

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WMC Mortgage Corporation; Regional Trustee Service Corporation;
Homeq Services; Mortgage Electronic Registration Systems; and

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Hermenegildo J. Caparas and Juanita R. Caparas

FILED
JUL 21 2009

K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____ Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court California, County of Contra Costa
725 Court Street; Martinez, CA 94553

CASE NUMBER:
(Número del Caso):

C 09-02048

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

The Law Offices of Timothy McCandless; 15647 Village Drive; Victorville, CA 92392 (760) 298-2057

DATE:
(Fecha)

JUL 21 2009

Clerk, by
(Secretario)

C. Green

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Próof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

other (specify):

4. by personal delivery on (date):

FOR COURT USE ONLY

FILED

JUL 21 2009

K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____ Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY
Timothy L. McCandless (SBN 1-_____)

Bar number, and address):

The Law Offices of Timothy McCandless
15647 Village Drive
Victorville, CA 92392

TELEPHONE NO.: 760-298-2057

FAX NO.: 909-382-9956

ATTORNEY FOR (Name): In Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa

STREET ADDRESS: 725 Court Street

MAILING ADDRESS: 725 Court Street

CITY AND ZIP CODE: Martinez, California 94553

BRANCH NAME:

CASE NAME:

Caparas vs. WMC Mortgage Corporation

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

C 09-02048

JUDGE:

DEPT:

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

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

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 09

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case (You may use form CM-015.)

Date: July 15, 2009

Timothy L. McCandless Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)	Breach of Rental/Lease	Construction Defect (10)
	Contract (<i>not unlawful detainer or wrongful eviction</i>)	Claims Involving Mass Tort (40)
	Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>)	Securities Litigation (28)
	Negligent Breach of Contract/Warranty	Environmental/Toxic Tort (30)
	Other Breach of Contract/Warranty	Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment
Asbestos (04)	Collection Case—Seller Plaintiff	Enforcement of Judgment (20)
Asbestos Property Damage	Other Promissory Note/Collections Case	Abstract of Judgment (Out of County)
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (<i>not provisionally complex</i>) (18)	Confession of Judgment (<i>non-domestic relations</i>)
Product Liability (<i>not asbestos or toxic/environmental</i>) (24)	Auto Subrogation	Sister State Judgment
Medical Malpractice (45)	Other Coverage	Administrative Agency Award (<i>not unpaid taxes</i>)
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Professional Health Care Malpractice	Contractual Fraud	Other Enforcement of Judgment Case
Other PI/PD/WD (23)	Other Contract Dispute	Miscellaneous Civil Complaint
Premises Liability (e.g., slip and fall)	Real Property	RICO (27)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Other Complaint (<i>not specified above</i>) (42)
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only (<i>non-harassment</i>)
Other PI/PD/WD	Writ of Possession of Real Property	Mechanics Lien
Non-PI/PD/WD (Other) Tort	Mortgage Foreclosure	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Business Tort/Unfair Business Practice (07)	Quiet Title	Other Civil Complaint (<i>non-tort/non-complex</i>)
Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)	Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Miscellaneous Civil Petition
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Partnership and Corporate Governance (21)
Fraud (16)	Commercial (31)	Other Petition (<i>not specified above</i>) (43)
Intellectual Property (19)	Residential (32)	Civil Harassment
Professional Negligence (25)	Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Workplace Violence
Legal Malpractice	Judicial Review	Elder/Dependent Adult Abuse
Other Professional Malpractice (<i>not medical or legal</i>)	Asset Forfeiture (05)	Election Contest
Other Non-PI/PD/WD Tort (35)	Petition Re: Arbitration Award (11)	Petition for Name Change
Employment	Writ of Mandate (02)	Petition for Relief From Late Claim
Wrongful Termination (36)	Writ—Administrative Mandamus	Other Civil Petition
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor	
	Commissioner Appeals	

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA, 94553

CAPARAS VS WMC

NOTICE OF CASE MANAGEMENT CONFERENCE

CIVMSC09-02048

1. NOTICE: THE CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED FOR:

DATE: 12/08/09 *Cal* DEPT: 07 TIME: 8:30

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, A BLANK CASE MANAGEMENT CONFERENCE QUESTIONNAIRE, AND A BLANK STIPULATION FORM ARE TO BE SERVED ON OPPOSING PARTIES. ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT OR THEIR ATTORNEY OF RECORD MUST APPEAR.

2. You may stipulate to an earlier Case Management Conference. If all parties agree to an early Case Management Conference, please contact the Court Clerk's Office at (925)957-5794 for Unlimited Civil cases and (925)957-5791 for Limited Civil cases for assignment of an earlier date.

3. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference and to discuss the suitability of this case for the EASE Program, private mediation, binding or non-binding arbitration, and/or use of a Special Master.

4. At any Case Management Conference the court may make pretrial orders including the following:

- a. an order establishing a discovery schedule
- b. an order referring the case to arbitration
- c. an order transferring the case to limited jurisdiction
- d. an order dismissing fictitious defendants
- e. an order scheduling exchange of expert witness information
- f. an order setting subsequent conference and the trial date
- g. an order consolidating cases
- h. an order severing trial of cross-complaints or bifurcating issues
- i. an order determining when demurrers and motions will be filed

SANCTIONS

If you do not file the Case Management Conference Questionnaire or attend the Case Management Conference or participate effectively in the Conference, the court may impose sanctions (including dismissal of the case and payment of money).

I declare under penalty of perjury that I am not a party to this action, and that I delivered or mailed a copy of this notice to the person representing the plaintiff/cross-complainant. *C. Green*

Dated: 07/21/09

C. GREEN, Deputy Clerk

1 TIMOTHY L. MCCANDLESS, ESQ. SBN 147715
15647 Village Drive
2 Victorville, California 92394
Tel: (760) 298-2057
3 Fax: (909) 494-4214

4 Attorney for *Plaintiffs*
5 Hermenegildo J. Caparas
and Juanita R. Caparas
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FILED

JUL 21 2009

K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____ Deputy Clerk

C. Green

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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **IN AND FOR COUNTY OF CONTRA COSTA**

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

12 Plaintiffs,

13 V.

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16 WMC MORTGAGE CORPORATION;
17 REGIONAL TRUSTEE SERVICES
CORPORATION; HOMEQ SERVICES;
18 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS,

19 and DOES 1 through 50 inclusive

20 Defendants.
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CASE NO: C 09-02048

**COMPLAINT FOR:
MONETARY DAMAGES
STATUTORY DAMAGES, PUNITIVE
DAMAGES, INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

1. VIOLATION OF CALIFORNIA CIVIL CODE §2923.6;
2. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200;
3. BREACH OF COVENANT OF GOOD AND FAIR DEALING;
4. INJUNCTIVE RELIEF;
5. VIOLATION OF CIVIL CODE §1572;
6. FRAUD;
7. DECLARATORY RELIEF;
8. INTENTIONAL MISREPRESENTATION;
9. TO SET ASIDE FORECLOSURE
10. VIOLATION OF CALIFORNIA CIVIL CODES §2923.5 AND §2924.

SEE LEGAL RULE 5 THIS

CASE IS ASSIGNED TO

DEPT

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26 Plaintiffs, Hermenegildo J. Caparas and Juanita R. Caparas, (Hereinafter referred as "Plaintiffs")
27 allege herein as follows:
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COMPLAINT

I.

GENERAL ALLEGATIONS

1. Plaintiffs, Hermenegildo J. Caparas and Juanita R. Caparas at all times relevant have been residents of the County of Contra Costa, State of California and the owners of Real Property, including but not limited to the property at issue herein, 3554 Lovebird Way, Antioch, CA 94509. The Legal descriptions are as follows:
Put in APN #075-422-003-6
2. Defendant, WMC MORTGAGE CORPORATION (hereinafter "WMC MORTGAGE") at all times herein mentioned was doing business in the County of Contra Costa, State of California and was the original Lender for Plaintiff's Trust Deed and Note.
3. Mortgage Electronic Registration Systems Inc., (hereinafter "MERS") at all times herein mentioned was presumed to be doing business in the County of Contra Costa, State of California and alleged to be the Beneficiary regarding Plaintiffs' Real Property as described above and as Situated in Contra Costa County California
4. Defendant, REGIONAL TRUSTEE SERVICES CORPORATION, (hereinafter "REGIONAL") at all times herein mentioned was doing business in the County of Contra Costa, State of California and was listed on the Notice of Default and Notice of Trustee's Sale for the above named Real Property. (See Exhibit A – Notice of Default and Exhibit B – Notice of Trustee's Sale)
5. Defendant, HOMEQ SERVICES, (hereinafter "HOMEQ") at all times herein mentioned was doing business in the County of Contra Costa, State of California and

CT CT
was listed on the Notice of Default and Notice of Trustee's Sale for the above named
Real Property.

6. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names and all persons unknown claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff(s) title, or any cloud on Plaintiffs title thereto. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
7. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned each of the defendants sued herein was the agent and employee of each of the remaining defendants. Plaintiffs allege that each and every defendant alleged herein ratified the conduct of each and every other defendant. Plaintiffs further allege that at all times said defendants were was acting within the purpose and scope of such agency and employment.
8. Plaintiffs purchased the foregoing Real Property and on or about July 7, 2006 financed their purchase through WMC MORTGAGE by virtue of a Trust Deed and Notes securing the Loans.
9. Plaintiffs are informed and believe that directly after WMC MORTGAGE caused Mortgage Electronic Registration Systems ("MERS") to go on title as the "Nominee Beneficiary" this is routinely done in order to hide the true identity of the successive Beneficiaries when and as the loan was sold. MERS, however, acted as if they were the actual beneficiary although a Nominee is an entity in whose name a security is registered through true ownership is held by another party, in other words

MERS is not the Beneficiary but is used to hide the true identity of the Beneficiary. Based on this failure to disclose, and the lack of consideration paid by MERS, Plaintiffs allege that the Deed of Trust were never perfected and are a nullity as the MERS recording separates the Debt from the Lien, and this is more so especially upon a sale of the Note and Trust Deed.

10. Plaintiffs further allege that MERS acts as a Nominee for more than one principal, and conceals their identity therefore if a Nominee is the same as an agent MERS cannot act as an agent for multiple Banks, insurance and title companies and Mortgage Companies because of a serious Conflict of interest. In addition Plaintiff allege that a Deed of Trust cannot lawfully be held by a Nominee who has no financial interest in the instrument without disclosing the identity of the actual Beneficiary, and that if a party with no interest in the Note records it in their name the recorded deed is Nullity.

11. Plaintiffs further allege that MERS failure to transfer beneficial interests as the Note and deed are sold further renders the Deed recording a nullity.

12. Plaintiffs further allege that on or about July 7, 2006, Defendants allege that Plaintiffs became in default of their loan. (See Exhibit "A") However this default of the loan was occasioned by the high payments, the structure of the loan and interest rate. Furthermore, Plaintiffs were not in default because of the prior breach of the terms of the notes by Defendants, and each of them, and therefore, the performance of Plaintiffs is excused. In addition, the Declaration of Due Diligence is not attached to the Notice of Default or Notice of Trustee's Sale and therefore the pertinent information such as the required "penalty of perjury" and signature of a person with actual knowledge is missing which will be discussed later in the complaint.

