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4 Attorneys for Defendant
5 WMC MORTGAGE CORPORATION

6
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8
9 IN AND FOR THE COUNTY OF CONTRA COSTA

10 HERMENEGILDO J. CAPARAS and
11 JUANITA R. CAPARAS,

12 Plaintiffs,

13 v.

14 WMC MORTGAGE CORPORATION, et
15 al.,

16 Defendants.

) CASE NO. C09-02048

) Assigned For All Purposes To:
Hon. Barry Baskin

) **NOTICE OF HEARING ON**
) **DEMURRER AND DEMURRER OF**
) **DEFENDANT WMC MORTGAGE**
) **CORPORATION TO PLAINTIFFS'**
) **VERIFIED COMPLAINT;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES; REQUEST FOR**
) **JUDICIAL NOTICE**

) Date:
) Time:
) Dept: 7
) Trial: None

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21 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that on _____, 2009 at _____ a.m./p.m., or as soon thereafter
23 as counsel may be heard in Department 7 of the above-entitled Court located at 725 Court St., Martinez,
24 California, Defendant WMC MORTGAGE CORPORATION (hereafter "Defendant") will demur to
25 Plaintiffs' verified Complaint (hereafter referred to as the "Complaint"), and more specifically to the
26 purported causes of action contained therein, as follows:
27

28 Defendant demurs to the First Cause of Action (Violation of Cal. Civil Code §2923.6) on the

1 basis that it fails to state facts sufficient to constitute a cause of action as to Defendant. (CCP §
2 430.10(e).)

3 Defendant demurs to the Second Cause of Action (Violation of Cal. Bus. & Prof. Code §17200)
4 on the basis that it fails to state facts sufficient to constitute a cause of action as to Defendant. (CCP §
5 430.10(e).)

6 Defendant demurs to the Third Cause of Action (Breach of Covenant of Good Faith and Fair
7 Dealing) on the basis that it fails to state facts sufficient to constitute a cause of action as to Defendant.
8 (CCP § 430.10(e).)

9 Defendant demurs to the Fourth Cause of Action (Injunctive Relief) on the basis that it fails to
10 state facts sufficient to constitute a cause of action as to Defendant (CCP § 430.10(e).)

11 Defendant demurs to the Fifth Cause of Action (Violation of Civil Code §1572) on the basis that
12 it fails to state facts sufficient to constitute a cause of action as to Defendant. (CCP § 430.10(e).)

13 Defendant demurs to the Sixth Cause of Action (Fraud) on the basis that it fails to state facts
14 sufficient to constitute a cause of action as to Defendant. (CCP § 430.10(e).)

15 Defendant demurs to the Seventh Cause of Action (Declaratory Relief) on the basis that it fails to
16 state facts sufficient to constitute a cause of action as to Defendant. (CCP § 430.10(e).)

17 Defendant demurs to the Eighth Cause of Action (Intentional Misrepresentation) on the basis that
18 it fails to state facts sufficient to constitute a cause of action as to Defendant. (CCP § 430.10(e).)

19 Defendant demurs to the Ninth Cause of Action (To Set Aside Foreclosure) on the basis that it
20 fails to state facts sufficient to constitute a cause of action as to Defendant. (CCP § 430.10(e).)

21 Defendant demurs to the Tenth Cause of Action (Violation of Cal. Civil Code §§2923.5 and
22 2924) on the basis that it fails to state facts sufficient to constitute a cause of action as to Defendant.
23 (CCP § 430.10(e).)

24 Finally, Defendant specially demurs to the entire Complaint on the grounds of uncertainty and
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1 unintelligibility (CCP § 430.10(f).)

2 This demurrer is based on this notice, the Memorandum of Points and Authorities and the
3 Request for Judicial Notice filed concurrently herewith, on the papers and pleadings on file herein, and
4 on such other and further evidence, both oral and documentary, as may be submitted at the hearing of this
5 demurrer.
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7 DATED: August 19, 2009

LAW OFFICES OF GLENN H. WECHSLER

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9 By: 
LAWRENCE D. HARRIS

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DEMURRER

Defendant WMC MORTGAGE CORPORATION (hereafter "Defendant") demurs to Plaintiffs' verified Complaint (hereafter referred to as the "Complaint"), and more specifically to the purported causes of action contained therein, as follows:

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3 that it fails to state facts sufficient to constitute a cause of action as to Defendant. (CCP § 430.10(e).)

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5 and 2924) on the basis that it fails to state facts sufficient to constitute a cause of action as to Defendant.
6 (CCP § 430.10(e).)

7
8 11. Finally, Defendant specially demurs to the entire Complaint on the grounds of uncertainty
9 and unintelligibility (CCP § 430.10(f).)

10 DATED: August 19, 2009

LAW OFFICES OF GLENN H. WECHSLER

11
12 By: 

13 LAWRENCE D. HARRIS

14 E:\Larry\WMC\Caparas\Notice of Demurrer

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) Hon. Barry Baskin

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **DEMURRERS OF DEFENDANT**
) **WMC MORTGAGE CORPORATION**
) **TO PLAINTIFFS' VERIFIED**
) **COMPLAINT**

) Date:
) Time:
) Dept: 7
) Trial: None
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20 Defendant WMC MORTGAGE LLC CORPORATION ("WMC" or "Defendant") respectfully
21 submits the following memorandum of points and authorities in support of its demurrers to the
22 Plaintiffs' verified Complaint (hereafter referred to as the "Complaint").
23

24 **1. SUMMARY OF THE DEMURRER**

25 Plaintiffs cannot state causes of action against WMC for wrongful foreclosure, and various other
26 claims relating to the foreclosure. WMC was the original lender but was never the beneficiary or
27 trustee. The foreclosure statutes upon which Plaintiffs rely were not in effect at the time the foreclosure
28 notices were issued. Plaintiffs cannot attack the foreclosure sale, and attempt to set it aside, when they

1 have not tendered the amount due. Plaintiffs have not stated a cause of action for fraud,
2 misrepresentation or unfair business practices relating to the underlying loan transaction. All of
3 Plaintiffs' causes of action are defective, and the demurrers should be sustained without leave to amend.

