

IN THE SUPREME COURT OF THE STATE OF NEVADA

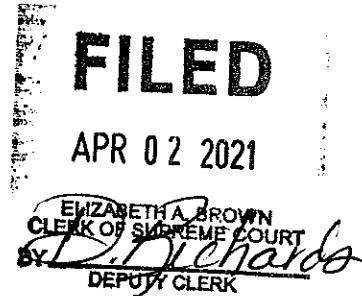
LEO KRAMER; AND AUDREY KRAMER  
Appellants,

NO. 82379

VS

NATIONAL DEFAULT SERVICING  
CORPORATION; ALYSSA MCDERMOTT;  
AND BRECKENRIDGE PROPERTY FUND  
2016, LLC,

Respondents.



---

RECORD ON APPEAL

VOLUME I

Leo Kramer and Audrey Kramer  
2364 Redwood Road  
Hercules, CA 94547

In Proper Person

Ace C. Van Patten, Esq.  
Tiffany & Bosco, P.A.  
10100 W. Charleston Blvd  
Ste. 220  
Las Vegas, Nevada 89135  
Attorney for Nat'l Default Serv.

Matthew Schriever, Esq.  
Hutchison & Steffen  
10080 W. Alta Drive, Ste 200  
Las Vegas, Nevada 89145  
Attorney for McDermott,  
Wedgewood and Breckenridge  
Property Fund 2016

21-09599

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**VOLUME**

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**VOLUME**

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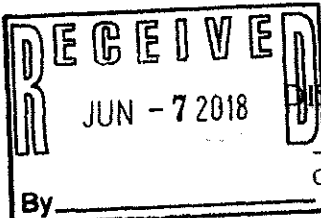
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## DISTRICT COURT CIVIL COVER SHEET

Lyon County, Nevada  
Case No. 18-CV-00663  
(Assigned by Clerk's Office)

FILED

Dept. I

2018 JUN -8 PM 12:38

## I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

Leo F. Kramer, Pro Se 510-708-9100  
Audrey E. Kramer Pro Se 510-708-9100  
2364 Redwood Rd  
Hercules, CA 94547

National Default Servicing Corp., et al  
Victoria Toran

Attorney (name/address/phone):

Kevin Soderman  
Tiffany & Bosco, P.A.  
212 S. Jones Blvd.  
Las Vegas, NV 89107

## II. Nature of Controversy (please select the one most applicable filing type below)

## Civil Case Filing Types

Real Property	Negligence	Torts
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-\$20,000 <input type="checkbox"/> \$2,500 or less	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

6/4/2018  
DateAudrey Kramer  
Signature of initiating party or representative

See other side for family-related case filings.

1 LEO KRAMER  
2 AUDREY KRAMER  
3 2364 REDWOOD ROAD  
4 HERCULES, CA 94547  
5 PLAINTIFFS IN PRO PER

RECEIVED  
JUN - 7 - 2018  
By \_\_\_\_\_

FILED  
2018 JUN -8 PM 12:38  
TANYA COLLINS  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
Victoria Toran

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF LYON

10 LEO KRAMER,  
11 AUDREY KRAMER,

12 Plaintiffs,

14 vs.

16 NATIONAL DEFAULT SERVICING  
17 CORPORATION, ALYSSA MC DERMOTT,  
18 WEDGWOOD INC., BRECKENRIDGE  
19 PROPERTY FUND 2016 LLC, and DOES 1  
20 THROUGH 50 INCLUSIVE,

21 Defendants.

Case No. 18-CV-00663  
Dept No. I  
COMPLAINT FOR:

- 1. UNLAWFUL FORECLOSURE
- 2. QUIET TITLE
- 3. PERLIMINARY INJUNCTION
- 4. SLANDER OF TITLE
- 5. CONSTRUCTIVE FRAUD
- 6. DECLARATORY RELIEF

17 Plaintiffs, LEO KRAMER and AUDREY KRAMER, ("Plaintiffs"), allege as follows:  
18

I.  
JURISDICTION AND VENUE

1. The transactions and events which are the subject matter of this Complaint all occurred within the County of Lyon, State of Nevada and the amount in controversy exceeds \$25,000.00.
2. This action arises under Nevada law and venue is proper in this judicial district pursuant to Defendants' obligation and liability that arise in this County and some of the Defendants reside and/or conduct business in the State of California.
3. Plaintiffs' allege that Defendants conducted unlawful and wrongful foreclosure and sale of their real property in Lyon County, Nevada because Plaintiffs had no obligation under any Mortgage Note; Plaintiffs were not in default on any Mortgage loan obligations and Plaintiffs were not in default of the revolving line of credit Plaintiffs obtained from Washington Mutual Bank when Defendants initiated the foreclosure proceedings. Defendants are not the holder of Plaintiffs' Note in due course and Defendants did not have assignment of Deed of Trust of Plaintiffs' real property when Defendants commenced the non-judicial foreclosure of Plaintiffs' real property in the State of Nevada. Plaintiffs claim that Defendants' actions in the State of Nevada were fraudulent, malicious, and oppressive. Plaintiffs did not breach any condition of any mortgage agreement sufficient to permit a non-judicial foreclosure proceedings against them in the State of Nevada.
4. Plaintiffs allege that at the time the power of sale was exercised or the foreclosure occurred, no breach of condition or failure of performance existed on Plaintiffs which would have authorized the foreclosure or exercise of the power of sale of Plaintiffs' real property.

II  
THE PARTIES:

5. Plaintiffs, **!Undefined Bookmark, PLAINTIFF LEO KRAMER and AUDREY**

KRAMER, ("Plaintiffs"), are now, and at all times relevant to this action, residents of the County of Contra Costa, State of California. Plaintiffs are the rightful owners of the real property commonly describe as: 1740 Autumn Glen Street, Fernley, NV 89408, ("the subject property").and more fully legally described as:

**Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF, FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE OF NEVADA Bearing APN: 022-052-02 in Lyon County, State of Nevada**

6. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned in this Complaint, Defendant, NATIONAL DEFAULT SERVICING CORPORATION, is organized and existing under the laws of the State of Arizona, and under the laws of the State of Nevada and at all times pertinent, was conducting business in the County of Lyon, State of Nevada. Plaintiffs further alleges that, Defendant, is the purported agent of JP Morgan Chase Bank. Plaintiffs further alleges that, prior to and during the recording of the Notice of Default & Notice of Trustee Sale, Defendant made false or misleading representations and engaged in various abusive and unfair practices and misrepresented that Plaintiffs are indebted to Washington Mutual Bank from the revolving line of credit when Defendant knew that to be false.

7. Plaintiffs' allege that Defendant, NATIONAL DEFAULT SERVICING CORPORATION, conspired with the remaining Defendants to conduct unlawful and wrongful foreclosure of Plaintiffs' real property in Lyon County, Nevada. Plaintiffs had no obligation under any Mortgage Note; Plaintiffs were not in default on any

1 Mortgage loan obligations and Plaintiffs were not in default of the revolving line of  
2 credit Plaintiffs obtained from Washington Mutual Bank when Defendants initiated the  
3 non-judicial foreclosure proceedings. Defendant, NATIONAL DEFAULT  
4 SERVICING CORPORATION is a duly appointed trustee and NATIONAL DEFAULT  
5 SERVICING CORPORATION is not the holder of Plaintiffs' Note in due course.  
6 Neither Defendant, NATIONAL DEFAULT SERVICING CORPORATION nor its  
7 cohorts had assignment of Deed of Trust of Plaintiffs' real property when Defendants  
8 commenced the non-judicial foreclosure of Plaintiffs' real property in the State of  
9 Nevada. Plaintiffs claim that Defendants' actions in the State of Nevada were  
10 fraudulent, malicious, and oppressive. Plaintiffs did not breach any condition of any  
11 mortgage agreement sufficient to permit a non-judicial foreclosure proceedings against  
12 them in the State of Nevada.  
13

- 14 8. Defendant allege that ALYSSA MC DERMOTT, an individual; is, and was at all times  
15 relevant herein, a Nevada corporation, doing business in the State of Nevada.  
16  
17 9. Plaintiffs' alleges that, ALYSSA MC DERMOTT conspired with NATIONAL  
18 DEFAULT SERVICING CORPORATION to conduct unlawful and wrongful  
19 foreclosure of their real property in Lyon County, Nevada because Plaintiffs had no  
20 obligation under any Mortgage Note and Plaintiffs were not in default on any mortgage  
21 loan obligations or in their obligation under the revolving line of credit from  
22 Washington Mutual Bank, when Defendant, ALYSSA MC DERMOTT conspired with  
23 NATIONAL DEFAULT SERVICING CORPORATION to initiate the foreclosure  
24 proceedings. Plaintiffs claim that Defendant, ALYSSA MC DERMOTT's actions  
25 were fraudulent, malicious, and oppressive. Plaintiffs did not breach any condition of  
26 any mortgage agreement sufficient to permit a non-judicial foreclosure proceedings  
27 against them in the State of Nevada. Plaintiffs further allege that ALYSSA MC  
28



DERMOTT is not a bonafide purchaser or bonafide encumbrancer of Plaintiffs real property in that, ALYSSA MC DERMOTT was an active participant in the Fraud.

10. Plaintiffs are informed and believe and thereon allege that at all relevant times

mentioned in

this Complaint, Defendant, WEDGWOOD INC., is organized and existing under the laws of the state of Nevada; was at all times pertinent, conducting business in the County of Lyon, State of Nevada.

11. Plaintiffs' allege that Defendants conducted unlawful and wrongful foreclosure and sale of Plaintiffs' real property in Lyon County, Nevada because Plaintiffs had no obligation under any Mortgage Note. Plaintiffs were not in default on any Mortgage loan obligations and Plaintiffs were not in default of the revolving line of credit Plaintiffs obtained from Washington Mutual Bank when Defendant, WEDGWOOD INC conspired with the remaining Defendants to initiate the unlawful and wrongful foreclosure proceedings. Defendants are not the holder of Plaintiffs' Note in due course and Defendants did not have assignment of Deed of Trust of Plaintiffs' real property when Defendants commenced the non-judicial foreclosure of Plaintiffs' real property in the State of Nevada. Plaintiffs claim that Defendants' actions in the State of Nevada were fraudulent, malicious, and oppressive. Plaintiffs did not breach any condition of any mortgage agreement sufficient to permit a non-judicial foreclosure proceedings against them in the State of Nevada. Plaintiffs further allege that WEDGWOOD INC is not a bonafide purchaser or bonafide encumbrancer of Plaintiffs real property in that, WEDGWOOD INC was an active participant in the Fraud.

12. Plaintiffs are informed and believe and thereon allege that at all relevant times

mentioned in this Complaint, Defendant, BRECKENRIDGE PROPERTY FUND 2016

1 LLC is organized and existing under the laws of the state of California; was at all times  
2 pertinent, conducting business in the County of Lyon, State of Nevada.

3 13. Plaintiffs' allege that Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC,  
4 conspired with the remaining Defendants to conduct unlawful and wrongful foreclosure  
5 of Plaintiffs' real property in Lyon County, Nevada because Plaintiffs had no obligation  
6 under any Mortgage Note. Plaintiffs were not in default on any Mortgage loan  
7 obligations and Plaintiffs were not in default of the revolving line of credit Plaintiffs  
8 obtained from Washington Mutual Bank when Defendants initiated the foreclosure  
9 proceedings. Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC, is not the  
10 holder of Plaintiffs' Note in due course and BRECKENRIDGE PROPERTY FUND  
11 2016 LLC did not have assignment of Deed of Trust of Plaintiffs' real property when  
12 BRECKENRIDGE PROPERTY FUND 2016 LLC and its cohorts commenced the non-  
13 judicial foreclosure of Plaintiffs' real property in the State of Nevada. Plaintiffs claim  
14 that Defendants' actions in the State of Nevada were fraudulent, malicious, and  
15 oppressive. Plaintiffs did not breach any condition of any mortgage agreement  
16 sufficient to permit a non-judicial foreclosure proceedings against them in the State of  
17 Nevada.  
18

19  
20 14. Plaintiffs further allege that BRECKENRIDGE PROPERTY FUND 2016 LLC is not a  
21 bonafide purchaser or bonafide encumbrancer of Plaintiffs real property in that,  
22 BRECKENRIDGE PROPERTY FUND 2016 LLC, was an active participant in the  
23 Fraud.  
24

25 15. Plaintiffs do not know the true names, capacities, or basis for liability of Defendants  
26 sued herein as Does 1 through 50, inclusive, as each fictitiously named Defendant is in  
27 some manner liable to Plaintiffs, or claims some right, title, or interest in the Property.  
28 Plaintiffs will amend this Complaint to allege their true names and capacities when

ascertained. Plaintiffs are informed and believe, and therefore allege, that at all relevant times mentioned in this Complaint, each of the fictitiously named Defendants are responsible in some manner for the injuries and damages to Plaintiffs so alleged and that such injuries and damages were proximately caused by such Defendants, and each of them.

IV.  
FACTUAL AND GENERAL ALLEGATIONS

16. On or about June 2, 2005, Plaintiffs, LEO KRAMER and AUDREY KRAMER, purchased the aforementioned property for \$204,488.00. **SEE EXHIBIT A**

17. On or about June 2, 2005, Plaintiffs obtained a mortgage loan from Paul Financial, LLC in the amount of \$163,500.00, to purchase the subject property. **SEE EXHIBIT B**

18. On or about April 4, 2008, Plaintiffs, LEO KRAMER and AUDREY KRAMER, obtained a REVOLVING LINE OF CREDIT from Washington Mutual Bank in the amount of \$176,000, pledging the subject property as collateral. **SEE EXHIBIT C.** Under the revolving line of credit, grantor ("Plaintiffs"), may borrow, repay, and re-borrow from time to time up to the maximum credit limit. Plaintiffs did not use up to the maximum credit limit and Plaintiffs were unable to re-borrow from time to time up to the maximum credit limit under the revolving line of credit agreement because Washington Mutual Bank breached the agreement under the revolving line of credit when Washington Mutual Bank failed to exist and when Washington Mutual became a defunct banking institution. Plaintiffs allege that the amount used by Plaintiffs from the revolving line of credit were repaid in full to Washington Mutual Bank and whatever was outstanding from the revolving line of credit was discharged in Bankruptcy Court in 2011.

1 19. Plaintiffs paid substantial amounts of monies toward the REVOLVING LINE OF

2 CREDIT, with any remaining monies owed, if any, being fully discharged on June 16,  
3 2011, in a Chapter 7 Bankruptcy filed by Leo Kramer. **SEE EXHIBIT D**

4 20. On or about April 29, 2008, a **SUBSTITUTION OF TRUSTEE AND FULL**

5 **RECONVEYANCE** was filed with Lyon County Records on June 19, 2008.

6 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC (MERS) purports to  
7 be the Owner and Holder of the Note secured by the Deed of Trust Dated June 2, 2005,  
8 made by Leo Kramer and Audrey KRAMER as Trustors, with **FOUNDATION**

9 **REGISTRATION SYSTEMS, LLC** as Trustee, for the benefit of MORTGAGE

10 **ELECTRONIC REGISTRATION SYSTEMS, INC (MERS)** as Beneficiary. Plaintiffs

11 wish for this Honorable Court to recognize that NO ASSIGNMENT OF TITLE was

12 ever issued to **FOUNDATION REGISTRATION SYSTEMS, LLC**, and therefore had

13 no duly appointed authority to convey a **SUBSTITUTION OF TRUSTEE AND FULL**

14 **RECOVEYANCE** to MERS. **SEE EXHIBIT E**

15 21. On or about November 26, 2013, CALIFORNIA RECONVEYANCE CORPORATION

16 filed a Substitute of Trustee to NATIONAL DEFAULT SERVICING CORPORATION,

17 recorded on December 5, 2013. Said SUBSTITUTION OF TRUSTEE was requested by

18 Caryn Barron, Vice President of JP Morgan Bank. No ASSIGNMENT OF TITLE was

19 ever granted to JP Morgan Chase Bank. Therefore, JPMorgan Chase Bank had no duly

20 appointed authority to grant a SUBSTITUTION OF TRUSTEE. **SEE EXHIBIT F**

21 22. On or about October 5, 2017, National Default Servicing Corporation filed a Notice of

22 Default (NOD), which was recorded in Lyon County on October 6, 2017. Attached to

23 the same NOD was an Affidavit signed on June 24, 2014, by Von Mai, Vice President of

24 JPMorgan Chase Bank, claiming to be the current beneficiary of the deed of trust or

25 authorized representative of the current beneficiary. Plaintiffs would like this court to

take notice that NO ASSIGNMENT OF TITLE had been granted to Chase Bank.

Therefore, Chase Bank had NO duly appointed authority in granting support of NOD to National Default Servicing Corporation. Plaintiffs would also like the Court to take notice that the Affidavit of Von Mai bears NO stamp of recordation whatsoever and was signed approximately (3) three years and (4) four months prior to the NOD. **SEE EXHIBIT G** Plaintiffs would also like the Court to take notice that Plaintiffs were never served with a Notice of Default, Plaintiffs only learned of the NOD on October 16, 2017, from their Property Management Company via email. **SEE EXHIBIT H** Plaintiffs also were never notified or provided with the STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM required by Nevada law. Plaintiffs only saw notice of this after National Default Servicing Corp. filed the certificate with the Lyon County Recorder's Office on March 22, 2018. **SEE EXHIBIT I**

23. Further, the Notice of Default on the subject property to conduct a non-judicial foreclosure is unlawful and inappropriate given that Plaintiffs did not have a mortgage loan and there was no mortgage note with Washington Mutual Bank. Plaintiffs acquired a Revolving Line of Credit, which is considered a Consumer Debt and is viewed and compared to that of a Credit Card, in that they both credit offerings feature a maximum credit limit, allow a consumer to access funds, repay the funds and re-access funds throughout the credit term. With a Consumer Debt a creditor must provide an accurate accounting of any alleged monies owed and must obtain a judgment before they can collect on a consumer debt. In this case, Plaintiffs paid substantial monies toward the \$176,000 Revolving Line of Credit and any amounts, if any, still owing were fully discharged in Plaintiff, Leo Kramer's Chapter 7 Bankruptcy on June 16, 2018.
- Additionally, Defendant National Default Servicing Corporation, who was hired by JPMorgan Chase Bank, is time-barred to conduct a judicial foreclosure by Nevada's (6)

1 six year Statute of Limitations, Judicial Estoppel and the doctrine of res judicata and  
2 collateral estoppels.

3 **24.** On January 2, 2018, Plaintiffs, Leo Kramer and Audrey Kramer, filed a Complaint with  
4 the US District Court of Reno Nevada naming JPMorgan Chase Bank, National Default  
5 Servicing Corporation, Mortgage Electronics Registration Systems, Inc., and  
6 Washington Mutual Bank as defendants. The case was dismissed on May 17, 2018. On  
7 May 24, 2018, Plaintiffs filed a Notice of Appeal with the **United States Court of**  
8 **Appeals for the Ninth Circuit San Francisco.** Case #18-15059 **SEE EXHIBIT J**

9  
10 **25.** On or about April 10, 2018, JPMorgan Chase Bank filed a fabricated fraudulent  
11 ASSIGNMENT OF DEED OF TRUST, dated April 4, 2018, with Lyon County. This  
12 Assignment states for Value Received, Washington Mutual Bank, hereby grants, assigns  
13 and transfers to JPMorgan Chase Bank all beneficial interest under that certain Deed of  
14 Trust dated 04/04/2008. This Assignment is signed by Debbie Swayzer, Vice President  
15 of JPMorgan Chase Bank. Ms. Swayzer signs under the following: JPMorgan Chase  
16 Bank, National Association, as Attorney In fact for the Federal Deposit Insurance  
17 Corporation as Receiver of Washington Mutual Bank F/K/A Washington Mutual Bank,  
18 FA. It shocks the conscience that Chase Bank would, after (9) nine years and (6) six  
19 months plus would fabricate and record a fraudulent self-signed and self-assigned  
20 ASSIGNMENT OF DEED OF TRUST so latently after acquiring 'Certain' Assets and  
21 Debts of Washington Mutual Bank, from the FDIC seizure of WAMU, which took place  
22 on September 25, 2008. **SEE EXHIBIT K**

23  
24  
25 **26.** On or about April 19, 2018, National Default Servicing Corporation, who was not a duly  
26 appointed Trustee, filed an unlawful non-judicial Notice of Trustee Sale with Lyon  
27 County. The Trustee Sale was scheduled to take place on May 18, 2018, at 11am. **SEE**  
28 **EXHIBIT L**

1 27. On May 28, 2018, Plaintiffs were notified by their Property Management Company that  
2 the tenants currently residing in the subject property were prematurely contacted by Ms.  
3 McDermott claiming to be the new owner of the subject property. Plaintiffs  
4 immediately checked with Lyon County Records and found NO evidence that a sale of  
5 the property had occurred. Plaintiff, Audrey Kramer left a voice message for Ms.  
6 McDermott on May 28, 2018. Ms. McDermott returned Plaintiff's call and said she had  
7 just purchased the property. Plaintiff asked Ms. McDermott when the sale took place  
8 and Ms. McDermott said, "On Friday", but did not know the actual date of the sale.  
9 Plaintiff, Audrey Kramer informed Ms. McDermott that there is pending litigation on  
10 the property which was filed and is currently before the United States Ninth Circuit  
11 Court of Appeals in San Francisco, whereby Ms. McDermott said, "That's fine", and  
12 hung up on Plaintiff. Plaintiff, Audrey Kramer continued checking with Lyon County  
13 Records and on June 1, 2018, found a Trustee's Deed recorded with Lyon County  
14 Recorder's Office of Records. **SEE EXHIBIT M**

15  
16  
17 28. Plaintiffs bring this action for declaratory judgment, injunctive and equitable relief, and  
18 for compensatory, special, general, punitive damages and treble damages against above  
19 named Defendants and each of them. Plaintiffs allege that, prior to recording the Notice  
20 of Default, Notice of Trustee's sale and the trustees' deed, neither NATIONAL  
21 DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD  
22 INC., nor BRECKENRIDGE PROPERTY FUND 2016 LLC, was the holder of  
23 Plaintiffs' Note in due course or Assignment of Deed of Trust under Plaintiffs' Note and  
24 Deed of Trust. Furthermore, Plaintiffs did not breach any condition of any mortgage  
25 agreement sufficient to permit a non-judicial foreclosure proceedings against them in the  
26 State of Nevada.  
27  
28

1 29. Through this action, Plaintiffs seek damages against Defendants, NATIONAL  
2 DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD  
3 INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, resulting from the  
4 unlawful and wrongful non-judicial foreclosure of Plaintiffs' real property and for  
5 Treble Damages and punitive damages for Defendants' fraud.  
6

7  
8 FIRST CAUSE OF ACTION  
9 (FOR UNLAWFUL FORECLOSURE)  
10 (AGAINST ALL DEFENDANTS)

11 30. Plaintiffs re-allege and incorporates by reference all preceding paragraphs  
12 though fully set forth herein.

13 31. Plaintiffs allege that there has been an illegal, fraudulent or willfully oppressive sale of  
14 their real property by the Foreclosing Defendant, NATIONAL DEFAULT SERVICING  
15 CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and  
16 BRECKENRIDGE PROPERTY FUND 2016 LLC.

17 32. Plaintiffs are informed and belief, and thereon alleges that Defendants, executed  
18 fraudulent real estate documents that touched and concerned Plaintiff's real property and  
19 thereafter caused said documents to be recorded in the Official Records in the Office of  
20 the Lyon County Recorder's office in violation of Nevada laws.

21 33. Plaintiffs performed all terms, covenants, and conditions required under the mortgage,  
22 except for those terms, covenants, and conditions the performance of which was either  
23 waived or rendered impossible by Washington Mutual bank due to Washington Mutual  
24 Bank's breach of the revolving line of credit.  
25

26 34. On or about June 2, 2005, Plaintiffs, LEO KRAMER and AUDREY KRAMER,  
27 purchased the aforementioned property for \$204,488.00. **SEE EXHIBIT A**  
28



- 1 35. On or about June 2, 2005, Plaintiffs obtained a mortgage loan from Paul Financial, LLC  
2 in the amount of \$163,500.00, to purchase the subject property. **SEE EXHIBIT B**
- 3 36. On or about April 4, 2008, Plaintiffs, LEO KRAMER and AUDREY KRAMER,  
4 obtained a REVOLVING LINE OF CREDIT from Washington Mutual Bank for a  
5 maximum credit limit of \$176,000, pledging the subject property as collateral. **SEE**  
6 **EXHIBIT C Under the revolving line of credit, grantor ("Plaintiffs"), may**  
7 **borrow, repay, and re-borrow from time to time up to the maximum credit limit.**
- 8 37. Plaintiffs contend that, plaintiff did not use up to the maximum credit limit and Plaintiffs  
9 were unable to re-borrow from time to time up to the maximum credit limit under the  
10 revolving line of credit agreement because Washington Mutual Bank breached the  
11 agreement under the revolving line of credit because Washington Mutual Bank failed to  
12 exist and when Washington Mutual became a defunct banking institution, thereby,  
13 making it legally impossible for Plaintiffs to re-borrow up to the \$176,000 credit limit as  
14 provided by the credit agreement.
- 15 38. Plaintiffs allege that the amount used by Plaintiffs from the revolving line of credit were  
16 repaid in full to Washington Mutual Bank and whatever was outstanding, if any, from  
17 the revolving line of credit was fully discharged in Bankruptcy Court in 2011.
- 18 39. Plaintiffs further allege that when JPMorgan Chase Bank purportedly appointed  
19 NATIONAL DEFAULT SERVICING CORPORATION, as Trustee in 2013, Plaintiffs  
20 did not owe any money on the revolving line of credit.
- 21 40. Plaintiffs' allege that Defendants, NATIONAL DEFAULT SERVICING  
22 CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and  
23 BRECKENRIDGE PROPERTY FUND 2016 LLC conducted unlawful and wrongful  
24 foreclosure and sale of Plaintiffs' real property in Lyon County, Nevada.  
25  
26  
27  
28

1 41. Plaintiffs had no obligation under any Mortgage Note and Plaintiffs were not in default  
2 on any Mortgage loan obligations when NATIONAL DEFAULT SERVICING  
3 CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and  
4 BRECKENRIDGE PROPERTY FUND 2016 LLC commenced the unlawful non-  
5 judicial foreclosure of Plaintiffs' real property.