13. Plaintiffs allege that the loan contract was procedurally and substantively
unconscionable because while the Plaintiffs' stated income at the time of making the
loan was unknown to plaintiff, whereas, the payment on the loan exceeded the
Plaintiffs' entire spendable income, the employees and/or agents of WMC
MORTGAGE did not disclose to Plaintiffs the terms and conditions of the repayment,
and Plaintiffs executed documents without any explanation whatsoever.

14. Plaintiffs allege that the employees and/or agents of WMC MORTGAGE represented
that said employees and/or agents could work-around the fact that Plaintiffs' credit was
not in good standing and could get Plaintiffs approved for the loan. Defendants did not
disclose at any time to Plaintiffs that the initial loan payment would exceed their entire
income. Plaintiffs allege that the loan contract, deed of trust and accompanying
documents were offered to Plaintiffs on a take it or leave it basis.

15. Further, on information and belief, Plaintiffs allege that the Defendants charged and
obtained improper fees for the placement of their loan as "sub-prime" when they
qualified for a prime rate mortgage which would have generated less in fees and
interest.

16. On information and belief, Plaintiffs allege that the service of the purported note was,
without their knowledge, by some means transferred from or by Defendant WMC
MORTGAGE either completely or by association or other means to MERS who
unknown to Plaintiffs provided services in various forms to be determined to others
which were of such a nature to render them a "Servicer."

17. Also on July 7, 2006 Plaintiffs executed a "Deed of Trust" which cited the lenders
WMC MORTGAGE and stating in the definition section that:

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13. Plaintiffs allege that the loan contract was procedurally and substantively unconscionable because while the Plaintiffs' stated income at the time of making the loan was unknown to plaintiff, whereas, the payment on the loan exceeded the Plaintiffs' entire spendable income, the employees and/or agents of WMC MORTGAGE did not disclose to Plaintiffs the terms and conditions of the repayment, and Plaintiffs executed documents without any explanation whatsoever.
 14. Plaintiffs allege that the employees and/or agents of WMC MORTGAGE represented that said employees and/or agents could work-around the fact that Plaintiffs' credit was not in good standing and could get Plaintiffs approved for the loan. Defendants did not disclose at any time to Plaintiffs that the initial loan payment would exceed their entire income. Plaintiffs allege that the loan contract, deed of trust and accompanying documents were offered to Plaintiffs on a take it or leave it basis.
 15. Further, on information and belief, Plaintiffs allege that the Defendants charged and obtained improper fees for the placement of their loan as "sub-prime" when they qualified for a prime rate mortgage which would have generated less in fees and interest.
 16. On information and belief, Plaintiffs allege that the service of the purported note was, without their knowledge, by some means transferred from or by Defendant WMC MORTGAGE either completely or by association or other means to MERS who unknown to Plaintiffs provided services in various forms to be determined to others which were of such a nature to render them a "Servicer."
 17. Also on July 7, 2006 Plaintiffs executed a "Deed of Trust" which cited the lenders WMC MORTGAGE and stating in the definition section that:

(E) "MERS" is a 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.

18. Plaintiff alleges that Defendant WMC MORTGAGE and a superior bargaining strength over Plaintiff, and that Plaintiffs was relegated only the opportunity to adhere to the contract or reject it, that WMC MORTGAGE drafted all of the documents related to the loan, that no negotiations were possible between Plaintiffs and WMC MORTGAGE, and MERS, and that the contract was a contract of adhesion.

19. Plaintiff alleges that the loan was unconscionable in that the repayment terms were unfair and unduly oppressive, because the payments exceeded Plaintiffs entire combined income and as such, Defendants, and each of them, cannot enforce the terms and conditions of the loan against Plaintiffs, and any non-judicial foreclosure arising there from is void.

20. Plaintiff is informed and believes and thereupon alleges that Defendants, and each of them, entered into a fraudulent scheme, the purpose of which was to make a loan to Plaintiff, which Defendants, and each of them, were keenly aware that Plaintiff could not afford, at a cost way above the then prevailing market rate, made loans to Plaintiff and falsely represented to Plaintiff that they could not qualify for any other financing, that Plaintiff could not qualify under any reasonably underwriting guidelines, that such scheme was devised to extract illegal and undisclosed compensation from Plaintiff by virtue of an undisclosed yield spread premium and which Defendants, and each of them, shared in some presently unknown percentage.

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1 21. Plaintiff is informed and believes and therefore alleges that their loans after they were
2 originated and funded were sold on multiple occasions, bundled into a group of Trust
3 Deeds and subsequently sold to investors as a Derivative, "Mortgage Backed Security",
4 and that therefore none of these defendants, and each of them, owned this loan, or Note
5 and cannot be and are not the Beneficiary, or lawfully appointed trustee, and have no
6 right to declare a default, to cause notices of default to issue or to be recorded, or to
7 foreclose on Plaintiffs interest in the subject property, Defendants, and each of them,
8 were not the note Holder or the Note holder in due course or any Beneficiary at any
9 time in regards to this loan.

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11 22. That none of these Defendants, and each of them, were ever disclosed as the
12 beneficiary in accordance with California Code of Civil Procedure section 2924 et seq.

13
14 Moreover The California Legislature passed Senate Bill 1137, impacting residential
15 mortgage lenders, foreclosure procedures and eviction procedures. The Governor has
16 signed this law into effect and it has taken effect as Urgency Legislation. The law has
17 three pertinent parts. It amends California *Code of Civil Procedure* Section 1161(b)
18 regarding notice of an eviction. It adds a provision strengthening the right of local
19 governments to adopt "blight" ordinances and moreover, it modifies the non-judicial
20 foreclosure procedures set forth in California *Civil Code* Section 2924. The legislature
21 recognized that the need for such legislation by stating as follows:
22

23
24
25 "...It is essential to the economic health of California for the state to ameliorate
26 the deleterious effects on the state economy and local economies and the
27 California housing market that will result from the continued foreclosures of
28 residential properties in unprecedented numbers by modifying the foreclosures
process to require mortgagees, beneficiaries, or authorized agents to contact
borrowers and explore options that could avoid foreclosure..."

1 This law is effective immediately and extends on to January 1, 2013. This law
2 impacts owner-occupied primary residences only and only loans made on January 1, 2003
3 and December 3, 2007. *California Civil Code Section 2924* states in part:

4 **Foreclosure:**

5 The primary purpose for the Statute is foreclosure procedures and imposes an
6 unprecedented duty upon lenders relating to contact with borrowers. The Statute amends
7 provisions of the non-judicial foreclosure procedures found in California Code of Civil
8 Procedure §2924, by adding requirements for meetings, due diligence, and notification of
9 counseling. Some of the more important provisions include all of the following:
10

- 11
- 12 • The lender, beneficiary or authorized agent must wait thirty (30) days after contact is
13 made with the borrower, or thirty days (30) after satisfying the due diligence requirements
14 set forth in the Statute, in order to commence the filing of a Notice of Default.
 - 15 • The contact requires that the borrower's financial situation be assessed and requires that
16 the borrower and lender explore options for the borrower to avoid foreclosure.

17 ***This was not done by plaintiff or the lender.***

- 18
- 19 • The Statute requires the lender or their authorized agent to advise the borrower that the
20 borrower has the right to a subsequent meeting within fourteen (14) days of the initial
21 contact.
 - 22 • The borrower is to be provided a toll free telephone number available at HUD for
23 certified housing counseling agencies.
 - 24 • The borrower may designate an authorized agent, such as a counseling service,
25 REALTOR® or attorney, to act as their authorized agent but must expressly approve any
26 workout agreement reached by that agent.
- 27
28

1 • The Notice of Default must include a declaration indicating that the lender has made the
2 contact or made a diligent effort to make the contact and will not apply in the event of
3 surrender of the property.

4 • If the Notice of Default was already recorded prior to the date of the Statute, this
5 declaration must be included in Notices of Sale.

6 • In the event that the lender is initially unable to contact the borrower, they must attempt
7 telephone contact on three separate occasions at three different times.

8 • The lender must provide the borrower with an (800) number that will be answered by a
9 live person during normal business hours and provide certain links to web pages. The web
10 page must be a prominent link and must link to the following information:

11 - Options for borrowers who cannot afford their payments.

12 - A list of financial documents to gather when discussing their options.

13 - A toll-free telephone number available by HUD for certified counseling services.

14 - A toll-free telephone number for borrower's to discuss options to avoid foreclosure with
15 the lender or lender's representative.

16 Defendants did not fully comply with this code therefore the title is not duly
17 perfected.

18
19 23. Plaintiffs further allege on information and belief that none of these alleged
20 beneficiaries or representatives of the Beneficiary have the original note to prove that
21 they are in fact the party authorized to conduct the foreclosure.

22
23 24. Plaintiffs further allege that the foreclosure sale of the Subject Property was not
24 executed in accordance with the requirements of California Civil Code Sections
25 2923.5, 2932.5 and Commercial Code section 3302 et seq.

1 25. That the notices and foreclosure failed to conform with the provisions of California
2 Civil Code Sections 2923.5, 2932.5 et seq., and Commercial Code section 3302
3 et seq. Furthermore, the Notice of Default did not have the required declaration of due
4 diligence with a penalty of perjury disclosure by a agent with personal knowledge.
5 Therefore, it is not a valid Notice of Default.

6
7 26. Plaintiffs further allege that California Civil Code section 2924 et seq. and its subparts
8 are being applied to Plaintiffs in a manner that is unlawful, because at least in part the
9 party acting as the Trustee proceeded with the foreclosure of Plaintiffs Subject Property
10 notwithstanding the fact that the Trustee was not in possession of the original Note,
11 that the Note when it was assigned, the assignment by WMC MORTGAGE and its
12 assigns, did not convey the power of sale because it violated the terms of California
13 Civil Code section 2932.5, that the assignment when it was made, that the Note
14 executed by Plaintiff was no longer a negotiable instrument because the assignment
15 was not physically applied to the Note pursuant to the holding of *Pribus v. Bush*,
16 (1981) 118 Cal.App.3d 1003, 173 Cal.Rptr. 747, although there was sufficient room on
17 the back of the Note to complete the assignment, and as such the foreclosure of
18 Plaintiff's subject property did not conform to the strict mandates of Civil Code section
19 2924.76.
20
21

22 27. Plaintiffs allege that the employees and/or agents of WMC MORTGAGE represented
23 that said employees and/or agents could work-around the fact that Plaintiffs' credit was
24 not in good standing and could get Plaintiffs approved for the loan. Defendants did not
25 disclose at any time to Plaintiffs that the initial loan payment would exceed their entire
26 income.
27
28

1 28. Plaintiffs allege that the loan contract, deed of trust and accompanying documents
2 were offered to Plaintiffs on a take it or leave it basis.

3 29. That by virtue of the method and manner of Defendants carrying out Civil Code
4 section 2924 et seq., the foreclosure of the Subject Property is void ab initio as a matter
5 of law.

6
7 30. Plaintiff alleges that Defendants, and each of them, are engaged in and continue to
8 engage in violations of California law including but, not limited to: Civil Code section
9 2924 et seq. and 2932.5 et seq., and unless restrained will continue to engage in such
10 misconduct, and that a public benefit necessitates that Defendants be restrained from
11 such conduct in the future.