4 **2. SHORT STATEMENT OF FACTS**

5 Plaintiffs HERMENEGILDO J. CAPARAS and JUANITA R. CAPARAS ("Plaintiffs") are the
6 former owners of the real property which is the subject of this action, known as 3554 Lovebird Way,
7 Antioch, California ("Property") [Complaint ¶1]. Plaintiffs on or about July 7, 2006 executed two
8 promissory notes in the amounts of \$640,000 ("First Note") and \$160,000 ("Second Note"),
9 respectively. The notes were secured by two deeds of trust encumbering the Property ("First Deed of
10 Trust" and "Second Deed of Trust"), which were recorded on July 19, 2006 in the real estate records of
11 Contra Costa County, California. [Complaint ¶¶8, 17; Request for Judicial Notice, Deeds of Trust].
12 Pursuant to the terms of the First Deed of Trust and the Second Deed of Trust, WMC is the "Lender"
13 and Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") is the
14 beneficiary thereunder, and WESTWOOD ASSOCIATES was the original Trustee. REGIONAL
15 TRUSTEE SERVICES CORPORATION ("RTSC") is the successor trustee under the First Deed of
16 Trust [Complaint ¶4, Exhibit A]. RTSC recorded a Notice of Default and Election to Sell on or about
17 May 12, 2008 [Complaint ¶187, Exhibit A], and subsequently recorded a Notice of Trustee Sale on
18 August 14, 2008 [Complaint ¶187, Exhibit B].

19 **3. PLAINTIFFS CANNOT STATE A CAUSE OF ACTION FOR WRONGFUL** 20 **FORECLOSURE OR VIOLATION FOR CIVIL CODE §§2923.5 ET SEQ.**

21 Plaintiffs cannot state a cause of action for violation of Cal. Civil Code §§ 2923.5 and 2923.6, as
22 the statute did not take effect until September 6, 2008 [Complaint ¶184]. The Notice of Default was
23 recorded on or about May 12, 2008 [Complaint ¶187, Exhibit A], and the Notice of Trustee Sale was
24 recorded on August 14, 2008 [Complaint ¶187, Exhibit B], before the effective date of the act.
25 Therefore, Cal. Civil Code §§2923.5 and 2923.6 do not even apply in this case. Plaintiffs allege that
26 "Defendants' Pooling and Servicing Agreement (PSA) contains a duty to maximize net present value to
27 its investors and related parties" and that "California Civil Code §2923.6 broadens and extends this PSA
28 duty by requiring servicers to accept loan modifications with borrowers" [Complaint ¶¶ 90-91].

1 Plaintiffs have not alleged that there is a “PSA” in this case, attached a copy or summarized its
2 terms. Even if such a document existed, Plaintiffs admit that the purported statutory duty they posit runs
3 in favor of “investors and related parties” and not to the borrower. Furthermore, the statute does not
4 require that a lender accept *any* offer of a loan modification, and there is no *statutory mandate* that a
5 lender accept a loan modification if the “anticipated recovery under the loan modification or workout
6 plan exceeds the anticipated recovery on a net present value basis” [Complaint ¶92; Civil Code
7 §2923.6(a)(2)]. Furthermore, Plaintiffs’ proposal is absurd on its face and does not even meet this
8 standard. Plaintiffs are offering to pay 4.0% interest on a principal balance of \$325,565.00 [Complaint
9 ¶95]. However, there are two liens on the Property. The First Note was in the face amount of
10 \$640,000.00 payable at an adjustable interest rate, starting at 8.0% [Request for Judicial Notice, First
11 Deed of Trust, Adjustable Rate Rider]. This not a tender of the full amount due on the First Note, and
12 Plaintiffs do not make any offer of tender at all as to the Second Note. Plaintiffs are essentially asking
13 the court to write down the principal balance on the First Note *by over \$314,000.00*, to the alleged fair
14 market value of the property. There is no legal basis for such a remedy, even in bankruptcy
15 proceedings. Plaintiffs also allege violations of the California Foreclosure Prevention Act (Civil Code
16 §2923.52). This code section took effect on June 15, 2009 [Complaint ¶185] and provides that “a
17 mortgagee, trustee or other person authorized to take sale shall not give notice of sale until at least 90
18 days after the lapse of three months as set forth in [Civ. Code §2924(a)(2)]...”. This statute also does
19 not apply, as the Notice of Trustee Sale was issued before the act took effect.

20 **4. PLAINTIFFS CANNOT SET ASIDE THE TRUSTEE SALE, AND THEY HAVE NOT**
21 **TENDERED THE AMOUNT DUE.**

22 While Plaintiffs do not allege that a foreclosure sale has taken place, they seek to “set aside a
23 defective and wrongful foreclosure” (ninth cause of action) and “cancellation of the sale and restitution
24 of the home to Plaintiffs” and to “reinstate Plaintiff on title” [Complaint, Prayer for Relief §§6, 9].
25 Plaintiffs cannot attack the subject trustee sale and restore their title, as they have not tendered the
26 amount due. A debtor must offer to do equity by making a tender or otherwise offering to pay his debt.
27 It has long been established that a trustor must tender the obligation in full as a prerequisite to his or her
28 challenge of the foreclosure sale. (*Humboldt Sav. Bank v. McCleverty* (1911) 161 Cal. 285, 290;

1 *Williams v. Koenig* (1934) 219 Cal. 656, 660; *United States Cold Storage v. Great Western Savings &*
2 *Loan Association*. (1985) 165 Cal.App.3d 1214, 1222-1223.) The Complaint's allegations do not state
3 a cause of action absent a presale offer to pay the full amount of the debt. (*MCA, Inc. v. Universal*
4 *Diversified Enterprises Corp.* (1972) 27 Cal. App.3d 170, 177.) "Some disposition on the part of
5 [plaintiff] to do equity by tendering the amount of the debt due is a prerequisite to [a] demand for
6 judgment cancelling the trustee's sale." (*Ibid.*) Plaintiffs cannot invoke the jurisdiction of a court of
7 equity to set aside a trustee's sale when the pleadings show no tender of payment of the full obligation
8 for which the property was secured or an offer in good faith to pay and that implicit in such offer must
9 be the ability to pay. (*Karlsen v. American Savings & Loan Association*. (1971) 15 Cal.App.3d 112,
10 117.) The applicable law is set forth in *Mack v. Golino* (1950) 95 Cal.App.2d 731, which refers to
11 *Holland v. Pendleton Mtg. Co.* wherein the court held that:

12 Even if the sale should be regarded as voidable, it appears that a
13 tender of the amount due on the obligation was not made. Therefore,
14 even if the sale should be regarded as voidable, it should not be set
15 aside since the plaintiff failed to offer to do equity. (95 Cal.App.2d at
16 735, emphasis added.)

17 In *Karlsen v. American Savings & Loan Association* (1971) 15 Cal.App.3d 112, plaintiff filed a
18 Complaint to Set Aside a Trustee's Deed. The case was decided via Judgment on the pleadings, on the
19 basis that the plaintiff had not made a valid tender. In that case, plaintiff's "tender" consisted of an offer
20 to pay the lender rather than an actual tender of the full amount of the debt. The *Karlsen* Court held that
21 a tender dependent upon a future refinance of the property was not a valid tender. The court stated that:

22 The basic rule is that an offer of performance is of no effect if the
23 person making it is not able to perform. (citations) Simply put, if the
24 offeror ... is without the money necessary to make the offer good and
25 knows it ... the tender is without legal force or effect¹. (15
26 Cal.App.3d at 117, emphasis added)

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28 ¹ The Court also held that negotiations concerning a possible refinance did not constitute a
 tender. (15 Cal.App.3d at 118.)