6 42. Furthermore, Plaintiffs were not in default on the revolving line of credit Plaintiffs  
7 obtained from Washington Mutual Bank when Defendants initiated the foreclosure  
8 proceedings.  
9

10 43. Defendants, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC  
11 DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016  
12 LLC and their cohorts are not the holder of Plaintiffs' Note in due course and  
13 Defendants did not have assignment of Deed of Trust of Plaintiffs' real property when  
14 Defendants commenced the non-judicial foreclosure of Plaintiffs' real property in the  
15 State of Nevada. Plaintiffs claim that Defendants' actions in the State of Nevada were  
16 fraudulent, malicious, and oppressive. Plaintiffs did not breach any condition of any  
17 mortgage agreement sufficient to permit a non-judicial foreclosure proceedings against  
18 them in the State of Nevada.  
19

20 44. Plaintiffs allege that at the time the power of sale was exercised or the foreclosure  
21 occurred, no breach of condition or failure of performance existed on Plaintiffs which  
22 would have authorized the foreclosure or exercise of the power of sale of Plaintiffs' real  
23 property. As such, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA  
24 MC DERMOTT, WEDGWOOD INC., or BRECKENRIDGE PROPERTY FUND 2016  
25 LLC had no standing to conduct the unlawful and wrongful non-judicial foreclosure of  
26 Plaintiffs' real property.  
27  
28

1 45. Plaintiffs allege that none of the Foreclosing Defendants, NATIONAL DEFAULT  
2 SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., or  
3 BRECKENRIDGE PROPERTY FUND 2016 LLC, in this action were lawfully  
4 appointed as trustee or had the original note assigned to them. Accordingly, none of the  
5 Foreclosing Defendants in this action had the right to declare default, cause notices of  
6 default to be issued or recorded, or foreclosed on Plaintiffs' interest in the Subject  
7 Property. Defendants, NATIONAL DEFAULT SERVICING CORPORATION,  
8 ALYSSA MC DERMOTT, WEDGWOOD INC., or BRECKENRIDGE PROPERTY  
9 FUND 2016 LLC, were not the note holder or a beneficiary at any time with regard to  
10 Plaintiffs' Note and Deed of Trust.  
11

12 46. Plaintiffs further allege on information and belief that none of the Foreclosing  
13 Defendants, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC  
14 DERMOTT, WEDGWOOD INC., or BRECKENRIDGE PROPERTY FUND 2016  
15 LLC, in this action are beneficiaries or representatives of the beneficiary and, if the  
16 Foreclosing Defendants allege otherwise, they do not have the original note to prove that  
17 they are in fact the party authorized to conduct the non-judicial foreclosure of Plaintiffs'  
18 real property.  
19

20 47. As a result of the above alleged unlawful or wrongful non-judicial foreclosure, Plaintiffs  
21 have suffered general and special damages in an amount to be determined at trial.  
22

23 SECOND CAUSE OF ACTION

24 (QUIET TITLE)

25 (AGAINST ALL DEFENDANTS)

26 48. Plaintiffs re-allege and incorporates by reference all preceding paragraphs  
27 as though fully set forth herein.  
28

1 49. Plaintiffs allege that there has been an illegal, fraudulent or willfully oppressive sale of  
2 their real property by the Foreclosing Defendant, NATIONAL DEFAULT SERVICING  
3 CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and  
4 BRECKENRIDGE PROPERTY FUND 2016 LLC.

5 50. Plaintiffs are informed and believe and thereon alleges that Defendants, executed  
6 fraudulent real estate documents that touched and concerned Plaintiff's real property and  
7 thereafter caused said documents to be recorded in the Official Records in the Office of  
8 the Lyon County Recorder's office in violation of Nevada laws.  
9

10 51. Plaintiffs allege that, NATIONAL DEFAULT SERVICING CORPORATION,  
11 ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY  
12 FUND 2016 LLC, unlawfully, claim an interest and estate in the property adverse to  
13 plaintiffs in that defendants asserts that they are the owner of the note secured by the  
14 deed of trust to the property the subject of this suit.  
15

16 52. ALL the above named Defendants claims an interest and estate in the property adverse  
17 to plaintiffs in that defendants asserts that they are the owner of deed of trust securing  
18 the note to the property, the subject of this suit.

19 53. The claims of all defendants are without any right whatsoever, and defendants have no  
20 right, estate, title, lien or interest in or to the property, or any part of the property.

21 54. The claim of all defendants herein named, and each of them, claim some estate, right,  
22 title, lien or interest in or to the property adverse to plaintiff's title, and these claims  
23 constitute a cloud on plaintiff's title to the property.  
24

25 55. Plaintiffs, therefore, allege, upon information and belief, that none of the parties to nor  
26 any of the Defendants in this case, hold a perfected and secured claim in the Property;  
27 and that, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC  
28 DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016

1 LLC are estopped and precluded from asserting an unsecured claim against Plaintiffs  
2 real property.

3 56. Plaintiffs request the decree permanently enjoin defendants, and each of them, and all  
4 persons claiming under them, from asserting any adverse claim to plaintiff's title to the  
5 property.

6 57. Plaintiffs request the court award the plaintiffs costs of this action, and such other relief  
7 as the court may deem proper.

8  
9 THIRD CAUSE OF ACTION

10 (INJUNCTIVE RELIEF)

11 (Against all Defendants)

12  
13 58. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully  
14 set forth herein.

15 59. An actual controversy has arisen and now exists between Plaintiffs and Defendants,  
16 NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT,  
17 WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC,  
18 concerning their respective rights and duties regarding the Note and Trust Deed.

19  
20 60. Plaintiffs contends that pursuant to the mortgage loans and the Deed of Trust,  
21 Defendants, do not have authority to foreclose upon and/or sell Plaintiffs' real properties  
22 described above.

23 61. Plaintiffs allege that, in addition to violating the Nevada non-judicial foreclosure laws  
24 Defendants, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC  
25 DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016  
26 LLC, knowingly concealed their lack of an enforceable security interests in plaintiffs'  
27 real properties by fabricating and recording false documents in the Lyon County  
28

Recorder's Office.

62. Plaintiffs brings this action for preliminary injunction against Defendants, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, and their agents, officers, employees, and affiliates or associated parties for their and their predecessors' actions in engaging in a pattern of unlawful, fraudulent, and unfair predatory real estate practices causing Plaintiffs to become victims of such behavior and to be in jeopardy of losing their real property through unlawful non-judicial foreclosure.
63. Plaintiffs have clear legal rights to seek temporary and permanent injunctive relief as Plaintiffs have legal rights to their real property and as Defendants are without any satisfying and necessary legal standing to institute a foreclosure, are seeking to take possession, custody, and control of Plaintiffs' real property and ultimately remove the Plaintiffs from their home/real property.
64. Plaintiffs have no adequate remedy at law to redress the harm complained of, and the sale of the Plaintiff's property, under the circumstances of record, is contrary to equity and good conscience in that such sale is being instituted by Defendants who have no legal standing to institute or maintain the non-judicial foreclosure.
65. The specific facts set forth in this Complaint demonstrates that unless an injunctive relief temporary is granted against Defendants from removing Plaintiffs from their real properties during the pendency of this lawsuit, Plaintiffs will suffer irreparable injury, loss, and damage of her real properties and eviction therefrom. The threatened injury to Plaintiff's properties and personal rights cannot be compensated for by an ordinary damage award in that Plaintiffs real properties are unique.
66. Under the circumstances where the unlawful non-judicial foreclosure sale has occurred and Defendants are threatening to remove Plaintiffs from their property, irreparable loss

1 to Plaintiffs will result if the Injunctive Relief requested herein is not granted  
2 immediately.

3 67. As Defendants has no legal standing to institute or maintain a foreclosure of the  
4 Property, there is no harm to said Defendant with the granting of the requested relief,  
5 and any claimed harm is substantially outweighed by the irreparable harm to the  
6 Plaintiffs if the relief requested herein is not granted.

7 68. The granting of the relief requested herein is in the public interest, as the consuming  
8 public, including Plaintiffs, will continue to be harmed by the illegal and unlawful  
9 conduct of the Defendants if the relief requested herein is not granted.  
10

11 69. Under the circumstances where there is no harm to Defendants with the granting of the  
12 requested relief, no bond should be required as a prerequisite to the granting of the relief  
13 requested herein as there are no costs or other damages which could be contemplated on  
14 the part of Defendants, NATIONAL DEFAULT SERVICING CORPORATION,  
15 ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY  
16 FUND 2016 LLC, with the granting of the requested relief for which a bond would  
17 otherwise be necessary.  
18

19  
20 **WHEREFORE**, Plaintiffs respectfully request that this Court immediately take jurisdiction  
21 of this matter and enter an Order granting temporary and permanent injunctive relief  
22 expressly precluding Defendants, NATIONAL DEFAULT SERVICING CORPORATION,  
23 ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY  
24 FUND 2016 LLC, and their agents and assigns, from enforcing the non-judicial foreclosure  
25 and from removing Plaintiffs from their real property during the pendency of this action.  
26  
27  
28

FOURTH CAUSE OF ACTION

(SLANDER OF TITLE)

(Against all Defendants)

70. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

71. Defendants, NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, and each of them, disparaged Plaintiffs' exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, the Notice of Default, Notice of Trustee's Sale, and Trustee's Deed.

72. Said Defendants knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Defendants had no right, title, or interest in the Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Plaintiffs' legal title to the Property. By posting, publishing, and recording said documents, Defendants' disparagement of Plaintiff's legal title was made to the public at large.

73. As a direct and proximate result of Defendants' conduct in publishing these documents, Plaintiffs' title to the Property has been disparaged and slandered, and there is a cloud on Plaintiff's title, and Plaintiff has suffered, and continues to suffer, damages in an amount to be proved at trial.

74. As a further proximate result of Defendants' conduct, Plaintiffs have incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Plaintiff will incur additional charges for such purpose until the cloud on Plaintiff's title



1 to the property has been removed. The amounts of future expenses and damages are not  
2 ascertainable at this time.

3 75. As a further direct and proximate result of Defendants' conduct, Plaintiffs have suffered  
4 humiliation, mental anguish, anxiety, depression, and emotional and physical distress,  
5 resulting in the loss of sleep and other injuries to his and her health and well-being, and  
6 continues to suffer such injuries on an ongoing basis. The amount of such damages shall  
7 be proven at trial.

8  
9 76. At the time that the false and disparaging documents were created and published by the  
10 Defendants, Defendants knew the documents were false and created and published them  
11 with the malicious intent to injure Plaintiff and deprive them of their exclusive right,  
12 title, and interest in the Property, and to obtain the Property for their own use by  
13 unlawful means.

14 77. The conduct of the Defendants in publishing the documents described above was  
15 fraudulent, oppressive, and malicious. Therefore, Plaintiffs are entitled to an award of  
16 punitive damages in an amount sufficient to punish Defendants for their malicious  
17 conduct and deter such misconduct in the future.  
18

19 FIFTH CAUSE OF ACTION

20 (CONSTRUCTIVE FRAUD)

21 (Against all Defendants)

22 78. Plaintiffs re-alleges and incorporates by reference all preceding paragraphs as  
23 though fully set forth herein.  
24

25 79. Plaintiffs, LEO KRAMER and AUDREY KRAMER, ("Plaintiffs"), are now, and at all  
26 times relevant to this action, residents of the County of Contra Costa, State of California.  
27 Plaintiffs are the rightful owners of the real property commonly describe as: 1740  
28

Autumn Glen Street, Fernley, NV 89408, ("the subject property").and more fully legally  
described as:

**Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP  
THEREOF, FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF  
LYON, STATE OF NEVADA**

**Bearing APN: 022-052-02 in Lyon County, State of Nevada**

80. Plaintiffs and each of them is, the original Trustor under the Deed of Trust which  
secured the property and recorded in the official records of Lyon County, Nevada.

81. Plaintiffs are informed and believe and thereon alleges that Defendants, NATIONAL  
DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD  
INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, and each of them claim  
an interest in the property adverse to Plaintiffs herein by false misrepresentation.

82. Plaintiffs are informed and believe and thereon alleges that Defendants NATIONAL  
DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD  
INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, in conspiracy with, each  
and all of the DOES Defendants entered into an agreement of peonage, and through  
malicious acts, duress, coercion and fraud in recording the Notice of Default, Notice of  
Trustee's Sale and the Trustee's Deed.

83. Plaintiffs are informed and believe and thereon alleges that Defendants, NATIONAL  
DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD  
INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, are insured pursuant to  
insurance laws and at least one of the Defendants is a State insured institution and has a  
duty of candor and a duty not to defraud the Plaintiffs and a duty not cause harm to  
individual member of the public.

- 1 84. Plaintiffs are informed and believe and thereon alleges that Defendants, breached this  
2 duty when it conspired with others implementing fraudulent assignments, Notice of  
3 Default, Notice of Trustee's Sale and the Trustee's Deed, and schemes to foreclose on  
4 Plaintiff's home.
- 5 85. Plaintiffs are informed and believe and thereon alleges that Defendants, NATIONAL  
6 DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD  
7 INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC, conspired with each of  
8 them and through false misrepresentation, concealment and nondisclosure of assignment  
9 instrument in their zeal to induce reliance, justifiable reliance with the co-conspirators to  
10 assert fraudulent claim on Plaintiffs' real property. All Defendants individually,  
11 including DOE Defendants had knowledge of this falsity.
- 12 86. As direct and proximate result of Defendants' illegal foreclosure schemes, Plaintiffs  
13 have been harm and the extent of Plaintiffs' injury will be determined by the jury at trial.  
14  
15  
16

17 SIXTH CAUSE OF ACTION  
18 (DECLARATORY RELIEF)  
19 (Against all Defendants)  
20

- 21 87. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
22 fully set forth herein.
- 23 88. An actual controversy has arisen and now exists between Plaintiffs and Defendants  
24 concerning their respective rights and duties regarding the Note and Trust Deed.
- 25 89. Plaintiffs contend that pursuant to the Loans, Defendants do not have authority to  
26 foreclose upon and sell the Property.  
27  
28

1 90. Plaintiffs are informed and believes and upon that basis alleges that Defendants dispute  
2 Plaintiffs' contention and instead contend they may properly foreclose upon the  
3 Property.

4 91. Plaintiffs therefore request a judicial determination of the rights, obligations and interest  
5 of the parties with regard to the Property, and such determination is necessary and  
6 appropriate at this time under the circumstances so that all parties may ascertain and  
7 know their rights, obligations and interests with regard to the Property.  
8

9 92. Plaintiffs request a determination of the validity of the Trust Deeds as of the date the  
10 Notes were assigned without a concurrent assignation of the underlying Trust Deeds.

11 93. Plaintiffs request a determination of the validity of the NOD (Notice of Default).

12 94. Plaintiffs request a determination of whether any Defendants have authority to foreclose  
13 on the Property.

14 95. Plaintiffs request all adverse claims to the real property must be determined by a decree  
15 of this court.  
16

17 96. Plaintiffs request the decree declare and adjudge that plaintiff is entitled to the exclusive  
18 possession of the property.  
19

20 97. Plaintiffs request the decree declare and adjudge that plaintiffs owns in fee simple, and  
21 is entitled to the quiet and peaceful possession of, the above-described real property.  
22

23 98. Plaintiffs request the decree declare and adjudge that defendants, and each of them, and  
24 all persons claiming under them, have no estate, right, title, lien, or interest in or to the  
25 real property or any part of the property.  
26  
27  
28

**DEMAND FOR JURY TRIAL**

**WHEREFORE**, Plaintiffs request for Jury Trial on all causes of action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, ask for the following for each Cause of Action to be awarded:

- i. For treble damages;
- ii. That the Defendants have no enforceable secured or unsecured claim against the Property;
- iii. Plaintiffs owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
- iv. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.
- v. Plaintiffs are entitled to the exclusive possession of the property;
- vi. For Compensatory Damages in an amount to be determined by proof at trial;
- vii. For Special Damages in an amount to be determined by proof at trial;
- viii. For General Damages in an amount to be determined by proof at trial;
- ix. For Punitive Damages as allowed by law;
- x. For Restitution as allowed by law;
- xi. For Attorney's Fees and Costs of this action.

Date: 6/4/18

Date: 6/4/18

Leo Frederick Kramer  
Leo Kramer, Pro se

Audrey Kramer  
Audrey Kramer, Pro se

## EXHIBIT LIST:

EXHIBIT A	Purchase Contract from Fernley Ponderosa, LLC (Seller)
EXHIBIT B	Deed of Trust from Paul Financial, LLC
EXHIBIT C	Credit Agreement with Washington Mutual Bank (WAMU)
EXHIBIT D	Chapter 7 Bankruptcy, 'Certified' Schedule of Creditors & Discharge
EXHIBIT E	Substitution of Trustee & Full Reconveyance
EXHIBIT F	Substitution of Trustee from JPMorgan Chase Bank
EXHIBIT G	Notice of Default (NOD) from National Default Servicing Corporation
EXHIBIT H	Email from Chaffin Real Estate (Property Management Company)
EXHIBIT I	STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM
EXHIBIT J	Notice of Appeal: United States 9 <sup>th</sup> District Court of Appeals
EXHIBIT K	Assignment of Deed of Trust from WAMU to Chase
EXHIBIT L	Notice of Trustee Sale
EXHIBIT M	Trustee's Deed

# EXHIBIT A

**Purchase Contract from Fernley Ponderosa, LLC (Seller)**

# EXHIBIT A

## Official Record

Requested By  
WESTERN TITLE COMPANY

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 2 Fee: \$15.00

Recorded By: HFK RPTT \$797.55

APN: 022-052-02  
RPTT \$797.55

WHEN RECORDED MAIL TO:  
Name LEO F. KRAMER  
Street 1740 Autumn Glen  
Address Fernley, NV 89408  
City, State  
Zip

MAIL TAX STATEMENTS TO:  
Name LEO F. KRAMER  
Street Same  
Address  
City, State  
Zip  
Order 00009691-111- EMB  
No.



0353219

(SPACE ABOVE THIS LINE FOR RECORDERS USE)

## GRANT, BARGAIN AND SALE DEED

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FERNLEY PONDEROSA, LLC., a Nevada limited liability company

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

**LEO F. KRAMER and AUDREY E. KRAMER, husband and wife as**  
**JOINT TENANTS**

and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of FERNLEY, County of Lyon, State of Nevada bounded and described as follows:

All that real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 62 of UPLAND RANCH ESTATES UNIT NO. 7, according to the map thereof, filed in the office of the County Recorder of Lyon County, State of Nevada, as Document No. 315377, on March 09, 2004.

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: June 2, 2005



Grant, Bargain and Sale Deed - Page 2

FERNLEY PONDEROSA, LLC a Nevada limited liability  
company

Jaynie Tamura Gaines  
JAYNIE TAMURA GAINES, VICE PRESIDENT

STATE OF CALIFORNIA } ss.  
COUNTY OF SAN JOAQUIN

On JUNE 3, 2005, before me, TWILA M. SILVEIRA, personally  
appeared JAYNIE TAMURA GAINES, X personally  
known to me OR        proved to me on the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that he/she executed the same in her  
authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of  
which the person acted, executed the instrument.

WITNESS my hand and official seal.

Twila M. Silveira  
Signature of Notary



# STATE OF NEVADA DECLARATION OF VALUE

Requested By  
WESTERN TITLE COMPANY

Lyon County - NV  
Mary C. Milligan - Recorder

## 1. Assessor Parcel Number(s)

- a) 022-052-02  
b)  
c)  
d)

### FOR RECORDER

Document/Instrument #

Book: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

Page 1 of 2 Fee: \$15.00  
Recorded By: MFK RPT: \$197.65

## 2. Type of Property:

- a) ☐ Vacant Land  
b) ☒ Single Fam. Res.  
c) ☐ Condo/Twnhse  
d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg.  
f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural  
h) ☐ Mobile Home  
i) ☐ Other \_\_\_\_\_

## 3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property): \$ 204,488.00  
Transfer Tax Value: \$ 204,488.00  
Real Property Transfer Tax Due: \$ 797.55

## 4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

## 5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_ Capacity: SELLER

JAYNIE TAMURA GARNES, VICE PRESIDENT Dated: June 2, 2005

Signature: [Signature] Capacity: BUYER

### SELLER (GRANTOR) INFORMATION (REQUIRED)

Print Name: FERNLEY PONDEROSA, LLC.

Address: 3202 W. MARCH LANE #A

City: STOCKTON

State: CA Zip: 95219

### BUYER (GRANTEE) INFORMATION (REQUIRED)

Print Name: LEO E. Kramer

Address: 1227 Ballena Blvd.

City: Alameda

State: CA Zip: 94501

### COMPANY/PERSON REQUESTING RECORDING (REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Western Title Company, Inc.  
Address: 55 N. Center #3 P. O. Box 710  
City/State/Zip: Fernley, NV 89408

Esc. #: 00009621-111-EMB

# STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a) 022-052-02
- b)
- c)
- d)

FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

2. Type of Property:

- a) ☐ Vacant Land
- b) ☒ Single Fam. Res.
- c) ☐ Condo/Twnhse
- d) ☐ 2-4 Plex
- e) ☐ Apt. Bldg.
- f) ☐ Comm'l/Ind'l
- g) ☐ Agricultural
- h) ☐ Mobile Home
- i) ☐ Other \_\_\_\_\_

3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property): \$ 204,488.00  
Transfer Tax Value: \$ 204,488.00  
Real Property Transfer Tax Due: \$ 797.55

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_
- b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exception, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Jamie Tamura Gaines Capacity: SELLER  
JAMIE TAMURA GAINES, VICE PRESIDENT Dated: June 3, 2005  
Signature: \_\_\_\_\_ Capacity: BUYER

**SELLER (GRANTOR) INFORMATION**  
(REQUIRED)

Print Name: FERNLEY PONDEROSA, LLC

Address: 3702 W. MARCH LANE #A  
City: STOCKTON  
State: CA Zip: 95219

**BUYER (GRANTEE) INFORMATION**  
(REQUIRED)

Print Name: LEOE Kramer

Address: 1227 Bollena Blvd  
City: FERNLEY  
State: NV Zip: 89408

**COMPANY/PERSON REQUESTING RECORDING**  
(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Western Title Company, Inc.  
Address: 55 N. Center #3 P. O. Box 710  
City/State/Zip: Fernley, NV 89408

Esc. #: 00009691-111-EMB



# EXHIBIT B

**Deed of Trust from Paul Financial, LLCz**

# EXHIBIT B

Requested By  
WESTERN TITLE COMPANY

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 25 Fee: \$63.00

Recorded By: MFK RPTT



0353220

Assessor's Parcel Number:

022-052-02

Return To:

Paul Financial, LLC

1401 Los Gatos Drive

San Rafael, CA, 94903

Prepared By:

Paul Financial, LLC

Recording Requested By:

Paul Financial, LLC

1401 Los Gatos Drive

San Rafael, CA, 94903

96A1-EMB

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN 100270600003892476

## DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated June 02, 2005 together with all Riders to this document.

(B) "Borrower" is Leo F. Kramer and Audrey E. Kramer, husband and wife, as joint tenants

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Paul Financial, LLC

Lender is a Limited Liability Company organized and existing under the laws of The State of Delaware

ALTA-NEG-40YR-1/1-09

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

-6A(NV) (0307)

Page 1 of 15

Initials:

VMP Mortgage Solutions (800)521-7291

0000389247

Form 3029 1/01

D06A01NV

ALTA-NEG-40YR-1/1-09

(REPRODUCED FROM THE ORIGINAL INSTRUMENT BY THE CLERK OF THE COUNTY CLERK'S OFFICE)

(REPRODUCED FROM THE ORIGINAL INSTRUMENT BY THE CLERK OF THE COUNTY CLERK'S OFFICE)



353220

06/08/2005  
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Lender's address is 1401 Los Gatos Drive, San Rafael, CA, 94903

(D) "Trustee" is Foundation Conveyancing, LLC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated June 02, 2005. The Note states that Borrower owes Lender One Hundred Sixty-Three Thousand Five Hundred and 0/100ths Dollars

(U.S. \$163,500.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 01, 2045.

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

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

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

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input checked="" type="checkbox"/> Second Home Rider                    |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider                                |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify]<br>Prepay Penalty |

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time.

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Initials

AK QEK

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(25)



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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Lyon [Name of Recording Jurisdiction]:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 022-052-02  
1740 Autumn Glen Street  
Fernley  
("Property Address"):

which currently has the address of  
[Street]  
[City], Nevada 89408-0000 [Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

ALTA-NEG-40YR-1/1-09

6A(NV) (0307)

Initials

AK QEK

0000389247

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives



Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

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

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

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one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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(45)



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

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

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

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

**23. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

ALTA-NEG-40YR-1/1-09

6A(NV) (0307)

Initials: *AK*

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

Witnesses:

\_\_\_\_\_  
Leo F. Kramer (Seal)  
-Borrower

\_\_\_\_\_  
Audrey E. Kramer (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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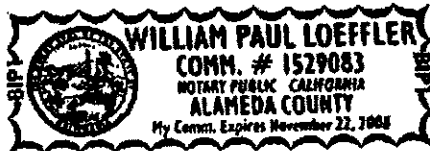
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STATE OF NEVADA <sup>we</sup> California  
COUNTY OF ~~Lyons~~ Alameda

This instrument was acknowledged before me on June 2, 2005  
Leo F. Kramer and Audrey E. Kramer



*[Signature]*  
by

Mail Tax Statements To:  
Paul Financial, LLC  
1401 Los Gatos Drive  
San Rafael, CA, 94903

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Initials: *AK EK*

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## ADJUSTABLE RATE RIDER

(Monthly Treasury Average - Payment and Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 02nd day of June, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Paul Financial, LLC

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

1740 Autumn Glen Street, Fernley, NV, 89408

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE BORROWER'S MONTHLY PAYMENT INCREASES MAY BE LIMITED AND THE INTEREST RATE INCREASES ARE LIMITED.

