01-Jan-2012	6	1.000%	4,091.01
Summary	4731	Aug-2011	01-Aug-2007	NY	75.00	630,000.00	668,991.11	01-Apr-2011	15	4.000%	37,823.12
Summary	2956	May-2011	01-Jul-2007	CA	80.00	560,000.00	588,732.21	01-Nov-2009	32	3.875%	66,147.43
Summary	5068	Feb-2012	01-Jul-2007	MD	75.00	742,500.00	825,041.73	01-Mar-2011	16	4.000%	49,069.44
Summary	4969	May-2012	01-Aug-2007	CA	70.99	465,000.00	517,009.63	01-Aug-2011	11	2.000%	11,005.80
Summary	9356	Mar-2012	01-Aug-2007	CA	73.08	475,000.00	454,153.15	01-Sep-2011	10	2.000%	8,802.36
Summary	2968	Jun-2011	01-Aug-2007	NY	80.00	580,000.00	604,746.01	01-Jun-2008	49	3.875%	121,650.06
Summary	0040	Feb-2009	01-Aug-2007	FL	67.95	1,495,000.00	1,564,429.64	01-Oct-2008	45	3.875%	271,501.02
Summary	0077	Jun-2011	01-Aug-2007	NY	80.00	560,000.00	587,971.88	01-Jul-2008	48	4.250%	124,577.54
Summary	2494	Jan-2011	01-Aug-2007	FL	80.00	148,000.00	157,738.46	01-Sep-2010	22	4.000%	12,831.53
Summary	5815	Nov-2008	01-Jul-2007	FL	79.49	775,000.00	806,321.28	01-Jun-2008	49	3.898%	159,807.13
Summary	9959	Nov-2011	01-Jul-2007	CA	73.86	517,000.00	564,852.39	01-Sep-2010	22	3.250%	72,707.84
Summary	9999	Nov-2009	01-Jul-2007	FL	80.00	191,120.00	198,409.24	01-Oct-2008	45	3.250%	56,276.55
Summary	0014	Sep-2012	01-Jul-2007	CA	80.00	536,000.00	589,430.95	01-Mar-2012	4	3.250%	12,935.99
Summary	0045	Sep-2012	01-Jul-2007	CA	74.24	490,000.00	551,013.29	01-Dec-2011	7	3.250%	21,337.08
Summary	5950	Jul-2012	01-Jun-2007	CA	79.75	520,000.00	555,775.93	01-Sep-2009	34	3.250%	113,757.10

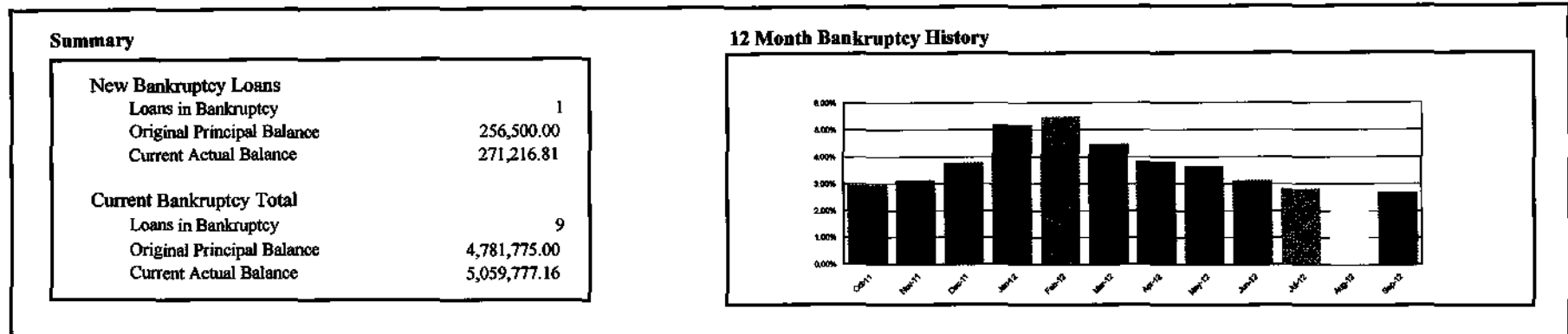
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18-Sep-2012 12:37:34PM

Bankruptcy Detail - All Mortgage Loans in Bankruptcy during Current Period



Bankruptcy Detail - All Mortgage Loans in Bankruptcy during Current Period

Group	Loan Number	Month Loan Entered Bankruptcy	First Payment Date	State	LTV at Origination	Original Principal Balance	Current Actual Balance	Paid To Date	Months Delinquent	Current Loan Rate	Approximate Delinquent Interest
Summary	0115480258	Oct-2010	01-Jul-2007	CA	69.87	538,000.00	538,491.93	01-Sep-2012	(1)	2.875%	1,276.20
Summary	0115545299	Jul-2011	01-Jul-2007	CA	80.00	856,000.00	903,649.44	01-Jul-2011	12	3.773%	39,657.78
Summary	0115589746	Feb-2012	01-May-2007	FL	73.05	599,025.00	610,138.93	01-Jan-2008	54	3.375%	184,014.70
Summary	0115664387	Dec-2011	01-Jul-2007	CA	77.97	807,000.00	890,161.78	01-Nov-2010	20	2.125%	34,108.14
Summary	0115725756	Apr-2011	01-Aug-2007	CA	80.00	424,000.00	465,128.43	01-Aug-2012	0	2.000%	1,340.02
Summary	0115764800	Sep-2012	01-Aug-2007	FL	95.00	256,500.00	271,216.81	01-Dec-2008	43	4.250%	47,804.10
Summary	0115767760	May-2008	01-Aug-2007	WA	80.00	428,000.00	488,698.03	01-Aug-2012	0	4.625%	3,737.13
Summary	0115782880	Dec-2009	01-Aug-2007	AZ	70.00	574,000.00	585,723.60	01-Aug-2012	0	3.625%	3,508.18
Summary	0115846810	May-2012	01-Jul-2007	GA	95.00	299,250.00	306,568.21	01-Mar-2009	40	3.250%	54,625.59

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Series 2007-OA5

Contact: Customer Service - CTSLink
Wells Fargo Bank, N.A.
Securities Administration Services
8480 Stagecoach Circle
Frederick, MD 21701-4747
www.ctslink.com
Telephone: 1-866-846-4526
Fax: 240-586-8675

18-Sep-2012 12:37:34PM

Realized Loss Detail Report - Loans with Losses during Current Period

Group	Inactive				Active				Totals			
	# Loans with Losses	Liquidated Actual Balance	Realized Loss/(Gain) Amount	Current Loss Percentage	# Loans with Losses	Ending Actual Balance	Realized Loss/(Gain) Amount	Current Loss Percentage	# Loans with Losses	Liquidated or Ending Actual Balance	Realized Loss/(Gain) Amount	Current Loss Percentage
Total	5	3,829,149.32	126,097.10	0.068 %	0	0.00	0.00	0.000 %	5	3,829,149.32	126,097.10	0.068 %

Realized Loss Loan Detail Report - Loans with Losses during Current Period

Group	Loan Number	Original Principal Balance	Current Note Rate	State	LTV at Origination	Original Term	Liquidated or Ending Actual Balance	Liquidation Effective Date	Realized Loss/(Gain)	Cumulative Realized Loss/(Gain)
Summary	0115403171	577,500.00	3.000%	CA	75.00	360	632,563.37	01/09/2012	715.18	336,152.42
Summary	0115695267	588,000.00	3.625%	CA	80.00	360	610,074.21	06/15/2011	295.08	361,945.97
Summary	0115746439	426,000.00	5.875%	CA	77.31	360	433,127.17	08/30/2012	137,200.01	137,200.01
Summary	0115762834	199,500.00	3.250%	FL	95.00	360	200,158.64	05/17/2011	(1,913.00)	144,546.17
Summary	0115950087	1,715,000.00	6.500%	CA	61.25	360	1,953,225.93	05/31/2012	(10,200.17)	1,017,206.38

Realized Loss/(Gain) value may include Interest Loss, Principal Loss, and Expense amounts.

* This data is currently not provided for reporting.

** The current loss for this loan is associated with a modification; for further detail please see the Modification section.

DEUTSCHE ALT-A SECURITIES, INC
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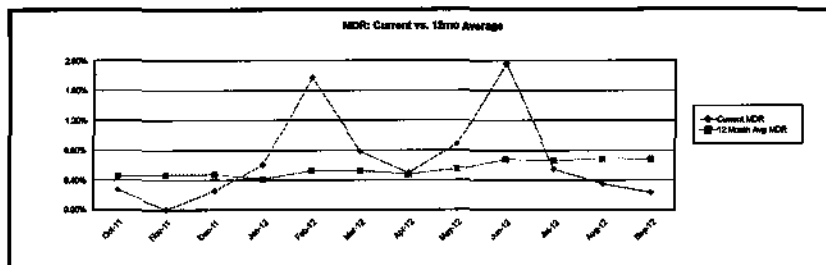
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Realized Loss Report - Collateral

Summary

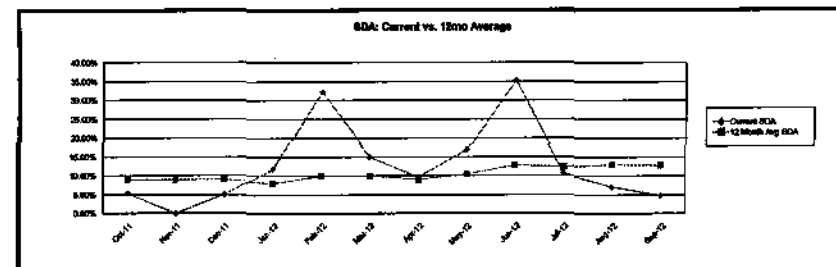
MDR

Current Month 0.233%
3 Month Average 0.376%
12 Month Average 0.681%



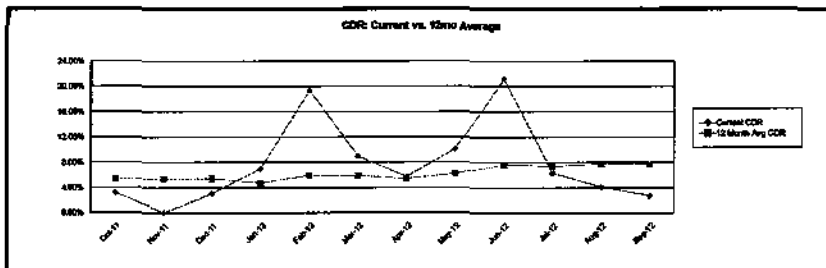
SDA

Current Month 4.782%
3 Month Average 7.478%
12 Month Average 12.803%



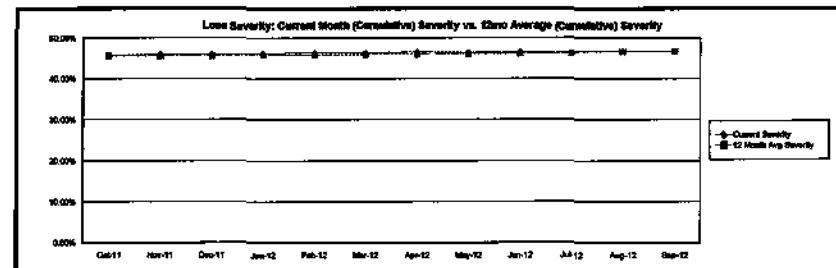
CDR

Current Month 2.765%
3 Month Average 4.412%
12 Month Average 7.663%



Loss Severity

Current Month (Cumulative) 46.393%
3 Month Average (Cumulative) 46.437%
12 Month Average (Cumulative) 46.387%



Calculation Methodology:

Monthly Default Rate (MDR): $\text{Sum}(\text{Beg Scheduled Balance of Liquidated Loans}) / \text{Sum}(\text{Beg Scheduled Balance})$

Conditional Default Rate (CDR): $1 - ((1 - \text{MDR})^{12})$

SDA Standard Default Assumption: If $\text{WAS} \leq 30$ then $\text{CDR} / (\text{WAS} * 0.02)$ else if $30 < \text{WAS} \leq 60$ then $\text{CDR} / 0.6$ else if $60 < \text{WAS} \leq 120$ then $\text{CDR} / (0.6 - ((\text{WAS} - 60) * 0.0095))$ else if $\text{WAS} > 120$ then $\text{CDR} / 0.03$

Cumulative Loss Severity: $\text{Sum}(\text{All Active \& Inactive Realized Losses}) / \text{Sum}(\text{Active Loans or loans without a loss passed on or after liquidation; the Actual Ending Principal Balance as of the most recent cycle in which a Realized Loss was passed; loans with a loss passed on or after the month of liquidation: the Actual Beginning Principal Balance from the cycle in which the loan was liquidated})$
3 Month Average and 12 Month Average will not have values until the 3rd and 12th month respectively.

DEUTSCHE ALT-A SECURITIES, INC
Mortgage Pass-Through Certificates
Distribution Date: 25-Sep-2012

DEUTSCHE ALT-A SECURITIES, INC
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Prepayment Detail - Prepayments during Current Period

Summary													
	Loans Paid in Full			Repurchased Loans			Substitution Loans			Liquidated Loans			Curtailments
	Count	Original Principal Balance	Current Scheduled Balance	Count	Original Principal Balance	Current Scheduled Balance	Count	Original Principal Balance	Current Scheduled Balance	Count	Original Principal Balance	Current Scheduled Balance	Curtailment Amount
Total	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	1	426,000.00	432,521.59	(21,000.02)

Prepayment Loan Detail - Prepayments during Current Period

Group	Loan Number	State	LTV at Origination	First Payment Date	Original Principal Balance	Prepayment Amount	PIF Type	Months Delinquent	Current Loan Rate	Original Term	Seasoning
Summary	0115746439	CA	77.31	01-Aug-2007	426,000.00	433,127.17	Liquidation	8	5.875%	360	61

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Prepayment Penalty Detail - Prepayment Penalty Paid during Current Period

Summary	Loan Count	Prior Balance	Prepayment Penalty Amount	Prepayment Penalty Waived
Total	0	0.00	0.00	0.00

Prepayment Penalty Loan Detail - Prepayment Penalty Paid during Current Period

Group	Loan Number	Paid In Full Date	Prior Balance	Prepayment Penalty Amount	Prepayment Penalty Waived
No Prepayment Penalties this Period					

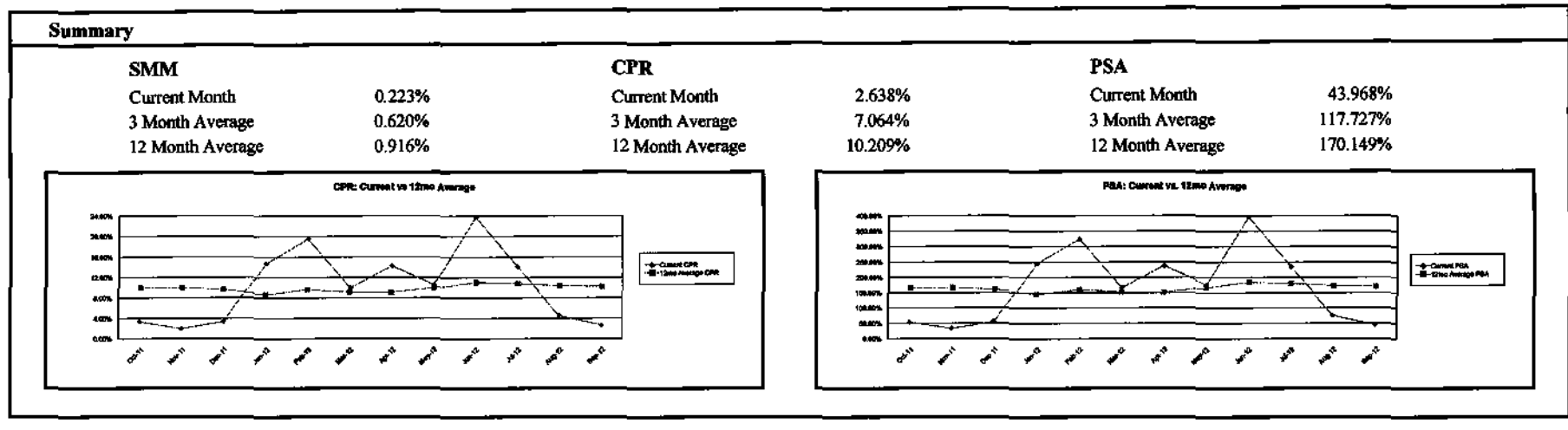
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Prepayment Rates



Calculation Methodology:

Single Month Mortality (SMM): (Partial and full prepayments + Repurchases) / (Beginning Scheduled Balance - Scheduled Principal)

Conditional PrePayment Rate (CPR): $1 - (1 - \text{SMM})^{12}$

PSA Standard Prepayment Model: $100 * \text{CPR} / (0.2 * \text{MIN}(30, \text{WAS}))$

Weighted Average Seasoning (WAS): $\text{sum}((\text{Original Term} - \text{Remaining Term}) * (\text{Current Scheduled Balance} / \text{Deal Scheduled Principal Balance}))$

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Loan Number	Beginning Scheduled Balance	Current Scheduled Balance	Prior Rate	Modified Rate	Prior Payment	Modified Payment
0115631784	544,472.50	600,761.75	3.750%	2.000%	2,332.51	1,464.90

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<u>Loans Repurchased</u>				<u>Loans Substituted</u>			
Loan Number	Current Scheduled Balance	Current Rate	Current Payment	Loan Number	Current Scheduled Balance	Current Rate	Current Payment
No Substitutions this Period							

Loan Number	Beginning Scheduled Balance	Payoff Balance	Current Rate	Current Payment
No Repurchases Due to Breaches this Period				

Loan Number	Beginning Scheduled Balance	Payoff Balance	Current Rate	Current Payment
No Repurchases Due to Other this Period				

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Interest Rate Stratification

Current Interest Rate Range (%)		Summary		
		Number Of Loans	Outstanding Scheduled Balance(\$)	Percentage Of Balance(%)
< 0.750		0	0.00	0.000
0.750	1.249	14	8,742,561.43	4.731
1.250	1.749	3	1,270,595.83	0.688
1.750	2.249	76	45,342,545.87	24.539
2.250	2.749	17	10,247,368.96	5.546
2.750	3.249	36	22,860,477.58	12.372
3.250	3.749	36	24,139,536.52	13.064
3.750	4.249	80	58,023,514.56	31.402
4.250	4.749	4	2,215,277.99	1.199
4.750	5.249	3	2,377,731.59	1.287
5.250	5.749	4	2,862,852.01	1.549
5.750	6.249	6	4,117,657.75	2.228
6.250	6.749	4	2,577,858.82	1.395
6.750	7.249	0	0.00	0.000
7.250	7.749	0	0.00	0.000
7.750	8.249	0	0.00	0.000
8.250	8.749	0	0.00	0.000
8.750	9.249	0	0.00	0.000
>= 9.500		0	0.00	0.000
Total		283	184,777,978.91	100.000

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Supplemental Reporting

Closing Date

July 31, 2007

Determination Date

With respect to each Servicer, the day of the month set forth as the Determination Date in the related Servicing Agreement. With respect to Article IX hereto, the fifteenth (15th) day of the month or if such day is not a Business Day, the Business Day immediately following such fifteenth (15th) day.

Distribution Date

The 25th day (or, if such 25th day is not a Business Day, the Business Day immediately succeeding such 25th day) of each month, beginning in August 2007.

LIBOR Business Day

Any day on which dealings in United States dollars are transacted in the London interbank market.

LIBOR Determination Date

With respect to each Interest Accrual Period (other than the initial Interest Accrual Period) and the LIBOR Certificates, the second LIBOR Business Day preceding such Interest Accrual Period on which the Securities Administrator will determine One-Month LIBOR for such Interest Accrual Period.

Record Date

With respect to each Distribution Date and any Class of Book-Entry Certificates (other than the Class XS-1 and Class XS-2 Certificates), the Business Day preceding the related Distribution Date. With respect to each Distribution Date and the Class CE, Class XS-1, Class XS-2, Class P and Class R Certificates, the last Business Day of the month immediately preceding the month in which the Distribution Date occurs.

Servicer Remittance Date

With respect to each Servicer, as set forth in the related Servicing Agreement.

Miscellaneous Modification Reporting Footnote

In the absence of specific guidance in the governing agreements, Wells Fargo Bank, N.A. has determined that a reduction in principal agreed to by a servicer in connection with a loan modification should be treated in a manner similar to a realized principal loss on the related loan.

Extraordinary Costs and Expenses

Wells Fargo Bank, N.A. is processing an expense charge to recover extraordinary costs and expenses incurred as a result of the enhanced administration of residential mortgage backed securities transaction(s) necessitated by significant and/or unanticipated changes in industry and market conditions. These extraordinary costs and expenses may be adjusted periodically.

EXHIBIT "H"

1 ADAM N. BARASCH (State Bar No. 158220)
THOMAS N. ABBOTT (State Bar No. 245568)
2 JOHN B. SULLIVAN (State Bar No. 96742)
SEVERSON & WERSON
3 A Professional Corporation
One Embarcadero Center, Suite 2600
4 San Francisco, California 94111
Telephone: (415) 398-3344
5 Facsimile: (415) 956-0439
anb@severson.com

6 Attorneys for Movant
7 GMAC Mortgage LLC f/k/a GMAC Mortgage
Corporation

8 UNITED STATES BANKRUPTCY COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re
13 MARC JASON ANIEL,
14 Debtor.

Case No. 12-33117

Chapter 11

R.S. No.: ANB-1358

15 GMAC MORTGAGE, LLC f/k/a GMAC
MORTGAGE CORPORATION,
16 Movant,

17 vs.

18 MARC JASON ANIEL,
19 Respondent.

**SUPPLEMENTAL DECLARATION OF
PETER KNAPP IN SUPPORT OF GMAC
MORTGAGE LLC f/k/a GMAC
MORTGAGE CORPORATION'S
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY**

Date: January 17, 2013
Time: 9:30 AM
Judge: Hon. Dennis Montali
Crtm.: 235 Pine Street
Courtroom 22
San Francisco, CA 94104

22 I, Peter Knapp, declare:

23
24 1. I am over 18 years of age and am employed as a Senior Litigation Analyst for
25 GMAC Mortgage, LLC ("GMACM"), who is the Assignee of Holder of Deed of Trust and the
26 Servicer of the loan. In such capacity, I am authorized to make this declaration regarding the loan
27 described below (the "Loan"). If called to testify in this matter, I would testify under oath as to
28 the following:

1 2. I have access to and am familiar with GMACM's books and records regarding the
2 Loan, GMACM's servicing records, and copies of the applicable Loan documents. I am familiar
3 with the manner in which GMACM maintains its books and records, including computer records
4 relating to the servicing of the Loan. GMACM's records are made at or near the time of the
5 occurrence of the matters set forth in such records, by an employee or representative with
6 knowledge of the acts or events recorded. Such records are obtained, kept and maintained by
7 GMACM in the regular course of GMACM's business. GMACM relies on such records in the
8 ordinary course of its business.

9 3. According to GMACM's books and records, the Loan is evidenced by a
10 Promissory Note executed by Erlinda Aniel ("Borrower") in favor of Mortgageit, Inc., and is
11 dated June 4, 2007, in the original principal amount of \$2,000,000.00 (the "Note"). A true and
12 correct copy of the Note is attached as Exhibit A to my original Declaration.

13 4. The Note is secured by a Deed of Trust ("Deed of Trust") relating to the real
14 property commonly known as 75 Tobin Clark Drive, Hillsborough, California 94010. Per the
15 Deed of Trust, "Fermin Aniel and Erlinda Aniel, Husband and Wife and Marc Jason Aniel, a
16 single man," are listed as "all joint tenants" and all are signatories to the Deed of Trust. A true and
17 correct copy of the Deed of Trust is attached as Exhibit B to my original Declaration.

18 5. On August 24, 2009, the Deed of Trust was assigned to HSBC Bank USA, National
19 Association as Trustee for DALT2007-OA5 ("HSBC Bank"). A copy of this Assignment is
20 attached as Exhibit C to my original Declaration.

21 6. Subsequently, the Note was endorsed in blank by Mortgageit, Inc. HSBC now
22 holds the Note. After origination, the servicing transferred to GMAC Mortgage, LLC who has
23 been servicing the loan on behalf of HSBC.

24 7. The Deed of Trust was subsequently assigned from HSBC Bank to GMACM on
25 February 1, 2011 in order to allow GMACM, as the Servicer, to proceed with foreclosure. A copy
26 of the Assignment is attached as Exhibit D to my original Declaration.

27 8. The Note is currently physically located with Deutsche Bank, the custodian for
28 HSBC.

1 I declare under penalty of perjury of the laws of the United States of America that the
2 foregoing is true and correct and that this declaration was executed on December/January 4th,
3 2012/2013, at Dallas, Texas.

4
5 
6 By: Peter Kago
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-3-SUPPLEMENTAL DECLARATION IN ~~SUPPORT~~
FOR RELIEF FROM THE AUTOMATIC STAY

EXHIBIT "I"

1 MARY KATE SULLIVAN (State Bar No. 180203)
mks@severson.com

2 THOMAS N. ABBOTT (State Bar No. 245568)
tna@severson.com

3 SEVERSON & WERSON

A Professional Corporation

4 One Embarcadero Center, Suite 2600

San Francisco, California 94111

5 Telephone: (415) 398-3344

Facsimile: (415) 956-0439

6 Attorneys for Defendants

7 GMAC MORTGAGE LLC and EXECUTIVE

TRUSTEE SERVICES LLC dba ETS

8 SERVICES, LLC

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA — OAKLAND DIVISION

11
12 ERLINDA ABIBAS ANIEL, an individual;
13 FERMIN SOLIS ANIEL, an individual;
14 MARC JASON ANIEL, an individual,

15 Plaintiffs,

16 vs.

17 GMAC MORTGAGE, LLC; EXECUTIVE
18 TRUSTEE SERVICES, LLC, DBA ETS
19 SERVICES, LLC; AND DOES 1 THROUGH
20 50,

21 Defendants.

Case No. 4:12-cv-04201-SBA

**DECLARATION OF RUSSELL
CALHOUN IN SUPPORT OF
OPPOSITION TO PLAINTIFFS'
APPLICATION FOR PRELIMINARY
INJUNCTION**

Filed concurrently with Memorandum of
Points and Authorities

Date: September 25, 2012

Time: 9:00 a.m.

Crtrm.: 1 - 4th Floor

Judge: Hon. Sandra Brown Armstrong

Action Filed: August 9, 2012

Trial Date: None Set

DECLARATION OF RUSSELL CALHOUN

I, Russell Calhoun, declare as follows:

1. I am employed by GMAC Mortgage, LLC ("GMACM") as a senior litigation analyst. I make this declaration in support of GMACM's opposition to the plaintiffs' application for preliminary injunction. I have personal knowledge of all facts set forth in this declaration, and if called as a witness, could and would testify competently thereto.

2. GMACM's records and documents relating to servicing of a loan are prepared by employees of GMACM with knowledge of the matters they record or from information supplied by persons with such knowledge, and are prepared at or about the time of the events recorded. It is GMACM's regular business practice to maintain such documents in the ordinary course of its business. The documents herein referenced and attached as exhibits are business records produced and maintained in this above-described manner.

3. On or about June 4, 2007, Erlinda Aniel (the "Borrower") entered into a refinance loan in the amount of \$2,000,000 (the "Loan") from MortgageIt. As part of the same transaction, Borrower executed and delivered a Flex Pay Fixed/Adjustable Rate Note to evidence her promise to repay the Loan. A true and correct copy of the Flex Pay Fixed/Adjustable Rate Note is attached hereto as **Exhibit A**.

4. As part of the same transaction described in paragraph 3 herein, the Borrower was informed that GMACM would service the Loan and she signed a Payment Letter acknowledging receipt of the notice that GMACM is the loan servicer. A true and correct copy of the Payment Letter is attached hereto as **Exhibit B**.

5. Also as part of the same transaction described in paragraphs 3 and 4 herein, the Borrower, together with her spouse and son, executed and delivered a Deed of Trust encumbering certain real property known as 75 Tobin Clark Drive, Hillsborough, California 94010. A true and correct copy of the Deed of Trust is attached hereto as **Exhibit C**.

6. Although GMACM received payments on the Loan initially, beginning with the payment due for February 1, 2008, GMACM ceased receiving payments on the account. The last

1 payment GMACM received on the Loan was on June 17, 2008. The Loan is currently past due for
2 the payment that was due on July 1, 2008, and all payments due thereafter.

3 7. Plaintiffs have acknowledged GMACM's authority regarding the Loan. In January
4 2009, GMACM received correspondence from Plaintiffs' attorney requesting that GMACM
5 modify the Loan. A true and correct copy of the January 15, 2009, letter is attached hereto as
6 **Exhibit D**. Unfortunately, the income stated on the request was far below that necessary to carry
7 a \$2,000,000 loan, even on modified terms.

8 8. In addition to being the loan servicer, GMACM acquired the Deed of Trust in
9 February 2011 by an Assignment of the Deed of Trust by the then beneficiary, U.S. Bank USA,
10 National Association as Trustee for DALT2007-OA5. A true and correct copy of the recorded
11 Assignment of Deed of Trust is attached hereto as **Exhibit E**.

12 9. The Borrower's monetary delinquency continued. Therefore, GMACM attempted
13 to call Borrower on three occasions in August 2011 to inquire about her financial situation and
14 explore options for avoiding foreclosure. On each occasion, there was no answer.

15 10. On October 11, 2011, GMACM sent a letter to the Borrower by Certified U.S. Mail
16 providing GMACM's toll-free number for loss mitigation, the toll-free number for HUD to locate
17 a HUD-certified counseling office, and a link to GMACM's Internet Web site where further
18 information regarding options to avoid foreclosure are provided. A true and correct copy of the
19 October 11, 2011 letter is attached hereto as **Exhibit F**.

20 11. Although GMACM received no response to its letter dated October 11, 2011, on
21 October 21, 2011, GMACM received correspondence from the Borrower claiming that she no
22 longer was obligated to repay the Loan because she filed a voluntary petition for bankruptcy
23 protection. A true and correct copy of the letter received on October 21, 2011 is attached hereto as
24 **Exhibit G**.

25 12. On November 1, 2011, GMACM responded to the Borrower in writing, providing
26 copies of the loan documents and payment history, and requesting that the Borrower explain why
27 she believed that she was no longer obligated to repay the Loan. A true and correct copy of the
28 November 1, 2011 letter is attached hereto as **Exhibit H**.

1 ///

2 13. GMACM attempted to call the Borrower six additional times on three different
3 days: January 25, 2012, January 26, 2012, and January 30, 2012, to assess her financial situation
4 and explore options to avoid foreclosure. Each time, there was no answer.

5 14. GMACM did not receive a response from the Borrower for two weeks, and
6 therefore, on February 14, 2012, sent another letter by Certified U.S. Mail to the Borrower, again
7 providing GMACM's toll-free number for loss mitigation, the toll-free number for HUD to locate
8 a HUD-certified counseling office, and a link to GMACM's Internet Web site where further
9 information regarding options to avoid foreclosure are provided. A true and correct copy of the
10 February 14, 2012 letter is attached hereto as Exhibit I.

11 15. In response to further requests by the Borrower to release the Deed of Trust on the
12 premise that her bankruptcy eliminated the security instrument, GMACM sent written
13 correspondence on or about March 16, 2012, explaining that the Borrower's bankruptcy discharge
14 affects only her personal liability on the loan, but does not affect the security interest of the Deed
15 of Trust or GMACM's legal and contractual right to enforce that interest by non-judicial
16 foreclosure in the event of default. A true and correct copy of the March 16, 2012 letter is
17 attached hereto as Exhibit J.

18 16. As of August 21, 2012, the amount necessary to pay off the Loan is \$2,051,922.93,
19 which reflects principal, accrued interest, and late charges as permitted by the Deed of Trust. In
20 addition, GMACM has paid the property taxes, which are approximately \$29,000 per year, and
21 has not been reimbursed. The total amount advanced by GMACM for property taxes is
22 \$145,272.35 and will continue to increase upon further payments to the County.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed on September 10, 2012, in Dallas, Texas.

25
26 
27 Russell Calhoun
28

EXHIBIT "J"

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

Date: Apr 30, 2012

T.S. Number: CA1200053786
Loan Number: [REDACTED] 8492

DEBT VALIDATION NOTICE

- 1. The enclosed document relates to a debt owed to the current creditor:
GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)**

You may send us a written request for the name and address of the original creditor, if different from the current creditor, and we will obtain and mail the information to you.

- 2. As of 04/21/2012, the total delinquency owed was \$516,041.70, but this amount will increase until the delinquency has been fully cured.**
- 3. As of 04/30/2012, the amount required to pay the entire debt in full was \$2,117,458.81, but this amount will increase daily until the debt has been fully paid.**
- 4. You may dispute the validity of this debt, or any portion thereof, within thirty (30) days after receiving this notice. Otherwise, we will assume that the debt is valid.**
- 5. If you notify us in writing that you dispute all or any portion of this debt within thirty (30) days after receiving this notice, we will obtain and mail to you verification of the debt, or a copy of any judgement against you.**

**WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION
WE OBTAIN WILL BE USED FOR THAT PURPOSE**

D

Erlinda Aniel's 9/12/2012 Experian Credit Report with Score

Accounts (cont.)

GMAC MORTGAGE (800) 766-4622

Account Name: GMAC MORTGAGE
Account #: [REDACTED] XXXX
Payment Status: Debt Included in or discharged through Bankruptcy Chapter 7, 11, or 12
Account Type: Unknown
Balance: \$0

Date Open: 06/01/2007
Last Updated: 12/01/2010
Account Status: Closed
Terms: 360 Months
Phone #: (800) 766-4622
Address: PO BOX 4622

Ownership:
Original Creditor: -
Company Sold-to: -
Credit Limit: -
Monthly Payment: -
Past Due Amount: -
High Balance: -
Balloon Payment: -
Comments: -

24-Month Payment History

	2010			2011			2012		
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Experian	[REDACTED]								

Schedule
Print postage

PLEASE PRESS FIRMLY



Visit us at usps.com

US POSTAGE

**When used internationally,
declarations (PS Form 29**



PRESS HARD. YOU ARE MAKING 3 COPIES.

ORIGIN (POSTAL SERVICE USE ONLY)			
PO Zip Code 90402		Day of Delivery Next <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> 3rd Del. Day	
Date Accepted 7/13/53		Scheduled Date of Delivery 7/16/53	
Mo. Day Year		Month Day	
Time Accepted 8:21 AM PM		Scheduled Time of Delivery Neon <input checked="" type="checkbox"/> 3 PM <input type="checkbox"/>	
Flat Rate <input type="checkbox"/> or Weight <input type="checkbox"/>		Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day <input type="checkbox"/>	
lbs. ozs.		Int'l Alpha Country Code	
		Acceptance Emp. Initials	

FROM: (PLEASE PRINT) PHONE ()
LAW OFFICES OF
MARK JACOB ANTEL
265 LA HABRA BLVD #144
SMD: MATEL CA 944-2

Visit www.iisps.com

Call 1-800-222-1814



Label 11-B, March 2004

Post Office To Addressee

DELIVERY (POSTAL USE ONLY)		
Delivery Attempt	Time <input type="checkbox"/> AM	Employee Signature
Mo. Day	<input type="checkbox"/> PM	
Delivery Attempt	Time <input type="checkbox"/> AM	Employee Signature
Mo. Day	<input type="checkbox"/> PM	
Delivery Date	Time <input type="checkbox"/> AM	Employee Signature
Mo. Day	<input type="checkbox"/> PM	

CUSTOMER USE ONLY

CUSTOMER USE ONLY

to be made without obtaining signature
of addressee's agent in delivery employee
signature can be left in secure location and
proof of delivery.

<input type="checkbox"/> Weekend	<input type="checkbox"/> Holiday	<input type="checkbox"/> Mailer Signature
TO: (PLEASE PRINT) _____ PHONE (_____) _____		
ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)		
5 8 4 3 2 + [] [] [] []		
FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.		



Exhibit D

Date: MARCH 22, 2007

Loan # 9856
Mia #: 5696

FLEX PAY FIXED/ADJUSTABLE RATE NOTE

(LIBOR One-Year Index (As Published In *The Wall Street Journal*)-Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MARCH 22, 2007
[Date]

SAN MATEO
[City]

CALIFORNIA
[State]

881 FOOTHILL DRIVE, SAN MATEO, CALIFORNIA 94402
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 1,000,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is MORTGAGEIT, INC.

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

I understand that Lender may transfer this Note. 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 6.875 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on MAY 1, 2007

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on APRIL 1, 2037, 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

P.O. BOX 780

WATERLOO, IA 50704-0780

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 3,613.11. This amount is a FORTY FIVE AND NO / 100 percent (45.000 %) reduction of the payment amount that will be sufficient to repay the unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate set forth in Section 2. This amount may change.

JudyMac Bank FlexPay 1 Yr. LIBOR Fixed Adjustable Rate Note - Multistate
8480990 (0607)

FANDS 8480990 Rev. 10-25-06

Page 1 of 6

Initials: RM

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(C) Payment Changes

My monthly payment will remain the same until MAY 1, 2012, the month after the first Change Date, and will not change again until after I have made my 120th scheduled monthly payment unless it is required to change in accordance with Section 4(F) below.

If I have made less than 120 scheduled monthly payments, my new monthly payment will be in an amount equal to FORTY FIVE AND NO / 100 percent (45.000 %) reduction of the "Full Payment." This limitation will not apply under the circumstances described in Section 4(F). The Full Payment is the amount of the monthly payment that would be sufficient to repay the unpaid balance that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments.

If I have made 120 or more scheduled monthly payments, my new monthly payment will be in an amount equal to the Full Payment.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of APRIL, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 75 / 100 percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.875 %.

(E) Additions to My Unpaid Balance

If I have made less than 120 scheduled monthly payments, on any monthly payment date the amount of my monthly payment could be less than the interest portion of the Full Payment. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid balance. The Note Holder will also accrue interest on the amount of this difference to my unpaid balance each month. The interest rate on the interest added to the balance will be the rate required by Section 4(C) above.

(F) Limit on My Unpaid Balance: Increased Monthly Payment

My unpaid balance can never exceed a maximum amount equal to one hundred FIFTEEN percent (115 %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments until I have made 120 scheduled monthly payments, the addition of unpaid interest to my unpaid balance under Section 4(E) above could cause my unpaid balance to exceed that maximum. In that event, on the date that the payment of my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment equal to the interest only portion of the Full Payment if I have made less than 120 scheduled monthly payments.

8480990 (0607)

FANDM 2480990-2 Rev. 10-25-06

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Initials: RMH

Form 5608 07/06

(G) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(H) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. 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 this Note.

I may make a full Prepayment or partial Prepayments without paying any 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. 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 that 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.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

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

(B) Default

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

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that 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.

8488990 (0607)

FANDM 8488990-3 Rev. 10-25-06

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Initials: PMH

Form 5608 07/06

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(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.

8. 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.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given 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.

9. 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.

10. 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.

11. 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 that might result if I do not keep the promises that 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 read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

8480990 (06/07)

PAND# 8480990-4 Rev. 10-25-06

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Initials: RMC

Form 3608 07/06

056

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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

8480990 (0607)

FAND# 8480990-5 Rev. 10-25-06

Page 5 of 6

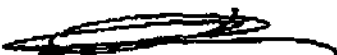
Initials

RK

Form 8608 07/06

0456


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



RAUL ESTIVA (Seal)
- Borrower

[Sign Original Only]

Pay to the order of: HSBC Bank, NA as trustee of Series 2007-OA3

Wells Fargo Bank, NA
San Francisco, CA
By: 
Name: Maria Miranda
Title: Assistant Secretary

8480990 (0607)

FANDS 8480990-6 Rev. 10-25-06

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Form 5408 07/06

Exhibit E

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 92108

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT, INC.
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

9565509
[Space Above This Line for Recording Data]

MIN: *9056* *5696* *21P*

2007-050317

FIDELITY NATIONAL TITLE
08:00am 04/03/07 DT Fee: 67.00
Count of pages 21
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



DEED OF TRUST

ORIGINAL

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 **MARCH 22, 2007**, together with all Riders to this document.

(B) "Borrower" is
RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
MORTGAGEIT, INC.

Lender is a **CORPORATION**
organized and existing under the laws of **NEW YORK**
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
CA71 : 07/01 (Page 1)

RMB *Form 3005 1/01*
S

9056

Lender's address is
33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 22, 2007
The Note states that Borrower owes Lender
ONE MILLION AND NO / 100

Dollars (U.S. \$ 1,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2037

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As

RHS ✓

used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

of SAN MATEO

[Name of Recording Jurisdiction]

[Type of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF; APN: 034-312-030

which currently has the address of 801 FOOTHILL DRIVE

SAN MATEO

[City]

, California

94402

[Street]

[Zip Code]

("Property Address"):

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

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such

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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall

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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and.

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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.

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

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third



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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes

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

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

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

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.

BORROWERS:



RAUL ESTIVA (Seal)
- Borrower



CORAZON ESTIVA (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF *San Mateo*

On *3/23/07* before me, *Lili Frances Cummins, Notary Public*
personally appeared
RAUL ESTIVA AND CORAZON ESTIVA

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

WITNESS my hand and official seal.

Lili Frances Cummins (Seal)



RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 92108

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT, INC.
1855 GATEWAY BLVD., #650
CONCORD, CA 94520

Fidelity National Title Insurance Company
hereby certifies this to be a true and
correct copy of the original.

Authorized Signature

[Space Above This Line for Recording Data]

MIN: 9056 \$696

DEED OF TRUST

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 **MARCH 22, 2007**, together with all Riders to this document.

(B) "**Borrower**" is
RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "**Lender**" is
MORTGAGEIT, INC.

Lender is a **CORPORATION**
organized and existing under the laws of **NEW YORK**
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
CA71 : 07/01 (Page 1)

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Lender's address is

33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

**(D) "Trustee" is
FIDELITY NATIONAL TITLE**

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 22, 2007

The Note states that Borrower owes Lender

ONE MILLION AND NO / 100

Dollars (U.S. \$ **1,000,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **APRIL 01, 2037**

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

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

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

<input checked="" 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"/> Biweekly Payment Rider
<input type="checkbox"/> 1-4 Family Rider		
<input type="checkbox"/> Other(s) [specify]		

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. s2601 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

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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the **COUNTY**

[Type of Recording Jurisdiction]

of **SAN MATEO**

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF; APN; 034-312-030

which currently has the address of **801 FOOTHILL DRIVE**

[Street]

SAN MATEO

, California

94402

("Property Address"):

[City]

[Zip Code]

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

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such

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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall

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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and.

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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.

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

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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third

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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes

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

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

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

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.

BORROWERS:



RAUL ESTIVA (Seal)
- Borrower



CORAZON ESTIVA (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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STATE OF CALIFORNIA

COUNTY OF *San Mateo*

On *3/23/07*
personally appeared

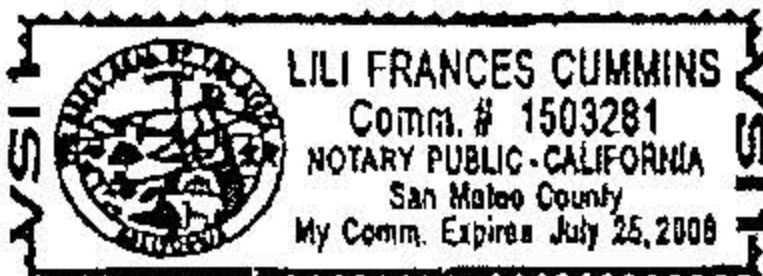
before me, *Lili Frances Cummins, Notary Public*

RAUL ESTIVA AND CORAZON ESTIVA

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

WITNESS my hand and official seal.

Lili Cummins (Seal)



CA85: 02/03

(Page 15)

Fidelity National Title Insurance Company
hereby certifies that this is a true and
correct copy of the original.

Authorized Signature _____

State of CALIFORNIA
County of *Alameda*

} ss.

On *March 26, 2007*

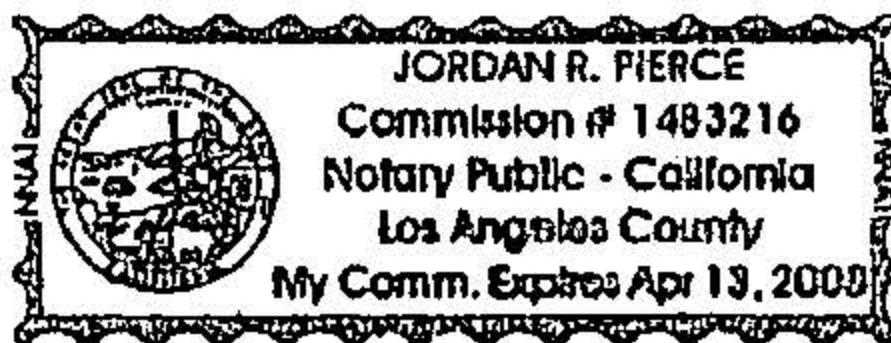
before me, *Jordan R. Pierce, Notary Public*

personally appeared

KARL C. PIERCE

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

WITNESS my hand and official seal.



Jordan R. Pierce (Seal)

We hereby certify this to be a true
copy of the original.
FIRST AMERICAN TITLE GUARANTEE COMPANY

Date: **MARCH 22, 2007**

Loan # **9056**

Min #: **5696**

FLEX PAY FIXED/ADJUSTABLE RATE RIDER
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)- Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this **22ND** day of **MARCH, 2007** and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **MORTGAGEIT, INC.**

(**"Lender"**) of the same date and covering the property described in the Security Instrument and located at:

801 FOOTHILL DRIVE, SAN MATEO, CALIFORNIA 94402

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **6.875** %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

3. PAYMENTS

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ **3,613.11**. This amount is a **FORTY FIVE AND NO / 100** percent (**45.000** %) reduction of the payment amount that will be sufficient to repay the unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate set forth in Section 2. This amount may change.

(C) Payment Changes

My monthly payment will remain the same until **MAY, 2012**, the month after the first Change Date, and will not change again until after I have made my 120th scheduled monthly payment unless it is required to change in accordance with Section 4(F) below.

Indymac Bank Flex Pay 1 Yr LIBOR Fixed/Adjustable Rate Rider - Multistate

8480998 (0606)

FAND# 8480998 Rev. 10-09-06

Page 1 of 5

Form 5609

06/06

9056

If I have made less than 120 scheduled monthly payments, my new monthly payment will be in an amount equal to a **FORTY FIVE AND NO / 100** percent (**45.000** %) reduction of the "Full Payment." This limitation will not apply under the circumstances described in Section 4(F). The Full Payment is the amount of the monthly payment that would be sufficient to repay the unpaid balance that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments.