1 Accordingly, the face of the Complaint shows no “valid and viable tender”, which, as set forth in
2 *Karlsen* is “essential” to such an action. (*Ibid.*) Plaintiffs cannot set aside the trustee sale or the trustee’s
3 deed, as Plaintiffs have not alleged any defect in the sale, and have not tendered the full amount due.
4 The demurrers must be sustained without leave to amend.

5 **5. PLAINTIFFS CANNOT STATE A CAUSE OF ACTION FOR INTENTIONAL**
6 **MISREPRESENTATION OR FRAUD.**

7
8 To state a cause of action for fraud under California law, Plaintiff must allege each and every
9 element of fraud, both factually and specifically, to establish a fraud and deceit claim against Defendant.
10 Plaintiffs have failed to do so. The essential allegations for a fraud and deceit claim are false
11 representation as to a material fact, knowledge of its falsity, intent to defraud, justifiable reliance and
12 resulting damage. “*The absence of any one of these elements will preclude recovery.*” (*Wilhelm v.*
13 *Pray, Price, Williams & Russell*, (1986) 186 Cal.App.3d 1324, 1332.) It is well settled that a fraud and
14 deceit cause of action is subjected to a strict pleading standard because of its nature as a serious attack
15 upon a defendant’s character. (*Committee on Children's Television, Inc. v. General Foods Corp.*, (1983)
16 35 Cal.3d 197, 216.) *Every element* of fraud must be alleged in full, factually and specifically. The
17 policy of liberal construction of pleading will *not* be invoked to sustain a pleading defective in any
18 material respect. (*Wilhelm v. Pray, Price, Williams & Russell, supra*, 186 Cal.App.3d 1324, 1332,
19 emphasis added.) With respect to the element of misrepresentation, “[t]his particularity requirement
20 necessitates pleadings facts which ‘show how, when, where, to whom, and by what means the
21 representations were tendered.’” (*Stansfield v. Starkey*, (1990) 220 Cal.App.3d 70, 74.) Further, where
22 the complaint alleges fraud *against a corporation*, such as demurring Defendants, “[t]he requirement of
23 specificity . . . requires the plaintiff to allege the names of the persons who made the allegedly
24 fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and
25 when it was said or written.” (*Tarmann v. State Farm Mut. Auto. Ins. Co.*, (1991) 2 Cal.App.4th 156,
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1 158). (Emphasis added.) Without *specific* allegations of specific facts to show misrepresentation and
2 falsity by each particular defendant, Plaintiffs' cause of action for fraud must fail *as a matter of law*.
3 (See, BAJI No. 12.31; *Wilhelm v. Pray, Price, Williams & Russell, supra*, 186 Cal.App.3d at p. 1331.)
4 Plaintiffs have not met these strict pleading standards. They allege that "documents were not provided
5 to the trustee that showed that REGIONAL or HOMEQ or MERS was the beneficiary..." [Complaint
6 ¶145]. In the same vein is the allegation that "documents were not provided to the trustee that showed
7 that any of the Defendants was the beneficiary and entitled to the payments" [Complaint ¶177]. This is
8 pure supposition. Plaintiffs are in no position to know what was provided to RTSC. The deeds of trust
9 executed by Plaintiffs recited that MERS is the beneficiary, and RTSC, as the successor trustee, is
10 entitled to enforce the Deed of Trust. Civil Code §2924(a)(1) provides that "[t]he trustee, mortgagee, or
11 beneficiary, or any of their authorized agents" may commence the nonjudicial foreclosure process by
12 recording and servicing a notice of default. Plaintiffs also allege that:
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15 WMC ... made the loan to Plaintiffs by marketing and extending adjustable-rate
16 mortgage ("ARM") products to Plaintiffs in an unsafe and unsound manner that
17 greatly increases the risk that Plaintiffs would default on the loan... did not
18 properly consider the Plaintiffs' ability to meet his overall level of indebtedness...
and making Plaintiffs a mortgage loan without adequately considering the
19 Plaintiffs' ability to repay the mortgage according to its terms.

20 [Complaint ¶149]

21 Plaintiffs posit a duty where none exists, and there is certainly no fraud alleged, or failure to
22 disclose under any state or federal lending statute or regulation. What Plaintiffs are essentially saying is
23 that WMC has a fiduciary duty to look out for the interests of Plaintiffs, and that is not the law. "It has
24 long been regarded as 'axiomatic that the relationship between a bank and its depositor arising out of a
25 general deposit is that of a debtor and creditor.'" (*Price v. Wells Fargo Bank*, (1989) 213 Cal.App.3d
26 465, 476.) "A debt is not a trust and there is not a fiduciary relation between debtor and creditor as
27 such." The same principle should apply with even greater clarity to the relationship between a bank and
28

1 its loan customers.” “The relationship between a lending institution and its borrower-client is not
2 fiduciary in nature.” (Price at 476-478.) A commercial lender is entitled to pursue its own economic
3 interests in a loan transaction. (Kruse v. Bank of America, (1988) 202 Cal.App.3d 38, 67.) This right is
4 inconsistent with fiduciary obligations which require the fiduciary knowingly agree to subordinate its
5 interests to act on behalf of and for the benefit of another.” (Committee on Children's Television, Inc.
6 v. General Foods Corp., (1983) 35 Cal.3d 197, 221.) WMC has no such duty to Plaintiffs and therefore
7 has not breached any duty. Plaintiffs’ fraud, intentional misrepresentation and “violation of Civil Code
8 §1572” causes of action fail, and the demurrers should be sustained.