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

### A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

### 2. INTEREST

#### (A) Interest Rate

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 1.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

ALTA-NEG-40YR-1/1-09

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VMP-840R (0088)

Form 3112 1/01 Modified for Monthly Treasury Average (MTA)

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Initials: *AK* *AK*

VMP MORTGAGE FORMS - (800)821-7291

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**(B) Interest Change Dates**

The interest rate I will pay may change on the first day of August, 2005, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Change Date." The new rate of interest will become effective on each Interest Change Date.

**(C) Interest Rate Limit**

My interest rate will never be greater than 12.500 %

**(D) The Index**

Beginning with the first Interest Change Date, my interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (h.15)" (the "Monthly Yields"). The "Twelve Month Average" is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

**(E) Calculation of Interest Rate Changes**

Before each Interest Change Date, the Note Holder will calculate my new interest rate by adding Three and 500/1000 percentage points (3.500 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limit stated in Section 2(C) above, the rounded amount will be my new interest rate until the next Interest Change Date.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on August 01, 2005. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on July 01, 2043, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 7867, Santa Rosa, CA, 954070867

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

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 413.42. This amount may change.

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Initials: AK AER

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UMS-840R (0008)

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Modified for Monthly Treasury Average (MTA)

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**(C) Payment Change Dates**

My monthly payment may change as required by Section 3(D) below beginning on the day of August, 2006, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment will also change at any time Section 3(F) or 3(G) below requires me to pay the Full Payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." The Note Holder will then calculate the amount of my monthly payment due the month preceding the Payment Change Date multiplied by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, I may choose to pay the Limited Payment.

**(E) Additions to My Unpaid Principal**

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder will also add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to principal will be the rate required by Section 2 above.

**(F) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid principal can never exceed a maximum amount equal to one hundred ten percent (110 %) of the principal amount I originally borrowed. My unpaid principal could exceed that maximum amount due to the Limited Payments and interest rate increases. If so, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. The new monthly payment will be in an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my current interest rate in substantially equal payments.

1040R (0008)

Modified for Monthly Treasury Average (MTA)

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Initials: *JEK ASK*

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**(G) Required Full Payment**

On the 5th Payment Change Date and on each succeeding 5th Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again. I will also begin paying the Full Payment as my monthly payment on the final Payment Change Date.

**4. NOTICE OF CHANGES**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will contain the interest rate or rates applicable to my loan for each month since the prior notice or, for the first notice, since the date of this Note. The notice will also include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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Initials: *PK QEK*

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Modified for Monthly Treasury Average (MTA)

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PF0133



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

Leo F. Kramer (Seal)  
Leo F. Kramer -Borrower

Audrey E. Kramer (Seal)  
Audrey E. Kramer -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

[Sign Original Only]

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Modified for Monthly Treasury Average (MTA)

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Lender: Paul Financial, LLC  
Address: 1401 Los Gatos Drive  
City, State Zip: San Rafael, CA, 94903

[ Space Above This Line For Recording Data ]

## PREPAYMENT PENALTY RIDER

This Prepayment Penalty Rider is made this 02nd day of June, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note (the "Note") to

Paul Financial, LLC  
("Lender") of the same date and covering the property described in the Security Instrument and located at:

1740 Autumn Glen Street, Fernley, NV, 89408  
[ Property Address ]

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

Borrower may make a full prepayment or a partial prepayment of principal at any time. However, if within the first 2 years after the date Borrower executes the Note, Borrower will pay a prepayment charge on the aggregate prepayments made within any consecutive twelve month period which exceed 20% of the original principal amount stated in the Note (the "Excess Principal"). The prepayment charge will equal the interest rate that would accrue during a six month period of the Excess Principal calculated at the rate of interest in effect under the terms of the note at the time of the prepayment.

No prepayment penalty will be assessed for any prepayment made after the Penalty Period.

The Note Holder's failure to collect a prepayment penalty at the time a prepayment is received shall not be deemed a waiver of such penalty and any such penalty calculated in accordance with this section shall be payable on demand.

PF0103 (H - 12/03) Prepayment Penalty Rider

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Initials JFK QEK

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If a law, which applies to this loan and which sets a maximum prepayment charge or prohibits prepayment charges, is finally interpreted so that the prepayment charge to be collected in connection with this loan exceeds the permitted limits, then (i) any such prepayment charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, or (ii) if the prepayment charge is prohibited, no prepayment charge will be assessed or collected.

**DO NOT SIGN THE PREPAYMENT PENALTY RIDER BEFORE YOU READ IT. THIS PREPAYMENT PENALTY RIDER PROVIDES FOR THE PAYMENT OF A CHARGE IF YOU WISH TO REPAY THE LOAN PRIOR TO THE DATE PROVIDED FOR REPAYMENT.**

By signing below, Borrower accepts and agrees to the terms and covenants contained in the Prepayment Note Addendum.

Leo F. Kramer  
Leo F. Kramer

(Seal)  
-Borrower

Audrey E. Kramer  
Audrey E. Kramer

(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

## SECOND HOME RIDER

THIS SECOND HOME RIDER is made this 02nd day of June, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to Paul Financial, LLC

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

1740 Autumn Glen Street, Fernley, NV, 89408

[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

**6. Occupancy.** Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

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

ALTA-NEG-40YR-1

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MULTISTATE SECOND HOME RIDER - Single Family -  
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Page 1 of 2

Form 3890 1/01  
Initials: JEK A&K

365R (0011)

VMP MORTGAGE FORMS - (800)521-7291



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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Second Home Rider.

Leo F. Kramer (Seal)  
Leo F. Kramer - Borrower

Audrey E. Kramer (Seal)  
Audrey E. Kramer - Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

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Unofficial Copy

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**Legal Description**

All that real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 62 of UPLAND RANCH ESTATES UNIT NO. 7, according to the map thereof, filed in the office of the County Recorder of Lyon County, State of Nevada, as Document No. 315377, on March 09, 2004.

Unofficial Copy



# EXHIBIT C

**Credit Agreement with Washington Mutual Bank (WAMU)**

# EXHIBIT C

## Official Record

Requested By  
TICOR TITLE CO OF CA

Lyon County - NV

Mary C Halligan - Recorder

Page 1 of 10 Fee \$48.00

Recorded By MCM RPTT



0425436

APN: 22-052-02

The undersigned hereby affirms that there is no  
Social Security Number contained in this document

Recording requested by and  
when recorded return to  
250 COMMERCE  
2ND FLOOR  
IRVINE, CA 92602  
ATTN: SERVICELINK

APN SEE EXHIBIT 'A'

Washington  
Mutual

WaMu Mortgage Plus

## DEED OF TRUST

Loan Number 0792726861

THIS DEED OF TRUST is between  
LEO F. KRAMER AND AUDREY E. KRAMER

whose address is

1740 AUTUMN GLEN ST. FERNLEY, NV 89408-7204

("Grantor"), CALIFORNIA RECONVEYANCE COMPANY, a CALIFORNIA

corporation, the address of which is

9200 OAKDALE AVENUE CHATSWORTH, CA 91311

("Trustee"); and

WASHINGTON MUTUAL BANK, A FEDERAL ASSOCIATION, WHICH IS ORGANIZED AND  
EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND WHOSE ADDRESS  
IS 2273 N GREEN VALLEY PARKWAY, SUITE #14, HENDERSON, NV 89014 ("BENEFICIARY")  
AND ITS SUCCESSORS OR ASSIGNS

1 Granting Clause Grantor hereby grants, bargains, sells and conveys to Trustee in  
trust, with power of sale, the real property in LYON County, Nevada,  
described below and all interest in it Grantor ever gets

SHOWN ON EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF BY THIS  
REFERENCE 1740 AUTUMN GLEN ST, FERNLEY, NV 89408 LYON

ACCOMMODATION ONLY THIS INSTRUMENT FILED FOR RECORD  
BY TICOR TITLE COMPANY IS AN ACCOMMODATION  
ONLY IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION  
OR AS TO ITS EFFECTS UPON TITLE

580005539

Tax Parcel Number: SEE EXHIBIT 'A' together with all  
appurtenances, insurance proceeds, and condemnation proceeds related to it; all income, rents

0792726861

and profits from it, all plumbing, lighting, air conditioning and heating apparatus and equipment, and all fencing, blinds, drapes, floor coverings, built-in appliances and other fixtures at any time installed on or in or used in connection with such real property

All of the property described above will be called the "Property". If any of the Property is personal property, this Deed of Trust is also a Security Agreement which grants Beneficiary, as secured party, a security interest in all such property. Despite any other provision of this Deed of Trust, however, Beneficiary is not granted and will not have, a nonpurchase money security interest in household goods, to the extent such security interest would be prohibited by applicable law. As used herein "State" shall refer to the state of Nevada.

**2 Obligation Secured** This Deed of Trust is given to secure performance of each promise of Grantor contained herein and in a WaMu Mortgage Plus(TM) Agreement and Disclosure with Beneficiary with a maximum credit limit of \$176,000.00 (the "Credit Agreement"), including any extensions, renewals or modifications thereof and repayment of all sums borrowed by Grantor under the Credit Agreement, with interest from the date of each advance until paid at the rates provided therein. The Credit Agreement provides for variable and fixed rates of interest. Under the Credit Agreement, the Grantor may borrow, repay and re-borrow from time to time, up to the maximum credit limit stated above and all such advances shall be secured by the lien of this Deed of Trust. This Deed of Trust also secures payment of certain fees and charges payable by Grantor under the Credit Agreement, certain fees and costs of Beneficiary as provided in Section 9 of this Deed of Trust and repayment of money advanced by Beneficiary to protect the Property or Beneficiary's interest in the Property, including advances made pursuant to Section 6 below. The Credit Agreement provides that unless sooner repaid, the Debt is due and payable in full thirty (30) years from the date of this Deed of Trust (the "Maturity Date"). All amounts due under the Credit Agreement and this Deed of Trust are called the "Debt".

**3 Representations of Grantor** Grantor represents that

- (a) Grantor is the owner of the Property, which is unencumbered except by easements, reservations and restrictions of record not inconsistent with the intended use of the Property and any existing first mortgage or deed of trust given in good faith and for value, the existence of which has been disclosed in writing to Beneficiary, and
- (b) The Property is not presently and will not during the term of this Deed of Trust be used for any agricultural purposes.

**4 Promises of Grantor** Grantor promises

- (a) To keep the Property in good repair and not to remove, alter or demolish any of the improvements on the Property, without first obtaining Beneficiary's written consent,
- (b) To allow representatives of Beneficiary to inspect the Property at any reasonable hour and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property,
- (c) To pay on time all lawful taxes and assessments on the Property,
- (d) To perform on time all terms, covenants and conditions of any prior mortgage or deed of trust covering the Property or any part of it and pay all amounts due and owing thereunder in a timely manner,
- (e) To see to it that this Deed of Trust remains a valid lien on the Property superior to all liens except those described in Section 3(a) and to keep the Property free of all encumbrances which may impair Beneficiary's security. It is agreed that if anyone asserts the priority of any



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encumbrance other than those described in Section 3(a) over this Deed of Trust in any pleading filed in any action, the assertion alone shall be deemed to impair the lien of this Deed of Trust for purposes of this Section 4(e).

(f) To keep the improvements on the Property insured by a company satisfactory to Beneficiary against fire and extended coverage perils and against such other risks as Beneficiary may reasonably require, in an amount equal to the full insurable value of the improvements, and to deliver evidence of such insurance coverage to Beneficiary. Beneficiary shall be named as the loss payee on all such policies pursuant to a standard lender's loss payable clause. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in the same manner as payments under the Note or, at Beneficiary's sole option, released to Grantor. In the event of foreclosure or sale of the Property pursuant to the Trustee's power of sale, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the Sheriff's or Trustee's sale,

(g) To sign all financing statements and other documents that Beneficiary may request from time to time to perfect, protect and continue Beneficiary's security interest in the Property. Grantor irrevocably appoints Beneficiary as Grantor's attorney-in-fact to execute, file and record any financing statements or similar documents in Grantor's name and to execute all documents necessary to transfer title if there is a default, and

(h) To advise Beneficiary immediately in writing of any change in Grantor's name, address or employment.

**5 Sale, Transfer or Further Encumbrance of Property.** Loan is personal to Grantor and the entire Debt shall become immediately due and payable in full upon sale or other transfer of the Property or any interest therein by Grantor by contract of sale or otherwise including, without limit, any further encumbrance of the Property.

**6 Curing of Defaults.** If Grantor fails to comply with any of the covenants in Section 4, including all the terms of any prior mortgage or deed of trust, Beneficiary may take any action required to comply with any such covenants without waiving any other right or remedy it may have for Grantor's failure to comply. Repayment to Beneficiary of all the money spent by Beneficiary on behalf of Grantor shall be secured by this Deed of Trust, at Beneficiary's option, advance may be made against the Credit Agreement to pay amounts due hereunder, such shall not relieve Beneficiary from liability for failure to fulfill the covenants in Section 4. The amount spent shall bear interest at the rates from time to time applicable under the Credit Agreement and be repayable by Grantor on demand. Although Beneficiary may take action under this paragraph, Beneficiary is not obligated to do so.

#### **7 Remedies For Default**

(a) Prompt performance under this Deed of Trust is essential. If Grantor does not pay any installment of the Debt or other amount due hereunder on time or any other event occurs that entitles Beneficiary to declare the unpaid balance of the Debt due and payable in full under the Credit Agreement or if Grantor fails to comply with any other term, condition, obligation or covenant contained in the Credit Agreement or this Deed of Trust or any order thereto or any other deed of trust, mortgage, trust indenture or security agreement or other instrument having priority over this Deed of Trust or if any representation of Grantor herein was false or misleading, the Debt and any other money whose repayment is secured by this Deed of Trust shall immediately become due and payable in full, at the options of Beneficiary and the total amount owed by Grantor shall thereafter bear interest at the rate(s) stated in the Credit Agreement. The parties agree that interest is to be compounded as set forth in this paragraph. Beneficiary may

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then or thereafter advise Trustee of the default and of Beneficiary's election to have the Property sold pursuant to Trustee's power of sale in accordance with applicable law and deliver to Trustee any documentation as may be required by law. After Trustee or Beneficiary gives any notices and the time required by applicable law, Trustee shall sell the Property, either in whole or in separate parcels or other part and in such order as Trustee may choose, at public auction to the highest bidder for cash in lawful money of the United States which will be payable at the time of sale all in accordance with applicable law. Anything in the preceding sentence to the contrary notwithstanding, Beneficiary may apply the Debt towards any bid at any such sale. Trustee may postpone any such sale by providing such notice as may be required by law. Unless prohibited by law, any person, including the Grantor, Beneficiary or Trustee, may purchase at any such sale. Trustee shall apply the proceeds of the sale as follows: (i) to the expenses of the sale, including a reasonable trustee's fee and lawyer's fee, (ii) to the obligations secured by this Deed of Trust, and (iii) the surplus, if any, shall go to the person(s) legally entitled thereto or, at Trustee's discretion, to the government or other official authorized by state law to accept such amounts,

(b) Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of execution of this Deed of Trust and any interest which Grantor subsequently acquired. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust. This recital shall be prima facie evidence of such compliance and conclusive evidence of such compliance in favor of bona fide purchasers and encumbrancers for value.

(c) To the extent permitted by law the power of sale conferred by this Deed of Trust is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be judicially foreclosed or sue on the Credit Agreement or take any other action available in equity or at law. In connection with any portion of the Property which is personal property, Beneficiary shall further be entitled to exercise the rights of a secured party under the Uniform Commercial Code as then in effect in the state of Nevada,

(d) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay, and

(e) If Grantor meets certain conditions, Grantor shall have the right to reinstate the Debt in accordance with applicable law within thirty-five (35) days after a notice of default and election to sell is recorded in the office of the county recorder in the county in which the Property is located and mailed by registered or certified mail, return receipt requested and with postage prepaid to Grantor, which thirty-five (35) day period commences on the first day following the day the recorded notice of default and election to sell is mailed.

**8 Condemnation; Eminent Domain** In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured by this Deed of Trust, shall be paid to Beneficiary to be applied to the obligation in the same manner as payments under the Credit Agreement.

**9 Fees and Costs** Grantor shall pay Beneficiary's and Trustee's reasonable cost of searching records, other reasonable expenses as allowed by law and reasonable attorney's fees, in any lawsuit or other proceeding to foreclose this Deed of Trust, in any lawsuit or proceeding which Beneficiary or Trustee prosecutes or defends to protect the lien of this Deed of Trust, in defending of an action to enjoin foreclosure and, in any other action taken by Beneficiary to

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collect the Debt, including without limitation any disposition of the Property under the State Uniform Commercial Code; and, any action taken in bankruptcy proceedings as well as any appellate proceedings

**10 Reconveyance** Trustee shall reconvey the Property to the person entitled thereto, on written request of Beneficiary or following satisfaction of the obligations secured hereby and Beneficiary and Trustee shall be entitled to charge Grantor a reconveyance fee together with fees for the recordation of the reconveyance documents unless prohibited by law

**11 Trustee; Successor Trustee** Beneficiary may, unless prohibited by law, appoint a successor Trustee from time to time in the manner provided by law. The successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee

**12. Savings Clause** If a law, which applies to this Deed of Trust or the Credit Agreement and which sets maximum loan charges, is finally interpreted by a court having jurisdiction so that the interest or other loan charges collected or to be collected in connection with this Deed of Trust or the Credit Agreement exceed the permitted limits, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Grantor which exceeded permitted limits will be refunded to Grantor. Beneficiary may choose to make this refund by reducing the principal owed or by making a direct payment. If a refund reduces the principal, the reduction will be treated as a partial prepayment.

**13 Miscellaneous** This Deed of Trust shall benefit and obligate the heirs, devisees, legatees, administrators, executors, successors and assigns of the parties hereto. The term "Beneficiary" shall mean the holder and owner of the Credit Agreement secured by this Deed of Trust, whether or not that person is named as Beneficiary herein. The words used in this Deed of Trust referring to one (1) person shall be read to refer to more than one (1) person if two (2) or more have signed this Deed of Trust or become responsible for doing the things this Deed of Trust requires. This Deed of Trust shall be governed by and construed in accordance with Federal law and, to the extent Federal law does not apply, the laws of the state of Nevada. If any provision of this Deed of Trust is determined to be invalid under law, the remaining provisions of this Deed of Trust shall nonetheless remain in full force and effect.

**14 Beneficiary and Similar Statements** Beneficiary may collect a fee not to exceed the maximum amount permitted by law for furnishing the statement as provided by Nev. Rev. Stat. Ch. 107 310.

**15 Riders** If one or more riders are executed by Grantor and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es))

☒ Condominium Rider☐ Other. \_\_\_\_\_  
(specify)☐ Planned Unit Development Rider



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By signing below, Grantor accepts and agrees to the provisions of this Deed of Trust, and of any rider(s) executed by Grantor concurrently therewith

*San Francisco*  
DATED at April, 4<sup>th</sup> this 4<sup>th</sup> day of April

*Leo F. Kramer*  
LEO F KRAMER

*Audrey E. Kramer*  
AUDREY E KRAMER

Mail tax statements to  
LEO F KRAMER  
1740 AUTUMN GLEN ST  
FERNLEY, NV 89408-7204

*Leo F. Kramer*  
Signature



425436

05/01/21  
007 of 1

STATE OF California

COUNTY OF San Francisco

On 4/4 2008 before me, Mark R Mooney  
(Name of Notary Public)

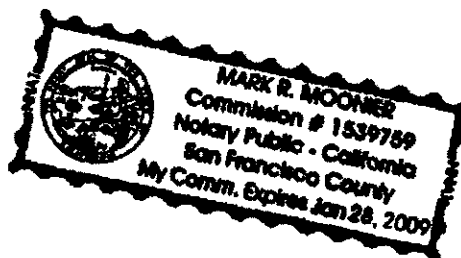
personally appeared Audrey E Kramer & Leo E Kramer

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

WITNESS my hand and official seal.

Mark R Mooney  
(Signature of Notary Public)

(This area for notarial seal)





425436

05/01/2  
008 of 1

0792726861

STATE OF NEVADA

COUNTY OF

California

San Francisco

ss

This instrument was acknowledged before me on  
LEO F KRAMER  
AUDREY E KRAMER

4/4/08

by  
and  
and  
and  
and  
and

My commission expires

1/28/09

WITNESS my hand and official seal

Notary Public in and for the State of Nevada



**REQUEST FOR FULL RECONVEYANCE**

Do not record. To be used only when Grantor's  
Indebtedness has been repaid and Credit Agreement cancelled

TO TRUSTEE

The undersigned is Trustee of the within Deed of Trust, and the legal owner and holder of the  
WaMu Mortgage Plus(TM) Agreement secured thereby Said Deed of Trust is hereby  
surrendered to you for reconveyance and you are requested, upon payment of all sums owing to  
you, to reconvey, without warranty, to the person(s) entitled thereto, the right, title and interest  
now held by you thereunder

DATE

WASHINGTON MUTUAL BANK

By

Its



425436

05/01/20  
009 of 10

STATE OF California

COUNTY OF San Francisco

On 4/4/2008 before me, Mark R Moonier  
(Name of Notary Public)

personally appeared Audrey E Kraver & Leo F. Kraver

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

WITNESS my hand and official seal.

[Signature]  
(Signature of Notary Public)

(This area for notarial seal)



**EXHIBIT "A"**

LT 62, SD UPLAND RANCH ESTATES UNIT NO 7, ACCORDING TO MAP THEREOF, FILED AS  
DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE OF NEVADA

APN 022-052-02

Unofficial Copy





# EXHIBIT D

**Chapter 7 Bankruptcy, 'Certified'**  
**Schedule of Creditors & Discharge**

# EXHIBIT D

UNITED STATES BANKRUPTCY COURT  
Northern District of California (Oakland)

In re:

Leo Frederick Kramer  
1229 Ballena Blvd  
Alameda, CA 94501

Case Number: 10-43951 EDJ 7  
Chapter: 7

Debtor(s)

Debtor/Joint Debtor Social Security Number(s):  
xxx-xx-0908

DISCHARGE OF DEBTOR AND FINAL DECREE

It appearing that the debtor(s) is/are entitled to a discharge, **IT IS ORDERED:**  
The debtor(s) is/are granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

It further appears that the trustee, Lois I. Brady in the above-entitled case has filed a report of no distribution and said Trustee has performed all other and further duties required in the administration of said estate; accordingly, it is hereby

ORDERED that the chapter 7 case of the above-named debtor is closed; that the Trustee is discharged and relieved of said trust.

Dated: 6/16/11

By the Court:

Edward D. Jellen  
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Doc # 77

United States Bankruptcy Court  
Northern District of California

I certify that this is a true and full copy of the original document now existing among the records of this Court. Edward Emmons, Clerk of Court

Dated 4/24/18

By [Signature] Deputy Clerk

## **EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE**

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

### **Collection of Discharged Debts Prohibited**

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:]* A creditor who violates this order can be required to pay damages and attorney's fees to the debtor. [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the discharged debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

### **Debts That are Discharged**

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

### **Debts that are Not Discharged.**

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes (applies to cases filed on or after 10/17/2005);
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans (applies to cases filed on or after 10/17/2005).

**This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.**

## Notice Recipients

District/Off: 0971-4  
Case: 10-43951

User: accounts  
Form ID: ODSC7fi

Date Created: 6/16/2011  
Total: 39

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:  
cr Suntrust Mortgage, Inc.