12
13 **II.**

14 **CALIFORNIA LEGISLATURE FINDINGS**

15
16 31. Recently, the California Legislature **found and declared** the following in enacting
17 *California Civil Code 2923.6* on July 8, 2008:

18
19 (a) *California is facing an unprecedented threat to its state economy because of*
20 *skyrocketing residential property foreclosure rates in California. Residential*
21 *property foreclosures increased sevenfold from 2008 to 2007, in 2007, more than*
22 *84,375 properties were lost to foreclosure in California, and 254,824 loans went*
23 *into default, the first step in the foreclosure process.*

24
25 (b) *High foreclosure rates have adversely affected property values in*
26 *California, and will have even greater adverse consequences as foreclosure rates*
27 *continue to rise. According to statistics released by the HOPE NOW Alliance the*
28 *number of completed California, foreclosure sales in 2007' increased almost*

1 *threefold from 2002 in the first quarter to 5574 in the fourth quarter of that year.*
2 *Those same statistics report that 10,556 foreclosure sales, almost double the*
3 *number for the prior quarter, were completed just in the month of January 2008.*
4 *More foreclosures means less money for schools, public safety, and other key*
5 *services.*

6
7 *(c) Under specified circumstances, mortgage lenders and servicers are*
8 *authorized under their pooling and servicing agreements to modify mortgage loans*
9 *when the modification is in the best interest of investors. Generally, that*
10 *modification may be deemed to be in the best interest of investors when the net*
11 *present value of the income stream of the modified loan is greater than the amount*
12 *that would be recovered through the disposition of the real property security*
13 *through a foreclosure sale.*

14
15 *(d) It is essential to the economic health of California for the state to*
16 *ameliorate the deleterious effects on the state economy and local economies and*
17 *the California housing market that will result from the continued foreclosures of*
18 *residential properties in unprecedented numbers by modifying the foreclosure*
19 *process to require mortgagees, beneficiaries, or authorized agents to contact*
20 *borrowers and explore options that could avoid foreclosure. These Changes in*
21 *accessing the state's foreclosure process are essential to ensure that the process*
22 *does not exacerbate the current crisis by adding more foreclosures to the glut of*
23 *foreclosed properties already on the market when a foreclosure could have been*
24 *avoided. Those additional foreclosures will further destabilize the housing market*
25 *with significant, corresponding deleterious effects on the local and state economy.*

(e) According to a survey released by the Federal Home Loan Mortgage Corporation (Freddie Mac) on January 31, 2008, 57 percent of the nation's late-paying borrowers do not know their lenders may offer alternative to help them avoid foreclosure.

(f) As reflected in recent government and industry-led efforts to help troubled borrowers, the mortgage foreclosure crisis impacts borrowers not only in nontraditional loans, but also many borrowers in conventional loans.

(g) This act is necessary to avoid unnecessary foreclosures of residential properties and thereby provide stability to California's statewide and regional economies and housing market by requiring early contact and communications between mortgagees, beneficiaries, or authorized agents and specified borrowers to explore options that could avoid foreclosure and by facilitating the modification or restructuring of loans in appropriate circumstances.

32. "Operation Malicious Mortgage" is a nationwide operation coordinated by the U.S. Department of Justice and the FBI to identify, arrest, and prosecute mortgage fraud violators." San Diego Union Tribune, June 19, 2008. As shown below, Plaintiffs were victims of such mortgage fraud.

33. "Home ownership is the foundation of the American Dream. Dangerous mortgages have put millions of families in jeopardy of losing their homes." CNN Money, December 24, 2007. The Loan which is the subject of this action to Plaintiff is of such character.

34. "Finding ways to avoid preventable foreclosures is a legitimate and important concern of public policy. High rates of delinquency and foreclosure can have substantial

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1 *spillover effects on the housing market, the financial markets and the broader*
2 *economy. Therefore, doing what we, can to avoid preventable foreclosures is not just*
3 *in the interest of the lenders and borrowers. It's in everybody's best interest."* Ben
4 Bernanke, Federal Reserve Chairman, May 9, 2008.

5 35. Plaintiff alleges that Defendants had the duty to prevent such foreclosure, but failed to
6 so act.

7 36. *"Most of these homeowners could avoid foreclosure if present loan holders would*
8 *modify the existing loans by lowering the interest rate and making it fixed, capitalizing*
9 *the arrearages, and forgiving a portion of the loan. The result would benefit lenders,*
10 *homeowners, and their communities."* CNN Money, id.

11 37. On behalf of President Bush, Secretary Paulson has encouraged lenders to voluntarily
12 freeze interest rates on adjustable-rate mortgages. Mark Zandl, chief economist for
13 Mood's commented, *"There is no stick in the plan. There are a significant number of*
14 *investors who would rather see homeowners default and go into foreclosure."* San
15 Diego Union Tribune, id.

16 38. *"Fewer than 1% of homeowners have experienced any help "from the Bush-Paulson*
17 *plan."* San Diego Union Tribune, id. Plaintiffs' are not of that sliver that have
18 obtained help.

19 39. The Gravamen of Plaintiff's complaint is that Defendants violated State laws which
20 were specifically enacted to protect such abusive, deceptive, and unfair conduct by
21 Defendants, and that Defendants cannot legally enforce a non-judicial foreclosure.

22 40. Plaintiff is a "debtor" as defined by the Rosenthal Act, *California Civil Code*
23 *1788.2(h).*

1 41. Defendants are engaged in the collection of debts from consumers using the mail and
2 telephone.

3 42. Defendants regularly attempt to collect consumer debts alleged to be due to another.

4 43. Defendants are "debt collectors" as defined by the Rosenthal Act, *California Civil*
5 *Code §1788.2(c)*.

6 44. The purported debt which Defendants attempted to collect from Plaintiff was a
7 "consumer debt" as defined by the Rosenthal Act, *California Civil Code §1788.2(f)*.
8

9 **Defendants Are Not Holders In Due Course Since Plaintiff Was Duped Into An**
10 **Improper Loan And There Is No Effective Endorsement:**
11

12 45. Plaintiff incurred a "debt" as that term is defined by *California Civil 17 Code*
13 *§1788(d)*, when he obtained a Loan on their Personal Residence.

14 46. The loan is memorialized via a Deed of Trust and Promissory Note, each of which
15 contain an attorney fees provision for the lender should they prevail in the enforcement
16 of their contractual rights.
17

18 47. Plaintiff has no experience beyond basic financial matters.

19 48. Plaintiff was never explained the full terms of their loan, including but not limited to
20 the rate of interest how the interest rate would be calculated, what the payment
21 schedule should be, the risks and disadvantages of the loan, the prepay penalties, the
22 maximum amount the loan payment could arise to.
23

24 49. Certain fees in obtaining the loan, were also not explained to the Plaintiff, including
25 but not limited to "underwriting fees," "MERS registration fee," "appraisal fees,"
26 "broker fees", "loan tie in fees," etc.
27
28

50. A determination of whether Plaintiff would be able to make the payments as specified in the loan was never truly made.
51. Plaintiff's income was never truly verified.
52. Plaintiff was rushed when signing the documents; the closing process provided no time for review and took minutes to accomplish.
53. Plaintiff could not understand any of the documents and signed them based on representations and the trust and confidence the Plaintiff placed in Defendants' predecessors.
54. Plaintiff is informed and believes that Defendants and/or Defendants' predecessors established and implemented the policy of failing to disclose material facts about the Loan, failing to verify Plaintiff's income, falsifying Plaintiff's income, agreeing to accept a Yield Spread Premium, and causing Plaintiff's Loan to include a penalty for early payment.
55. Plaintiff is informed and believes that Defendants and/or Defendants' predecessors established such policy so as to profit, knowing that Plaintiff would be unable to perform future terms of the Loan.
56. Plaintiff was a victim of Fraud in the Factum since the forgoing misrepresentations caused them to obtain the home loan without accurately realizing, the risks, duties, or obligations incurred.
57. The Promissory Note contains sufficient space on the note itself for endorsement whereby any assignment by allonge is ineffective pursuant to *Pribus v. Bush*, 118 Cal. App. 3d 1003 (May 12, 1981).

58. Defendants are not holders in due course due to Fraud in Factum and ineffective endorsement.

**Defendants' Lack Standing To Conduct A Non-Judicial Foreclosure
Pursuant To *California Civil Code 2932.5***

59. Defendants have no standing to enforce a non-judicial foreclosure.

60. Defendants are strangers to this transaction, and have no authority to go forward with the foreclosure and Trustee's Sale.

61. Plaintiff executed a Promissory Note (hereinafter the "Note") and a Deed of Trust to WMC MORTGAGE.

62. WMC MORTGAGE is the Lender and only party entitled to enforce the Note and any security interest with it.

63. REGIONAL is not listed anywhere in the Deed of Trust or Promissory Note.

64. HOMEQ is not listed anywhere in the Deed of Trust or Promissory Note

65. In California, *California Civil Code § 2932.5* governs the Power of sale under an assigned mortgage, and provides that the power of sale can only vest in a person entitled to money payments: *"Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee if the assignment is duly acknowledged and recorded."*

66. The Contra Costa County Recorder's Office does not contain any evidence of a recorded assignment from WMC MORTGAGE.

67. REGIONAL and HOMEQ have never assigned their rights under the Note.

68. The power of sale may not be exercised by any of the Defendants since there was never an' acknowledged and recorded assignment pursuant to *California Civil Code § 2932.5*.

69. Since the Defendants did not comply with *California Civil Code § 2932.5*, the Notice of Default provisions of *California Civil Code § 2924* were likewise never complied with.

70. REGIONAL TRUSTEE SERVICES CORPORATION never complied with the Notice of Default provisions of *California Civil Code § 2924*. (See Exhibit "B")

71. HOMEQ SERVICES never complied with the Notice of Default provisions of *California Civil Code § 2924*.

**Defendants' Lack of Standing to Enforce A Non-Judicial Foreclosure Pursuant To
California Commercial Code § 3301**

72. A promissory note is person property and the deed of trust securing a note is a mere incident of the debt it secures, with no separable ascertainable market value. *California Civil Code §§ 657, 663. Kirby v. Palos Verdes Escrow Co., 183 Cal. App. 3d 57, 62.*

73. Any transfers of the notice and mortgage fundamentally flow back to the note:

"The assignment of a mortgage without a transfer of the Indebtedness confers no right, since debt and security are inseparable and the mortgage alone is not a subject of transfer, " Hyde v. Mangan (1891) 88 Cal. 319, 26 P 180, 1891 Cal LEXIS 693; Johnson v, Razy (1919) 181 Cal 342, 184 P 657; 1919 Cal LEXIS 358;

1 *Bowman v. Sears* (1923, *Cal App*) 63 *Cal App* 235, 218 P 489, 1923 *Cal App LEXIS*
2 199; *Treat v. Burns* (1932) 216 *Cal* 216, 13 *P2d*,724, 1932 *Cal LEXIS* 554.

3 80. "A mortgagee's purported assignment of the mortgage without an assignment of the
4 debt which is secured is a legal nullity." *Kelley V. Upshaw* (1952) 39 *Cal 2d* 179,
5 246 *P2d* 23, 1952 *Cal. LEXIS* 248.

6
7 74. "A trust deed has no assignable quality independent of the debt; it may not be
8 assigned or transferred apart from the debt; and an attempt to assign the trust deed
9 without a transfer of the debt is without effect." *Domarad v. Fisher & Burke, Inc.*
10 (1969 *Cal. App. 1st Dist*) 270 *Cal. App. 2d* 543, 76 *Cal. Rptr.* 529, 1969 *Cal. App.*
11 *LEXIS* 1556.

12
13 75. The Promissory Note is a negotiable instrument.

14 76. Transferring a Deed of Trust by itself does not allow enforcement of the instrument
15 unless the Promissory Note is properly negotiated.