10 **6. PLAINTIFFS HAVE FAILED TO STATE A CAUSE OF ACTION FOR VIOLATION OF**
11 **BUS. & PROF. CODE §17200 ET SEQ.**

12 Bus. & Prof. Code § 17200 prohibits unfair competition, which is defined as “any unlawful,
13 unfair or fraudulent business act or practice.” Since § 17200 is written in the disjunctive, it establishes
14 three varieties (or “prongs”) of unfair competition—acts or practices which are unlawful, or unfair, or
15 fraudulent. See, e.g., *Bernardo v. Planned Parenthood Federation of America*, (2004) 115 Cal.App.4th
16 322; and *Shvarts v. Budget Group, Inc.*, (2000) 81 Cal.App.4th 1153. Unlawful acts or practices should
17 always be alleged in terms of the specific law or laws violated, making clear that violation of law is a
18 basis of the claim. See, e.g., *People v. McKale* (1979) 25 Cal.3d 626; *Khoury v. Macy's of California,*
19 *Inc.*, (1993) 14 Cal.App.4th 612; *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, (N.D. Cal. 1997) 983
20 F.Supp. 1303. Fraudulent acts or practices must be set forth with specificity as to the misrepresentation
21 or misleading conduct. See, e.g., *Quelimane Co., Inc. v. Stewart Title Guaranty Co.*, (1998) 19 Cal. 4th
22 26; *Committee on Children's Television, Inc. v. General Foods Corp.*, (1983) 35 Cal.3d 197. Unfair
23 acts or practices should be alleged in accordance with a statutory basis or else the nature of the anti-
24 competitive conduct should be described. See, e.g., *Perdue v. Crocker National Bank*, (1985) 38 Cal. 3d
25 913; and *Gregory v. Albertson's, Inc.*, (2002) 104 Cal.App.4th 845; *Rubio v. Capital One Bank (USA),*
26 *N. A.* (2008) 572 F.Supp.2d 1157, 1168. Plaintiffs have failed to allege any facts showing that
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1 Defendants engaged in any business act or practice that is prohibited by statute, a predicate for Plaintiffs
2 to prevail on a cause of action for unfair business practices under Bus. & Prof. Code §17200. The
3 demurrers should be sustained without leave to amend.

4
5 **7. PLAINTIFFS CANNOT STATE CAUSES OF ACTION FOR BREACH**
6 **CONTRACT OR OF THE IMPLIED COVENANT OF GOOD FAITH AND**
7 **FAIR DEALING.**

8 Plaintiffs cannot state a cause of action for breach of contract or of the implied covenant on the
9 facts alleged. Plaintiffs allege that “commencement of foreclosure proceeding...without the production
10 of documents demonstrating the lawful rights for the foreclosure constitutes a breach of the covenant”
11 [Complaint ¶112]. There is no duty of WMC to “produce” anything. WMC is not the beneficiary or the
12 trustee, and did not initiate the foreclosure proceedings. As stated above, MERS is the beneficiary, and
13 RTSC, as the successor trustee, is entitled to enforce the Deed of Trust [Civil Code §2924(a)(1)].
14 Furthermore, no cause of action can be stated based on the breach of the covenant of good faith and fair
15 dealing outside of the insurance context *as a matter of law*. Outside of that context, there is no “special
16 relationship” giving rise to a fiduciary duty. *Jonathan Neil & Associates, Inc. v Jones*, (2004) 33 Cal.
17 4th 917, 937. There is no tort for the breach of the implied covenant of good faith and fair dealing
18 *outside of an insurance contract*. See *Cates Construction, Inc. v Talbot Partners* (1999) 21 Cal. 4th 28.
19 No California court has found a special relationship outside of the insurance context. *Foley v Interactive*
20 *Data Corp.* (1988) 47 Cal. 3d 654. As the transaction described in the Complaint is a real estate
21 financing transaction, the implied covenant of good faith and fair dealing does not apply. The demurrers
22 should be sustained without leave to amend.

23 **8. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR**
24 **DECLARATORY RELIEF**

25 While a party claiming an interest in property may bring a declaratory relief action under Cal. Code
26 of Civ. Proc. §1060, the complaint must specifically allege the existence of an actual, present
27 controversy between the parties with respect to the property, and must allege the underlying facts of the
28 respective claims concerning the dispute or controversy. *City of Cotati v. Cashman* (2002) 29 Cal.4th
69, 79. A court may sustain a demurrer to a declaratory relief cause of action on the grounds that the

1 complaint fails to allege an actual or present controversy, or if it determines that a judicial declaration is
2 not “necessary or proper at the time under all the circumstances.” CCP §1061; *DeLaura v. Beckett*
3 (2006) 137 Cal.App.4th 542, 545. As none of Plaintiffs’ claims of statutory violations are meritorious as
4 set forth herein, there are no grounds stated for declaratory relief under California law. In this case, no
5 “actual controversy” exists, and the demurrers must be sustained.
6

7 **9. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR**
8 **INJUNCTIVE RELIEF.**

9 Under California law, an “injunction” is a remedy, not a cause of action. (CCP §525.)
10 “Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before
11 injunctive relief may be granted. *Williams v. Southern P. R. R. Co.*, 150 Cal. 624 [89 P. 599].)” *Shell Oil*
12 *Co. v. Richter* (1942), 52 Cal. App. 2d 164, 168. In order to obtain an injunction, a proponent must
13 make a showing of (1) the likelihood of success on the merits at trial; and (2) that the relative balance of
14 harm that is likely to result from the granting or denying the injunction favors the moving party. *See*
15 *Robbins v. Sup. Ct.* (1985) 38 Cal.3d 199, 206; Civil Code §526; *Butt v. State of California* (1992) 4
16 Cal.4th 668-677-678; *Jessen v. Keystone Savings & Loan Association*, (1983) 142 Cal. App. 3d 454.)
17 Plaintiffs cannot succeed on the merits because, as set forth more fully below, Plaintiffs have not alleged
18 any facts which would constitute a statutory or other defect in the foreclosure proceedings. Since
19 Plaintiffs cannot succeed on the merits, an injunction should not lie, and the demurrer must be sustained
20 without leave to amend.

21 **10. PLAINTIFFS’ ENTIRE COMPLAINT FAILS AGAINST DEFENDANTS**
22 **BECAUSE IT IS UNCERTAIN AND UNINTELLIGIBLE**

23 Code of Civil Procedure § 430.10(f) states in pertinent part: “The party against whom a
24 complaint has been filed may object, by way of demurrer as provided in Section 430.30, to the pleadings
25 on the following grounds: (f) The pleading is uncertain. As used in this subdivision “uncertain” includes
26 ambiguous and unintelligible.” The complaint is uncertain in that it does not include a “statement of the
27 facts constituting the cause of action, in clear and concise language” [CCP §425.10(a)(1)]. A demurrer
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1 for uncertainty will be sustained where the complaint is so vague and ambiguous that the defendant
2 cannot reasonably respond; i.e. he or she cannot reasonably determine what issues must be admitted or
3 denied, or what counts or claims are directed against him. (*Khoury v. Maly's of California, Inc.*, (1983)
4 14 Cal.App.4th 612, 616.) A complaint is subject to demurrer for uncertainty where there are multiple
5 Defendants, and the complaint does not specify which Defendants committed the acts complained of, or
6 to whom the cause(s) of action are directed. *Williams v. Beechnut Nutrition Corp.* (1986) 185
7 Cal.App.3d 135, 139 [fn.2]. Plaintiffs fail to identify which Defendants are included in their collective
8 use of the term "Defendants" in each cause of action. All the causes of action in Plaintiffs' complaint
9 are defective against Defendant as a matter of law and the demurrer should be sustained *without leave to*
10 *amend.*

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14 DATED: August 19, 2009

LAW OFFICES OF GLENN H. WECHSLER

15
16 By: 

LAWRENCE D. HARRIS

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Lawrence D. Harris, State Bar No. 153350
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3 Walnut Creek, California 94596
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4 Attorneys for Defendant
5 WMC MORTGAGE CORPORATION

6
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8
9 IN AND FOR THE COUNTY OF CONTRA COSTA

10 HERMENEGILDO J. CAPARAS and
11 JUANITA R. CAPARAS,

12 Plaintiffs,

13 v.