TOTAL: 1

### Recipients of Notice of Electronic Filing:

ust	Office of the U.S. Trustee/Oak	USTPRegion17.OA.ECF@usdoj.gov
aty	Alan S. Wolf	wdk@wolffirm.com
aty	Darlene C. Vigil	ndcaecf@BDFGroup.com
aty	Dominique Sopko	ecf@sagarialaw.com
aty	Matthew R. Kretzer	matt.r.kretzer@usdoj.gov
aty	Richard J. Bauer, Jr.	rbauer@mileslegal.com
aty	Scott J. Sagaria	ECFGotNotices@Gmail.com

TOTAL: 7

### Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Leo Frederick Kramer	1229 Ballena Blvd	Alameda, CA 94501	
cr	Wells Fargo Bank, N.A.	c/o BDFTW	20955 Pathfinder Rd., Ste. 300	Diamond Bar, CA 91765
cr	BAC Home Loans Servicing, LP...		Miles, Bauer, Bergstrom & Winters, LLP	1231 E. Dyer Road, Suite
	100	Santa Ana, CA 92705		
tr	Lois I. Brady	P.O. Box 12425	Oakland, CA 94604	
smg	Labor Commissioner	1515 Clay St.	Room 801	Oakland, CA 94612
smg	State Board of Equalization	Collection Dept.	P.O. Box 942879	Sacramento, CA 94279
smg	CA Employment Development Dept.	Bankruptcy Group MIC 92E	P.O. Box 826880	Sacramento,
	CA 94280-0001			
smg	CA Franchise Tax Board	Special Procedures Bankruptcy Unit	P.O. Box 2952	Sacramento, CA
	95812-2952			
10830683	Angius & Terry Collections, LLC.	1451 River Park Drive, Suite 125	Sacramento, CA 95815	
11430730	BAC Home Loans Servicing, LP...	Miles, Bauer, Bergstrom & Winters, LLP	1231 E. Dyer Road, Suite	
	100	Santa Ana, CA 92705		
10830684	Ballena Bay Townhouse Association	c/o Angius & Terry Collections, LLC.	1451 River Park drive #	
	125	Sacramento, CA 95815		
11791331	Ballena Bay Townhouse Association	c/o Massingham & Associates	2247 National Avenue	Hayward,
	CA 94545			
10918917	Ballena Bay Townhouse Association No. 1	c/o Angius & Terry Collections, LLC.	1451 River Park Drive #	
	125	Sacramento, CA 95815		
10830685	Bank Of America	Attn: Bankruptcy NC4-105-02-77	Po Box 26012	Greensboro, NC 27410
10830686	Bank Of The West	Attn: Bankruptcy	Po Box 1566	Manitowoc, WI 54221
10830687	Bank One/Chase	8333 Ridgpoint Dr	Irving, TX 75063	
10867223	Bank of America, N.A.	PO Box 26012	NC4-105-03-14	Greensboro, NC 27420
10843531	Bellena Bay Townhouse Association	c/o Angius & Terry Collections, LLC.	1451 River Park Drive #	
	125	Sacramento, CA 95815		
11791332	Chase	POB 94014	Palatine, IL 60094	
10830688	Chase	Po Box 15298	Wilmington, DE 19850	
10932255	Chase Bank USA, N.A.	PO Box 15145	Wilmington, DE 19850-5145	
10830689	Countrywide Home Lending	Attention: Bankruptcy CA6-919-01-41	Po Box 5170	Simi Valley,
	CA 93062			
11926925	Donald White Tax -- Collector	1221 Oak St.	Oakland, CA 94612	
10830690	Expo/cbsd	Po Box 6497	Sioux Falls, SD 57117	
10851586	Internal Revenue Service	Insolvency Group 2	P.O. Box 21126	Stop N781 Philadelphia, PA
	19114			
10830691	Massingham & Associates	2247 National Avenue	Hayward, CA 94545	
10904064	SUNTRUST MORTGAGE, INC.	1001 Semmes Avenue	Richmond, VA 23224	
10830692	Suntrust Mortgage/cc 5	Attention: Bankruptcy	Po Box 85092	Richmond, VA 23286
10923069	Wachovia Mortgage	Attn: BK Dept	PO Box 659558	San Antonio, TX 78265-9558
10830693	Washington Mutual Mortgage/ Chase	Attention: Bankruptcy Dept. JAXA 2035	7255 Bay Meadows	
	Way	Jacksonville, FL 32256		
10830694	World Savings & Loan	Attn: Bankruptcy	4101 Wiseman Blvd	San Antonio, TX 78251

TOTAL: 31

# United States Bankruptcy Court

## Northern District of California

# Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):  
**Kramer, Leo Frederick**

Name of Joint Debtor (Spouse) (Last, First, Middle):

All Other Names used by the Debtor in the last 8 years  
(include married, maiden, and trade names):

All Other Names used by the Joint Debtor in the last 8 years  
(include married, maiden, and trade names):

Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN  
(if more than one, state all)  
**xxx-xx-0908**

Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN  
(if more than one, state all)

Street Address of Debtor (No. and Street, City, and State):  
**1229 Ballena Blvd  
Alameda, CA**

Street Address of Joint Debtor (No. and Street, City, and State):

ZIP Code

**94501**

ZIP Code

County of Residence or of the Principal Place of Business:  
**Alameda**

County of Residence or of the Principal Place of Business:

Mailing Address of Debtor (if different from street address):

ZIP Code

Mailing Address of Joint Debtor (if different from street address):

ZIP Code

Location of Principal Assets of Business Debtor  
(if different from street address above):

### Type of Debtor (Form of Organization) (Check one box)

- ☒ Individual (includes Joint Debtors)  
*See Exhibit D on page 2 of this form.*
- ☐ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (if debtor is not one of the above entities, check this box and state type of entity below.)

### Nature of Business (Check one box)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☐ Other

### Tax-Exempt Entity (Check box, if applicable)

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

### Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 9
- ☒ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

### Nature of Debts (Check one box)

- ☒ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☐ Debts are primarily business debts.

### Filing Fee (Check one box)

- ☒ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

### Check one box:

- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☒ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

### Check if:

- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter).

### Check all applicable boxes:

- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

### Statistical/Administrative Information

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☒ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

### Estimated Number of Creditors

☒ 1-49 ☐ 50-99 ☐ 100-199 ☐ 200-999 ☐ 1,000-5,000 ☐ 5,001-10,000 ☐ 10,001-25,000 ☐ 25,001-50,000 ☐ 50,001-100,000 ☐ OVER 100,000

### Estimated Assets

☒ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion

### Estimated Liabilities

☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☒ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion

THIS SPACE IS FOR COURT USE ONLY

United States Bankruptcy Court  
Northern District of California

I certify that this is a true and full copy of the original document now existing among the records of this Court. Edward Emmons, Clerk of Court

Dated 4/24/18

By [Signature] Deputy Clerk

**Voluntary Petition**

(This page must be completed and filed in every case)

Name of Debtor(s):  
**Kramer, Leo Frederick****All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)**

Location Where Filed: <b>- None -</b>	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:

**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)**

Name of Debtor: <b>- None -</b>	Case Number:	Date Filed:
District:	Relationship:	Judge:

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).

**X** /s/ **Scott J. Sagaria**  
Signature of Attorney for Debtor(s)  
**Scott J. Sagaria 217981****April 7, 2010**  
(Date)**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.  
☒ No.**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☒ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.**Information Regarding the Debtor - Venue**

(Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
- ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**

(Check all applicable boxes)

- ☐
- Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(Name of landlord that obtained judgment)

(Address of landlord)

- ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and
- ☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.
- ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

**Voluntary Petition***(This page must be completed and filed in every case)*Name of Debtor(s):  
**Kramer, Leo Frederick****Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X** /s/ Leo Frederick KramerSignature of Debtor **Leo Frederick Kramer****X**

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

April 7, 2010

Date

**Signature of Attorney\*****X** /s/ Scott J. Sagaria

Signature of Attorney for Debtor(s)

Scott J. Sagaria 217981

Printed Name of Attorney for Debtor(s)

Sagaria Law, P.C.

Firm Name

333 West San Carlos StreetSuite 1700San Jose, CA 95110

Address

Email: SagariaBK@SagariaLaw.com408-279-2288 Fax: 408-279-2299

Telephone Number

April 7, 2010

Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X**

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.**X**

Signature of Foreign Representative

Printed Name of Foreign Representative

Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

**X**

Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.*

**United States Bankruptcy Court**  
**Northern District of California**

In re Leo Frederick Kramer

Debtor(s)

Case No.  
Chapter11

**EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH  
CREDIT COUNSELING REQUIREMENT**

**Warning:** You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

*Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.*

☒ 1. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☐ 2. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

☐ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Summarize exigent circumstances here.]* \_\_\_\_\_

**If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.**

☐ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*



☐ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

☐ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

☐ Active military duty in a military combat zone.

☐ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

**I certify under penalty of perjury that the information provided above is true and correct.**

Signature of Debtor: /s/ Leo Frederick Kramer  
Leo Frederick Kramer

Date: April 7, 2010

**United States Bankruptcy Court**  
**Northern District of California**

In re Leo Frederick Kramer

Debtor(s)

Case No.

Chapter

11

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
Bank Of America Attn: Bankruptcy NC4-105-02-77 Po Box 26012 Greensboro, NC 27410	Bank Of America Attn: Bankruptcy NC4-105-02-77 Po Box 26012 Greensboro, NC 27410	CreditLineSecured		310,790.00  (Unknown secured)
Bank Of The West Attn: Bankruptcy Po Box 1566 Manitowoc, WI 54221	Bank Of The West Attn: Bankruptcy Po Box 1566 Manitowoc, WI 54221	Recreational		131,299.00  (Unknown secured)
Bank One/Chase 8333 Ridgpoint Dr Irving, TX 75063	Bank One/Chase 8333 Ridgpoint Dr Irving, TX 75063	CreditLineSecured		175,274.00  (Unknown secured)
Chase Po Box 15298 Wilmington, DE 19850	Chase Po Box 15298 Wilmington, DE 19850	CreditCard		1,693.00  (Unknown secured)
Countrywide Home Lending Attention: Bankruptcy CA6-919-01-41 Po Box 5170 Simi Valley, CA 93062	Countrywide Home Lending Attention: Bankruptcy CA6-919-01-41 Po Box 5170 Simi Valley, CA 93062	ConventionalRealEstateMortgage		60,870.00  (Unknown secured)
Expo/cbsd Po Box 6497 Sioux Falls, SD 57117	Expo/cbsd Po Box 6497 Sioux Falls, SD 57117	ChargeAccount		65,983.00
Suntrust Mortgage/cc 5 Attention: Bankruptcy Po Box 85092 Richmond, VA 23286	Suntrust Mortgage/cc 5 Attention: Bankruptcy Po Box 85092 Richmond, VA 23286	ConventionalRealEstateMortgage		710,000.00  (Unknown secured)
Washington Mutual Mortgage/ Chase Attention: Bankruptcy Dept. JAXA 2035 7255 Bay Meadows Way Jacksonville, FL 32256	Washington Mutual Mortgage/ Chase Attention: Bankruptcy Dept. JAXA 2035 7255 Bay Meadows Way Jacksonville, FL 32256	CreditLineSecured		174,398.00  (Unknown secured)

Debtor(s)

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**  
(Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
<b>World Savings &amp; Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251</b>	<b>World Savings &amp; Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251</b>	<b>Conventional Real Estate Mortgage</b>		<b>1,182,077.00  (Unknown secured)</b>

**DECLARATION UNDER PENALTY OF PERJURY  
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, **Leo Frederick Kramer**, the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date **April 7, 2010**

Signature **/s/ Leo Frederick Kramer**  
**Leo Frederick Kramer**  
Debtor

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.*

United States Bankruptcy Court  
Northern District of California

In re Leo Frederick Kramer

Debtor(s)

Case No.

Chapter 11

CREDITOR MATRIX COVER SHEET

I declare that the attached Creditor Mailing Matrix, consisting of 2 sheets, contains the correct, complete and current names and addresses of all priority, secured and unsecured creditors listed in debtor's filing and that this matrix conforms with the Clerk's promulgated requirements.

Date: April 7, 2010

/s/ Scott J. Sagaria

Signature of Attorney

Scott J. Sagaria 217981

Sagaria Law, P.C.

333 West San Carlos Street

Suite 1700

San Jose, CA 95110

408-279-2288 Fax: 408-279-2299

Kramer, Leo -

Angius & Terry Collections, LLC.  
1451 River Park Drive, Suite 125  
Sacramento, CA 95815

Ballena Bay Townhouse Association  
c/o Massingham & Associates  
2247 National Avenue  
Hayward, CA 94545

Bank Of America  
Attn: Bankruptcy NC4-105-02-77  
Po Box 26012  
Greensboro, NC 27410

Bank Of The West  
Attn: Bankruptcy  
Po Box 1566  
Manitowoc, WI 54221

Bank One/Chase  
8333 Ridgpoint Dr  
Irving, TX 75063

Chase  
Po Box 15298  
Wilmington, DE 19850

Countrywide Home Lending  
Attention: Bankruptcy CA6-919-01-41  
Po Box 5170  
Simi Valley, CA 93062

Expo/cbsd  
Po Box 6497  
Sioux Falls, SD 57117

Kramer, Leo -

Massingham & Associates  
2247 National Avenue  
Hayward, CA 94545

Suntrust Mortgage/cc 5  
Attention: Bankruptcy  
Po Box 85092  
Richmond, VA 23286

Washington Mutual Mortgage/ Chase  
Attention: Bankruptcy Dept. JAXA 2035  
7255 Bay Meadows Way  
Jacksonville, FL 32256

World Savings & Loan  
Attn: Bankruptcy  
4101 Wiseman Blvd  
San Antonio, TX 78251

# EXHIBIT E

**Substitution of Trustee & Full Reconveyance**

# EXHIBIT E

Official Record

Requested By  
GMAC MORTGAGE

Lyon County - NV

Mary C. Mailigan - Recorder

Page 1 of 3 Fee \$19.00  
Recorded By CDL RPTT

Assessor's/Tax ID No 022-052-02

Recording Requested By  
GMAC MORTGAGE, LLCWhen Recorded Return To  
LEO F KRAMER  
1229 BALLENA BLVD  
ALAMEDA, CA 94501-3668**SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE**Greenwich # 0359184644 "KRAMER" Lender ID 41455/0000389247 Lyon, Nevada PIF  
04/29/2008

MERS #: 100270600003892476 VRU #: 1-888-679-6377

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT SUBMITTED  
FOR RECORDING DOES NOT CONTAIN A SOCIAL SECURITY NUMBER

Mortgage Electronic Registration Systems, Inc ("MERS") is the Owner and Holder of the Note secured by the Deed of Trust Dated 06/02/2005, made by LEO F KRAMER AND AUDREY E KRAMER as Trustor, with FOUNDATION CONVEYANCING, LLC as Trustee, for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC ("MERS") as Beneficiary, which said Deed of Trust was recorded 06/08/2005 in the Office of the County Recorder of Lyon State of Nevada, as Instrument No 353220 wherein said Owner and Holder hereby substitutes EXECUTIVE TRUSTEE SERVICES, LLC as Trustee in lieu of the above-named Trustee under said Deed of Trust

Property Address 1740 AUTUMN GLEN ST, FERNLEY, NV 89408

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc ("MERS") 1595 SPRING HILL ROAD, VIENNA, VA 22182 as owner and EXECUTIVE TRUSTEE SERVICES, LLC 15455 SAN FERNANDO MISSION BLVD, SUITE 208, MISSION HILLS, CA 91345 as Substituted Trustee, have caused this instrument to be executed, each in its respective interest,

\*MMS\*MMSGMAC\*05/13/2008 05:13:44 PM\* GMAC17GMAC00000000000000002310605\*  
NVLYON\* 0359184644 NVSTATE\_TRUST\_SUB \* MMS\*MMSGMAC\*





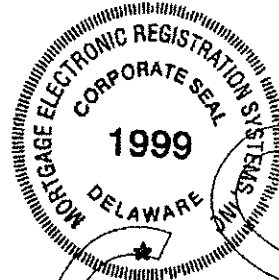
426240

05/19/2008  
002 of 3

## SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE Page 2 of 3

Mortgage Electronic Registration Systems, Inc ("MERS")  
On May 13th, 2008

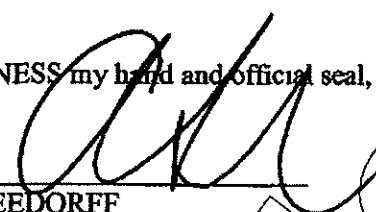
By   
Vickie Ingamells, Assistant Secretary

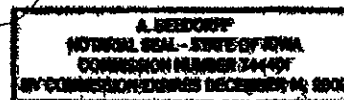


STATE OF Iowa  
COUNTY OF Black Hawk

On May 13th, 2008, before me, A. SEEDORFF, a Notary Public in and for Black Hawk in the State of Iowa, personally appeared Vickie Ingamells, Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal,

  
A SEEDORFF  
Notary Expires 12/14/2009 #744401



EXECUTIVE TRUSTEE SERVICES, LLC hereby accepts said appointment as Trustee under said Deed of Trust and as Successor Trustee pursuant to the request of said Owner and Holder and in accordance with the provisions of said Deed of Trust does hereby reconvey without warranty to the person or persons legally entitled thereto all estate now held by it under said Deed of Trust

By EXECUTIVE TRUSTEE SERVICES, LLC as Trustee  
On May 13th, 2008

  
Christie Bouchard, LIMITED SIGNING OFFICER

\*MMS\*MMSGMAC\*05/13/2008 05 13 44 PM\* GMAC17GMAC00000000000000002310605\*  
NVLYON\* 0359184644 NVSTATE\_TRUST\_SUB \* MMS\*MMSGMAC\*



426240

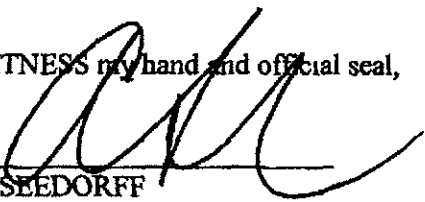
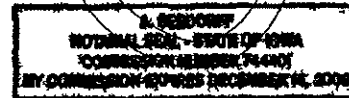
05/19/2001  
003 of 3

## SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE Page 3 of 3

STATE OF Iowa  
COUNTY OF Black Hawk

On May 13th, 2008, before me, A SEEDORFF, a Notary Public in and for Black Hawk in the State of Iowa, personally appeared Christie Bouchard, LIMITED SIGNING OFFICER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal,

  
A SEEDORFF  
Notary Expires 12/14/2009 #744401

\*MMS\*MMSGMAC\*05/13/2008 05 13 45 PM\* GMAC17GMAC00000000000000002310605\*  
NVLYON\* 0359184644 NVSTATE\_TRUST\_SUB \* MMS\*MMSGMAC\*

127



# EXHIBIT F

**Substitution of Trustee from JPMorgan Chase Bank**

EXHIBIT F

**Official Record**  
Requested By  
LSI TITLE AGENCY INC.  
Lyon County - NV  
Mary C. Milligan - Recorder  
Page: 1 of 1 Fee: \$14.00  
Recorded By MCM RPTV: \$0.00



0515723

**RECORDING REQUESTED BY:**  
National Default Servicing Corporation

**WHEN RECORDED MAIL TO:**  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC File No. : 12-31926-JP-NV  
APN No. : 022-052-02

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### SUBSTITUTION OF TRUSTEE

WHEREAS, Leo F. Kramer And Audrey E Kramer was the original Trustor(s), CALIFORNIA RECONVEYANCE COMPANY, A CALIFORNIA CORPORATION was the original Trustee and WASHINGTON MUTUAL BANK, A FEDERAL ASSOCIATION was the original Beneficiary under that certain Deed of Trust dated 04/04/2008 and recorded on 05/01/2008 as Instrument No. 425436 of the Official Records of Lyon County, State of NV and

WHEREAS, the undersigned is the present beneficiary under the said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes NATIONAL DEFAULT SERVICING CORPORATION, An Arizona Corporation, whose address is 7720 N. 16<sup>th</sup> Street, Suite 300, Phoenix, Arizona 85020, as Trustee under said Deed of Trust. Said Substitute Trustee is qualified to serve as Trustee under the laws of this state.

Whenever the context hereof requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

JPMorgan Chase Bank, National Association

Dated : 11-26-13

*Caryn Barron*  
By: CARYN BARRON  
Its : Vice President

STATE OF Texas  
COUNTY OF Dallas

On November 26, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Caryn Barron who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

*Lynda Denise Marshall*  
Lynda Denise Marshall  
Exp: 4-20-15



LYNDA DENISE MARSHALL  
My Commission Expires  
June 20, 2015



# EXHIBIT G

**Notice of Default (NOD) from  
National Default Servicing Corporation**

# EXHIBIT G

**Official Record**

Requested By  
SERVICELINK TITLE AGENCY INC.

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 7 Fee: \$288.00  
Recorded By MFK RPTT: \$0.00



0571145

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC File No. : 12-31926-JP-NV  
Title Order No. : 120135457-NV-GTO

APN: 022-052-02

**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 (5) business days prior to the date set for the sale of your property pursuant to NRS 107.080. 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).

**NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION** is either the original Trustee or the duly appointed substituted Trustee under a Deed of Trust dated 04/04/2008, executed by Leo E. Kramer and Audrey E Kramer, as Trustor, to secure certain obligations in favor of Washington Mutual Bank, a Federal Association as beneficiary recorded 05/01/2008 as Instrument No. 425436 (or Book, Page) of the Official Records of Lyon County, NV. Said obligations including **ONE NOTE FOR THE ORIGINAL** sum of \$176,000.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

The installments of principal and interest which became due on 11/09/2010 and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee fee's, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off (and will increase until your account becomes current) as summarized in the accompanying Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.



**Notice of Default and Election to Sell Under Deed of Trust**  
**NDSC File No.: 12-31926-JP-NV**  
**Page 2**

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 by 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 the 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:

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, SUCCESSOR IN INTEREST BY  
PURCHASE FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER  
OF WASHINGTON MUTUAL BANK  
c/o National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: [www.ndscorp.com/sales/](http://www.ndscorp.com/sales/)**

Contact the following number to discuss Loan Modification Options: 866-550-5705

Attached hereto and incorporated herein by reference is the Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their Approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to the HUD web site at:  
<http://portal.hud.gov/portal/page/portal/HUD/localoffices>.

The Property Address: 1740 Autumn Glen St , Fernley NV 89408-7204

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.**



571145

10/06/2017  
3 of 7

Notice of Default and Election to Sell Under Deed of Trust  
NDSC File No.: 12-31926-JP-NV  
Page 3

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to 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 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: 10-5, 2017

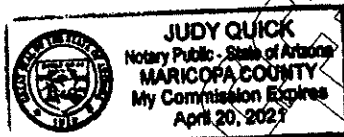
National Default Servicing Corporation, an Arizona Corporation, As Trustee for JPMorgan Chase Bank, National Association

By: Ivan Mora, Trustee Sales Supervisor

State of: Arizona  
County of: Maricopa

On 10-5, 2017, before me, the undersigned, a Notary Public for said State, personally appeared Ivan Mora, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature

This is an attempt to collect a debt and any information obtained will be used for that purpose.

63





TS No: 12-31926-JP-NV  
APN: 022-052-02

**AFFIDAVIT OF AUTHORITY IN SUPPORT OF NOTICE OF DEFAULT AND  
ELECTION TO SELL  
[NRS § 107.080]**

Borrowers Identified in Deed of Trust:  
Leo F. Kramer And Audrey E Kramer

Trustee Address:  
7720 N. 16th Street, Suite 300  
Phoenix AZ 85020

Property Address:  
1740 Autumn Glen St  
Fernley NV 89408-7204

Deed of Trust Document Instrument  
Number:  
425436

I, Von Mai, being first duly sworn, under penalty of perjury  
state as follows:

1. I am a Vice President of JPMorgan Chase Bank, National Association ("Chase"), the current beneficiary of the deed of trust or the authorized representative of the current beneficiary. I am over the age of 18 and competent to testify as to the matters stated herein.
2. I have access to Chase's electronic mortgage servicing system, documents and other records (together the "business records"), maintained in the ordinary course of the regularly conducted business activity of servicing mortgage loans. I have received training on how those business records are kept and maintained, and I make this Affidavit based on the personal knowledge I acquired by a review of the business records of Chase for the debt obligation for this Deed of Trust (identified in the caption above).



TS No: 12-31926-JP-NV  
APN: 022-052-02

3. The following subparagraphs list contact information that I understand is required to be provided in this Affidavit:
- a. The full name and business address of the trustee for the Deed of Trust (identified in the caption above) is National Default Servicing Corporation, located at 7720 N. 16th Street, Suite 300, Phoenix, AZ 85020.
  - b. The full name and address of the servicer of the loan obligation for the Deed of Trust (identified in the caption above) is JPMorgan Chase Bank, National Association, located at 3415 Vision Drive Columbus, OH 43219.
  - c. The full name and address of the current beneficiary of record (and holder of the note) for the Deed of Trust (identified in the caption above) is JPMorgan Chase Bank, National Association, successor in interest by purchase from the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank, located at 3415 Vision Drive, Columbus OH 43219.
4. The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust.
5. I confirm that the servicer of the obligation or debt secured by the deed of trust has instructed the trustee to exercise the power of sale with respect to the property when permissible under Nevada law.
6. The beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written statement of:



TS No: 12-31926-JP-NV  
APN: 022-052-02

- a. The amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;
  - b. The amount in default;
  - c. The principal amount of the obligation or debt secured by the deed of trust;
  - d. The amount of accrued interest and late charges;
  - e. A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and
  - f. Contact information for obtaining the most current amounts due, including the local or toll-free number.
7. The Contact information provided for obtaining the most current amounts due in the written statement above, 1-888-290-4323 may also be contacted by the obligor or borrower of the obligation or debt for a recitation of the information contained in this affidavit.
8. I make the statements in this paragraph based on my personal knowledge acquired by a review of the business records of Chase, information contained in the records of the recorder of the county in which the property is located; or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS.
- a. The date, recordation number (or other unique designation of), the name of each assignee under each recorded assignment of the deed of trust is as follows:



571145

10/06/2017  
7 of 7TS No: 12-31926-JP-NV  
APN: 022-052-02Date      Recording No.      Assignee Name

(NONE)

Dated this 24<sup>th</sup> day of June, 20 14By: *Von Mai*  
SignatureName: Von Mai Vice President  
Printed  
JP Morgan Chase Bank, N.A.Subscribed and sworn to before me in said county this 24<sup>th</sup> day of June, 2014, by  
Von MaiCarol Anne Welch Notary Public  
Carol Anne Welch  
State of Texas  
County of Dallas  
My Commission expires: 3/3/2018Personally Known ✓ OR  
Produced Identification \_\_\_\_\_Type of Identification Produced:  
\_\_\_\_\_



# EXHIBIT H

**Email from Chaffin Real Estate  
(Property Management Company)**

# EXHIBIT H

**From:** Debi Taylor <[debi@chaffinrealestate.com](mailto:debi@chaffinrealestate.com)>  
**Date:** October 16, 2017 at 2:51:58 PM PDT  
**To:** Audrey Kramer <[audreykramer55@yahoo.com](mailto:audreykramer55@yahoo.com)>  
**Subject:** Re: 1740 Autumn Glen

I will let the tenants know

On Mon, Oct 16, 2017 at 2:30 PM, Audrey Kramer  
<[audreykramer55@yahoo.com](mailto:audreykramer55@yahoo.com)> wrote:

Debbie,

Also, forgot to mention we just receive notice from Fernley water company that the bill has not been paid and there is a shut off notice.