If I have made 120 or more scheduled monthly payments, my new monthly payment will be in an amount equal to the Full Payment.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **APRIL, 2012**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in The Wall Street Journal. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND 75 / 100** percentage points (**2.750** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.875** % or less than **2.750** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.875** %.

(E) Additions to My Unpaid Balance

If I have made less than 120 scheduled monthly payments, on any monthly payment date the amount of my monthly payment could be less than the interest portion of the Full Payment. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid balance. The Note Holder will also accrue interest on the amount of this difference to my unpaid balance each month. The interest rate on the interest added to the balance will be the rate required by Section 4(C) above.

(F) Limit on My Unpaid Balance: Increased Monthly Payment

My unpaid balance can never exceed a maximum amount equal to one hundred **FIFTEEN** percent (**115** %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments until I have made 120 scheduled monthly payments, the addition of unpaid interest to my unpaid balance under Section 4(E) above could cause my unpaid balance to exceed that maximum. In that event, on the date that the payment of my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment equal to the interest only portion of the Full Payment if I have made less than 120 scheduled monthly payments.

9056

(G) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(H) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

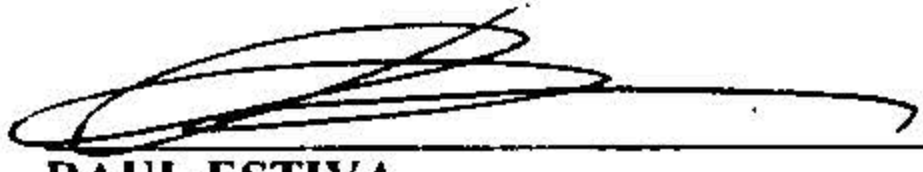
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee

9056

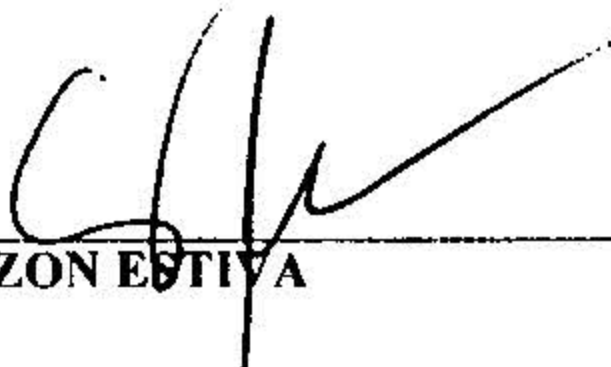
to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.



RAUL ESTIVA (Seal)
-Borrower



CORAZON ESTIVA (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

9056

(Seal)

-Borrower

(Seal)

-Borrower

8480998 (0606)

FAND# 8480998-5 Rev. 10-09-06

Page 5 of 5

Form 5609

06/06

Title No. 06-9565509-A-BD
Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

Rue
✓

Exhibit F

**RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY**

RECORDING REQUESTED BY:
Mortgage Electronic Registration Systems, Inc.
Solely as Nominee for Mortgageit, Inc.

RECORDED MAIL TO:
Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92117-0933

2009-094899

09:34am 07/16/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



APN:

00001-028478

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC BANK U.S.A. as Trustee for DALT 2007-AO3 all beneficial interest under that certain Deed of Trust dated March 22, 2007, executed by Raul Estiva and Corazon Estiva, husband and wife as joint tenants to Fidelity National Title, as trustee, for Mortgage Electronic Registration Systems, Inc., Solely as Nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007-050317 on April 3, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 5-26-09

**Mortgage Electronic Registration Systems, Inc., Solely
as Nominee for Mortgageit, Inc.**

By: _____

Its: _____

Jeffrey Stephan
Vice President

State of Pennsylvania)

County of Montgomery) ss.

On 5/26/09 before me, Thomas P. Strain, Notary Public, personally appeared Jeffrey Stephan who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Thomas P. Strain
Notary Public

(This Area for Official Notary Seal)

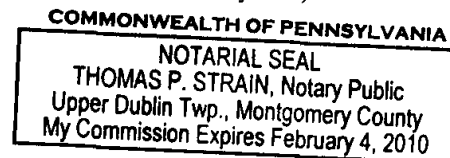


Exhibit G

2008-135231

09:25am 12/17/08 ND Fee: 12.00

Count of pages 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



RECORDING REQUESTED BY:

LSI TITLE COMPANY, INC.

WHEN RECORDED MAIL TO:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

TS No.: GM-172824-C Loan No.: [REDACTED] 1440

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **\$13,579.22** as of **12/15/2008**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**

C/O ETS Services, LLC

2255 North Ontario Street, Suite 400

Burbank, California 91504-3120

(818) 260-1600 phone

2p
llj

TS NO.: GM-172824-C

LOAN NO.: [REDACTED] 1440

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **3/22/2007**, executed by **RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, as beneficiary, recorded **4/3/2007**, as Instrument No. **2007-050317**, in Book , Page , of Official Records in the Office of the Recorder of **San Mateo** County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$1,000,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 10/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 12/15/2008

ETS Services, LLC AS AGENT FOR
BENEFICIARY

BY: 

Neda Cayco
TRUSTEE SALE OFFICER

Exhibit H

RECORDING REQUESTED BY:

2008-135230

09:25am 12/17/08 ST Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



LSI TITLE COMPANY, INC.

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

TS NO : GM-172824-C
LOAN NO : [REDACTED] 1440

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 3/22/2007 and recorded on 4/3/2007 as Instrument No. 2007-050317, in Book , Page of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated : 12/15/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.



Rosalie Solano, ASSISTANT SECRETARY

State of California} ss.
County of Los Angeles }

On 12/15/2008 before me, Dee C. Ortega Notary Public, personally appeared Rosalie Solano who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)
Dee C. Ortega

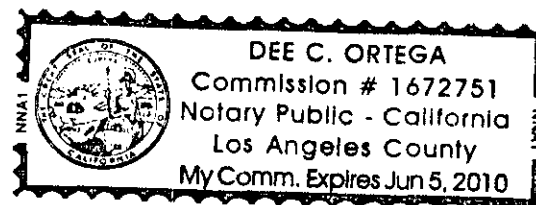


Exhibit I

RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. GM-172824-C
Loan No. 1440

2009-031269

09:24am 03/20/09 NT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



SPACE ABOVE THIS LINE FOR RECORDER'S Use

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/22/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Recorded 4/3/2007 as Instrument No. 2007-050317 in Book , page of

Official Records in the office of the Recorder of San Mateo County, California,

Date of Sale: 4/13/2009 at 1:00 PM

Place of Sale: **At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California**

Property Address is purported to be: **801 FOOTHILL DRIVE
SAN MATEO, California 94402-0000**

APN #: 034-312-030-9

The total amount secured by said instrument as of the time of initial publication of this notice is **\$1,110,157.53**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Date: 3/18/2009

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
Sale Line: 714-730-2727

Omar Solorzano, TRUSTEE SALE OFFICER

Exhibit J

**U.S. Bankruptcy Court
Northern District of California (San Francisco)
Bankruptcy Petition #: 09-30452**

Assigned to: Judge Dennis Montali
Chapter 7
Previous chapter 11
Voluntary
Asset
[Show Associated Cases](#)
[Claims Register](#)

Date filed: 02/25/2009
Date converted: 08/02/2010
Date reopened: 02/06/2014
Debtor discharged: 12/02/2010
Joint debtor discharged: 12/02/2010
341 meeting: 09/01/2010
Deadline for objecting to discharge: 11/01/2010
Deadline for financial mgmt. course: 09/16/2010

Debtor disposition: Standard Discharge
Joint debtor disposition: Standard Discharge

Debtor

Fermin Solis Aniel
75 Tobin Clark Drive
Hillsborough, Ca 94010
SAN MATEO-CA
(650) 342-1830
SSN / ITIN: xxx-xx-3120

represented **Marc J. Aniel**

by Law Offices of Marc Jason Aniel
205 De Anza Blvd. #144
San Mateo, CA 94402
(650) 814-9478
Email: mj_aniel@me.com

Sydney Jay Hall

Law Offices of Sydney Jay Hall
1308 Bayshore Hwy. #220
Burlingame, CA 94010
(650) 342-1830
Email: sydneyhalllawoffice@yahoo.com
TERMINATED: 07/02/2009

Joint Debtor

Erlinda Abibas Aniel
75 Tobin Clark Drive
Hillsborough, Ca 94010
SAN MATEO-CA
(650) 342-1830
SSN / ITIN: xxx-xx-2668
aka Erlinda Jose Abibas

represented **Marc J. Aniel**

by (See above for address)

Sydney Jay Hall

(See above for address)
TERMINATED: 07/02/2009

Trustee

Janina M. Hoskins
P.O. Box 158

represented **Jean Barnier**

by MacConaghy and Barnier
645 1st St. W #D

Middletown, CA 95461
(707) 569-9508

Sonoma, CA 95476
(707) 935-3205
Email: jbarnier@macbarlaw.com

Monique Jewett-Brewster
MacConaghy and Barnier, PLC
645 First St. West, #D
Sonoma, CA 95476
(707) 935-3205
Email: jewett-brewster@bryancave.com
TERMINATED: 04/04/2014

U.S. Trustee
Office of the U.S. Trustee / SF
Office of the U.S. Trustee
235 Pine St
Suite 700
San Francisco, CA 94104
(415) 705-3333

Filing Date	#	Docket Text
02/25/2009	<u>1</u> (13 pgs)	Chapter 11 Voluntary Petition, Fee Amount \$1039, Filed by fermin a aniel, erlinda a aniel. Order Meeting of Creditors due by 3/4/2009. (Hall, Sydney) Additional attachment(s) added on 2/26/2009 (akb,). MISSING DOCUMENTS: See order to file required documents. (Entered: 02/25/2009)
02/25/2009		Receipt of filing fee for Voluntary Petition (Chapter 11)(09-30452) [misc,volp11] (1039.00). Receipt number 6741102, amount \$1039.00 (U.S. Treasury) (Entered: 02/25/2009)
02/25/2009		First Meeting of Creditors with 341(a) meeting to be held on 03/24/2009 at 01:00 PM at San Francisco U.S. Trustee Office. Last Day to Determine Dischargeability of Certain Debts due by 05/26/2009. Proof of Claim due by 06/22/2009. (admin,) (Entered: 02/25/2009)
02/26/2009	<u>2</u>	Statement of Social Security Number. Filed by Joint Debtor Erlinda A. Aniel , Debtor Fermin A. Aniel (akb,) (Entered: 02/26/2009)
02/26/2009	<u>3</u>	Order To File Required Documents and Notice Regarding

		(1 pg)	Dismissal. . Non-Compliance (Documents) due by 3/16/2009 (akb,) (Entered: 02/26/2009)
02/26/2009		4 (2 pgs)	Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, and Deadlines (Generated) (akb,) (Entered: 02/26/2009)
02/26/2009		5 (1 pg)	Unsecured Creditors Committee Acceptance or Rejection Form (akb,) (Entered: 02/26/2009)
02/26/2009		6 (2 pgs)	Order for Payment of State and Federal Taxes . (akb,) (Entered: 02/26/2009)
02/28/2009		7 (5 pgs)	BNC Certificate of Mailing - Meeting of Creditors. (RE: related document(s) 4 Generate 341 Notices). Service Date 02/28/2009. (Admin.) (Entered: 02/28/2009)
02/28/2009		8 (3 pgs)	BNC Certificate of Mailing - Payment of State and Fed Taxes. (RE: related document(s) 6 Order for Payment of State and Federal Taxes). Service Date 02/28/2009. (Admin.) (Entered: 02/28/2009)
02/28/2009		9 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 3 Order to File Missing Documents). Service Date 02/28/2009. (Admin.) (Entered: 02/28/2009)
02/28/2009		10 (2 pgs)	BNC Certificate of Mailing - Unsecured Creditors' Comm Acc/Rej Form. (RE: related document(s) 5 Unsecured Creditors Committee Acc/Rej Form). Service Date 02/28/2009. (Admin.) (Entered: 02/28/2009)
03/04/2009		11 (3 pgs)	Amended Voluntary Petition. Filed by Debtor Fermin A. Aniel (Hall, Sydney) (Entered: 03/04/2009)
03/05/2009		12 (4 pgs)	Exhibit D. Filed by Debtor Fermin A. Aniel (Hall, Sydney) (Entered: 03/05/2009)
03/05/2009		13 (2 pgs)	Certificate of Credit Counseling Filed by Debtor Fermin A. Aniel (Hall, Sydney) (Entered: 03/05/2009)
03/05/2009		14 (6 pgs)	Amendment to List of Creditors . Fee Amount \$26 Filed by Debtor Fermin A. Aniel (Hall, Sydney)Incorrect Event Used. I spoke with Attorney and She will Redocket Correctly. Modified on 3/5/2009 (mw,). (Entered: 03/05/2009)
03/11/2009			Receipt of filing fee for Amended Creditor Matrix (Fee)(09-30452) [misc,amdcm] (26.00). Receipt number 8155956,

			amount \$ 26.00 (U.S. Treasury) (Entered: 03/11/2009)
03/13/2009		15 (23 pgs)	Summary of Schedules <i>SUMMARY OF SCHEDULES, STATISTICAL SUMMARY OF CERTAIN LIABILITIES, SCHEDULES A TO J</i> (RE: related document(s) 3 Order to File Missing Documents). Filed by Debtor Fermin Solis Aniel (Hall, Sydney) (Entered: 03/13/2009)
03/13/2009		16 (13 pgs)	Statement of Financial Affairs <i>DECLARATION CONCERNING DEBTOR'S SCHEDULE, STATEMENT OF FINANCIAL AFFAIRS, STATEMENT OF CURRENT MONTHLY INCOME</i> Filed by Debtor Fermin Solis Aniel (Hall, Sydney) (Entered: 03/13/2009)
03/24/2009		17 (47 pgs)	Amended Schedule A, Schedule B, Schedule C, Schedule H, Schedule J. <i>ammended schedule a,b,c,h and j</i> Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) Includes Amended Chapter 11 Statement of Current Monthly Income. Modified on 3/25/2009 (mw). (Entered: 03/24/2009)
03/24/2009		18 (47 pgs)	Amended Schedule D Schedule F <i>AMMENDED SCHEDULE D & F</i> . Fee Amount \$26. Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (COURT NOTE: CA Spoke to Attorneys Office, They will file Additional Creditors to be Added). Modified on 3/25/2009 (mw). (Entered: 03/24/2009)
03/24/2009		19 (2 pgs)	Chapter 11 Statement of Current Monthly Income (Form 22B) <i>AMMENDED CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME</i> Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (Entered: 03/24/2009)
03/24/2009		20 (3 pgs)	Request for Notice Filed by Creditor GMAC Mortgage, LLC (Whitson, Melodie) (Entered: 03/24/2009)
03/25/2009			Receipt of filing fee for Amended Schedules (D, E, and F - Fee Required)(09-30452) [misc,amdsch] (26.00). Receipt number 8225362, amount \$ 26.00 (U.S. Treasury) (Entered: 03/25/2009)
03/25/2009			**ERROR** Incorrect PDF Attached. Full Amended Voluntary Petition Attached. In Future: Only Add Amended Schedules You Are Amending. (RE: related document(s) 17 Amended Schedules (A, B, C, H, I and J - No Fee Required)). (mw) (Entered: 03/25/2009)
03/25/2009			Meeting of Creditors Held <i>D to file ASAP emp appl for</i>

			<i>counsel, sp purpose counsel (Miller Law Group), acct, appraiser; amend S&S to provide complete & accurate disclosure: e.g. Sch A (int as to Earl & Foothill props, correct int as to other props that are held jointly), Sch B (disclose WAMU & other fin accts, TILA, RESPA or impound claims, claim v. Kathleen Repil), Sch D (prop description); Sch F (Miller Law Group claim); SFA 14 (R350); appropriate motion wrt post-petition pmt to Miller Law Group; appropriate treatment of cash collateral, if any and by 20 Apr MOR for 2/25 - 3/31. D to provide UST ev that EIN # has been obtained; stmt identify all pre-pet bk accts on which either D named acct holder, identify bk, bk acct #, acct holders names, purpose of acct; ev that separate DIP acct has been opened to segregate rental income receipts; names, address, phone #s of all tenants & amt of dep held; copies of ltrs alleging TILA, RESPA, or impound issues.. (Loo, Minnie) (Entered: 03/25/2009)</i>
04/15/2009		<u>21</u> (3 pgs)	Request for Notice Filed by Creditor Litton Loan Servicing, L.P. (Schlotter, John) (Entered: 04/15/2009)
04/17/2009		<u>22</u> (55 pgs)	Operating Report for Filing Period February 25 2009 - March 31, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 04/20/2009)
04/20/2009		<u>23</u> (8 pgs)	Amended Schedule A, Schedule B, Schedule C,. <i>amended schedules a, b and c</i> Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (Entered: 04/20/2009)
04/20/2009		<u>24</u> (8 pgs)	Amended Schedule D Schedule F <i>amended schedule d & f</i> . Fee Amount \$26. Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (Entered: 04/20/2009)
04/21/2009			Receipt of filing fee for Amended Schedules (D, E, and F - Fee Required)(09-30452) [misc,amdsch] (26.00). Receipt number 8370158, amount \$ 26.00 (U.S. Treasury) (Entered: 04/21/2009)
04/21/2009		<u>25</u> (5 pgs)	Substitution of Attorney <i>motion to withdraw / motion to be relieved as counsel</i> . Attorney Sydney Jay Hall terminated. debtor / self added to the case.. Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (Entered: 04/21/2009)
04/23/2009			**ERROR** Incorrect Event Used. This is a Motion and Should be Filed As Motion To Withdraw. Order To Be Uploaded To Judge. (RE: related document(s) <u>25</u> Substitution of Attorney). (mw) (Entered: 04/23/2009)

05/06/2009	<u>26</u> (5 pgs)	Motion to Withdraw as Attorney Filed by Debtor Fermin Solis Aniel (Hall, Sydney) (Entered: 05/06/2009)
05/11/2009	<u>27</u> (2 pgs)	Certificate of Service <i>Proof of Service of Motion To Withdraw as Counsel</i> (RE: related document(s) <u>26</u> Motion to Withdraw as Attorney). Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (Entered: 05/11/2009)
05/11/2009	<u>28</u> (2 pgs)	Notice of Appearance and Request for Notice by Dean Prober. Filed by Creditor BAC Home Loans Servicing, LP (Prober, Dean) (Entered: 05/11/2009)
05/14/2009	<u>29</u> (1 pg)	Letter (RE: related document(s) <u>26</u> Motion to Withdraw as Attorney. (dc) (Entered: 05/15/2009)
05/18/2009	<u>30</u> (38 pgs)	Operating Report for Filing Period April 1 - April 30, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 05/20/2009)
05/21/2009	<u>31</u> (2 pgs)	Notice of Hearing <i>of Motion to Withdraw as Counsel filed by Sydney Jay Hall</i> (RE: related document(s) <u>26</u> Motion to Withdraw as Attorney Filed by Debtor Fermin Solis Aniel). Hearing scheduled for 6/26/2009 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Joint Debtor Erlinda Aribas Aniel (Hall, Sydney) (Entered: 05/21/2009)
05/21/2009	<u>32</u> (2 pgs)	Certificate of Service <i>of Notice of Hearing of Motion to Withdraw as Counsel</i> (RE: related document(s) <u>26</u> Motion to Withdraw as Attorney). Filed by Debtor Fermin Solis Aniel (Hall, Sydney) (Entered: 05/21/2009)
06/08/2009	<u>33</u> (2 pgs)	Request for Notice <i>with Proof of Service</i> Filed by Creditor American Home Mortgage Servicing, Inc. (Buckley, Lawrence) (Entered: 06/08/2009)
06/15/2009	<u>34</u> (5 pgs; 2 docs)	Declaration of Nicolas Daluiso in support of <i>OneWest Bank, FSB's Proof of Claim</i> Filed by Creditor OneWest Bank, FSB (Attachments: <u>1</u> Exhibit) (Daluiso, Nicolas) (Entered: 06/15/2009)
06/18/2009	<u>35</u> (26 pgs)	Small Business Monthly Operating Report for Filing Period May 1- May 31, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 06/18/2009)
06/24/2009	<u>36</u> (2 pgs)	Certificate of Service <i>of proof of claim #21</i> Filed by Creditor GMAC Mortgage, LLC (Johnson, Katherine) (Entered: 06/24/2009)

			06/24/2009)
06/26/2009			Courtroom Hearing Held (RE: Motion to Withdraw as Attorney - related document(s) 26) (Motion granted. Mr. Hall to submit an order.)(lp) (Entered: 06/26/2009)
07/02/2009		37 (3 pgs; 2 docs)	Order Granting Motion To Withdraw As Attorney (Related Doc # 26) (mw) (Entered: 07/06/2009)
07/08/2009		38 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 37 Order on Motion to Withdraw as Attorney). Service Date 07/08/2009. (Admin.) (Entered: 07/08/2009)
07/10/2009		39 (37 pgs; 4 docs)	Motion for Relief from Stay RS #TJS-553, Fee Amount \$150, Filed by Creditor Litton Loan Servicing, L.P. duly authorized servicing agent for Residential Mortgage Capital its successors and/or its assigns (Attachments: 1 RS Cover Sheet 2 Declaration 3 Exhibit) (Silverman, Timothy) (Entered: 07/10/2009)
07/10/2009			Receipt of filing fee for Motion for Relief From Stay(09-30452) [motion,mrlfsty] (150.00). Receipt number 8817989, amount \$ 150.00 (U.S. Treasury) (Entered: 07/10/2009)
07/10/2009		40 (7 pgs; 2 docs)	Notice of Hearing <i>on Motion for Relief from Automatic Stay</i> (RE: related document(s) 39 Motion for Relief from Stay RS #TJS-553, Fee Amount \$150, Filed by Creditor Litton Loan Servicing, L.P. duly authorized servicing agent for Residential Mortgage Capital its successors and/or its assigns). Hearing scheduled for 8/6/2009 at 09:30 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor Litton Loan Servicing, L.P. duly authorized servicing agent for Residential Mortgage Capital its successors and/or its assigns (Attachments: 1 Certificate of Service) (Silverman, Timothy) (Entered: 07/10/2009)
07/10/2009		41 (55 pgs; 8 docs)	Motion for Relief from Stay RS #DRP-509, Fee Amount \$150, Filed by Creditor BAC Home Loans Servicing, LP (Attachments: 1 Declaration 2 Certificate of Service 3 RS Cover Sheet 4 Waiver of Requirement 5 Exhibit 1 of 36 Exhibit 2 of 37 Declaration 3 of 3) (Prober, Dean) (Entered: 07/10/2009)
07/10/2009			Receipt of filing fee for Motion for Relief From Stay(09-30452) [motion,mrlfsty] (150.00). Receipt number 8819150,

			amount \$ 150.00 (U.S. Treasury) (Entered: 07/10/2009)
07/10/2009		42 (3 pgs)	Notice of Hearing <i>on Motion for Relief from the Automatic Stay</i> (RE: related document(s) 41 Motion for Relief from Stay RS #DRP-509, Fee Amount \$150, Filed by Creditor BAC Home Loans Servicing, LP). Hearing scheduled for 8/6/2009 at 09:30 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor BAC Home Loans Servicing, LP (Prober, Dean) (Entered: 07/10/2009)
07/14/2009		43 (54 pgs; 3 docs)	Operating Report for Filing Period June 1-June 30, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 part 22 part 3) (mw) (Entered: 07/17/2009)
08/06/2009			Courtroom Hearing Held (RE: Motion for Relief From Stay - related document(s) 39) (Motion granted. No sale to occur before 9/8/09. Order to follow and to be served on counsel.)(lp) (Entered: 08/07/2009)
08/06/2009			Courtroom Hearing Held (RE: Motion for Relief From Stay - related document(s) 41) (Motion granted. Order to folow.)(lp) (Entered: 08/07/2009)
08/07/2009		44 (5 pgs)	Certificate of Service <i>Re: Order on Motion for Relief from Automatic Stay</i> Filed by Creditor Litton Loan Servicing, L.P. duly authorized servicing agent for Residential Mortgage Capital its successors and/or its assigns (Silverman, Timothy) (Entered: 08/07/2009)
08/11/2009		45 (6 pgs; 2 docs)	Order On Motion For Relief From Automatic Stay. (RE: related document(s) 39 Motion for Relief From Stay filed by Creditor Litton Loan Servicing, L.P. duly authorized servicing agent for Residential Mortgage Capital its successors and/or its assigns). (mw) (Entered: 08/12/2009)
08/14/2009		46 (6 pgs)	BNC Certificate of Mailing (RE: related document(s) 45 Order). Service Date 08/14/2009. (Admin.) (Entered: 08/14/2009)
08/17/2009		47 (3 pgs)	Certificate of Service <i>on Order for Relief from Stay</i> Filed by Creditor BAC Home Loans Servicing, LP (Prober, Dean) (Entered: 08/17/2009)
08/17/2009		48 (4 pgs; 2 docs)	Order For Relief From Automatic Stay. (RE: related document(s) 41 Motion for Relief From Stay filed by Creditor BAC Home Loans Servicing, LP). (mw) (Entered: 08/18/2009)

08/19/2009	49 (54 pgs; 3 docs)	Exhibit Index To Declaration In Support Of Motion For Relief From Judgement. (RE: related document(s) 39 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 part 22 part 3) (mw) (Entered: 08/20/2009)
08/19/2009	50 (11 pgs)	Memorandum of Points and Authorities in Support of (RE: related document(s) 39 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 08/20/2009)
08/19/2009	51 (3 pgs)	Declaration of Fermin Solis Aniel (RE: related document(s) 39 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 08/20/2009)
08/19/2009	52 (1 pg)	Declaration of Erlinda Abibas Aniel In Support Of Motion To Set Aside Judgment. (RE: related document(s) 39 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 08/20/2009)
08/19/2009	53 (4 pgs)	Declaration Of Authorization. (RE: related document(s) 39 Motion for Relief From Stay). Filed by Interested Party Corazon Estiva (mw) (Entered: 08/20/2009)
08/19/2009	54 (46 pgs; 2 docs)	Operating Report for Filing Period July 01- July 31, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 part 2) (mw) (Entered: 08/20/2009)
08/20/2009	55 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 48 Order). Service Date 08/20/2009. (Admin.) (Entered: 08/20/2009)
08/21/2009	56 (4 pgs; 2 docs)	Order Denying Motion for Relief From Judgment (Related Doc # 39) (dc) (Entered: 08/24/2009)
08/26/2009	57 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 56 Order on Motion for Relief From Stay). Service Date 08/26/2009. (Admin.) (Entered: 08/26/2009)
08/31/2009		Receipt of Amendment Filing Fee. Amount 26.00 from Fermin & Erlinda Aniel. Receipt Number 30048490. (ia) (Entered: 08/31/2009)
08/31/2009	58 (2 pgs)	Amended List of 20 Largest Unsecured Creditors Filed by Joint Debtor Erlinda Aribas Aniel, Debtor Fermin Solis Aniel (akb)

			(Entered: 09/01/2009)
08/31/2009		59 (13 pgs)	Amended Summary of Schedules, Amended Schedule A, Amended Schedule B, Amended Schedule C and Amended Schedule D filed by Joint Debtor Erlinda Aribas Aniel, Debtor Fermin Solis Aniel (akb) (Entered: 09/01/2009)
08/31/2009		60 (3 pgs)	Urgent Motion For Reconsideration. (RE: related document(s) 56 Order on Motion for Relief From Stay) . Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/01/2009)
09/01/2009		61 (4 pgs; 2 docs)	Order Denying Urgent Motion To Reconsider (Related Doc # 60) (mw) (Entered: 09/02/2009)
09/02/2009		62 (6 pgs)	Letter From Debtors To Judge: . (RE: related document(s) 60 Motion to Reconsider). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/03/2009)
09/04/2009		63 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 61 Order on Motion to Reconsider). Service Date 09/04/2009. (Admin.) (Entered: 09/04/2009)
09/08/2009		64 (95 pgs; 3 docs)	Notice of Appeal to BAP , Fee Amount \$ 255. (RE: related document(s) 61 Order on Motion to Reconsider). Appellant Designation due by 9/18/2009. Transmission to BAP due by 9/11/2009. (Attachments: 1 part 22 part 3) Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/08/2009)
09/08/2009			Receipt of Appeal Filing Fee. Amount 255.00 from Fermin & Erlinda Aniel. Receipt Number 30048536. (mw) (Entered: 09/08/2009)
09/08/2009		65 (2 pgs)	Notice Of Pending Action. (RE: related document(s) 64 Notice of Appeal to BAP , Fee Amount \$ 255.). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/09/2009)
09/10/2009		66 (1 pg)	Notice of Referral of Appeal to Bankruptcy Appellant Panel (RE: related document(s) 64 Notice of Appeal). (mw) (Entered: 09/10/2009)
09/10/2009		67	Transmission of Notice of Appeal to BAP (RE: related

		(1 pg)	document(s) 64 Notice of Appeal). (mw) (Entered: 09/10/2009)
09/10/2009		68 (1 pg)	Courts Certificate of Mailing. Number of notices mailed: 5 (RE: related document(s) 64 Notice of Appeal). (mw) (Entered: 09/10/2009)
09/14/2009		69 (2 pgs)	Certificate of Service <i>RE Proof of Claim</i> Filed by Creditor HSBC Bank USA, (Johnson, Katherine) (Entered: 09/14/2009)
09/18/2009		71 (36 pgs)	Operating Report for Filing Period August 1 thru August 31, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/21/2009)
09/20/2009		70 (29 pgs; 3 docs)	Transcript regarding Hearing Held 08/06/09 RE: motions for relief from stay by Litton Loan Servicing and BAC Home Loan Servicing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber <i>Palmer Reporting Services, PalmerRptg@aol.com, 800-665-6251</i> . Notice of Intent to Request Redaction Deadline Due By 9/30/2009. Redaction Request Due By 10/13/2009. Redacted Transcript Submission Due By 10/21/2009. Transcript access will be restricted through 12/21/2009. (Palmer, Susan) (Entered: 09/20/2009)
09/21/2009		72 (16 pgs)	Motion to Stay Pending Appeal (RE: related document(s) 64 Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel) . Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/22/2009)
09/21/2009		73 (1 pg)	Return Letter From BAP: BAP Case No NC-09-1295. (RE: related document(s) 64 Notice of Appeal). (mw) (Entered: 09/23/2009)
09/23/2009		74 (4 pgs; 2 docs)	Order Denying Motion to Stay Pending Appeal (Related Doc # 72) (mw) (Entered: 09/24/2009)
09/25/2009		75 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 70 Transcript Re: Appeal). Service Date 09/25/2009. (Admin.) (Entered: 09/25/2009)
09/26/2009		76	BNC Certificate of Mailing (RE: related document(s) 74 Order

		(4 pgs)	on Motion to Stay Pending Appeal). Service Date 09/26/2009. (Admin.) (Entered: 09/26/2009)
10/05/2009		77 (5 pgs)	Appellant Designation of Contents For Inclusion in Record On Appeal (RE: related document(s) 64 Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel). Appellee designation due by 10/15/2009. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/13/2009)
10/09/2009		78 (72 pgs; 9 docs)	Motion To Object And Dismiss Proof Of Claim Filed By GMAC Mortgage, LLC. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 Part 12 Part 23 Part 34 Part 45 Part 56 Part 67 Part 78 Part 8) (mw) (Entered: 10/15/2009)
10/09/2009		79 (2 pgs)	Notice Of Pending Action. (RE: related document(s) 78 Motion To Object And Dismiss Proof Of Claim Filed By GMAC Mortgage, LLC. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/15/2009)
10/13/2009		80 (2 pgs)	Amendment To The Motion To Object And Dismiss Proof Of Claim Filed By GMAC Mortgage, LLC. (RE: related document(s) 78 Motion Miscellaneous Relief filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel) . Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/16/2009)
10/13/2009		81 (47 pgs)	Operating Report for Filing Period September 1 - September 30, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/16/2009)
10/29/2009		82 (3 pgs; 3 docs)	Transfer of Claim. (#5). Transfer Agreement 3001 (e) 2 Transferor: Chase Bank USA NA (Claim No. 5) To Roundup Funding, LLC. Filed by Creditor Roundup Funding LLC. (Tran, Linh) (Entered: 10/29/2009)
10/29/2009		83 (3 pgs; 3 docs)	Transfer of Claim. (#6). Transfer Agreement 3001 (e) 2 Transferor: Chase Bank USA NA (Claim No. 6) To Roundup Funding, LLC. Filed by Creditor Roundup Funding LLC. (Tran, Linh) (Entered: 10/29/2009)
10/29/2009		84 (3 pgs;	Transfer of Claim. (#4). Transfer Agreement 3001 (e) 2 Transferor: Chase Bank USA NA (Claim No. 4) To Roundup

		3 docs)	Funding, LLC. Filed by Creditor Roundup Funding LLC. (Tran, Linh) (Entered: 10/29/2009)
11/01/2009		85 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 82 Transfer of Claim). Service Date 11/01/2009. (Admin.) (Entered: 11/02/2009)
11/01/2009		86 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 83 Transfer of Claim). Service Date 11/01/2009. (Admin.) (Entered: 11/02/2009)
11/01/2009		87 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 84 Transfer of Claim). Service Date 11/01/2009. (Admin.) (Entered: 11/02/2009)
11/02/2009		88 (1 pg)	Notice of Change of Address Filed by Creditor JPMorgan Chase Bank, N.A. (mw) (Entered: 11/04/2009)
11/09/2009		89 (4 pgs)	Urgent Motion To Resolve "Motion To Object And Dismiss Proof Of Claim By GMAC Mortgage, LLC". Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 11/12/2009)
11/13/2009		90 (39 pgs; 6 docs)	Response to <i>Debtors' Objection to HSBC Bank USA, National Association as Trustee for DALT2007-OA5's Proof of Claim, with Exhibits and Proof of Service</i> (RE: related document(s) 78 Motion Miscellaneous Relief). Filed by Creditor HSBC Bank USA, (Attachments: 1 Exhibit A2 Exhibit B3 Exhibit C4 Exhibit D5 Certificate of Service) (Johnson, Katherine) (Entered: 11/13/2009)
11/16/2009			**ERROR** Incorrect event code entered. (RE: related document(s) 90 Response). (ac) (Entered: 11/16/2009)
11/17/2009		91 (43 pgs)	Operating Report for Filing Period October 1 thru October 31, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 11/18/2009)
11/18/2009		92 (3 pgs)	Motion To Object To Transfer Of All Claims Under Roundup Funding, LLC, And Chase Bank, USA NA. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 11/19/2009)
11/19/2009		93 (1 pg)	Letter To Court: (RE: related document(s) 92 Motion Miscellaneous Relief). Filed by Joint Debtor Erlinda Aribas

			Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 11/19/2009)
11/20/2009		94 (28 pgs; 4 docs)	Motion for Relief from Stay RS #GJB-3718, Fee Amount \$150, Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer (Attachments: 1 Declaration 2 RS Cover Sheet 3 Exhibit) (Babcock, Gregory) (Entered: 11/20/2009)
11/20/2009			Receipt of filing fee for Motion for Relief From Stay(09-30452) [motion,mrlfsty] (150.00). Receipt number 9648638, amount \$ 150.00 (U.S. Treasury) (Entered: 11/20/2009)
11/20/2009		95 (5 pgs; 2 docs)	Notice of Hearing (RE: related document(s) 94 Motion for Relief from Stay RS #GJB-3718, Fee Amount \$150, Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer). Hearing scheduled for 12/10/2009 at 09:30 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer (Attachments: 1 Certificate of Service) (Babcock, Gregory) (Entered: 11/20/2009)
11/23/2009		96 (4 pgs; 2 docs)	Order Setting Status Conference On Objection To Proof Of Claim . Status Conference scheduled for 12/18/2009 at 01:30 PM at San Francisco Courtroom 22 - Montali. (mw) (Entered: 11/24/2009)
11/26/2009		97 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 96 Order for Status Conference). Service Date 11/26/2009. (Admin.) (Entered: 11/26/2009)
11/30/2009		98 (21 pgs)	Opposition to Motion For Relief Fron Automatic Stay. (RE: related document(s) 94 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 12/01/2009)
11/30/2009		99 (3 pgs)	Notice Of Pending Action. (RE: related document(s) 98 Opposition to Motion For Relief Fron Automatic Stay.). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 12/01/2009)

12/10/2009	<u>100</u> (3 pgs; 2 docs)	Notice of Status Conference scheduled for 1/14/2010 at 02:30 PM at San Francisco Courtroom 22 - Montali. (dc) Modified on 12/11/2009 ERROR: Court to Re-generate using the correct notice (dc). (Entered: 12/10/2009)
12/10/2009		Courtroom Hearing Held (RE: Motion for Relief From Stay - related document(s) <u>94</u>) (The matter stands submitted.)(lp) (Entered: 12/10/2009)
12/10/2009	<u>101</u> (53 pgs; 2 docs)	Response to <i>Debtor's Objection to Transfer of Claim</i> (RE: related document(s) <u>92</u> Motion Miscellaneous Relief, <u>93</u> Document). Filed by Creditor Roundup Funding LLC (Attachments: <u>1</u> Exhibit A-F) (Tran, Linh) (Entered: 12/10/2009)
12/10/2009	<u>102</u> (2 pgs)	Certificate of Service (RE: related document(s) <u>101</u> Response). Filed by Creditor Roundup Funding LLC (Tran, Linh) (Entered: 12/10/2009)
12/11/2009	<u>103</u> (3 pgs; 2 docs)	AMENDED Notice of Status Conference Individual Chapter 11. Status Conference to be held on 1/14/2010 at 02:30 PM San Francisco Courtroom 22 - Montali Status Conference Statement due by 1/4/2010 (dc) (Entered: 12/11/2009)
12/12/2009	<u>104</u> (3 pgs)	BNC Certificate of Mailing - Notice of Status Conference in Ch 11. (RE: related document(s) <u>100</u> Notice of Status Conference). Service Date 12/12/2009. (Admin.) (Entered: 12/12/2009)
12/13/2009	<u>105</u> (3 pgs)	BNC Certificate of Mailing - Notice of Status Conference in Ch 11. (RE: related document(s) <u>103</u> Notice of Status Conference Chp 11 Individual). Service Date 12/13/2009. (Admin.) (Entered: 12/13/2009)
12/15/2009	<u>106</u> (33 pgs; 4 docs)	Motion for Relief from Stay RS #01/07/2010, Fee Amount \$150, Filed by Creditor Aurora Loan Services, its assignees and/or successors (Attachments: <u>1</u> Declaration <u>2</u> RS Cover Sheet <u>3</u> Exhibit) (Babcock, Gregory) (Entered: 12/15/2009)
12/15/2009	<u>107</u> (5 pgs; 2 docs)	Notice of Hearing (RE: related document(s) <u>106</u> Motion for Relief from Stay RS #01/07/2010, Fee Amount \$150, Filed by Creditor Aurora Loan Services, its assignees and/or successors). Hearing to be held on 1/7/2010 at 09:30 AM (San Francisco Courtroom 22 - Montali). Filed by Creditor Aurora Loan Services, its assignees and/or successors (Attachments: <u>1</u> Certificate of Service) (Babcock, Gregory)

			Modified on 12/23/2009 (mw). (Entered: 12/15/2009)
12/15/2009			Receipt of filing fee for Motion for Relief From Stay(09-30452) [motion,mrlfsty] (150.00). Receipt number 9790599, amount \$ 150.00 (U.S. Treasury) (Entered: 12/15/2009)
12/16/2009		108 (5 pgs; 2 docs)	Order Regarding Motion For Relief From Stay. (RE: related document(s) 94 Motion for Relief from Stay. filed by Creditor Deutsche Bank National Trust Company. (mw) Modified on 1/14/2010 (dc). (Entered: 12/17/2009)
12/16/2009		109 (4 pgs; 2 docs)	Order Denying Motion To Object.(Related Doc # 92) (mw) (Entered: 12/17/2009)
12/17/2009		110 (42 pgs; 9 docs)	Declaration in Support of <i>Opposition to Debtors' Objection to HSBC Bank USA, National Association As Trustee for DALT2007-0A5's Proof of Claim</i> (RE: related document(s) 90 Response). Filed by Creditor HSBC Bank USA, (Attachments: 1 Exhibit A 2 Exhibit B 3 Exhibit C 4 Exhibit D 5 Exhibit E 6 Exhibit F 7 Exhibit G 8 Certificate of Service) (Johnson, Katherine) (Entered: 12/17/2009)
12/18/2009			Hearing Set On (RE: related document(s) 96 Order for Status Conference). Status Conference scheduled for 12/18/2009 at 01:30 PM at San Francisco Courtroom 22 - Montali. (lp) (Entered: 12/18/2009)
12/18/2009			Hearing held and continued. The objection to the proof of claims is overruled in all respects except re the charges. Debtors to file and serve by 1/15/10 an opposition re the six points discussed on the record> A further status conference shall be held on 1/29/10 at 2:30 p.m. (RE: related document(s) 96 Order for Status Conference, Hearing Set). Status Conference to be held on 1/29/2010 at 2:30 PM San Francisco Courtroom 22 - Montali for [], (lp) (Entered: 12/18/2009)
12/18/2009		113 (2 pgs)	Notice of Change of Address of Creditors. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 12/22/2009)
12/18/2009		114 (32 pgs)	Operating Report for Filing Period November 1 thru November 30, 2009 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) Additional attachment(s) added on 12/22/2009 (mw). (Entered: 12/22/2009)

			12/22/2009)
12/19/2009	<u>111</u> (5 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>108</u> Order). Service Date 12/19/2009. (Admin.) (Entered: 12/19/2009)	
12/19/2009	<u>112</u> (4 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>109</u> Order on Motion for Miscellaneous Relief). Service Date 12/19/2009. (Admin.) (Entered: 12/19/2009)	
12/22/2009	<u>115</u> (28 pgs)	Opposition To Motion For Relief From Automatic Stay. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 12/23/2009)	
12/23/2009	<u>116</u> (2 pgs)	Notice Of Pending Action. (RE: related document(s) <u>115</u> Opposition To Motion For Relief From Automatic Stay. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) Additional attachment(s) added on 12/23/2009 (mw). (Entered: 12/23/2009)	
12/23/2009		**CORRECTIVE ENTRY** Court Corrected Court Location to San Francisco, Courtroom 22-Montali, Which Was Not Selected when Docketing Notice Of Hearing.(RE: related document(s) <u>107</u> Notice of Hearing). (mw) (Entered: 12/23/2009)	
12/23/2009	<u>117</u> (14 pgs)	Motion to Reconsider Or To Amend Order Regarding Motion For Relief From Stay Under Rule 9023. (RE: related document(s) <u>108</u> Order) . Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 12/28/2009)	
12/28/2009	<u>118</u> (51 pgs; 6 docs)	Status Conference Statement (RE: related document(s) <u>103</u> Notice of Status Conference Chp 11 Individual). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: <u>1</u> part <u>22</u> part <u>33</u> part <u>44</u> part <u>55</u> part 6) (mw) (Entered: 12/29/2009)	
12/29/2009	<u>119</u> (13 pgs; 2 docs)	Supplemental Document <i>exhibits to motion for relief from the automatic stay</i> in support (RE: related document(s) <u>106</u> Motion for Relief From Stay). Filed by Creditor Aurora Loan Services, its assignees and/or successors (Attachments: <u>1</u> Certificate of Service) (Babcock, Gregory) (Entered: 12/29/2009)	

12/31/2009	120 (5 pgs; 2 docs)	Order Granting, In Part, Debtors' Motion To Reconsider. (RE: related document(s) 117 Motion to Reconsider filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel). (mw) (Entered: 01/04/2010)
01/04/2010	121 (29 pgs)	Response to Movant's Supplemental Exhibits. (RE: related document(s) 119 Supplemental Document). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 01/05/2010)
01/05/2010	122 (5 pgs)	Urgent Motion To Reconsider Or Amend Order Regarding Motion For Reconsideration Under Rule 9023. (RE: related document(s) 120 Order) . Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 01/05/2010)
01/05/2010	123 (3 pgs; 2 docs)	Order Denying Urgent Motion To Reconsider (Related Doc # 122) (mw) (Entered: 01/05/2010)
01/06/2010	124 (5 pgs)	BNC Certificate of Mailing (RE: related document(s) 120 Order). Service Date 01/06/2010. (Admin.) (Entered: 01/06/2010)
01/07/2010		Courtroom Hearing Held (RE: Motion for Relief From Stay - related document(s) 106) (Debtor is to make adequate protection payments for December and January in the amount of \$5763.06 for each month, check is to be sent to movant attorney. If not paid by 1/15/10, relief from stay is granted. Payments to continue thereafter of each month by the 1st, 10 day grace and if not cured there is relief from stay. Order to be uploaded.)(gh) (Entered: 01/07/2010)
01/07/2010	125 (42 pgs; 4 docs)	Motion for Relief from Stay RS #GJB-4255, Fee Amount \$150, Filed by Creditor EMC MORTGAGE CORPORATION (Attachments: 1 Declaration 2 Exhibit 3 RS Cover Sheet) (Babcock, Gregory) (Entered: 01/07/2010)
01/07/2010		Receipt of filing fee for Motion for Relief From Stay(09-30452) [motion,mrlfsty] (150.00). Receipt number 9924163, amount \$ 150.00 (U.S. Treasury) (Entered: 01/07/2010)
01/07/2010	126 (5 pgs; 2 docs)	Notice of Hearing (RE: related document(s) 125 Motion for Relief from Stay RS #GJB-4255, Fee Amount \$150, Filed by Creditor EMC MORTGAGE CORPORATION). Hearing scheduled for 1/28/2010 at 09:30 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor EMC

			MORTGAGE CORPORATION (Attachments: 1 Certificate of Service) (Babcock, Gregory) (Entered: 01/07/2010)
01/07/2010		127 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 123 Order on Motion to Reconsider). Service Date 01/07/2010. (Admin.) (Entered: 01/07/2010)
01/09/2010		128 (13 pgs)	Transcript regarding Hearing Held 12-10-09 RE: Preliminary Hearing, Deutsche Bank. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber <i>Jo McCall</i> 480-361-3790. Notice of Intent to Request Redaction Deadline Due By 1/19/2010. Redaction Request Due By 02/1/2010. Redacted Transcript Submission Due By 02/9/2010. Transcript access will be restricted through 04/9/2010. (McCall, Jo). ERROR: The filed transcript is in error. Modified on 3/19/2010 (akb). (Entered: 01/09/2010)
01/09/2010		129 (23 pgs; 3 docs)	Transcript regarding Hearing Held 12-18-09 RE: Status Conference on Objection to Proof of Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber <i>Jo McCall</i> 480-361-3790. Notice of Intent to Request Redaction Deadline Due By 1/19/2010. Redaction Request Due By 02/1/2010. Redacted Transcript Submission Due By 02/9/2010. Transcript access will be restricted through 04/9/2010. (McCall, Jo) (Entered: 01/09/2010)
01/11/2010		130 (13 pgs)	Opposition To GMAC Loan Services, LLC, As Authorized Loan Servicing Agent For HSBC Bank, USA, National Association As Trustee For DALT 2007-OA5's Proof Of Claim. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 01/12/2010)
01/14/2010		131 (2 pgs)	Certificate of Service <i>of proposed order</i> (RE: related document(s) 106 Motion for Relief From Stay). Filed by Creditor Aurora Loan Services, its assignees and/or successors (Babcock, Gregory) (Entered: 01/14/2010)
01/14/2010		132 (5 pgs;	Order On Motion For Relief From Automatic Stay. (RE: related document(s) 106 Motion for Relief From Stay filed by