16
17 77. Where an instrument has been transferred, enforceability is determined based upon
18 possession.

19 78. *California Commercial Code* § 3301 limits a negotiable instrument's enforcement to
20 the following:

21 "Person entitled to enforce" an Instrument means (a) the holder of the instrument,
22 (b) a nonholder in possession of the instrument who has the rights of a holder, or
23 (c) a person not in possession of the instrument who is entitled to enforce the
24 instrument pursuant to
25 instrument pursuant to

Section 3309 or subdivision (d) of Section 3418. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

79. None of the Defendants are present holders of the instrument.

80. None of the Defendants are nonholders in possession of the instrument who has rights of the holder.

81. None of the Defendants are entitled to enforce the instrument pursuant to section 3309 or subdivision (d) of Section 3418.

82. Defendants have no enforceable rights under *California Commercial Code 3301(a)* to enforce the negotiable instrument.

83. Since there is no right to enforce the negotiable instrument, the Notice of Default provisions of *California Civil Code § 2924* and Notice of Sale provisions of *California Civil Code § 2924(f)* were likewise never complied with, and there is no subsequent incidental right to enforce any deed of trust and conduct a non-judicial foreclosure.

84. That the Trustee and the loan servicer are acting as agents of the Beneficiary and signing documents as the agent of the agent of the agent of the Beneficiary for Plaintiffs Notes and the notices therein, notwithstanding the fact that the Notes were not negotiable prior to the sale of the Subject Property.

85. That by virtue of the method and manner of Defendants carrying out Civil Code section 2924 et seq., the foreclosure of the Subject Property is void ab initio as a matter of law.

86. MERS was NOT and never has been a Beneficiary of this loan or any other. MERS is solely a registration service for tracking these Trust Deeds and mortgages and also

the Notes. MERS records these Trust Deeds in their name as a “nominee”, with NO actual ownership interest in these Loans, the purpose is allegedly to allow the sale and transfer of these instruments without the need for further recordation, however what actually occurs is that the real Beneficiary remains obscured, and unknown. In addition MERS is NOT a TRUSTEE and has no right to collect any TD payments on the Note, neither does MERS have any right to enforce the notes or to be a party in any Foreclosure proceedings. Yet MERS has represented itself under oath in this case to be the BENEFICIARY and in that “stated” but “false” capacity has unlawfully nominated a successive trustee.

87. While MERS remain on title as a “nominee” for the TD and Note both are sold on several occasions afterward and ultimately bundled as a security and sold to a final investor. MERS actually helps to conceal the real beneficiary which is in violation of California statutory law, Cal. Civ. Code Sec. 2924 et. Seq. The Beneficiary is completely shielded and not disclosed as required. Also the forms that they used to give Notices are defective.

88. Evidence in prior cases has demonstrated that MERS is nothing more than a Registration Service, and does not even service the loan. MERS cannot prove or show ownership in the form of an “original Note” (i) with proper endorsements, to them, or that they are actually in the chain of ownership and (ii) to establish the actual relationship of the holder of the Note, as a Holder in Due course, and (iii) with the right to enforce the Note. April Charney, a lawyer at Jacksonville Are Legal Aid in Florida, in 2007 had over 300 foreclosure cases dismissed or postponed due to “MERS” attempting to foreclose on those Mortgages.

III.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA CIVIL CODE §2923.6

(As Against All Defendants)

89. Plaintiffs reallege and incorporate by reference the above paragraphs 1 through 88 as though set forth fully herein.

90. Defendants' Pooling and Servicing Agreement (hereinafter "PSA") contains a duty to maximize net present value to its investors and related parties.

91. *California Civil Code 2923.6* broadens and extends this PSA duty by requiring servicers to accept loan modifications with borrowers.

92. Pursuant to *California Civil Code 2923.6(a)*, a servicer acts in the best interest of all parties if it agrees to or implements a loan modification where the (1) loan is in payment default, and (2) anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

93. *California Civil Code 2923.6(b)* now provides that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

94. Plaintiffs' loan is presently in an uncertain state.

95. **Plaintiffs are willing, able, and ready to execute a modification of their loan on a reasonable basis**

(a) **New Loan Amount: \$325,565.00**

(b) **New Interest Rate: 4%**

(c) **New Loan Length: 30 years**

(d) **New Payment: \$1,554.30**

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4 96. **The present fair market value of the property is \$403,500.00.**

5 97. The Joint Economic Committee of Congress estimated in June, 2007, that the average
6 foreclosure results in \$77, 935.00 in costs to the homeowner, lender, local government,
7 and neighbors.

8 98. Of the \$77,935.00 in foreclosure costs, the Joint Economic Committee of Congress
9 estimates that the lender will suffer \$50,000.00 in costs in conducting a non-judicial
10 foreclosure on the property, maintaining, rehabilitating, insuring, and reselling the
11 property to a third party. Freddie Mac places this loss higher at \$58,759.00.

12 99. Pursuant to *California Civil Code §2823.6*, Defendants are now contractually bound
13 to accept the loan modification as provided above and tender is deemed made pursuant
14 to Defendants' Pooling and Service Agreement, California Civil Code 2923.6(a), and
15 California Civil Code 2923.6(b), taken individually or entirely. Plaintiffs invoke the
16 remedies embodied in the aforementioned agreement and/or codes with a willingness
17 to execute a modification of their loan.

18 100. Alternatively, Plaintiffs allege that tender, if any, is excused by obstruction or
19 prevention or imposition of unwarranted conditions by the person or corporate entity to
20 whom it was to be made.

21 101. Alternatively, Plaintiffs allege that obstruction or imposition of unwarranted
22 conditions by defendants occurred when defendants evaded the plaintiffs' attempts to
23 provide tender as specified and encouraged by defendants' pooling agreement,
24 California Civil Code 2923.6(a), and California Civil Code 2923.6(b). [Hudson v.
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28

1 Morton, 231 Ala. 392, 165 So. 227 (1936); Loftis v. Alexander, 139 Ga. 346, 77 S.E.
2 169 (1913); Kennedy v. Neil, 333 Ill. 629, 165 N.E. 148 (1929); Borden v. Borden, 5
3 Mass. 67, 1809 WL 989 (1809); Loughney v. Quigley, 279 Pa. 396, 123 A. 84 (1924);
4 Montague Corp. v. E.P. Burton Lumber Co., 136 S.C. 40, 134 S.E. 147 (1926);
5 Stansbury V. Embrey, 128 Tenn. 103, 158 S.W. 991 (1913); Loehr v. Dickson, 141
6 Wis. 332, 124 N.W. 293 (1910)]

7
8 102. Alternatively, Plaintiffs further allege that obstruction or imposition of unwarranted
9 conditions by defendants occurred when defendants manifested to the Plaintiffs that
10 tender, if made, will not be accepted, the Plaintiffs are excused from making tender as
11 it would be a futile gesture, and the law will not require the doing of a useless act.
12 [Simmons v. Swan, 275 U.S. 113, 48 S. Ct. 52, 72 L. Ed. 190 (1927); Lee v. Joseph E.
13 Seagram & Sons, Inc., 552 F.2d 447 (2d Cir. 1977); Buckner v. Tweed, 157 F.2d 211
14 (App. D.C. 1946); Peterson v. Hudson Ins. Co., 41 Ariz. 31, 15 P.2d 249 (1932);
15 Woods-Drury, Inc. v. Superior Court in and for City and County of San Francisco, 18
16 Cal. App. 2d 340, 63 P.2d 1184 (1st District 1936); Chesapeake Bay Distributing Co. v.
17 Buck Distributing Co., Inc. 60 Md. App. 210, 481 A.2d 1156 (1984); Issacs v.
18 Caterpillar, Inc., 765 F. Supp. 1359 (C.D. Ill. 1991); Platsis v. Diafokeris, 68 Md. App.
19 257, 511 A.2d 535 (1986)]

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23 103. Alternatively, Plaintiffs further allege that obstruction or imposition of unwarranted
24 conditions by defendants occurred when defendants' objection for want of actual
25 tender of money is waived by defendants' refusal to receive the money if produced.
26 [Shaner v West Coast Life Ins. Co, 73F.2d 681 (C.C.A. 10th Cir. 1934); Buell v. White,
27 908 P.2d 1175 (Colo. Ct. App. 1995) (when party, who is willing and able to pay,
28

offers to pay another a sum of money and is advised that it will not be accepted, offer amounts to tender even though money is not produced); Hall v. Norwalk Fire Ins. Co., 57 Conn. 105, 17 A. 356 (1888); Lamar v. Sheppard, 84 Ga. 561, 10 S.E. 10984 (1890); Ventres v. Cobb, 105 Ill. 33, 1882 WL 10475 (1882); Metropolitan Credit Union v. Matthes, 46 Mass. App. Ct. 326, 706 N.E.2d 296 (1999)].

SECOND CAUSE OF ACTION

(VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200

(As Against All Defendants)

104. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 103, inclusive, as though set forth at length herein again.

105. Beginning in July 7, 2006, and continuing to the present time, Defendants committed acts of unfair competition as defined by *Business and Professions Code § 17200*, by engaging in the following practices:

106. These acts and practices, as described in the previous paragraphs, violate *Business and Professions Code § 17200* because their policies and practices described above violate all the statutes as previously listed and *California Civil Code § 1709*, and consequently, constitute an unlawful business act of practice within the meaning of *Business and Professions Code § 17200*.

107. The harm to Plaintiffs and to members of the general public outweighs the utility of Defendants' policy and practices, consequently, constitute an unlawful business act of practice within the meaning of *Business and Professions Code §17200*.

108. Further, the foregoing conduct threatens an incipient violation of a consumer law, including, or violates the policy or spirit of such law or otherwise significantly

1 threatens or harms competition. Defendants' practices described above are likely to
2 mislead the general public, and therefore, constitute a fraudulent business act of
3 practice within the meaning of *Business and Professions Code §17200*. The
4 Defendants' unfair, unlawful, and fraudulent business practices and false and
5 misleading advertising present a continuing threat to members of public in that other
6 consumers will be defrauded into closing on similar fraudulent loans. Plaintiffs and
7 other members of the general public have no other adequate remedy of law.
8

9 109. As a result of the aforementioned acts, Plaintiffs have lost money or property and
10 suffered injury in fact. Defendants received and continue to hold Plaintiffs' money and
11 other members of the public who fell victim to Defendants' scheme.
12

13 **THIRD CAUSE OF ACTION**

14 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

15 **(Only Against WMC MORTGAGE)**

16
17
18 110. Plaintiffs repeat and reallege Paragraphs 1 through 109 as though fully set forth
19 herein.

20 111. Plaintiffs allege that at all times there existed an implied covenant of good faith and
21 fair dealing requiring Defendants, and each of them, to safeguard, protect, or otherwise
22 care for the assets and rights of Plaintiffs. Said covenant prohibited Defendants from
23 activities interfering with or contrary to the rights of Plaintiffs.
24

25 112. Plaintiffs allege that the commencement of foreclosure proceedings upon the
26 property lawfully belonging to Plaintiffs without the production of documents
27 demonstrating the lawful rights for the foreclosure constitutes a breach of the covenant.
28

113. Defendants breach the provisions as contained within the "Deed of Trust" which cited the lender as WMC MORTGAGE.

114. Defendants breached the provisions as contained within the "Adjustable Rate Note" promising to pay WMC MORTGAGE a monthly payment.

115. Plaintiffs paid timely monthly payments in accordance with the "Adjustable Rate Note" to WMC MORTGAGE or its agents.