Regards,  
Audrey

Sent from my iPad

On Oct 16, 2017, at 12:50 PM, Debi Taylor <[debi@chaffinrealestate.com](mailto:debi@chaffinrealestate.com)>  
wrote:

Hello,

The tenants received a notice of default on the home. I have attached the paperwork they received. If the home is going to be foreclosed, we must let the tenants out of their lease.

*Thank you, We appreciate your business!*

*Debi Taylor  
Assistant to Lee Anne Chaffin  
Chaffin Real Estate Services  
775 575 5000*

*<http://www.chaffinrealestate.com>  
visit my facebook page*



*<1740 Autumn Glen NOD.pdf>  
<1740 Autumn Glen NOD2.pdf>*

*Thank you, We appreciate your business!*

*Debi Taylor  
Assistant to Lee Anne Chaffin  
Chaffin Real Estate Services  
775 575 5000*

*<http://www.chaffinrealestate.com>  
visit my facebook page*



# EXHIBIT I

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM

RECORDED DATE: March 23, 2018

# EXHIBIT I



**Doc #: 578119**

03/22/2018 03:13 PM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: SERVICELINK TITLE AGENCY INC

**Lyon County, NV**

**Dawna L. Warr, Recorder**

Fee: \$38.00 RPTT: \$0.00

Recorded By: lharrington

When recorded, return to;  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ. 85020

---

12-31926-JP-NV  
022-052-02

**STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM  
CERTIFICATE**

Do Not Remove Cover Sheet

Part of the Original Document

Unofficial Copy



**HOME MEANS NEVADA, INC.**  
*A Non-Profit Entity Established by the  
 State of Nevada, Department of Business and Industry*

**Board of Director**

*President - Shannon Chamber  
 VP- Perry Falgi  
 Member at-large - Robin Swe  
 Member at-large - Verise Campbe  
 Member at-large - Jennifer Yli*

## STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM CERTIFICATE

APN: 022-052-02

**Recording requested by:**

National Default Servicing Corporation

7720 North 16th Street, Suite 300

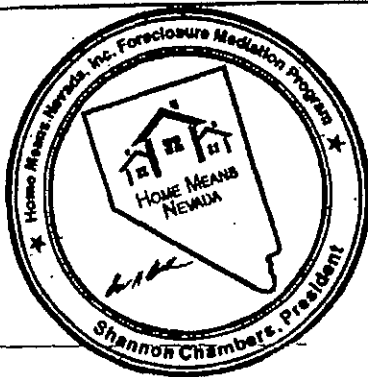
Phoenix AZ 85020

**When recorded, mail to:**

National Default Servicing Corporation

7720 North 16th Street, Suite 300

Phoenix AZ 85020



☐ **Mediation Waiver:** The Beneficiary may proceed with foreclosure process.

☐ **No Agreement:** A Foreclosure Mediation Conference was held on . The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with foreclosure process.

☐ **Relinquish the Property:** A Foreclosure Mediation Conference was held on . The parties homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.

☒ **Grantor Non-Compliance:** The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference, failed to produce the necessary disclosure forms, did not file petition, or did not pay the fees required by the district court. The Beneficiary may proceed with the foreclosure process.

☐ **Certificate Reissuance:** The Beneficiary may proceed with foreclosure process.

☐ **Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 10/06/2017 Proof of Service Date: 10/16/2017

**Property Owner(s):**

Audrey E. Kramer  
Leo F. Kramer

**Property Address:**

1740 Autumn Glen St.  
Fernley, NV 89408

**Trustee:**

National Default Servicing  
Corporation

**Instrument Number:** 425436

**Deed of Trust Document Number:**

Book Page

**Foreclosure Mediation Program Certificate Number:** 2018-01-27-0001 **Issue Date:** 01/27/2018

# EXHIBIT J

**Notice of Appeal: United States 9<sup>th</sup> District Court of Appeals**

# EXHIBIT J



Office of the Clerk  
**United States Court of Appeals for the Ninth Circuit**  
Post Office Box 193939  
San Francisco, California 94119-3939  
415-355-8000

Molly C. Dwyer  
Clerk of Court

May 24, 2018

---

No.: 18-15959  
D.C. No.: 3:18-cv-00001-MMD-WGC  
Short Title: Leo Kramer, et al v. JP Morgan Chase Bank NA, et al

---

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

**The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.**

**Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAY 24 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LEO KRAMER; AUDREY  
KRAMER,

Plaintiffs - Appellants,

v.

JP MORGAN CHASE BANK NA;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
NATIONAL DEFAULT  
SERVICING CORPORATION;  
WASHINGTON MUTUAL BANK,  
N.A.,

Defendants - Appellees.

No. 18-15959

D.C. No. 3:18-cv-00001-MMD-WGC  
U.S. District Court for Nevada, Reno

**TIME SCHEDULE ORDER**

The parties shall meet the following time schedule.

**Mon., July 23, 2018**

Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

**Thu., August 23, 2018**

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

**The optional appellant's reply brief shall be filed and served within 21 days of service of the appellees' brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.**

**Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.**

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Ruben Talavera  
Deputy Clerk  
Ninth Circuit Rule 27-7

# EXHIBIT K

**Assignment of Deed of Trust from WAMU to Chase**

**Dated: Signed--April 4 ,2018**

**Recorded--April 10, 2018**

# EXHIBIT K

Doc #: 578946

04/10/2018 08:53 AM Page: 1 of 1

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

Lyon County, NV  
Dawna L. Warr, Recorder

Fee: \$38.00 RPTT: \$0.00

Recorded By: mkassebaum

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC NO.: 12-31926-JP-NV

APN: 022-052-02

PROP ADDRESS: 1740 Autumn Glen St, Fernley NV 89408-7204

ASSIGNMENT OF DEED OF TRUST

For Value Received, Washington Mutual Bank, a Federal Association the undersigned corporation hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association all beneficial interest under that certain Deed of Trust dated 04/04/2008 executed by Leo F. Kramer and Audrey E Kramer Trustor, to California Reconveyance Company, A California Corporation Trustee, and recorded on 05/01/2008 as Instrument No. 425436 of the Official Records of Lyon County, NV describing the land therein:

AS PER DEED OF TRUST MENTIONED ABOVE.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: April 4, 2018

JPMorgan Chase Bank, National Association, as Attorney In fact for the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank F/K/A Washington Mutual Bank, FA

Debbie A. Swartz  
By: Debbie A. Swartz  
Its: Vice President

STATE OF Louisiana  
PARISH OF Ouachita

On April 4, 2018, before me, Amy Gott, a Notary Public for said State, personally appeared Debbie A. Swartz who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

AMY GOTT  
OUACHITA PARISH, LOUISIANA  
LIFETIME COMMISSION  
NOTARY ID # 66396

Signature: [Signature]

Amy Gott #66396



# EXHIBIT L

**Notice of Trustee Sale**

**Dated: April 19, 2018**

# EXHIBIT L

**OFFICIAL RECORD**

Requested By: SERVICELINK TITLE AGENCY INC

**Lyon County, NV**  
**Dawna L. Warr, Recorder**

Fee: \$38.00 RPTT: \$0.00  
Recorded By: lharrington

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC File No. : 12-31926-JP-NV  
Title Order No. : 120135457-NV-GTO  
APN No. : 022-052-02

**NOTICE OF TRUSTEE'S SALE**

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 04/04/2008 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 is hereby given that **National Default Servicing Corporation** as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by **Leo F. Kramer and Audrey E Kramer**, dated **04/04/2008** and recorded **05/01/2008** as Instrument No. **425436** (or Book, Page) of the Official Records of **Lyon County, State of NV**, and pursuant to the Notice of Default and Election to Sell thereunder recorded **10/06/2017** as Instrument No. **571145** (or Book, Page) of said Official Records.

**Date and Time of Sale: 05/18/2018 at 11:00 AM**

**Place of Sale: Main entrance to Lyon County Courthouse, 31 South Main Street, Yerington, NV 89447**

Property will be sold at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full (at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit "A" attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

**1740 Autumn Glen St**  
**Fernley, NV 89408**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is **\$219,160.91** The opening bid at the time of the sale may be more or less than this amount depending on the total indebtedness owed and/or the fair market of the property.

**BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.**

Page 2

Notice of Trustee's Sale

NDSC File No. : 12-31926-JP-NV

In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 04/18/2018

National Default Servicing Corporation

7720 N. 16<sup>th</sup> Street, Suite 300

Phoenix, AZ 85020

602-264-6101

Sales Line : 800-280-2832 Sales Website: [www.ndscorp.com/sales](http://www.ndscorp.com/sales)

By:

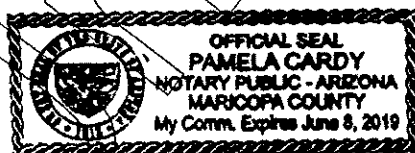
  
 Rachael Hamilton, Trustee Sales Representative

State of: Arizona

County of: Maricopa

On 4/18 2018, before me, the undersigned, a Notary Public for said State, personally appeared Rachael Hamilton personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature



## Exhibit A

## **NDSC Notice of Sale Addendum**

NDSC No. : 12-31926-JP-NV  
PROP. ADDRESS : 1740 Autumn Glen St  
Fernley, NV 89408

**COUNTY** : Lyon

**LEGAL DESCRIPTION :**

Lot 62 of UPLAND RANCH ESTATES UNIT NO 7, according to the map thereof, filed as Document No 315377, on March 9, 2004, County of Lyon, State of Nevada



# EXHIBIT M

Trustee's Deed Recorded: June 1, 2018

# EXHIBIT M

## Search Results

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Showing selected 1 of 12 Total Results

Printed Jun 1, 2018 3:46:57 PM

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Document Search - Web where Either Party contains KRAMER LEO F

---

**581625 • • TRUSTEE'S DEED**

Recording Date <b>06/01/2018 03:13 PM</b>	Grantor/Party 1 (3) <b>KRAMER LEO F NATIONAL DEFAULT SERVICING CORP KRAMER AUDREY E</b>	Grantee/Party 2 <b>BRECKENRIDGE PROPERTY FUND 2016 LLC</b>	Legal <b>Parcel: 022-052-02 ALMO</b>
--	--	---	---

**Related Documents (1)**

Document Number <b>DV-581625</b>	Document Type <b>DECLARATION OF VALUE</b>	Recording Date <b>06/01/2018</b>	Book/Page
-------------------------------------	--	-------------------------------------	-----------

---

Case No. 18-CV-00663

Department: I

The undersigned hereby affirms this document  
does not contain a social security number.

THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

Leo Kramer, Pro Se  
Audrey Kramer, Pro Se

Plaintiff, )

SUMMONS

vs.

National Default Servicing Corp.  
et. al

Defendant )

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST  
YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ  
THE INFORMATION BELOW CAREFULLY.

A civil complaint has been filed by the Plaintiff against you for the relief as set forth in that document.  
(see complaint)

1. If you intend to defend this lawsuit, you must do the following within 20 days after service  
of this Summons, exclusive of the day of service:
  - a. File with the Clerk of this Court, a formal written answer to the Complaint, along  
with the appropriate filing fees, in accordance with the rules of the Court.
  - b. Serve a copy of your answer upon the attorney or plaintiff whose name and address  
is shown below.
2. Unless you respond, a default will be entered upon application of the Plaintiff and the  
Court may enter a judgment against you for the relief demanded in the Complaint.

DATED: This 8<sup>th</sup> day of June, 2018.

ATTORNEY:

TANYA SCEIRINE, COURT ADMINISTRATOR

BY Victoria Torar  
Deputy Clerk

1 STATE OF \_\_\_\_\_ )  
2 COUNTY OF \_\_\_\_\_ ) ss.

**AFFIDAVIT OF SERVICE**  
(For General Use)

3 \_\_\_\_\_, being first duly sworn, deposes and says: That affiant is  
and was on the day when he served the within Summons, a citizen of the United States, over 21 years of age, and not a party to, nor  
4 interested in, the within action: that the affiant received the Summons on the \_\_\_\_\_ day of \_\_\_\_\_, and  
personally served the same upon \_\_\_\_\_  
5 the within named defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by delivering to the said  
defendant \_\_\_\_\_, personally in the County of \_\_\_\_\_, State of \_\_\_\_\_, a copy of the Summons attached to the  
6 Complaint.

7 \_\_\_\_\_  
8 Signature of Person making service

9 Subscribed and Sworn to before me this

10 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

11 \_\_\_\_\_  
12 Notary Public

13 \_\_\_\_\_  
14 STATE OF NEVADA )  
15 COUNTY OF LYON )ss.

**NEVADA SHERIFF'S RETURN**

16 \_\_\_\_\_  
17 I hereby certify and return that I received the within Summons on the \_\_\_\_\_ day of \_\_\_\_\_,  
18 \_\_\_\_\_, and personally served the same upon \_\_\_\_\_, the  
19 within named defendant on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by delivering to  
20 the said defendant \_\_\_\_\_, personally in Lyon County, State of Nevada, a copy of the Summons attached to a copy of  
21 the Complaint.  
22

23 Al McNeil  
24 Sheriff of Lyon County, Nevada

25 Date: \_\_\_\_\_ BY \_\_\_\_\_  
26 Deputy  
27  
28



FILED

AFFIDAVIT OF SERVICE

2018 JUN 20 AM 11:27

Case: 18-CV- 00663	Court: Third Judicial District Court of the State of Nevada In and for the County of Lyon	County: Lyon County, NV	Job: TANYA S. THOMAS COURT ADMINISTRATOR THIRD JUDICIAL DISTRICT DEPUTY
Plaintiff / Petitioner: Leo Kramer and Audrey Kramer		Defendant / Respondent: National Default Servicing Corp., et al.	
Received by: One Source Process, Inc.		For: Audrey Kramer	
To be served upon: National Default Servicing Corporation			

I, Melissa Ruiz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Mark S. Bosco - Authorized Agent, 2525 E Camelback Rd, Phoenix, AZ 85016

Manner of Service: Authorized, Jun 12, 2018, 4:42 pm MDT

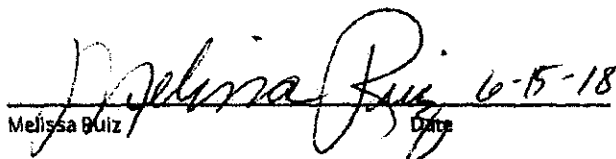
Documents: Summons and Complaint (Received Jun 11, 2018 at 2:37 pm EST)

Additional Comments:

1) Unsuccessful Attempt: Jun 11, 2018, 3:44 pm MST at 2525 E Camelback Rd, Phoenix, AZ 85016

Per front desk, Mr Bosco's secretary stated Mr. Bosco was on the phone and didn't know how long he would be on. He is the only one authorized to accept. Waited 30 minutes and he was still on the phone. Front desk also said he took an unscheduled call and it's lasting longer than expected. They said to come back tomorrow.

2) Successful Attempt: Jun 12, 2018, 4:42 pm MDT at 2525 E Camelback Rd, Phoenix, AZ 85016 received by Mark S. Bosco - Authorized Agent. Age: 64; Ethnicity: Caucasian; Gender: Male; Weight: 200; Height: 5'8"; Relationship: Statutory Agent; Other: Brown/Gray Hair.

  
Melissa Ruiz Date 6-15-18

One Source Process, Inc.  
1133 13th St Unit C4  
Washington DC  
800-668-5448

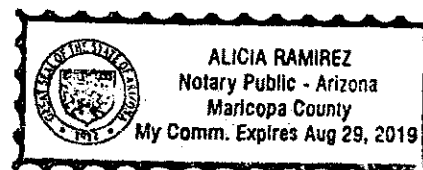
Subscribed and sworn to before me by the affiant who is personally known to me.

  
Notary Public

6-15-18

Date

Commission Expires



1 STATE OF NEVADA )  
2 COUNTY OF LYON ) ss.

**AFFIDAVIT OF SERVICE**  
(For General Use)

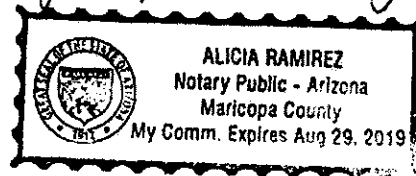
3 MELISSA RUIZ, being first duly sworn, deposes and says: That affiant is  
4 and was on the day when he served the within Summons, a citizen of the United States, over 21 years of age, and not a party to, nor  
5 interested in, the within action: that the affiant received the Summons on the 11<sup>th</sup> day of JUNE, 2018, and  
6 personally served the same upon MARK S. BOSCO - AUTHORIZED AGENT  
7 the within named defendant, on the 12<sup>th</sup> day of JUNE, 2018, by delivering to the said  
8 defendant, personally in the County of Phoenix, State of Arizona, a copy of the Summons attached to the  
9 Complaint.

Signature of Person making service

10 Subscribed and Sworn to before me this

11 15<sup>th</sup> day of JUNE, 2018.

12 [Signature]  
Notary Public



14 STATE OF NEVADA )  
15 COUNTY OF LYON ) ss.

**NEVADA SHERIFF'S RETURN**

17 I hereby certify and return that I received the within Summons on the \_\_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_, and personally served the same upon \_\_\_\_\_, the  
19 within named defendant on the \_\_\_\_\_ day of \_\_\_\_\_, by delivering to  
20 the said defendant \_\_\_\_\_, personally in Lyon County, State of Nevada, a copy of the Summons attached to a copy of  
21 the Complaint.

23 Al McNeil  
24 Sheriff of Lyon County, Nevada

25 Date: \_\_\_\_\_ BY \_\_\_\_\_  
26 Deputy

FILED

2018 JUN 20 AM 11:27

AFFIDAVIT OF SERVICE

Case: 18-CV- 00663	Court: Third Judicial District Court of the State of Nevada In and for the County of Lyon	County: Lyon County, NV
Plaintiff / Petitioner: Leo Kramer and Audrey Kramer		Defendant / Respondent: National Default Servicing Corp., et al.
Received by: One Source Process, Inc.		For: Audrey Kramer
To be served upon: Breckenridge Property Fund 2016 LLC c/o Registered Agent		

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
2367301  
*Kathy Thomas*

I, Brayden Lott, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Casey Nelson - Authorized Agent, 2320 Potosi Street, Suite 130, Las Vegas, NV 89146

Manner of Service: Authorized, Jun 11, 2018, 4:50 pm PDT

Documents: Summons and Complaint (Received Jan 2, 2018 at 2:37pm EST)

Additional Comments:

1) Successful Attempt: Jun 11, 2018, 4:50 pm PDT, 2320 Potosi Street, Suite 130, Las Vegas, NV 89146 received by Casey Nelson - Authorized Agent. Age: 45; Ethnicity: Caucasian; Gender: Male; Weight: 160; Height: 5'8"; Hair: Brown; Relationship: Assistant General Counsel. Served person authorized to accept.

*Brayden Lott*  
Brayden Lott  
06-13-2018  
Date

One Source Process, Inc.  
1133 13th St NW Unit C4  
Washington DC  
800-668-5448

Subscribed and sworn to before me by the affiant who is  
personally known to me.

*Jill Judd*  
Notary Public

06-13-2018

Date

09-14-2019

Commission Expires



2018001943

(120)

1 STATE OF NEVADA )  
2 COUNTY OF LYON ) ss.

AFFIDAVIT OF SERVICE  
(For General Use)

3 BRAYDEN LOTT, being first duly sworn, deposes and says: That affiant is  
and was on the day when he served the within Summons, a citizen of the United States, over 21 years of age, and not a party to, nor  
4 interested in, the within action: that the affiant received the Summons on the 11<sup>th</sup> day of JUNE, 2018, and  
personally served the same upon CASEY NELSON - KATHLEEN NELSON  
5 the within named defendant, on the 11<sup>th</sup> day of JUNE, 2018, by delivering to the said  
defendant, personally in the County of Las Vegas, State of Nevada, a copy of the Summons attached to the  
6 Complaint.

7 Brayden Lott

8 Signature of Person making service  
Brayden Lott R-082954

9 Subscribed and Sworn to before me this

10 18<sup>th</sup> day of June, 2018

11 Jill Judd  
12 Notary Public



14 STATE OF NEVADA )  
15 COUNTY OF LYON ) ss.

NEVADA SHERIFF'S RETURN

17 I hereby certify and return that I received the within Summons on the \_\_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_, and personally served the same upon \_\_\_\_\_, the  
19 within named defendant on the \_\_\_\_\_ day of \_\_\_\_\_, by delivering to  
20 the said defendant \_\_\_\_\_, personally in Lyon County, State of Nevada, a copy of the Summons attached to a copy of  
21 the Complaint.

23 Al McNeil  
24 Sheriff of Lyon County, Nevada

25 Date: \_\_\_\_\_ BY \_\_\_\_\_  
26 Deputy

TIFFANY & BOSCO, P.A.  
10100 W. Charleston Boulevard, Suite 220  
Las Vegas, NV 89135  
Tel 702-258-8200 Fax 702-258-8787

JASON C. KOLBE, ESQ.  
Nevada Bar No. 11624  
KEVIN S. SODERSTROM, ESQ.  
Nevada Bar No. 10235  
**TIFFANY & BOSCO, P.A.**  
10100 W. Charleston Blvd., Ste. 220  
Las Vegas, NV 89135  
Tel: (702) 258-8200  
Fax: (702) 258-8787  
Attorney for Defendant  
National Default Serving Corporation

TB #18-72716

**THIRD JUDICIAL DISTRICT COURT**

**LYON COUNTY, NEVADA**

LEO KRAMER,  
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING  
CORPORATION, ALYSSA MC  
DERMOTT, WEDGWOOD INC.,  
BRECKENRIDGE PROPERTY FUND 2016  
LLC, and DOES 1 THROUGH 50  
INCLUSIVE,

Defendants.

Case No.: 18-CV-00663  
Dept. No.: I

**FILED**

2018 JUN 25 AM 10:43

TANYA SCHEINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Anderson* DEPUTY

**NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO DISMISS**

COMES NOW Defendant National Default Servicing Corporation (hereinafter "NDSC"  
or the "Defendant"), by and through its counsel of record, Jason C. Kolbe, Esq. of Tiffany &  
Bosco, P.A., and moves the above-captioned Court to dismiss the Complaint of Plaintiffs Leo


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Las Vegas, NV 89135  
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1 Kramer and Audrey Kramer (hereinafter collectively the "Plaintiffs") with prejudice based on  
2 the doctrine of res judicata.

3  
4 This Motion is made and based upon the papers and pleadings on file herein, the  
5 Memorandum of Points and Authorities, the attached documents, and any other additional  
6 information or oral argument as may be requested by the Court.

7  
8 DATED this 22<sup>nd</sup> day of June, 2018.

9  
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25  
26  
27  
28  
TIFFANY & BOSCO, P.A.

  
JASON C. KOLBE, ESQ.  
Nevada Bar No. 11624  
KEVIN S. SODERSTROM, ESQ.  
Nevada Bar No. 10235  
10100 W. Charleston Blvd., Ste. 220  
Las Vegas, NV 89135  
Attorneys for Defendant  
National Default Servicing Corporation

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

21 The instant lawsuit is the second lawsuit filed by the Plaintiffs regarding the foreclosure  
22 of the real property commonly known as 1740 Autumn Glen Street, Fernley, Nevada, 89408,  
23 Assessor's Parcel Number 022-052-02 (hereinafter the "Property"). The Plaintiffs filed their  
24 Complaint in this action (hereinafter the "2<sup>nd</sup> Action") on June 8, 2018. The following are the  
25 core allegations of the Plaintiffs in the 2<sup>nd</sup> Action:  
26

27 "6. Plaintiffs are informed and believe and thereon allege that at all relevant  
28 times mentioned in this Complaint, Defendant, NATIONAL DEFAULT  
SERVICING CORPORATION, is organized and existing under the laws of the

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1 State of Arizona, and under the laws of the State of Nevada and at all times  
2 pertinent, was conducting business in the County of Lyon, State of Nevada.  
3 Plaintiffs further alleges [sic] that, Defendant, is the purported agent of JP Morgan  
4 Chase Bank. Plaintiffs further alleges [sic] that, prior to and during the recording  
5 of the Notice of Default & Notice of Trustee Sale, Defendant made false or  
6 misleading representations and engaged in various abusive and unfair practices  
7 and misrepresented that Plaintiffs are indebted to Washington Mutual Bank from  
8 the revolving line of credit when Defendant knew that to be false.

9  
10 7. Plaintiffs' [sic] allege that Defendant, NATIONAL DEFAULT SERVICING  
11 CORPORATION, conspired with the remaining Defendants to conduct unlawful  
12 and wrongful foreclosure of Plaintiffs' real property in Lyon County, Nevada.  
13 Plaintiffs had no obligation under any Mortgage Note; Plaintiffs were not in  
14 default on any Mortgage loan obligations and Plaintiffs were not in default of the  
15 revolving line of credit Plaintiffs obtained from Washington Mutual Bank when  
16 Defendants initiated the non-judicial foreclosure proceedings. Defendant,  
17 NATIONAL DEFAULT SERVICING CORPORATION is a duly appointed  
18 trustee and NATIONAL DEFAULT SERVICING CORPORATION is not the  
19 holder of Plaintiffs' Note in due course. Neither defendant, NATIONAL  
20 DEFAULT SERVICING CORPORATION nor its cohorts had assignment of  
21 Deed of Trust of Plaintiffs' real property when Defendants commenced the non-  
22 judicial foreclosure of Plaintiffs' real property in the State of Nevada. Plaintiffs  
23 claim that Defendants' actions in the State of Nevada were fraudulent, malicious,  
24 and oppressive. Plaintiffs did not breach any condition of any mortgage  
25 agreement sufficient to permit a non-judicial foreclosure proceedings [sic] against  
26 them in the State of Nevada."