		2 docs)	Creditor Aurora Loan Services, its assignees and/or successors). (mw) (Entered: 01/15/2010)
01/14/2010			Courtroom Hearing Continued (RE: Notice of Status Conference Chp 11 Individual - related document(s) 103) (Continued to 6/24/2010 01:30 PM at San Francisco Courtroom 22 - Montali) (Debtors to file a Plan and Disclosure Statement by 6/18/10. A further status conference shall be held on 6/24/10 at 1:30 p.m. The court shall issue an order.)(lp) (Entered: 01/19/2010)
01/15/2010		134 (3 pgs; 2 docs)	Order. Status Conference scheduled for 6/24/2010 at 01:30 PM at San Francisco Courtroom 22 - Montali. (mw) (Entered: 01/19/2010)
01/15/2010		135 (8 pgs)	Order Establishing Procedures for Disclosure Statement Hearing and Confirmation Hearing. . (mw) (Entered: 01/19/2010)
01/17/2010		133 (5 pgs)	BNC Certificate of Mailing (RE: related document(s) 132 Order). Service Date 01/17/2010. (Admin.) (Entered: 01/17/2010)
01/21/2010		136 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 134 Order To Set Hearing). Service Date 01/21/2010. (Admin.) (Entered: 01/21/2010)
01/21/2010		148 (1 pg)	Order Denying Motion For Reconsideration From BAP, BAP No. NC 09-1295. (mw) (Entered: 02/05/2010)
01/25/2010		137 (11 pgs)	Opposition To Motion For Relief From Stay. (RE: related document(s) 125 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) Additional attachment(s) added on 1/28/2010 (dc). (Entered: 01/26/2010)
01/28/2010		138	Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, and Deadlines (Generated) (akb) Modified on 1/28/2010. ERROR: Court entered in error (akb). (Entered: 01/28/2010)
01/28/2010			Courtroom Hearing Held (RE: Motion for Relief From Stay - related document(s) 125) (Motion granted for the reasons stated on the record. Order to follow.)(lp) (Entered: 01/28/2010)
01/29/2010			Status conference re objection to proof of claim of HSBC

			held. Counsel for HSBC to amend claim within 30 days. Counsel is to file a declaration establishing that HSBC is the holder of the note. Debtors to amend the objection 3/15/10. A continued status conference shall be held on 3/26/10 at 2:30 p.m. (RE: related document(s) 96 Order for Status Conference, Hearing Set, Hearing Continued/Rescheduled (BK)). Status Conference to be held on 3/26/2010 at 2:30 PM San Francisco Courtroom 22 - Montali for [], (lp) (Entered: 02/02/2010)
01/29/2010		147 (1 pg)	Appeal Pending at 9th Circuit of Appeals Regarding Court of Appeals Case Number (RE: related document(s) 64 Notice of Appeal). (mw) (Entered: 02/05/2010)
02/02/2010		139 (16 pgs; 3 docs)	Declaration of Gregory J. Babcock <i>Of Default Under Order Regarding Motion For Relief From Stay</i> (RE: related document(s) 108 Order). Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer (Attachments: 1 Certificate of Service 2 Exhibit) (Babcock, Gregory) (Entered: 02/02/2010)
02/02/2010		140 (3 pgs)	Certificate of Service <i>of proposed order</i> (RE: related document(s) 106 Motion for Relief From Stay). Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer (Babcock, Gregory) (Entered: 02/02/2010)
02/02/2010		141 (8 pgs; 2 docs)	Supplemental Exhibit <i>To The Motion For Relief For Relief From Automatic Stay</i> (RE: related document(s) 94 Motion for Relief From Stay). Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer (Attachments: 1 Exhibit) (Babcock, Gregory) (Entered: 02/02/2010)
02/02/2010		142 (4 pgs)	Certificate of Service <i>of proposed order</i> (RE: related document(s) 125 Motion for Relief From Stay). Filed by Creditor EMC MORTGAGE CORPORATION (Babcock, Gregory) (Entered: 02/02/2010)
02/03/2010		143	Declaration of Gregory J. Babcock <i>Of Default Under Order</i>

		(5 pgs; 2 docs)	<i>On Motion For Relief From Automatic Stay</i> (RE: related document(s) 132 Order). Filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer (Attachments: 1 Certificate of Service) (Babcock, Gregory) (Entered: 02/03/2010)
02/03/2010		144 (33 pgs; 3 docs)	Transcript regarding Hearing Held 1-7-10 RE: Preliminary Hearing - Aurora Loan Services. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber <i>Jo McCall</i> (480)361-3790. Notice of Intent to Request Redaction Deadline Due By 2/10/2010. Redaction Request Due By 02/24/2010. Redacted Transcript Submission Due By 03/8/2010. Transcript access will be restricted through 05/4/2010. (McCall, Jo) (Entered: 02/03/2010)
02/03/2010		145 (5 pgs; 2 docs)	Order Granting (RE: related document(s) 94 Granting Motion for Relief From Stay filed by Creditor Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer). (mw) (Entered: 02/04/2010)
02/04/2010		146 (5 pgs; 2 docs)	Declaration of Gregory J. Babcock in support of <i>default under order on motion for relief from automatic stay</i> (RE: related document(s) 132 Order). Filed by Creditor Aurora Loan Services, its assignees and/or successors (Attachments: 1 Certificate of Service) (Babcock, Gregory) (Entered: 02/04/2010)
02/06/2010		149 (5 pgs)	BNC Certificate of Mailing (RE: related document(s) 145 Order Granting Related Motion/Application). Service Date 02/06/2010. (Admin.) (Entered: 02/06/2010)
02/11/2010		150 (10 pgs)	Opposition To Motion For Relief From Stay Supplements; Emergency Motion For Reconsideration On The Order For Relief From Automatic Stay; Objection To Proof of Claim. (RE: related document(s) 94 Motion for Relief From Stay, 145 Order Granting Related Motion/Application). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 02/12/2010)

02/11/2010	<u>151</u> (5 pgs)	Appendix of Exhibit Motions. (RE: related document(s) <u>150</u> Opposition Brief/Memorandum). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 02/12/2010)
02/11/2010	<u>152</u> (5 pgs)	Motion To Disqualify Counsel. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 02/12/2010)
02/11/2010	<u>153</u> (8 pgs)	Appendix Of Exhibit Motions. (RE: related document(s) <u>152</u> Motion Miscellaneous Relief). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 02/12/2010)
02/16/2010	<u>154</u> (3 pgs; 2 docs)	Order Setting Briefing Schedule On Motion To Disqualify Counsel. (RE: related document(s) <u>152</u> Motion Miscellaneous Relief filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel). (mw) (Entered: 02/17/2010)
02/17/2010		**ERROR** You will need to upload an amended declaration with the correct caption and to ensure that the docket text says "Aurora" and not "Deutsche Bank." , Per Law Clerk Peggy (RE: related document(s) <u>143</u> Declaration). (dc) (Entered: 02/17/2010)
02/17/2010	<u>155</u> (45 pgs; 2 docs)	Operating Report for Filing Period January 1 - January 31, 2010 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: <u>1</u> Attachment 2) (mw) (Entered: 02/17/2010)
02/17/2010	<u>156</u> (5 pgs; 2 docs)	Order Denying Emergency Motion to Reconsoder (RE: related document(s) <u>150</u> Opposition Brief/Memorandum filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel). (dc) (Entered: 02/18/2010)
02/19/2010	<u>157</u> (3 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>154</u> Order). Service Date 02/19/2010. (Admin.) (Entered: 02/19/2010)
02/20/2010	<u>158</u> (5 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>156</u> Order). Service Date 02/20/2010. (Admin.) (Entered: 02/20/2010)
02/23/2010	<u>159</u> (2 pgs)	Withdrawal of Claim: 11 Filed by Creditor National City, Joint Debtor Erlinda Aribas Aniel, Debtor Fermin Solis Aniel. (Green, Therese) (Entered: 02/23/2010)

02/26/2010	<u>160</u> (8 pgs)	Objection (w/ <i>Proof of Service</i>) (RE: related document(s) <u>152</u> Motion Miscellaneous Relief). Filed by Creditor Aurora Loan Services (Babcock, Gregory) (Entered: 02/26/2010)
03/03/2010	<u>161</u> (3 pgs; 2 docs)	Order Denying Motion To Disqualify Counsel.(Related Doc # <u>152</u>) (mw) (Entered: 03/04/2010)
03/06/2010	<u>162</u> (3 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>161</u> Order on Motion for Miscellaneous Relief). Service Date 03/06/2010. (Admin.) (Entered: 03/06/2010)
03/10/2010	<u>164</u> (3 pgs)	Order Dismissing Appeal. (RE: related document(s) <u>64</u> Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Aribas Aniel). (mw) (Entered: 03/16/2010)
03/13/2010	<u>163</u> (2 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>144</u> Transcript). Service Date 03/13/2010. (Admin.) (Entered: 03/13/2010)
03/17/2010	<u>165</u> (22 pgs)	Operating Report for Filing Period February 1-28, 2010 Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) Additional attachment(s) added on 3/18/2010 (mw). (Entered: 03/18/2010)
03/20/2010	<u>166</u> (15 pgs; 3 docs)	Transcript regarding Hearing Held 12-10-09 RE: Correction of Debtor's Name Only. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber <i>Jo McCall</i> (480)361-3790. Notice of Intent to Request Redaction Deadline Due By 3/29/2010. Redaction Request Due By 04/12/2010. Redacted Transcript Submission Due By 04/20/2010. Transcript access will be restricted through 06/18/2010. (McCall, Jo) (Entered: 03/20/2010)
03/21/2010	<u>167</u> (2 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>129</u> Transcript). Service Date 03/21/2010. (Admin.) (Entered: 03/21/2010)
03/22/2010	<u>176</u> (1 pg)	Letter From Bap No. NC-09-1295-MaHD RE: Appeal to the United States Court of Appeals Ninth Circuit currently pending. (RE: related document(s) <u>64</u> Notice of Appeal). (mw) (Entered: 04/02/2010)

03/23/2010	168 (167 pgs; 5 docs)	Motion to Expunge <i>Lis Pendens</i> Filed by Creditor Aurora Loan Services (Attachments: 1 Exhibit Request for Judicial Notice 2 Exhibit Exhibit 1 Part 1 to Request for Judicial Notice 3 Exhibit Exhibit 1 Part 2 to Request for Judicial Notice 4 Exhibit 2-4 to Request for Judicial Notice) (Balser, Justin) (Entered: 03/23/2010)
03/24/2010	169 (33 pgs; 5 docs)	Supplemental Declaration in Support of <i>Opposition to Debtors' Objection to HSBC Bank USA, National Association as Trustee for DALT2007-OA5's Proof of Claim, with Exhibits and Proof of Service</i> (RE: related document(s) 90 Response). Filed by Creditor HSBC Bank USA, (Attachments: 1 Exhibit A 2 Exhibit B 3 Exhibit C 4 Certificate of Service) (Rankin, Casper) (Entered: 03/24/2010)
03/25/2010		Hearing Set On (RE: related document(s) 168 Motion to Expunge <i>Lis Pendens</i>). Hearing scheduled for 4/30/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. (dc) (Entered: 03/25/2010)
03/25/2010		**ERROR** Notice of Hearing should be filed separately, in order for the hearing date and time to be set on the Judge's calendar (RE: related document(s) 168 Motion to Expunge <i>Lis Pendens</i>). (dc) (Entered: 03/25/2010)
03/25/2010	170 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 166 Transcript). Service Date 03/25/2010. (Admin.) (Entered: 03/25/2010)
03/26/2010	171 (3 pgs)	Notice of Hearing (RE: related document(s) 168 Motion to Expunge <i>Lis Pendens</i> Filed by Creditor Aurora Loan Services). Hearing scheduled for 4/30/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. Confirmation Hearing scheduled for 4/30/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor Aurora Loan Services (Balser, Justin) (Entered: 03/26/2010)
03/26/2010	174 (20 pgs)	Opposition To GMAC Loan Services, LLC, As Authorized Loan Servicing Agent For HSBC Bank, USA National Association As Trustee For DALT2007-OA5'S Declaration In Support Of Opposition To Debtors' Objection To the Proof of Claim. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 03/30/2010)
03/26/2010		Courtroom Hearing Continued (RE: Hearing Set - related

			document(s) []) (Continued to 4/23/2010 11:00 AM at San Francisco Courtroom 22 - Montali) (Debtors and HSBC shall file a statement by 4/9/10 re what discovery will be taken, what witnesses will be called, what will be presented and what facts will be proven at trial. The Court will determine if the matter can be decided on the papers submitted or if an evidentiary hearing is necessary.)(lp) (Entered: 03/30/2010)
03/29/2010		172 (4 pgs)	Certificate of Service <i>regarding proposed order</i> (RE: related document(s) 125 Motion for Relief From Stay). Filed by Creditor EMC MORTGAGE CORPORATION (Babcock, Gregory) (Entered: 03/29/2010)
03/29/2010		173 (4 pgs; 2 docs)	Order On Motion For Relief From Automatic Stay. (RE: related document(s) 125 Granting Motion for Relief From Stay filed by Creditor EMC MORTGAGE CORPORATION). (mw) Modified on 3/30/2010 (mw). (Entered: 03/30/2010)
04/01/2010		175 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 173 Order Granting Related Motion/Application). Service Date 04/01/2010. (Admin.) (Entered: 04/01/2010)
04/08/2010		177 (10 pgs)	Statement of Request And Demands On HSBC Bank, USA, National Association As Trustee For DALT2007-OA5's And GMAC Mortgage, LLC As Loan Servicing Agent For HSBC Bank Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 04/09/2010)
04/09/2010		178 (6 pgs; 2 docs)	Statement of Re: Evidentiary Hearing in Support of Creditor's Opposition to Debtor's Objection to Proof of Claim <i>with proof of Service</i> (RE: related document(s) 90 Response). Filed by Creditor HSBC Bank USA, (Attachments: 1 Certificate of Service) (Hamann, Anne) (Entered: 04/09/2010)
04/16/2010		179 (43 pgs; 2 docs)	Operating Report for Filing Period March 1 - 31, 2010. Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 attach 1) (mw) (Entered: 04/19/2010)
04/20/2010		180 (14 pgs; 2 docs)	Memorandum Decision Regarding Order Denying Emergency Motion To Reconsider (Persia Avenue Property) . (mw) (Entered: 04/21/2010)
04/23/2010			Courtroom Hearing Continued (RE: Hearing Set - related document(s) []) (Continued to 5/27/2010 03:30 PM at San Francisco Courtroom 22 - Montali) (HSBC to file a declaration re the whereabouts of the original note and a

			declaration that explains why the proof of claim did not include the original endorsement by 5/6/10. HSBC to amend its proof of claim by 5/6/10 and is to serve the debtor with a copy. Debtors to respond to the amended proof of claim and the declarations by 5/20/10. A continued status conference shall be held on 5/27/10 at 3:30 p.m.)(lp) (Entered: 04/23/2010)
04/23/2010		181 (14 pgs)	BNC Certificate of Mailing (RE: related document(s) 180 Memorandum Decision). Service Date 04/23/2010. (Admin.) (Entered: 04/23/2010)
04/26/2010		182 (93 pgs; 7 docs)	Brief/Memorandum in Opposition to (RE: related document(s) 168 Motion to Expunge). Filed by Joint Debtor Erlinda Aribas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 part 12 part 33 part 44 part 55 part 66 part 7) (mw) Additional attachment(s) added on 4/29/2010 (mw). (Entered: 04/27/2010)
04/27/2010		183 (6 pgs)	Reply to <i>Debtors Opposition to Motion to Expunge Lis Pendens</i> (RE: related document(s) 168 Motion to Expunge, 182 Opposition Brief/Memorandum). Filed by Creditor Aurora Loan Services (Balser, Justin) (Entered: 04/27/2010)
04/28/2010		184 (6 pgs; 2 docs)	Memorandum Decision Regarding Motion To Expunge Lis Pendens (Clearfield Drive) (RE: related document(s) 168 Motion to Expunge filed by Creditor Aurora Loan Services). (mw) (Entered: 04/29/2010)
04/29/2010			Receipt of Appeal Filing Fee. Amount 255.00 from Fermin And Erlinda Aniel. Receipt Number 30050297. (admin) (Entered: 04/29/2010)
04/29/2010		185 (3 pgs)	Notice of Appeal to BAP , Fee Amount \$ 255.00. (RE: related document(s) 180 Memorandum Decision). Appellant Designation due by 5/13/2010. Transmission to BAP due by 5/3/2010. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (dc) (Entered: 04/30/2010)
04/30/2010			Hearing Dropped From Calendar (RE: Motion to Expunge - related document(s) 168) (Matter taken off calendar prior to the hearing.)(lp) (Entered: 04/30/2010)
04/30/2010		186 (2 pgs)	Notice of Referral of Appeal to Bankruptcy Appellant Panel with Certificate of Service (RE: related document(s) 185 Notice of Appeal). (dc) (Entered: 04/30/2010)

04/30/2010	187 (1 pg)	Transmission of Notice of Appeal to BAP (RE: related document(s) 185 Notice of Appeal). (dc) (Entered: 04/30/2010)
05/01/2010	188 (6 pgs)	BNC Certificate of Mailing (RE: related document(s) 184 Memorandum Decision). Service Date 05/01/2010. (Admin.) (Entered: 05/01/2010)
05/07/2010	189 (5 pgs; 2 docs)	Stipulation to Continue Hearing <i>on Debtors' Objection to HSBC Bank USA, National Association as Trustee for DALT2007-OA5's Proof of Claim, with Proof of Service</i> Filed by Creditor HSBC Bank USA, (RE: related document(s) 78 Motion Miscellaneous Relief filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel, Hearing Continued/Rescheduled Courtroom). (Attachments: 1 Certificate of Service) (Hamann, Anne) (Entered: 05/07/2010)
05/07/2010	190 (3 pgs)	Statement of Election to District Court, (RE: related document(s) 185 Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 05/10/2010)
05/07/2010	191 (3 pgs)	Return of Record from BAP, BAP Case No. NC-10-1150. (RE: related document(s) 185 Notice of Appeal). (mw) (Entered: 05/10/2010)
05/10/2010	192 (10 pgs; 2 docs)	Supplemental Declaration of Justin D. Balser in in support of <i>Motion to Expunge Lis Pendens</i> (RE: related document(s) 168 Motion to Expunge, 184 Memorandum Decision). Filed by Creditor Aurora Loan Services (Attachments: 1 Proposed Order-FRBP 4001) (Balser, Justin) (Entered: 05/10/2010)
05/10/2010		Hearing Set On (RE: related document(s) 189 Stipulation to Continue Hearing). Hearing scheduled for 5/27/2010 at 03:30 PM at San Francisco Courtroom 22 - Montali. (mw) (Entered: 05/10/2010)
05/10/2010		**CORRECTIVE ENTRY** Court Set Hearing to match Hearing Date on Stipulation. (RE: related document(s) 189 Stipulation to Continue Hearing). (mw) (Entered: 05/10/2010)
05/11/2010	193 (3 pgs;	Order Granting Motion To Expunge Lis Pendens (Related Doc # 168) (mw) (Entered: 05/12/2010)

		2 docs)	
05/11/2010		194 (3 pgs; 2 docs)	Order Continuing Chapter 11 Status Conference, Extending Deadline For Filing Plan And Disclosure Statement And Granting Stipulation For Continuance Of Hearing On Debtors' Objection To HSBC's Proof Of Claim. (RE: related document(s) 189 Stipulation to Continue Hearing filed by Creditor HSBC Bank USA,). (Dkt # 189 Stipulation is Approved. HSBC's Claim is Continued to 6/10/2010 at 10:30 AM at San Francisco Courtroom 22 - Montali. (mw) Modified on 5/12/2010 (mw). (Entered: 05/12/2010)
05/12/2010			Hearing Set For (Continued) Status Conference. (RE: related document(s) 194 Order To Set Hearing). Status Conference scheduled for 6/15/2010 at 01:30 PM at San Francisco Courtroom 22 - Montali. (mw) (Entered: 05/12/2010)
05/14/2010		195 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 194 Order To Set Hearing). Service Date 05/14/2010. (Admin.) (Entered: 05/14/2010)
05/17/2010		196 (43 pgs)	Operating Report for Filing Period April 1 - 30, 2010 Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 05/18/2010)
05/19/2010			Hearing Set On Motion for Objection to HSBC's Claim (RE: related document(s) 78 Motion). Hearing scheduled for 6/10/2010 at 10:30 AM at San Francisco Courtroom 22 - Montali. (dc) (Entered: 05/19/2010)
05/20/2010		197 (3 pgs)	<i>Motion for leave to File Adversary Complaint after Deadline</i> Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 05/20/2010)
05/20/2010		198 (3 pgs)	Notice of Hearing (RE: related document(s) 197 <i>Motion for leave to File Adversary Complaint after Deadline</i> Filed by Creditor Zenaida Flores). Hearing scheduled for 6/25/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 05/20/2010)
05/20/2010		199 (4 pgs)	Certificate of Service (RE: related document(s) 197 Motion Miscellaneous Relief). Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 05/20/2010)
05/20/2010		200	Memorandum of Points and Authorities in Support of (RE:

		(3 pgs)	related document(s) 197 Motion Miscellaneous Relief). Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 05/20/2010)
05/20/2010		201 (14 pgs)	Declaration of Donald Tasto in Support of (RE: related document(s) 197 Motion Miscellaneous Relief). Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 05/20/2010)
05/21/2010		202 (4 pgs)	Supplemental Document <i>Supplemental Declaration of GMAC Mortgage, LLC</i> in In Opposition to (RE: related document(s) 78 Motion Miscellaneous Relief). Filed by Creditor HSBC Bank USA, (Hamann, Anne) (Entered: 05/21/2010)
05/24/2010		203 (2 pgs)	Supplemental Declaration of Anne W. Hamann in Support of <i>Opposition to Debtors' Objection to Proof of Claim</i> (RE: related document(s) 78 Motion Miscellaneous Relief). Filed by Creditor HSBC Bank USA, (Hamann, Anne) (Entered: 05/24/2010)
05/24/2010		204 (3 pgs)	Amended Certificate of Service (RE: related document(s) 202 Supplemental Document, 203 Declaration). Filed by Creditor HSBC Bank USA, (Hamann, Anne) (Entered: 05/24/2010)
06/01/2010		206 (14 pgs)	Opposition To GMAC Loan Services, LLC, As Authorized Loan Servicing Agent For HSBC Bank, USA, National Association As Trustee For DALT2007-OA5'S 4th Amended Proof of Claim And A Declaration Of Daniel P. Catrino And Anne W. Hamann. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) Additional attachment(s) added on 6/7/2010 (mw). (Entered: 06/04/2010)
06/01/2010		207 (20 pgs)	Appendix of Exhibits. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) Additional attachment(s) added on 6/4/2010 (mw). (Entered: 06/04/2010)
06/02/2010		205 (66 pgs; 3 docs)	Supplemental Declaration of Anne W. Hamann in in support of <i>Opposition to Debtors' Objection to HSBC Bank's Proof of Claim</i> (RE: related document(s) 78 Motion Miscellaneous Relief, 80 Amended Application/Motion). Filed by Creditor HSBC Bank USA, (Attachments: 1 Exhibit 1 (Note) 2 Exhibit 2 (Deed of Trust)) (Hamann, Anne) (Entered: 06/02/2010)
06/10/2010		208 (2 pgs)	Certificate of Service of <i>Supplemental Declaration of Anne Hamann in Support of Opposition to Debtors' Objection to</i>

			<i>Proof of Claim</i> (RE: related document(s) 205 Declaration). Filed by Creditor HSBC Bank USA, (Hamann, Anne) (Entered: 06/10/2010)
06/10/2010		212 (16 pgs)	Opposition To Motion For Leave Of Court To File An Adversary Proceeding After The Deadline. (Appendix) (RE: related document(s) 197 Motion Miscellaneous Relief). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 06/11/2010)
06/10/2010		213 (7 pgs)	Opposition To Motion For Leave Of Court To File Adversary Proceeding After The Deadline. (RE: related document(s) 197 Motion Miscellaneous Relief). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 06/11/2010)
06/10/2010			Courtroom Hearing Held (RE: Motion Miscellaneous Relief - related document(s) 78) (Objection is overruled as to standing issue and validity of loan documents. Objection as to amount of the debt sustained in part and denied in part. Counsel for HSBC to submit an order.)(lp) (Entered: 06/11/2010)
06/11/2010		209 (11 pgs)	Request for Entry of Default Re: (RE: related document(s) 197 Motion Miscellaneous Relief). Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 06/11/2010)
06/11/2010		210 (11 pgs)	Declaration of Adam C. Kent in Support of <i>Request for Entry of Default Order</i> Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 06/11/2010)
06/11/2010		211 (4 pgs)	Certificate of Service of <i>Request for Entry of Default Order</i> Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 06/11/2010)
06/11/2010		214 (3 pgs)	Notice of Hearing (RE: related document(s) 197 Motion for leave to File Adversary Complaint after Deadline Filed by Creditor Zenaida Flores). Hearing scheduled for 6/25/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor Zenaida Flores (Kent, Adam) Modified on 6/14/2010 (mw). (Entered: 06/11/2010)
06/11/2010		215 (4 pgs)	Certificate of Service (RE: related document(s) 214 Notice of Hearing). Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 06/11/2010)
06/14/2010			**CORRECTIVE ENTRY** Court corrected hearing time

			from June 25, 2010 at 9:30 am to June 25, 2010 at 10:00 am to match PDF. (RE: related document(s) 214 Notice of Hearing). (mw) (Entered: 06/14/2010)
06/14/2010		216 (3 pgs)	Reply to(RE: related document(s) 213 <i>Opposition by Debtors for Motion for Leave to File Adversary complaint</i> Filed by Creditor Zenaida Flores (Kent, Adam) Modified on 6/15/2010 (mw). (Entered: 06/14/2010)
06/14/2010		217 (4 pgs)	Certificate of Service of <i>Reply to Opposition</i> Filed by Creditor Zenaida Flores (Kent, Adam) (Entered: 06/14/2010)
06/15/2010			**CORRECTIVE ENTRY** Court Corrected Linkage: Document # 216 linked to Dkt 213.(RE: related document(s) 216 Reply). (mw) Modified on 6/15/2010 (mw). (Entered: 06/15/2010)
06/17/2010			DOCKET TEXT ORDER (no separate order issued:) TENTATIVE RULING DENYING MOTION TO FILE ADVERSARY PROCEEDING AFTER DEADLINE. Moving Party Flores argues that the requirement to file a complaint to determine nondischargeability found in FRBP 4004 (the correct rule being 4007) applies to unsecured claims, not secured claims. She cites no authority for that distinction and the court knows of none. The court will therefore deny the motion. If counsel for Flores accepts this tentative ruling he should notify the courtroom deputy (Ms. Lorena Parada - 415-268-2323) and debtors by Wednesday, June 23, 2010, in which case the matter will be dropped from calendar and debtors should submit a proposed order denying the motion. If counsel instead elects to argue the motion on June 25, 2010, he should at that time provide the court with authority for proposition stated above.. (Montali, Dennis) (Entered: 06/17/2010)
06/18/2010		218 (50 pgs)	Operating Report for Filing Period May 1 - May 31, 2010 Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 06/18/2010)
06/25/2010			Hearing Dropped From Calendar (RE: Motion Miscellaneous Relief - related document(s) 197) (Matter taken off calendar prior to the hearing.)(lp) (Entered: 06/25/2010)
06/30/2010		219 (99 pgs; 4 docs)	Disclosure Statement Described Chapter 11 Plan & Chapter 11 Plan of Reorganization Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel . (Attachments: 1 part 22 part 33 part 4)(mw) Modified on 7/15/2010 (mw). (Entered: 06/30/2010)

			06/30/2010)
07/15/2010	220 (50 pgs; 7 docs)		Operating Report for Filing Period June 1 to June 30, 2010 Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 part 22 part 33 part 44 part 55 part 66 part 7) (mw) (Entered: 07/15/2010)
07/15/2010			Courtroom Hearing Continued (RE: Hearing Set - related document(s) []) (Continued to 8/5/2010 01:30 PM at San Francisco Courtroom 22 - Montali) (A continued chapter 11 status conference shall be held on 8/5/10 at 1:30 p.m.)(lp) (Entered: 07/15/2010)
07/28/2010	221 (14 pgs; 4 docs)		Objection to Confirmation of Plan Filed by Creditor BAC Home Loans Servicing, LP (Attachments: 1 Exhibit 1 of 22 Exhibit 2 of 23 Certificate of Service) (Prober, Dean) (Entered: 07/28/2010)
07/28/2010	222 (47 pgs; 11 docs)		Objection to Confirmation of Plan <i>with proof of service and exhibits</i> Filed by Creditor HSBC BANK U.S.A. as Trustee for DALT 2007-AO3 (Attachments: 1 Exhibit A-Note 2 Exhibit B-Deed 3 Exhibit C-Assignment 4 Exhibit D1-Broker Price Opinion 5 Exhibit D2-Broker Price Opinion 6 Exhibit D3-Broker Price Opinion 7 Exhibit D4-Broker Price Opinion 8 Exhibit D5-Broker Price Opinion 9 Exhibit D6-Broker Price Opinion 10 Certificate of Service) (Stephanie, Schiff) (Entered: 07/28/2010)
07/29/2010	223 (46 pgs; 6 docs)		Objection to Confirmation of Plan <i>with proof of service and exhibits</i> Filed by Creditor Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5, Mortgage Pass-Through Certi (Attachments: 1 Exhibit A-Note 2 Exhibit B-Deed 3 Exhibit C-Assignment 4 Exhibit D-Order 5 Certificate of Service) (Hamann, Anne) (Entered: 07/29/2010)
07/29/2010	224 (4 pgs)		Request for Notice <i>with proof of service</i> Filed by Creditor Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5, Mortgage Pass-Through Certi (Hamann, Anne) (Entered: 07/29/2010)
07/29/2010	225 (37 pgs;		Objection to Confirmation of Plan <i>with proof of service and exhibits</i> Filed by Creditor HSBC Bank USA, National

		5 docs)	Association as Trustee for DALT2007-OA5 (Attachments: 1 Exhibit A-Note 2 Exhibit B-Deed 3 Exhibit C-Assignment 4 Certificate of Service) (Hamann, Anne) (Entered: 07/29/2010)
07/30/2010		226 (4 pgs)	Motion to Convert Case to Chapter 7 Fee Amount \$15 (NO FILING FEE PAID OR SUBMITTED WITH MOTION) Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) NOTE: \$15.00 Conversion Filing Fee Paid by Debtor on 8/4/10. Modified on 8/4/2010 (mw). (Entered: 07/30/2010)
08/02/2010		227 (3 pgs; 2 docs)	Order Granting Motion to Convert Case to Chapter 7 (Related Doc # 226) Order Meeting of Creditors due by 8/16/2010. Financial Management Certificate due by 9/16/2010. (mw) (Entered: 08/04/2010)
08/04/2010			Trustee Janina M. Elder added to case (mw) (Entered: 08/04/2010)
08/04/2010			Meeting of Creditors 341(a) meeting to be held on 9/1/2010 at 03:30 PM San Francisco U.S. Trustee Office Last day to oppose discharge or dischargeability is 11/1/2010 Proofs of Claims due by 11/30/2010 (mw) (Entered: 08/04/2010)
08/04/2010		228 (4 pgs; 2 docs)	Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, and Deadlines (Generated) (mw) (Entered: 08/04/2010)
08/04/2010			Receipt of Conversion to Chapter 7 Filing Fee. Amount 15.00 from Erlinda Aniel. Receipt Number 30050966. (admin) (Entered: 08/04/2010)
08/04/2010		229 (3 pgs; 2 docs)	Order For Individual(s) In Chapter 7 And Chapter 13 Cases To File Required Documents After Case Conversion. (RE: related document(s) 226 Motion to Convert Case to Chapter 7 filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). (mw) (Entered: 08/05/2010)
08/05/2010			Deadlines Updated For Incomplete Filings Due. (RE: related document(s) 227 Order on Motion to Convert Case to Chapter 7, 229 Order). Incomplete Filings due by 8/18/2010. (mw) (Entered: 08/05/2010)
08/05/2010		241 (2 pgs)	Order Dismissing Appeal (RE: related document(s) 185 Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor

			Erlinda Abibas Aniel). (dc) (Entered: 09/10/2010)
08/06/2010		230 (7 pgs)	BNC Certificate of Mailing - Meeting of Creditors. (RE: related document(s) 228 Generate 341 Notices). Service Date 08/06/2010. (Admin.) (Entered: 08/06/2010)
08/06/2010		231 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 227 Order on Motion to Convert Case to Chapter 7). Service Date 08/06/2010. (Admin.) (Entered: 08/06/2010)
08/07/2010		232 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 229 Order). Service Date 08/07/2010. (Admin.) (Entered: 08/07/2010)
08/10/2010		233 (7 pgs)	Payment Advices Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 08/10/2010)
08/10/2010		234 (2 pgs)	Notice of Change of Address: Re: US Courts Bankruptcy Noticing Center-Undeliverable Notice. Filed by Joint Debtor Erlinda Abibas Aniel (mw) (Entered: 08/12/2010)
08/12/2010		235 (2 pgs)	Statement of Non-Payment of Title 28 Fees <i>with Certificate of Service</i> . (Tamanaha, Donna (at)) (Entered: 08/12/2010)
08/16/2010		236 (5 pgs)	Application to Employ MacConaghy & Barnier, PLC as Counsel by Chapter 7 Trustee <i>and Declaration of Proposed Counsel (w/proof of service) [UST stated no objection]</i> Filed by Trustee Janina M. Elder (Barnier, Jean) (Entered: 08/16/2010)
08/16/2010		237 (4 pgs; 2 docs)	Order Granting Application to Employ MacConaghy & Barnier, PLC as Counsel by Chapter 7 Trustee (Related Doc # 236) (dc) (Entered: 08/17/2010)
08/19/2010		238 (6 pgs; 2 docs)	Application to Employ Bachecki, Crom & Co., LLP as Accountant <i>(w/proof of service) [UST stated no objection]</i> Filed by Trustee Janina M. Elder (Attachments: 1 Declaration in Support of Application for Order Authorizing Employment of Accountant) (Barnier, Jean) (Entered: 08/19/2010)
08/19/2010		239 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 237 Order on Application to Employ). Service Date 08/19/2010. (Admin.) (Entered: 08/19/2010)
08/23/2010		240	Order Authorizing Employment Of Accountant. (Related Doc

		(4 pgs; 2 docs)	# 238 (mw) (Entered: 08/24/2010)
09/02/2010			Trustee's Initial Report & First Meeting Held (Elder, Janina) (Entered: 09/02/2010)
09/17/2010		242 (2 pgs; 2 docs)	Notice of Deficiency of Financial Management Course Certificate Due Before Discharge (admin) (Entered: 09/17/2010)
09/22/2010		243 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 242 Notice of Deficiency Financial Management Course). Service Date 09/22/2010. (Admin.) (Entered: 09/22/2010)
09/29/2010			Receipt of Amendment Filing Fee. Amount 26.00 from Fermin Solis Aniel. Receipt Number 30051400. (admin) (Entered: 09/29/2010)
09/29/2010		244 (2 pgs)	Financial Management Course Certificate. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/30/2010)
09/29/2010		245 (6 pgs)	Amended Schedule F . Fee Amount \$26 . Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/30/2010)
09/29/2010		246 (1 pg)	Amended Schedule C, . Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 09/30/2010)
10/12/2010			Receipt of Abandonment Filing Fee. Amount 150.00 from Erlinda Abibas Aniel. Receipt Number 30051500. (admin) (Entered: 10/12/2010)
10/12/2010		247 (3 pgs)	Motion to Compel Abandonment of Property Fee Amount \$150. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/14/2010)
10/12/2010		248 (2 pgs)	Notice of Hearing (RE: related document(s) 247 Motion to Compel Abandonment of Property Fee Amount \$150. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel). Hearing scheduled for 10/29/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/14/2010)

10/14/2010	<u>249</u> (6 pgs)	Motion to Shorten Time For Hearing On The Motion To Compel Trustee To Abandon Debtor's Properties. (RE: related document(s) <u>247</u> Motion to Compel filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel) . Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/14/2010)
10/18/2010	<u>250</u> (11 pgs; 2 docs)	Brief/Memorandum in Opposition to <i>Motion to Shorten Time for Hearing on the Motion to Compel Trustee to Abandon Debtors' Properties (w/proof of service)</i> (RE: related document(s) <u>249</u> Motion to Shorten Time). Filed by Trustee Janina M. Elder (Attachments: <u>1</u> Declaration of Monique Jewett-Brewster) (Jewett-Brewster, Monique) (Entered: 10/18/2010)
10/20/2010	<u>251</u> (3 pgs; 2 docs)	Order Denying Debtors' Request For Shortened Time. (Related Doc # <u>249</u>) (mw) (Entered: 10/21/2010)
10/21/2010		Hearing Set By Clerk, Per Order 10/20/10. (RE: related document(s) <u>247</u> Motion to Compel Abandonment of Property Fee Amount \$150.). Hearing scheduled for 11/12/2010 at 10:00 AM at San Francisco Courtroom 22 - Montali. (mw) (Entered: 10/21/2010)
10/22/2010	<u>253</u> (2 pgs)	Debtors' Request To Attend Hearing Telephonically On Motion To Compel The Trustee To Abandon Properties. (RE: related document(s) <u>247</u> Motion to Compel). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (mw) (Entered: 10/25/2010)
10/23/2010	<u>252</u> (3 pgs)	BNC Certificate of Mailing (RE: related document(s) <u>251</u> Order on Motion to Shorten Time). Service Date 10/23/2010. (Admin.) (Entered: 10/23/2010)
10/28/2010	<u>254</u> (5 pgs)	Adversary case <u>10-03187</u> . 62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud) Complaint by Zenaida Flores against Fermin Solis Aniel, Erlinda Aribas Aniel. Fee Amount \$ 250. (Kent, Adam) (Entered: 10/28/2010)
10/29/2010	<u>255</u> (4 pgs)	Response to <i>Motion to Compel Trustee to Abandon Debtors' Properties</i> (RE: related document(s) <u>247</u> Motion to Compel). Filed by Trustee Janina M. Elder (Jewett-Brewster, Monique) (Entered: 10/29/2010)

10/29/2010	256 (108 pgs; 8 docs)	Declaration of Janina M. Elder in Support of <i>Trustee's Response to Motion to Compel Trustee To Abandon Debtors' Properties (w/proof of service)</i> (RE: related document(s) 247 Motion to Compel). Filed by Trustee Janina M. Elder (Attachments: 1 Exhibit 12 Exhibit 2 3 Exhibit 34 Exhibit 45 Exhibit 56 Exhibit 67 Exhibit 7) (Jewett-Brewster, Monique) (Entered: 10/29/2010)
10/29/2010		Courtroom Hearing Continued (RE: Motion to Compel - related document(s) 247) (Continued to 11/12/2010 10:00 AM at San Francisco Courtroom 22 - Montali) (lp) (Entered: 10/29/2010)
11/02/2010	257 (4 pgs; 2 docs)	Order Authorizing Abandonment Of Property. (RE: related document(s) 247 Granting Motion to Compel filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). (mw) (Entered: 11/02/2010)
11/04/2010	258 (48 pgs; 9 docs)	Motion for Relief from Stay RS #CJR-1375, Fee Amount \$150, Filed by Creditor GMAC Mortgage, LLC (Attachments: 1 Declaration 2 Exhibit A3 Exhibit B4 Exhibit C5 Exhibit D6 Exhibit E7 Certificate of Service 8 RS Cover Sheet) (Rankin, Casper) (Entered: 11/04/2010)
11/04/2010	259 (2 pgs)	Notice of Hearing (RE: related document(s) 258 Motion for Relief from Stay RS #CJR-1375, Fee Amount \$150, Filed by Creditor GMAC Mortgage, LLC). Hearing scheduled for 12/2/2010 at 09:30 AM at San Francisco Courtroom 22 - Montali. Filed by Creditor GMAC Mortgage, LLC (Rankin, Casper) (Entered: 11/04/2010)
11/04/2010		Receipt of filing fee for Motion for Relief From Stay(09-30452) [motion,mrlfsty] (150.00). Receipt number 12066333, amount \$ 150.00 (U.S. Treasury) (Entered: 11/04/2010)
11/04/2010	260 (4 pgs)	BNC Certificate of Mailing (RE: related document(s) 257 Order Granting Related Motion/Application). Service Date 11/04/2010. (Admin.) (Entered: 11/04/2010)
11/18/2010	261 (48 pgs; 3 docs)	Opposition To Motion For Relief From Stay. (RE: related document(s) 258 Motion for Relief From Stay). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (Attachments: 1 part 22 part 3) (mw) (Entered: 11/22/2010)
12/01/2010	262 (3 pgs)	Notice of Appearance and Request for Notice by Melodie A. Whitson. Filed by Creditor GMAC Mortgage, LLC (Whitson,


			Melodie) (Entered: 12/01/2010)
12/02/2010		263 (4 pgs; 2 docs)	Order Discharging Debtor (RE: related document(s) Meeting of Creditors Chapter 7 Asset). (dc) (Entered: 12/02/2010)
12/02/2010			Courtroom Hearing Held (RE: Motion for Relief From Stay - related document(s) 258) (Motion denied as moot. The court shall issue an order.)(lp) (Entered: 12/02/2010)
12/02/2010		264 (3 pgs; 2 docs)	Order Regarding Motion For Relief From Stay. (RE: related document(s) 258 Motion for Relief From Stay filed by Creditor GMAC Mortgage, LLC). (mw) (Entered: 12/03/2010)
12/04/2010		265 (4 pgs)	BNC Certificate of Mailing - Order of Discharge. (RE: related document(s) 263 Order Discharging Debtor). Service Date 12/04/2010. (Admin.) (Entered: 12/04/2010)
12/05/2010		266 (3 pgs)	BNC Certificate of Mailing (RE: related document(s) 264 Order). Service Date 12/05/2010. (Admin.) (Entered: 12/05/2010)
12/13/2010		267 (1 pg)	Notice Regarding <i>Trustee Name Change</i> Filed by Trustee Janina M. Hoskins (Hoskins, Janina) (Entered: 12/13/2010)
02/03/2011			Chapter 7 Trustee's Report of No Distribution: I, Janina M. Hoskins, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 6 months. Assets Abandoned (without deducting any secured claims): \$ 5615808.00, Assets Exempt: Not Available, Claims Scheduled: \$ 8965115.85, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \$ 8965115.85. Meeting of Creditors Held. (Hoskins, Janina) (Entered: 02/03/2011)

02/04/2011	268 (2 pgs; 2 docs)	Final Decree . (mw) (Entered: 02/04/2011)
02/04/2011	269 (2 pgs; 2 docs)	Final Decree . (mw) Duplicate Entry, No Notice Generated. Modified on 2/4/2011 (mw). (Entered: 02/04/2011)
02/04/2011		Bankruptcy Case Closed. (mw) (Entered: 02/04/2011)
02/06/2011	270 (2 pgs)	BNC Certificate of Mailing (RE: related document(s) 268 Final Decree). Service Date 02/06/2011. (Admin.) (Entered: 02/06/2011)
03/22/2012		Adversary Case Closed 3:10-ap-3187. (rw) (Entered: 03/22/2012)
06/18/2012	272 (3 pgs)	Certification of Debtors' Discharge (RE: related document(s) 271 Order). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (rw) (Entered: 06/22/2012)
06/20/2012	271 (4 pgs; 2 docs)	Order Denying Debtors' Requested Certifications Regarding Effect Of Discharge On Secured Debts (rw) (Entered: 06/21/2012)
06/23/2012	273 (5 pgs)	BNC Certificate of Mailing (RE: related document(s) 271 Order). Notice Date 06/23/2012. (Admin.) (Entered: 06/23/2012)
06/28/2012	274 (4 pgs)	Motion To Vacate Sua Sponte Order On Certification Of Discharge (RE: related document(s) 271 Order) . Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (rw) (Entered: 06/29/2012)
07/02/2012	275 (5 pgs; 2 docs)	Order Denying Motion To Vacate Order (Related Doc # 274) (rw) (Entered: 07/03/2012)
07/05/2012	276 (6 pgs)	BNC Certificate of Mailing (RE: related document(s) 275 Order on Motion to Vacate). Notice Date 07/05/2012. (Admin.) (Entered: 07/05/2012)
07/13/2012		Receipt of Appeal Filing Fee. Amount 298.00 from Marc Jason Aniel. Receipt Number 30056382. (admin) (Entered: 07/13/2012)


07/13/2012	<u>277</u> (2 pgs)	Notice of Appeal to District Court , Fee Amount \$ 298. (RE: related document(s) <u>275</u> Order on Motion to Vacate). Appellant Designation due by 7/27/2012. Transmission to District Court due by 8/13/2012. Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (ac) (Entered: 07/16/2012)
07/13/2012	<u>278</u> (1 pg)	Statement of Election to District Court, (RE: related document(s) <u>277</u> Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). Filed by Joint Debtor Erlinda Abibas Aniel , Debtor Fermin Solis Aniel (ac) (Entered: 07/16/2012)
07/17/2012	<u>279</u> (1 pg)	Courts Certificate of Mailing. Number of notices mailed: 3 (RE: related document(s) <u>277</u> Notice of Appeal, <u>278</u> Statement of Election on Appeal). Court Certificate of Mailing. (ac) (Entered: 07/17/2012)
07/17/2012	<u>280</u> (1 pg)	Transmittal of Record on Appeal to District Court (RE: related document(s) <u>277</u> Notice of Appeal). (ac) (Entered: 07/17/2012)
07/20/2012	<u>283</u> (3 pgs)	Return of Record from District Court, (RE: related document(s) <u>277</u> Notice of Appeal). Case No. is C-12-03794 JSW. (ac) (Entered: 07/24/2012)
07/21/2012	<u>281</u> (4 pgs)	Appellant Designation of Contents For Inclusion in Record On Appeal <i>Appellants' Election to submit its own Appendix of Record</i> (RE: related document(s) <u>277</u> Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). Appellee designation due by 08/6/2012. Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Aniel, Marc) (Entered: 07/21/2012)
07/21/2012	<u>282</u> (3 pgs)	Statement of Issues on Appeal, (RE: related document(s) <u>277</u> Notice of Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel, <u>278</u> Statement of Election on Appeal filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel, <u>281</u> Appellant Designation filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Aniel, Marc) (Entered: 07/21/2012)
08/16/2012	<u>284</u> (1 pg)	Certificate of Readiness Re: District Court Case C12-03794 JSW (RE: related document(s) <u>277</u> Notice of Appeal). (ac) (Entered: 08/16/2012)