14 WMC MORTGAGE CORPORATION, et
15 al.,

16 Defendants.

) CASE NO. C09-02048

) Assigned For All Purposes To:
Hon. Barry Baskin

) **REQUEST FOR JUDICIAL**
) **NOTICE IN SUPPORT OF**
) **DEMURRERS TO PLAINTIFFS'**
) **VERIFIED COMPLAINT**

) Date:

) Time:

) Dept: 7

) Trial: None

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20 Defendant WMC MORTGAGE CORPORATION (hereafter "Defendant") hereby requests the
21 court pursuant to *Evidence Code* § 452 to take judicial notice of the following documents, and the
22 contents thereof, copies of which are attached hereto:

23 1. Attached hereto as Exhibit A and incorporated herein by this reference is a true and
24 correct copy of the First Deed of Trust on the subject Property; and

25 ///

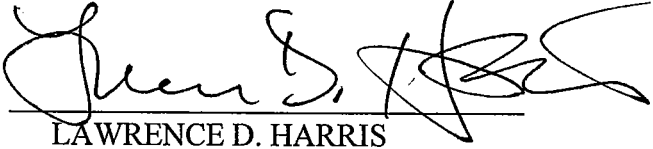
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1 2. Attached hereto as Exhibit B and incorporated herein by this reference is a true and
2 correct copy of the Second Deed of Trust on the subject Property.

3 DATED: August 19, 2009

LAW OFFICES OF GLENN H. WECHSLER

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6 By: 
LAWRENCE D. HARRIS

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EXHIBIT "A"

20

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2006-0227370-00

Recording Requested By /
Return To:
WMC MORTGAGE CORP.

3100 THORNTON AVENUE
BURBANK, CA 91504
Attn: (WHOLESALE)

Acct 2- Chicago Title
Wednesday, JUL 19, 2006 08:00:00
MIC \$1.00:MOD \$20.00:REC \$24.00
TCF \$19.00:DAF \$1.80:REF \$0.20
Ttl Pd \$65.00
Nbr-0003328379
188/R2/1-20

Prepared By:
DONNA RISELING

WMC MORTGAGE CORP.
3100 THORNTON AVENUE
BURBANK, CA 91504

WLP

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY

To # 39107587
Escrow 66100954

[Space Above This Line For Recording Data]

Serv #: 11606566 DEED OF TRUST CAPARAS
Loan #: 11606566
MIN: 100136300116065664
PIN: 075-422-003

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 July 7, 2006, together with all Riders to this document.
- (B) "Borrower" is HERMENEGILDO J. CAPARAS AND JUANITA R. CAPARAS, HUSBAND AND WIFE AS JOINT TENANTS

Borrower is the trustor under this Security Instrument.
(C) "Lender" is WMC MORTGAGE CORP.

Lender is a Corporation organized and existing under the laws of CALIFORNIA. Lender's address is P.O. BOX 54089, LOS ANGELES, CA 90054-0089

(D) "Trustee" is WESTWOOD ASSOCIATES, A CALIFORNIA CORPORATION

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(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 July 7, 2006. The Note states that Borrower owes Lender

Six Hundred Forty Thousand and 00/100

Dollars (U.S. \$ 640,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 1, 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"/> Biweekly Payment Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input checked="" type="checkbox"/> Other(s) [specify] Balloon Rider | |

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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



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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 CONTRA COSTA [Type of Recording Jurisdiction] [Name of Recording Jurisdiction] LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AND KNOWN AS EXHIBIT 'A'.

which currently has the address of 3554 LOVEBIRD WAY

[Street]

ANTIOCH

, California 94509

("Property Address"):

[City]

[Zip Code]

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

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within

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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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for



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such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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

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

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

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

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

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

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

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

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

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender



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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



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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.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the



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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



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Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

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

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

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



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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.

Juanita R Caparas 7-10-06
- Borrower - JUANITA R CAPARAS - Date -

[Signature] 7-10-06
- Borrower - HERMENEGILDO J CAPARAS - Date -



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State of CALIFORNIA

County of SOLANO

On 7-10-06

before me, LORA VELARDO NOTARY PUBLIC
(here insert name and title of the officer)

personally appeared HERVEN EBILDO J. CAPARAS &
UANITA R. CAPARAS

~~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

(Seal)



227370

ADJUSTABLE RATE RIDER
(6-Month LIBOR Index - Rate Caps)
(First Business Day of Preceding Month Lookback)

Serv #: 11606566

CAPARAS
Loan #: 11606566
NIN#: 100136300116065664

THIS ADJUSTABLE RATE RIDER is made this 7th day of July, 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 (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to WMC MORTGAGE CORP.

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:
3554 LOVEBIRD WAY, ANTIOCH, CA 94509

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE 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. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.000 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of August, 2008 and may change on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

MULTISTATE ADJUSTABLE RATE RIDER 6-Month LIBOR Index (First Business Day Lookback)--Single Family--

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(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the six month London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs 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 **Seven and Three-Fourths** percentage point(s) (**7.750** %) 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.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on a date that is **10** years after the Maturity Date (such date being referred to herein as the "Amortization Date") at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment. I understand that as a result of the Amortization Date being after the Maturity Date, I will have a balloon payment on the Maturity 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 **11.000** % or less than **8.000** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **One** percentage point(s) (**1.000** %) from the rate of interest I have been paying for the preceding **6** months. My interest rate will never be greater than **14.500** %, or less than **8.000** %.

(E) 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.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include 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
Section 18 of the Security Instrument is 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.



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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 Adjustable Rate Rider.

Juanita R. Caparas 7-10-06
- Borrower - JUANITA R CAPARAS - Date -
[Signature] 7-10-06
- Borrower - HERMENEGILDO J CAPARAS - Date -



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BALLOON RIDER

Serv #: 11606566

CAPXAS
Loan #: 11606566
HEX: 100136300116065664

THIS BALLOON RIDER is made this 7th day of July, 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 Note (the "Note") to WMC MORTGAGE CORP.

(the "Lender") of the same date and covering the property described in the Security Instrument and located at 3554 LOVEBIRD WAY ANTIOCH, CA 94509

[Property Address]

The interest rate stated on the Note is called the "Note Rate". The date of the Note is called the "Note Date". I understand the Lender may transfer the Note, Security Instrument and this Rider. The Lender or anyone who takes the Note, the Security Instrument and this Rider by transfer and who is entitled to receive payments under the Note is called the "Note Holder".