27 On January 2, 2018, the Plaintiffs filed a lawsuit (hereinafter the "1<sup>st</sup> Action") against  
28 NDSC, JPMorgan Chase Bank, N.A., Mortgage Electronic Registration Systems, Inc., and  
Washington Mutual Bank, N.A. in the United States District Court for the District of Nevada  
(3:18-cv-00001-MMD-WGC). On May 17, 2018, Judge Miranda Du entered an order  
(hereinafter the "1<sup>st</sup> Action Dismissal Order") dismissing the 1<sup>st</sup> Action with prejudice. A copy  
of the 1<sup>st</sup> Action Dismissal Order is attached hereto as Exhibit "1."

In the 1<sup>st</sup> Action Dismissal Order, Judge Du stated the following, in part:

"This action is in part an attempt by Leo Kramer ('Kramer') and Audrey  
Kramer (collectively 'Plaintiffs') to prevent a non-judicial foreclosure of  
their property.

...

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1 In June 2005, Plaintiffs obtained a loan from Paul Financial, LLC ('Paul  
2 Financial') to purchase property located at 1740 Autumn Glen Street in Fernley  
3 Nevada (the 'Property' or 'Collateral Property'). (ECF No. 1 at 7, 52.) The loan  
4 was secured by a deed of trust ('First DOT' naming Paul Financial as the lender  
5 and MERS as beneficiary. (See ECF No. 1 at 51-53.) In May 2008, MERS  
6 substituted Executive Trustee Services, LLC ('ETS') as the trustee under the First  
7 DOT. (ECF No. 1 at 88-90.) Acting as the substituted trustee, ETS reconveyed  
8 the Property. (*Id.* at 89.) Accordingly, the First DOT ceased to encumber the  
9 Property.

10 On May 1, 2008, Plaintiffs used the Property as collateral to obtain a  
11 \$176,000 revolving line of credit (the 'Loan') from Defendant Washington  
12 Mutual Bank, F.A. ('WaMu'). (ECF No. 1 at 6-8.) The deed of trust on the  
13 Property securing the WaMu Loan ('Second DOT') was publicly recorded.  
14 (*Id.* at 77.) In September 2008, the Federal Deposit Insurance Corporation  
15 ('FDIC') assumed receivership of WaMu and sold WaMu's assets and  
16 liabilities to Chase pursuant to a Purchase and Assumption Agreement ('the  
17 PAA'). The PAA details that as part of Chase's acquisition, Chase obtained  
18 the rights and liabilities of WaMu, as lender and beneficiary, arising under  
19 all of the loan assets of WaMu, which would include the Second DOT. In  
20 November 2013, Chase substituted Defendant National Default Servicing  
21 Corporation ('NDSC') as trustee under the Second DOT. (ECF No. 1 at 9,  
22 92.)

23 Kramer filed three bankruptcy petitions: Case No 10-43951, filed as a Chapter 11  
24 petition in April 2010, but *converted to a Chapter 7 filing*; Case No 11-49493  
25 filed as a Chapter 13 petition in September 2011; and Case No 14-42866, filed as  
26 a Chapter 13 petition in July 2014. (ECF Nos. 17-6, 17-7, 17-8, 17-11, 17-12; *see*  
27 *also* ECF No. 1 at 10, 96-100, 102.) In schedules filed in Case Nos. 10-43951  
28 and 14-42866, Kramer acknowledged the Loan was secured and that Chase held a  
security interest in the Collateral Property. (ECF No. 17-7 at 4; ECF No. 17-12 at  
4, 9; ECF No. 1 at 97.)

Chase filed a proof of claim regarding the Loan in both Case No. 14-42866 and  
Case No. 11-49493, before the latter's dismissal. (ECF No. 17-9; ECF No. 17-13;  
*see also* ECF No. 17-8.) To the proof of claims Chase attached a copy of the  
WaMu Mortgage Plus Agreement and Disclosure relating to the Loan (the  
'Note'), and the Second DOT. (See ECF No. 17-9 at 4-23; ECF No. 17-13 at 9-  
31.) In Case No. 14-42866, Kramer proposed a Chapter 13 plan wherein Chase  
was recognized as a Class 3 creditor, and Kramer was to surrender his interest in  
the Collateral Property upon plan confirmation. (ECF No. 17-14 at 3.) Kramer  
received discharges in both Case No. 10-43951 and Case No. 14-42866, on June  
16, 2011, and January 9, 2017, respectively. (ECF No. 17-6 at 2, 13; ECF No. 1 at  
11, 102.) At no point in the bankruptcy proceedings did Kramer assert claims  
against any of the Defendants herein. Nor did Kramer seek to have the lien



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1 evidenced in the Second DOT stripped from the Property to render the Loan  
2 'unsecured.'

3 In October 2017, NDSC recorded a Notice of Default and Election to Sell  
4 Under the Deed of Trust. (ECF No. 1 at 11, 105.) In January 2018, Plaintiff  
5 initiated this action. The Complaint alleges fifteen (15) causes of action  
6 against 'all Defendants,' challenging the impending foreclosure (*see generally*  
7 ECF No. 1) and requesting damages (*id.* at 12). The Complaint does not allege  
8 that the Loan has been paid or that Plaintiffs are not in payment default under the  
9 terms of the Loan.

10 Chase moves for dismissal, contending, *inter alia*, Plaintiffs are judicially  
11 estopped from asserting claims in this Court against Chase and the various  
12 Defendants. (*See* ECF No. 17.) MERS argues it is entitled to dismissal because  
13 MERS had 'no interest in transactions that allegedly give rise to Plaintiffs'  
14 claims.' (ECF No. 22 at 3.) **The Court finds that dismissal with prejudice is**  
15 **warranted as to all Defendants, on all of Plaintiffs' claims, as amendment**  
16 **would be futile."** (Emphasis added, footnotes omitted.) *Id.* at 1-4.

17 On May 18, 2018, the Property was sold at a non-judicial foreclosure sale.<sup>1</sup> The  
18 Property was sold to Breckenridge Property Fund 2016, LLC at that time for \$211,000.00. A  
19 copy of the Trustee's Deed Upon Sale is attached hereto as Exhibit "2." Because the Trustee's  
20 Deed Upon Sale is a matter of public record, the Court may take judicial notice of and consider  
21 it in ruling on NDSC's Motion to Dismiss without converting it to a motion for summary  
22 judgment, and NDSC requests that the Court take judicial notice of said document. "[A] court  
23 may take judicial notice of matters of public record." *Lee v. City of Los Angeles*, 250 F.3d 668,  
24 689 (9th Cir.2001) (internal quotations omitted); *see also Breliant v. Preferred Equities Corp.*,  
25 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (court may consider matters of public record in  
26 ruling on a motion to dismiss).

---

27 <sup>1</sup> At the time of dismissal of the 1<sup>st</sup> Action, a motion filed by the Plaintiffs seeking a preliminary  
28 injunction to stop the foreclosure sale was pending. The court denied that motion in the 1<sup>st</sup>  
Action Dismissal Order."

II.

LEGAL ARGUMENT

A. THE DOCTRINE OF RES JUDICATA BARS THE INSTANT ACTION

The Nevada Supreme Court provided the following guidance regarding res judicata in *University of Nevada v. Tarkanian*, 110 Nev. 581, 879 P.2d 1180 (1994):

"Generally, the doctrine of res judicata precludes parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction. *Horvath v. Gladstone*, 97 Nev. 594, 597, 637 P.2d 531, 533 (1981); *Gilbert v. Warren*, 95 Nev. 296, 594 P.2d 696 (1979). **The doctrine is intended to prevent multiple litigation causing vexation and expense to the parties and wasted judicial resources by precluding parties from relitigating issues they could have raised in a prior action concerning the same controversy.** *Hulsey v. Koehler*, 218 Cal.App.3d 1150, 267 Cal.Rptr. 523, 526 (Ct.App.1990). For res judicata to apply, three pertinent elements must be present: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation. *Horvath*, 97 Nev. at 597, 637 P.2d at 531.

Additionally, there are two different species of res judicata that might arguably apply here: issue preclusion and claim preclusion.

...  
Claim preclusion, or merger and bar, is triggered when a judgment is entered. A valid and final judgment on a claim precludes a second action on that claim or any part of it. *See Gilbert v. Warren*, 95 Nev. 296, 594 P.2d 696 (1979). The preclusive effect is generally as to a subsequent action on the same claim or part thereof, not as to subsequent proceedings in the same litigation. *See Office Services Corp. of America v. CAS Systems, Inc.*, 63 Or.App. 842, 666 P.2d 297 (Ct.App.), *rev. denied*, 295 Or. 773, 670 P.2d 1036 (1983); Charles A. Wright, *Law of Federal Courts* § 100A (4th ed. 1983). The claim of a prevailing plaintiff is merged into the judgment. If the defendant prevails, the plaintiff is thereafter barred from subsequent suits on the same claim. *See Restatement (Second) of Judgments* § 24 (1982). **The modern view is that claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel.** *See Batterman v. Wells Fargo Ag. Credit Corp.*, 802 P.2d 1112 (Colo.Ct.App.1990); *Matter of Herbert M. Dowsett Trust*, 7 Haw.App. 640, 791 P.2d 398 (Ct.1990); *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah 1988)." (Emphasis added.) *Id.* at 598-600, 1191-92.

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Las Vegas, NV 89135  
Tel 702-258-8200 Fax 702-258-8787

1 All of the requirements for the doctrine of res judicata to apply are satisfied in this case.  
2 NDSC was named as a defendant in the 1<sup>st</sup> Action filed by the Plaintiffs, which pertained to the  
3 Plaintiffs' mortgage and foreclosure of the Property. This 2<sup>nd</sup> Action filed by the Plaintiffs  
4 again names NDSC as a defendant and is again based on the Plaintiffs' mortgage and  
5 foreclosure of the Property. Not only did the 1<sup>st</sup> Action involve NDSC, the same issues were  
6 raised in the 1<sup>st</sup> Action as have been raised in the 2<sup>nd</sup> Action. The Court entered a final ruling  
7 on the merits in the 1<sup>st</sup> Action, dismissing all of the Plaintiffs' claims with prejudice. Therefore,  
8 the 2<sup>nd</sup> Action is barred by the doctrine of res judicata.  
9


10  
11 **III.**

12 **CONCLUSION**

13 Based on the foregoing, NDSC requests that its Motion to Dismiss be granted in its  
14 entirety and that the Plaintiffs' Complaint against NDSC be dismissed in its entirety with  
15 prejudice.  
16

17 DATED this 22<sup>nd</sup> day of June, 2018.

18 **TIFFANY & BOSCO, P.A.**

19  
20   
21 JASON C. KOLBE, ESQ.  
22 Nevada Bar No. 11624  
23 KEVIN S. SODERSTROM, ESQ.  
24 Nevada Bar No. 10235  
25 10100 W. Charleston Blvd., Ste. 220  
26 Las Vegas, NV 89135  
27 Attorneys for Defendant  
28 National Default Servicing Corporation

TIFFANY & BOSCO, P.A.  
10100 W. Charleston Boulevard, Suite 220  
Las Vegas, NV 89135  
Tel 702-258-8200 Fax 702-258-8787

CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of June, 2018 I placed a copy of the above  
NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO DISMISS into a  
sealed envelope and mailed it via regular mail, postage prepaid, addressed to:

Leo Kramer  
Audrey Kramer  
2364 Redwood Road  
Hercules, CA 94547  
Plaintiffs in Proper Person

Casey J. Nelson, Esq.  
2320 Potosi Street, Suite 130  
Las Vegas, NV 89146  
Attorney for Breckenridge Property Fund  
2016, LLC

  
An employee of Tiffany & Bosco, P.A.

# Exhibit “1”

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\*\*\*

LEO KRAMER, AUDREY KRAMER,

Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
NATIONAL DEFAULT SERVICING  
CORPORATION, WASHINGTON  
MUTUAL BANK, N.A., and DOES 1  
THROUGH 50 INCLUSIVE,

Defendants.

Case No. 3:18-cv-00001-MMD-WGC

ORDER

(ECF Nos. 17, 22, 43)

**I. SUMMARY**

This action is in part an attempt by Leo Kramer ("Kramer") and Audrey Kramer (collectively "Plaintiffs") to prevent a non-judicial foreclosure of their property. (See *generally* ECF No. 1.) Before the Court, and among other motions, are two motions to dismiss Plaintiffs' complaint ("the Complaint"), pursuant to Fed. Civ. P. ("Rule") 12(b)(6), by Defendants JPMorgan Chase Bank, N.A. ("Chase") and Mortgage Electronic Registration Systems, Inc. (MERS). (ECF Nos. 17, 22.) Plaintiffs filed responses to Chase's motion to dismiss ("Chase's Motion") (ECF Nos. 28, 31), and Chase replied (ECF No. 38).

Additionally before the Court is Plaintiffs' motion to strike MERS's motion to dismiss ("MERS's Motion"). (ECF No. 43.) The Court has reviewed MERS's response (ECF No. 45) and Plaintiffs' reply (ECF No. 50).

For the reasons discussed below, Plaintiffs' motion to strike (ECF No. 43) is denied, and both motions to dismiss (ECF Nos. 17, 22) are granted.

## II. BACKGROUND

The following facts are derived from the Complaint and exhibits attached thereto, or are established by documents found in the public records (ECF Nos. 1, 17-6, 17-7, 17-8, 17-9, 17-11, 17-12, 17-13, 17-14)<sup>1</sup>:

In June 2005, Plaintiffs obtained a loan from Paul Financial, LLC ("Paul Financial") to purchase property located at 1740 Autumn Glen Street in Fernley Nevada (the "Property" or "Collateral Property"). (ECF No. 1 at 7, 52.) The loan was secured by a deed of trust ("First DOT") naming Paul Financial as the lender and MERS as beneficiary. (See ECF No. 1 at 51-53.) In May 2008, MERS substituted Executive Trustee Services, LLC ("ETS") as the trustee under the First DOT. (ECF No. 1 at 88-90.) Acting as the substituted trustee, ETS reconveyed the Property.<sup>2</sup> (*Id.* at 89.) Accordingly, the First DOT ceased to encumber the Property.

On May 1, 2008, Plaintiffs used the Property as collateral to obtain a \$176,000 revolving line of credit (the "Loan") from Defendant Washington Mutual Bank, F.A. ("WaMu"). (ECF No. 1 at 6-8.) The deed of trust on the Property securing the WaMu Loan ("Second DOT") was publicly recorded. (*Id.* at 77.) In September 2008, the Federal Deposit Insurance Corporation ("FDIC") assumed receivership of WaMu and sold WaMu's assets and liabilities to Chase pursuant to a Purchase and Assumption Agreement ("the PAA").<sup>3</sup>

///

<sup>1</sup>The Court may take judicial notice of "matters of public record." *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001) (quoting *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)); see also Fed. R. Evid. 201.

<sup>2</sup> The Substitution of Trustee and Full Reconveyance effectively allowed for ETS to be substituted as successor trustee, and allowed ETS to reconvey the Property to "the person or persons legally entitled thereto all estate now held by [ETS] under [the First DOT,]" who would be Plaintiffs. (See ECF No. 1 at 52-53, 88; see also *id.* at 78 (Plaintiffs representing to Washington Mutual Bank that Plaintiffs owned the Property, and that the Property was unencumbered.))

<sup>3</sup>The Court takes judicial notice of the PAA, which is available on the FDIC's website, at [https://www.fdic.gov/about/freedom/washington\\_mutual\\_p\\_and\\_a.pdf](https://www.fdic.gov/about/freedom/washington_mutual_p_and_a.pdf). See,

1 The PAA details that as part of Chase's acquisition, Chase obtained the rights and  
 2 liabilities of WaMu, as lender and beneficiary, arising under all of the loan assets of WaMu,  
 3 which would include the Second DOT. In November 2013, Chase substituted Defendant  
 4 National Default Servicing Corporation ("NDSC") as trustee under the Second DOT. (ECF  
 5 No. 1 at 9, 92.)

6 Kramer filed three bankruptcy petitions: Case No 10-43951, filed as a Chapter 11  
 7 petition in April 2010, but *converted to a Chapter 7 filing*; Case No 11-49493 filed as a  
 8 Chapter 13 petition in September 2011; and Case No 14-42866, filed as a Chapter 13  
 9 petition in July 2014.<sup>4,5</sup> (ECF Nos. 17-6, 17-7, 17-8, 17-11, 17-12; *see also* ECF No. 1 at  
 10 10, 96-100, 102.) In schedules filed in Case Nos. 10-43951 and 14-42866, Kramer  
 11 acknowledged the Loan was secured and that Chase held a security interest in the  
 12 Collateral Property.<sup>6</sup> (ECF No. 17-7 at 4; ECF No. 17-12 at 4, 9; ECF No. 1 at 97.)

13 ///

14 *e.g.*, *Allen v. United Fin. Mortg. Corp.*, 660 F. Supp. 2d 1089, 1093-94 (2009) (citing *New*  
 15 *Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 702 n.22 (10th Cir. 2009) (taking judicial  
 16 notice of data on web sites of federal agencies)). Because the PAA establishes only that  
 17 Chase assumed WaMu's assets and liabilities, contrary to Plaintiffs' position, it is  
 18 impertinent whether the link to the PAA, provided here, displays 39 pages, instead of 118  
 pages which Plaintiffs allege is the actual length of the PAA and has not been made public.  
 Plaintiffs do not contest that the 39-page PAA is a public record, nor do they aver that the  
 allegedly longer 118-page PAA contradicts the 39-page PAA in pertinent part. (See ECF  
 No. 28 at 2-3.)

19 <sup>4</sup>The Court takes judicial notice of the bankruptcy proceedings, as identified in  
 20 exhibits attached to Chase's Motion, because the proceedings are matters of public  
 record. Plaintiffs do not challenge the authenticity of the bankruptcy case documents. (See  
 generally ECF Nos. 28, 31.)

21 <sup>5</sup>The bankruptcy court dismissed Case No. 11-49493. (See ECF No. 17-8.)

22 <sup>6</sup>Plaintiffs' response to Chase's Motion asserts that Plaintiffs "naïve[ly]" and  
 23 "inadvertently" listed Chase as having a security interest in Kramer's bankruptcy  
 24 schedules. (See ECF No. 31 at 24.) Citing to "Exhibit I," Plaintiffs claim they "discovered  
 25 through this process that their Note associated with the Loan was not assigned to Chase.  
 26 (*Id.*) However, Exhibit I, which only displays Chase's billing statements, does not  
 27 undermine Chase's security interest in the Collateral Property. Plaintiffs also identify an  
 28 Exhibit H to support their claim that the "alleged debt" was listed as "non-secure" in the  
 Chapter 7 bankruptcy. (ECF No. 31 at 4.) However, as noted *infra*, debt discharge does  
 not also discharge a creditor's secured interest in collateral property. Further, Exhibit H  
 lists the Collateral Property under "Schedule D – Creditors Holding Secured Claims," and  
 notes Chase as a creditor. (ECF No. 31 at 166). Exhibit H also separately lists  
 WaMu/Chase under "Schedule F-Creditors Holding Unsecured Nonpriority Claims," but



1 Chase filed a proof of claim regarding the Loan in both Case No. 14-42866 and  
2 Case No. 11-49493, before the latter's dismissal. (ECF No. 17-9; ECF No. 17-13; see  
3 *also* ECF No. 17-8.) To the proof of claims Chase attached a copy of the WaMu Mortgage  
4 Plus Agreement and Disclosure relating to the Loan (the "Note"), and the Second DOT.  
5 (See ECF No. 17-9 at 4-23; ECF No. 17-13 at 9-31.) In Case No. 14-42866, Kramer  
6 proposed a Chapter 13 plan wherein Chase was recognized as a Class 3 creditor, and  
7 Kramer was to surrender his interest in the Collateral Property upon plan confirmation.  
8 (ECF No. 17-14 at 3.) Kramer received discharges in both Case No. 10-43951 and Case  
9 No. 14-42866, on June 16, 2011, and January 9, 2017, respectively. (ECF No. 17-6 at 2,  
10 13; ECF No. 1 at 11, 102.) At no point in the bankruptcy proceedings did Kramer assert  
11 claims against any of the Defendants herein. Nor did Kramer seek to have the lien  
12 evidenced in the Second DOT stripped from the Property to render the Loan "unsecured."

13 In October 2017, NDSC recorded a Notice of Default and Election to Sell Under the  
14 Deed of Trust. (ECF No. 1 at 11, 105.) In January 2018, Plaintiff initiated this action. The  
15 Complaint alleges fifteen (15) causes of action against "all Defendants," challenging the  
16 impending foreclosure (*see generally* ECF No. 1) and requesting damages (*id.* at 12). The  
17 Complaint does not allege that the Loan has been paid or that Plaintiffs are not in payment  
18 default under the terms of the Loan.

19 Chase moves for dismissal, contending, *inter alia*, Plaintiffs are judicially estopped  
20 from asserting claims in this Court against Chase and the various Defendants. (See ECF  
21 No. 17.) MERS argues it is entitled to dismissal because MERS had "no interest in  
22 transactions that allegedly give rise to Plaintiffs' claims." (ECF No. 22 at 3.) The Court  
23 finds that dismissal with prejudice is warranted as to all Defendants, on all of Plaintiffs'  
24 claims, as amendment would be futile.<sup>7</sup>

25 ///

26 nonetheless notes the claim as "Secured Credit Line," and does not list the Collateral  
27 Property (*id.* at 170).

28 <sup>7</sup>The Court takes note of Plaintiffs' argument that certain issues raised by Chase's  
Motion can be cured by the Court permitting amendment to the Complaint (ECF No. 31 at

### 1 III. PLAINTIFFS' MOTION TO STRIKE MERS'S MOTION TO DISMISS

2 Plaintiffs' motion to strike is premised on their contention that MERS failed to serve  
3 its Motion in time for Plaintiffs to respond (see ECF No. 43 at 2), and that therefore  
4 Plaintiffs' right to due process was undermined (*id.* at 5; ECF No. 50 at 2). The Court  
5 disagrees.

6 On January 23, 2018, this Court ordered MERS to respond to the Complaint within  
7 twenty days after Plaintiffs posted their required security. (ECF No. 13.) Plaintiffs made  
8 their cash deposit on February 21, 2018. (ECF No. 15.) MERS filed its Motion on March  
9 12, 2018, within the twenty-day deadline. (*Compare* ECF No. 22 with ECF No. 13 and  
10 ECF No. 15.) MERS's Motion includes a certification that MERS's Motion was served on  
11 Plaintiffs by mail at the address Plaintiffs provided in the Complaint. (ECF No. 22 at 7; see  
12 also ECF No. 45 at 2.) Plaintiffs filed the motion to strike MERS's Motion on April 6, 2018.  
13 (See ECF No. 43.)

14 The day before Plaintiffs filed the motion to strike, MERS's counsel and Plaintiffs  
15 had exchanged emails wherein MERS, in addition to noting it had complied with its  
16 servicing obligations by mail, was "agreeable to setting a schedule for [Plaintiffs] to file a  
17 response to [MERS's Motion]." (ECF No. 45-1.) MERS expressed it was "agreeable" given  
18 Plaintiffs' claim of lack of receipt by mail. (*Id.*) MERS had also sent Plaintiffs a copy of its  
19 Motion by email on April 3, 2018. (ECF No. 43 at 4.) It appears Plaintiffs chose to file the  
20 instant motion to strike instead of accepting MERS's proposal.

21 The Court finds no merit to Plaintiffs' claim that MERS needed to engage in good  
22 faith effort to "meet and confer" before filing its Motion. (ECF No. 43 at 2, 6, ECF No. 50  
23 at 5.) In support of this claim, Plaintiffs cite to LR IA 1-3(f). (ECF No. 43 at 2.) However,  
24 neither LR IA 1-3(f) nor any rule of which the Court is aware requires parties to meet and  
25 confer prior to filing a motion to dismiss.

26 ///

27 ///

28 6), but ultimately finds these other issues irrelevant in light of the application of the judicial  
estoppel bar.

Under the circumstances here, the Court disagrees with Plaintiffs that their right to due process was undermined by not having sufficient time to respond. This is really a problem of Plaintiffs' own choosing. Plaintiffs opted to file a motion to strike instead of working with MERS to give Plaintiffs more time to respond. Moreover, Plaintiffs provide no evidence contradicting MERS's attestation that it timely mailed its Motion.<sup>8</sup> Accordingly, Plaintiffs' motion to strike (ECF No. 43) is denied

#### IV. THE MOTIONS TO DISMISS

##### A. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Rule 12(b)(6). A properly pleaded complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555.) "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pleaded factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's

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<sup>8</sup> MERS' Motion was filed on the Court's docket. (ECF No. 22.) The next day, the Court issued a notice of the filing of a motion to dismiss and the need for the opposing party (i.e., Plaintiffs) to respond. (ECF No. 25.) Even if Plaintiffs did not receive a copy of MERS' Motion, the Court's notice should have alerted Plaintiff of the filing of such a motion.

1 complaint alleges facts that allow a court to draw a reasonable inference that the  
2 defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does not  
3 permit the court to infer more than the mere possibility of misconduct, the complaint has  
4 "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.* at 679 (internal  
5 quotation marks omitted). When the claims in a complaint have not crossed the line from  
6 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

7 Ordinarily, a complaint must contain either direct or inferential allegations  
8 concerning "all the material elements necessary to sustain recovery under some viable  
9 legal theory." *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745  
10 F.2d 1101, 1106 (7th Cir. 1989)). But, allegations in *pro se* complaints are held to less  
11 stringent standards than formal pleadings drafted by lawyers and must be liberally  
12 construed. See *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir. 2011).

13 "Generally, a district court may not consider any material beyond the pleadings in  
14 ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896  
15 F.2d 1542, 1555 n.19 (9th Cir. 1990). Where "matters outside the pleading are presented  
16 to and not excluded by the court," a Rule 12(b)(6) motion is to "be treated as one for  
17 summary judgment and disposed of as provided in Rule 56, and all parties shall be given  
18 reasonable opportunity to present all material made pertinent to such a motion by Rule  
19 56." Rule 12(b).