08/16/2012	<u>285</u> (1 pg)	Courts Certificate of Mailing. Number of notices mailed: 3 (RE: related document(s) <u>284</u> Certificate of Readiness). (ac) (Entered: 08/16/2012)
08/16/2012	<u>286</u> (1 pg)	Transmittal to District Court Case No. C12-03794 JSW. (RE: related document(s) <u>281</u> Appellant Designation, <u>282</u> Statement of Issues on Appeal, Court Entry, <u>285</u> Court Certificate of Mailing). (ac) (Entered: 08/16/2012)
04/09/2013	<u>287</u> (3 pgs)	Appeal Pending at 9th Circuit of Appeals Regarding Court of Appeals Case Number: 13-15528 (RE: related document(s) <u>277</u> Notice of Appeal). (ac) (Entered: 10/02/2013)
02/03/2014	<u>288</u> (4 pgs)	Motion to Reopen Chapter 7 Case . Fee Amount \$260 Filed by Joint Debtor Erlinda Abibas Aniel (Aniel, Marc) (Entered: 02/03/2014)
02/03/2014		Receipt of filing fee for Motion to Reopen Chapter 7/13 Case(09-30452) [motion,mreop713] (260.00). Receipt number 21789154, amount \$ 260.00 (re: Doc# <u>288</u> Motion to Reopen Chapter 7 Case . Fee Amount \$260) (U.S. Treasury) (Entered: 02/03/2014)
02/03/2014	<u>289</u> (3 pgs)	Certificate of Service <i>Proposed Order</i> (RE: related document(s) <u>288</u> Motion to Reopen Chapter 7/13 Case, Receipt). Filed by Joint Debtor Erlinda Abibas Aniel (Aniel, Marc)ERROR: Orders are to be uploaded to chambers. Modified on 2/5/2014 (ac). (Entered: 02/03/2014)
02/05/2014	<u>290</u> (6 pgs; 2 docs)	Supplemental Document in support (RE: related document(s) <u>288</u> Motion to Reopen Chapter 7/13 Case). Filed by Joint Debtor Erlinda Abibas Aniel (Attachments: # <u>1</u> Exhibit "A") (Aniel, Marc) (Entered: 02/05/2014)
02/05/2014		**ERROR** Orders are to be uploaded to chambers. (RE: related document(s) <u>289</u> Certificate of Service). (ac) (Entered: 02/05/2014)
02/06/2014	<u>291</u> (4 pgs; 2 docs)	Order Granting Motion To Reopen Chapter 7/13 Case (Related Doc # <u>288</u>) (bg) (Entered: 02/10/2014)
02/11/2014	<u>292</u> (4 pgs; 2 docs)	Amended Schedule B,. Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Attachments: # <u>1</u> Schedule B Attachment) (Aniel, Marc) (Entered: 02/11/2014)

02/13/2014	<u>293</u> (2 pgs)	Appointment of Trustee and Approval of Bond <i>with Certificate of Service attached.</i> (Tamanaha, Donna) (Entered: 02/13/2014)
04/02/2014	<u>294</u> (4 pgs)	Motion to Compel Abandonment of Property Fee Amount \$176. Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Aniel, Marc) (Entered: 04/02/2014)
04/02/2014		Receipt of filing fee for Motion to Compel(09-30452) [motion,mcmpe] (176.00). Receipt number 22196752, amount \$ 176.00 (re: Doc# <u>294</u> Motion to Compel Abandonment of PropertyFee Amount \$176.) (U.S. Treasury) (Entered: 04/02/2014)
04/02/2014	<u>295</u> (3 pgs)	Notice of Hearing (RE: related document(s) <u>294</u> Motion to Compel Abandonment of Property Fee Amount \$176. Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel). Hearing scheduled for 5/2/2014 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Aniel, Marc) (Entered: 04/02/2014)
04/04/2014	<u>296</u> (2 pgs)	Notice of Appearance and Request for Notice by Jean Barnier. Attorney Monique Jewett-Brewster terminated. Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 04/04/2014)
04/07/2014	<u>297</u> (4 pgs)	Application to Employ MacConaghy & Barnier, PLC as Counsel for Chapter 7 Trustee ; <i>Declaration of Proposed Counsel (w/proof of service)</i> Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 04/07/2014)
04/07/2014	<u>298</u> (2 pgs)	Order Granting Application to Employ MacConaghy & Barnier, PLC (Related Doc # <u>297</u>) (bg) (Entered: 04/08/2014)
04/16/2014	<u>299</u> (6 pgs; 2 docs)	Brief/Memorandum in Opposition to <i>Debtors' Motion to Compel Trustee to Abandon Debtors' Properties (w/proof of service)</i> (RE: related document(s) <u>294</u> Motion to Compel). Filed by Trustee Janina M. Hoskins (Attachments: # <u>1</u> Declaration of Trustee in Support Thereof) (Barnier, Jean) (Entered: 04/16/2014)
04/24/2014	<u>300</u> (5 pgs)	Reply (RE: related document(s) <u>294</u> Motion to Compel, <u>295</u> Notice of Hearing, <u>299</u> Opposition Brief/Memorandum). Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Aniel, Marc) (Entered: 04/24/2014)

			04/24/2014)
05/02/2014			Hearing held and continued. Debtors to supplement the motion consistent with the comments made on the record by 5/16/14. The supplement is to include a brief summary of the nature of the lawsuit and its status. Creditors of the bankruptcy estate are to be given notice of the supplement. The trustee to file a response by 6/16/14. Mr. Marc Aniel is directed to contact the trustee or trustee's counsel to discuss the strengths and weaknesses of the case. (related document(s): 294 Motion to Compel filed by Erlinda Abibas Aniel, Fermin Solis Aniel) Hearing scheduled for 06/19/2014 at 11:00 AM at San Francisco Courtroom 22 - Montali. (lp) (Entered: 05/05/2014)
05/05/2014		301 (1 pg)	 PDF with attached Audio File. Court Date & Time [5/2/2014 10:10:08 AM]. File Size [6856 KB]. Run Time [00:28:34]. (admin). (Entered: 05/05/2014)
05/16/2014		302 (13 pgs; 2 docs)	Supplemental Document <i>Motion to Compel</i> in support (RE: related document(s) 294 Motion to Compel, 295 Notice of Hearing, 299 Opposition Brief/Memorandum, 300 Reply, Hearing Continued/Rescheduled, 301 audio). Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Attachments: # 1 Declaration) (Aniel, Marc) (Entered: 05/16/2014)
05/22/2014		303 (15 pgs)	Application to Compromise Controversy with Bank of America, N.A. <i>includes Declaration of Trustee in Support Thereof</i> Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 05/22/2014)
05/22/2014		304 (6 pgs)	Notice and Opportunity for Hearing <i>of Trustee's Motion for Authority to Compromise Controversy (w/proof of service)</i> (RE: related document(s) 303 Application to Compromise Controversy with Bank of America, N.A. <i>includes Declaration of Trustee in Support Thereof</i> Filed by Trustee Janina M. Hoskins). Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 05/22/2014)
05/22/2014		305 (2 pgs)	Motion to Abandon <i>Interest in Estate Assets</i> Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 05/22/2014)
05/22/2014		306	Notice and Opportunity for Hearing <i>of Trustee's Motion to</i>

		(6 pgs)	<i>Abandon Interest in Estate Assets (w/proof of service)</i> (RE: related document(s) 305 Motion to Abandon <i>Interest in Estate Assets</i> Filed by Trustee Janina M. Hoskins). Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 05/22/2014)
06/11/2014		307 (2 pgs)	Motion for Entry of Default <i>Order Authorizing Abandonment of Interests in Estate Assets</i> (RE: related document(s) 305 Motion to Abandon filed by Trustee Janina M. Hoskins, 306 Opportunity for Hearing filed by Trustee Janina M. Hoskins). Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 06/11/2014)
06/11/2014		308 (16 pgs; 3 docs)	Objection (RE: related document(s) 304 Opportunity for Hearing). Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Attachments: # 1 Exhibit # 2 Declaration) (Aniel, Marc) (Entered: 06/11/2014)
06/11/2014		309 (3 pgs)	Notice of Hearing (RE: related document(s) 303 Application to Compromise Controversy with Bank of America, N.A. <i>includes Declaration of Trustee in Support Thereof</i> Filed by Trustee Janina M. Hoskins, 308 Objection (RE: related document(s) 304 Opportunity for Hearing). Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Attachments: # 1 Exhibit # 2 Declaration)). Hearing scheduled for 7/18/2014 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Aniel, Marc) (Entered: 06/11/2014)
06/11/2014		311 (2 pgs)	Order Authorizing Abandonment of Interests in Estate Assets (Related Doc # 305) (bg) (Entered: 06/13/2014)
06/12/2014		310 (2 pgs)	Notice of Hearing <i>on Trustee's Motion to Compromise Controversy (w/proof of service)</i> (RE: related document(s) 308 Objection (RE: related document(s) 304 Opportunity for Hearing). Filed by Joint Debtor Erlinda Abibas Aniel, Debtor Fermin Solis Aniel (Attachments: # 1 Exhibit # 2 Declaration)). Hearing scheduled for 7/11/2014 at 10:00 AM at San Francisco Courtroom 22 - Montali. Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 06/12/2014)
06/13/2014			Hearing Dropped. Hearing on 7/18/14 at 10:00 a.m. is taken off calendar. (related document(s): 303 Application to Compromise Controversy filed by Janina M. Hoskins) (lp) (Entered: 06/13/2014)

06/13/2014			Hearing Set On (RE: related document(s) 303 Application to Compromise Controversy with Bank of America, N.A. <i>includes Declaration of Trustee in Support Thereof</i>). Hearing scheduled for 7/11/2014 at 10:00 AM at San Francisco Courtroom 22 - Montali. (lp) (Entered: 06/13/2014)
06/19/2014		312 (1 pg)	 PDF with attached Audio File. Court Date & Time [6/19/2014 10:42:17 AM]. File Size [3372 KB]. Run Time [00:14:03]. (admin). (Entered: 06/19/2014)
06/19/2014		313 (2 pgs)	Order Authorizing Abandonment of Interests in Estate Assets (RE: related document(s) 302 Supplemental Document filed by Debtor Fermin Solis Aniel, Joint Debtor Erlinda Abibas Aniel). (bg) (Entered: 06/23/2014)
06/19/2014			Hearing held and continued. The abandonment is approved as to the claims against the parties who are involved in the pending appeal. The matter is continued to 7/11/14 at 10:00 a.m. as to the remaining claim against Bank of American only. Mr. Aniel to upload an order after Ms. Barnier signs off. (related document(s): 294 Motion to Compel filed by Erlinda Abibas Aniel, Fermin Solis Aniel) Hearing scheduled for 07/11/2014 at 10:00 AM at San Francisco Courtroom 22 - Montali. (lp) (Entered: 06/25/2014)
06/27/2014			Hearing Dropped. Hearing terminated as duplicate. (related document(s): 308 Objection filed by Erlinda Abibas Aniel, Fermin Solis Aniel) (lp) (Entered: 06/27/2014)
07/11/2014			Hearing Held. Debtors' objection is overruled. By the close of business on 7/21/14, debtors are to deliver \$15,000 or any lesser amount the trustee through counsel accepts. If the money is not received, counsel for the trustee may upload two orders and an A&C analysis. (related document(s): 303 Application to Compromise Controversy filed by Janina M. Hoskins) (lp) (Entered: 07/11/2014)
07/11/2014			Hearing Held. Decision of the motion is deferred pending the outcome of the Motion Authorizing Compromise. The motion will be denied if debtors tender a payment to the trustee or, the motion will be deemed moot if the payment is made. (related document(s): 294 Motion to Compel filed by Erlinda Abibas Aniel, Fermin Solis Aniel) (lp) (Entered: 07/11/2014)

07/11/2014	314 (1 pg)	 PDF with attached Audio File. Court Date & Time [7/11/2014 10:14:56 AM]. File Size [4208 KB]. Run Time [00:17:32]. (admin). (Entered: 07/11/2014)
07/11/2014	315 (1 pg)	 PDF with attached Audio File. Court Date & Time [7/11/2014 10:44:58 AM]. File Size [1820 KB]. Run Time [00:07:35]. (admin). (Entered: 07/11/2014)
07/23/2014	316 (3 pgs)	Supplemental Declaration of Janina M. Hoskins in Support of <i>Motion for Order Authorizing Compromise of Controversy</i> (RE: related document(s) 303 Application to Compromise Controversy). Filed by Trustee Janina M. Hoskins (Barnier, Jean) (Entered: 07/23/2014)
07/25/2014	317 (2 pgs)	Order Re: Debtors' Motion to Compel Trustee to Abandon Debtors' Properties (Related Doc # 294) (bg) (Entered: 07/28/2014)
07/25/2014	318 (2 pgs)	Order Granting Application to Compromise Controversy with Bank of America, N.A. (Related Doc # 303) (bg) (Entered: 07/28/2014)
11/05/2014	319 (8 pgs; 2 docs)	Final Application for Compensation <i>by Attorney for Chapter 7 Trustee; includes Declaration in Support Thereof [Short Form]</i> for Jean Barnier, Trustee's Attorney, Fee: \$5,000.00, Expenses: \$284.27. Filed by Attorney Jean Barnier (Attachments: # 1 Time Record) (Barnier, Jean) (Entered: 11/05/2014)

PACER Service Center

Transaction Receipt

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Exhibit K

Case: 09-30452 Doc# 17 Filed: 03/24/09 Entered: 03/24/09 11:46:04 Page 1 of 47

Voluntary Petition (This page must be completed and filed in every case)		Name of Debtor(s): ANIEL, FERMIN & ERLINDA	
All Prior Bankruptcy Case Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:		Case Number:	Date Filed:
Location Where Filed:		Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:		Case Number:	Date Filed:
District:		Relationship:	Judge:
<div style="text-align: center;">Exhibit A</div> (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		<div style="text-align: center;">Exhibit B</div> (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b). <div style="display: flex; justify-content: space-between;"> <div> X <u>/s/ Sydney Jay Hall</u> Sydney Jay Hall </div> <div> March 3, 2009 Date </div> </div>	
<div style="text-align: center;">Exhibit C</div> Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No			
<div style="text-align: center;">Exhibit D</div> (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input checked="" type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
<div style="text-align: center;">Information Regarding the Debtor - Venue</div> <div style="text-align: center;">(Check any applicable box.)</div> <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<div style="text-align: center;">Certification by a Debtor Who Resides as a Tenant of Residential Property</div> <div style="text-align: center;">(Check all applicable boxes.)</div> <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="text-align: right; margin-right: 100px;"> _____ (Name of landlord that obtained judgment) </div> <div style="text-align: right; margin-right: 100px;"> _____ (Address of landlord) </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgement for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(1)).			

Voluntary Petition (This page must be completed and filed in every case)	Name of Debtor(s): ANIEL, FERMIN & ERLINDA
Signatures	
<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p>[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under Chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X <u>/s/ Fermin A. Aniel</u> Signature of Debtor</p> <p>X <u>/s/ Erlinda Aniel</u> Signature of Joint Debtor</p> <p>_____ Telephone Number (If not represented by attorney)</p> <p>_____ March 3, 2009</p> <p>_____ Date</p>	<p style="text-align: center;">Signature of a Foreign Representative</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.</p> <p><input type="checkbox"/> Pursuant to § 1511 of title 11, United States Code, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p> <p>_____ Date</p>
<p style="text-align: center;">Signature of Attorney*</p> <p>X _____ /S/ SYDNEY JAY HALL SYDNEY JAY HALL, Esq. Printed Name of Attorney for Debtor(s) LAW OFFICE OF SYDNEY JAY HALL Firm Name 1308 BAYSHORE HIGHWAY, SUITE 220 Address BURLINGAME, CA 94010 _____ (650) 3421830 Telephone Number _____ March 3, 2009 Date</p> <p>* In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</p>	<p style="text-align: center;">Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notice and information required under 11 U.S.C. 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.)(Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>_____ X _____ Date</p> <p>Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.</p>
<p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>_____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>	

[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit "A" shall be completed and attached to the petition.]

EXHIBIT "A" TO VOLUNTARY PETITION

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is .

2. The following financial data is the latest available information and refers to the debtor's condition on .

a. Total assets \$ _____

b. Total debts (including debts listed in 2.c., below) \$ _____

				Approximate number of holders	
c. Debt securities held by more than 500 holders.					
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$ _____	_____	
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$ _____	_____	
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$ _____	_____	
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$ _____	_____	
<input type="checkbox"/> Secured	<input type="checkbox"/> Unsecured	<input type="checkbox"/> Subordinated	\$ _____	_____	
d. Number of shares of preferred stock _____					
e. Number of shares of common stock _____					

Comments, if any:

3. Brief description of debtor's business:

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:

UNITED STATES BANKRUPTCY COURTIn Re: ANIEL, FERMIN & ERLINDA
DebtorCase No. 09-30452
(if known)Chapter 11**AMENDED
SUMMARY OF SCHEDULES**

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	2	\$8,020,000.00		
B - Personal Property	Yes	5	\$133,799.00		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	3		\$8,760,000.00	
E - Creditors Holding Unsecured Priority Claims	Yes	2			
F - Creditors Holding Unsecured Nonpriority Claims	Yes	5		\$242,882.25	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			20,333.07
J - Current Expenditures of Individual Debtor(s)	Yes	1			14,258.00
TOTAL		22	\$8,153,799.00	\$9,002,882.25	

UNITED STATES BANKRUPTCY COURTIn Re: ANIEL, FERMIN & ERLINDA
DebtorCase No. 09-30452
(if known)Chapter 11**STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)**

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)(whether disputed or undisputed)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	20,333.07
Average Expenses (from Schedule J, Line 18)	14,258.00
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" COLUMN		\$1,424,006.25
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column.		
4. Total from Schedule F		\$242,882.25
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		\$1666888.50

DECLARATION CONCERNING DEBTOR(S) SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of sheets (total shown on summary page plus 2), and that they are true and correct to the best of my knowledge, information, and belief.

March 3, 2009

/s/ Fermin A. Aniel

Date

Signature of Debtor

March 3, 2009

/s/ Erlinda Aniel

Date

Signature of Joint Debtor

* * * * *

DECLARATION AND SIGNATURE OF BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section; and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social-Security No. (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person or partner who signs this document.

Address

X

Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of Title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

* * * * *

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, _____ named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary of schedules, consisting of sheets (total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date

Signature of Authorized Individual

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. § 152 and 3571.

Debtor

(if known)

AMENDED SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint or Community". If the debtor holds no interest in real property, write "None" under "Description and Location of Property".

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim".

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption	Amount of Secured Claim
75 TOBIN CLARK DRIVE HILLSBOROUGH, CA 94010	Fee simple	C	2,550,000.00	\$2,550,000.00
833 CLEARFIELD DRIVE MILLBRAE, CA 94030	Fee simple	H	1,200,000.00	\$1,599,366.00
1061 SYCAMORE D RIVE MILLBRAE, CA 94030	Fee simple	J	1,070,000.00	\$1,219,000.00
3 FAIRMONT DRIVE DALY CITY, CA 94015	Fee simple	J	650,000.00	\$713,996.36

In Re:

ANIEL, FERMIN & ERLINDA

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Case No.

09-30452

Debtor

(if known)

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption	Amount of Secured Claim
418 PERSIA AVE. SAN FRANCISCO, CA 94112	Fee simple	C	510,000.00	\$772,000.00
1881 EARL AVENUE SAN BRUNO, CA 94066	Fee simple	C	740,000.00	\$900,000.00
801 FOOTHILL DRIVE SAN MATEO CA 94022	Fee simple	C	1,300,000.00	\$1,350,000.00
	Fee simple			
	Fee simple			
	Fee simple			
	Fee simple			
	Fee simple			
	Fee simple			
Total			\$8,020,000.00	

In Re:

ANIEL, FERMIN & ERLINDA

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Case No.

09-30452

Debtor

(if known)

AMENDED SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None". If additional space is needed in any category, attach a separate sheet properly identified with the same case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint or Community". If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state the person's name and address under "Description and Location of Property".

If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, CD's, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses or cooperatives.		CITIBANK CHECKING [REDACTED] 0141 CITIBANK CHECKING CITIBANK SAVINGS	C	\$549.00 \$450.00 \$1,300.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		FURNITURES, COMPUTER, RUGS & FURNISHINGS, PIANO	C	\$10,000.00

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.		WATCH AND JEWELRY	C	\$10,000.00
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X		C	
10. Annuities. Itemize and name each issuer.	X		C	
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars.	X			
12. Interest in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		THRIFT & SAVINGS PLAN	I	\$30,000.00
		FEDERAL RETIREMENT USPS		\$63,000.00

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.		SAVINGS BOND	C	\$1,500.00
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in real estate of a decedent, death benefit plan, life insurance policy, or trust.	X			

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
21. Other contingent or unliquidated claims of every nature, including tax refunds, counter-claims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		LEXUS 1999 RX300 MERCEDES 2003 ML500	C	\$7,000.00 \$10,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			

In Re:

ANIEL, FERMIN & ERLINDA

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Case No.

09-30452

Debtor

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
Total				\$88,299.00

Debtor

(if known)

AMENDED
SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:

(Check one box)

☒ Check if debtor claims a homestead exemption that exceeds \$136,875.

☒ 11 U.S.C. § 522(b)(2)☐ 11 U.S.C. § 522(b)(3)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption

Debtor

(if known)

AMENDED

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

Creditor's Name and Mailing Address Including Zip Code	Codebtor Husband, Wife, Joint, or Community	Date Claim was Incurred, Nature of Lien, and Description and Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
8492 GMAC 3451 HAMMOND AVE. WATERLO, IA 59704	C	JUNE 4,2007 DEED OF TRUST (1ST LIEN) VALUE \$ 2,550,000.00	X	X	X	2,000,000.00	63,840.37
8492 WASHINGTON MUTUAL PO BOX 78065 PHOENIX, ARIZONA 85062-8065	H	JUNE 4, 2007 HELOC VALUE \$	X	X	X	500,000.00	10,663.10
Account Number: 0531 AURORA LOAN SERVICES 2617 COLLEGE PARK DRIVE NE, 69363-1706	H	NOVEMBER 23, 2005 DEED OF TRUST (1ST LIEN) VALUE \$	X	X	X	1,000,000.00	36,894.78
Subtotal (Total of this page)						\$3,500,000.00	\$111,398.25
Total (Use only on last page)							

(Report also on
Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

2 continuation sheets attached

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code	Codebtor Husband, Wife, Joint, or Community	Date Claim was Incurred, Nature of Lien, and Description and Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
8409 INDYMAC FEDERAL BANK PO BOX 4045 KALAMAZOO, MICHIGAN 49003	C	JULY 2005 HELOC VALUE \$	X	X	X	250,000.00	250,000.00
Account Number: PRIVATE ZENAIDA FLORES C/O PROPERTY SERVICES 1499 BALTIMORE HIWAY 126 BURLINGAME, 94010	H	DEED OF TRUST 2ND LOAN VALUE \$ 1,200,000.00	X	X	X	247,000.00	950.00
Account Number: 1153 EMC PO BOX 619063 DALLAS, TX 75261-9063	H	OCTOBER 2006 DEED OF TRUST VALUE \$ 1,070,000.00	X	X	X	1,000,000.00	45,000.00
Account Number: 6183 NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981	H	FEBRUARY 2006 HELOC VALUE \$ 170,000.00	X	X	X	180,000.00	180,000.00
Account Number: 6580 AHMSI PO BOX 631730 IRVING, TX 75063-1730	C	APRIL 2007 DEED OF TRUST 1ST LOAN VALUE \$ 510,000.00	X	X	X	676,000.00	30,000.00
Account Number: 5390 NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981	C	APRIL 2007 HELOC VALUE \$ 510,000.00	X	X		75,000.00	75,000.00
Account Number: 6212 COUNTRYWIDE PO BOX 10219 VANNUYS,CA 91410-0219	C	FEBRU DEED OF TRUST VALUE \$ 650,000.00	X	X	X	497,000.00	21,168.00
Subtotal (Total of this page)						\$2,925,000.00	\$602,118.00
Total (Use only on last page)							

(Report also on
Summary of
Schedules.)(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

In Re:

ANIEL, FERMIN & ERLINDA

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Case No.

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred, Nature of Lien, and Description and Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
Account Number: [REDACTED] 0505 CITIBANK PO BOX 790110 MS 504A ST. LOUIS, MO 63179-0110	C	FEBRUARY 2006 HELOC VALUE \$ 650,000.00	X	X	X	223,000.00	223,000.00
Account Number: [REDACTED] 8053 LITTON LOAN SERVICING 4828 LOOP CENTRAL DRIVE HOUSTON, TX 77081	X J	AUGUST 9, 2 006 1ST LOAN VALUE \$ 740,000.00	X	X	X	712,500.00	83,990.00
Account Number: UNKNOWN BANK OF AMERICA NC4-105-03-14 4161 PIEDMONT PARKWAY GREENSBOROUGH, NC 27410	X J	AUGUST 9, 2006 HELOC VALUE \$ 740,000.00	X	X	X	142,500.00	142,500.00
Account Number: [REDACTED] 1440 GMAC 2711 NORTH HUSKELL AVE. DALLAS, TEXAS 75201	X C	MARCH 22, 2007 DEED OF TRUST 1ST LIEN VALUE \$ 1,300,000.00	X	X	X	1,021,000.00	25,000.00
Account Number: UNKNOWN NATIONAL CITY PO BOX 856153 LOUSEVILLE, KENTUCKY 40285-6153	X C	APRIL 2, 2007 HELOC VALUE \$	X	X	X	236,000.00	236,000.00
Account Number:							
		VALUE \$					
Account Number:							
		VALUE \$					
Subtotal (Total of this page)						\$2,335,000.00	\$710,490.00
Total (Use only on last page)						\$8,760,000.00	\$1,424,006.25

(Report also on
Summary of
Schedules.)(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)Sheet no. 2 of 2 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

In Re:

ANIEL, FERMIN & ERLINDA

Pg 20 of 48

Case No.

09-30452

Debtor

(if known)

AMENDED

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of this petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 or 13 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Debtor

(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,425* deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTR, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

In Re:

ANIEL, FERMIN & ERLINDA

Pg 22 of 48

Case No.

09-30452

Debtor

(if known)

AMENDED

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts filing a case under chapter 7, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

Creditor's Name and Mailing Address Including Zip Code, and Account Number	Codebtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
7735 PATELCO 156 SECOND STREET SAN FRANCISCO, CA 94105	H	FEBRUARY 2004 CREDIT CARD				\$20,316.00
4210 CITIBANK PO BOX 183113 COLUMBUS, OHIO 43218-3113	H	OCTOBER 2007 CREDIT CARD				\$33,000.00
3725 BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102	H	FEBRUARY 2006 CREDIT CARD				\$32,000.00
7320 MARRIOTT REWARD -CHASE PO BOX 15123 WILMINGTON, DE 19850-5123	H	FEBRUARY 2006 CREDIT CARD				\$5,000.00
Subtotal						\$90,316.00
Total						

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.)

4 continuation sheets attached

In Re:

ANIEL, FERMIN & ERLINDA

Pg 23 of 48

Case No.

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
7307 CHASE - UNITED MILEAGE PO BOX 15298 WILMINGTON, DE 19850-5298	H	FEBRUARY 2006 CREDIT CARD				\$10,283.00
Account Number: 6660 NEIMAN MARCUS PO BOX 729080 TEXAS 75372-9080	H	JULY 4, 2004 CREDIT CARD				\$5,277.00
9251 WASHINGTON MUTUAL PO BOX 660487 DALLAS, TX 75266-0487	W	JUNE 1999 CREDIT CARD				10,500.00
1694 SEARS PO BOX 6937 THE LAKE , NEVADA 88901-6937	W	SEPTEMBER 2006 CREDIT CARD				3,300.00
9209 BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102	W	OCTOBER 2006 CREDIT CARD				16,500.00
7511 HOME DEPOT PO BOX 6028 THE LAKE, NV 89901-6028	W	JULY 2005 CREDIT CARD				6,400.00
9820 MACY'S PO BOX 6938 THE LAKE, NV 88901-6938	W	MARCH 2004 CREDIT CARD				857.00
Subtotal						\$53,117.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						

Sheet no. 1 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re:

ANIEL, FERMIN & ERLINDA

Pg 24 of 48

Case No.

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
9028 WASHINGTON MUTUAL PO BOX 660433 DALLAS, TX 752660433	W	JUNE 2000 CREDIT CARD				4,007.25
4740 LOWE'S PO BOX 530914 ATLANTA, GA 30353-0914	W	APRIL 2003 CREDIT CARD				4,000.00
1924 BLOOMINGDALE'S VISA PO BOX 689194 DES MOINES, IA 50368-9194	W	DECEMBER 2005 CREDIT CARD				4,040.00
4781 CITICARDS PO BOX 6406 THE LAKE, NV 88901-6406	W	NOVEMBER 2007 CREDIT CARD				5,300
7974 BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726	W	OCTOBER 2006 CREDIT CARD				14,500.00
0778 BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726	W	MAY 2005 CREDIT CARD				17,100.00
5281 BLOOMINGDALE PO BOX 183083 COLUMBUS, OH 43218-3083	W	JUNE 2007 CREDIT CARD				3,900.00
Subtotal						\$52,847.25
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						

Sheet no. 2 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re:

ANIEL, FERMIN & ERLINDA

Pg 25 of 48

Case No.

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
1541 UNITED MILEAGE PLUS PO BOX 94014 PALATINE, IL 60094-4014	W	NOVEMBER 2005 CREDIT CARD				5,800.00
4447 CITI BUSINESSCARD PO BOX 6408 THE LAKE, NV 88901-8408	W	NOVEMBER 2007 CREDIT CARD				11,000.00
2181 BAILEY BANK & BIDDLE PROCESSING CENTER DES MOINES, IA 50364-0001	W	JUNE 2003 CREDIT CARD				6,200.00
5281 BLOOMINGDALE PO BOX 18303 COLUMBUS, OH 43218-3083	W	DECEMBER 2005 CREDIT CARD				4,300.00
4239 SAKS FIFTH PO BOX 60151 CITY OF INDUSTRY , CA 91716-0151	W	JULY 2007 CREDIT CARD				1,400.00
2487 SAKS FIFTH VISA PO BOX 60102 CITY OF INDUSTRY, CA 9176-0100	W	JULY 2007 CREDIT CARD				5,600.00
Account Number: MACY'S PO BOX 6938 THE LAKE, NV 88901-6938	W	MARCH 2004 CREDIT CARD				2,300.00
Subtotal						\$36,600.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						

Sheet no. 3 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

In Re:

ANIEL, FERMIN & ERLINDA

Pg 26 of 48

Case No.

09-30452

Debtor

(if known)

Creditor's Name and Mailing Address Including Zip Code, and Account Number	Code Debtor Husband, Wife, Joint, or Community	Date Claim was Incurred and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
<div>7700</div> <div>DISCOVER CARD PO BOX 15316 WILLMINGTON, DELAWARE 19850</div>	H	JANUARY 1995 CREDIT CARD				5,620.00
<div>Account Number: 9028</div> <div>WASHINGTON MUTUAL PO BOX 660487 DALLAS, TX 75266-0487</div>	W	JUNE 1999 CREDIT CARD				4,382.00
<div>Account Number:</div> <div></div>						
<div>Account Number:</div> <div></div>						
<div>Account Number:</div> <div></div>						
<div>Account Number:</div> <div></div>						
<div>Account Number:</div> <div></div>						
Subtotal						\$10,002.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						\$242,882.25

Sheet no. 4 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Debtor

(if known)

AMENDED SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

Name and Mailing Address of Codebtor	Name and Mailing Address of Creditor
MARC JASON ANIEL 75 TOBIN CLARK DRIVE HILLBOROUGH, CA 94010	AMHSI P.O. BOX 631730 IRVING, TX 75063-1730
	NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981
RAUL ESTIVA & CORZON ESTIVA 2 ULLOA STREET SAN FRANCISCO, CA 94107	GMAC 3451 HAMMOND AVE WATTERLOO, IA 59704
	NATIONAL CITY L007180 PO BOX 94991-44101 CLEVELAND, OHIO 08981
	LITTON LOAN SERVING 4828 LOOP CENTRAL DRIVE HOUSTON, TX 77081
	BANK OF AMERICA 4161 PIEDMONT PARKWAY GREENSBOROUGH, NC 27410

Debtor

(if known)

AMENDED

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse".

1. Rent or home mortgage payment (include lot rented for mobile home)	\$	7,503.00
a. Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b. Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
2. Utilities: a. Electricity and heating fuel	\$	549.00
b. Water and sewer	\$	239.00
c. Telephone	\$	167.00
d. Other GARBAGE	\$	65.00
3. Home maintenance (repairs and upkeep)	\$	545.00
4. Food	\$	1,000.00
5. Clothing	\$	0
6. Laundry and dry cleaning	\$	30.00
7. Medical and dental expenses	\$	50.00
8. Transportation (not including car payments)	\$	100.00
9. Recreation, clubs and entertainment, newspapers, magazines	\$	50.00
10. Charitable contributions	\$	0
11. Insurance (not deducted from wages or included in home mortgage payments)		
a. Homeowner's or renters	\$	400.00
b. Life	\$	180.00
c. Health	\$	243.00
d. Auto	\$	200.00
e. Other	\$	
12. Taxes (not deducted from wages or included in home mortgage payments)	\$	
Specify:		
13. Installment payments: (In chapter 11, 12 or 13 cases, do not list payments to be included in the plan)		
a. Auto	\$	837.00
b. Other	\$	
c. Other	\$	
14. Alimony, maintenance, and support paid to others	\$	
15. Payments for support of additional dependents not living at your home	\$	2,000.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	100.00
17. Other	\$	
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17.)	\$	14,258.00
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: INCREASED EXPENSES WHEN SON WENT ABROAD TO STUDY		
20. STATEMENT OF MONTHLY NET INCOME		
a. Average monthly income from Line 15 of Schedule I	\$	19,691.07
b. Average monthly expenses from Line 18 above	\$	12,968.00
c. Monthly net income (a. minus b.)	\$	6,723.07

FORM 7. STATEMENT OF FINANCIAL AFFAIRS

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA
DebtorCase No. 09-30452
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfer and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Questions 1-18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19-25. **If the answer to an applicable question is "None", mark the box labeled "None".** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

None ☐ **1. Income from employment or operation of business**

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Amount	Source
57,660.00	2008 - POSTAL SERVICE
7,284.00	2008 - SOCIAL SECURITY DISABILITY
63,000.00	2007- POSTAL SERVICE
7,116.00	2007 - SOCIAL SECURITY DISABILITY
62,795.47	2006 - POSTAL SERVICE
6,888.00	2006 - SOCIAL SECURITY DISABILITY

- None ☐ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Amount	Source
47,994.00	YEAR 2007 ADMINISTRATIVE FEES
272,538.00	YEAR 2006 ADMINISTRATIVE FEES
7500.00	YEAR 2008 ADMINISTRATIVE FEES

3. Payments to creditors

- None ☐ a. Individual or joint debtor(s) with primarily consumer debts: List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, [except for a debt on account of a domestic support obligation,] made within 90 days immediately preceding the commencement of this case. Indicate with an * any payments that were made to the creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor	Dates of Payments	Amount Paid	Amount Still Owing
CHEVRON	2/1/09	394.00	0
OSH	2/1/09	100.00	505.00
NEIMAN MARCUS	2/1/09	115.00	2,000.00

- None ☐ b. Debtor whose debts are not primarily consumer debts: List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor	Dates of Payments/ Transfers	Amount Paid or Value of Transfers	Amount Still Owing
ZENAIDA FLORES C/O PROPERTY SERVICES 1499 BALTIMORE HIWAY 126 BURLINGAME, CA 94010	2/1/09	950.00	245,000.00

None ☒ c. All debtors: List all payment made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor and Relationship to Debtor	Date of Payment	Amount Paid	Amount Still Owing
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4. Suits and administrative proceedings, executions, garnishments and attachments

None ☒ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Caption of Suit and Case Number	Nature of Proceeding	Court or Agency and Location	Status or Disposition
------------------------------------	----------------------	---------------------------------	--------------------------

None ☒ 12-12020-mg Doc 8237-15 Filed 03/05/15 Entered 03/05/15 12:55:52
 List all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Exhibit K

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Name and Address of Person for Whose Benefit Property was Seized	Date of Seizure	Description and Value of Property
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5. Repossessions, foreclosures and returns

None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor or Seller	Date of Repossession, Foreclosure Sale, Transfer or Return	Description and Value of Property
---	--	--------------------------------------

- None ☒ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address
of Assignee

Date of
Assignment

Terms of Assignment
or Settlement

- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address
of Custodian

Name and Location of Court
Case Title & Number

Date of Order

Description and
Value of Property

None ☒ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Person or Organization	Relationship to Debtor, if any	Date of Gift	Description and Value of Gift
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8. Losses

None ☒ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Description and Value of Property	Description of Circumstances and, if Loss was Covered in Whole or in Part by Insurance, Give Particulars.	Date of Loss
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9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

Name and Address of Payee	Date of Payment, Name of Payor if other than Debtor	Amount of Money or Description and Value of Property
ATTY. SYDNEY JAY HALL	10/1/2008	\$1,000.00
1308 BAYSHORE HIGHWAY, STE 200	02/1/2009	\$1,000.00
BURLINGAME, CA 94010		
MILLER LAW GROUP	02/07/2009	\$1,500.00
260 SHERIDAN AVE #208	03/2009	\$2,800.00
PALO ALTO, CA 94309		

- None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Transferree, Relationship to Debtor	Date	Describe Property Transferred and Value Received
--	------	---

- None ☒ b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

Name of Trust or Other Device	Date(s) of Transfer(s)	Amount of Money or Description and Value of Property or Debtor's Interest in Property
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11. Closed financial accounts

- None ☒ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Institution	Type of Account, Last Four Digits of Account Number, and Amount of Final Balance	Amount and Date of Sale or Closing
------------------------------------	--	---------------------------------------

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Bank or Other Depository	Names and Addresses of those with Access to Box or Depository	Description of Contents	Date of Transfer or Surrender, if any
CITIBANK	MARC JASON DANIEL FERMIN ANIEL	IMPORTANT DOCUMENTS PERSONAL EFFECT	N/A

13. Setoffs

None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

Name and Address of Creditor	Date of Setoff	Amount of Setoff
------------------------------	----------------	------------------

14. Property held for another person

None ☐ List all property owned by another person that the debtor holds or controls.

Name and Address of Owner	Description and Value of Property	Location of Property
CORAZON ESTIVA RAUL ESTIVA #2 ULLOA ST. SAN FRANCISCO, CA 94127	740,000.00 1,300,000.00	1881 EARL AVE SAN BRUNO CA, 94066 801 FOOTHILL DRIVE SAN MATEO CA, 94402
MARC JASON ANIEL 75 TOBIAN CLARK DR HILLSBOROUGH, CA 94010	510,000.00	418 PERSIA AVENUE SAN FRANCISCO, CA 94112

15. Prior address of debtor

None ☐ If the debtor has moved within the three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

Address	Name Used	Dates of Occupancy
1061 SYCAMORE DRIVE MILLBRAE CA 94030		MAY 2003
75 TOBIN CLARK HILLSBOROUGH CA 94010		JUNE 2005 - PRESENT

16. Spouses and former spouses

None ☒ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

Name

17. Environmental information

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law.

Site Name and Address	Name and Address of Governmental Unit	Date of Notice	Environmental Law
-----------------------	--	----------------	-------------------

- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

Site Name and Address	Name and Address of Governmental Unit	Date of Notice	Environmental Law
-----------------------	--	----------------	-------------------

- None ☒ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

Name and Address of Governmental Unit	Docket Number	Status or Disposition
---------------------------------------	---------------	-----------------------

18. Nature, location and name of business

None ☒ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was a self-employed in a trade, profession, or other activity either full- or part-time within the six-years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

Name, Address, Last Four Digits of Soc. Sec. No.
Complete EIN or Other Taxpayer I.D. No.

Nature of Business

Beginning and
Ending Dates

None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

Name

Address

In re ANIEL, FERMIN & ERLINDA
Debtor(s)Case Number: _____
(If known)**AMENDED**
CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedule I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME						
1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10. c. <input checked="" type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.				Column A Debtor's Income	Column B Spouse's Income
	2	Gross wages, salary, tips, bonuses, overtime, commissions.		5,000.00	642.00	
3	Net income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero.			116.66		
	a.	Gross receipts	816.66			
	b.	Ordinary and necessary business expenses	700.00			
	c.	Business income	Subtract Line b from Line a			
4	Net rental and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero.			15,150.00		
	a.	Gross receipts	15,650.00			
	b.	Ordinary and necessary operating expenses	500.00			
	c.	Rent and other real property income	Subtract Line b from Line a			
5	Interests, dividends, and royalties.			35.00		
6	Pension and retirement income.					
7	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse if Column B is completed.					
8	Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:					
	Unemployment compensation claimed to be a benefit under the Social Security Act		Debtor			Spouse

Part II: VERIFICATION	
12	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. (If this is a joint case, both debtors must sign.)</p> <p>Date: <u>March 3, 2009</u> Signature: <u>/s/ Fermin A. Aniel</u></p> <p>Date: <u>March 3, 2009</u> Signature: <u>/s/ Erlinda Aniel</u></p>

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

VERIFICATION OF CREDITOR MATRIX

The above named debtor(s), or debtor's attorney if applicable, do hereby certify under
penalty of perjury that the attached Master Mailing List of creditors, consisting of 3 sheet(s) is
complete, correct and consistent with the debtor's schedules pursuant to Local Bankruptcy
Rules and I/we assume all responsibility for errors and omissions.

March 3, 2009

Date

Signature of Attorney

/s/ Fermin A. Aniel

Signature of Debtor

/s/ Erlinda Aniel

Signature of Joint Debtor

Signature of Authorized Individual

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA Case No. 09-30452
Debtor (if known)

VERIFICATION OF MAILING LIST

The Debtor(s) certifies that the attached mailing list (only one option may be selected per form):

- ☐ is the first mail matrix in this case.
☒ adds entities not listed on previously filed mailing list(s).
☐ changes or corrects name(s) and address(es) on previously filed mailing list(s).
☐ deletes name(s) and address(es) on previously filed mailing list(s).

The above named Debtor(s) hereby verify that the attached list of creditors is true and correct.

March 3, 2009

Date

/S/ SYDNEY JAY HALL

/s/ Fermin A. Aniel

Signature of Debtor

/s/ Erlinda Aniel

Signature of Joint Debtor

UNITED STATES BANKRUPTCY COURT

In Re: ANIEL, FERMIN & ERLINDA
Debtor

Case No. 09-30452
(if known)

Chapter 11

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

	(1)	(2)	(3)	(4)	(5)
	Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim who may be contacted.	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff.	Amount of claim [if secured also state value of security]
1	CITIBANK PO BOX 183113 COLUMBUS, OHIO 43218-3113				\$33,000.00
2	BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102				\$32,000.00
3	PATELCO 156 SECOND STREET SAN FRANCISCO, CA 94105				\$20,316.00
4	BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726				17,100.00

	(1) Name of creditor and complete mailing address including zip code	(2) Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim who may be contacted.	(3) Nature of claim (trade debt, bank loan, government contract, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff.	(5) Amount of claim [if secured also state value of security]
5	BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102				16,500.00
6	BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726				14,500.00
7	CITI BUSINESSCARD PO BOX 6408 THE LAKE, NV 88901-8408				11,000.00
8	WASHINGTON MUTUAL PO BOX 660487 DALLAS, TX 75266-0487				10,500.00
9	CHASE - UNITED MILEAGE PO BOX 15298 WILMINGTON, DE 19850-5298				\$10,283.00
10	HOME DEPOT PO BOX 6028 THE LAKE, NV 89901-6028				6,400.00
11	BAILEY BANK & BIDDLE PROCESSING CENTER DES MOINES, IA 50364-0001				6,200.00
12	UNITED MILEAGE PLUS PO BOX 94014 PALATINE, IL 60094-4014				5,800.00

	(1) Name of creditor and complete mailing address including zip code	(2) Name, telephone number and complete mailing address, including zip code of employee, agent, or department of creditor familiar with claim who may be contacted.	(3) Nature of claim (trade debt, bank loan, government contract, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff.	(5) Amount of claim [if secured also state value of security]
13	SAKS FIFTH VISA PO BOX 60102 CITY OF INDUSTRY, CA 9176-0100				5,600.00
14	CITICARDS PO BOX 6406 THE LAKE , NV 88901-6406				5,300
15	NEIMAN MARCUS PO BOX 729080 TEXAS 75372-9080				\$5,277.00
16	MARRIOT REWARD -CHASE PO BOX 15123 WILMINGTON, DE 19850-5123				\$5,000.00
17	BLOOMINGDALE PO BOX 18303 COLUMBUS, OH 43218-3083				4,300.00
18	BLOOMINGDALE'S VISA PO BOX 689194 DES MOINES,IA 50368-9194				4,040.00
19	WASHINGTON MUTUAL PO BOX 660433 DALLAS, TX 752660433				4,007.25
20	LOWE'S PO BOX 530914 ATLANTA, GA 30353-0914				4,000.00

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION**

I, the undersigned authorized agent of the corporation named as the Debtor
in this case, declare under penalty of perjury that I have read the foregoing "List of
Creditors Holding 20 Largest Unsecured Claims" and that it is true and correct to the best
of my knowledge, information and belief.

Date

X _____
Signature of Authorized Individual

Printed Name and Title

Exhibit L

Form CAodsc7

**UNITED STATES BANKRUPTCY COURT
Northern District of California (San Francisco)**

In re:

Fermin Solis Aniel
75 Tobin Clark Drive
Hillsborough, Ca 94010

Erlinda Abibas Aniel
aka Erlinda Jose Abibas
75 Tobin Clark Drive
Hillsborough, Ca 94010

Debtor(s)

Debtor/Joint Debtor Social Security Number(s):

xxx-xx-3120
xxx-xx-2668

Case Number: 09-30452 DM 7

Chapter: 7

DISCHARGE OF DEBTOR

It appearing that the debtor(s) is/are entitled to a discharge, **IT IS ORDERED:**
The debtor(s) is/are granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 12/2/10

By the Court:

Dennis Montali
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Doc # 263

CAocsd7 continued

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:]* A creditor who violates this order can be required to pay damages and attorney's fees to the debtor. [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the discharged the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes (applies to cases filed on or after 10/17/2005);
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans (applies to cases filed on or after 10/17/2005).