116. As a consequence and proximate result, Plaintiffs has been damaged in a sum to be proven at trial.

FOURTH CAUSE OF ACTION

INJUNCTIVE RELIEF

(Against all Defendants)

117. Plaintiffs repeat and reallege Paragraphs 1 through 116 as though fully set forth herein.

118. Plaintiffs seek a determination as to the legal status of the parties as to the Adjustable Rate Note and the Deed of Trust.

119. The Adjustable Rate Note states that the Lender is WMC MORTGAGE.

120. It also states, "Lender or anyone who takes this Note by transfer and who is entitled to receive payment under this Note is called the "Note Holder."

121. REGIONAL sent to Plaintiffs a statement with a coupon asking for payment.

122. The Deed of Trust which cited the lender as WMC MORTGAGE and stating in the definition section that:

1 "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate
2 corporation that is acting solely as a nominee for Lender and Lender's successors and
3 assigns; MERS is the beneficiary under this Security Instrument.

4 123. Additionally, based upon information and belief, Mortgage Electronic Registration
5 Systems is not qualified to do business in the state of California and therefore, would
6 not have standing to seek non-judicial remedies as well as judicial remedies.
7

8 124. Defendants should be required to provide the original note with the appropriate
9 endorsements thereon to Plaintiffs or this Honorable Court so that it may determine
10 under California law, who owns the right to receive payments and exercises the rights
11 relating to said ownership.
12

13 125. Only the Note Holder is authorized to collect payments and, in the event of a
14 default, commence foreclosure proceedings, including authorizing the substitution of a
15 Trustee.
16

17 126. Until Defendants are able to provide Plaintiffs and this Honorable Court the
18 aforementioned documents, this Honorable Court should order that Plaintiffs are not
19 required to make any further payments on the Adjustable Rate Note and enjoin any
20 further collection activity on the Note, including staying the count down towards the
21 date a Notice of Trustee's sale may be filed and served.
22

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF CIVIL CODE §1572**

25 **(As to All Defendants)**

26 127. Plaintiff realleges and incorporates by reference the above paragraphs 1 through
27 126 as though set forth fully herein.
28

- 1 128. The misrepresentations by Defendants' and/or Defendants' predecessors, failures to
2 disclose, and failure to investigate as described above were made with the intent to
3 induce Plaintiff to obligate himself on the Loan in reliance on the integrity of
4 Defendants and/or Defendants' predecessors.
- 5 129. Plaintiff is an unsophisticated customer whose reliance upon Defendants and/or
6 Defendants' predecessors was reasonable and consistent with the Congressional intent
7 and purpose of *California Civil Code* § 1572 enacted in 1872 and designed to assist
8 and protect consumers similarly situated as Plaintiff in this action.
- 9 130. As an unsophisticated customer, Plaintiff could not have discovered the true nature
10 of the material facts on their own.
- 11 131. The accuracy by Defendants and/or Defendants' predecessors of representation is
12 important in enabling consumers such as Plaintiff to compare market lenders in order
13 to make informed decisions regarding lending transactions such as a loan.
- 14 132. Plaintiff was ignorant of the facts which Defendants and/or Defendants'
15 predecessors misrepresented and failed to disclose.
- 16 133. Plaintiff's reliance on Defendants and/or Defendants' predecessors was a
17 substantial factor in causing their harm.
- 18 134. Had the terms of the Loan been accurately represented and disclosed by Defendants
19 and/or Defendants' predecessors, Plaintiff would not have accepted the Loan nor been
20 harmed.
- 21 135. Had Defendants and/or Defendants' predecessors investigated Plaintiff's financial
22 capabilities, they would have been forced to deny Plaintiff on this particular loan.
- 23 136. Defendants and/or Defendants' predecessors conspired and agreed to commit the
24 above mentioned fraud.
- 25 137. As a proximate result of Defendants and or Defendants' predecessors fraud,
26 Plaintiff has suffered damage in an amount to be determined at trial.
- 27 138. The conduct of Defendants and/or Defendants' predecessors as mentioned above
28 was fraudulent within the meaning of *California Civil Code* § 3294(c)(3), and by virtue
thereof Plaintiff is entitled to an award of punitive damages in an amount sufficient to
punish and make an example of the Defendants.

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SIXTH CAUSE OF ACTION

FOR FRAUD

(Against All Defendants)

139. Plaintiff repeats and realleges Paragraphs 1 through 138 as though fully set forth herein.

140. An unknown employee of REGIONAL executed on behalf of the alleged Beneficiary a "Notice of Default" which stated that the payments were due to REGIONAL. "Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust" (See Exhibit "A")

141. On the Notice of Breach, it stated, in part, that Plaintiffs as Trustor, to secure certain obligations in favor of Defendants, as beneficiary.

142. It further states that:

That by reason thereof of the present Beneficiary under such deed of Trust has executed and delivered to said duly appointed Trustee a written Declaration of Default and Demand for Sale and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declared all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations served thereby.

143. This representation was made by these defendants in order to induce reliance by Plaintiffs.

144. Plaintiffs did rely on these representations and because of their reliance their property will be foreclosed and Plaintiffs reliance was justified.

1 145. Plaintiffs is informed and believes that the representation as stated on the Notice of
2 Default were a false representation in the following particular(s)

3 A. Documents were not provided to the trustee that showed that REGIONAL or
4 HOMEQ or MERS was the Beneficiary and entitled to the payments.

5 B. At the time WMC MORTGAGE made the representations they knew they were
6 false and were made for the sole purpose of inducing reliance.
7

8 146. Plaintiffs allege that Defendants, and each of them, were engaged in an illegal
9 scheme the purpose of which was to execute loans secured by real property in order to
10 make commissions, kick-backs, illegal undisclosed yield spread premiums, and
11 undisclosed profits by the sale of any instruments arising out of the transaction and to
12 make loans to borrowers that they could not afford to repay given their stated financial
13 situation. Plaintiffs allege that Defendants, and each of them, have represented to
14 plaintiffs and to third parties that they were the owner of the Trust Deed and Note as
15 either the Trustee or the Beneficiary regarding Plaintiffs real property. Based on this
16 representation they caused a Notice of Default to be issued and recorded without
17 disclosing their true role, and thereafter a notice of intent to foreclose and finally they
18 executed a foreclosure, which was completed, permanently affecting Plaintiffs right,
19 title and interest in the Subject Property. In fact, Plaintiffs allege that the promissory
20 notes which was executed by Plaintiffs and which initially formed a basis of a security
21 interest in the subject property, was assigned in violation of Civil Code section 2932.5
22 et seq. because the assignment was not recorded, and as such the promissory note was
23 rendered as non-negotiable and no power of sale was conveyed with the note at the
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1 time of the assignment, and therefore, Defendants, and each of them, had no lawful
2 security interest in the subject property.

3 147. On or about July 7, 2006, representatives, agents and/or employees of Defendants,
4 and each of them, made false representations to Plaintiffs in order to fund a loan, in
5 which the Plaintiffs' personal residence was to be security therefore. Plaintiffs allege
6 that Defendants, and each of them, made certain representations regarding their
7 honesty, that they were experts in obtaining loans which borrower's could afford and
8 that they would only offer Plaintiffs a loan which was in their best interests given their
9 credit history and financial needs and limitations and that Plaintiffs could trust the
10 representations of Defendants, and each of them. Plaintiffs allege that based upon the
11 representations made by Defendants, and each of them, Plaintiffs reasonably reposed
12 their trust in Defendants' representations and disclosed their private financial
13 information to Defendants, in order that Defendants could in keeping with their
14 representations, find a loan which was in the best interests of Plaintiffs given their
15 financial needs and limitations. More particularly, Defendants, and each of them,
16 represented that they would not make a loan to Plaintiffs unless he could afford the
17 loan, and that they would not make the loan unless and until he had passed the
18 underwriting guidelines of the lender, which further assured that the loan being
19 offered to Plaintiffs were in fact in the Plaintiff's best interests, and that the loan was
20 within Plaintiffs' financial needs and limitations.
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25 148. Plaintiffs allege that the loans provided by Defendants, and each of them, contained
26 a repayment schedule, whereas, exceeded Plaintiffs' total spendable income, and that
27 the loan contained excessive financing was approved to allow closing costs to be
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1 financed, that Defendants failed to utilize adequate due diligence regarding Plaintiffs'
2 ability to repay the loan, Defendants' as part of their continuing scheme intentionally
3 placed Plaintiffs' in a sub-prime loan to the benefit of the Defendants with excessively
4 high interest rates, Defendants failed to provide Plaintiffs mandated disclosures, and
5 Defendants repeatedly employed coercive tactics in order to force Plaintiffs to sign the
6 loan documents.
7

8 149. Plaintiffs are informed and believe and thereupon allege that defendants WMC
9 MORTGAGE, and MERS, engaged in some degree in making the loan to Plaintiffs
10 including, but not limited to: made the loan to Plaintiffs by "marketing and extending
11 adjustable-rate mortgage ("ARM") products to Plaintiffs in an unsafe and unsound
12 manner that greatly increases the risk that Plaintiffs would default on the loan,
13 because the initial payments on the loan exceeded Plaintiffs' established retirement
14 income, and the loan terms offered to Plaintiffs included ARM products with one or
15 more of the following characteristics: without to utilize an adequate analysis of the
16 Plaintiffs ability to repay the debt at the fully-indexed rate; approving Plaintiffs
17 without considering appropriate documentation and/or verification of their income;
18 including substantial prepayment penalties and/or prepayment penalties that extend
19 beyond the initial interest rate adjustment period; providing Plaintiffs with inadequate
20 and/or confusing information relative to product choices, material loan terms and
21 product risks, prepayment penalties, and the Plaintiffs' obligations for property taxes
22 and insurance; approving Plaintiffs for a loan with inadequate debt-to-income
23 analyses
24 that did not properly consider the Plaintiffs' ability to meet his overall level
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1 indebtedness and common housing expenses; and/or approving Plaintiffs for loan
2 arrangements with loan-to-value ratios approaching or exceeding 100 percent of the
3 value of the collateral;" and making Plaintiffs a mortgage loan without adequately
4 considering the Plaintiffs' ability to repay the mortgage according to its terms.

5 150. Plaintiffs allege that based upon the foregoing representations of Defendants, and
6 each of them, plaintiffs did in fact repose their trust in the representations of
7 Defendants, and each of them, and that such trust was reasonable.

8
9 151. Plaintiffs alleges that Defendants, and each of them, presented a loan to Plaintiffs
10 whereby Defendants represented that they did qualify for ordinary underwriting, and
11 that the loan was within Plaintiffs' personal financial needs and limitations given the
12 confidential financial information that Plaintiffs shared with Defendants, however, the
13 true is that the loan payments exceeded Plaintiffs' established retirement income.

14
15 152. Plaintiffs allege that Defendants, and each of them, had a duty to disclose the true
16 cost of the loan which was made to Plaintiffs, and the fact that Plaintiffs could not
17 afford the loan in the first instance. Defendants, and each of them, provided Plaintiff a
18 loan through Defendant WMC MORTGAGE, and Defendants, and each of them,
19 were secretly compensated, however, they did not disclose for this loan that they were
20 by being paid for its services, and in a spread of the yield of an amount which has not
21 yet been fully ascertained as a Yield Spread Premium paid-outside and after the close
22 of escrow.