ADDITIONAL COVENANTS. In addition to the covenants and agreements in the Security Instrument, Borrower and Lender further covenant and agree as follows (despite anything to the contrary contained in the Security Instrument or the Note):

NOTWITHSTANDING THE 40 -YEAR AMORTIZATION PERIOD, THIS LOAN IS PAYABLE IN FULL ON THE MATURITY DATE. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN

BALLOON RIDER MULTISTATE (01/97)

DOCID: 11606566
DOCID: 11606566 05/24/2006

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IF YOU OBTAIN REFINANCING FROM THE SAME LENDER. ACCORDINGLY, IF THIS LOAN HAS NOT BEEN SATISFIED, YOU WILL HAVE A BALLOON PAYMENT ON THE MATURITY DATE.

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

Juanita R. Caparas 7-10-06
- Borrower - JUANITA R. CAPARAS - Date -

[Signature] - 7-10-06
- Borrower - HERMENEGILDO J. CAPARAS - Date -



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Escrow No.: 06-66100954-LV
Locate No.: CACTT7707-7748-1661-0039107587
Title No.: 06-39107587-GS

EXHIBIT "A"

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

Lot 991, as shown on the map of subdivision 6497, "Mira Vista Hills Unit 11", filed October 19, 1988, map book 326, page 27, Contra Costa county records.

Excepting therefrom:

All oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas, now or hereafter found, situated or located in all or any part or portion of the lands described herein lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface thereof, but without any right whatsoever to enter upon the surface of said land or upon any part of said lands within five hundred feet (500') vertical distance below the surface thereof, as conveyed by deed from Western Title Insurance Company to Mary Grace Prewett Bertsch, et al, recorded December 10, 1980 in book 10123 of official records, page 222, Contra Costa county records.

APN: 075-422-003

End of Document

EXHIBIT "B"

2nd
Recording Requested By /
Return To:
WMC MORTGAGE CORP.

3100 THORNTON AVENUE

BURBANK, CA 91504
Attn: (WHOLESALE)

Prepared By:
DONNA RISELING

WMC MORTGAGE CORP.

3100 THORNTON AVENUE

BURBANK, CA 91504

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC-2006-0227371-00

Acct 2- Chicago Title

Wednesday, JUL 19, 2006 08:00:00

MIC \$2.00:MOD \$12.00:REC \$20.00

TCF \$10.00:DAF \$3.00:REF \$0.40

Ttl Pd \$48.00

Nbr-0003328380

Iss/R2/2-11

To # 39107587
Escrow 66100954

[Space Above This Line For Recording Data]

DEED OF TRUST AND REQUEST FOR NOTICE OF DEFAULT

Serv #: 11606567

CAPARAS
Loan #: 11606567
PIN: 075-422-003
MIN: 100136300116065672

THIS DEED OF TRUST is made this 7th day of July, 2006, among the Trustor,
HERMENEGILDO J. CAPARAS AND JUANITA R. CAPARAS, HUSBAND AND WIFE AS
JOINT TENANTS

whose address is 3554 LOVEBIRD WAY, ANTIOCH, CA 94509

, (herein "Borrower"),

WESTWOOD ASSOCIATES, A CALIFORNIA CORPORATION

(herein "Trustee"), and the Beneficiary, Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns.) 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. WMC MORTGAGE CORP.

("Lender") is organized and existing under the laws of CALIFORNIA
P.O. BOX 54089, LOS ANGELES, CA 90054-0089

and has an address of

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of CONTRA COSTA, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AND KNOWN AS EXHIBIT 'A'.

Parcel ID Number: 075-422-003

CALIFORNIA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT WITH MERS

DOCU7CA1

Page 1 of 8

Form 3805

WMCD7CA1.VTX 09/30/2005



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11606567.
which has the address of 3554 LOVEBIRD WAY

11606567

[Street]

, California 94509

(herein "Property Address");

ANTIOCH

[City]

[Zip Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust; but, if necessary to comply with law of 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 or canceling this Deed of Trust.

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note dated July 7, 2006 and extensions and renewals thereof (herein "Note"), in the principal sum of U.S. \$ 160,000.00, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on August 1, 2021; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

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

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional Lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust



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3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

5. **Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has a priority over this Deed of Trust.

10. **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 Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.



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11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and this Deed of Trust at the time of execution or after recordation hereof.

15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Deed of Trust.

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 delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

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

17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender, prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust 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 breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees.

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 and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in



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the manner prescribed by applicable law. After the lapse of such time as may be 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 such order as Trustee may determine. 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 Lender's designee may purchase the Property at any sale.

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Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold 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 reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

21. Substitute Trustee. Lender, at Lender'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 where the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. The procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

22. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address. Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Lender's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the Civil Code of California.

23. 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.

REFERENCE IS HEREBY MADE TO THE RIDER(S) ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES: [Check box as applicable]

- | | | |
|--|--|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Bi-Weekly Rider | <input checked="" type="checkbox"/> Other(s) [specify] Balloon Rider | |



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**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

Borrower request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust, of any default under the superior encumbrance and of any sale or other foreclosure action.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded Concurrently Herewith in Book N/A, Page N/A, records of CONTRA COSTA County, or filed for record with recorder's serial number Concurrently Herewith, CONTRA COSTA County, California, executed by HERMENEGILDO J. CAPARAS AND JUANITA R. CAPARAS, HUSBAND AND WIFE AS JOINT TENANTS

as trustor (or mortgagor) in which WMC MORTGAGE CORP.

7-19-06
06-227370

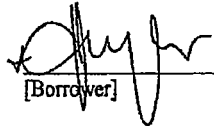
WMC MORTGAGE CORP. is named as beneficiary (or mortgagee) and WESTWOOD ASSOCIATES, A CALIFORNIA CORPORATION as trustee be mailed to WMC MORTGAGE CORP.

[Receiver of Notice]

at P.O. BOX 54089, LOS ANGELES, CA 900540089

[Address]

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.


[Borrower]



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IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

11606567

Juanita R. Caparas 7-10-06
- Borrower - JUANITA R. CAPARAS - Date -
[Signature] 7-10-06
- Borrower - HERMENEGILDO J. CAPARAS - Date -

(Sign Original Only)



227371

11606567
State of CALIFORNIA)
County of SOLANO)

11606567

On 7-10-06 before me, LORA VELARDO, Notary Public
(here insert name and title of the officer)

personally appeared
HERMENEGILDO J. CAPARAS &
JUANITA R. CAPARAS

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 Lora Velardo (Seal)



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Serv #: 11606567

BALLOON RIDER

CAPRAS
Loan #: 11606567
MIN: 100136300116065672

THIS BALLOON RIDER is made this 7th day of July, 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 Note (the "Note") to WMC MORTGAGE CORP.