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

Notice Recipients

District/Off: 0971-3

User: dchambers

Date Created: 12/2/2010

Case: 09-30452

Form ID: CAODSC7

Total: 104

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

cr OneWest Bank, FSB
 intp Corazon Estiva
 cr HSBC Bank USA,
 cr JPMorgan Chase Bank, N.A.
 cr EMC Mortgage Corporation

TOTAL: 5

Recipients of Notice of Electronic Filing:

ust Office of the U.S. Trustee / SF USTPRegion17.SF.ECF@usdoj.gov
 tr Janina M. Hoskins jmelder7@aol.com
 tract Jay D. Crom jcrom@bachcrom.com
 aty Adam C. Kent adkent@aol.com
 aty Anne W. Hamann ecfcamb@piteduncan.com
 aty Casper J. Rankin ecfcamb@piteduncan.com
 aty Dean Prober cmartin@pprlaw.net
 aty Gregory James Babcock bknotice@mccarthyholthus.com
 aty Jean Barnier jbarnier@macbarlaw.com
 aty John D. Schlotter ecfmail@aclawllp.com
 aty Justin Balser justin.balser@akerman.com
 aty Katherine L. Johnson ecfcamb@piteduncan.com
 aty Lawrence J. Buckley notice@bkcyllaw.com
 aty Linh K. Tran bline.chapter13@blinellc.com
 aty Melodie A. Whitson ecfcamb@piteduncan.com
 aty Monique Jewett-Brewster mjewett-brewster@macbarlaw.com
 aty Nicolas A. Daluiso ndaluiso@robinsontait.com
 aty Stefanie A. Schiff ecfcamb@piteduncan.com
 aty Timothy J. Silverman tim@sgsslaw.com

TOTAL: 19

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db Fermin Solis Aniel 75 Tobin Clark Drive Hillsborough, Ca 94010
 jdb Erlinda Abibas Aniel 75 Tobin Clark Drive Hillsborough, Ca 94010
 cr GMAC Mortgage, LLC 4375 Jutland Drive, Suite 200 P.O. Box 17933 San Diego, CA 92177-0933
 cr MTGLO Investors, L.P. McCalla, Raymer, et al. Bankruptcy Department 1544 Old Alabama Road Roswell, GA 30076
 cr BAC Home Loans Servicing, LP 7105 Corporate Drive PTX-B-35 Plano, TX 75024
 cr American Home Mortgage Servicing, Inc. 4875 Belfort Road Suite 130 Jacksonville, FL 32256
 cr Litton Loan Servicing, L.P. duly authorized servicing agent for Residential Mortgage Capital its successors and/or its assigns Solomon, Grindle, Silverman & Spinella c/o Timothy J. Silverman 12651 High Bluff Drive, Suite 300 San Diego, CA 92130
 cr Roundup Funding LLC MS 550 PO Box 91121 Seattle, WA 98111 9221
 cr Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-5, its assignees and/or successors and the servicing agent Amer c/o McCarthy & Holthus LLP 1770 Fourth Ave San Diego, CA 92101
 cr Roundup Funding LLC MS 550 PO Box 91121 Seattle, WA 98111-9221
 cr Aurora Loan Services c/o McCarthy & Holthus, LLP 1770 Fourth Avenue San Diego, CA 92101
 cr National City PO Box 94982 Cleveland, OH 44101
 cr Zenaída Flores c/o Donald L. Tasto 600 Allerton Street Suite 202 Redwood City, CA 94063
 cr HSBC BANK U.S.A. as Trustee for DALT 2007-AO3 Pite Duncan, LLP c/o Stefanie A. Schiff 4375 Jutland Drive, Suite 200 PO Box 17933 San Diego, CA 92177-0933
 cr Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5, Mortgage Pass-Through Certi Pite Duncan, LLP c/o Anne Hamann 4375 Jutland Drive Suite 200 San Diego, CA 92177
 cr HSBC Bank USA, National Association as Trustee for DALT2007-OA5 Pite Duncan, LLP c/o Anne Hamann 4375 Jutland Drive Suite 200 San Diego, CA 92177
 smg Chief Tax Collection Section Employment Development Section P.O. Box 826203 Sacramento, CA 94230
 smg CA Employment Development Dept. Bankruptcy Group MIC 92E P.O. Box 826880 Sacramento, CA 94280-0001
 smg CA Franchise Tax Board Special Procedures Bankruptcy Unit P.O. Box 2952 Sacramento, CA 95812-2952
 10287170 AHMSI PO Box 631730 Irving, TX 75063-1730
 10076331 AMERICAN HOME MORTGAGE SERVICING INC. 4875 BELFORT ROAD SUITE 130 JACKSONVILLE, FLORIDA 32256
 9783028 AURORA LOAN SERVICES 2617 COLLEGE PARK DRIVE NE, 69363-1706
 11270597 American Infosource Lp As Agent for Citibank (South Dakota) N.A. PO Box 248840 Oklahoma City, OK 73124-8840

9959098 Aurora Loan Services, LLC c/o McCarthy Holthus, LLP 1770 Fourth Avenue San Diego, CA 92101

9987074 BAC Home Loans Servicing, LP fka Countrywide Home 7105 Corporate Drive PTX-B-35 Plano, TX 75024

9783029 BAILEY BANK & BIDDLE PROCESSING CENTER DES MOINES, IA 50364-0001

9783030 BANK OF AMERICA PO BOX 15102 WILMINGTON, DE 19886-5102

9783031 BANK OF AMERICA PO BOX 15726 WILMINGTON, DE 19886-5726

9783032 BLOOMINGDALE PO BOX 18303 COLUMBUS, OH 43218-3083

9783033 BLOOMINGDALE'S VISA PO BOX 689194 DES MOINES, IA 50368-9194

10287172 Bank of America NC4-105-02-14 4161 Piedmont Pwy Greensborough, NC 27410

9783034 CHASE - UNITED MILEAGE PO BOX 15298 WILMINGTON, DE 19850-5298

9867360 CHASE BANK USA C O Weinstein And Riley, Ps 2001 Western Avenue, Ste 400 Seattle, Wa 98121

9867361 CHASE BANK USA C O Weinstein And Riley, Ps 2001 Western Avenue, Ste 400 Seattle, Wa 98121

9783035 CITI BUSINESSCARD PO BOX 6408 THE LAKE, NV 88901-8408

9783036 CITIBANK PO BOX 183113 COLUMBUS, OHIO 43218-3113

9783037 CITICARDS PO BOX 6406 THE LAKE, NV 88901-6406

9931337 Chase Bank USA NA PO BOX 15145 Wilmington, DE 19850-5145

10287160 Citibank MS 504A PO Box 790110 St. Louis, MO 63179

11171789 Corazon Estiva 2 Willow St. San Francisco, CA 94127

10287163 EMC PO Box 619063 Dallas, TX 75261-9063

11171792 EMC Mortgage Corporation 800 State Highway 121 Bypass Lewisville, TX 75067-4180

9883170 Fia Card Services, N.A. Attn. Mr. Bk 1000 Samoset Drive DE5-023-03-03 Newark, DE 19713

10067220 GE Money Bank Care of Recovery Management Systems Corp dba CHEVRON TEXACO
PLCC 25 SE 2nd Ave Ste 1120 Miami FL 33131

10075363 GE Money Bank Care of Recovery Management Systems Corp dba LOWES CONSUMER 25 SE
2nd Ave Ste 1120 Miami FL 33131

9783038 GMAC 3451 HAMMOND AVE. WATERLOO, IA 59704

10082493 GMAC Mortgage, LLC 4375 Jutland Drive, Suite 200 P.O. Box 17933 San Diego, CA 92177-0933

9783039 HOME DEPOT PO BOX 6028 THE LAKE, NV 89901-6028

10033861 HSBC Bank Nevada, N.A. eCAST Settlement Corporation c/o Bass & Associates, P.C. 3936 E. Ft.
Lowell Rd., Suite 200 Tucson, AZ 85712

11171790 HSBC Bank USA 452 Fifth Avenue New York, NY 10018

9814236 HSBC Bank USA N.A. One HSBC Center Buffalo, NY 14203

10787270 HSBC Bank USA, National Association c/o Pite Duncan, LLP 4375 Jutland Drive, Suite 200 P.O.
Box 17933 San Diego, CA 92177-0933

10315281 HSBC Bank USA, National Association as Trustee for c/o Pite Duncan, LLP Attn: Katherine L. Johnson,
Esq. 4375 Jutland Drive, Suite 200 P.O. Box 17933 San Diego, CA 92177-0933

9783040 INDYMAC BANK PO BOX 4045 KALAMAZOO, MI 49003

9797627 Internal Revenue Service P.O. Box 21126 Philadelphia, PA 19114

11171791 JPMorgan Chase Bank NA 1111 Polaris Parkways Columbus, OH 43240

10444342 JPMorgan Chase Bank, NA Attn: Bankruptcy Department 833 Ridgepoint Dr. Irving, TX 75063-5812

9783041 LOWE'S PO BOX 530914 ATLANTA, GA 30353-0914

9986100 Litton Loan Servicing, L.P. Bankruptcy Department 4828 Loop Central Drive Houston, TX 77081-2226

9783042 MACY'S PO BOX 6938 THE LAKE, NV 88901-6938

9783043 MARRIOTT REWARD -CHASE PO BOX 15123 WILMINGTON, DE 19850-5123

9854454 NATIONAL CITY BANK P.O. BOX 94982 CLEVELAND, OH 44101

9783044 NEIMAN MARCUS PO BOX 729080 TEXAS 75372-9080

10287157 National City L007180 PO Box 94991-44101 Cleveland, OH 08981

11171788 OneWest Bank FSB 2900 Esperanza Crossing Austin, TX 78758

10061303 OneWest Bank, FSB 7700 W. Palmer, Bldg. D Austin, Texas 78729

9783045 PATELCO 156 SECOND STREET SAN FRANCISCO, CA 94105

11027283 PNC BANK PO BOX 94982 CLEVELAND, OH 44101

10424547 Roundup Funding, LLC MS 550 PO Box 91121 Seattle, WA 98111-9221

10424586 Roundup Funding, LLC MS 550 PO Box 91121 Seattle, WA 98111-9221

10424628 Roundup Funding, LLC MS 550 PO Box 91121 Seattle, WA 98111-9221

9783065 SAKS FIFTH PO BOX 60151 CITY OF INDUSTRY, CA 91716-0151

9783066 SAKS FIFTH VISA PO BOX 60102 CITY OF INDUSTRY, CA 9176-0100

9783067 SEARS PO BOX 6937 THE LAKE, NEVADA 88901-6937

9783068 UNITED MILEAGE PLUS PO BOX 94014 PALATINE, IL 60094-4014

9783069 WASHINGTON MUTUAL PO BOX 660433 DALLAS, TX 752660433

9783070 WASHINGTON MUTUAL PO BOX 660487 DALLAS, TX 75266-0487

11452464 Zenaida Flores c/o Adam C. Kent 605 Middlefield Road Redwood City, CA 94063

10287162 Zenaida Flores c/o Property Services 1499 Bayshore Highway 126 Burlingame, CA 94010

10033863 eCAST Settlement Corp Assignee of HSBC Bank Nevada Bass & Associates, P.C. 3936 E. Ft.
Lowell Rd., Suite 200 Tucson, AZ 85712

TOTAL: 80

Exhibit M

November 02, 2010
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: November 02, 2010

Dennis Montali

DENNIS MONTALI
 U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
) No. 09-30452DM
 FERMIN SOLIS ANIEL and ERLINDA)
 ABIBAS ANIEL,) Chapter 7
)
 Debtors.)

ORDER AUTHORIZING ABANDONMENT OF PROPERTY

Debtors filed a motion to compel the trustee to abandon certain properties listed below on October 12, 2010. The court set the motion for hearing on November 12, 2010, at 10:00 A.M.

On October 29, 2010, the trustee filed her response, indicating that based upon her business judgment and her assessment that administration of the subject assets would not benefit the estate, she did not oppose Debtors' motion.

No purpose would be served by having a hearing on an unopposed motion and the court agrees with the trustee as to the lack of benefit to the estate in retaining the subject assets. Accordingly, the scheduled hearing on November 12, 2010, is dropped from calendar, and the following assets are ABANDONED to Debtors:

Real Property:

833 Clearfield Dr., Millbrae, California 94030
 1061 Sycamore Dr., Millbrae, California 94030

1 418 Persia Ave., San Francisco, California 94112
2 3 Fairmont Dr., Daly City, California 94015
3 75 Tobin Clark Dr., Hillsborough, California 94010
4 1881 Earl Ave., San Bruno, California 94066
5 801 Foothill Dr., San Mateo, California 94402

6 Pending Lawsuits:

7 Aniel v. Aurora Loan Services, LLC, et al.,
8 Case Number 10-1042JSW

9 Aniel v. Litton Loan Services, et al.,
10 Case Number 10-0951SBA

11 Aniel v. EMC Mortgage Corporation, et al.,
12 Case Number: CIV 499323

13 **END OF ORDER**
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COURT SERVICE LIST

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Dr.
Hillsborough, CA 94010

Exhibit N

2010-163953

8:41 am 12/31/10 NT Fee: 18.00
Count of Pages 2
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder



RECORDING REQUESTED BY
ETS Services, LLC

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

T.S. No. **GM-172824-C** Investor No. **11530481**
Loan No. **1440**

572

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/22/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS

Recorded **4/3/2007** as Instrument No. **2007-050317** in Book , page of

Official Records in the office of the Recorder of **San Mateo** County, California,

Date of Sale: **1/27/2011 at 1:00 PM**

Place of Sale: **At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California**

Property Address is purported to be: **801 FOOTHILL DRIVE**
SAN MATEO, California 94402-0000

APN #: **034-312-030-9**

The total amount secured by said instrument as of the time of initial publication of this notice is **\$1,274,601.00**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Pursuant to California Civil Code §2923.54 the undersigned, on behalf of the beneficiary, loan servicer or authorized agent, declares as follows:

- [1] The mortgage loan servicer has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.53 that is current and valid on the date the notice of sale is filed;
- [2] The timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or 2923.55.

T.S. No. **GM-172824-C**
Loan No. **1440**
Investor No. **4814**

Date: **12/28/2010**

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
Sale Line: 714-730-2727


Jeanna Petersen, TRUSTEE SALE OFFICER

Exhibit O

California Superior Courts**CA Superior - San Mateo
(SanMateo)****CIV502857****Fermin Solis Aniel VS Ets Services, Llc et al****This case was retrieved from the court on Wednesday, March 04, 2015**

Header**Case Number:** CIV502857**Date Filed:** 02/02/2011**Date Full Case Retrieved:** 03/04/2015**Misc:** (33) FRAUD; (CIV) Unlimited Civil[\[Summary\]](#)[\[Participants\]](#)[\[Proceedings\]](#)[\[Complaints\]](#)[\[Minutes\]](#)[\[Pending Hearings\]](#)**Summary****No Information is Available for this case****Participants****Litigant**

Fermin Solis Aniel
Plaintiff
Complaint Number: 1
Status: DISMISSED 12/06/2011

Erlinda Abibas Aniel
Plaintiff
Complaint Number: 1
Status: DISMISSED 12/06/2011

Ets Services, Llc
Defendant
Complaint Number: 1
Status: DISMISSED 12/06/2011

Gmac Mortgage, Llc
Defendant
Complaint Number: 1
Status: DISMISSED 12/06/2011

Attorney

Pro Per
Aniel, Fermin Solis
75 Tobin Clark Drive
Hillsborough, CA 94010

Pro Per
Aniel, Erlinda Abibas
75 Tobin Clark Drive
Hillsborough, CA 94010

Buell, Edward R
, CA

Buell, Edward R
, CA

Hsbc Bank, USA

Defendant

Complaint Number: 1

Status: DISMISSED 12/06/2011

Buell, Edward R

, CA

Mortgage Electronic Registration Systems

Defendant

Complaint Number: 1

Status: DISMISSED 12/06/2011

Buell, Edward R

, CA

Pite Duncan, Llp

Defendant

Complaint Number: 1

Status: DISMISSED 12/06/2011

Salmon, Peter J

Proceedings

<u>Nbr</u>	<u>Date</u>	<u>Details</u>	<u>Disposition</u>
1	02/02/2011	(S) Complaint Filed	
2	02/02/2011	30 Day Summons, Issued And Filed.	
3	02/02/2011	30 Day Summons, Issued And Filed.	
4	02/02/2011	Civil Case Coversheet Received	
5	02/02/2011	30 Day Summons, Issued And Filed.	
6	02/02/2011	30 Day Summons, Issued And Filed.	
7	02/02/2011	30 Day Summons, Issued And Filed.	
8	02/10/2011	Proof of Personal Service of Summons And Complaint Filed 02/02/2011 of Fermin Aniel Served on Gmac Mortgage, Llc by Serving Becky Degeorge,Agent For Service With Service Date of 02/03/11	
9	02/10/2011	Proof of Personal Service of Summons And Complaint Filed 02/02/2011 of Fermin Aniel Served on Pite Duncan, Llp by Serving Steven Pite,Senior Partner With Service Date of 02/03/11	
10	02/10/2011	Proof of Personal Service of Summons And Complaint Filed 02/02/2011 of Fermin Aniel Served on Ets Services, Llc by Serving Bekcy Degeorge,Agent For Service With Service Date of 02/03/11	
11	02/10/2011	Proof of Personal Service of Summons And Complaint Filed 02/02/2011 of Fermin Aniel Served on Hsbc Bank, USA by Serving Maria Sanchez,Agent For Service With Service Date of 02/03/11	
12	02/10/2011	Proof of Personal Service of Summons And Complaint Filed 02/02/2011 of Fermin Aniel Served on Mortgage Electronicregistration Systems by Serving Desiree George,Agent For Service With Service Date of 02/03/11	
13	03/07/2011	(S) Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel Filed by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems Represented by Edward R Buell	
14	03/07/2011	Request For Judicial Notice of in Support of Demurrer to Plaintiffs Verified Complaint Filed by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems.	
15	03/07/2011	Memorandum of Points And Authorities Filed by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems in Support of Demurrer to Verified Complaint	

16	03/07/2011	Proof of Service of Demurrer With Supporting Documents Served on See Service List by Mail With A Service Date of 03/07/11.	
17	03/15/2011	(S) Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel Filed by Pite Duncan, Llp Represented by Peter J Salmon	
18	03/15/2011	Memorandum of Points And Authorities Filed by Pite Duncan, Llp in Support of Demurrer to Complaint	
19	03/15/2011	Request For Judicial Notice of Notice in Support of Demurrer to Complaint Filed by Pite Duncan, Llp.	
20	03/22/2011	Request For Default Filed And Default Not Entered. Reason: Def, Pite Duncan, Llp Filed A Demurrer on 3-7-11.	
21	03/22/2011	Request For Default Filed And Default Not Entered. Reason: Def, Mortgage Electronic Registration Systems, Inc. Filed A Demurrer on 3-7-11.	
22	03/22/2011	Request For Default Filed And Default Not Entered. Reason: Def, Gmac Mortgage Llc Filed A Demurrer on 3-7-11.	
23	03/22/2011	Request For Default Filed And Default Not Entered. Reason: Def, Hsbc Bank USA Filed A Demurrer on 3-7-11.	
24	03/22/2011	Request For Default Filed And Default Not Entered. Reason: Def, Ets Services, Llc Filed A Demurrer on 3-7-11.	
25	04/01/2011	Notice of Motion to Enter Default Against All Defendants And to Set Aside Trustee Sale Filed by Fermin Solis Aniel, Erlinda Abibas Aniel	
26	04/01/2011	Motion to Enter Default And Set Aside Trustee Sale Complaint Filed 02/02/2011 of Fermin Aniel Filed by Fermin Solis Aniel, Erlinda Abibas Aniel	
27	04/25/2011	Reply And Notice of Lack of Opposition to Demurrer, Filed.	
28	04/26/2011	Amended Notice of Hearing on Demurrer Filed by Pite Duncan, Llp.	
29	05/09/2011	Opposition to Plaintiffs Motion to Enter Default And Set Aside Trustee Sale Filed by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems	
30	05/09/2011	Request For Judicial Notice in Support of Opposition to Motion to Enter Default.	
31	05/09/2011	Proof of Service of Defendants Opposition, Etc. Served on See List by Federal Express With A Service Date of 05/09/11.	
32	05/11/2011	Notice of Joinder in Defendants Opposition to Motion to Enter Default And Set Aside Trustees Sale Filed by Pite Duncan, Llp.	
33	05/16/2011	Reply to Defendants Opposition to Motion to Enter Default Filed by Fermin Solis Aniel, Erlinda Abibas Aniel	
34	05/16/2011	Case Management Statement Filed by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems.	
35	05/16/2011	Proof of Service (By Mail) of Case Management Statement Request For Courtcall Served on See List With A Service Date of 05/16/11 Filed.	
36	05/19/2011	Case Management Statement Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
37	05/20/2011 9:00 AM	Hearing: Motion Re: to Enter Default And Set Aside Trustee Sale Filed by Fermin Solis Aniel, Erlinda Abibas Aniel (Dept Lm)	Completed
38	05/25/2011	Opposition to Defendant, Pite Duncans Demurrer to Complaint Filed by Fermin Solis Aniel, Erlinda Abibas Aniel	
39	05/26/2011	Opposition to Defendants Demurrer to Complaint Filed by Fermin Solis Aniel, Erlinda Abibas Aniel	
40	05/27/2011	Case Management Statement Filed by Pite Duncan, Llp.	
41	05/27/2011	Hcmc1i Calendared on 06/02/11 in Dept. 21. Has Been Updated to 06/02/11 in Dept. 8.	

42	06/02/2011	(Proposed) Order Denying Motion to Enter Default Sent to Judge Scott For Review.	
43	06/02/2011 9:00 AM	Case Management Conference (Dept 8)	Continued
44	06/02/2011	Reply in Support of Demurrer to Plaintiffs Verified Complaint, Filed.	
45	06/07/2011	Order Denying Plaintiffs Motion to Enter Default And to Set Aside Trustee Sale, Signed by Judge Scott on 06/02/11 Filed.	
46	06/08/2011 9:00 AM	Hearing: Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel by Pite Duncan, Llp (Dept Lm)	Completed
47	06/08/2011	Notice of Ruling Filed	
48	06/09/2011 9:00 AM	Hearing: Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems (Dept Lm)	Completed
49	06/17/2011	(Proposed) Order Sustaining Demurrer Sent to Judge Scott For Review.	
50	06/22/2011	Order After Hearing For 06/08/11 Received And Forwarded to Dept. 25.	
51	06/30/2011	Order Sustaining Demurrer to Plaintiffs Complaint Without Leave to Amend, Signed by Judge Scott on 06/20/11 Filed.	
52	07/07/2011	Notice of Entry of Order Filed by Gmac Mortgage, Llc, Hsbc Bank, USA.	
53	07/18/2011	Order on Def. Pite Duncan, Llps Demurrer, Signed by Judge Scott on 06/28/11, Filed.	
54	07/18/2011	Proposed Judgment Received.	
55	07/21/2011 9:00 AM	Case Management Conference (Dept 21)	Vacated
56	08/10/2011	Case Management Statement Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
57	08/17/2011	Notice of Appeal Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
58	08/17/2011	Notice of Filing of Appeal Filed.	
59	08/17/2011	Transcript Trust Posted by Erlinda Aniel on Behalf of Fermin Solis Aniel, Erlinda Abibas Aniel.	
60	08/23/2011	Appellants Notice Designating Record on Appeal Filed.	
61	08/26/2011	Defendants Case Management Statement, Filed.	
62	08/26/2011	Proof of Service by Mail of Ccopy of Case Mgt Statement, Req For Court Call Served on Fermin Solis Aniel, Erlinda Abibas Aniel, Ets Services, Llc Filed. Date of Mailing 08/26/11.	
63	08/26/2011	Respondents Notice Designating Record on Appeal Filed.	
64	08/29/2011	Transcript Trust Posted by S&R Services on Behalf of Pite Duncan, Llp.	
65	08/29/2011	Hcmc1i Calendared on 09/01/11 in Dept. 21. Has Been Updated to 09/01/11 in Dept. 7.	
66	08/30/2011	Exonerate Transcript Trust	
67	08/30/2011	Void Transcript Trust	
68	08/31/2011	Hcmc1i Calendared on 09/01/11 in Dept. 7. Has Been Updated to 09/01/11 in Dept. 11.	
69	09/01/2011 9:00 AM	Case Management Conference (Dept 11)	Continued
70	09/01/2011	Transcript Trust Posted by S& R Services on Behalf of Pite Duncan, Llp.	
71	09/02/2011	Notice of Case Management Conference Continuance Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
72	09/13/2011	Notice to Prepare Transcripts on Appeal Filed.	

12-12020-mg

Doc 8237-19

Filed 03/05/15

Entered 03/05/15 12:55:52

Exhibit O

Pg 6 of 12

73	09/14/2011	Corrected Notice to Prepare Transcripts on Appeal Filed.	
74	09/19/2011	Clerks Certificate Re:certifying Record to Court of Appeals,1st Appellate District Filed.	
75	09/19/2011	Transmittal of Record on Appeal Filed.	
76	10/12/2011	Received Notice From Court of Appeals. Appeal A132 950 is Dismissed as Premature.	
77	10/24/2011	Received Judgment Documents And Placed in Judgment Box 10;25 Am.	
78	10/31/2011	Proposed Judgment Submitted by Pltf-Solis, Etc Returned Unprocessed - Pls See File For Details.	
79	11/03/2011	Judgment Returned Unprocessed - Signature of Attorney Missing From Judgment.	
80	11/09/2011	Proposed Judgment Returned Unprocessed - Per Judge Scott, Defs Demurrer is Being Appealed.	
81	11/15/2011	Case Management Statement Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
82	12/06/2011 9:00 AM	Case Management Conference (Dept 21)	Completed
83	12/09/2011	Remittitur Filed For Appeal A132950. Appeal is Dismissed.	
84	12/29/2011	Exonerate Transcript Trust	
85	02/02/2012	Notice of Appeal Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
86	02/02/2012	Transcript Trust Posted by Erlinda Aniel on Behalf of Fermin Solis Aniel, Erlinda Abibas Aniel.	
87	02/02/2012	Notice of Filing of Appeal Filed.	
88	02/08/2012	Appellants Notice Designating Record on Appeal Filed.	
89	02/09/2012	Clerks Certificate Re: Register of Actions Per Crc Rule 8.124 Filed.	
90	02/16/2012	Respondents Notice Designating Record on Appeal Filed.	
91	02/21/2012	Respondents Notice Designating Record on Appeal Filed.	
92	02/21/2012	Transcript Trust Posted by Janney & Janney Atty Services on Behalf of Pite Duncan, Llp.	
93	02/21/2012	Notice to Prepare Reporters Transcripts on Appeal Filed.	
94	02/22/2012	Transcript Trust Posted by San Francisco Legal Support, Inc. on Behalf of Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA.	
95	02/22/2012	Notice to Prepare Reporters Transcript on Appeal Filed(R).	
96	02/28/2012	Exonerate Transcript Trust	
97	03/28/2012	Exonerate Transcript Trust	
98	04/02/2012	Clerks Certificate Re: Certifying Record to Court of Appeals, First Appellate District Filed.	
99	04/02/2012	Clerks Cerificate Re: Reporters Transcript on AP Peal Filed.	
100	04/02/2012	Transmittal of Record on Appeal Filed .	
101	06/06/2012	Respondents Brief For A134461 Received .	
102	06/20/2012	Notice of Plaintiffs EX Parte Application For A Written Order Dismissing The Case Filed by Fermin Solis Aniel, Erlinda Abibas Aniel.	
103	06/20/2012	Ex Parte Application And Proposed Order Located to Dept. 21 For Consideration.	
104	06/20/2012	Ex-Parte Fee Paid by Fermin Solis Aniel, Erlinda Abibas Aniel.	
105	06/29/2012	Order Dismissing Case Effective 12/6/11, Signed by Judge Foiles on 06/29/12, Filed.	

Complaints

Nbr	Type	File Date	Status
1	COM COMPLAINT of FERMIN SOLIS ANIEL	02/02/2011	Dismissed 12/06/2011

Minutes

Type	Details
Reference Action	(S) Complaint Filed 02/02/2011 Receipt: 110202-0306 \$395.00
Reference Action	(S) Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel Filed by Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems Represented by Edward R Buell 03/07/2011 Receipt: 110307-0764 \$1,580.00
Reference Action	(S) Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel Filed by Pite Duncan, Llp Represented by Peter J Salmon 03/15/2011 Receipt: 110316-0007 \$40.00
Reference Action	Notice of Motion to Enter Default Against All Defendants And to Set Aside Trustee Sale Filed by Fermin Solis Aniel, Erlinda Abibas Aniel 04/01/2011 Receipt: 110401-0498 \$40.00
Reference Action	Hearing: Motion Re: to Enter Default And Set Aside Trustee Sale Filed by Fermin Solis Aniel, Erlinda Abibas Aniel 05/20/2011 9:00 AM Dept LM Honorable Joseph C. Scott, Judge Presiding. Clerk: Rebecca Huerta Court Reporter: Fakhouri. Erlinda Abibas Aniel Present in Pro Per. Attorney(S): Jillian A Benbow Appeared by Court Call on Behalf of Defendant Pite Duncan Lp. Attorney(S): Brian Whitemore Appeared on Behalf of Defendants Ets,Gmac, And Hsbc, et Al. Matter Argued by Counsel And Submitted to The Court. Tentative Ruling Adopted And Becomes The Order: ===== The Request For Judicial Notice is Denied as The Documents That Are The Subject of The Instant Request Were Unnecessary to The Determination of The Merits of The Instant Motion.The Court Notes That Defendants Failed to Comply With Crc 3.1110(F) With Respect to The Exhibits to The Request. ===== The Motion to Enter Default And Set Aside Trustee Sale is Denied. Entry of Default at This Time is Improper.Plaintiffs Have Failed to Show That They Are Entitled to The Ultimate Relief They Seek at This Time of A Setting Aside of The Trustee Sale. =====

The Moving Party Shall Prepare A Formal Order Consistent With The Ruling And Submit to Opposing Party For Review as to Form And Content. Submit to Court For Judges Signature.

=====

Entered by R Huerta on 05/20/11.

- 7 -

Reference Case Management Conference
Action

06/02/2011 9:00 AM

Dept 8

Hearing Continued to 07/21/11 at 09:00 in Department 21.

Honorable Mark R. Forcum, Judge Presiding. Clerk: Cheryl Lyssand Court Reporter: Valerie Cathey

Counsel Joseph Astleford For Plaintiff Appeared by Court Call.

Hearing Continued to 09/01/11 at 09:00 in Department 21.

Plaintiff to Give Notice.

Plaintiff Shall Submit an Updated Case Management Statement.

Entered by C Lyssand on 06/02/11.

- 4 -

=====

Change Entered on 08/16/11 by C Lyssand. Reason: Preceding Minutes Entered in Error.

The Preceding Minutes Were Entered in Error. These Minutes Were Relating to Civ 502857.

The Cmc Set For This Date Was Continued to 7/21/11 And That Cmc Was Continued to 9/1/11.

The Cmc Set For 9/1/11 Will Remain as Set.

Entered by C Lyssand on 08/16/11.

Reference Hearing: Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel by Pite Duncan, Llp
Action

06/08/2011 9:00 AM

Dept LM

Honorable Joseph C. Scott, Judge Presiding. Clerk: Linda Makela Court Reporter: Fakhouri.

Counsel Jillian Benbow For Defendant Appeared by Court Call.

No Appearance For or by Plaintiff.

Tentative Ruling Adopted And Becomes The Order:

=====

The Demurrer to Complaint by Defendant Pite Duncan, Llp is Sustained Without Leave to Amend

As to All Causes of Action on The Grounds That Plaintiffs Lack Standing. (County of Fresno v.

Shelton (1998) 66 Cal.App.4th 996, 1009). The Allegations of The Complaint Admit That

Plaintiffs Names Did Not Appear on The Promissory Note or Deed of Trust at Any Point

During The Time The Complained-Of Activities Took Place. The Court is Not Persuaded by

Plaintiffs Argument That They Did Not Properly or Timely Record Their Alleged 50% Interest

Because They Wished to Avoid Paying Taxes.

=====

Defendants Request For Judicial Notice is Granted as to Exhibits P, Q, And R. Judicial

Notice is Taken of The Fact That Exhibits A Through K Were Recorded in The Official Records

Of The County of San Mateo, And That Exhibits L Through O Were Filed in Plaintiffs
Bankruptcy

Action in United States Bankruptcy Court For The Northern District of California, Case No.
09-30452-Dm, But Not as to The Truth of Any Matters Asserted Therein

Demurring Party is Directed to Prepare A Written Order Consistent With The Courts Ruling
For The

Courts Signature, Pursuant to California Rules of Court, Rule 3.1312, And to Provide Notice
Thereof to The Opposing Party/Counsel as Required by Law And The California Rules of
Court.

Entered by Lmakela on 06/08/11.

Reference Hearing: Demurrer to Complaint Filed 02/02/2011 of Fermin Aniel by Ets Services, Llc,
Action Gmac Mortgage, Llc, Hsbc Bank, USA, Mortgage Electronicregistration Systems

06/09/2011 9:00 AM

Dept LM

Honorable Joseph C. Scott, Judge Presiding. Clerk: Linda Makela Court Reporter: Fakhouri.
Attorney Brian Whittmore Appearing With/For Defendant(S).

Erlinda Abibas Aniel Present in Pro Per.

Matter Argued by Counsel And Submitted to The Court.

Tentative Ruling Adopted And Becomes The Order:

The Demurrer to Complaint by Defendants Gmac Mortgage, Llc; Ets Services, Llc; Hsbc
Bank,

U.S.A; And Mortgage Electronic Registration Systems, Inc. is Sustained Without Leave to
Amend as to All Causes of Action on The Grounds That Plaintiffs Lack Standing. (County of
Fresno

V. Shelton (1998) 66 Cal.App.4th 996, 1009). The Allegations of The Complaint Admit That
Plaintiffs Names Did Not Appear on The Promissory Note or Deed of Trust at Any Point
During The Time The Complained-Of Activities Took Place.

Defendants Request For Judicial Notice is Granted Insofar as The Documents For Which
Judicial Notice is Sought Were Recorded in The Official Records of The County of San Mateo
or

Filed in The United States Bankruptcy Court, But Not as to The Truth of Any Matters
Asserted

Therein.

Demurring Parties Are Directed to Prepare A Written Order Consistent With The Courts
Ruling

For The Courts Signature, Pursuant to California Rules of Court, Rule 3.1312, And to
Provide

Notice Thereof to The Opposing Party/Counsel as Required by Law And The California Rules
of
Court.

Entered by Lmakela on 06/09/11.

Reference Case Management Conference
Action

07/21/2011 9:00 AM
Dept 21
Hearing Vacated. Reason: Cmc Set For 9/1/11

Reference Action Transcript Trust Posted by Erlinda Aniel on Behalf of Fermin Solis Aniel, Erlinda Abibas Aniel.
08/17/2011
Receipt: 110817-0702 \$100.00

Reference Action Transcript Trust Posted by S&R Services on Behalf of Pite Duncan, Llp.
08/29/2011
Receipt: 110829-0402 \$325.00
Receipt# 110829-0402 Voided by Rwils From Aorte

Reference Action Exonerate Transcript Trust
08/30/2011
Receipt: 110830-0126 \$100.00

Reference Action Void Transcript Trust
08/30/2011
110830-0153 Voided 110829-0402 (325.00)

Reference Action Case Management Conference
09/01/2011 9:00 AM
Dept 11
Honorable John L. Grandsaert, Judge Presiding. Clerk: Cheryl Lyssand Court Reporter: Wendy Wachhorst
Erlinda Abibas Aniel Present in Pro Per.
Attorney(S): Brian S. Whittemore Appeared by Courtcall on Behalf of Defendants Ets Services,
Llc, Gmac Mortgage, Llc, Hsbc Bank, And Mers.
There Was no Appearance by or on Behalf of Plaintiff Fermin Solis Aniel.
There Was no Appearance by or on Behalf of Defendant Pite Duncan, Llp.
The Court is Informed The Demurrer Was Sustained Without Leave to Amend, Which The Plaintiffs Are
Appealing.
Hearing Continued to 12/06/11 at 09:00 in Department 21.
Plaintiff to Give Notice.
Plaintiff And Defendant Shall Submit an Updated Case Management Statement.
Entered by C Lyssand on 09/01/11.
- 13 -

Reference Action Transcript Trust Posted by S& R Services on Behalf of Pite Duncan, Llp.
09/01/2011
Receipt: 110901-0616 \$325.00

Reference Action Case Management Conference
12/06/2011 9:00 AM
Dept 21

Honorable Robert D. Foiles, Judge Presiding. Clerk: Cheryl Lyssand Court Reporter: Cindy Del Rosario

Erlinda Abibas Aniel Present in Pro Per.

Attorney(S): Brian Wittemore Appeared by Courtcall on Behalf of Defendants Ets Services, Llc; Gmac Mortgage, Llc; Hsbc Bank; And Mers.

There Was no Appearance by or on Behalf of Plaintiff Fermin Solis Aniel.

There Was no Appearance by or on Behalf of Defendant Pite Duncan, Llp.

Based on The Demurrers Sustained Without Leave to Amend by Judge Scott as to All Defendants, The

Court Orders This Case Dismissed.

Case Dismissed.

The Court Orders This Matter Dismissed With Prejudice.

Entered by C Lyssand on 12/06/11.

- 13 -

Reference Action Exonerate Transcript Trust

12/29/2011

Receipt: 111229-0472 \$325.00

Reference Action Transcript Trust Posted by Erlinda Aniel on Behalf of Fermin Solis Aniel, Erlinda Abibas Aniel.

02/02/2012

Receipt: 120202-0331 \$100.00

Reference Action Transcript Trust Posted by Janney & Janney Atty Services on Behalf of Pite Duncan, Llp.

02/21/2012

Receipt: 120221-1041 \$650.00

Reference Action Transcript Trust Posted by San Francisco Legal Support, Inc. on Behalf of Ets Services, Llc, Gmac Mortgage, Llc, Hsbc Bank, USA.

02/22/2012

Receipt: 120222-0235 \$325.00

Reference Action Exonerate Transcript Trust

02/28/2012

Receipt: 120228-0080 \$100.00

Reference Action Exonerate Transcript Trust

03/28/2012

Receipt: 120328-0802 \$17.50

Reference Action Ex-Parte Fee Paid by Fermin Solis Aniel, Erlinda Abibas Aniel.

06/20/2012

Receipt: 120620-0463 \$40.00

Pending Hearings

No Information is Available for this case

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*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

Exhibit P

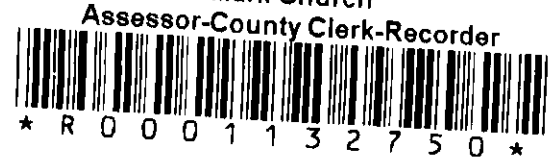
Recording requested by:
ERLINDA A ANIFI

2011-014606

2:17 pm 02/03/11 DE Fee: 18.00
Count of Pages 2 SM
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder

And when recorded, mail this deed and tax
statements to.

ERLINDA A. ANILL
75 TOBIN CLARK DR.
HILLSBOROUGH, CA 94010



GRANT DEED

TRA: _____

APN: 034-312-030

CITY OF SAN MATEO
REAL PROPERTY CONVEYANCE TAX

AMOUNT OF TAX DUE \$20.12
COMPUTED ON TOTAL VALUE OF
THE CONSIDERATION.

Declarant's Signature _____ Firm Name _____
(or Agent)

DOCUMENTARY TRANSFER TAX \$19.80
EXEMPTION (R&T CODE) _____
EXPLANATION _____

Signature of Declarant or Agent determining tax _____

For a valuable consideration, receipt of which is hereby acknowledged.

CORAZON G. ESTIVA, UNMARRIED WOMAN

hereby grant(s) to

HERMIN S. ANIEL 1% INTEREST, ERLINDA A. ANIEL 1% INTEREST AS HUSBAND AND WIFE AND
CORAZON G. ESTIVA WITH 98% INTEREST AS TENANCY IN COMMON

the following real property in the City of SAN MATEO, County of SAN MATEO
California:

SEE ATTACHED LEGAL Description.

Date: 2-3-11

(Signature of declarant)

Date: _____

(Signature of declarant)

State of California

County of San Francisco

On February 3, 2011, before me, Natalia Orihuela, Notary Public, personally appeared
Corazon G. Estiva, who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

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

WITNESS my hand and official seal.

Signature of Notary



FILE NO. 00-00000000-00
Locate No. CAFNT0941-0938-0007-0009565509

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

JPN: 034-031-312-03

APN: 034-312-030

Exhibit Q

RECORDING REQUESTED BY:

Executive Trustee Services, LLC dba ETS Services, LLC

16 AND WHEN RECORDED MAIL TO:

GMAC MORTGAGE, LLC FKA
GMAC MORTGAGE CORPORATION
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034

Forward Tax Statements to
the address given above

2011-045481

8:53 am 04/21/11 TD Fee: 21.00

Count of Pages 3

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



SPACE ABOVE LINE FOR RECORDER'S USE

TS # GM-172824-C

LOAN # [REDACTED] 1440

INVESTOR #: [REDACTED] 4814

TITLE ORDER # 080134572-CA-MSI

TRUSTEE'S DEED UPON SALE

APN 034-312-030-9

TRANSFER TAX: \$00.00

"THIS TRANSACTION IS EXEMPT FROM THE REQUIREMENTS OF THE REVENUE AND TAXATION CODE, SECTION 480.3"

The Grantee Herein **Was** The Foreclosing Beneficiary.

The Amount Of The Unpaid Debt was \$1,293,657.39

The Amount Paid By The Grantee was \$945,000.00

Said Property Is In The City Of **SAN MATEO**, County of **San Mateo**

*This instrument is being recorded as an
ACCOMMODATION ONLY, with no
Representation as to its effect upon title"*

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

HSBC BANK, NA AS TRUSTEE OF SERIES 2007-OA3

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

As more fully described on said Deed of Trust.

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **RAUL ESTIVA AND CORAZON ESTIVA, HUSBAND AND WIFE AS JOINT TENANTS** as Trustor, dated **03/22/2007** of the Official Records in the office of the Recorder of **San Mateo**, California under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on **04/03/2007**, instrument number **2007-050317** (or Book, Page) of Official records. Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

TRUSTEE'S DEED UPON SALE

Trustee's Deed

T.S.# **GM-172824-C**

Loan # **1440**

Title Order # **080134572-CA-MSI**

All requirements per California Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **03/10/2011**. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being **\$945,000.00**, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

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

Date: 4/11/11

Executive Trustee Services, LLC dba ETS Services, LLC

By: _____

Derek Hudson, Authorized Officer

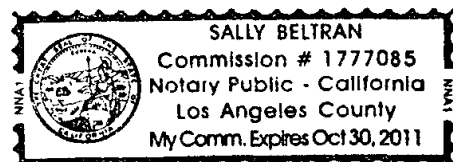
State of California } S.S.
County of Los Angeles }

On 4/11/11 before me, **Sally Beltran** Notary Public, personally appeared **Derek Hudson** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Sally Beltran* (Seal)
Sally Beltran



GM-172824-C

EXHIBIT "A"

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE", FILED IN THE OFFICE OF THE RECORDER ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

Exhibit R

RECORDING REQUESTED BY:

Fidelity National Title Company
Escrow No.: 12-325724-BG
Locate No.: CAIND0000-0948-0003-
Title No.: 110145071
LSI Title Company

**When Recorded Mail Document
and Tax Statement To:**

Mr. and Mrs. Julian Basler
801 Foothill Drive
San Mateo, CA 94402

2012-041989

10:08 am 03/29/12 DE Fee: 18.00

Count of Pages 2 SM

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 3 7 7 5 2 6 *

APN: 034-312-030-9

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

GRANT DEED

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$1,182.50 City Tax \$5,375.00

[X] computed on full value of property conveyed, or
[] computed on full value less value of liens or encumbrances remaining at time of sale,
Unincorporated Area XX City of **San Mateo**,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2004-OA3 who acquired title as HSBC Bank, NA as Trustee of Series 2007-OA3

hereby **GRANT(S)** to ^{/N:} Julian Basler and Vanessa Love, husband and wife, as joint tenants

the following described real property in the City of San Mateo, County of San Mateo, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: February 29, 2012

State of Texas

County of Dallas

On February 29, 2012 before me,
Cortney Cowden, Notary Public
(here insert name and title of the officer), personally appeared

Scott Buskirk

AD

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

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

WITNESS my hand and official seal.

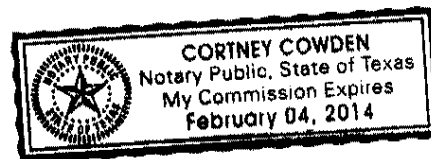
Signature Cortney Cowden (Seal)

HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2004-OA3 who acquired title as HSBC Bank, NA as Trustee of Series 2007-OA3

By: [Signature]
GMAC Mortgage, LLC its attorney in fact

Scott Buskirk

Authorized Officer



MAIL TAX STATEMENTS AS DIRECTED ABOVE

Escrow No.: 12-325724-BG
Locate No.: CAIND0000-0948-0003-
Title No.: 110145071

EXHIBIT "A"

LOT 11, BLOCK 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "FOOTHILL TERRACE, SAN MATEO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON JUNE 10, 1946 IN BOOK 25 OF MAPS AT PAGE(S) 59.

Exhibit S

1 JOHN B. SULLIVAN (State Bar No. 96742)
2 EDWARD R. BUELL III (State Bar No. 240494)
3 SEVERSON & WERSON
4 A Professional Corporation
5 One Embarcadero Center, Suite 2600
6 San Francisco, CA 94111
7 Telephone: (415) 398-3344
8 Facsimile: (415) 956-0439

ENDORSED FILED
SAN MATEO COUNTY

JUL - 7 2011

Clerk of the Superior Court
By S. YAMING
DEPUTY CLERK

9 Attorneys for Defendants
10 GMAC Mortgage, LLC f/k/a GMAC
11 Mortgage Corp. and GMAC Mortgage, ETS
12 Services, LLC, HSBC Bank, U.S.A. as
13 Trustee for DALT 2007-A03, Mortgage
14 Electronic Registration Systems, Inc.
15 (erroneously named herein as Mortgage
16 Electronic Systems, Inc.)

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF SAN MATEO

14 FERMIN SOLIS ANIEL, an individual;
15 ERLINDA ABIBAS ANIEL, an individual,,

16 Plaintiffs,

17 vs.