20 There are three exceptions to this rule: (1) a court may consider documents  
21 "'properly submitted as part of the complaint' on a motion to dismiss;" (2) if "documents  
22 are not physically attached to the complaint," incorporation by reference is proper "'if the  
23 documents' authenticity . . . is not contested' and 'the plaintiff's complaint necessarily  
24 relies' on them," *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001) (quoting *Parrino*  
25 *v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998)); and (3) "a court may take judicial  
26 notice of 'matters of public record.'" *Id.* (quoting *Mack v. S. Bay Beer Distribs.*, 798 F.2d  
27 1279, 1282 (9th Cir. 1986)).

28 ///

1           **B. Chase's Motion**

2           Chase argues that Plaintiffs are judicially estopped from asserting claims against  
3 it, as well as the other Defendants, because Plaintiffs failed to provide notice of their claims  
4 during the bankruptcy proceedings. (ECF No. 17 at 12-13.) The Court agrees.

5           "Judicial estoppel will be imposed when the debtor has knowledge of enough facts  
6 to know that a potential cause of action exists during the pendency of the bankruptcy, but  
7 fails to amend his schedules or disclosure statements to identify the cause of action as a  
8 contingent asset." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir.  
9 2001) (citing *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir.  
10 1992)) (additional citations omitted). In bankruptcy proceedings, potential claims a debtor  
11 may have against a creditor or lender are deemed assets. See *Hamilton v.*, 270 F.3d at  
12 785 (noting the debtor plaintiff's failure to list potential claims against creditor as an asset);  
13 *Hay*, 978 F.2d at 556 (the debtor plaintiff conceding its action is an asset of its bankruptcy  
14 estate). While *Hay* and *Hamilton* are summary judgment cases, there is no reason their  
15 analysis and conclusion would not apply in this case. Both cases support the proposition  
16 that judicial estoppel should be applied here.

17           In *Hay*, the Ninth Circuit recognized that *while the plaintiff did not know all the facts*,  
18 *the plaintiff knew enough* to require notification of the asset (the action/suit against a  
19 creditor) to the bankruptcy court. 978 F.2d at 557. The Ninth Circuit ruled that the plaintiff's  
20 failure to give the required notice estopped the plaintiff and justified the district court's  
21 grant of summary judgment to the defendants. *Id.*

22           *Hamilton* additionally recognized that it is immaterial that a debtor commences an  
23 action against a creditor or lender after filing for bankruptcy. 270 F.3d at 784. "The debtor's  
24 duty to disclose potential claims as assets does not end when the debtor files schedules,  
25 but instead continues for the duration of the bankruptcy proceeding." *Id.* at 785 (citations  
26 omitted). *Hamilton* also explains that courts "must invoke judicial estoppel to protect the  
27 integrity of the bankruptcy process," which includes preventing a debtor from deceiving  
28 the bankruptcy court, and acquiring an "unfair advantage" due to having enjoyed "the

1 benefit of both an automatic stay and a discharge of debt in the debtor's Chapter 7  
2 bankruptcy proceeding." *Id.*

3 The rulings and reasoning in *Hay* and *Hamilton* compel this Court to dismiss the  
4 Complaint. Here, as noted, Kramer was involved in Chapter 7 and Chapter 13 proceedings  
5 and received discharges. (ECF No. 17-6; ECF No. 1 at 11, 102.) Moreover, the Complaint  
6 is grounded in the assertions that the Collateral Property that secured the Loan was part  
7 of the bankruptcy proceedings and cannot be foreclosed upon, due to alleged fraud and  
8 irregularities, and that the Second DOT should be stripped from it. (See ECF No. 1.) The  
9 judicially noticed records show that during both the Chapter 7 and 13 bankruptcy  
10 proceedings Kramer acknowledged Chase's acquired security interest in the Collateral  
11 Property. (ECF No. 17-7 at 4; ECF No. 17-12 at 4,9; ECF No. 17-14 at 3; ECF No. 1 at  
12 97.) The July 2014 Chapter 13 plan in Case No. 14-42866 called for Kramer to surrender  
13 his interest in the Collateral Property to Chase. (ECF No. 17-14 at 3.)

14 Kramer (and by extension the Plaintiffs) knew sufficient facts by which he could  
15 anticipate a cause of action against Chase, especially given Kramer's now evident  
16 reservations about actually surrendering the Collateral Property. While bankruptcy  
17 discharge covering the Loan extinguished Kramer's personal liability for the Loan,  
18 bankruptcy discharge does not prevent foreclosure on the Collateral Property. *See Long*  
19 *v. Bullard*, 117 U.S. 617, 621 (1886); *accord Dewsnap v. Timm*, 502 U.S. 410, 417 (1992)  
20 ("the creditor's lien stays with the real property until the foreclosure"); *Farrey v. Sanderfoot*,  
21 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive  
22 bankruptcy."); *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) ("[A] bankruptcy  
23 discharge extinguishes only one mode of enforcing a claim—namely, an action against  
24 the debtor *in personam*—while leaving intact another—namely, an action against the  
25 debtor *in rem*.").

26 Additionally, during the 2014 Chapter 13 bankruptcy proceeding, Kramer knew, or  
27 should have known, that Chase substituted NDSC as the trustee under the Second DOT,  
28 as the substitution occurred in November 2013. (See ECF No. 1 at 9.) Therefore, Kramer

(and by extension the Plaintiffs) knew enough to trigger his obligation to provide the bankruptcy court notice of his potential claims against Chase, WaMu, and NDSC.<sup>9</sup> Equity demands that Plaintiffs be judicially estopped from now asserting claims against these Defendants in this Court to avoid foreclosure on the Collateral Property. To rule otherwise would be to allow Kramer to circumvent the bankruptcy process.

In sum, the Court finds that Plaintiffs are judicially estopped from asserting the claims here against Chase, WaMu and NDSC. Claims against these Defendants will be dismissed.

### C. MERS's Motion

The Court finds the Complaint is improperly instituted against MERS because MERS was not involved in the loan transaction giving rise to the claims asserted in the Complaint. Although Plaintiffs have not filed a response to MERS's Motion, a response is unnecessary given the fact that MERS was not involved in the Loan or the Second DOT. The loan transaction involving MERS was resolved when ETS executed the reconveyance of the Property. Moreover, the "robo-signing" and substitution of trustee claims asserted against MERS (ECF No. 1 at 8-9) have no merits. *See, e.g., Heidig v. PNC Bank N.A.*, 2017 WL 4102465, \*3 n.6 (D. Nev. Sept. 15, 2017) (stating with respect to the plaintiffs' theory challenging assignments based on a "robo-signing" argument, "the Ninth Circuit has affirmed that a borrower lacks standing to allege such an argument because the borrower does not suffer an injury from the robo-signing"); *Closson v. Reconstruct Co.*, No. 2:11-cv-00146-KDJ-RJJ, 2012 WL 893746, at \*3-5 (D. Nev. Mar. 15, 2012) (holding that trustee was properly substituted by MERS because MERS has the right to substitute a new trustee in its capacity as nominee).

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<sup>9</sup> Chase essentially stands in the place of WaMu as the acquirer of WaMu's assets and liabilities (specifically the Note and Second DOT), and Chase substituted NDSC as the trustee under the Second DOT.

1 **V. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several cases  
3 not discussed above. The Court has reviewed these arguments and cases and determines  
4 that they do not warrant discussion as they do not affect the outcome of the motions before  
5 the Court.

6 It is therefore ordered that Plaintiffs' motion to strike MERS's Motion (ECF No. 43)  
7 is denied.

8 It is further ordered that Chase and MERS's motions to dismiss (ECF Nos. 17, 22)  
9 are granted.

10 It is further ordered that Plaintiffs' pending motions (ECF Nos. 30, 46, 55, 56) and  
11 objection (ECF No. 51) are denied as moot.

12 The Clerk is directed to enter judgment accordingly and close this case.

13 DATED THIS 17<sup>th</sup> day of May 2018.

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16 \_\_\_\_\_  
17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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# Exhibit “2”

**Doc #: 581625**

06/01/2018 03:13 PM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: NEVADA TITLE LAS V

**Lyon County, NV**

**Dawna L. Warr, Recorder**

Fee: \$38.00 RPTT: \$0.00

Recorded By: mkassebaum

**RECORDING REQUESTED BY :**

**WHEN RECORDED MAIL TO :**

**BRECKENRIDGE PROPERTY FUND 2016, LLC**

2320 Potosi Street Suite 130

LAS VEGAS NV 89146

**FORWARD TAX STATEMENTS TO:**

**BRECKENRIDGE PROPERTY FUND 2016, LLC**

**1740 Autumn Glen St**

2320 Potosi Street Suite 130

LAS VEGAS NV 89146

NDSC File No. : 12-31926-JP-NV  
Title Order No. : 120135457-NV-GTO

Recorded As An Accommodation  
Only Without Liability

APN: 022-052-02

## **TRUSTEE'S DEED UPON SALE**

Transfer Tax : \$ **822.90**

The Grantee herein WAS not the Beneficiary

The amount of the unpaid debt was **\$219,524.46**

The amount paid by the Grantee was **\$211,000.00.**

The property is in the city of Fernley, County of Lyon, State of NV.

**National Default Servicing Corporation, an Arizona Corporation**, as the duly appointed Trustee (or successor Trustee or Substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without any covenant or warranty to :

**BRECKENRIDGE PROPERTY FUND 2016, LLC**

herein called Grantee, the following described real property situated in Lyon County :

**Lot 62 of UPLAND RANCH ESTATES UNIT NO 7, according to the map thereof, filed as Document No 315377, on March 9, 2004, County of Lyon, State of Nevada**

This conveyance is made pursuant to the powers conferred upon Trustee by said Deed of Trust executed by **Leo F. Kramer and Audrey E Kramer**, as Trustor, recorded on **05/01/2008** as Instrument No. **425436** (or Book, Page) of the Official Records of Lyon County, NV.

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **05/18/18** Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, which amount was **\$211,000.00**.

Dated: 05/22/18  
Corporation

National Default Servicing Corporation, an Arizona

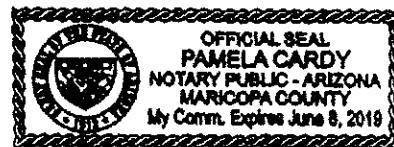
By: *Genevieve Mada*  
Genevieve Mada, Trustee Sales Officer

State of ARIZONA  
County of MARICOPA

On 5/22/18 before me, the undersigned, a Notary Public for said State, personally appeared **Genevieve Mada** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Pamela Cardy*



*Pamela Cardy*  
*Expires 6/8/19*

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1 Assessor Parcel Number(s)

a) 022-052-02

b) \_\_\_\_\_

c) \_\_\_\_\_

d) \_\_\_\_\_

2 Type of Property:

- a) ☐ Vacant Land  
c) ☐ Condo/Twnhse  
e) ☐ Apt. Bldg  
g) ☐ Agricultural  
☐ Other \_\_\_\_\_

- b) ☒ Single Fam. Res.  
d) ☐ 2-4 Plex  
f) ☐ Comm'l/Ind'l  
h) ☐ Mobile Home

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3. a Total Value/Sales Price of Property

\$211,000.00

b Deed in Lieu of Foreclosure Only (value of property)

(\_\_\_\_\_)

c Transfer Tax Value:

\$211,000.00

d Real Property Transfer Tax Due

822.90

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, \_\_\_\_\_

b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declare and acknowledges, under penalty of perjury, pursuant to NRS, 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Genevieve Mada

Capacity Trustee Sales Officer

Genevieve Mada, 12-31926-JP-NV

Signature

SELLER (GRANTOR) INFORMATION

Capacity Grantee

BUYER (GRANTEE) INFORMATION

National Default Servicing Corporation\*  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

Breckenridge Property Fund 2016, LLC  
2320 Potosi Street Suite 130  
LAS VEGAS, NV 89146

\* An Arizona Corporation

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name

Nevada Title

Escrow #:

ACCM

Address:

10000 W Charleston

City:

LAS Vegas

State:

NV

Zip:

89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

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TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

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*Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC*

**THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA**

LEO KRAMER, AUDREY KRAMER,

Plaintiff,

v.

NATIONAL DEFAULT SERVICING  
CORPORATION, ALYSSA MCDERMOTT,  
WEDGEWOOD INC., BRECKENRIDGE  
PROPERTY FUND 2016 LLC and DOES 1  
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663  
Dept No.: I

**MOTION TO DISMISS**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"),  
and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Defendants") by  
and through its counsel of record, Hutchison & Steffen, LLC, and hereby submits its Motion to Dismiss  
the Plaintiffs' Complaint. In support of this request, Defendants rely upon the papers and pleadings on

1 file herein, the following points and authorities, all facts judicially noticed, and any oral argument that  
2 the Court may entertain at a hearing on this matter.

3 **POINTS AND AUTHORITIES**

4 **I. INTRODUCTION.**

5 This case pertains to the foreclosure of real property commonly known as 1740 Autumn Glen  
6 Street, Fernley, NV 89408 ("Subject Property") that took place on or about May 18, 2018 wherein  
7 Breckenridge purchased the Subject Property. The Plaintiffs filed the Complaint on June 8, 2018. In  
8 their Complaint, the Plaintiffs have asserted claims for relief against the Defendants as follows: (1)  
9 Unlawful Foreclosure, (2) Quiet Title, (3) Preliminary Injunction, (4) Slander of Title, (5) Constructive  
10 Fraud, and (6) Declaratory Relief.  
11

12 Breckenridge is a limited liability company licensed to do business in Nevada that purchased the  
13 Subject Property at the foreclosure sale. Wedgewood is Breckenridge's manager. McDermott is an  
14 employee of Wedgewood that is assigned as the project manager for the Subject Property. Breckenridge,  
15 Wedgewood, and McDermott's sole relationship to this case is a result of Breckenridge's purchase of the  
16 Subject Property at the foreclosure sale – they were not lenders, noteholders, or beneficiaries of Plaintiffs'  
17 loan obligations.  
18

19 Dismissal is appropriate because this complaint does not meet the standards of Rule 8(a) or Rule  
20 9(b) of the Nevada Rules of Civil Procedure. The undisputed facts establish, as a matter of law, that the  
21 Plaintiffs have no viable claims against these Defendants. Consequently, dismissal on all of Plaintiffs'  
22 claims is appropriate. Plaintiffs have not stated a claim for relief against the Defendants and the  
23 Complaint should be dismissed. The Complaint is devoid of any facts that state a claim for relief against  
24 these Defendants. Plaintiffs repeatedly generalize "the Defendants" and their actions. According to the  
25 Complaint, each of the named Defendants are parties to all of the allegations and all of the causes of  
26  
27  
28

1 action, so it is impossible to ascertain which facts apply to which specific Defendant. The Plaintiffs  
2 sprinkle in terms like "unlawful", "wrongful", "illegal", and "fraudulent" throughout their Complaint but  
3 fail to plead the fraudulent conduct with the particularity required under NRCP Rule 9(b).

4 The essence of Plaintiffs' Complaint is that the foreclosing lender, JPMorgan Chase, and its  
5 trustee, NDSC, did not have the ability to foreclose. Plaintiffs concede that they executed the note and  
6 deed of trust, but dispute that there was a default. However, the issue of their default was already raised  
7 by the Plaintiffs in the federal court litigation that they recently lost. This Complaint is similar to  
8 numerous other complaints that have been filed in federal and state court in Nevada and throughout the  
9 United States. It appears that Plaintiffs have simply cut and pasted this Complaint from one of the  
10 countless websites that provide these "form" pleadings.

11 The remainder of the Complaint is a series of meticulous but ill-defined accusations about  
12 everyone who has been involved in the loan transaction from the time of its origination. Plaintiffs alleges  
13 that all of them were engaged in a grand conspiracy to misrepresent facts to the Plaintiffs

14 The six causes of action add nothing material or specific, leaving these Defendants to blindly  
15 guess about the facts which led Plaintiffs to name them in this Complaint. Again, these Defendants –  
16 Breckenridge, Wedgewood, and McDermott – were in no way involved with this matter until it purchased  
17 the Subject Property at the foreclosure sale. For this reason, and all the other reasons set forth, the Motion  
18 To Dismiss should be granted and the Complaint dismissed with prejudice.

## 19 **II. REQUEST FOR JUDICIAL NOTICE.**

20 Defendants request that the Court take judicial notice of the following documents, copies of which  
21 are attached to Plaintiff's Complaint or this Motion. The attached documents are either on file in the  
22 County Recorder's Office, the federal court, or incorporated by reference in the Plaintiffs' complaint:

- 23 1. Exhibit #G of Plaintiffs' Complaint – Notice of Default recorded October  
24 6, 2017

2. Exhibit #J of Plaintiffs' Complaint – Notice of Appeal filed May 24, 2018 in Case 3:18-cv-00001-MMD-WGC
3. Exhibit #L of Plaintiffs' Complaint – Notice of Trustee Sale recorded April 19, 2018
4. Exhibit #M of Plaintiffs' Complaint – Trustee's Deed recorded June 1, 2018
5. Exhibit #1 of Defendants' Motion To Dismiss – Order filed May 17, 2018 in Case 3:18-cv-00001-MMD-WGC

Nevada law allows for a court to take judicial notice of a fact if it is "(a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." *See*, NRS 47.130. A court may take judicial notice of matters of public record. *See, Caballero v. Seventh Judicial Dist. Ct.*, 123 Nev. 316, 167 P.3d 415 (2007); *Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279 (9th Cir. 1986), *overruled on other grounds by Astoria v. Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991). Further, a court may take judicial notice of documents filed for cases in other jurisdictions involving the same subject matter as the case at bar. *See, Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981) (not reasonably subject to dispute that the subject matter in the federal case was the same as in the state case).

The Exhibits are public documents on file in the County Recorder's Office or with the federal court. The documents are therefore generally known within the territorial jurisdiction of this Court. Moreover, they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned-i.e., by resort to the County Recorder's Office or federal court. Therefore, Defendants request that the court take judicial notice of these documents.

A court may also take judicial notice of documents that are incorporated by reference into, although not attached to, a Complaint if: (1) the Complaint refers to the document, (2) it is central to the



1 Plaintiff's claims, and (3) the authenticity of the document is not disputed. *Marder v. Lopez*, 450 F.3d  
2 445 (9th Cir. 2006) ("A court may consider evidence on which the complaint 'necessarily relies' if: (1)  
3 the complaint refers to the document; (2) the document is central to the plaintiffs claim; and (3) no party  
4 questions the authenticity of the copy attached to the 12(b)(6) motion."); *In Re Silicon Graphics Sec.*  
5 *Litig.*, 183 F.3d 970 (9th Cir. 1999) ("That doctrine permits a district court to consider documents 'whose  
6 contents are alleged in a complaint and whose authenticity no party questions, but which are not  
7 physically attached to the [plaintiffs] pleading.'" (interpreting FRCP 12(b)(6), upon which NRCP  
8 12(b)(5) is patterned, *see Benson v. Eighth Judicial Dist. Court ex rel. County of Clark*, 85 Nev. 327,  
9 454 P.2d 892 (1969), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d  
10 1119 (2002) (comparing NRCP 12(b) to FRCP 12(b)).

11  
12  
13 "Such consideration does 'not convert the motion to dismiss into a motion for summary  
14 judgment.'" *Branch v. Tunnell*, 14 F.3d 449 (9th Cir. 1994). Further, "[t]he court may treat such a  
15 document as 'part of the complaint, and thus may assume that its contents are true for purposes of a  
16 motion to dismiss under Rule 12(b)(6).'" *Marder*, 450 F.3d at 448 (*quoting United States v. Ritchie*,  
17 342 F.3d 903 (9th Cir. 2003)).

18  
19 Here, these exhibits were also incorporated by reference in Plaintiffs' complaint and are central  
20 to Plaintiffs' claims. Therefore, they may be considered by this Court without converting Defendants'  
21 motion to dismiss into a motion for summary judgment. Therefore, defendants request that the court  
22 take judicial notice of the various exhibits.

### 23 24 **III. STATEMENT OF FACTS.**

25 On or about May 18, 2018, National Default Servicing Corporation ("NDSC") held a foreclosure  
26 sale on behalf of non-party JPMorgan Chase Bank, National Association, Successor In Interest By  
27 Purchase From The Federal Deposit Insurance Corporation As Receiver Of Washington Mutual Bank  
28

1 (“JPMorgan Chase”) because of a Default in Plaintiffs’ loan obligation. *See Exhibits #G and #L of*  
2 *Complaint.*

3 Plaintiffs have previously been in litigation in federal court with NDSC and/or JPMorgan Chase  
4 prior to the foreclosure sale. That litigation was dismissed by the federal court on or about May 17, 2018  
5 – prior to the foreclosure sale. *See Exhibit #1 attached hereto.*

6 Although the dismissal is currently on appeal, that Appeal was filed on or about May 25, 2018 –  
7 after the foreclosure sale. There were not (and currently are not) any injunctions or stays in effect at the  
8 time of the foreclosure sale. *See Exhibit #J of Complaint.*

9 Breckenridge, an unrelated third party, purchased the Subject Property at the foreclosure sale for  
10 \$211,000.00. *See Exhibit #M of Complaint.*

11 Many of the Plaintiffs’ allegations deal with the origination, closing, and servicing of the  
12 underlying loan. According to the exhibits that the Plaintiffs attached to their Complaint, the lender  
13 of the loan was JPMorgan Chase. However, Plaintiffs have failed to name JPMorgan Chase as a  
14 Defendant in this action. The named Defendants in this action cannot be responsible for the  
15 supposed actions of another entity.

#### 16 **IV. STANDARD OF REVIEW.**

17 When a complaint fails to state a claim upon which relief can be granted by the court, the party  
18 against whom the claims have been brought may move the court to dismiss those claims. Pursuant to  
19 NRC 12(b)(5), “failure to state a claim upon which relief can be granted” is a basis to dismiss a  
20 Complaint where the moving party can demonstrate beyond doubt that the Plaintiff cannot provide a set  
21 of facts in support of his claim which would entitle them to relief, such that the motion to dismiss should  
22 be granted. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985). In making a determination,  
23 the allegations made in the Complaint are generally taken as true and viewed in the light most favorable  
24

1 to the non-moving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670, 672 (2008). However,  
2 the Court should dismiss if the factual allegations of the Complaint, if accepted as true, are insufficient  
3 to establish essential elements of a claim for relief. *Edgar*, 101 Nev. at 228, 699 P.2d at 112.

4 "Generally, a district court may not consider any material beyond the pleadings in ruling on a  
5 Rule 12(b)(6)<sup>1</sup> motion[.] However, material which is properly submitted as part of the complaint may  
6 be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,  
7 1555 n. 19 (9th Cir. 1990) (citations omitted). Similarly, "documents whose contents are alleged in a  
8 complaint and whose authenticity no party questions, but which are not physically attached to the  
9 pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss without converting the motion  
10 to dismiss into a motion for summary judgment." *Branch v. Tunnell* 14 F.3d 449, 454 (9th Cir. 1994).

11  
12 Additionally, a court is within its discretion to deny a party leave to amend if it determines that  
13 further attempts to amend would not be productive and/or futile (i.e., the defect in the complaint is  
14 incurable). *United States ex rel Roop v. Hypogaurd USA, Inc.*, 559 F.3d 818 (8th Cir. 2008); *Lucente v.*  
15 *International Business Machines Corp.*, 310 F.3d 243 (2nd Cir. 2002); *Ruffolo v. Oppenheimer & Co.*,  
16 987 F.2d 129 (2nd Cir. 1993).

17  
18 Even under the rigorous standards set out above, Plaintiff has failed to state a claim against  
19 Defendants upon which relief may be granted and that failure cannot be cured by amending the  
20 Complaint. As such, the Complaint against these Defendants should be dismissed, with prejudice,  
21 pursuant to NRCP 12(b)(5).  
22

23  
24 Where a Motion to Dismiss is relied on and supported by documentation outside of the pleadings,  
25 the Motion should be considered as a Motion for Summary Judgment. *Lumbermen's Underwriting*  
26

---

27 <sup>1</sup> FRCP 12(b)(6) is the functional equivalent of NRCP 12(b)(5). The provision of NRCP 12(b) regarding matters outside the  
28 pleading that are presented to and not excluded by the court, are treated identically in FRCP 12(d).

1 *Alliance v. RCR Plumbing, Inc.*, 114 Nev. 1231, 1234 (1998). NRCP 56(c) instructs this Court to enter  
2 judgment "if the pleadings together with affidavits, if any, show that there is no genuine issue as to any  
3 material fact and that the moving party is entitled to judgment as a matter of law."

4 The purpose of a Motion for Summary Judgment is to obviate trials when they would serve no  
5 useful purpose. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963). Summary judgment is  
6 appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment  
7 as a matter of law. NRCP 56(c). The Supreme Court of Nevada abandoned the "slightest doubt" standard  
8 and clarified the applicable standard for summary judgment in *Wood v. Safeway, Inc.*, 121 Nev., Adv.  
9 Op. 73 (2005), adopting the standard articulated by the United States Supreme Court in *Celotex Corp. v.*  
10 *Catrett*, 477 U.S. 317 (1986), by specifically holding:  
11

12 [T]he plain language of Rule 56(c) mandates the entry of summary judgment  
13 after adequate time for discovery and upon motion, against a party who fails to  
14 make a showing sufficient to establish the existence of an element essential to  
15 that party's case, and on which that party will bear the burden of proof at trial.  
16 In such a situation, there can be no genuine issue as to any material fact, since a  
17 complete failure of proof concerning an essential element of the non-moving  
18 party's case necessarily renders all other facts immaterial. The moving party is  
19 entitled to judgment as a matter of law because the non-moving party has failed  
20 to make a sufficient showing on an essential element of her case with respect to  
21 which she has the burden of proof.

22 *Id.* at 322 (emphasis added). *Sanders v. Culinary Workers Union, et al.*, 804 F. Supp. 86, 92 (D. Nev.  
23 1992).