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25 153. Plaintiffs are informed and believes and thereupon allege that after the close of
26 escrow Defendant WMC MORTGAGE paid the other Defendants herein fees above
27 and beyond the value of the services actually performed and an illegal kickback and
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added that additional amount to the total amount being financed, however such amount was never disclosed to Plaintiffs.

154. Plaintiffs acquire the foregoing property by virtue of the said funding through WMC MORTGAGE based on the representations of Defendants, and each of them, that the loan was the best they could obtain for him, and that the loan was well within Plaintiffs' financial needs and limitations.

155. Plaintiffs ARE informed and believe and thereupon alleges that Defendants, and each of them, represented to Plaintiffs that Defendants, and each of them, were working for the benefit of Plaintiffs and in their particular best interest to obtain for him the best loan and at the best rates available.

156. That at the time Defendants, and each of them, made the foregoing false representations to Plaintiffs they knew that they were untrue and that these representations were material representations, and that no basis in fact existed to support such fraudulent representations.

157. That the foregoing representations were made in order to induce Plaintiff to act on and take the said loan(s) in order for both defendants to make a substantial amount of money thereby and there from.

158. Plaintiffs were in fact induced to and did take these loans based on the said fraudulent representations.

159. That Plaintiffs were induced to rely and did rely on the representations of these defendants through deception and their reliance was justified as they believed that Defendants, and each of them, were working for their and in his best interests.

160. That by virtue of Plaintiff's reasonable reliance and the increased interest they were

made to pay, they have been damaged in the loss of their good credit and a higher payment and are now being involved in litigation that they did not bargain for, all to their damage and injury.

161. Plaintiffs have relied on the representations of Defendant, and each of them, and because of this reliance have made various moves to avoid foreclosure all to no avail, while defendants knew all the time that they were deceiving Plaintiffs.

162. Plaintiff's reliance was justified based upon the false representations of Defendants, and each of them, and had no reason to believe that a party representing a bank would go to such lengths to deceive and to convert Plaintiffs' property by utilizing such a fraud and artifice.

163. Plaintiffs are informed and believe that Defendants, and each of them, at the time of execution of the Deed of Trust and Note maintained an interest in the Subject Property, however at the time the Note and Deed of Trust were assigned to Defendant REGIONAL, the Note was no longer negotiable and the power of sale was not conveyed during the assignment, notwithstanding the foregoing, Defendants, and each of them, foreclosed on Plaintiffs' Trust Deed, in concert with their scheme to defraud Plaintiff out of their property.

164. Plaintiffs have recently learned that Defendants, and each of them, are not the legal owners of the Note and TRUST DEED and will not be at the time they will issue the notices and commenced the foreclosure process, notwithstanding the fact that the note was not negotiable and did not contain a valid power of sale.

165. Plaintiffs allege that Defendants, and each of them, knew at the time they made these representations to Plaintiffs that they were untrue, and defendants know at the

1 time that they were attempting to foreclose on Plaintiffs' Trust Deeds and notes that
2 they had no right to do so.

3 166. Plaintiffs allege Defendants, and each of them, intentionally and fraudulently
4 converted Plaintiffs' right, title and interest to his property, and any equity therein.

5 167. Plaintiffs allege that due to their reliance on Defendants representations he has been
6 damaged in an amount that currently exceeds \$25,000.00 and additionally costs of
7 moving out of Plaintiffs' property and the costs to relocate back to the subject
8 Property.
9

10 168. Defendants' conduct as set forth above was intentional, oppressive fraudulent and
11 malicious so as to justify an award of punitive damages in an amount sufficient that
12 such conduct will not be repeated.
13

14 169. Plaintiffs will be damaged in having their home wrongfully foreclosed and a slander
15 of their title, and being required to become involved in this litigation all to their
16 damages and injuries the amount of which is subject to proof at the time of trial.
17

18 170. The actions of Defendants and each of them were fraudulent oppressive and
19 malicious so as to warrant the imposition of exemplary damages, and that by virtue of
20 Defendants conduct as set forth herein Plaintiff is entitled to exemplary damages.
21

22 **SEVENTH CAUSE OF ACTION**

23 **FOR DECLARATORY RELIEF**

24 **(Against all Defendants)**

25 171. Plaintiffs repeat and realleges Paragraphs 1 through 170 as though fully set forth
26 herein.

27 172. A dispute has arisen between and among Plaintiffs and Defendants and each of
28 them as to the duties and obligations of the respective parties with regard to the loan

or the foreclosure.

173. These disputes concern but are not limited to the ownership rights and the validity of the commencement of the foreclosure process.

174. As to these issues, Plaintiff(s) are required to seek this relief.

175. Plaintiffs further alleges that a declaration of rights and duties of the parties herein are essential to determine the actual status and validity of the loan, deed of trust, nominated beneficiaries, actual beneficiaries, loan servicers, trustees instituting foreclosure proceedings and related matter.

EIGHTH CAUSE OF ACTION
FOR INTENTIONAL MISREPRESENTATION
(Against all Defendants)

176. Plaintiffs repeat and realleges Paragraphs 1 through 175 as though fully set forth herein.

177. Plaintiffs are informed and believe that the representation as stated on the Notice of Default and each of them were a false representation in the following particulars(s):

[A] Documents were not provided to the trustee that showed that any of the Defendants was the Beneficiary and entitled to the payments.

[B] At the time Defendants made the representations they knew they were false and were made for the sole purpose of inducing reliance and confusing Plaintiffs.

NINTH CAUSE OF ACTION
TO SET ASIDE A DEFECTIVE AND WRONGFUL FORECLOSURE
(Against all Defendants)

178. Plaintiff repeats and reallege Paragraphs 1 through 177 as though fully set forth herein.

Recording of an Assignment Prior to Foreclosure

179. Cal. Civ. Code section 2932.5 provides a condition precedent for an assignee of a Deed of Trust prior to commencing a foreclosure:

Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee *if* the assignment is duly **acknowledged and recorded**. (Emphasis added)

180. Defendants drafted the Deed of Trust, Plaintiff had no opportunity to negotiate the terms of the instrument.

Defendants REGIONAL and HOMEQ, failed to record the assignment prior to commencing the foreclosure as such the Foreclosure was not conducted in accordance with Cal Civ. Code Sec 2924 and 2932.5.

Invalid Notice of Default

181. There is in existence a certain written instrument which purports to be a Notice of Default that is in the possession of Defendants, and each of them. (See Exhibit "A")

182. The written instrument alleged in Paragraph "181" was procured as follows: Defendants cannot prove that the nonjudicial foreclosure which occurred, strictly complied with the tenets of *California Civil Code Sections 2923.5 and 2924* in order to maintain an action for possession pursuant to California Code of Civil Procedure section 1161. As of

1 September 6, 2008, *California Civil Code Section 2923.5* applies to loans made from
2 January 1, 2003, to December 31, 2007, and loans secured by residential real property that
3 are for owner-occupied residences. For purposes of *Section 2923.5*, "owner-occupied"
4 means that the residence is the principal residence of the borrower. Prior to filing a Notice
5 of Default, *Section 2923.5* of the California Civil Code provides in pertinent part:
6

7 (1) *A trustee may not file a notice of default pursuant to Section 2924 until 30 days after*
8 *contact is made* as required by paragraph (2) or 30 days after satisfying the due
9 diligence requirements as described in subdivision (g).

10 (2) *An authorized agent shall contact the borrower* in person or by telephone *in order to*
11 *assess the borrower's financial situation and explore options for the borrower to*
12 *avoid foreclosure.* During the initial contact, the mortgagee, beneficiary, or authorized
13 agent shall advise the borrower that he or she has the right to request a subsequent
14 meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall
15 schedule the meeting to occur within 14 days.
16

17 (3) *A notice of default filed pursuant to Section 2924 shall include a declaration from*
18 *the mortgagee, beneficiary, or authorized agent that it has contacted the borrower,*
19 *tried with due diligence to contact the borrower as required by this section,* or the
20 borrower has surrendered the property to the mortgagee, trustee, beneficiary, or
21 authorized agent.
22

23
24 **Invalid Declaration on Notice of Default and/or Notice of Trustee's Sale**

25 183. According to Giles v. Friendly Finance Co. of Biloxi, Inc., 199 So. 2nd 265 (Miss.
26 1967), "an affidavit on behalf of a corporation must show that it was made by an
27 authorized officer or agent, and the officer him or herself must swear to the facts."
28

1 Furthermore, in Giles v. County Dep't of Public Welfare of Marion County (Ind.App. 1
2 Dist.1991) 579 N.E.2d 653, 654-655 states in pertinent part, "a person who verified a
3 pleading to have personal knowledge or reasonable cause to believe the existence of
4 the facts stated therein."

5 Here, The Notice of Default is missing and does not have the required information.
6 As a result the Notice of Default is invalid. Furthermore, the Notice of Trustee's Sale is
7 also missing the required declaration.
8

9 For the aforementioned reasons, the Notice of Default and Notice of Trustee's Sale
10 will be void as a matter of law.
11

12 Recording a False Document

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14 184. Furthermore, according to California Penal Code § 115 in pertinent part:

15 (a) Every person who knowingly procures or offers any false or forged instrument
16 to be filed, registered, or recorded in any public office within this state, which
17 instrument, if genuine, might be filed, registered, or recorded under any law of this
18 state or of the United States, is guilty of a felony.

19
20 (b) Each instrument which is procured or offered to be filed, registered, or recorded
21 in violation of subdivision (a) shall constitute a separate violation of this section.
22

23 In addition, California Evidence Code § 669 states in pertinent part:

24 (a) The failure of a person to exercise due care is presumed if:

25 (1) He violated a statute, ordinance, or regulation of a public entity;
26
27
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1 Here, as stated above the Declaration of Due Diligence as required by Section 2923.5 of
2 the California Civil Code is missing and/or improper for the Notice of Default. Therefore,
3 Defendants are guilty of a felony for recording the Notice of Default with a false
4 instrument according to California Penal Code §115. Since Defendants have violated a
5 statute, the failure of them to exercise due care will be presumed.
6

7 183. The written instrument alleged in Paragraph "181" was also procured as follows:
8 By an invalid sale conducted on the part of Defendants, and each of them, in violation of
9 statutes including, but not limited to: Plaintiff is informed and believes and thereupon
10 alleges that the NOTE was invalid and unenforceable due to the intentional and willful
11 violations including but, not limited to: California Civil Code 2924b etc. et seq.,
12 California Civil Code §§§ 2924b(a), 2924b(d), 2924b(e) by failing and/or refusing to mail
13 the Notice of Default within ten business days to Plaintiffs, by failing and/or refusing to
14 post and mail the Notice of Default; by failing and/or refusing to mail Plaintiffs the
15 Notice of Default within one month pursuant to California Civil Code § 2924b (c (1), (2));
16 by failing and/or refusing to properly set the sale date pursuant to California Civil Code §
17 2924f(b); by failing and/or refusing to publish the Notice of Sale twenty days prior to the
18 date set for sale pursuant to California Civil Code § 2924f(b); by failing and/or refusing to
19 record the Notice of Sale pursuant to California Civil Code § 2924g(d);
20
21

22 184. Since the enumerated law was effective as of September 06, 2008 the sale of the
23 property at issue is invalid pursuant to *California Civil Code Sections* 2923.5 and 2924,
24 and thus the Defendants' claim of title and allegation thereto is erroneous.
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1 185. Plaintiff alleges that Defendants, and each of them, willfully, wrongfully and
2 without justification, and without privilege conducted an invalid foreclosure sale against
3 the Plaintiff's SUBJECT PROPERTY, thereby, slandering Plaintiff's title thereto.