18 ETS SERVICES, LLC, a California Limited
19 Liability Corporation; GMAC MORTGAGE,
20 LLC F/K/A GMAC MORTGAGE
21 CORPORATION AND GMAC MORTGAGE;
22 HSBC BANK, U.S.A. as Trustee for DALT
23 2007-A03; MORTGAGE ELECTRONIC
24 SYSTEMS, INC.; PITE DUNCAN, LLP;
25 AND DOES 1-50 inclusive,

26 Defendants.

Case No.: CIV 502857

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that the above-captioned court issued the attached Order
26 sustaining Defendants GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC
27 Mortgage, ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, Mortgage
28

1 Electronic Registration Systems, Inc. (erroneously named herein as Mortgage Electronic Systems,
2 Inc.) demurrer without leave to amend which was entered on June 30, 2011.

3 A true and correct copy of the Order is attached hereto as Exhibit A.

4 DATED: July 6, 2011

SEVERSON & WERSON
A Professional Corporation

6 By: 
7 Brian S. Whittemore

8 Attorneys for Defendants
9 GMAC Mortgage, LLC f/k/a GMAC Mortgage
10 Corp. and GMAC Mortgage, ETS Services,
11 LLC, HSBC Bank, U.S.A. as Trustee for DALT
12 2007-A03, Mortgage Electronic Registration
13 Systems, Inc. (erroneously named herein as
14 Mortgage Electronic Systems, Inc.)
15
16
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EXHIBIT A

1 JOHN B. SULLIVAN (State Bar No. 96742)
EDWARD R. BUELL III (State Bar No. 240494)
2 BRIAN S. WHITTEMORE (State Bar No. 241631)
SEVERSON & WERSON
3 A Professional Corporation
One Embarcadero Center, Suite 2600
4 San Francisco, CA 94111
Telephone: (415) 398-3344
5 Facsimile: (415) 956-0439

ENDORSED FILED
SAN MATEO COUNTY

JUN 9 0 2011

Clerk of the Superior Court
By P. Alvarez
DEPUTY CLERK

6 Attorneys for Defendants
GMAC Mortgage, LLC f/k/a GMAC
7 Mortgage Corp. and GMAC Mortgage, ETS
Services, LLC, HSBC Bank, U.S.A. as
8 Trustee for DALT 2007-A03, Mortgage
Electronic Registration Systems, Inc.
9 (erroneously named herein as Mortgage
Electronic Systems, Inc.)

10
11
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN MATEO
14

15 FERMIN SOLIS ANIEL, an individual;
16 ERLINDA ABIBAS ANIEL, an individual,,

17 Plaintiffs,

18 vs.

19 ETS SERVICES, LLC, a California Limited
Liability Corporation; GMAC MORTGAGE,
20 LLC F/K/A GMAC MORTGAGE
CORPORATION AND GMAC MORTGAGE;
21 HSBC BANK, U.S.A. as Trustee for DALT
2007-A03; MORTGAGE ELECTRONIC
22 SYSTEMS, INC.; PITE DUNCAN, LLP;
AND DOES 1-50 inclusive,
23

24 Defendants.
25

Case No.: CIV 502857

**[PROPOSED] ORDER SUSTAINING
DEMURRER TO PLAINTIFFS'
COMPLAINT WITHOUT LEAVE TO
AMEND**

Hearing Date: June 9, 2011
Time: 9:00 a.m.
Dept.: Law and Motion
Judge: Hon. Joseph C. Scott

26 Defendants GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp. and GMAC Mortgage,
27 ETS Services, LLC, HSBC Bank, U.S.A. as Trustee for DALT 2007-A03, Mortgage Electronic
28

1 Registration Systems, Inc.. ("Moving Defendants") filed a demurrer to Plaintiffs Fermin Solis
2 Aniel and Erlinda Abibas Aniel's Complaint on June 9, 2011 (the "Demurrer").

3 The Demurrer came on regularly for hearing on June 9, 2011, at 9:00 a.m, before this
4 Court in the Law and Motion Department, the Honorable Joseph C. Scott, presiding. Brian S.
5 Whittemore appeared on behalf of Moving Defendants. Plaintiff Erlinda A. Aniel appeared on
6 behalf of Plaintiffs.

7 After full consideration of the written submissions of the parties, all other matters
8 presented to the Court, and good cause appearing,

9 **IT IS HEREBY ORDERED** that the Demurrer to the Complaint is sustained as to all
10 causes of action without leave to amend as to all causes of action on the grounds that Plaintiffs
11 lack standing. (*County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.) The allegations
12 of the Complaint admit that Plaintiffs' names did not appear on the promissory note or Deed of
13 Trust at any point during the time the complained-of activities took place.

14 Moving Defendants' Request for Judicial Notice is GRANTED insofar as the documents
15 for which judicial notice is sought were recorded in the Official Records of the County of San
16 Mateo or filed in the United States Bankruptcy Court, but not as to the truth of any matters
17 asserted therein.

18 **IT IS SO ORDERED.**

19
20 JUN 20 2011

21 DATED: _____, 2011

22 **JOSEPH C. SCOTT**

23 _____
Judge of the Superior Court

24
25 Approved as to form:

26
27 By: 

28 Erlinda Aniel
Plaintiff in Pro Per

PROOF OF SERVICE

Aniel vs. ETS Services, et al.

San Mateo County Superior Court Case No. CIV 502857

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

NOTICE OF ENTRY OF ORDER (SUSTAINING DEMURRER)

on all interested parties in said case addressed as follows:

Fermin Solis Aniel
Erlinda Abibas Aniel
75 Tobin Clark Drive
Hillsborough, CA 94010

In Pro Per

Tel: 650-284-6417
Fax: 650-571-5829

Peter J. Salmon
Pite Duncan LLP
4375 Jutland Drive, Suite 200
San Diego, CA 92117

Attorneys for Defendant Pite Duncan LLP

Tel: (858) 750-7600
Fax: (619) 590-1385
e-mail: psalmon@piteduncan.com

☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

☐ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons listed above and providing them to a professional messenger service for delivery.

☐ **(BY FEDERAL EXPRESS)** By depositing copies of the above documents in a box or other facility regularly maintained by Federal Express with delivery fees paid or provided for.

☐ **(BY FAX)** By use of facsimile machine telephone number (415) 956-0439, I faxed a true copy to the addressee(s) listed above at the facsimile number(s) noted after the party's address. The transmission was reported as complete and without error. The attached transmission report, which sets forth the date and time for the transmission, was properly issued by the transmitting facsimile machine.

☐ **(BY ELECTRONIC TRANSMISSION)** By sending a file of the above document(s) via electronic transmission (e-mail) at _____ a.m./p.m. using e-mail address (____@severson.com) to the e-mail address designated for each party identified above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on July 6, 2011.

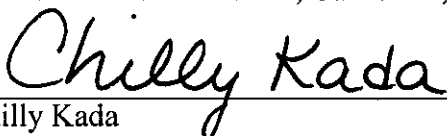

Chilly Kada

Exhibit T

NOTE

Fax 7142476123

May 12 2009 09:55am P003/008

Date: JUNE 4, 2007

Loan # 1137

Mia #: 8632

FLEX PAY FIXED/ADJUSTABLE RATE NOTE

(LIBOR One-Year Index (As Published In *The Wall Street Journal*)-Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JUNE 4, 2007
(Date)

HILLSBOROUGH 94010 94010
(City)

CALIFORNIA
(State)

75 TOBIN CLARK DRIVE, HILLSBOROUGH 94010 94010
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 2,000,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is MORTGAGEIT, INC.

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

I understand that Lender may transfer this Note. 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 7.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on AUGUST 1, 2007

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 1, 2037, 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

GMAC MORTGAGE, LLC., P.O. BOX 780

WATERLOO, IA 50704-0780

or at a different place if required by the Note Holder

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 7,503.94. This amount is a FORTY FIVE AND NO / 100 percent (45.000 %) reduction of the payment amount that will be sufficient to repay the Unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate set forth in Section 2. This amount may change.

JeddyMac Bank FlexPay 1 Yr. LIBOR Fixed Adjustable Rate Note - Multistate

8480990 (0607)

FANDM 8480990 Rev. 10-23-06

Page 1 of 6

Initials: 

Form 5408 07/06

Fax 7142476123

May 12 2009 09:55am P004/008

1137

(C) Payment Changes

My monthly payment will remain the same until AUGUST 1, 2012, the month after the first Change Date, and will not change again until after I have made my 120th scheduled monthly payment unless it is required to change in accordance with Section 4(F) below.

If I have made less than 120 scheduled monthly payments, my new monthly payment will be in an amount equal to FORTY FIVE AND NO / 100 percent (45.000 %) reduction of the "Full Payment." This limitation will not apply under the circumstances described in Section 4(F). The Full Payment is the amount of the monthly payment that would be sufficient to repay the unpaid balance that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments.

If I have made 120 or more scheduled monthly payments, my new monthly payment will be in an amount equal to the Full Payment.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of JULY, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 75 / 100 percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.250 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 12.250 %.

(E) Additions to My Unpaid Balance

If I have made less than 120 scheduled monthly payments, on any monthly payment date the amount of my monthly payment could be less than the interest portion of the Full Payment. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid balance. The Note Holder will also accrue interest on the amount of this difference to my unpaid balance each month. The interest rate on the interest added to the balance will be the rate required by Section 4(C) above.

(F) Limit on My Unpaid Balance: Increased Monthly Payment

My unpaid balance can never exceed a maximum amount equal to one hundred FIFTEEN percent (115 %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments until I have made 120 scheduled monthly payments, the addition of unpaid interest to my unpaid balance under Section 4(E) above could cause my unpaid balance to exceed that maximum. In that event, on the date that the payment of my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment equal to the interest only portion of the Full Payment if I have made less than 120 scheduled monthly payments.

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Initials: 

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(G) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(H) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. 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 this Note.

I may make a full Prepayment or partial Prepayments without paying any 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. 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 that 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.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

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

(B) Default

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

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that 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.

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(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.

8. 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.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given 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.

9. 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.

10. 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.

11. 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 that might result if I do not keep the promises that 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 read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

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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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.


If Lender exercises the option to require immediate payment in full, 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.

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


ERLINDA ANTEL (Seal)
- 08/11/08

[Sign Original Only]

Pay to the order of:

Without Recourse
MortgageIT, Inc.

By: 
Name: Ken Lauer
Its: Assistant Secretary

Exhibit U

RECORD AND RETURN TO:
MORTGAGEIT, INC.
1350 DEMING WAY, 3RD FLOOR
MIDDLETON, WI 53562

Recording Requested By:
MORTGAGEIT, INC.
1855 GATEWAY BLVD. SUITE 650
CONCORD, CALIFORNIA 94520

This Document Was Prepared By:
DERRICK BAUTISTA
MORTGAGEIT
1855 GATEWAY BLVD., #650 [REDACTED] 5875
CONCORD, CA 94520

[Space Above This Line for Recording Data]

MIN: [REDACTED] 137 8632

2007-088561

01:24pm 06/08/07 DT Fee: 67.00

Count of pages 21

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



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DEED OF TRUST

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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 JUNE 4, 2007 together with all Riders to this document.

(B) "Borrower" is
FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON
ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
MORTGAGEIT, INC.

Lender is a CORPORATION
organized and existing under the laws of NEW YORK
CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT (MERS)
CA71 : 07/01 (Page 1)

Form 3005 1/01

[Handwritten signatures]

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Lender's address is
33 MAIDEN LANE, 6TH FLOOR, NEW YORK, NEW YORK 10038

(D) "Trustee" is
FIDELITY NATIONAL TITLE

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 4, 2007

The Note states that Borrower owes Lender

TWO MILLION AND NO / 100

Dollars (U.S. \$ **2,000,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JULY 01, 2037**

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

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

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

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

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

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

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

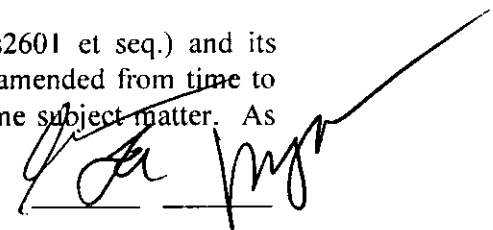
(M) "Escrow Items" means those items that are described in Section 3.

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. s2601 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



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used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as a nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the **COUNTY**

[Type of Recording Jurisdiction]

of **SAN MATEO**

:

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. 038-352-040

which currently has the address of **75 TOBIN CLARK DRIVE**

[Street]

HILLSBOROUGH 060326 0602A

, California

94010

("Property Address"):

[City]

[Zip Code]

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

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

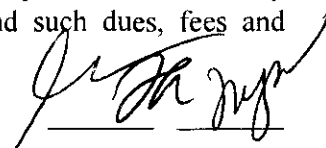
Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and



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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

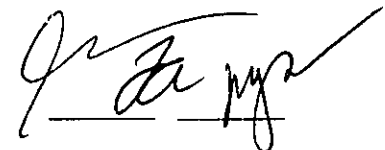
The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such



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proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

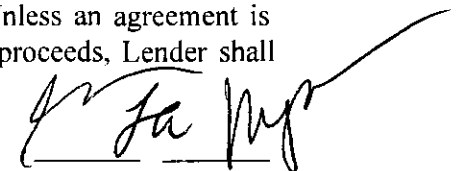
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall



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not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

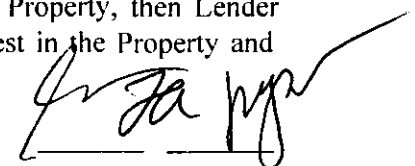
6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and



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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.

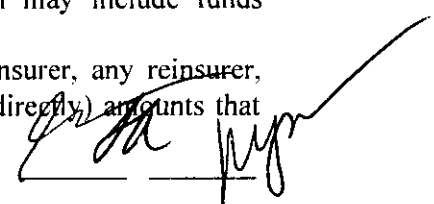
If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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.

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



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derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

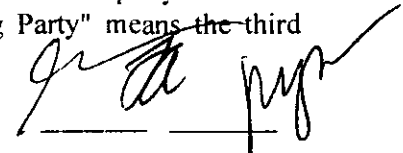
If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third



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party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

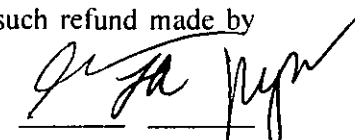
12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower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

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

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

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by



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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

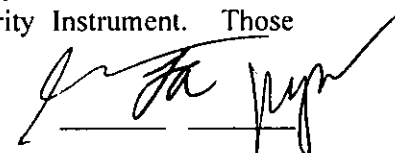
17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those



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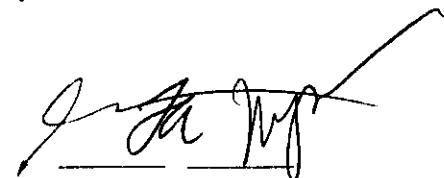
conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not

A handwritten signature in black ink, appearing to be "J. M. W.", is written over a horizontal line.

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do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

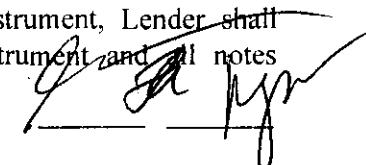
NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes



1137

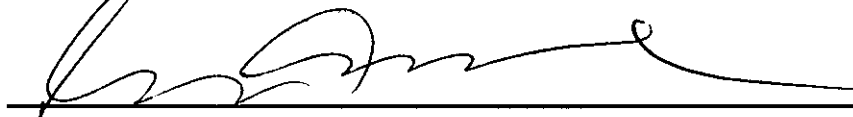
evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at it's option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers, and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by section 2943 of the Civil Code of California.

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.


BORROWERS:



ERLINDA ANIEL (Seal)
- Borrower



FERMIN ANIEL (Seal)
- Borrower



MARC JASON ANIEL (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

1137

[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA

COUNTY OF San Mateo

On June 4, 2007 before me, Carolyn Chan, Notary Public ,
personally appeared
ERLINDA ANIEL AND FERMIN ANIEL AND MARC JASON ANIEL

~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



 (Seal)
Carolyn Chan

Date: **JUNE 4, 2007**

Loan # **1137**
Min #: **48632**

FLEX PAY FIXED/ADJUSTABLE RATE RIDER
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)- Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this **4TH** day of **JUNE, 2007**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **MORTGAGEIT, INC.**

(**"Lender"**) of the same date and covering the property described in the Security Instrument and located at:

75 TOBIN CLARK DRIVE, HILLSBOROUGH 06032-0002A, CALIFORNIA 94010

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **7.250** %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

3. PAYMENTS

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ **7,503.94**. This amount is a **FORTY FIVE AND NO / 100** percent (**45.000** %) reduction of the payment amount that will be sufficient to repay the unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate set forth in Section 2. This amount may change.

(C) Payment Changes

My monthly payment will remain the same until **AUGUST, 2012**, the month after the first Change Date, and will not change again until after I have made my 120th scheduled monthly payment unless it is required to change in accordance with Section 4(F) below.

Indymac Bank Flex Pay 1 Yr LIBOR Fixed/Adjustable Rate Rider - Multistate

8480998 (0606)

FAND# 8480998 Rev. 10-09-06

Page 1 of 5

Form 5609

06/06

1137

If I have made less than 120 scheduled monthly payments, my new monthly payment will be in an amount equal to a **FORTY FIVE AND NO / 100** percent (**45.000** %) reduction of the "Full Payment." This limitation will not apply under the circumstances described in Section 4(F). The Full Payment is the amount of the monthly payment that would be sufficient to repay the unpaid balance that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments.

If I have made 120 or more scheduled monthly payments, my new monthly payment will be in an amount equal to the Full Payment.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **JULY, 2012**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in The Wall Street Journal. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND 75 / 100** percentage points (**2.750** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **12.250** % or less than **2.750** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **12.250** %.

(E) Additions to My Unpaid Balance

If I have made less than 120 scheduled monthly payments, on any monthly payment date the amount of my monthly payment could be less than the interest portion of the Full Payment. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid balance. The Note Holder will also accrue interest on the amount of this difference to my unpaid balance each month. The interest rate on the interest added to the balance will be the rate required by Section 4(C) above.

(F) Limit on My Unpaid Balance: Increased Monthly Payment

My unpaid balance can never exceed a maximum amount equal to one hundred **FIFTEEN** percent (**115** %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments until I have made 120 scheduled monthly payments, the addition of unpaid interest to my unpaid balance under Section 4(E) above could cause my unpaid balance to exceed that maximum. In that event, on the date that the payment of my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment equal to the interest only portion of the Full Payment if I have made less than 120 scheduled monthly payments.

1137

(G) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(H) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.


To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee

1137

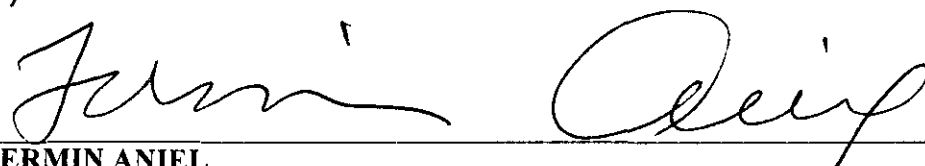
to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.



ERLINDA ANIEL (Seal)
-Borrower



FERMIN ANIEL (Seal)
-Borrower



MARC JASON ANIEL (Seal)
-Borrower

(Seal)
-Borrower

 1137

(Seal)
-Borrower

(Seal)
-Borrower

Title No. 07-**9565875**-A-BD
Locate No. CAFNT0941-0938-0007-0009565875

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HILLSBOROUGH, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 15, AS DESIGNATED ON THAT CERTAIN MAP ENTITLED, "TOBIN CLARK ESTATES UNIT NO. TWO, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER ON JUNE 25, 1976, IN BOOK 91 OF MAPS AT PAGES 17 AND 19.

JPN: 091-017-000-0015

APN: 038-352-040

Exhibit V

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

RECORDING REQUESTED BY:

Mortgage Electronic Registration Systems, Inc.,
solely as nominee for Mortgageit, Inc.

RECORDED MAIL TO:

Pite Duncan, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933

2009-125757

09:34am 09/21/09 AT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



4263507

APN: 038-352-040

1-026976

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to HSBC Bank USA, National Association as Trustee for DAL2007-OA5 all beneficial interest under that certain Deed of Trust dated June 4, 2007, executed by Fermin Aniel, and Erlinda Aniel, Husband and Wife and Marc Jason Aniel, A Single man, all as joint tenants, to Fidelity National Title as trustee, for Mortgage Electronic Registration Systems, Inc., solely as nominee for Mortgageit, Inc., as beneficiary, and recorded as Instrument No. 2007008561, on June 8, 2007, in the State of California, San Mateo County Recorder's Office. Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 8-24-09

Mortgage Electronic Registration Systems, Inc., solely
as nominee for Mortgageit, Inc.

By: Jamaine Yamoah

Its: Jamaine Yamoah ASSISTANT SECRETARY

State of PA
County of Montgomery) ss.

On 8/24/09 before me, Zahira Y Sweet - Notary Public, personally appeared Jamaine Yamoah who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Zahira Y Sweet
Notary Public

(This Area for Official Notary Seal)

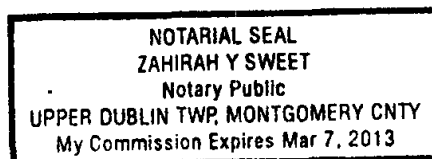


Exhibit W

1PAY

Payment Letter

Loan Number: [REDACTED] 1137

Borrower: ERLINDA ANIEL

Property Address: 75 TOBIN CLARK DRIVE
HILLSBOROUGH 08032-0002A, CALIFORNIA 94010

Dear Borrower:

The following is a breakdown of your monthly mortgage payment:

First Payment Date	AUGUST 1, 2007	
Principal and Interest		\$ 7,503.94
Hazard Insurance		\$
Monthly PMI / MIP		\$
City Property Taxes		\$
County Property Taxes		\$
Annual Assessments		\$
Flood Insurance		\$

TOTAL PAYMENT

\$ 7,503.94

All payments are to be made directly to MORTGAGEIT, INC.

who will handle the servicing of your loan.

You may not receive payment coupons for 30 to 60 days. Please use the temporary coupons attached below until you receive your coupon booklet.

Should you have any questions regarding your mortgage loan, please feel free to call 866-547-9504 for assistance.

Thank you for using MORTGAGEIT, INC.

IMPORTANT NOTICE

We have entered into an agreement with GMAC Mortgage LLC (GMAC) to service your mortgage loan. GMAC will be responsible for handling all aspects of your loan, including providing monthly statements, posting your payments, and handling any customer service issues you may have.

If you do not receive your initial monthly statement 10 days prior to the date your first payment is due, please follow the instructions on the enclosed Temporary Payment Coupon. If you have any questions prior to receiving your first statement from GMAC, please contact them at 1-855-725-0782 and they will be pleased to assist you. In the unlikely event GMAC is not able to help you with any questions or concerns you may have, please feel free to contact MortgageIT's Customer Service Department at 1-888-548-8448 for further assistance.

We sincerely appreciate the opportunity to provide your mortgage financing and we will do everything possible to ensure that both MortgageIT and GMAC provide you with the courteous and professional service you deserve.

Acknowledge receipt of this payment letter.

	
Borrower	Date
ERLINDA ANIEL	

Borrower	Date	Borrower	Date
----------	------	----------	------

Borrower	Date	Borrower	Date
----------	------	----------	------

THIS COUPON MUST ACCOMPANY PAYMENT

MORTGAGE LOAN NUMBER	DUE DATE	AMOUNT DUE
[REDACTED] 1137	08/01/2007	\$ 7,503.94

Mail payments to: MORTGAGEIT, INC.
GMAC MORTGAGE, LLC., P.O. BOX 780
WATERLOO, IA 50704-0780

Exhibit X

RECORDING REQUESTED BY:

Pg 2 of 2

2008-108476

09:04am 09/29/08 ST Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder

FIRST AMERICAN TITLE INSURANCE

ETS Services, LLC
 2255 North Ontario Street, Suite 400
 Burbank, California 91504-3120
 (818) 260-1600

TS NO : GM-164602-C

LOAN NO : [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, **FIDELITY NATIONAL TITLE** was the original Trustee, and **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.** was the original Beneficiary under that certain Deed of Trust dated **6/4/2007** and recorded on **6/8/2007** as Instrument No. **2007-088561**, in Book , Page of Official Records of **San Mateo** County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute **Executive Trustee Services, LLC dba ETS Services, LLC**, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 9/25/2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.


 Rosalie Solano, ASSISTANT SECRETARY

State of California} ss.
 County of Los Angeles }

On **9/25/2008** before me, **Christine Gomez-Schwab** Notary Public, personally appeared **Rosalie Solano** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Christine Gomez-Schwab

(Seal)



Exhibit Y

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE

WHEN RECORDED MAIL TO:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

2008-108477

09:04am 09/29/08 ND Fee: 12.00

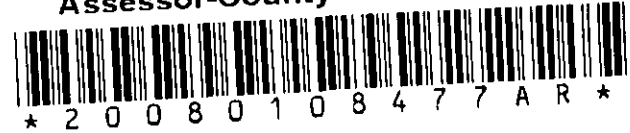
Count of pages 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



TS No. : GM-164602-C Loan No.: [REDACTED] 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **\$29,905.26** as of **9/25/2008**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**

C/O ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

TS NO.: GM-164602-C

LOAN NO.: [REDACTED] 8492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **6/4/2007**, executed by **FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, as beneficiary, recorded **6/8/2007**, as Instrument No. **2007-088561**, in Book , Page , of Official Records in the Office of the Recorder of **San Mateo County, California** describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$2,000,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on **7/1/2008** plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 9/25/2008

ETS Services, LLC AS AGENT FOR
BENEFICIARY

BY: Mardros

Anabel Mardros
TRUSTEE SALE OFFICER

Exhibit Z

Date Data as-of: March 5, 2014

Account Number	Name Primary Borrower	Name Secondary Borrower	Property Address	Mailing Address
8492	ERLINDA ANIEL		75 TOBIN CLARK DRIVE	MARC JASON ANIEL, ATTORNEY AT L
			HILLSBOROUGH	205 DE ANZA BLVD. #144
			CA	SAN MATEO
			94010-0000	CA
				94402

Investor Info	
Investor Acct No - Prim	4254
Investor Number	42222
Investor Name Full	WELLS FARGO BANK, N.A.
Investor Id	

Previous Servicer Info	
Previous Account Number	1137
Seller Company Name	MORTGAGE IT

Loan Info	Dates	Current Balances	Uncollected	Year-To-Date
Arm Flag Y	Int Collected To 07/01/2008	Principal \$0.00	Late Charges \$0.00	Interest \$0.00
Loan Type Conventional	Next Due 08/01/2008	Escrow \$0.00	Interest \$0.00	Taxes \$0.00
Lien Position 01	Last Payment 02/27/2013	Unapplied \$0.00	Fees \$0.00	
Interest Rate 7.250%	Last Activity 08/14/2013	Buydown \$0.00	Opt \$0.00	
Collection Status PO	Setup Date 06/13/2007			
	Maturity Date 07/01/2037			

Financial

Account Number	Trans Added Date	Date Interest Paid Current	Prin Bal after trans	Transaction Description	Transaction Reason Code	Trans Type	Teller ID	Trans Amount	To Principal	To Interest Amt	To Escrow Amt	To Fee Amt	To Unapplied Funds Amt	To Credit Insurance Amt	To Late Charge Amt
8492	08/14/2013	07/01/2008	\$0.00	FEE	096	FP	25102	\$118.75	\$0.00	\$0.00	\$0.00	\$118.75	\$0.00	\$0.00	\$0.00
8492	08/02/2013		\$0.00			IPR	28724	(\$85.00)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
8492	08/02/2013		\$0.00			NPP	28724	\$85.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	FEE	011	FWV	32580	(\$231.25)	\$0.00	\$0.00	\$0.00	(\$231.25)	\$0.00	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	FEE	028	FWV	32580	(\$120.00)	\$0.00	\$0.00	\$0.00	(\$120.00)	\$0.00	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	FEE	040	FWV	32580	(\$10,855.29)	\$0.00	\$0.00	\$0.00	(\$10,855.29)	\$0.00	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	FEE	164	FWV	32580	(\$352.00)	\$0.00	\$0.00	\$0.00	(\$352.00)	\$0.00	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	Service Release		SV	32580	\$0.00	\$2,056,816.02	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21,541.98
8492	08/01/2013	07/01/2008	\$2,056,816.02	Service Release		SVT	32580	\$175,499.35	\$0.00	\$0.00	\$182,995.41	\$0.00	(\$7,496.06)	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	Unapplied		UF	32580	(\$7,496.06)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
8492	08/01/2013	07/01/2008	\$0.00	Unapplied		UI	32580	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21,541.98
8492	08/01/2013		\$0.00			NBW	32580	(\$168.00)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Loan History

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Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492		06/14/2012	FOR	Intercom Type: General Update / Subj	NEW TRAK SYSTEM ID
8492		06/14/2012	FOR	06/14/12 - 16:48 - 51307	NEW TRAK SYSTEM ID
8492		06/14/2012	FOR	ect: Fees and Costs Complete /	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	06/11/12 - 11:30 - 89073	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	Intercom From: Morano, Mike - To:	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	Perez, Alejandra; /	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	06/11/12 - 10:20 - 39283	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	e borrower.	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	06/11/12 - 10:20 - 39283	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	omments: dispute response	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	- I uploaded as Missing	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	Documents a copy of GMAC's dispute	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	response letter which was sent to th	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	06/11/12 - 10:20 - 39283	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	System updated for the following	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	event: User has ended the Issue	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	associated with this loan. Issue	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	Type: FC Payment Research/Dispute. C	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	06/11/12 - 10:19 - 00007	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	Foreclosure (NIE Id# 39150016) sent	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	to Executive Trustee Services, Inc.	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	at 6/11/2012 10:19:13 AM by Mike	NEW TRAK SYSTEM ID
8492		06/11/2012	FOR	Morano	NEW TRAK SYSTEM ID
8492	INQ60	06/08/2012	CIT	021 DONE 06/08/12 BY TLR 01220	DENISE JUNGEN
8492	INQ60	06/08/2012	CIT	TSK TYP 048-REINSTATEMENT Q	DENISE JUNGEN
8492	INQ60	06/08/2012	CIT	020 DONE 06/08/12 BY TLR 01220	DENISE JUNGEN
8492	INQ60	06/08/2012	CIT	TSK TYP 246-EXECUTIVE OFFIC	DENISE JUNGEN
8492	INQ60	06/08/2012	CIT	020 close cit 246-sent letter of response to	DENISE JUNGEN
8492	INQ60	06/08/2012	CIT	customer to advise of reinstmnt and no changes	DENISE JUNGEN
8492	INQ60	06/08/2012	CIT	to loan	DENISE JUNGEN
8492		06/06/2012	FOR	06/06/12 - 11:37 - 00000	NEW TRAK SYSTEM ID
8492		06/06/2012	FOR	g Glass then emailed CORRSPEC again	NEW TRAK SYSTEM ID
8492		06/06/2012	FOR	Status: Active Issue Comment: rcv	NEW TRAK SYSTEM ID
8492		06/06/2012	FOR	06/06/12 - 11:37 - 00000	NEW TRAK SYSTEM ID
8492		06/06/2012	FOR	to CORRSPEC / VOC and requested a	NEW TRAK SYSTEM ID

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Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492		05/18/2012	FOR	Renukaradhya Channabasavaiah, good	NEW TRAK SYSTEM ID
8492		05/18/2012	FOR	through 5/31/2012	NEW TRAK SYSTEM ID
8492	INQ60	05/18/2012	CIT	020 sent ack letter to customer and imaged	DENISE JUNGEN
8492	INQ30	05/17/2012	CIT	019 DONE 05/17/12 BY TLR 12852	JILL SLIFKA
8492	INQ30	05/17/2012	CIT	TSK TYP 106-CREDIT AMEND >	JILL SLIFKA
8492	INQ30	05/17/2012	CIT	019 closing cit 106 item forwarded to voc group	JILL SLIFKA
8492	INQ30	05/17/2012	CIT	for response. jills/5140	JILL SLIFKA
8492	INQ60	05/17/2012	CIT	020 new cit 246--letter from from b1 opposition of	DENISE JUNGEN
8492	INQ60	05/17/2012	CIT	debt validation notice	DENISE JUNGEN
8492		05/16/2012	FOR	05/16/12 - 13:14 - 39283	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	proved.	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	05/16/12 - 13:14 - 39283	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	System updated for the following	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	event: User has approved the issue.	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	issue type: FC Payment	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Research/Dispute. Status: Active, Ap	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	05/16/12 - 13:14 - 00000	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	t: rcvd bwr corr- VOD dispte-	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Changed to: rcvd bwr corr- VOD	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	dispte- ---	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	05/16/12 - 13:14 - 00000	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	to CORRSPEC / VOC and requested a	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	copy of their response. Status:	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Active Projected End: 12:00:00 AM	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	changed to 05/30/2012 Issue Commen	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	05/16/12 - 13:14 - 00000	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	yment Research/Dispute. Issue	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Comments: rcvd bwr corr- VOD	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	dispte- --- 5/16	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Forwarded borrower s dispute letter	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	05/16/12 - 13:14 - 00000	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	System updated for the following	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	event: User has updated a	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Process-Level issue for this loan.	NEW TRAK SYSTEM ID
8492		05/16/2012	FOR	Issue updated to: Issue Type: FC Pa	NEW TRAK SYSTEM ID

Loan History

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Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492	INQ60	02/23/2012	CIT	of debt that bky court elimantd	DENISE JUNGEN
8492	VOC	02/23/2012	NT	rcvd lttr to T Marano. fwded to D Jungen to hndl.	LINDSEY EAST
8492	VOC	02/23/2012	NT	lindseye5165	LINDSEY EAST
8492	DODV	02/22/2012	NT	No social security number was found to complete	API CSRV
8492	DODV	02/22/2012	NT	DOD website search for additional borrower Marc	API CSRV
8492	DODV	02/22/2012	NT	Jason	API CSRV
8492	FCINV	02/21/2012	NT	Sent reason for delay in fcl process to investor.	KEVIN HYNES
8492		02/21/2012	D28	FORCED BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		02/17/2012	CBR	DELINQUENT: 180+ DAYS	SYSTEM ID
8492	CACRT	02/14/2012	NT	Sent CA cert letter per state req; cert	MELISSA KNUTSON
8492	CACRT	02/14/2012	NT	tracking can be obtained from imaged	MELISSA KNUTSON
8492	CACRT	02/14/2012	NT	doc. Melissa/236.5516	MELISSA KNUTSON
8492		02/14/2012	OL	WDOYCA Certified DNR Only	MELISSA KNUTSON
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	name and mailing/property address.	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Please exhaust all resources to	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	obtain the information and conti	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	I Could not complete DOD website	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	search for additional borrower	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Fermin Ariel as no social security	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	number was located when searching by	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	ers and Sailors Relief Act. Issue	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Comments: Please provide scra	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	verification for 2nd bwr - Marc	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Jason Aniel, and 3rd bwr Fermin Anie	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	System updated for the following	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	event: User has updated a	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Process-Level issue for this loan.	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Issue updated to: Issue Type: Soldi	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	ecurity number was located when	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	searching by name and	NEW TRAK SYSTEM ID

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Loan History

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492		02/03/2012	FOR	mailing/property address. Please	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	exhaust all	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Jason Aniel, and 3rd bwr Fermin	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Aniel Could not complete DOD	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	website search for additional	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	borrower Fermin Ariel as no social s	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	erification for 2nd bwr - Marc	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Jason Aniel, and 3rd bwr Fermin	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Aniel Changed to: Please provide	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	scra verification for 2nd bwr - Marc	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	NewTrak User - (Cont) - nue with	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	foreclosure. Still need search for	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Marc Jason Status: Active	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	Issue Comment: Please provide scra v	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	02/03/12 - 09:12 - 00000	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	NewTrak User - (Cont) - resources	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	to obtain the information and	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	continue with foreclosure. Still	NEW TRAK SYSTEM ID
8492		02/03/2012	FOR	need search for Marc Jason	NEW TRAK SYSTEM ID
8492	DODV	02/03/2012	NT	Could not complete DOD website search for	AMBER SWANGER
8492	DODV	02/03/2012	NT	additional borrower Fermin Ariel as no social	AMBER SWANGER
8492	DODV	02/03/2012	NT	security number was located when searching by name	AMBER SWANGER
8492	DODV	02/03/2012	NT	and mailing/property address. Please exhaust all	AMBER SWANGER
8492	DODV	02/03/2012	NT	resources to obtain the information and continue	AMBER SWANGER
8492	DODV	02/03/2012	NT	with foreclosure.	AMBER SWANGER
8492		02/02/2012	DM	EARLY IND: SCORE 134 MODEL EI90C	SYSTEM ID
8492		02/02/2012	NT	CONTRACT CHANGED NO NOTES ENTERED	JILL SCHARES
8492		02/02/2012	NT	CONTRACT CHANGED NO NOTES ENTERED	JILL SCHARES
8492		01/31/2012	FSV	INSP TP A RESULTS RCVD; ORD DT=01/25/12	SYSTEM ID
8492		01/30/2012	DMD	01/30/12 15:12:00 NO ANSWER	DAVOX INCOMING FILE
8492		01/30/2012	DMD	01/26/12 12:57:06 NO ANSWER	DAVOX INCOMING FILE
8492		01/30/2012	DMD	01/25/12 17:43:15 NO ANSWER	DAVOX INCOMING FILE

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Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492	CADNR	01/30/2012	NT	Contact Attempted	GRETA HUNTER
8492		01/30/2012	DM	NO ANSWER	GRETA HUNTER
8492		01/30/2012	DM	ACTION/RESULT CD CHANGED FROM LMDC TO BRNA	GRETA HUNTER
8492		01/26/2012	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		01/26/2012	DMD	01/26/12 12:57:06 NO ANSWER	DAVOX INCOMING FILE
8492		01/26/2012	DMD	01/25/12 17:43:15 NO ANSWER	DAVOX INCOMING FILE
8492		01/26/2012	FOR	01/26/12 - 13:39 - 17593	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	: No first legal filed no NOR	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	required	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	01/26/12 - 13:39 - 17593	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	User has completed the Action	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	Dismissed and Order Uploaded data	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	form with the following entries:	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	Action Dismissed and Order Uploaded:	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	01/26/12 - 13:39 - 17593	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	User has updated the system for the	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	following event: Attorney Confirmed	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	File Closed, completed on 1/26/2012	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	01/26/12 - 13:39 - 17593	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	User has updated the system for the	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	following event: Action Dismissed	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	and Order Uploaded, completed on	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	1/26/2012	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	01/26/12 - 05:16 - 00007	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	Foreclosure (NIE Id# 36876892) sent	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	to Executive Trustee Services, Inc.	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	at 1/26/2012 5:15:51 AM by	NEW TRAK SYSTEM ID
8492		01/26/2012	FOR	Automated Tasks	NEW TRAK SYSTEM ID
8492	COL81	01/26/2012	CIT	014 Open CIT#828 New cit #828. Active foreclosure	MELISSA KNUTSON
8492	COL81	01/26/2012	CIT	file closed. Holding referral pending due	MELISSA KNUTSON
8492	COL81	01/26/2012	CIT	diligence completion. When 3 call attempts	MELISSA KNUTSON
8492	COL81	01/26/2012	CIT	have been made on 3 different days at 3	MELISSA KNUTSON
8492	COL81	01/26/2012	CIT	different times at least 1 hour apart the DNR	MELISSA KNUTSON
8492	COL81	01/26/2012	CIT	cert letter will be re-sent. Melissa/236.5516	MELISSA KNUTSON
8492		01/25/2012	NT	PRIOR BREACH REACTIVATED	

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Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492		01/25/2012	FSV	INSP TYPE A ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492		01/25/2012	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		01/25/2012	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		01/25/2012	DMD	01/25/12 17:43:15 NO ANSWER	DAVOX INCOMING FILE
8492		01/25/2012	FOR	01/25/12 - 11:44 - 11293	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	Process opened 1/25/2012 by user	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	Jessica Yeiter.	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	01/25/12 - 11:44 - 11293	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	User has updated the system for the	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	following event: Attorney Notified	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	to Close and Bill, completed on	NEW TRAK SYSTEM ID
8492		01/25/2012	FOR	1/25/2012	NEW TRAK SYSTEM ID
8492	CADNR	01/25/2012	NT	Contact Attempted	TERRANCE ECK
8492		01/25/2012	FOR	FILE CLOSED (1000) COMPLETED 01/25/12	JESSICA YEITER
8492		01/24/2012	FOR	01/24/12 - 17:03 - 89073	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	s Relief Act. Issue Comments:	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	Please provide scra verification	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	for 2nd bwr - Marc Jason Aniel, and	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	3rd bwr Fermin Aniel Status: Active	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	01/24/12 - 16:45 - 00007	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	User has updated the system for the	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	following event: File Received By	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	Attorney, completed on	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	1/24/2012Automation	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	01/24/12 - 16:03 - 00007	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	Foreclosure (NIE Id# 36687349)	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	picked up by firm Executive Trustee	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	Services, Inc. at 1/24/2012 4:03:07	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	PM by Alejandra Perez	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	01/24/12 - 17:03 - 89073	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	System updated for the following	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	event: User has created a	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	Process-Level issue for this	NEW TRAK SYSTEM ID
8492		01/24/2012	FOR	loan.Issue Type: Soldiers and Sailor	NEW TRAK SYSTEM ID
8492		01/23/2012	FOR	01/20/12 - 19:50 - 00007	NEW TRAK SYSTEM ID

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Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492	INQ30	10/24/2011	CIT	013 new cit 109 corr rcvd	SUSAN PARKER
8492		10/19/2011	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		10/18/2011	ET	ARM CHANGE NOTICE SCHEDULED FOR 10/19/11	SYSTEM ID
8492		10/14/2011	CBR	DELINQUENT: 180+ DAYS	SYSTEM ID
8492	CACRT	10/11/2011	NT	CA DNR CERT LETTER SENT PER STATE REQ;	MELISSA MATTHIAS
8492	CACRT	10/11/2011	NT	CERT TRACKING CAN BE OBTAINED FROM	MELISSA MATTHIAS
8492	CACRT	10/11/2011	NT	IMAGED DOC	MELISSA MATTHIAS
8492		10/11/2011	OL	WDOYCA Certified DNR Only	MELISSA MATTHIAS
8492		10/03/2011	FSV	INSP TP A RESULTS RCVD; ORD DT=09/26/11	SYSTEM ID
8492		09/26/2011	FSV	INSP TYPE A ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492		09/20/2011	D28	FORCED BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		09/16/2011	CBR	DELINQUENT: 180+ DAYS	SYSTEM ID
8492		09/16/2011	ET	ARM CHANGE NOTICE SCHEDULED FOR 09/19/11	SYSTEM ID
8492		09/02/2011	DM	EARLY IND: SCORE 134 MODEL EI90C	SYSTEM ID
8492		08/31/2011	FSV	INSP TP A RESULTS RCVD; ORD DT=08/26/11	SYSTEM ID
8492		08/26/2011	FSV	INSP TYPE A ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492		08/19/2011	DMD	08/18/11 20:19:31 NO MESSAGE LEFT	DAVOX INCOMING FILE
8492		08/19/2011	DMD	08/17/11 12:53:54 NO ANSWER	DAVOX INCOMING FILE
8492		08/19/2011	DMD	08/17/11 12:52:08 NO ANSWER	DAVOX INCOMING FILE
8492		08/19/2011	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		08/18/2011	ET	ARM CHANGE NOTICE SCHEDULED FOR 08/19/11	SYSTEM ID
8492		08/18/2011	DMD	08/18/11 20:19:31 NO MESSAGE LEFT	DAVOX INCOMING FILE
8492		08/18/2011	DMD	08/17/11 12:53:54 NO ANSWER	DAVOX INCOMING FILE
8492		08/18/2011	DMD	08/17/11 12:52:08 NO ANSWER	DAVOX INCOMING FILE
8492		08/17/2011	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		08/17/2011	DMD	08/17/11 12:53:54 NO ANSWER	DAVOX INCOMING FILE
8492		08/17/2011	DMD	08/17/11 12:52:08 NO ANSWER	DAVOX INCOMING FILE
8492		08/12/2011	CBR	DELINQUENT: 180+ DAYS	SYSTEM ID
8492		08/02/2011	DM	EARLY IND: SCORE 134 MODEL EI90C	SYSTEM ID
8492		08/01/2011	FSV	INSP TP A RESULTS RCVD; ORD DT=07/27/11	SYSTEM ID
8492		07/27/2011	FSV	INSP TYPE A ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492	ST1ST	07/22/2011	NT	CA 1st class ltr sent per state req;	JACOB HUTCHISON
8492	ST1ST	07/22/2011	NT	docs retained in XNET	JACOB HUTCHISON
8492		07/22/2011	OL	WDOYCA First Class DNR Only	JACOB HUTCHISON
8492		07/19/2011	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID

Date Data as-of: March 5, 2014

Loan History

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492		01/19/2009	FOR	Intercom From: Chris Herrera,	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	at-exet - To: Sheryll Pagsoligan	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	(GMAC) / Message: Fees and costs	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	have been submitted for all of the r	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	01/16/09 - 08:49 - 40703	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	Fees and costs response: Good	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	Through:1/25/2009 Fees: 6989.81	NEW TRAK SYSTEM ID
8492		01/19/2009	FOR	Costs: 2526.23 Comment:	NEW TRAK SYSTEM ID
8492		01/19/2009	DM	A3P BOOTS CLD TO DSCS LN MOD.,ADV	PORTIA BUTLER
8492		01/19/2009	DM	OVEREXTENDED BY -4460.94 & IF CLD CUT SOME	PORTIA BUTLER
8492		01/19/2009	DM	EXPENSES OR SALE PROP.,STATED DID NOT WANT TO	PORTIA BUTLER
8492		01/19/2009	DM	LOSE HOME, ADV HAVE THREE OPTIONS:#1)GET MORE	PORTIA BUTLER
8492		01/19/2009	DM	INCOME #2) CUT SOME EXPENSES OR #3)SALE PROPERTY,	PORTIA BUTLER
8492		01/19/2009	DM	STATED DID NOT WNT O INCL MTG, DAV HAVE TO INCL.	PORTIA BUTLER
8492		01/19/2009	DM	ACTION/RESULT CD CHANGED FROM NOTE TO LMDC	PORTIA BUTLER
8492		01/16/2009	CBR	FORECLOSURE STARTED	SYSTEM ID
8492		01/16/2009	CBR	DELINQUENT: 180+ DAYS	SYSTEM ID
8492		01/16/2009	ET	ARM CHANGE NOTICE SCHEDULED FOR 01/19/09	SYSTEM ID
8492		01/16/2009	DM	IMAGED AS WOUT, ICT-GLEE1@2863	MICHAEL CAPUTO
8492		01/16/2009	DM	ACTION/RESULT CD CHANGED FROM LMDC TO NOTE	MICHAEL CAPUTO
8492		01/16/2009	OL	WDOYLM - 10 DAY DOC	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	List items received from customer and imaged?	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	financial statement RFD: na; Outstanding items	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	for a complete package that a 10 day letter will	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	be sent to the customer? poi, bank statement, itr,	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	hardship letter ; Income if available? in loss	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	fin; Expenses if available? in loss fin; Total	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	Amount of Surplus or Shortage if available? in	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	loss fin; Loss Mit Rep/Site File was Assigned to?	MICHAEL CAPUTO
8492	PARPK	01/16/2009	NT	Velincia Serrano.	MICHAEL CAPUTO
8492		01/16/2009	FOR	LMT BORR FIN REC ADDED	MICHAEL CAPUTO
8492		01/15/2009	FOR	01/15/09 - 14:06 - 59125	NEW TRAK SYSTEM ID
8492		01/15/2009	FOR	all occupied single-family	NEW TRAK SYSTEM ID
8492		01/15/2009	FOR	properties to include any sales	NEW TRAK SYSTEM ID
8492		01/15/2009	FOR	scheduled between now & 01/31/09.	NEW TRAK SYSTEM ID