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:
3554 LOVEBIRD WAY ANTIOCH, CA 94509

[Property Address]

The interest rate stated on the Note is called the "Note Rate". The date of the Note is called the "Note Date". I understand the Lender may transfer the Note, Security Instrument and this Rider. The Lender or anyone who takes the Note, the Security Instrument and this Rider by transfer and who is entitled to receive payments under the Note is called the "Note Holder".

ADDITIONAL COVENANTS. In addition to the covenants and agreements in the Security Instrument, Borrower and Lender further covenant and agree as follows (despite anything to the contrary contained in the Security Instrument or the Note):

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU

BALLOON RIDER-MULTISTATE (01/97)
DOCUBRN
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Page 1 of 2



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MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

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

Juanita R. Caparas 7-10-06
- Borrower - JUANITA R CAPARAS - Date -

[Signature] 7-10-06
- Borrower - HERMENEGILDO J CAPARAS - Date -



Escrow No.: 06-66100954-LV
Locate No.: CACT17707-7748-1661-0039107587
Title No.: 06-39107587-GS

227371

EXHIBIT "A"

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

Lot 991, as shown on the map of subdivision 6497, "Mira Vista Hills Unit 11", filed October 19, 1988, map book 326, page 27, Contra Costa county records.

Excepting therefrom:

All oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas, now or hereafter found, situated or located in all or any part or portion of the lands described herein lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface thereof, but without any right whatsoever to enter upon the surface of said land or upon any part of said lands within five hundred feet (500') vertical distance below the surface thereof, as conveyed by deed from Western Title Insurance Company to Mary Grace Prewett Bertsch, et al, recorded December 10, 1980 in book 10123 of official records, page 222, Contra Costa county records.

APN: 075-422-003

End of Document

1 Glenn H. Wechsler, State Bar No. 118456
Lawrence D. Harris, State Bar No. 153350
2 LAW OFFICES OF GLENN H. WECHSLER
1655 North Main Street, Suite 230
3 Walnut Creek, California 94596
Telephone: (925) 274-0200

4 Attorneys for Defendant
5 WMC MORTGAGE CORPORATION

6
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8
9 IN AND FOR THE COUNTY OF CONTRA COSTA

10 HERMENEGILDO J. CAPARAS and
11 JUANITA R. CAPARAS,

12 Plaintiffs,

13 v.

14 WMC MORTGAGE CORPORATION, et
15 al.,

16 Defendants.

) CASE NO. C09-02048

) Assigned For All Purposes To:
17 Hon. Barry Baskin

) **NOTICE OF MOTION AND MOTION
18 TO STRIKE PORTIONS OF
19 PLAINTIFFS' VERIFIED COMPLAINT**

) Date:
20 Time:
21 Dept: 7
22 Trial: None

23 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE** that that on _____, 2009 at _____ a.m./p. m., or as soon
25 thereafter as counsel may be heard in Department 7 of the above-entitled Court located at 725 Court St.,
26 Martinez, California, Defendant WMC MORTGAGE CORPORATION (hereafter "Defendant") will
27 move the Court for an Order that the following matters in the Complaint ("Complaint") be stricken:

- 28
1. Those portions of paragraphs 138 and 170 of the Complaint in which Plaintiffs allege entitlement to punitive and/or exemplary damages; and
 2. Plaintiffs' prayer for punitive and/or exemplary damages in Item 1 of the Prayer for Relief;
 3. Plaintiffs' prayer for cancellation of the trustee sale and for "reinstatement" or "restoration" of Plaintiffs' title in Items 6 and 9 of the Prayer for Relief;

- 1 4. Paragraphs 32 to 38, inclusive, of the Complaint, in their entirety; and
- 2 5. Plaintiffs' prayer for attorneys' fees and costs in Prayer for Relief Item 3.
- 3 6. The motion shall be made pursuant to Code of Civil Procedure Sections 435 and 436 on the

4 grounds that (1) the Complaint fails to properly allege plaintiffs' entitlement for punitive damages, and
5 (2) the Complaint fails to properly allege Plaintiffs' entitlement to attorneys' fees and costs, all as more
6 particularly set forth in the memoranda of points and authorities supporting this Motion to Strike and
7 Defendant's demurrers filed concurrently herewith.

8 The motion will be based on this notice, the memorandum of points and authorities filed
9 herewith, the demurrers and memoranda in support thereof filed and served concurrently herewith, all
10 matters of which the Court may properly take judicial notice, the Court's files and records herein and
11 such other and further matters as may be presented to the Court on or at hearing on this matter.

12 DATED: August 19, 2009

LAW OFFICES OF GLENN H. WECHSLER

13
14 By:


15 LAWRENCE D. HARRIS

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11 HERMENEGILDO J. CAPARAS and
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13 Plaintiffs,

14 v.

15 WMC MORTGAGE CORPORATION, et
al.,

16 Defendants.

) CASE NO. C09-02048

) Assigned For All Purposes To:
Hon. Barry Baskin

) **MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF DEFENDANT WMC
MORTGAGE CORPORATION TO
STRIKE PORTIONS OF PLAINTIFFS'
VERIFIED COMPLAINT**

) Date:
) Time:
) Dept: 7
) Trial: None

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21 Defendant WMC MORTGAGE CORPORATION (hereafter "Defendant") respectfully submits
22 the following memorandum of points and authorities in support of its Motion to Strike Portions of the
23 verified Complaint ("Complaint") filed herein by Plaintiffs HERMENEGILDO J. CAPARAS and
24 JUANITA R. CAPARAS ("Plaintiffs"):

25
26 ///

27 ///

28 ///

1 **I. INTRODUCTION**

2 Plaintiffs HERMENEGILDO J. CAPARAS and JUANITA R. CAPARAS (“Plaintiffs”) are the
3 former owners of the real property which is the subject of this action, known as 3554 Lovebird Way,
4 Antioch, California (“Property”) [Complaint ¶1]. Plaintiffs on or about July 7, 2006 executed two
5 promissory notes in the amounts of \$640,000 (“First Note”) and \$160,000 (“Second Note”), respectively.
6 The notes were secured by two deeds of trust encumbering the Property (“First Deed of Trust” and
7 “Second Deed of Trust”), which were recorded on July 19, 2006 in the real estate records of Contra
8 Costa County, California. [Complaint ¶¶8, 17; Request for Judicial Notice, Deeds of Trust]. Pursuant to
9 the terms of the First Deed of Trust and the Second Deed of Trust, WMC is the “Lender” and Defendant
10 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”) is the beneficiary
11 thereunder, and WESTWOOD ASSOCIATES was the original Trustee. REGIONAL TRUSTEE
12 SERVICES CORPORATION (“RTSC”) is the successor trustee under the First Deed of Trust
13 [Complaint ¶4, Exhibit A]. RTSC recorded a Notice of Default and Election to Sell on or about May 12,
14 2008 [Complaint ¶187, Exhibit A], and subsequently recorded a Notice of Trustee Sale on August 14,
15 2008 [Complaint ¶187, Exhibit B].