4 186. Furthermore, The California Foreclosure Prevention Act, states the following:
5

6 The California Foreclosure Prevention Action became effective June 15, 2009. This
7 new law delays the non-judicial foreclosure process by requiring an **addition 90-day delay**
8 **(beyond the current three-month period) between recording a notice of default and a**
9 **notice of stay for certain residential properties.** The law applies to:

- 10 1. Loans recorded between January 1, 2003 and January 1, 2008, inclusive,
- 11 2. The borrower occupies the property as his/her principal residence and occupied it
12 at the time the loan became delinquent;
- 13 3. A notice of default has been recorded on the property; and
- 14 4. The loan is secured by a first lien on residential property that is located in
15 California.
16

17
18 187. In our case, Plaintiff's property was his principal place of residence and his deed
19 was dated on July 7, 2009. Therefore, the California Foreclosure Prevention Action applies
20 and they should be allowed an additional 90 days (plus the three-month period already)
21 after Notice of Default is recorded. Therefore, the Notice of Trustee's Sale on August 14,
22 2008 is invalid because the Notice of Default was recorded on May 12, 2008.
23

24 188. The aforementioned Instrument directly impairs Plaintiff's right to possession
25 and ownership of the Subject Property.

26 189. Furthermore, the aforementioned acts of Defendants, and each of them, were
27 motivated by oppression, fraud, malice in that Defendants, and each of them, by their
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1 respective acts, omissions, nonfeasance, misfeasance and/or malfeasance executed an
2 invalid foreclosure sale of the Plaintiff's SUBJECT PROPERTY, in order to deny Plaintiff
3 of his rights of possession and ownership, whereupon, the Foreclosure was defective as
4 such the Property must be restored to Plaintiff or Plaintiff is entitled to the value of thereof.
5

6
7 **WHEREFORE**, Plaintiffs having set forth the claims for relief against Defendants,
8 respectfully pray that this Court grant the following relief against the Defendants:

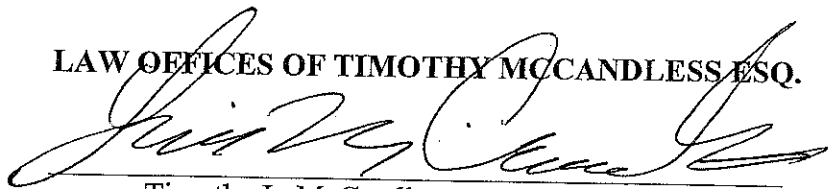
- 9 1. For exemplary and punitive damages;
- 10 2. Actual Economic and Non-Economic Damages;
- 11 3. Costs and reasonable attorney's fees pursuant to *California Civil Code* §1717,
12 §1788.30(b), §1788.30(c);
- 13 4. For a declaration of the rights of the parties relative to Plaintiff's Home, including
14 a declaration that Defendants have no enforceable lien against Plaintiff's Home;
- 15 5. For a preliminary injunction and permanent injunction enjoining all Defendants,
16 their agents, assigns, and all person acting under, for, or in concert with them, from
17 foreclosing on Plaintiff's Home or from conducting at trustee's sale or causing a trustee's
18 sale to be conducted relative to Plaintiff's Home.
- 19 6. Cancellation of the sale and restitution of the home to the Plaintiffs; and
- 20 7. For damages as provided by statute;
- 21 8. For an Order enjoining Defendants from continuing to violate the statutes alleged
22 herein;
- 23 9. For an Order, requiring Defendant to reinstate Plaintiff on title to his Property, and
24 or a restraining order preventing Defendants and his, hers, or its agents, employees,
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1 officers, attorneys, and representatives from engaging in or performing any of the
2 following acts: (i) offering, or advertising this property for sale and (ii) attempting to
3 transfer title to this property and or (iii) holding any auction therefore;

4 10. For such other and further relief as the court may deem just and proper.
5

6 Dated: July 16, 2009

LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.



Timothy L. McCandless, Esq.,
Attorney for Plaintiffs,
Hermenegildo J. Caparas
and Juanita R. Caparas

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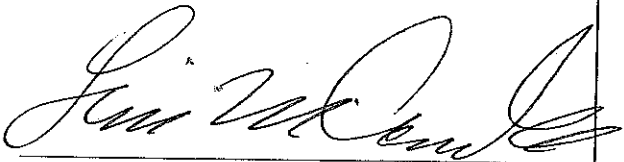
VERIFICATION

I, TIMOTHY L. MCCANDLESS, am an attorney at law admitted to practice before all courts of the State of California and have my office in San Bernardino County, California, and am the attorney for the Plaintiff in this action, that all of the officers of the Plaintiff are unable to make the verification because they are absent from said County and for that reason affiant makes this verification on the Plaintiff's behalf; that I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that matters stated herein are true.

Executed July 16, 2009, at Victorville, California.

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

DATED: July 16, 2009


TIMOTHY L. MCCANDLESS, ESQ

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67

Exhibit "A"

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

REGIONAL TRUSTEE SERVICES CORPORATION
616 1st Avenue, Suite 500
Seattle, WA 98104

Trustee's Sale No: 05-FMS-58074

THIS IS TO CERTIFY THAT THIS IS A FULL,
TRUE AND CORRECT COPY OF THE ORIGINAL
RECORDED IN THE OFFICE OF THE COUNTY

RECORDER ON: May 13, 2008

AS DOCUMENT NO: 106470

BY: s/ Justin Fizer

FIDELITY NATIONAL DEFAULT SOLUTIONS

FMS580740153000000

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). This amount is \$20,300.74 as of 5/12/2008, and will increase until your account becomes current.

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

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

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure or if your property is in foreclosure for any other reason, contact:

HOMEQ SERVICING
C/O REGIONAL SERVICE CORPORATION
616 1st Avenue, Suite 500
Seattle, WA 98104
(206) 340-2550

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember,

YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN that REGIONAL SERVICE CORPORATION, is either the duly appointed Trustee, the substitute Trustee or acting as agent for the Beneficiary under a Deed of Trust dated 7/1/2006, executed by HERMENEGILDO J. CAPARAS AND JUANITA R. CAPARAS, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, to secure obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as Beneficiary, recorded 7/19/2006, as Instrument No. 2006-0227370-00, of Official Records in the office of the Recorder of CONTRA COSTA County, CALIFORNIA, as more fully described on said deed of trust including one note(s) for the sum of \$840,000.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred as follows:

FAILURE TO PAY INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS AND LATE CHARGES WHICH BECAME DUE 2/1/2008 TOGETHER WITH ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS, LATE CHARGES, FORECLOSURE FEES AND EXPENSES; ANY ADVANCES WHICH MAY HEREAFTER BE MADE; ALL OBLIGATIONS AND INDEBTEDNESSES AS THEY BECOME DUE; AND ANY INSTALLMENTS ALREADY MADE, THAT AT A LATER DATE PROVE TO BE INVALID.

That by reason thereof, the present beneficiary under such Deed of Trust, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said Trustee, such Deed of Trust and all the documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby (immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated: 6/12/2008

Regional Service Corporation

By _____
As authorized agent

By Julie White
Name/Title

Exhibit "B"

NOTICE OF RIGHT TO CANCEL

servicing #: 11606567

LENDER: WMC MORTGAGE CORP.

DATE: July 7, 2006
LOAN NO.: 11606567
TYPE: Conventional

3100 THORNTON AVENUE BURBANK, CA 91504
BORROWERS: JUANITA R CAPARAS
HERMENEGILDO J CAPARAS

ADDRESS: 3554 LOVERBIRD WAY
CITY/STATE/ZIP: ANTIOCH, CA 94509
PROPERTY: 3554 LOVERBIRD WAY ANTIOCH, CA 94509

You are entering into a transaction that will result in a mortgage/lien/security interest on your home. You have a legal right under federal law to cancel this transaction, without cost, within **THREE BUSINESS DAYS** from whichever of the following events occurs **LAST**:

- (1) The date of the transaction, which is _____; or
- (2) The date you receive your Truth in Lending disclosures; or
- (3) The date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage/lien/security interest is also cancelled. Within 20 CALENDAR DAYS after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage/lien/security interest on your home has been cancelled, and we must return to you any money or property you have given us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 CALENDAR DAYS of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing at:
 3100 Thornton Ave. (Call Center)
 Burbank, CA 91504

You may use any written statement that is signed and dated by you and states your intention to cancel and/or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than MIDNIGHT of _____ (or MIDNIGHT of the **THIRD BUSINESS DAY** following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

_____ CONSUMER'S SIGNATURE _____ DATE

Each of the borrowers in this transaction has the right to cancel. The exercise of this right by one borrower shall be effective as to all borrowers.

I acknowledge receipt of two copies of NOTICE of RIGHT TO CANCEL.

- Borrower - JUANITA R CAPARAS - DATE -

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

REGIONAL TRUSTEE SERVICES CORPORATION
616 1st Avenue, Suite 500
Seattle, WA 98104



YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 7/7/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE OF TRUSTEE'S SALE

Trustee's Sale No. 05-FMS-58074

On September 4, 2008, at 10:00 AM, AT THE COURT STREET ENTRANCE TO THE COUNTY COURTHOUSE, 725 COURT STREET CORNER OF MAIN & COURT STREET, in the City of MARTINEZ, County of CONTRA COSTA, State of CALIFORNIA, REGIONAL SERVICE CORPORATION, a California corporation, as duly appointed Trustee under that certain Deed of Trust executed by HERMENEGILDO J. CAPARAS AND JUANITA R. CAPARAS, HUSBAND AND WIFE AS JOINT TENANTS, as Truators, recorded on 7/19/2006, as Instrument No. 2006-0227370-00, of Official Records in the office of the Recorder of CONTRA COSTA County, State of CALIFORNIA, under the power of sale therein contained, **WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER**, for cash, or cashier's check (payable at the time of sale in lawful money of the United States) without warranty express or implied as to title, use, possession or encumbrances, all right, title and interest conveyed to and now held by it as such Trustee, in and to the following described property situated in the aforesaid County and State, to-wit:

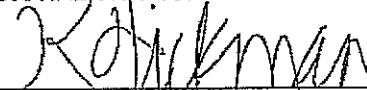
TAX PARCEL NO. 075-422-003-6

From information which the Trustee deems reliable, but for which Trustee makes no representation or warranty, the street address or other common designation of the above described property is purported to be 3554 LOVEBIRD WAY, ANTIOCH, CA 94509.

Said property is being sold for the purpose of paying the obligations secured by said Deed of Trust, including fees and expenses of sale. The total amount of the unpaid principal balance, interest thereon, together with reasonably estimated costs, expenses and advances at the time of the initial publication of the Notice of Trustee's Sale is \$671,428.63.