Loan History

Date Data as-of: March 5, 2014

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492		01/14/2009	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		01/14/2009	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		01/14/2009	DMD	01/14/09 11:48:20 VACANT	DAVOX INCOMING FILE
8492		01/02/2009	FSV	INSP TYPE F ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492		01/02/2009	DM	EARLY IND: SCORE 231 MODEL EIFRC	SYSTEM ID
8492		12/31/2008	FOR	12/30/08 - 18:32 - 30479	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	% FeesAndCostComment% (DIS)	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	12/30/08 - 18:31 - 30479	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	User has updated the system for the	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	following event: Sale Scheduled	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	For, completed on 1/26/2009 (DIS)	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	12/30/08 - 18:31 - 30479	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	Process opened 12/30/2008 by user	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	Connie Canada.	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	SALE SCHEDULED (604) COMPLETED 12/30/08	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	PRE-SALE REDEMPTION (603) COMPLETED 12/29/08	NEW TRAK SYSTEM ID
8492		12/31/2008	FOR	TASK:0605-FCL-CHANGD FUPDT 01/26/09	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	12/29/08 - 17:13 - 74155	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	ile being reviewed for pub/sale	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	date . Status: Active,	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	approval not required.	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	12/29/08 - 17:13 - 74155	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	System updated for the following	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	event: User has reprojected the	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	step Sale Scheduled For to	NEW TRAK SYSTEM ID
8492		12/30/2008	FOR	1/9/2009. Reason: Other. Comments: F	NEW TRAK SYSTEM ID
8492	LMT	12/19/2008	NT	fwd physical wout to Velencia, zcohn	LESLEY GALAYDA
8492		12/19/2008	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		12/18/2008	ET	ARM CHANGE NOTICE SCHEDULED FOR 12/19/08	SYSTEM ID
8492	LMT	12/17/2008	NT	Per 3rd party h/o is seeking a mod. instead of	MEAGAN VISSER
8492	LMT	12/17/2008	NT	short sale sent email to am rep Zac to forward to	MEAGAN VISSER
8492	LMT	12/17/2008	NT	someone doing resolutions..bkc 2757	MEAGAN VISSER
8492		12/12/2008	CBR	FORECLOSURE STARTED	SYSTEM ID
8492		12/12/2008	CBR	DELINQUENT: 150 DAYS	SYSTEM ID
8492		12/08/2008	FSV	INSP TP F RESULTS RCVD; ORD DT=12/03/08	SYSTEM ID

Loan History

Date Data as-of: March 5, 2014

Transaction s Account Number	Area ID	Trans Added Date	Trans Type	Transaction Message	Trans User Name
8492	LMT	12/08/2008	NT	A3P W/ATTY SYDNEY AHLL CLD TO DSCS LN MOD, ADV PER	PORTIA BUTLER
8492	LMT	12/08/2008	NT	NOTES ON 11/19 RCVD SHRT SALE, A3P WLD NOT ALLW	PORTIA BUTLER
8492	LMT	12/08/2008	NT	NME TO XPLAIN OR ASSIST IN GETTING INFO. NEEDED,	PORTIA BUTLER
8492	LMT	12/08/2008	NT	STARTED YELLING & DSC CALL., ADV. NEEDS FINACIALS	PORTIA BUTLER
8492		12/03/2008	FSV	INSP TYPE F ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492		12/02/2008	DM	EARLY IND: SCORE 246 MODEL EIFRC	SYSTEM ID
8492	LMT	11/19/2008	NT	RCVD SHORT SALE JMOORE 2838 SENT TO ZCOHN	JEANA MOORE
8492		11/19/2008	D28	BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		11/17/2008	DM	PROMISE BROKEN 11/17/08 PROMISE DT 11/15/08	SYSTEM ID
8492		11/17/2008	ET	ARM CHANGE NOTICE SCHEDULED FOR 11/18/08	SYSTEM ID
8492		11/14/2008	CBR	FORECLOSURE STARTED	SYSTEM ID
8492		11/14/2008	CBR	DELINQUENT: 120 DAYS	SYSTEM ID
8492		11/07/2008	FSV	INSP TP F RESULTS RCVD; ORD DT=11/03/08	SYSTEM ID
8492		11/04/2008	DM	EARLY IND: SCORE 265 MODEL EIFRC	SYSTEM ID
8492		11/03/2008	FSV	INSP TYPE F ORDERED; REQ CD =AUTO DELQ	SYSTEM ID
8492		11/03/2008	DM	A3P RUTH CLD TO GET MAILING ADDRESS TO MAILM LOSS	PORTIA BUTLER
8492		11/03/2008	DM	MIT PACK, PROV...3451 HAMMOND AVE...WATERLOO..IA	PORTIA BUTLER
8492		11/03/2008	DM	50702, REFERNEC ACCT. # ON DOCS IF NOT THERE.	PORTIA BUTLER
8492		11/03/2008	DM	ACTION/RESULT CD CHANGED FROM LMDC TO LMDC	PORTIA BUTLER
8492		11/03/2008	NT	Faxed to her at 650-376-3875. KHarris	KITTY HARRIS
8492		11/03/2008	DM	TTA3P; VII; FAXED W/O PKG TO HER AT 650-376-3875	KITTY HARRIS
8492		11/03/2008	DM	FOR POSSIBLE LOAN MOD. KHARRIS	KITTY HARRIS
8492		11/03/2008	DM	ACTION/RESULT CD CHANGED FROM OAAI TO LMDC	KITTY HARRIS
8492		10/23/2008	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		10/23/2008	DMD	00/00/00 00:00:00	DAVOX INCOMING FILE
8492		10/23/2008	DMD	10/23/08 14:00:25 4	DAVOX INCOMING FILE
8492	TAX	10/21/2008	NT	As Per efile 10/06/2008 deliquent taxes are	SANJAY GOUDA
8492	TAX	10/21/2008	NT	follows : For SAN MATEO COUNTY Disbursed 07/08	SANJAY GOUDA
8492	TAX	10/21/2008	NT	Total CK Delq. base tax 26961.66, Pen 4388.87	SANJAY GOUDA
8492	TAX	10/21/2008	NT	total 31350.53. GTD 10/31/08 Converted loan to	SANJAY GOUDA
8492	TAX	10/21/2008	NT	escrow. SKG	SANJAY GOUDA
8492		10/21/2008	D28	FORCED BILLING STATEMENT FROM REPORT R628	SYSTEM ID
8492		10/20/2008	DM	AUTH: SYDNEY JAY HALL, ESQ LAW OFFICES OF SYDNEY	CONRADO ARTICULO
8492		10/20/2008	DM	JAY HALL, PH # 925.550.9709 FAX # 925.932.3940,	CONRADO ARTICULO
8492		10/20/2008	DM	IMAGED AS ARTP, ICT-GLUE1@2863	CONRADO ARTICULO

Exhibit AA

23

FIRST AMERICAN TITLE COMPANY

RECORDING REQUESTED BY
ETS Services, LLC

AND WHEN RECORDED MAIL TO:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

T.S. No. GM-164602-C

Loan No. [REDACTED] 3492

9875

2009-000060

09:05am 01/02/09 NT Fee: 9.00

Count of pages 1

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



SPACE ABOVE THIS LINE FOR RECORDER'S Use

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 6/4/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS

Recorded **6/8/2007** as Instrument No. **2007-088561** in Book , page of

Official Records in the office of the Recorder of **San Mateo** County, California,

Date of Sale: **1/26/2009** at **1:00 PM**

Place of Sale: **At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, California**

Property Address is purported to be: **75 TOBIN CLARK DRIVE
HILLSBOROUGH, California 94010-0000**

APN #: **038-352-040**

The total amount secured by said instrument as of the time of initial publication of this notice is **\$2,207,729.33**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Date: **12/30/2008**

ETS Services, LLC

2255 North Ontario Street, Suite 400

Burbank, California 91504-3120

Sale Line: 714-730-2727

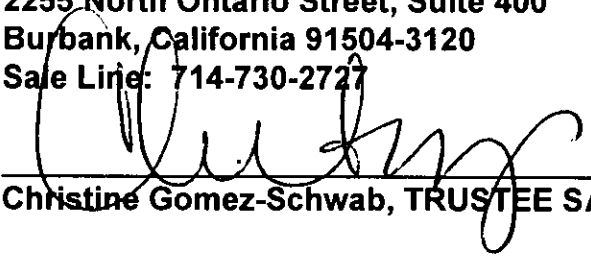

Christine Gomez-Schwab, TRUSTEE SALE OFFICER

Exhibit BB

MacCONAGHY & BARNIER, PLC
JOHN H. MacCONAGHY, SBN 83684
JEAN BARNIER, SBN 231683
MONIQUE JEWETT-BREWSTER, SBN 217792
645 First St. West, Suite D
Sonoma, California 95476
Telephone: (707) 935-3205
Facsimile: (707) 935-7051
Email: mjewett-brewster@macbarlaw.com

Attorneys for Trustee
JANINA M. ELDER

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

FERMIN SOLIS ANIEL and
ERLINDA ABIBAS ANIEL,

Debtors.

Case No. 09-30452 DM
(Chapter 7)

**TRUSTEE'S RESPONSE TO
MOTION TO COMPEL TRUSTEE
TO ABANDON DEBTORS'
PROPERTIES**

Date: November 12, 2010
Time: 10:00 a.m.
San Francisco Courtroom 22
Hon. Dennis Montali

Janina M. Elder, Trustee in Bankruptcy of the Estate of Fermin Solis Aniel and Erlinda Abibas Aniel ("Trustee"), hereby files her Response to the Debtors' *Motion to Compel Trustee to Abandon Debtors' Properties* ("Motion to Compel").

**I. LEGAL STANDARD FOR ABANDONMENT OF ESTATE PROPERTIES
PURSUANT TO 11 U.S.C. § 554 OF THE BANKRUPTCY CODE**

Section 554(b) of the Bankruptcy Code provides, in pertinent part, that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and

1 benefit to the estate.” *Id.* (emphasis supplied). Courts in this circuit have determined that
2 abandonment pursuant to Section 554 is proper only when the party seeking abandonment can
3 establish that the property at issue is indeed burdensome, or of inconsequential value and benefit
4 to the estate. *See, e.g., In re Viet Vu*, 245 B.R. 644, 647 (9th Cir. BAP 2000); *In re Sullivan &*
5 *Lodge, Inc.*, 2003 U.S. Dist. LEXIS 14616, *11 (N.D. Cal. 2003). Notably, when the trustee
6 does not oppose a motion to compel abandonment, the court must “focus . . . upon the reasons
7 underlying the trustee’s determination and affirm a decision which reflects a business judgment
8 made in good faith, upon a reasonable basis and within the scope of [her] authority under the
9 Code.” *See Sullivan*, 2003 U.S. Dist. LEXIS 14616 at *11, quoting *In re Wilson*, 94 B.R. 886,
10 888 (Bankr. E.D. Va. 1989).

11 It is well-settled that abandonment of encumbered real property of the estate is proper
12 where equity remaining in such property, if any, is of inconsequential value and benefit to the
13 estate. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004)(granting debtors’ motion to
14 compel trustee’s abandonment of debtors’ residence where residence was exempt and equity was
15 of inconsequential value to the estate); *see also In re Nelson*, 251 B.R. 857 (8th Cir. BAP
16 2000)(trustee compelled to abandon real properties where, among other things, trustee admitted
17 that debtors had no equity in the properties and sale would not generate any benefit for the
18 estate).

19 Furthermore, courts have recognized a trustee’s authority to abandon causes of action
20 which have inconsequential value to the estate. *See In re Yack*, 2009 Bankr. LEXIS 4554, at *20
21 (9th Cir. BAP 2009); *In re Moore*, 110 B.R. 924, 927 (Bankr. C.D. Cal. 1990)(noting that the
22 trustee must determine, in her sound business judgment, what disposition is in the best interests
23 of the estate.). As observed by the district court for the Northern District of California:

24 “Claims do not become valueless for section 554 purposes because a
25 trustee declines to pursue them; rather, a trustee may decline to pursue a
26 claim if that claim has no value Charged with the duty of maximizing
the value of the estate, . . . a trustee may abandon a cause of action only
when [she] deems its value to be less than the cost of asserting it.”

1 *Sullivan, supra*, at *11-12 (internal citations omitted).

2 **A. The Trustee Does Not Oppose Abandonment of the Real Properties and**
3 **Causes of Action Subject of the Motion to Compel Because Such Property Is**
4 **of Inconsequential Value and Benefit to the Estate**

5 As set forth in the accompanying Declaration of Janina M. Elder, the Trustee's
6 investigation into the assets of the estate leads the Trustee to conclude that the Debtors' real
7 properties, and the causes of action which the Debtors assert against various "pretender lenders",
8 hold little to no value for the estate.

9 The Court is well familiar with the background of this bankruptcy case. The Debtors,
10 while vehemently disputing their secured creditors' standing to seek relief from the automatic
11 stay to exercise their state court remedies, completely failed to save such properties from
12 foreclosure by tendering post-petition adequate protection payments. Indeed, it is the Trustee's
13 understanding and belief that the Debtors have failed to make any payments on the notes secured
14 by the seven real properties disclosed in the amended schedules during the pendency of their
15 bankruptcy case. Furthermore, based on the proofs of claim filed in this case, the Debtors also
16 owe significant pre-petition arrears on these various secured notes. Given that the properties are
17 all underwater, and the fact the Court has granted relief from the automatic stay with regard to
18 five out of the seven properties at issue, the Trustee believes that these properties have
19 inconsequential value and benefit to the Chapter 7 estate.

20 Likewise, the Trustee has thoroughly investigated the "pretender lender" litigation.
21 While such litigation may have value to the Debtors (if only to ensure that they have their "day in
22 court" to contest the lenders' standing to foreclose), the Trustee believes that the claims do not
23 have enough value to the estate to justify the costs of litigation to pursue such claims.
24 Particularly, in the *Aniel v. Aurora Loan Services, et al.* litigation (Case No. 10-1042), the district
25 court already has dismissed all claims against defendants Mortgage Electronic Registration
26 Systems, Inc. ("MERS") and Quality Loan Services Corp. ("Quality") with prejudice. While the

1 district court granted the Debtors leave to amend certain of their claims against remaining
2 defendants Aurora and McCarthy and Holthus, LLP ("McCarthy"), both Aurora and McCarthy
3 have filed motions to dismiss the Debtors' First Amended Complaint, which motions remain
4 pending. Similarly, in the *Aniel v. Litton Loan Services, L.P., et al.* litigation (Case No. 10-
5 0951), defendants Litton Loan Services and Quality have filed motions to dismiss; and the
6 district court clerk declined to enter defendant MERS' default in that suit, so the Trustee
7 anticipates that MERS likely will defend itself in that case, as it did in the *Aurora* litigation.

8 **CONCLUSION**

9 It is the Trustee's business judgment that the merits of the Debtors' "pretender lender"
10 claims simply do not warrant the estate's expense of continued prosecution of those suits. For the
11 reasons state above, it is also the Trustee's conclusion that the Debtors' real properties hold little
12 to no value for the estate. In closing, the Trustee does not oppose the Debtors' Motion to
13 Compel, and requests that the Court enter its order abandoning the estate's interests in these real
14 properties and claims.

15
16 Dated: October 29, 2010

17 Respectfully submitted,

18 MACCONAGHY & BARNIER, PLC

19
20 /s/ Monique Jewett-Brewster
21 Monique Jewett-Brewster
22 *Attorneys for Janina M. Elder,*
23 *Trustee in Bankruptcy*
24
25
26

Exhibit CC

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
AS AN ACCOMMODATION ONLY

Requested and Prepared by:
ETS Services, LLC

When Recorded Mail To:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

2011-016800

11:18 am 02/09/11 AT Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



3879875

Loan No.: 8492

TS NO: GM-164602-C

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to:

GMAC MORTGAGE, LLC FKA GMAC MORTGAGE CORPORATION

all beneficial interest under that certain Deed of Trust dated: 6/4/2007 executed by FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE AND MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS, as Trustor(s), to FIDELITY NATIONAL TITLE, as Trustee, and recorded as Instrument No. 2007-088561, on 6/8/2007, in Book XX, Page XX of Official Records, in the office of the County Recorder of San Mateo County, California together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

DATE: February 1, 2011

HSBC Bank USA, National Association as Trustee
for DALT2007-0A5

Mira Smoot
Authorized Officer

State of Pennsylvania } ss.
County of Montgomery }

On FEB 01 2011 before me, Mary Lynch Notary Public, personally appeared Mira Smoot who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of Pennsylvania that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mary Lynch (Seal)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary Lynch, Notary Public
Upper Dublin Twp., Montgomery County
My Commission Expires Nov. 3, 2014
Member Pennsylvania Association of Notaries

Exhibit DD

2011-074586

2:00 pm 07/01/11 NR Fee: 15.00

Count of Pages 1

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 2 1 2 1 4 1 *

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO

ETS Services, LLC

2255 North Ontario Street, Suite 400

Burbank, CA 91504-3120

9875 DM

Loan No.: 8492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. No.: GM-164602-C

038-352-040

NOTICE OF RESCISSION OF NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is duly appointed Trustee under a Deed of Trust dated **06/04/2007**, executed by ***FERMIN ANIEL* AND *ERLINDA ANIEL***, HUSBAND AND WIFE AND ***MARC JASON ANIEL***, A SINGLE MAN, ALL AS **JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGEIT, INC.**, as Beneficiary, recorded **06/08/2007**, as Instrument No. **2007-088561**, in book **XX**, page **XX**, of Official Records in the Office of the Recorder of **San Mateo** County, California describing land therein as more fully described on the above referenced deed of trust.

said obligations including one note for the sum of **\$2,000,000.00**.

Whereas, the present beneficiary under that certain Deed of Trust herein above described, heretofore delivered to the Trustee thereunder written Declaration of Default and Demand for Sale; and Whereas, Notice was heretofore given of breach of obligations for which said Deed of Trust is security and of election to cause to be sold the property therein described; and Whereas, a Notice of Default was recorded on the day and in the book and page set forth below:

Notice was recorded on **09/29/2008** in the office of the Recorder of **San Mateo** County, California, Instrument No. **2008-108477**, in Book **I**, of Official Records.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN that the present Beneficiary and/or the Trustee, does hereby rescind, cancel and withdraw said Declaration of Default and Demand for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default--past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall nowise jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.

Dated: **Jun 27, 2011**

ETS Services, LLC

By: 

Lizeth Chavez, TRUSTEE SALE OFFICER

Exhibit EE

GMAC Mortgage

3451 Hammond Ave
P.O. Box 780
Waterloo, IA 50704-0780

10/11/11

ERLINDA ANIEL

75 TOBIN CLARK DRIVE

HILLSBOROUGH CA 94010-0000

RE: Account Number [REDACTED] 8492
Property Address 75 TOBIN CLARK DRIVE

HILLSBOROUGH CA 94010-0000

Dear ERLINDA ANIEL

We are contacting you again as required by California law. As we have made a number of attempts to make arrangements with you without success, you are hereby notified that you have 30 days from the date of this letter to contact us to discuss options to avoid foreclosure. If you fail to contact us within this period of time, we are permitted by law to foreclose on your property.

If you wish to explore options that may prevent the foreclosure on your property, there is still time, but it is imperative that you contact us immediately. We have a number of options and programs for which you may be eligible. You, however, must take the first step by contacting us so that we can determine the best way to help you.

You may reach us toll-free at 800-850-4622 between the hours of 8:00 a.m. and 11:00 p.m. Central Time Monday through Friday and from 8:00 a.m. to 12:00 p.m. on Saturday. You can also obtain information about possible loss mitigation options, by visiting our website at www.gmacmortgage.com.

10/11/11

Account Number [REDACTED] 8492

Page 2

For additional assistance, you may contact HUD to locate a HUD-certified counseling office near you by calling HUD's toll-free number at 1-800-569-4287. The toll-free TDD number for HUD is 1-800-877-8339.

GMAC Mortgage, LLC
Collection Department
Loan Servicing

4:27

Notice Regarding Bankruptcy: If you have filed for bankruptcy and your case is still active and/or if you have received a discharge, please be advised that this is not an attempt to collect a pre-petition or discharged debt. Any action taken by GMAC Mortgage, LLC is for the sole purpose of protecting our lien interest in your property and not to recover any amounts from you personally. If you have surrendered the property during your bankruptcy case, you may disregard this notice.

If you are represented by an attorney in a bankruptcy proceeding, you should review this notice and discuss any questions you may have regarding this notice with your attorney.

Exhibit FF

GMAC Mortgage

3451 Hammond Ave
P.O. Box 780
Waterloo, IA 50704-0780

02/14/12

ERLINDA ANIEL

75 TOBIN CLARK DRIVE

HILLSBOROUGH CA 94010-0000

RE: Account Number [REDACTED] 8492
Property Address 75 TOBIN CLARK DRIVE

HILLSBOROUGH CA 94010-0000

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02/14/12

Account Number [REDACTED] 8492

Page 2

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GMAC Mortgage, LLC
Collection Department
Loan Servicing

4:27

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If you are represented by an attorney in a bankruptcy proceeding, you should review this notice and discuss any questions you may have regarding this notice with your attorney.

Exhibit GG

2012-058860

10:33 am 04/27/12 ST Fee: 15.00
Count of Pages 1
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder



RECORDING REQUESTED BY:

FIRST AMERICAN Title

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932

TS NO : CA1200053786
LOAN NO : [REDACTED] 3492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS was the original Trustor, FIDELITY NATIONAL TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC. was the original Beneficiary under that certain Deed of Trust dated 06/04/2007 and recorded on 06/08/2007 as Instrument No. 2007-088561, in Book XX, Page XX of Official Records of San Mateo County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: 4-5-12

GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)

A handwritten signature of Marcell G. Pace in cursive script.

Marcell G. Pace
Authorized Officer

State of **Pennsylvania** } ss.
County of **Montgomery** }

On April 5, 2012 before me,
Marcell G. Pace

Christine Morales

Notary Public, personally appeared
who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of **Pennsylvania** that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Christine Morales (Seal)
Christine Morales

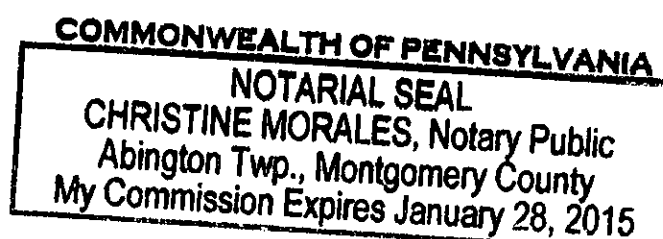


Exhibit HH

2012-058861

10:33 am 04/27/12 ND Fee: 18.00

Count of Pages 2

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



* R 0 0 0 1 3 9 8 0 5 0 *

RECORDING REQUESTED BY:
FIRST AMERICAN Title

WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC
dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
APN: 038-352-040-0

TS No. : CA1200053786

Loan No.: [REDACTED] 3492

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until **approximately 90 days** from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$516,041.70 as of **Apr 21, 2012**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, **GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation)**.
C/O Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932 phone

TS NO.: CA1200053786

LOAN NO.: [REDACTED] 8492

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **06/04/2007**, executed by **FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") AS NOMINEE FOR MORTGAGEIT, INC.**, as beneficiary, recorded **06/08/2007**, as Instrument No. **2007-088561**, in Book **XX**, Page **XX**, of Official Records in the Office of the Recorder of **San Mateo** County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$2,000,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 7/1/2008 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5

Dated: Apr 21, 2012

ETS Services, LLC as Agent for Beneficiary



BY: _____

Dee Ortega
TRUSTEE SALE OFFICER

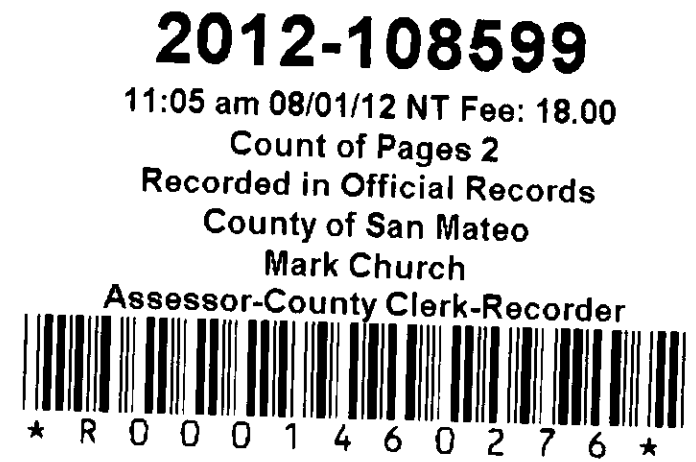
Exhibit II

4
RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE COMPANY
RECORDING REQUESTED BY
Executive Trustee Services, LLC dba ETS Services, LLC

AND WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120

T.S. No. **CA1200053786**
Loan No. **8492**
Insurer No. **4254**

0666



SPACE ABOVE THIS LINE FOR RECORDER'S Use

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 06/04/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: **FERMIN ANIEL AND ERLINDA ANIEL, HUSBAND AND WIFE MARC JASON ANIEL, A SINGLE MAN, ALL AS JOINT TENANTS**

Recorded **06/08/2007** as Instrument No. **2007-088561** in Book **XX**, page **XX** of Official Records in the office of the Recorder of **San Mateo** County, California

Date of Sale: **08/27/2012** at **01:00 P.M.**

Place of Sale: **At the Marshall Street entrance to the Hall of Justice and Records, 400 County Center, Redwood City, CA 94061**

Property Address is purported to be: **75 TOBIN CLARK DRIVE
HILLSBOROUGH, CA 94010**

APN #: **038-352-040-0**

The total amount secured by said instrument as of the time of initial publication of this notice is **\$2,856,811.25**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

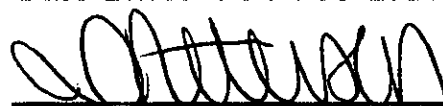
T.S. No. **CA1200053786**
Loan No. **8492**
Insurer No. **4254**

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 714-730-2727 or visit this Internet Web site address www.lpsasap.com for information regarding the sale of this property, using the file number assigned to this case file number CA1200053786. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

Date: **07/27/2012**

Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
Sale Line: 714-730-2727



Illeana Petersen, TRUSTEE SALE OFFICER

Exhibit JJ

GMAC Mortgage

May 17, 2012

May 17, 2012

ERLINDA ANIEL
75 TOBIN CLARK DRIVE
HILLSBOROUGH, CA 94010-0000

RE: Account Number: [REDACTED] 8492
Property Address: 75 TOBIN CLARK DRIVE
HILLSBOROUGH, CA 94010

Dear ERLINDA ANIEL

This letter is in response to your inquiry regarding the above referenced account. We are researching this request and will respond within 30 calendar days.

If you have any further questions, please contact me at 1-800-627-0128, extension 2365387.

Sincerely,


Denise Jungen
Executive Account Manager

Exhibit KK

GMAC Mortgage

June 8, 2012

June 8, 2012

Erlinda Aniel
75 Tobin Clark Drive
Hillsborough CA 94010

RE: Account Number [REDACTED] 8492
Property Address 75 Tobin Clark Drive
Hillsborough CA 94010

Dear Erlinda Aniel:

This is in response to your letter dated May 10, 2012, and received in our office May 17, 2012.

As previously addressed, our records indicate this debt was discharged through a Chapter 7 bankruptcy. The account is properly noted to ensure no collection activity occurs (i.e. collection phone calls or letters). The discharge of the personal liability for repayment of the debt is not the same as a release of the lien on the property, as the lien on the property is not removed, just your personal liability to pay. Therefore, the discharge of the bankruptcy releases personal liability; however, not the lien.

If the account is not maintained, GMAC Mortgage, LLC has the right to protect our interest in the property up to and including a foreclosure sale.

I encourage you to contact your Bankruptcy attorney for any additional inquiries you may have regarding this account. It is our understanding the bankruptcy court denied your objection to the proof of claim.

The following responses are in the same order as your letter:

1. The Qualified Written Request (QWR) response was sent on February 17, 2010.
2. Reinstatement on the account through June 30, 2012 is as follows:
 - 8 payments (July 2008 to February 2009) at \$7,503.94 \$60,031.52
 - 14 payments (March 2009 to April 1, 2010), at \$9,824.64 \$137,544.96
 - 16 payments (May 2010 to August 2011), at \$9,878.18 \$158,050.88
 - 6 payments (September 2011 to February 2012), at \$14,889.14 \$89,334.84
 - 2 payments (March 2012 and April 2012), at \$21,267.16 \$42,534.32
 - 2 payments (May 1, 2012 and June 2012), at \$18,012.61 \$36,025.22
 - Late charges \$19,734.96
 - Attorney fees/costs \$7,013.23
 - Outstanding fees costs \$2,756.81
 - Inspection costs \$222.88
 - Broker price opinion \$269.00
 - Payoff statement fee \$60.00
 - TOTAL DUE \$553,578.62**
3. A response to the validity of the debt was sent November 1, 2011.

4.-7. Our records do not reflect documentation to support your claims.

If you have further questions regarding this matter please contact me at 1-800-627-0128 extension 2365387

If you have further questions regarding this matter please contact me at 1-800-627-0128 extension 2365387
or direct at 319-236-5387.

Sincerely,



Denise Jungen
Executive Account Manager

Notice Regarding Bankruptcy: If you have filed for bankruptcy and your case is still active and/or if you have received a discharge, please be advised that this is not an attempt to collect a pre-petition or discharged debt. Any action taken by GMAC Mortgage, LLC is for the sole purpose of protecting our lien interest in your property and not to recover any amounts from you personally. If you have surrendered the property during the bankruptcy case, you may disregard this notice.

Erlinda Aniel
75 Tobin Clark Dr.
Hillsborough, Ca 94010
Hillsborough, Ca 94010



May 10, 2012

Executive Trustee Services, LLC
2255 North Ontario Street, Suite 400
Burbank, Ca 91504-3120

T.S. No. Ca 1200053786
Loan No. [REDACTED] 8492

An Opposition to DEBT Validation NOTICE

Dear Debt Collector:

As you may know, you are collecting a debt that has been discharged by operation of law through the Bankruptcy Code Section 727 of Title 11. This debt has been discharged as of December 2, 2010, and the bankruptcy Trustee closed my bankruptcy estate on February 04, 2011. You did not acquire interest in the loan till after the Bankruptcy Court had already discharged the liability on the loan. Accordingly, since you are a debt collector trying to collect a discharged debt, you are in a violation of that order under Title 11 of the United States Bankruptcy Code.

Collection of a Discharged Debts is Prohibited:

The discharged prohibits any attempt to collect a debt from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attached wages or other property, or to take any other action to collect a discharged debt from the debtor.

Since, you are representing GMAC Mortgage, LLC, a sub-loan servicer and not the original creditor on my deed of trust, you as a debt collector, and should be bound by this law. A creditor who violates this order can be required to pay damages and attorneys fees to the debtors.

Your debt validation notice did not comply with State and Federal Laws and we are disputing it.

1. We disputed we owed this debt to a sub-loan servicer to GMAC Mortgage, LLC (successor by merger to GMAC Mortgage Corporation) as claimed in debt validation notice and notice of default which we received a copy with no recordation date. We deny that GMAC is the current creditor because GMAC is only the sub-loan servicer of our discharged Note. GMAC, as sub servicer for HSBC as TRUSTEE for DALT 2007-0A5's, refused to acknowledge that my deed of trust and note belongs to them. GMAC's response to our

Qualified Written Request is claiming that HSBC is the creditor of our loan. That is the reason why the debt was discharged because it is an unsecured debt because HSBC and GMAC, as a sub-servicer, failed to perfect the lien in Bankruptcy. This does not include the GMAC, as a sub-servicer, failed to perfect the lien in Bankruptcy. This does not include the big scandal about ROBO-signing documents that resulted in a 25 billion dollar settlement, where GMAC was named as the leading ROBO-signers culprit by using their employees like Jeffrey Stephan to sign documents with no personal knowledge of what he is signing.

2. You stated that as of 4/21/12, the total delinquency owed was \$516,041.70:
 - a. Kindly state how did you arrive at such amount listed on question Number 2?
 - b. Kindly give us an accounting of that figure you stated since the debt of \$2,051,000.00 has been eliminated through my bankruptcy, and was reported in my credit report that I owed nothing to GMAC.
 - c. Kindly state why, as of 4/30/12, the amount I am required to pay was \$2,117,458.81. Can you give me an accounting for that amount, and how did you derive such debt?

3. You stated I may dispute of this debt within 30 days after receiving this notice. I am DISPUTING the amount, and you have 30 days to send me a notice that you are rescinding the notice of default and that we owe NOTHING. If not, we will file our case against GMAC and the subsidiaries of GMAC, Executive Trustee Services, LLC, for violating the bankruptcy order and illegally collecting a debt.

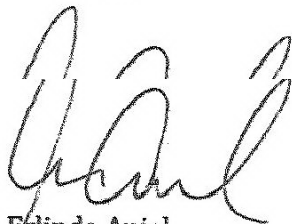
4. OUR DEED OF TRUST CANNOT SUFFER DEFAULT BECAUSE THERE IS NO OBLIGATION TO PAY. See CA CIVIL CODE § 2936. An assignment of a debt secured by mortgage carries with it the security. Therefore, since you recorded an assignment of debt together with the note, recorded on February 9, 2011, from HSBC to GMAC after the Note has been discharged, the assignment of the deed/debt is null and void and the Deed of Trust secures nothing. Because by operation of law, GMAC accepted a discharged note and deed from HSBC, GMAC accepted those assignment without any value or rights, and the deed itself is null and void.

5. This is clearly an ongoing fraud attempt between your company and GMAC. Your actions are a violation of Tax law, a violation of Cease and Desist order by OCC, a violation of FDCPA, a violation of State Law, a violation of Federal laws, a violation of money laundering, a violation of Consumer Financial Protection Bureau (CFPB), and Fraud

6. You have 30 days upon receipt of this certified letter to respond to our opposition to your debt validation notice. If you do not respond, we will assume you have no basis for your claims as a debt collector to give us a notice of debt validation.

7. Lastly, continuing to file fraudulent foreclosure documents, signed by Robo-Signers, and using the County Clerk and the Title Company to record these fraudulent documents to show beneficial interest in order to foreclose is testimony that GMAC and its affiliates are still continuing to steal homeowners' properties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erlinda Aniel', written in a cursive style.

Erlinda Aniel

CC:

GMAC Attn: Denise Jungen

Consumer Financial Protection Bureau

Certified copy: 70112000000167433429

Dear Member:

You are being sent this document because you are listed as the current Servicer and/or Investor on the MERS® System or MERS® Commercial for the mortgage loan(s) that are the subject of this document. You are being sent this document because you are listed as the current Servicer and/or Investor on the MERS® System or MERS® Commercial for the mortgage loan(s) that are the subject of this document. If you believe that you have received this document in error, please contact the MERSCORP Holdings, Inc. ("MERSCORP Holdings") Help Desk at 888-680-6377.

If you no longer have an interest in the mortgage loan(s) that are the subject of this document, and have transferred your interest(s) to another Member, pursuant to the Procedures Manual, you are required to forward this document to that Member and you must also ensure that the MERS® System or MERS® Commercial is updated to reflect the transfer(s).

Please note that the MERSCORP Holdings Law Department may request additional information about this legal filing or action.

Pursuant to the MERS® System Rules of Membership, regardless of whether a Member, MERSCORP Holdings and/or Mortgage Electronic Registration Systems, Inc. ("MERS") defended a member indemnified claim or none of these entities defended such claim, and regardless of whether MERSCORP Holdings and/or MERS had notice of the member indemnified claim, if a judgment is entered against MERSCORP Holdings and/or MERS, for such claim, the Member shall either pay the full amount of the judgment, or promptly post a surety bond, letter of credit, or the equivalent that is acceptable to the court, for the amount of the judgment pending: 1) any motions to set aside or vacate the judgment; 2) appeal of the judgment; or 3) any challenges made by either the Member or MERSCORP Holdings and/or MERS, to the judgment. It is the Member's responsibility (i) to pay the amount of the judgment and any other related indemnified payments on behalf of MERSCORP Holdings and/or MERS, and (ii) if MERSCORP Holdings and/or MERS defends against the enforcement of a judgment (which MERSCORP Holdings and/or MERS shall have the right to do in its discretion after notice to the Member), the Member shall promptly reimburse MERSCORP Holdings and/or MERS for the amount of the indemnified payments related to such defense.

Document ID : 17051407	
ICN # :	[REDACTED] 6332
ICN # :	[REDACTED] 6332
MemberID :	[REDACTED] 0375
MIN :	[REDACTED] 8632,
Borrower Information :	
Funds Information :	

April 13, 2012

April 13, 2012

Erlinda Aniel
75 Tobin Clark Dr.
Hillsborough, Ca 94010



Mortgage Electronic Registration Systems, Inc. (MERS)
P.O. Box 2026
Flint, Michigan 48501-2026

Re:
Property Address: 75 Tobin Clark Dr.
Hillsborough, CA 94010
MIN # [REDACTED] 363-2

To Whom It May Concern:

I am requesting a DEED OF FULL RECONVEYANCE on the subject property located at 75 Tobin Clark Dr. Hillsborough, CA 94010. The lien on the property has been eliminated, extinguished, and discharged by order of the Bankruptcy Court on December 2, 2010, under § 727 of Title 11 United States Code.

The Trustee of the Estates has fully administered and the Estate closed on February 4, 2011. See Case NO. 09-30452 DM7.

Since, the lien on the deed of trust has been discharged by operation of law, the mortgagee shall execute a certificate of the discharged and the mortgagee shall then deliver the Deed Of Full Reconveyance upon the request of mortgagor, the original note, and mortgage to the person making the request. See. Ca. Civil Code § 2941(a)(b)(1).


Any attempt to collect a debt on a discharged debt is a violation of bankruptcy law, FDCPA, California Rosenthal Act, Business and Professional Act and Fraud.

Cal Civil Code 2941(a) states: "Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of discharged thereof, as provided in Section 2939 and shall record or cause to be recorded in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

Therefore, since my debt has been discharged on December 2, 2010, and fully estate administered on February 4, 2011, the 30 days period for you to record the estate administered on February 4, 2011, the 30 days period for you to record the Deed of Full Reconveyance has been expired in violation of section 2941(b)(1).

Any delay of recording the Deed of Full Reconveyance or failure to follow Cal Civ. Code § 2941(a)(b)(1) will result in legal actions against you.

Respectfully,



Erlinda Aniel

Certified Copy #

CC: 7011 2000 0002 7406 3144

Mortgage Electronic Registration Systems, Inc.
1818 Library St, Suite 300
Reston, VA 20190

(MERS)

7011 2000 0002 7406 3151

Elminda Cruz
75 Titus Blvd D
Wishboro, CT 06090

US POSTAGE
Mailed From 94402
04/13/2012
\$05.75
049J82031471

Montage Electronic Registration
P.O. Box 2026
Jewett, Michigan 48851-7026



Exhibit LL

ADRMOP,CLOSED,STAYED

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:12-cv-04201-SBA**

Aniel et al v. GMAC Mortgage, LLC et al
Assigned to: Hon. Sandra Brown Armstrong
Demand: \$6,000,000
Cause: 15:1692 Fair Debt Collection Act

Date Filed: 08/09/2012
Date Terminated: 06/12/2014
Jury Demand: Plaintiff
Nature of Suit: 220 Real Property:
Foreclosure
Jurisdiction: Federal Question

Plaintiff**Erlinda Abibas Aniel**

represented by **Marc Jason Aniel**
Law Offices of Marc Jason Aniel
205 De Anza Blvd. number 144
San Mateo, CA 94402
650-814-9478
Fax: 650-571-5829
Email: mj_aniel@me.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Fermin Solis Aniel***TERMINATED: 02/05/2014*

represented by **Marc Jason Aniel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Marc Jason Aniel***TERMINATED: 02/05/2014*

represented by **Marc Jason Aniel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**GMAC Mortgage, LLC**

represented by **Mary Kate Sullivan**
Severson & Werson
A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
(415) 398-3344
Fax: (415) 956-0439

Email: mks@severson.com
ATTORNEY TO BE NOTICED

Thomas Nathaniel Abbott
Severson & Werson, P.C.
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
415-398-3344
Fax: 415-956-0439
Email: tna@severson.com
ATTORNEY TO BE NOTICED

Defendant

Executive Trustee Services, LLC
doing business as
ETS Services, LLC

represented by **Mary Kate Sullivan**
(See above for address)
ATTORNEY TO BE NOTICED

Thomas Nathaniel Abbott
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/09/2012	<u>1</u>	COMPLAINT with jury demand against Executive Trustee Services, LLC, GMAC Mortgage, LLC (Filing fee \$ 350, receipt number 3411077376.). Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # <u>1</u> Civil Cover Sheet)(vlk, COURT STAFF) (Filed on 8/9/2012) (Entered: 08/13/2012)
08/09/2012	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 10/31/2012. Case Management Conference set for 11/7/2012 01:30 PM. (Attachments: # <u>1</u> Standing Order)(vlk, COURT STAFF) (Filed on 8/9/2012) (Entered: 08/13/2012)
08/13/2012	<u>3</u>	NOTICE of Lis Pendens by Marc Jason Aniel (Aniel, Marc) (Filed on 8/13/2012) (Entered: 08/13/2012)
08/13/2012	<u>4</u>	Summons Issued as to Executive Trustee Services, LLC. (vlk, COURT STAFF) (Filed on 8/13/2012) (Entered: 08/14/2012)
08/13/2012	<u>5</u>	Summons Issued as to GMAC Mortgage, LLC. (vlk, COURT STAFF) (Filed on 8/13/2012) (Entered: 08/14/2012)
08/14/2012	<u>6</u>	ORDER Referring Case to the ADR Unit for Assessment Telephone Conference . Signed by Magistrate Judge Donna M. Ryu on 8/14/2012. (dmrlc2, COURT STAFF) (Filed on 8/14/2012) Modified on 8/15/2012 (vlk, COURT STAFF). (Entered: 08/14/2012)
08/15/2012	<u>7</u>	Emergency Ex Parte MOTION for Temporary Restraining Order and Order to Show Cause re <u>1</u> <i>Complaint</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # <u>1</u> Declaration Marc Jason Aniel, # <u>2</u>

		Declaration Erlinda Abibas Aniel, # 3 Exhibit "A-G", # 4 Proposed Order, # 5 Proof of Service)(Aniel, Marc) (Filed on 8/15/2012) Modified on 8/16/2012 (jlm, COURT STAFF). (Entered: 08/15/2012)
08/15/2012	8	ORDER REASSIGNING CASE. Signed by Magistrate Judge Donna M. Ryu on 8/15/2012. (dmrlc2, COURT STAFF) (Filed on 8/15/2012) (Entered: 08/15/2012)
08/15/2012	9	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Sandra Brown Armstrong for all further proceedings. Magistrate Judge Donna M. Ryu no longer assigned to the case. Signed by the Executive Committee on August 15, 2012. (cjl, COURT STAFF) (Filed on 8/15/2012) (Entered: 08/15/2012)
08/15/2012	10	CERTIFICATE OF SERVICE by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel re 4 Summons Issued, 5 Summons Issued (Attachments: # 1 Certificate/Proof of Service POS of Summons on Defendants)(Aniel, Marc) (Filed on 8/15/2012) (Entered: 08/15/2012)
08/22/2012	11	NOTICE of Trustee's Sale Date Changed re 7 <i>Emergency Ex Parte Motion for Temporary Restraining Order and Order to Show Cause</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel (Aniel, Marc) (Filed on 8/22/2012) Modified on 8/23/2012 (jlm, COURT STAFF). (Entered: 08/22/2012)
08/23/2012	12	ORDER: That a hearing is scheduled re 7 <i>Emergency Ex Parte Motion for Temporary Restraining Order and Order to Show Cause</i> . Responses due by 9/11/2012. Replies due by 9/18/2012. Motion Hearing set for 9/25/2012 01:00 PM before Hon. Sandra Brown Armstrong. Signed by Judge Sandra Brown Armstrong, on 8/23/12. (lrc, COURT STAFF) (Filed on 8/23/2012) Modified on 8/24/2012 (jlm, COURT STAFF). (Entered: 08/23/2012)
08/23/2012	13	NOTICE of Proof of Service re 12 <i>Order</i> , filed by McKesson Corporation, Judy Beatty, Charles Chillemi, Melvina Demps, Sunny Fronda, Windle Knight, Jerdie Martin, Connie Schulz, Harold Zealley (Attachments: # 1 Certificate/Proof of Service)(Aniel, Marc) (Filed on 8/23/2012) Modified on 8/24/2012 (jlm, COURT STAFF). (Entered: 08/23/2012)
08/28/2012	14	STIPULATION to Extend Time to Respond to Complaint re 1 <i>Complaint</i> , filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC, Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Abbott, Thomas) (Filed on 8/28/2012) Modified on 8/29/2012 (jlm, COURT STAFF). (Entered: 08/28/2012)
08/28/2012	15	NOTICE of Bankruptcy and Suggestion of Automatic Stay, filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC (Attachments: # 1 Exhibit A to Notice of Bankruptcy and Suggestion of Automatic Stay)(Abbott, Thomas) (Filed on 8/28/2012) Modified on 8/29/2012 (jlm, COURT STAFF). (Entered: 08/28/2012)
09/04/2012	16	ADR Clerk Notice Setting ADR Phone Conference on 9/7/12 at 11:30 a.m. Pacific. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (sgd, COURT STAFF) (Filed on 9/4/2012) (Entered: 09/04/2012)