16 The Complaint makes improper, irrelevant and immaterial allegations, and seeks an award of
17 punitive damages from all defendants without satisfying the statutory requirements for pleading such
18 entitlement as against a corporate defendant, as set forth below. The Complaint also improperly seeks to
19 set aside a trustee sale without tendering the amount due, and seeks attorneys’ fees and costs without any
20 contractual or statutory basis therefor. The Motion to Strike should be granted in its entirety.

21
22 **II. LEGAL ARGUMENT**

23 A demurrer is not the appropriate vehicle to challenge a portion of a cause of action demanding
24 an improper remedy. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th
25 1028, 1047, [“a demurrer cannot rightfully be sustained to part of a cause of action or to a particular type
26 of damage or remedy”]; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 163, [petitioners’ punitive
27 damage allegations not subject to real parties’ demurrers].) The appropriate procedural device for
28 challenging a portion of a cause of action seeking an improper remedy is a motion to strike. (*Caliber*

1 *Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 385.) A motion to strike is also the
2 appropriate method for challenging allegations in a Complaint that are false, improper or irrelevant.
3 (Code of Civil Procedure (“CCP”) Section 436(a).) “Irrelevant” matter includes allegations that are not
4 essential to the claim or defense; that are “...neither pertinent to nor supported by an otherwise sufficient
5 claim or defense;” or that contain “a demand for judgment requesting relief not supported by the
6 allegations of the complaint...” (CCP Section 431.10(b).)

7 **A. The Complaint Fails To Properly Allege Any Entitlement To Punitive Damages**
8 **Against Corporate Defendant WMC, and Prayer item One Should Therefore be**
9 **Stricken.**

10 Plaintiffs improperly seek punitive damages against all Defendants. [Complaint ¶¶138, 170;
11 Prayer for Relief ¶1]. Punitive damages are not available under Civil Code Section 3294(b) under the
12 facts alleged, which provides that in order to recover punitive damages against a corporate employer,
13 Plaintiffs must allege that WMC had advance knowledge of an employee's unfitness and employed the
14 employee with a conscious disregard of the rights or safety of others or that WMC authorized or ratified
15 the alleged wrongful conduct. Plaintiffs must also allege that the act of oppression, fraud or malice was
16 on the part of an "officer, director or managing agent" of WMC. (*Ibid.*) This Plaintiff has not done.

17 The Complaint also fails to allege that WMC had advance knowledge of an employee's unfitness
18 and employed the employee with a conscious disregard of the rights or safety of others, that WMC
19 authorized or ratified the alleged wrongful conduct. Therefore, the Complaint fails to properly plead
20 Plaintiffs' entitlement to punitive damages as against defendant WMC and all such allegations should be
21 stricken. The motion should be granted.

22 **B. Plaintiffs has Failed to Allege that They Tendered the Arrearages on the Loan Prior**
23 **to the Trustee's Sale and Prayer Items Six and Nine Should Therefore be Stricken.**

24 The Complaint seeks to cancel the trustee's sale of the Property, although it does not allege a
25 cause of action to set aside the trustee's sale, or that the sale has even occurred [Complaint, Prayer for
26 Relief, Items 6 and 9]. These prayer items should be stricken from the Complaint because Plaintiffs may
27 not challenge a trustee sale as a matter of law unless he alleges facts showing that that Plaintiffs
28 *previously* tendered the entire outstanding obligation on the loan secured by the Deed of Trust.

As more fully set forth in the demurrer filed concurrently herewith, it has long been established

1 that a trustor must tender the obligation in full as a prerequisite to his or her challenge of the foreclosure
2 sale. (*Humboldt Sav. Bank v. McCleverty* (1911) 161 Cal. 285, 290; *Williams v. Koenig* (1934) 219 Cal.
3 656, 660; *United States Cold Storage v. Great Western Savings & Loan Association*. (1985) 165
4 Cal.App.3d 1214, 1222-1223.) The Complaint's allegations do not raise a triable issue absent a presale
5 offer to pay the full amount of the debt. (*MCA, Inc. v. Universal Diversified Enterprises Corp.* (1972)
6 27 Cal. App.3d 170, 177.) "Some disposition on the part of [plaintiff] to do equity by tendering the
7 amount of the debt due is a prerequisite to [a] demand for judgment cancelling the trustee's sale." (*Ibid.*)
8 Plaintiffs cannot invoke the jurisdiction of a court of equity to set aside a trustee's sale when the
9 pleadings show no tender of payment of the full obligation for which the property was secured or an offer
10 in good faith to pay and that implicit in such offer must be the ability to pay. (*Karlsen v. American*
11 *Savings & Loan Association*. (1971) 15 Cal.App.3d 112, 117.) Plaintiffs have not alleged facts sufficient
12 to obtain relief in the form of cancellation of the trustee's sale of the Property as a matter of law. CCP
13 Section under 431.10(b) provides that an immaterial allegation in a complaint includes "...a demand for
14 judgment requesting relief that is not supported by the allegations of the complaint..." That section
15 explicitly provides that such immaterial allegations are considered "irrelevant matter" that is subject to a
16 motion to strike under to CCP Section 436(a). (CCP Section 431.10(c).) As a result, Items 6 and 9 of the
17 Complaint's Prayer for relief should be stricken in its entirety.

20
21 **C. The Complaint's References to Comments by Mainstream Media and Executive
22 Officials are Improper, Irrelevant and Prejudicial.**

23 The Complaint is rife with improper allegations referring to newspapers, television stations, and
24 the opinions of executive officials about the mortgage industry in general [Complaint ¶¶ 32-38]. None of
25 these allegations make specific reference to the subject loan and none mention any Defendant WMC.
26 Such allegations are irrelevant, improper and extremely prejudicial. For example, it is wholly irrelevant
27 that CNN Money has allegedly stated that "[h]ome ownership is the foundation of the American Dream"
28 or that "...[d]angerous mortgages have put millions of families in jeopardy of losing their homes."

1 **D. The Complaint fails to state any basis for an award of attorneys' fees or costs.**

2 In section 3 of the Prayer for Relief, Plaintiffs inappropriately seek an award of attorneys' fees
3 and costs under CC §§1717 and 1788.30. As more fully set forth in Defendant's demurrer, there is no
4 basis for an award of attorneys' fees under these statutes, under Civil Code § 2924 *et seq.* or under any
5 cause of action Plaintiffs have pled. Thus, the request for attorneys' fees and costs should be stricken.
6

7 DATED: August 19, 2009

LAW OFFICES OF GLENN H. WECHSLER

8
9 By: 

LAWRENCE D. HARRIS

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