Dated: 8/14/2008

REGIONAL SERVICE CORPORATION, Trustee

By 

KIMBERLEY HICKMAN, AUTHORIZED AGENT

Agent for Trustee: AGENCY SALES AND POSTING
3210 EL CAMINO REAL, SUITE 200
IRVINE, CA 92602

Telephone Number: (800) 542-2550

Sale Information: (714) 730-2727 or <http://www.rtrustee.com>

(7) (7)

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICE ACT
15 U.S.C. Section 1692**

TS# 05-FMS-58074

5/19/2008

ATTENTION TRUSTORS:

1. You are hereby notified that REGIONAL TRUSTEE SERVICES CORPORATION is attempting to collect a debt.
2. As of the date of this letter, you owe \$658,737.42. Because of interest, late charges, and other charges that may vary from day to day, or may apply only upon payoff, the amount due on the day you pay may be greater. Hence if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection.
3. The original creditor to whom the debt is/was owed is MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.. The current creditor is Deutsche Bank National Trust Company as Trustee under Pooling and Servicing Agreement Dated as of November 1, 2006 Securitized Asset Backed Receivables LLC Trust 2006-WM3 Mortgage Pass-Through Certificates Series 2006-WM3.
4. The debt will be assumed to be valid by REGIONAL TRUSTEE SERVICES CORPORATION unless WITHIN THIRTY DAYS AFTER THE RECEIPT OF THIS NOTICE, you dispute the validity of the debt or some portion thereof.
5. If you notify REGIONAL TRUSTEE SERVICES CORPORATION in writing within thirty days after the receipt of this Notice that the debt or any portion thereof is disputed, REGIONAL TRUSTEE SERVICES CORPORATION will provide a verification of the debt, and a copy of the verification will be mailed to you by REGIONAL TRUSTEE SERVICES CORPORATION. In attempting to collect the debt, any information obtained will be used for that purpose.
6. If the current creditor is not the original creditor, and if you make a written request to REGIONAL TRUSTEE SERVICES CORPORATION within thirty days after the receipt of this Notice, the name and address of the original creditor will be mailed to you by REGIONAL TRUSTEE SERVICES CORPORATION.
7. Written request should be addressed to and further information can be obtained from:

REGIONAL TRUSTEE SERVICES CORPORATION
616 1st Avenue, Suite 500
Seattle, WA 98104
(206) 340-2550

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act Require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

FDCA Notice

NOTICE OF RIGHT TO CANCEL

Servicing #: 11606567

LENDER: WMC MORTGAGE CORP.

DATE: July 7, 2006

LOAN NO.: 11606567

TYPE: Conventional

3100 THORNTON AVENUE BURBANK, CA 91504

BORROWERS: JUANITA R CAPARAS
HERMENEGILDO J CAPARAS

ADDRESS: 3554 LOVERBIRD WAY

CITY/STATE/ZIP: ANTIOCH, CA 94509

PROPERTY: 3554 LOVERBIRD WAY ANTIOCH, CA 94509

You are entering into a transaction that will result in a mortgage/lien/security interest on your home. You have a legal right under federal law to cancel this transaction, without cost, within **THREE BUSINESS DAYS** from whichever of the following events occurs **LAST**:

- (1) The date of the transaction, which is _____; or
- (2) The date you receive your Truth in Lending disclosures; or
- (3) The date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage/lien/security interest is also cancelled. Within 20 **CALENDAR DAYS** after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage/lien/security interest on your home has been cancelled, and we must return to you any money or property you have given us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 **CALENDAR DAYS** of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing at:
3100 Thornton Ave. (Call Center)
Burbank, CA 91504

You may use any written statement that is signed and dated by you and states your intention to cancel and/or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than **MIDNIGHT** of _____
(or **MIDNIGHT** of the **THIRD BUSINESS DAY** following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

CONSUMER'S SIGNATURE

DATE

Each of the borrowers in this transaction has the right to cancel. The exercise of this right by one borrower shall be effective as to all borrowers.

I acknowledge receipt of two copies of NOTICE of RIGHT TO CANCEL.

- Borrower - JUANITA R CAPARAS - DATE -

Superior Court of California, County of Contra Costa

NOTICE TO PLAINTIFFS
In Unlimited Jurisdiction Civil Actions

AFTER YOU FILE YOUR COURT CASE:

1. Have the forms the clerk gives you served on all defendants in this case:
 - a. The Complaint
 - b. The Summons
 - c. The Notice of Case Management Conference (shows hearing date and time)
 - d. The Notice to Defendants (Local Court Form CV-655d)
 - e. Blank: Case Management Statement (Judicial Council Form CM-110)
 - f. Blank: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
 - g. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c)
2. Within 60 days of the date you filed the complaint **you must prove that the forms have been served on (delivered to) the defendants correctly** by filing the Proof of Service form (POS-010) (completed by the person who did the service) with the court.
3. **Go to the case management conference on the date indicated on The Notice of Case Management Conference.**
4. **Consider using mediation, arbitration, or neutral case evaluation (ADR) to resolve the dispute.** All parties must answer questions about ADR on the *Case Management Statement* form. For more information, see the enclosed ADR information, visit www.cc-courts.org/adr, or call (925) 957-5787.
5. **You may delay the first case management conference while you try to resolve the dispute in ADR.** If all parties agree to use ADR, complete and file the Stipulation and Order to Attend ADR and Continue First Case Management Conference 90 Days form to tell the court you want to use this option.

All civil actions (except juvenile, probate, family, unlawful detainer, extraordinary writ, and asset forfeiture¹) and personal injury cases where a party is claiming damages² must meet the Civil Trial Delay Reduction time limits for filing documents and moving their cases forward. These time limits are listed in California Rule of Court 3.110 and Local Court Rule 5. If parties miss these deadlines, a judge might issue an order (*Order to Show Cause*) for them to explain in court why they should not have to pay a fine or have their case dismissed.

VIEW LOCAL COURT RULES AT: (WWW.CC-COURTS.ORG/RULES)

¹ *Health and Safety Code §11470 et seq.*

² *Including claims for emotional distress and/or wrongful death.*

Superior Court of California, County of Contra Costa

NOTICE TO DEFENDANTS
In Unlimited Jurisdiction Civil Actions

YOU ARE BEING SUED. The packet you have been served should contain:

- a. The Summons
- b. The Complaint
- c. The Notice of Case Management (shows hearing date and time)
- d. Blank: Case Management Statement (Judicial Council Form CM-110)
- e. Blank: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
- f. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c)

 **WHAT DO I DO NOW?** 

You must:

1. **Prepare your response** YOU COULD LOSE YOUR CASE—even before it is heard by a judge or before you can defend yourself, if you do not prepare and file a response on time. See the other side of this page for types of responses you can prepare.
2. **Complete the *Case Management Statement* (CM-110)**
3. **File and serve your court papers on time** Once your court forms are complete, you must file 1 original and 2 copies of the forms at court. An adult who is NOT involved in your case must serve one set of forms on the Plaintiff. If you were served in person you must file your response in 30 days. If the server left a copy of the papers with an adult living at your home or an adult in charge at your work or you received a copy by mail you must file your response in 40 days.
4. **Prove you served your court papers on time** by having your server complete a *Proof of Service*, (*Judicial Council form POS-040*), that must be filed at the court within 60 days.
5. **Go to court** on the date and time given in the *Notice of Case Management Conference*.
6. **Consider trying to settle your case before trial** If you and the other party to the case can agree to use mediation, arbitration or neutral case evaluation, the *Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days* can be filed with your other papers. For more information read the enclosed ADR information, visit www.cc-courts.org/adr, or call (925) 957-5787.

IMPORTANT! The court recommends consulting an attorney for all or part of your case. While you may represent yourself, lawsuits can be complicated, and the court cannot give you legal advice.

COURT FEES: You must pay court fees the first time you file your papers. If you also file a motion, you must pay another fee. If you cannot afford the fees, you may ask the court to waive (allow you not to pay) fees. Use Judicial Council forms FW-001-INFO [information sheet]; FW-001 [application]; and FW-003 [order].

COURT FORMS: Buy forms at the Forms Window in the Family Law Building or download them for free at: www.courtinfo.ca.gov/forms/

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Plaintiff(s) / Cross Plaintiff(s)
vs.

Defendant(s) / Cross Defendant(s)

ADR Case Management Stipulation and Order
(Unlimited Jurisdiction Civil Cases)

CASE NO.: _____

▶ ALL PARTIES STIPULATING TO ADR AND DELAYING THEIR CASE MANAGEMENT CONFERENCE 90 DAYS MUST SUBMIT THE ORDER FOR THE JUDGE'S SIGNATURE AND FILE THIS FORM AT LEAST 15 DAYS BEFORE THEIR CASE MANAGEMENT CONFERENCE. (NOT AVAILABLE IN COMPLEX LITIGATION CASES.)

▶ PARTIES MUST ALSO SEND A COPY OF THIS FILED STIPULATION AND ORDER TO THE ADR OFFICE:
FAX: (925) 957-5689 MAIL: P.O. BOX 911, MARTINEZ, CA 94553

Counsel and all parties agree to delay their case management conference 90 days to attend ADR and complete pre-ADR discovery as follows:

1. Selection and scheduling for Alternative Dispute Resolution (ADR):
 - a. The parties have agreed to ADR as follows:
 - i. Mediation (Court-connected Private)
 - ii. Arbitration (Judicial Arbitration (non-binding) Private (non-binding) Private (binding))
 - iii. Neutral case evaluation
 - b. The ADR neutral shall be selected by (date): _____ (no more than 14 days after filing this form)
 - c. ADR shall be completed by (date): _____ (no more than 90 days after filing this form)
2. The parties will complete the following discovery plan:
 - a. Written discovery: (Additional page(s) attached)
 - i. Interrogatories to: _____
 - ii. Request for Production of Documents to: _____
 - iii. Request for Admissions to: _____
 - iv. I
 - v. Independent Medical Evaluation of: _____
 - vi. Other: _____
 - b. Deposition of the following parties or witnesses: (Additional page(s) attached)
 - i. _____
 - ii. _____
 - iii. _____
 - c. No Pre-ADR discovery needed
3. The parties also agree: _____
4. Counsel and self-represented parties represent they are familiar with and will fully comply with all local court rules related to ADR as provided in Appendix C, will pay the fees associated with these services, and understand that if they do not, without good cause, comply with this stipulation and all relevant local court rules, they may be subject to sanctions.

Counsel for Plaintiff (print)		Fax	Counsel for Defendant (print)		Fax
Signature			Signature		
Counsel for Plaintiff (print)		Fax	Counsel for Defendant (print)		Fax
Signature			Signature		

Pursuant to the Stipulation of the parties, and subject to the Case Management Order to be filed, IT IS SO ORDERED that the Case Management Conference set for _____ is vacated and rescheduled for _____ at (8:30 a.m. / _____) Plaintiff/ Plaintiff's counsel must notify all parties of the new case management conference.

Dated: _____

Judge of the Superior Court

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in *(check all that apply)*:
- (1) Mediation
 - (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 - (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 - (4) Binding judicial arbitration
 - (5) Binding private arbitration
 - (6) Neutral case evaluation
 - (7) Other *(specify)*:
- e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court *(specify exemption)*:

11. **Settlement conference**

The party or parties are willing to participate in an early settlement conference *(specify when)*:

12. **Insurance**

- a. Insurance carrier, if any, for party filing this statement *(name)*:
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case *(explain)*:

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

Bankruptcy Other *(specify)*:

Status:

14. **Related cases, consolidation, and coordination**

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 14a.
- b. A motion to consolidate coordinate will be filed by *(name party)*:

15. **Bifurcation**

The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons)*:

16. **Other motions**

The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues)*:



CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the *Case Management Form (CM-110)*;
- File a *Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days* (local court form); or
- Agree to ADR at your first court appearance.

Questions? Call (925) 957-5787, or go to www.cc-courts.org/adr

MEDIATION

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties call or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay that person's regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.

TEMPORARY JUDGE

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

COMMUNITY MEDIATION SERVICES

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at (925) 957-5787