09/06/2012		ADR Remark: The ADR Phone Conference scheduled for 9/7/12 has been rescheduled to 9/13/12 at 11:30 a.m. Pacific. Please note that the call-in information remains the same. (sgd, COURT STAFF) (Filed on 9/6/2012) (Entered: 09/06/2012)
09/11/2012	17	Memorandum in Opposition re 7 <i>Emergency Ex Parte Motion for Temporary Restraining Order and Order to Show Cause</i> , filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Abbott, Thomas) (Filed on 9/11/2012) Modified on 9/12/2012 (jlm, COURT STAFF). (Entered: 09/11/2012)
09/11/2012	18	DECLARATION of Russell Calhoun in Support re 17 <i>Memorandum in Opposition</i> , filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Attachments: # 1 Exhibit A to Declaration of Calhoun, # 2 Exhibit B to Declaration of Calhoun, # 3 Exhibit C to Declaration of Calhoun, # 4 Exhibit D to Declaration of Calhoun, # 5 Exhibit E to Declaration of Calhoun, # 6 Exhibit F to Declaration of Calhoun, # 7 Exhibit G to Declaration of Calhoun, # 8 Exhibit H to Declaration of Calhoun, # 9 Exhibit I to Declaration of Calhoun, # 10 Exhibit J to Declaration of Calhoun)(Related document(s) 17) (Abbott, Thomas) (Filed on 9/11/2012) Modified on 9/12/2012 (jlm, COURT STAFF). (Entered: 09/11/2012)
09/13/2012		ADR Remark: ADR Phone Conference held by RWS on 9/13/12. (sgd, COURT STAFF) (Filed on 9/13/2012) (Entered: 09/13/2012)
09/13/2012		ADR Remark: A further ADR Phone Conference has been scheduled for 9/26/12 at 3:00 p.m. Pacific. The call-in information remains the same. (sgd, COURT STAFF) (Filed on 9/13/2012) (Entered: 09/13/2012)
09/18/2012	19	Reply to Opposition re 7 <i>Emergency Ex Parte Motion for Temporary Restraining Order and Order to Show Cause</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # 1 Exhibit)(Aniel, Marc) (Filed on 9/18/2012) Modified on 9/19/2012 (jlm, COURT STAFF). Modified on 9/26/2012 (jlm, COURT STAFF). (Entered: 09/18/2012)
09/26/2012		ADR Remark: ADR Phone Conference held by RWS on 9/26/12. A further ADR Phone Conference has been scheduled for 10/3/12 at 9:30 a.m. Pacific. The call-in information remains the same. (sgd, COURT STAFF) (Filed on 9/26/2012) (Entered: 09/26/2012)
09/26/2012	20	ORDER by Judge Sandra Brown Armstrong DENYING 7 Ex Parte Motion for Temporary Restraining Order. Signed by Judge Sandra Brown Armstrong, on 09/26/12 (lrc, COURT STAFF) (Filed on 9/26/2012) Modified on 9/27/2012 (jlm, COURT STAFF). (Entered: 09/26/2012)
10/03/2012		ADR Remark: ADR Phone Conference held by RWS on 10/3/12. (sgd, COURT STAFF) (Filed on 10/3/2012) (Entered: 10/03/2012)
10/04/2012	21	MOTION for Reconsideration 20 <i>Order on Ex Parte Motion for Preliminary Injunction</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # 1 Exhibit A-D)(Aniel, Marc) (Filed on 10/4/2012) Modified on 10/5/2012 (jlm, COURT STAFF). (Entered: 10/04/2012)
10/15/2012	22	

		ANSWER to Complaint by Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Abbott, Thomas) (Filed on 10/15/2012) (Entered: 10/15/2012)
10/18/2012	<u>23</u>	ORDER re <u>21</u> MOTION for Reconsideration re <u>19</u> Reply to Opposition/Response, <u>20</u> Order on Ex Parte Application, <u>17</u> Opposition/Response to Motion, <u>18</u> Declaration in Opposition,, <i>Leave for Reconsideration</i> filed by Marc Jason Aniel, Erlinda Abibas Aniel, Fermin Solis Aniel, Set/Reset Deadlines as to <u>21</u> MOTION for Reconsideration re <u>19</u> Reply to Opposition/Response, <u>20</u> Order on Ex Parte Application, <u>17</u> Opposition/Response to Motion, <u>18</u> Declaration in Opposition,, <i>Leave for Reconsideration</i> . Responses due by 10/25/2012.. Signed by Judge ARMSTRONG on 10/18/12. (lrc, COURT STAFF) (Filed on 10/18/2012) (Entered: 10/18/2012)
10/25/2012	<u>24</u>	RESPONSE (re <u>21</u> MOTION for Reconsideration filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Abbott, Thomas) (Filed on 10/25/2012) Modified on 10/26/2012 (cpS, COURT STAFF). (Entered: 10/25/2012)
10/30/2012	<u>25</u>	AMENDED ORDER DENYING EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER on Ex Parte Application (lrc, COURT STAFF) (Filed on 10/30/2012) Modified on 10/30/2012 (lrc, COURT STAFF). (Entered: 10/30/2012)
11/02/2012	<u>26</u>	ORDER DENYING <u>21</u> MOTION for Reconsideration re <u>19</u> Reply to Opposition/Response, <u>20</u> Order on Ex Parte Application, <u>17</u> Opposition/Response to Motion, <u>18</u> Declaration in Opposition,, <i>Leave for Reconsideration</i> filed by Marc Jason Aniel, Erlinda Abibas Aniel, Fermin Solis Aniel. Signed by Judge ARMSTRONG on 11/2/12. (lrc, COURT STAFF) (Filed on 11/2/2012) (Entered: 11/02/2012)
03/04/2013	<u>27</u>	SUGGESTION OF BANKRUPTCY Upon the Record as to Marc Jason Aniel by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # <u>1</u> Exhibit Notice of Bankruptcy)(Aniel, Marc) (Filed on 3/4/2013) (Entered: 03/04/2013)
03/04/2013	<u>28</u>	MOTION for Preliminary Injunction filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. Motion Hearing set for 4/30/2013 01:00 PM in Courtroom 1, 4th Floor, Oakland before Hon. Sandra Brown Armstrong. Responses due by 3/18/2013. Replies due by 3/25/2013. (Attachments: # <u>1</u> Exhibit A-D, # <u>2</u> Exhibit E-J, # <u>3</u> Proposed Order, # <u>4</u> Certificate/Proof of Service)(Aniel, Marc) (Filed on 3/4/2013) (Entered: 03/04/2013)
03/11/2013	<u>29</u>	Memorandum in Opposition re <u>28</u> <i>Motion for Preliminary Injunction</i> , filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Abbott, Thomas) (Filed on 3/11/2013) Modified on 3/12/2013 (jlm, COURT STAFF). (Entered: 03/11/2013)
03/25/2013	<u>30</u>	Reply to Opposition re <u>28</u> <i>Motion for Preliminary Injunction</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # <u>1</u> Exhibit)(Aniel, Marc) (Filed on 3/25/2013) Modified on 3/26/2013 (jlm, COURT STAFF). (Entered: 03/25/2013)

06/07/2013	<u>31</u>	ATTACHMENT INCOMPLETE. SEE DKT. NO. 32 ORDER by Judge ARMSTRONG denying <u>28</u> Motion for Preliminary Injunction (lrc, COURT STAFF) (Filed on 6/7/2013) Modified on 6/7/2013 (fs, COURT STAFF). (Entered: 06/07/2013)
06/07/2013	<u>32</u>	ORDER denying <u>28</u> Motion for Preliminary Injunction. Signed by Judge Saundra Brown Armstrong on 6/7/13. (fs, COURT STAFF) (Filed on 6/7/2013) (Entered: 06/07/2013)
06/18/2013	<u>33</u>	CASE MANAGEMENT SCHEDULING ORDER: Case Management Conference set for 7/18/2013 02:45 PM. VIA TELEPHONE. Signed by Judge ARMSTRONG on 6/18/13. (lrc, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
07/08/2013	<u>34</u>	NOTICE OF BANKRUPTCY/SUGGESTION OF BANKRUPTCY Upon the Record as to Marc Jason Aniel, filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # <u>1</u> Exhibit)(Aniel, Marc) (Filed on 7/8/2013) Modified on 7/9/2013 (jlm, COURT STAFF). (Entered: 07/08/2013)
07/09/2013	<u>35</u>	STIPULATION WITH PROPOSED ORDER to Continue re <u>33</u> <i>Case Management Scheduling Order</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel, Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Attachments: # <u>1</u> Proposed Order)(Aniel, Marc) (Filed on 7/9/2013) Modified on 7/10/2013 (jlm, COURT STAFF). (Entered: 07/09/2013)
07/10/2013	<u>36</u>	CASE MANAGEMENT SCHEDULING ORDER: Case Management Conference set for 9/19/2013 02:45 PM. VIA TELEPHONE. Signed by Judge ARMSTRONG on 7/9/13. (lrc, COURT STAFF) (Filed on 7/10/2013) (Entered: 07/10/2013)
09/06/2013	<u>37</u>	STIPULATION WITH PROPOSED ORDER to Continue re <u>36</u> <i>Case Management Scheduling Order</i> , filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel, Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Attachments: # <u>1</u> Proposed Order)(Aniel, Marc) (Filed on 9/6/2013) Modified on 9/9/2013 (jlmS, COURT STAFF). (Entered: 09/06/2013)
09/10/2013	<u>38</u>	ORDER by Judge Saundra Brown Armstrong Granting <u>37</u> Stipulation. (ndr, COURT STAFF) (Filed on 9/10/2013) (Entered: 09/10/2013)
09/10/2013		See Docket No. <u>38</u> . Reset Deadline/Hearing: Case Management Statement due by 11/7/2013; Telephonic Case Management Conference set for 11/14/2013 02:45 PM. (ndr, COURT STAFF) (Filed on 9/10/2013) Modified on 9/11/2013 (jlm, COURT STAFF). (Entered: 09/10/2013)
11/07/2013	<u>39</u>	JOINT CASE MANAGEMENT STATEMENT filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC, Marc Jason Aniel, Fermin Solis Aniel, Erlinda Abibas Aniel. (Abbott, Thomas) (Filed on 11/7/2013) Modified on 11/8/2013 (vlk, COURT STAFF). (Entered: 11/07/2013)
11/14/2013	<u>40</u>	Minute Entry: Telephonic Case Management Conference held on 11/14/2013 before Judge Saundra Brown Armstrong (Date Filed: 11/14/2013). Motions due by 1/17/2014; Case Management Statement due by 2/26/2014; Case Management Conference set for 3/5/2014 02:45 PM. (ndr, COURT STAFF)

		(Date Filed: 11/14/2013) Modified on 11/25/2013 (jlmS, COURT STAFF). (Entered: 11/22/2013)
01/17/2014	41	MOTION to Stay re 40 Case Management Conference - Initial, Set Deadlines/Hearings,, filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. Motion Hearing set for 3/5/2014 02:45 PM in Courtroom 1, 4th Floor, Oakland before Hon. Saundra Brown Armstrong. Responses due by 1/31/2014. Replies due by 2/7/2014. (Abbott, Thomas) (Filed on 1/17/2014) (Entered: 01/17/2014)
01/21/2014	42	CLERKS NOTICE. Notice is hereby given that counsel must re-notice not re-file the 41 motion to stay for a Tuesday at 1:00 p.m. Hearing date of March 5, 2014, is vacated. (This is a text only docket entry, there is no document associated with this notice.) (ndr, COURT STAFF) (Filed on 1/21/2014) (Entered: 01/21/2014)
01/21/2014	43	Renotice motion hearing re 41 MOTION to Stay re 40 Case Management Conference - Initial, Set Deadlines/Hearings,, filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. Motion Hearing set for 3/4/2014 01:00 PM in Courtroom 1, 4th Floor, Oakland before Hon. Saundra Brown Armstrong. Responses due by 2/4/2014. Replies due by 2/11/2014. (Related document(s) 41) (Abbott, Thomas) (Filed on 1/21/2014) (Entered: 01/21/2014)
01/31/2014	44	Memorandum in Opposition re 41 <i>Motion to Stay re 40 Case Management Conference, filed by Erlinda Abibas Aniel, Fermin Solis Aniel, Marc Jason Aniel. (Attachments: # 1 Exhibit)(Aniel, Marc) (Filed on 1/31/2014) Modified on 2/3/2014 (jlmS, COURT STAFF). (Entered: 01/31/2014)</i>
02/05/2014	45	NOTICE of Voluntary Dismissal <i>as to Fermin Solis Aniel and Marc Jason Aniel only</i> by Fermin Solis Aniel, Marc Jason Aniel (Aniel, Marc) (Filed on 2/5/2014) (Entered: 02/05/2014)
02/11/2014	46	Reply Memorandum re 41 <i>Motion to Stay</i> , filed by Executive Trustee Services, LLC, GMAC Mortgage, LLC. (Abbott, Thomas) (Filed on 2/11/2014) Modified on 2/12/2014 (jlmS, COURT STAFF). (Entered: 02/11/2014)
02/24/2014	47	CLERKS NOTICE. CLERKS NOTICE. Notice is hereby given that the Court, on its own motion, shall take the 41 motion to stay under submission on the papers. The hearing previously scheduled for March 4, 2014, is vacated. The Telephonic Case Management Conference, previously set for March 5, 2014, is continued to May 7, 2014, at 2:45 p.m., in Courtroom 1, 4th Floor, 1301 Clay Street, Oakland, CA 94612. The parties shall meet and confer prior to the conference and shall prepare a joint Case Management Conference Statement which shall be filed no later than seven (7) days prior to the Case Management Conference that complies with the Standing Order For All Judges Of The Northern District Of California and the Standing Order of this Court. Plaintiffs shall be responsible for filing the statement as well as for arranging the conference call. All parties shall be on the line and shall call (510) 637-3559 at the above indicated date and time.

		<p>(This is a text only docket entry, there is no document associated with this notice.)</p> <p>(ndr, COURT STAFF) (Filed on 2/24/2014) (Entered: 02/24/2014)</p>
04/25/2014	48	<p>CLERKS NOTICE. Notice is hereby given that the Telephonic Case Management Conference, previously set for May 7, 2014, is continued to July 9, 2014, at 2:00 p.m. The parties shall meet and confer prior to the conference and shall prepare a joint Case Management Conference Statement which shall be filed no later than seven (7) days prior to the Case Management Conference that complies with the Standing Order For All Judges Of The Northern District Of California and the Standing Order of this Court. Plaintiffs shall be responsible for filing the statement as well as for arranging the conference call. All parties shall be on the line and shall call (510) 879-3550 at the above indicated date and time.</p> <p>(This is a text only docket entry, there is no document associated with this notice.)</p> <p>(ndr, COURT STAFF) (Filed on 4/25/2014) (Entered: 04/25/2014)</p>
06/12/2014	49	<p>GRANTING 41 MOTION TO STAY. **Civil Case Terminated.** Signed by Judge Saundra Brown Armstrong on 6/12/2014. (ndr, COURT STAFF) (Filed on 6/12/2014) (Entered: 06/12/2014)</p>

PACER Service Center			
Transaction Receipt			
02/24/2015 12:45:47			
PACER Login:	mf1354:2923879:3945828	Client Code:	
Description:	Docket Report	Search Criteria:	4:12-cv-04201-SBA
Billable Pages:	6	Cost:	0.60

Exhibit MM

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ERLINDA ABIBAS ANIEL, an individual;
FERMIN SOLIS ANIEL, an individual;
MARC JASON ANIEL, an individual,

Plaintiffs,

v.

GMAC MORTGAGE, LLC; EXECUTIVE
TRUSTEE SERVICES, LLC., DBA ETS
SERVICES, LLC; AND DOES 1 THROUGH
50,

Defendants.

Case No: C 12-04201 SBA

**ORDER DENYING EX
PARTE APPLICATION
FOR TEMPORARY
RESTRAINING ORDER**

Docket 7.

On August 9, 2012, Plaintiffs Erlinda Aniel, Fermin Aniel, and Marc Aniel (collectively "Plaintiffs") filed the instant action against Defendants GMAC Mortgage, LLC ("GMAC") and Executive Trustee Services, LLC ("ETS") (collectively "Defendants"), alleging nine claims for relief in connection with a foreclosure proceeding on their residence located at 75 Tobin Clark Drive, Hillsborough, CA 94010 (the "Property"). Compl., Dkt. 1. The parties are presently before the Court on Plaintiffs' Ex Parte Application for Temporary Restraining Order and Order to Show Cause ("TRO Application"), which seeks an order enjoining the Trustee's Sale of the Property. Dkt. 7.¹ Defendants oppose the TRO Application. Dkt. 17. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby DENIES the

¹ The Trustee's Sale was originally scheduled for August 27, 2012. Dkt. 7. On August 22, 2012, Plaintiffs notified the Court that the Trustee's Sale has been postponed to September 27, 2012. Dkt. 11.

TRO Application. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. DISCUSSION

A. Legal Standard

The purpose of a TRO is to preserve the status quo before a preliminary injunction hearing may be held; its provisional remedial nature is designed merely to prevent irreparable loss of rights prior to judgment. See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (1974). The same standard applies to a motion for a TRO and a motion for a preliminary injunction. See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n. 7 (9th Cir. 2001). To obtain a TRO or preliminary injunction, the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in the moving party's favor; and (4) that an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

Under the Ninth Circuit's "sliding scale" approach, the first and third elements are to be balanced such that "serious questions" going to the merits and a balance of hardships that "tips sharply" in favor of the movant are sufficient for relief so long as the other two elements are also met. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-1135 (9th Cir. 2011). Nevertheless, a preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief," Winter, 555 U.S. at 22, and the moving party bears the burden of meeting all four Winter prongs. See Cottrell, 632 F.3d at 1135; DISH Network Corp. v. FCC, 653 F.3d 771, 776-777 (9th Cir. 2011).

B. The TRO Application

While the Court recognizes that loss of a home may constitute irreparable harm as a matter of law, see Saba v. Caplan, 2010 WL 2681987, at *5 (N.D. Cal. 2010) (Armstrong, J.), the Court finds that Plaintiffs have neither demonstrated that they are likely to succeed

on the merits nor raised "serious questions" going to the merits. In their TRO Application, Plaintiffs contend that injunctive relief is warranted because, among other things, they have shown a likelihood of success on the merits. Specifically, Plaintiffs contend that they are likely to prevail on the merits because: (1) "Defendants do not have a legal right to enforce the terms of the Deed of Trust" as Defendants are not the true creditors and therefore have "no legal, equitable, or pecuniary right in this debt obligation in the loan"; (2) "Plaintiffs were never personally contacted by telephone or in person by any of the Defendants prior to the 2012 Notice of Default" in violation of California Civil Code § 2923.5; (3) the Notice of Trustee's Sale is void because ETS was not properly substituted as the trustee; and (4) Defendants failed to respond to Plaintiffs debt validation request in violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 et seq. Plaintiffs arguments are discussed below.

1. Wrong Entity Attempting to Foreclose on the Property

Plaintiffs contend that injunctive relief is appropriate because they are likely to prevail on the merits of their claim that Defendants do not have a legal right to enforce the terms of the Deed of Trust. Pls.' Mtn. at 10. In this regard, Plaintiffs' assert that there is no evidence showing that GMAC is in fact the lender with an enforceable interest in the Deed of Trust. Pls.' Reply at 4. Specifically, Plaintiffs argue that "the Defendants lacked authority to collect payments, let alone foreclose because they do not own an interest in their Note and Deed and failed to properly assign the Deed of Trust to DALT2007-AO5 Trust, who subsequently assigned the Deed to GMAC."² Pls.' Mtn. at 10. This is because "the Assignment [of the Deed of Trust] to DALT2007-AO5 took place after the closing date under the terms of the [Pooled Security Agreement], which gives proper inference that the Assignment was likely fabricated." Id. According to Plaintiffs, "the Assignment of the Deed of Trust to [the DALT2007-AO5 Trust] never happened because the transfer took place after the cut off date. And as such, the assignment from [the DALT2007-AO5 Trust]

² Defendants do not dispute that Plaintiffs' Deed of Trust was assigned to the DALT2007-0A5 Trust.

1 to GMAC also never happened because [the trust] had no legal interest in the Deed of
2 Trust. Pls.' Reply at 4.

3 The Court finds that Plaintiffs have failed to direct the Court to specific evidence in
4 the record or cite controlling authority which sustains their burden to clearly show that
5 enjoining the foreclosure sale is appropriate. Plaintiffs' moving papers provide minimal
6 analysis to assist the Court in evaluating their legal challenge. While Plaintiffs claim that
7 the wrong entity is attempting to foreclose on the property because the Deed of Trust was
8 not "properly assigned to the DALT2007-AO5 Trust because the entities involved in the
9 attempted transfer failed to adhere to the requirements set forth in the Trust Agreement and
10 thus the note and Deed are not part of the trust res," Pls.' Mtn. at 10, they have not provided
11 the Court with a copy of this document. Without a copy of the "Trust Agreement," the
12 Court cannot determine whether the requirements of the agreement have been violated as
13 Plaintiffs contend. There is no evidence to support Plaintiffs' claim that the assignment of
14 the Deed of Trust to the DALT2007-AO5 Trust was not done in compliance with the terms
15 of the Trust Agreement.

16 Moreover, notably absent from Plaintiffs' moving papers is citation to authority
17 demonstrating that injunctive relief is appropriate. In their moving papers, Plaintiffs only
18 cite, without analysis or elaboration, Vogan v. Wells Fargo et al., 2011 WL 5826016, at *7
19 (E.D. Cal. 2011). Plaintiffs then make the conclusory assertion that injunctive relief is
20 appropriate because they "have clearly made factual allegations in their Complaint and this
21 Motion that are both plausible and sufficient to support that Defendants lack authority to
22 enforce a security interest[] when they challenged Defendants' ability to enforce that
23 interest through its Complaint." Pls.' Mtn. at 10. The Court rejects this argument.

24 First, contrary to Plaintiffs' suggestion, the standard for injunctive relief is not met
25 simply by factual allegations. "A preliminary injunction cannot issue absent a sufficient
26 evidentiary showing." See Boggs v. Wells Fargo Bank NA, 2012 WL 566587, at *1 (N.D.
27 Cal. 2012) (Armstrong, J.) (citing Am. Passage Media Corp. v. Cass Commc'n, Inc., 750
28 F.2d 1470, 1473 (9th Cir. 1985). Second, Vogan is distinguishable from the present case,

1 and therefore is of no assistance to Plaintiffs. In that case, the district court denied a motion
2 to dismiss a claim brought under California's Business and Professions Code § 17200, et
3 seq. ("UCL") on the ground that the Plaintiff pled facts sufficient to maintain a claim under
4 the unlawful prong of the UCL. Vogan, 2011 WL 5826016, at *7. In reaching this
5 conclusion, the district court stated that Plaintiff "pleaded that Wells Fargo recorded a
6 fabricated assignment of deed of trust assigning interest in Plaintiffs' loan to U.S. Bank. . . .
7 Plaintiffs alleged that the recorded assignment was executed well after the closing date of
8 the [mortgage backed security] to which it was allegedly sold, giving rise to a plausible
9 inference that at least some part of the recorded assignment was fabricated. Plaintiffs allege
10 that such conduct, if proven, constitutes a violation of Cal.Penal Code § 532f(a)(4)." Id. at
11 *7. Vogan does not support Plaintiffs' contention that injunctive relief is appropriate in this
12 case. Plaintiffs, for their part, failed to explain how Vogan supports their position.

13 In their reply brief, Plaintiffs cite several district court cases they contend support
14 their request for injunctive relief. See Sacchi v. Mortgage Electronic Registration Systems,
15 Inc., 2011 WL 2533029 (C.D. Cal. 2011); Weingartner v. Chase Home Finance, LLC, 702
16 F.Supp.2d 1276 (D. Nev. 2010); Ohlendorf v. Am. Home Mortgage Servicing, 279 F.R.D.
17 575 (E.D. Cal. 2010). According to Plaintiffs, each of these cases "acknowledges the
18 possibility for a claim based on the *wrong* entity initiating the foreclosure process." Pls.
19 Reply at 3. These cases are not controlling and, in any event, a mere possibility of stating a
20 claim is not sufficient to warrant injunctive relief. Moreover, none of the cases cited by
21 Plaintiffs involved an application for a TRO. Instead, each of these cases involved a
22 motion to dismiss. In short, even assuming for the sake of argument that Plaintiff has
23 sufficiently pled a claim based on the wrong entity initiating the foreclosure process, they
24 have not sustained their burden to clearly show that they are likely to succeed on this claim
25 and that the extraordinary remedy of injunctive relief is appropriate. It is not enough to
26 show that there is a mere "possibility" of success. Winter, 555 U.S. at 22. Rather, there
27 must be a "clear showing" that the plaintiffs are entitled to preliminary relief. Id.

28 ///

1 **2. California Civil Code § 2923.5**

2 Plaintiffs contend that they are entitled to injunctive relief because they are likely to
3 succeed on their claim for wrongful foreclosure predicated on a failure to comply with
4 California Civil Code § 2923.5. Section 2923.5 provides that a "mortgagee, trustee,
5 beneficiary, or authorized agent may not file a notice of default pursuant to section 2924
6 until 30 days after contact is made as required by paragraph two or 30 days after satisfying
7 the due diligence requirements as described in subdivision (g)." Cal. Civ. Code §
8 2923.5(a)(1). Paragraph 2 provides, in part, that "[a] mortgagee, beneficiary, or authorized
9 agent shall contact the borrower in person or by telephone in order to assess the borrower's
10 financial situation and explore options for the borrower to avoid foreclosure." Cal. Civ.
11 Code § 2923.5(a)(2).³ Under subdivision (g), "[a] notice of default may be filed . . . when a
12 mortgagee, beneficiary, or authorized agent has *not* contacted a borrower as required by
13 paragraph (2) of subdivision (a) provided that the failure to contact borrower occurred
14 despite the due diligence of the mortgagee, beneficiary, or authorized agent." Id. §
15 2923.5(g) (emphasis added).

16 "Due diligence" in attempting to contact the borrower requires: (1) "sending a first-
17 class letter that includes the toll-free telephone number made available by HUD to find a
18 HUD-certified housing counseling agency;" (2) "attempting to contact the borrower by
19 telephone at least three times at different hours and on different days" (an automated
20 system may be used if it connects the borrower to a live representative when answered, and
21 the telephone call requirements are satisfied if the lender determines that the borrower's
22 phone number has been disconnected); (3) sending a certified letter, with return receipt
23 requested, if the borrower does not respond within two weeks of the telephone calls; (4)
24 providing a toll-free telephone number that will provide access to a live representative
25
26

27 ³ The statute further requires that the notice of default include a "declaration that the
28 mortgagee, beneficiary or authorized agent has contacted the borrower" pursuant to
subdivision (a)(2). Cal. Civ. Code § 2923.5(b).

during business hours; and (5) posting a "prominent link on the homepage of its Internet Web site" to information about avoiding foreclosure. Cal. Civ. Code § 2923.5(g).

"The right conferred by section 2923.5 is a right to be contacted to 'assess' and 'explore' alternatives to foreclosure prior to a notice of default. It is enforced by the postponement of a foreclosure sale." Mabry v. Superior Court, 185 Cal.App.4th 208, 225 (2010).

Plaintiffs contend that Defendants violated § 2923.5 because they never personally contacted them by telephone or in person prior to the 2012 Notice of Default, citing the declaration of Erlinda Aniel. Aniel Decl., Dkt. 7-2 In her declaration, Erlinda Aniel attests that at no time prior to issuing the April 21, 2012 Notice of Default did any Defendant or any of their agents contact her in person or by telephone to discuss options as required by § 2923.5. Id. ¶ 15. In response, the Defendants contend that they complied with the "due diligence" requirements of § 2923.5(g). Defs.' Opp. at 3.

According to Defendants, the last payment received by GMAC on the loan was on June 17, 2008. Calhoun Decl. ¶ 6. In January 2009, Plaintiffs requested that GMAC modify the loan. Id. ¶ 7, Ex. D. However, because the income stated on the request was insufficient for a modification, the loan was not modified. See id. Due to the continuing failure to make loan payments, GMAC attempted to call Erlinda Aniel on three occasions in August 2011 to inquire about her financial situation and explore options for avoiding foreclosure. Id. ¶ 9. On each occasion there was no answer. Id.

On October 11, 2011, GMAC sent a letter by certified United States Mail to Erlinda Aniel stating that GMAC was contacting her as required by California law; noting that it had made a number of attempts to make arrangements with her without success. Calhoun Decl., Ex. F. The letter stated that Erlinda Aniel was being notified that she had 30 days from the date of the letter to contact GMAC to discuss options to avoid foreclosure, and that if she failed to contact GMAC within this period of time, GMAC is permitted by law to foreclose upon her property. Id. The letter goes on to state that "[i]f you wish to explore options that may prevent the foreclosure on your property . . . it is imperative to contact us

1 immediately. We have a number of options and programs for which you may be eligible.
2 You, however, must . . . contact[] us so that we can determine the best way to help you."
3 Id. The letter contains GMAC's toll-free telephone number and the time to call, and
4 informs Erlinda Aniel that she can obtain information about possible loss mitigation options
5 by visiting GMAC's website at www.gmacmortgage.com. Id. The letter also informs
6 Erlinda Aniel that, for additional assistance, she may contact HUD to locate a HUD-
7 certified counseling office by calling HUD's toll-free number. Id.

8 Although GMAC did not receive a response to this letter, it received a letter from
9 Erlinda Aniel claiming that she was no longer required to repay the loan because she filed a
10 voluntary bankruptcy petition. Calhoun Decl. ¶ 11, Exh. G. On November 1, 2011,
11 GMAC responded to a Validation of Debt request by Erlinda Aniel by written
12 correspondence. Id., Exh. H. The letter indicates that GMAC enclosed a copy of the loan
13 documents and a payment history, and requests that Erlinda Aniel explain why she believes
14 that she is no longer obligated to pay the loan. Id. Having received no response to the
15 October 11, 2011 letter, GMAC attempted to call Erlinda Aniel six additional times on
16 three different days in late January 2012 to assess her financial situation and explore
17 options to avoid foreclosure. Each time, there was no answer. Id. ¶ 13. After GMAC did
18 not receive a response from Erlinda Aniel for two weeks, GMAC sent her another certified
19 letter on February 14, 2012. Id. ¶ 13, Exh. I. The substance of this letter is virtually
20 identical to the October 2011 letter. Id.

21 On March 16, 2012, apparently in response to further requests by Erlinda Aniel to
22 release the Deed of Trust on the basis that the bankruptcy eliminated the security
23 instrument, GMAC sent Erlinda Aniel written correspondence explaining that her
24 bankruptcy discharge affects only her personal liability on the loan, but does not affect the
25 security interest of the Deed of Trust or GMAC's right to enforce that interest by a
26 foreclosure sale. Calhoun Decl. ¶ 15, Exh. J. On April 27, 2012, a Notice of Default was
27 recorded, which states that the "beneficiary, or its authorized agent declared that they have
28 complied with California Civil Code Section 2923.5 by making contact with the borrower

1 or tried with due diligence to contact the borrower as required by California Civil Code
2 Section 2923.5." Compl. ¶¶ 51-52, Exh. H.

3 In response to the evidence submitted by Defendants, Plaintiffs argue that
4 Defendants failed to satisfy the "due diligence" requirements of § 2923.5(g) because they
5 have submitted the declaration of Erlinda Aniel attesting that she never received the
6 telephone calls GMAC claims it made. Pls.' Reply at 7. Plaintiffs, however, do not claim
7 that they did not receive the correspondence sent by GMAC, including the October 2011
8 and February 2012 letters.

9 Based on the evidence submitted by the parties, the Court finds that Plaintiffs have
10 not sustained their burden to make a clear showing that they are likely to succeed on the
11 merits of their claim that Defendants failed to comply with § 2923.5. To the extent
12 Plaintiffs argue that injunctive relief is appropriate because Defendants have not shown
13 compliance with § 2923.5, the Court rejects this argument. Plaintiffs, as the party seeking
14 injunctive relief, have the burden to make a clear showing that they are entitled to such
15 relief. They have failed to do so. Defendants submitted evidence demonstrating that they
16 complied with the "due diligence" requirements of §2923(g), while Plaintiffs submitted the
17 declaration of Erlinda Aniel attesting that she never received a telephone call from GMAC.
18 As such, a material factual dispute exists regarding whether Defendants complied with the
19 requirement to contact the borrower by telephone at least three times at different hours and
20 on different days. In the absence of a clear showing of entitlement, the Court cannot
21 conclude that the extraordinary remedy of injunctive relief is appropriate.

22 The Court notes that Plaintiffs object to the declaration of Russell Calhoun, a senior
23 litigation analyst with GMAC who prepared his declaration after reviewing business
24 records that are maintained in the ordinary course of GMAC's business. Calhoun Decl. ¶¶
25 1-2. Plaintiffs object to this declaration, without citation to any authority, "based on a lack
26 of foundation, hearsay, and lack of personal knowledge." Pls.' Reply at 2. More
27 specifically, with respect to Plaintiffs' § 2923.5 claim, Plaintiffs argue that Calhoun's
28 declaration "does not hold any weight" because he has no personal knowledge of the

1 statements made therein, including his statements regarding the telephone calls that GMAC
2 claims it made to Erlinda Aniel. Pls.' Reply at 7. The Court disagrees. First, because
3 Plaintiffs' did not cite any authority and legal analysis in support of their objection, the
4 objection is unsupported, and therefore lacks merit. See Indep. Towers of Wash. v. Wash.,
5 350 F.3d 925, 929 (9th Cir. 2003) ("Our adversarial system relies on the advocates to
6 inform the discussion and raise the issues to the court."). Second, "[p]ersonal knowledge . .
7 . is not strictly limited to activities in which the declarant has personally participated." See
8 e.g., Washington Cent. R.R. Co., Inc. v. National Mediation Bd., 830 F.Supp. 1343, 1352-
9 1353 (E.D. Wash. 1993) (citing Londrigan v. FBI, 670 F.2d 1164, 1174-1175 (D.C. Cir.
10 1981). Instead, "[p]ersonal knowledge can come from the review of the contents of
11 business records, and an affiant may testify to acts that she did not personally observe but
12 which have been described in business records." Washington Cent. R.R. Co., 830 F.Supp.
13 at 1352-1353; Laurant Beverly Hills v. Ford Motor Co., 108 F.3d 338 *3 (9th Cir. 1996);
14 New Hampshire Ins. Co. v. Blaze Const. Inc., 28 F.3d 107 *2 (9th Cir. 1994).

15 **3. California Civil Code § 2934a(b)**

16 Plaintiffs contend that injunctive relief is appropriate because the Defendants did not
17 comply with California Civil Code § 2934a(b), and because ETS was not properly
18 substituted as the trustee in accordance with the covenants under the Deed of Trust. Pls.'
19 Mtn. at 12.

20 Section 2934a(b) provides:

21 If the substitution is effected after a notice of default has been recorded but
22 prior to the recording of the notice of sale, the beneficiary or beneficiaries
23 shall cause a copy of the substitution to be mailed, prior to the recording
24 thereof, in the manner provided in Section 2924b, to the trustee then of record
25 and to all persons to whom a copy of the notice of default would be required
26 to be mailed by the provisions of Section 2924b. An affidavit shall be
27 attached to the substitution that notice has been given to those persons and in
28 the manner required by this subdivision.

While Plaintiffs argue in their moving papers that the Trustee's Sale is void because
Defendants violated § 2934a(b), they fail to cite specific evidence or case law in support of
their position. Pls.' Mtn. at 12. Plaintiffs simply contend that the statute was violated

1 because ETS never sent any notice of the "substitution of trustee" and did not attach any
2 affidavit of mailing in its recording of the Substitution of Trustee. Id. In their reply brief,
3 Plaintiffs clarify that Defendants did not comply with § 2934a(b) regarding the Substitution
4 of Trustee recorded on April 27, 2012, arguing that "Defendants did not attach an affidavit
5 to the substitution that notice had been given to those persons and in the manner required
6 by 2934a(b)." Pls.' Reply at 7-8.

7 The Court finds that Plaintiffs have failed to demonstrate that Defendants violated §
8 2934a(b). Plaintiffs have failed to cite any authority in support of their position, nor does
9 the plain language of the statute support their position. Indeed, as pointed out by
10 Defendants, the undisputed evidence in the record demonstrates that the Substitution of
11 Trustee designating ETS as the new trustee and the Notice of Default were both recorded
12 on April 27, 2012. Compl., Exhs. H, I. These documents also demonstrate that the
13 Substitution of Trustee was recorded as document no. 2012-058860, while the Notice of
14 Default was recorded as document no. 2012-058861. Id. (emphasis added.) Thus, the
15 Substitution of Trustee was recorded before the Notice of Default on April 27, 2012. Id. In
16 short, Plaintiffs have not demonstrated that the Substitution of Trustee was "effected" after
17 the Notice of Default was recorded to trigger the requirements of § 2934a(b).

18 To the extent Plaintiffs argue that injunctive relief is appropriate because the
19 Substitution of Trustee was in violation of the covenants of the Deed of Trust, the Court
20 rejects this argument. Plaintiffs have failed to cite any authority in support of their
21 position. As such, they have failed to sustain their burden to clearly show that the
22 extraordinary remedy of injunctive relief is appropriate

23 4. RESPA

24 Plaintiffs contend that injunctive relief is appropriate because the Defendants failed
25 to comply with the requirements of RESPA. Pls.' Mtn. at 12-13. Plaintiffs' third claim for
26 relief alleges a violation of 12 U.S.C. § 2605, which only affords the following types of
27 relief for individual plaintiffs: "(A) any actual damages to the borrower as a result of the
28 failure; and (B) any additional damages, as the court may allow, in the case of a pattern or

1 practice of noncompliance with the requirements of this section, in an amount not to exceed
2 \$1,000." 12 U.S.C. § 2605(f)(1). Thus, this claim does not provide a basis for injunctive
3 relief, including enjoining foreclosure of Plaintiffs' home. Numerous district courts have
4 denied preliminary injunctions to RESPA plaintiffs on this basis. See e.g., Gray v. Central
5 Mortg. Co., 2010 WL 1526451, at * 3 (N.D. Cal. 2010) (Seeborg, J.); Chung v. NBGI, Inc.,
6 2010 WL 84129, at *3 (N.D. Cal. 2010) (Patel, J.).

7 **5. Summary**

8 In sum, because Plaintiffs have not met their burden to establish a likelihood of
9 success on the merits or raised "serious questions" going to the merits, and because they
10 must show each of the requisite elements to obtain a TRO under the Winter standard, a
11 TRO is not warranted. Winter, 555 U.S. at 20. Plaintiffs have not met their burden to show
12 that they are entitled to the extraordinary remedy of a TRO under the standards articulated
13 in Winter and Cottrell. Plaintiffs have not made "a clear showing" that they are entitled to
14 relief. Id. at 22. Accordingly, Plaintiffs' TRO Application is DENIED.⁴

15 Finally, the Court finds that Plaintiffs lack of diligence in filing their TRO
16 Application also militates against injunctive relief. Plaintiffs have known since at least on
17 or around early May 2012 about the potential for foreclosure when they received the Notice
18 of Default. Compl. ¶¶ 51, 55; Erlinda Aniel Decl. ¶ 16. Plaintiffs, however, waited over
19 three months to file the instant action and their TRO Application. They have not explained
20 this delay, and therefore have failed to demonstrate the absence of fault in creating the
21 crisis that triggers the need for injunctive relief. The Court finds that Plaintiffs'
22 unexplained and lengthy delay in seeking injunctive relief implies a lack of urgency and
23 irreparable harm and militates against granting the relief requested See Miller ex rel.
24 NLRB v. Cal. Pac. Med. Ctr., 991 F.2d 536, 544 (9th Cir. 1993) ("Plaintiff's long delay

25
26 ⁴ Because the Court finds that Plaintiffs have not met their burden to establish a
27 likelihood of success on the merits, it need not consider whether Plaintiffs established the
28 other elements to obtain a TRO under the Winter standard.

before seeking a preliminary injunction implies a lack of urgency and irreparable harm.") (internal quotation marks and citation omitted); Lydo Enters. v. City of Las Vegas, 745 F.2d 1211, 1213 (9th Cir. 1984) ("A delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of relief."); see also William W. Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial § 13:95 (The Rutter Group 2010) ("An important factor will be whether the applicant could have sought relief earlier by a motion for preliminary injunction, avoiding the necessity for a last-minute TRO. Delay in seeking relief may be evidence of laches . . . or negate the alleged threat of 'immediate' irreparable injury. . . . The court has discretion to deny the application on either ground").

II. CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' TRO Application is DENIED.
2. This Order terminates Docket 7.

IT IS SO ORDERED.

Dated: 9/26/12


SAUNDRA BROWN ARMSSTRONG
United States District Judge

Exhibit NN

CORPORATE RESOLUTION

Be it Resolved that the attached list of candidates are employees of **GMAC Mortgage LLC**, a Member of Mortgage Electronic Registration Systems, Inc. (MERS), and are hereby appointed as assistant secretaries and vice presidents of MERS, and, as such, are authorized to:

- (1) release the lien of any mortgage loan registered on the MERS System that is shown to be registered to the Member;
- (2) assign the lien of any mortgage loan naming MERS as the mortgagee when the Member is also the current promissory note-holder, or if the mortgage loan is registered on the MERS System, is shown to be registered to the Member;
- (3) execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member, including but not limited to (a) substitution of trustee on Deeds of Trust, (b) Trustee's Deeds upon sale on behalf of MERS, (c) Affidavits of Non-military Status, (d) Affidavits of Judgment, (e) Affidavits of Debt, (f) quitclaim deeds, (g) Affidavits regarding lost promissory notes, and (h) endorsements of promissory notes to VA or HUD on behalf of MERS as a required part of the claims process;
- (4) take any and all actions and execute all documents necessary to protect the interest of the Member, the beneficial owner of such mortgage loan, or MERS in any bankruptcy proceeding regarding a loan registered on the MERS System that is shown to be registered to the Member, including but not limited to: (a) executing Proofs of Claim and Affidavits of Movant under 11 U.S.C. Sec. 501-502, Bankruptcy Rule 3001-3003, and applicable local bankruptcy rules, (b) entering a Notice of Appearance, (c) vote for a trustee of the estate of the debtor, (d) vote for a committee of creditors, (e) attend the meeting of creditors of the debtor, or any adjournment thereof, and vote on behalf of the Member, the beneficial owner of such mortgage loan, or MERS, on any question that may be lawfully submitted before creditors in such a meeting, (f) complete, execute, and return a ballot accepting or rejecting a plan, and (g) execute reaffirmation agreements;
- (5) take any and all actions and execute all documents necessary to refinance, amend or modify any mortgage loan registered on the MERS System that is shown to be registered to the Member.
- (6) endorse checks made payable to Mortgage Electronic Registration Systems, Inc. to the Member that are received by the Member for payment on any mortgage loan registered on the MERS System that is shown to be registered to the Member;
- (7) take any such actions and execute such documents as may be necessary to fulfill the Member's servicing obligations to the beneficial owner of such mortgage loan (including mortgage loans that are removed from the MERS System as a result of the transfer thereof to a non-member of MERS).

I, [REDACTED], being the Corporate Secretary of Mortgage Electronic Registration Systems, Inc., hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Board of Directors of said corporation effective as of the **17th** day of **July, 2003**, which is in full force and effect on this date and does not conflict with the Certificate of Incorporation or By-Laws of said corporation.



[REDACTED], Secretary

**Residential Funding Company LLC, HomeComings Financial LLC, GMAC
Mortgage LLC, GMAC Bank (Trustee 01), GMAC Bank Asset Management**

Co

ORG ID 1000440, 1000474, 1000375, 1005726 and 1005727

Mortgage Electronic Registration Systems, Inc.

Certifying Officers

Updated 04/29/2009

• [REDACTED]

• [REDACTED]

- [REDACTED]
- YAMOA, Janine [REDACTED]

Exhibit 3

Rosenbaum Declaration

MORRISON & FOERSTER LLP
250 West 55th St.
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

*Counsel for the ResCap Liquidating Trust
and the ResCap Borrower Claims Trust*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	
	)	Chapter 11
Debtors.)	
	)	Jointly Administered

**DECLARATION OF NORMAN S. ROSENBAUM IN SUPPORT OF
THE RESCAP LIQUIDATING TRUST AND THE RESCAP BORROWER CLAIMS
TRUST'S OBJECTION TO CLAIM NOS. 112, 114, 416, AND 417 FILED BY ERLINDA
ABIBAS ANIEL, FERMIN SOLIS ANIEL, AND MARC JASON ANIEL**

Norman S. Rosenbaum, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

1. I am a partner in the law firm of Morrison & Foerster LLP (“M&F”). M&F maintains offices for the practice of law, among other locations in the United States and worldwide, at 250 West 55th Street, New York, New York 10019. I am an attorney duly admitted to practice before this Court and the courts of the State of New York. By this Court’s Order entered on July 16, 2012, M&F was retained as counsel to Debtors,¹ and subsequent to the effectiveness of the confirmed Plan, M&F has been engaged by the Liquidating Trust and the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms as set forth in the Objection.

Borrower Trust.

2. I submit this declaration (the “Declaration”) in support of the *ResCap Liquidating Trust and ResCap Borrower Claims Trust’s Objection to Claim Nos. 112, 114, 416, and 417 Filed by Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel* (the “Objection”) and in compliance with this Court’s Order entered on March 21, 2013, pursuant to section 105(a) of Title 11, United States Code (the “Bankruptcy Code”) and Rules 1009, 3007 and 9019(b) of the Federal Rules of Bankruptcy Procedure approving: (i) Claim Objection Procedures; (ii) Borrower Claim Procedures; (iii) Settlement Procedures; and (iv) Schedule Amendment Procedures [Docket No. 3294] (the “Claims Objection Procedures Order”).

3. It is my understanding that in connection with the filing of the Objection, prior to the Effective Date of the Plan, the Debtors complied with the Borrower Claim Procedures. I have been advised by M&F attorneys under my supervision that, prior to the Plan’s Effective Date, in accordance with the Claims Objection Procedures Order, prior to filing the Objection, the Debtors’ personnel mailed a request letter to Erlinda Abibas Aniel, Fermin Solis Aniel, and Marc Jason Aniel (the “Aniels”) to request additional supporting documentation and explanation in support of claim numbers 112, 114, 416, and 417 (the “Aniel Claims”). I am further advised that the Debtors conferred with SilvermanAcampora LLP then acting as Special Counsel to the Creditors’ Committee for Borrower Issues (“Special Counsel”) in drafting the request letter and provided Special Counsel with copies of the request letter sent to the Aniels.

4. Except as otherwise set forth herein, to the best of my knowledge, prior to the filing of the Objection, the Debtors and the Borrower Trust fully complied with all other relevant terms of the Claims Objection Procedures.²

² The Objection deviates from the Borrower Claim Procedures in that it is not supported by a declaration from Special Counsel. As of the Effective Date of the Plan, the Creditors’ Committee was dissolved (see Plan at

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on March 5, 2015

/s/ Norman S. Rosenbaum
Norman S. Rosenbaum

Art.XIII.D.). Because the Creditors' Committee was dissolved as of the Plan Effective Date (with the exception of certain limited duties provided for in the Plan), the Borrower Trust did not consult with Special Counsel prior to filing the Objection.