24 All facts and inferences drawn must be viewed in the light most favorable to the responding party  
25 when determining whether a genuine issue of material fact exists for summary judgment purposes.  
26 *Sawyer v. Sugarless Shops, Inc.*, 101 Nev. 265, 267, 792 P.2d 14, 15 (1990). The substantive law controls  
27 which facts are material and will preclude summary judgment. *Wood v. Safeway, Inc.*, 121 P.3d 1026,  
28 1031 (2005).

1 However, evidence that is merely colorable or not significantly probative is not sufficient to  
2 preclude summary judgment. *Oehler v. Humana, Inc.*, 105 Nev. 348, 351-52, 775 P.2d 1271, 1273  
3 (1989). Nor do conclusory statements along with general allegations create an issue of material fact.  
4 *Michaels v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991). Furthermore, the non-movant must  
5 "by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial  
6 or have summary judgment entered against him." *Wood*, quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev.  
7 105, 110, 825 P.2d 588, 591 (1992).

9 **V. LEGAL ARGUMENT.**

10 **A. DISMISSAL IS APPROPRIATE AS TO PLAINTIFFS' CLAIM FOR UNLAWFUL**  
11 **FORECLOSURE.**

12 The Complaint alleges that Defendants "conducted unlawful and wrongful foreclosure"  
13 (Complaint at ¶40), "are not the holder of Plaintiffs' Note" (Complaint at ¶43), "had no standing to  
14 conduct the unlawful and wrongful non-judicial foreclosure" (Complaint at ¶44), and "[did not have] the  
15 right to declare default, cause notices of default to be issued or recorded, or foreclosed on Plaintiffs'  
16 interest in the Subject Property." (Complaint at ¶45).

18 As plainly discernable from the exhibits attached by the Plaintiffs to their Complaint, these  
19 Defendants were not involved with the underlying foreclosure process. These Defendants merely  
20 purchased the Subject Property at the foreclosure sale. Because it is undisputed that these Defendants  
21 were not involved with the underlying foreclosure process, a claim for unlawful foreclosure is not  
22 sustainable against them.

24 Nonetheless, even if the Complaint could be construed as alleging a cause of action against these  
25 Defendants, Plaintiffs are incorrect in their assumption that only a note holder can initiate foreclosure  
26 proceedings. In fact, the scope of "persons entitled to enforce" a negotiable instrument is broader than  
27 the category of "holder". NRS 104.3301 states:  
28

1. "Person entitled to enforce" an instrument means:

- (a) The holder of the instrument;
- (b) A nonholder in possession of the instrument who has the rights of a holder; or
- (c) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to NRS 104.3309 or subsection 4 of NRS 104.3418.

2. 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.

Thus, Plaintiffs' argument that the foreclosure was wrongful because JPMorgan Chase was not the holder in due course must fail because even if they were not a holder in due course, it could still seek enforcement of the instrument if it could show that it was entitled to enforce the instrument pursuant to NRS 104.3301. Plaintiffs have failed to allege that JPMorgan Chase was not entitled to enforce the instrument pursuant to the other provisions of NRS 104.3301 and the federal court had no issue with JPMorgan Chase's standing to foreclose.

The Plaintiffs also do not meet the required pleading standards for wrongful foreclosure cause of action under Nevada law. The Nevada Supreme Court has stated:

An action for the tort of wrongful foreclosure will lie *if* the trustor or mortgagor can establish that at the time the power of sale was exercised or the foreclosure occurred, *no breach of condition or failure of performance existed on the mortgagor's or trustor's part* which would have authorized the foreclosure or exercise of the power of sale.

*Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 304 (1983) (emphasis added). In this case, the Plaintiffs breach in failing to pay the regular monthly mortgage payments is undeniable given the prior court decisions in Plaintiffs' previous cases. Thus, there can be no sustainable action for wrongful foreclosure because the Plaintiffs cannot establish that they have met their obligations under the loan.

The Plaintiffs' illegal foreclosure allegations ignore the plain language of the deed of trust. The Plaintiffs gave JPMorgan Chase the right to commence foreclosure proceedings in the event of a default when they executed the promissory note and deed of trust. The roles of the lender, nominee beneficiary, and substituted trustee are all defined in the deeds of trust, as is their right to foreclose on the Subject

1 Property when the Plaintiffs stop making the mortgage payments. Because the Plaintiffs have not lived  
2 up to their part of the contract, JPMorgan Chase should not be required to give up their interest in the  
3 Subject Property.

4 Finally, JPMorgan Chase's ability to foreclose on the Subject Property was recognized by the  
5 Federal Court in dismissing the Plaintiffs' prior Complaint.

6  
7 **B. DISMISSAL IS APPROPRIATE AS TO PLAINTIFFS' CLAIM FOR QUIET TITLE.**

8 In this cause of action, Plaintiffs seek to quiet title in the Subject Property as against the  
9 Defendants. NRS 40.010 states:

10 An action may be brought by any person against another who claims an estate or  
11 interest in real property, adverse to him, for the purpose of determining such  
12 adverse claim.

13 In a quiet title action, the burden of proof rests with the Plaintiff to prove good title to himself.  
14 *Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996). Because quiet title is equitable in  
15 nature, see *MacDonald v. Krause*, 77 Nev. 312, 317-18, 362 P.2d 724 (1961), the Plaintiff must show its  
16 right to such equitable relief. *Transaero Land & Dev. Co. v. Land Title Co. of Nev., Inc.*, 108 Nev. 997,  
17 1001, 842 P.2d 716 (1992). The often-quoted maxim is that "in seeking equity, a party is required to do  
18 equity." *Transaero Land & Dev. Co.* 108 Nev. 997 at 1001.

19  
20 A quiet title claim requires a Plaintiff to allege that the Defendant is unlawfully asserting an  
21 adverse claim to title to real property. *Kemberling v. Ocwen Loan Servicing, LLC*, Case No. 2:09-cv-  
22 00567, 2009 WL 5039495, at \*2 (D. Nev. Dec. 15, 2009). "The very object of the proceeding assumes  
23 that there are other claimants adverse to the Plaintiff, setting up titles and interests in the land or other  
24 subject-matter hostile to his [own]." *Clay v. Scheeline Banking & Trust Co.*, 40 Nev. 9, 16, 159 P. 1081,  
25 1082 (1916).

1 However, it is impossible for the Plaintiffs to sue for quiet title because the Plaintiffs admit that  
2 they encumbered the property by securing the loans with deeds of trust. Complaint at ¶17-18. These  
3 deeds of trust provide for the possibility of foreclosure if the Plaintiffs default. The Plaintiffs' default is  
4 evident by the bankruptcy court docket, the recorded Notice of Default, the recorded Notice of Sale, and  
5 the federal court order. Yet, Plaintiffs unjustifiably claim that they are still entitled to have title quieted  
6 in their favor. These allegations are contradictory and without any factual or legal support. The Plaintiffs  
7 are not entitled to equitable relief when they have not made their mortgage payments and are in default.  
8 The Plaintiffs do not come to court with clean hands.

10 The Plaintiffs also have not made, or even alleged the ability to make, a full tender of the amount  
11 due on the loan. Therefore, they lack standing to bring this cause of action. To challenge the validity of  
12 a foreclosure action, a Plaintiff must tender the undisputed amount due and owing on the secured  
13 indebtedness. *Abdallah v. United Savings Bank*, 43 Cal. App. 4<sup>th</sup> 1101 (1996) (holding that a borrower  
14 was required to allege tender of the amount of the secured indebtedness in order to maintain any cause  
15 of action for irregularity in the sale procedure). The tender requirement applies to any cause of action  
16 for irregularity in the sale procedure. *Id.* Courts have explained:

19 The rule...is based upon the equitable maxim that **a Court of Equity will not**  
20 **order a useless act performed**...if Plaintiff could not have redeemed the property  
21 had the sale procedures been proper, any irregularities in the sale did not result in  
damages to Plaintiffs.

22 *FPBI Rehab 101 v. ENG Investments, Ltd.* 207 Cal.App.3d 1018 (Cal. Ct. App. 1989) (emphasis added).

23 The "tender rule" states that the tenderer (Plaintiffs) must comply with whatever is necessary on  
24 their part to complete the agreed upon transaction, which in this case is the Plaintiffs' loan which is  
25 memorialized by the promissory note. The act of tender must be such that it needs only acceptance by  
26 the one to whom it is made to complete the transaction. In other words, in order to tender payment and  
27



1 have standing to complain of wrongful foreclosure or to seek to quiet title in the Subject Property, the  
2 Plaintiffs must first fulfill their obligations under the promissory note, including repayment.

3 A valid tender includes the full amount currently due and owing with additional tender each  
4 month as payments become due. *McCool v. Decatur County Bank of Greensburg*, 480 N.E.2d 596 (Ind.  
5 Ct. App. 1985) (holding that to prove defense of tender, mortgagors had to show they made a valid tender  
6 of the full amount due and that tender was kept good by paying it into the court for the use and benefit of  
7 the mortgagee; mortgagors were required to make additional tender each month as monies became due).  
8 In this case, the entire outstanding balance of the Plaintiffs' loan is due because the loan has now  
9 accelerated. The Plaintiffs must first do equity before the trustee's sale can be vacated. The Plaintiffs  
10 are not entitled to relief since they have not tendered the amount due under the promissory note and deed  
11 of trust, even if the non-payment is due to hardship. *Shimpones v. Stickney*, 28 P.2d 673 (Cal. 1934)  
12 (holding that it was clearly erroneous to quiet title to plaintiffs' property where plaintiffs refused to do  
13 equity). The Plaintiffs lack standing to maintain this claim because they have not tendered the payment  
14 as required.  
15

16  
17 The legal effect of the foreclosure stripped the Plaintiffs of any claim of ownership or possession  
18 to the Subject Property. As such, this cause of action for quiet title fails as a matter of law because the  
19 Plaintiffs: 1) cannot show they made a valid tender; 2) they are not the owners of the Subject Property;  
20 and 3) are not entitled to possession of the Subject Property.  
21

22 **C. DISMISSAL IS APPROPRIATE AS TO PLAINTIFFS' CLAIM FOR PRELIMINARY**  
23 **INJUNCTION.**

24 A Temporary Restraining Order and Preliminary Injunction are issued in order to preserve the  
25 status quo. This remedy is available only upon a showing that the party seeking the injunction has a  
26 reasonable probability of success on the merits and that the Defendant's conduct, if allowed to continue,  
27 will result in irreparable harm. *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726  
28

1 P.2d 335, 337 (1986); *Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987). The Court may also  
2 consider the relative interests of the parties (i.e., how much damage the Plaintiffs will suffer if injunctive  
3 relief is denied versus the hardship to the Defendants if injunctive relief is granted). *Ellis v. McDaniel*,  
4 95 Nev. 455, 459, 596 P.2d 222, 225 (1979).

5 The Plaintiffs have not succeeded in demonstrating that they can meet each (or any) of the  
6 requirements for obtaining a preliminary injunction. They have not even discussed or addressed how any  
7 of these factors or requirements weigh in their favor. As a result, this Court should construe that the  
8 factors do not weigh in their favor and dismiss the injunctive relief cause of action.  
9

10 **1. The Plaintiffs Have Not Shown, and Cannot Show, That They Enjoy a Reasonable**  
11 **Likelihood of Success on the Merits.**

12 The Complaint lists unspecified causes of action for Unlawful Foreclosure, Quiet Title,  
13 Preliminary Injunction, Slander of Title, Constructive Fraud, and Declaratory Relief.

14 Requests for declaratory relief and injunctive relief do not give rise to an independent cause of  
15 action. *Hearne v. Countrywide Home Loans, Inc.*, WL 1815424 (D.Nev., 2010) at 5; *Shell Oil Co. v.*  
16 *Richter*, 52 Cal.App.2d 164, 168, 125 P.2d 930 (Ct.App.1942). Instead, they are requests for remedies,  
17 which depend upon the existence of some supporting cause of action. *Id.* at 168.  
18

19 Defendants incorporate and reference the individual sections of this Opposition that address each  
20 of Plaintiffs' cause of action. Furthermore, Plaintiffs' allegations have already been briefed, argued, and  
21 decided in the prior bankruptcy and federal court cases involving the Plaintiffs. These courts have ruled  
22 against the Plaintiffs and found that the lender had proper standing to foreclosure. The Plaintiff's  
23 arguments are barred by the doctrine of res judicata and the Plaintiffs are therefore precluded from  
24 continuing to pursue these allegations. The Plaintiffs are unable to succeed on their causes of action  
25 against these Defendants because these Defendants were not involved with the origination of the loan,  
26 the assignment/transfer of the loan, or the foreclosure process.  
27  
28

1 Without any underlying cause of action which could support injunctive relief (and hence no  
2 prospect of ultimately prevailing against these Defendants on such a cause of action), the Plaintiffs cannot  
3 demonstrate that they enjoy a reasonable likelihood of success on the merits. Consequently, the Plaintiffs  
4 cannot obtain injunctive relief against these Defendants.

5 The Complaint requests "injunctive relief...against Defendants from removing Plaintiffs from  
6 their real properties during the pendency of this lawsuit...and eviction therefrom [because] Defendants  
7 are threatening to remove Plaintiffs from their property." (Complaint at ¶¶65-66) yet the Complaint also  
8 indicates that the Plaintiffs reside in California (Complaint at Heading, ¶2, ¶5, and ¶79). Injunctive relief  
9 to stop these Defendants from eviction proceedings is not needed because these Plaintiffs do not even  
10 reside in the Subject Property and will not be damaged because of eviction proceedings against the current  
11 occupants of the Subject Property.  
12

13  
14 **2. The Plaintiffs Have Not Shown, and Cannot Show, That The Actions of Defendants Will**  
15 **Cause Irreparable Harm To The Plaintiff If Not Enjoined.**

16 The Plaintiffs' allegation that they will suffer irreparable harm if the Subject Property is sold at  
17 foreclosure is moot because it has already sold at foreclosure to Breckenridge, a third-party purchaser for  
18 value. At best, the Plaintiffs would have a money damages claim, which the Plaintiffs would have to  
19 prove. Even if the Plaintiffs could prove damages, any damages would be against JPMorgan Chase; not  
20 these Defendants.  
21

22 Furthermore, as demonstrated above, the Plaintiffs do not reside in the Subject Property and  
23 therefore would not suffer irreparable harm due to eviction proceedings against the current occupants of  
24 the Subject Property.

25 In seeking a preliminary injunction, it is also not sufficient to merely allege, or even demonstrate,  
26 that the requesting party stands to suffer some injury or irreparable harm for which compensatory relief  
27  
28

1 is inadequate. Rather, that harm must be caused by the nonmoving party's conduct. *Boulder Oaks*  
2 *Community Association v. B & J Andrews Enterprises, LLC*, 123 Nev.Adv.Op. No. 46, (2007).

3 The Plaintiffs' attempts to blame these Defendants for any alleged misconduct of non-party  
4 JPMorgan Chase is misplaced. These Defendants are not the originator, current beneficiary, or servicer  
5 of the loan. They were not involved with the assignment or transfer of the Note or Deed of Trust. These  
6 Defendants purchased the Subject Property at the foreclosure sale and cannot be expected to defend or  
7 argue the alleged conduct of JPMorgan Chase or the other entities that Plaintiff complains against.

9 In the instant matter, even if the Plaintiff were able to demonstrate that irreparable harm would  
10 occur, it cannot be said that these Defendants would be the cause of that harm. The Plaintiffs' failure to  
11 make all required monthly mortgage payments is the sole cause of any alleged irreparable harm resulting  
12 from the foreclosure sale. The "cause" of any alleged harm resulting from a foreclosure sale lies more  
13 with the Plaintiffs than it does with anyone else.

15 Finally, Nevada law expressly permits a court to declare an improper trustee's sale void. NRS  
16 107.080(5). Therefore, if they are eventually successful in the litigation, the Plaintiffs can recover the  
17 Subject Property if they satisfy the elements for such relief. Under this basis alone, courts have declined  
18 to issue preliminary injunctions. *Zinni v. Mortgage Electronic Registration Sys. Inc.*, No. 11-cv-1479,  
19 2011 WL 4346585 (D. Nev. Sept. 15, 2011).

21 **3. The Balancing Of Equities Favors These Defendants.**

22 He who seeks equity must do equity. *McQuiddy v. Ware*, 87 U.S. 14, 19 (1873). The United  
23 States Supreme Court further stated the following regarding equitable relief in *McQuiddy*:  
24

25 Moreover, there has been an utter lack of personal diligence, which is required in  
26 such a case as this in order to bring into activity the powers of a court of equity.  
27 Equity always refuses to interfere where there has been gross laches in the  
28 prosecution of rights.

*Id.* at 19.

1 It has been years since the Plaintiffs have made a mortgage payment. The Plaintiffs have failed  
2 to do equity and, therefore, cannot obtain equitable relief from the Court. Also, the Plaintiffs have not  
3 tendered the amount due and owing to bring the loan out of default status.  
4

5 On the other hand, these Defendants simply purchased the Subject Property at the foreclosure  
6 sale. These Defendants are now being required to pay real property taxes to the County and the hazard  
7 insurance premiums to the insurer, while the Plaintiffs pay nothing. Under the circumstances, equitable  
8 considerations demand that the Plaintiffs' request for injunctive relief be denied.  
9

10 **4. If The Court Grants Injunctive Relief, Then A Substantial Bond Should Be Required.**

11 The Plaintiffs have not provided any compensation whatsoever for the delay and hindrance caused  
12 in this matter. While Defendants are firmly opposed to the Plaintiffs' request for injunctive relief, these  
13 Defendants submit that a bond of \$211,000 – which is the amount that Breckenridge purchased the  
14 Subject Property for at the foreclosure sale – should be required of the Plaintiffs in the event the Court  
15 is inclined to grant the Plaintiffs' request for injunctive relief.  
16

17 **D. DISMISSAL IS APPROPRIATE AS TO PLAINTIFFS' CLAIM FOR SLANDER OF**  
18 **TITLE.**

19 Slander of title requires the showing of false and malicious communications, disparaging to one's  
20 title in land, and causing special damages. *Higgins v. Higgins*, 103 Nev. 443, 445, 744 P.2d 530, 531  
21 (1987). The element of malice in a slander of title action requires a showing that the Defendants knew  
22 that the communication was false or acted in reckless disregard of its truth or falsity. *Rowland v. Lepire*,  
23 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983). There is no malice when a Defendant has reasonable  
24 grounds for belief in his claim, even if the claim proves to be false. *Id.* at 313–14, 662 P.2d at 1335–36.  
25

26 The Complaint alleges that these Defendants “disparaged Plaintiffs’ exclusive valid title by and  
27 through preparing, posting, publishing, and recording...the Notice of Default, Notice of Trustee’s Sale,  
28

1 and Trustee's Deed." *Complaint* at ¶71. It is undisputed that these Defendants had absolutely no  
2 involvement with the preparing, posting, publishing and recording of the Notice of Default or the Notice  
3 of Trustee's Sale as they did not become involved in this matter until Breckenridge purchased the Subject  
4 Property at the foreclosure sale. Similarly, the Trustee's Deed is prepared by the foreclosing trustee, not  
5 these Defendants.

6  
7 The Complaint fails to identify or allege any false or malicious communications by these  
8 Defendants. Furthermore, even if there were such communications, the Plaintiffs could not recover  
9 because they are unable to show that they own title to the land because their interest in the land was wiped  
10 out once JPMorgan Chase's foreclosure was concluded and Breckenridge took ownership of the Subject  
11 Property. Finally, even if the Plaintiffs were able to identify or allege false or malicious communications  
12 and an ownership interest in the Subject Property, these Defendants have shown reasonable grounds for  
13 belief in its claim to the property -- i.e. the purchase of the Subject Property at a properly noticed  
14 foreclosure sale that was not constrained by any statutory or judicially-imposed stays. As such, this cause  
15 of action fails and must be dismissed as a matter of law.  
16

17  
18 Plaintiffs have also failed to state a claim because it is undisputed that the Plaintiffs are in default.  
19 *Sexton v. IndyMac Bank FSB*, No. 3:11-CV-437, 2011 WL 4809640 (D. Nev. Oct. 7, 2011); *Ramos v.*  
20 *Mortg. Elec. Registrations Sys., Inc.*, No. 2:08-CV-1089, 2009 WL 5651132 (D. Nev. Mar. 5, 2009)  
21 (dismissing slander of title claim where plaintiffs failed to dispute that they were in default on their loan,  
22 nor was it false that the property was to be sold at a trustee's sale). In filing the underlying Notice of  
23 Default, NDSC and JPMorgan Chase stated that the Plaintiffs were in breach of the loan agreement due  
24 to nonpayment. That default has been confirmed by the ruling in the federal court litigation. Because  
25 the recorded documents are not false, Defendants cannot be liable for slander of title.  
26  
27  
28

1 **E. DISMISSAL IS APPROPRIATE AS TO PLAINTIFFS' CLAIM FOR CONSTRUCTIVE**  
2 **FRAUD.**

3 The Plaintiffs' fifth cause of action must also be dismissed. NRCP 9(b) states:

4 In all averments of fraud or mistake, the circumstances constituting fraud or  
5 mistake shall be stated with particularity. Malice, intent, knowledge, and other  
6 condition of mind of a person may be averred generally.

7 The purpose of Rule 9 is to require Plaintiffs to plead fraud with particularity in order that  
8 Defendants will not be required to play a guessing game. Although Nevada is a "notice pleading" state,  
9 Plaintiffs must still meet the requirements of NRCP 9 when making allegations pertaining to fraud. The  
10 facts in a Complaint alleging fraud must include averments as to time, place, identity of the parties  
11 involved, and the nature of the fraud or mistake. *Brown v. Keller*, 97 Nev. 582, (1981). Furthermore, to  
12 establish fraud, a Plaintiff must show:

13 [T]hat the defendant made a *false representation* to him, *with knowledge or belief*  
14 that the representation was *false* or without sufficient basis for making the  
15 representation. Further, the plaintiff must establish that the defendant *intended to*  
16 *induce the plaintiff to act or refrain from acting* on the representation, and that the  
17 plaintiff *justifiably relied* on the representation. Finally, the plaintiff must  
18 establish that he was *damaged* as a result of his reliance.

19 *Blanchard v. Blanchard*, 108 Nev. 908 (1992) (emphasis in original) (citations omitted). Additionally, a  
20 Plaintiff must establish that the false representation "played a substantial part in leading the plaintiff to  
21 adopt his particular course". *Id.* If the Plaintiff was unaware of the representation at the time that he  
22 acted or was not otherwise influenced by the representation and would have done the same thing without  
23 it for other reasons, his loss cannot be attributed to the Defendant. *Id.*

24 In a case with multiple Defendants, "Rule 9(b) does not allow a complaint to merely lump  
25 multiple defendants together but requires plaintiffs to differentiate their allegations when suing more than  
26 one defendant and inform each defendant separately of the allegations surrounding his alleged  
27  
28

1 participation in the fraud.” *Swartz v. KPMG LLP*, 476 F.3d 756 (9<sup>th</sup> Cir. 2007) (internal quotation marks  
2 and citations omitted).

3 The Plaintiffs have made no effort to do so in this Complaint. The Plaintiffs did not allege any  
4 facts or information as to when the fraud occurred; its form; where it took place; the way it was  
5 communicated; the content; the identities of the Defendants who concealed the material information; and  
6 how or why this had any bearing on the Plaintiffs’ decision to default on their loan obligations. There is  
7 no way for any of the Defendants to determine from the Complaint what fraudulent acts it is alleged to  
8 have committed. Plaintiffs’ claims for fraud fail to satisfy the heightened pleading standard of Rule 9(b).  
9

10 Plaintiffs’ Complaint is also deficient in that it fails to aver any facts which would establish any  
11 element of fraud. Furthermore, Plaintiffs have failed to identify who made the alleged  
12 misrepresentations, when they were made, to whom they were made and how they were made. The  
13 Plaintiffs allege that unspecified Defendants engaged in fraudulent activity. The Plaintiffs do not allege  
14 what the activity was, which Defendants engaged in it, when the activity was done, or and how the activity  
15 caused them damages.  
16

17 The Plaintiffs’ fraud claim also fails to state a claim because the Plaintiffs do not plead sufficient  
18 allegations to meet the element of reliance. While the Plaintiffs claim they were harmed “because of  
19 Defendants’ illegal foreclosure scheme” no fraudulent statements are specifically alleged against the  
20 Defendants and no allegations are made that the Plaintiffs relied on those statements.  
21

22 Finally, this cause of action is nonsensical in Plaintiffs’ allegation that, “[A]t least one of  
23 the Defendants is a State insured institution and has a duty of candor and a duty not to defraud the  
24 Plaintiffs and a duty not [to] cause harm to individual members of the public.” Complaint at ¶83.  
25 This allegation is contrary to other portions of the Complaint wherein Plaintiffs specifically identifies  
26 NDSC as an Arizona corporation (Complaint at ¶6), McDermott as an individual (Complaint at ¶8),  
27  
28



1 Wedgewood as a Nevada corporation (Complaint at ¶10), and Breckenridge as a California limited  
2 liability company (Complaint at ¶12). Because the Plaintiffs fail to identify any "State insured institution"  
3 in their Complaint, this cause of action appears to be another instance of Plaintiffs simply copying-and-  
4 pasting a formed pleading they found on the internet.

5 This cause of action must be dismissed because it fails as a matter of law and is pled without the  
6 specificity required by NRCP 9(b).  
7

8 **F. DISMISSAL IS APPROPRIATE AS TO PLAINTIFFS' CLAIM FOR DECLARATORY**  
9 **RELIEF.**

10 Plaintiffs' final claim for relief for declaratory relief fails for two reasons. First and foremost,  
11 "declaratory relief is not an independent cause of action." *Leung v. Mortgage Elec. Registration Sys.*,  
12 2:12-CV-1393-JCM 2013 U.S. Dist. LEXIS 8943 at \*14 (D. Nev. January 22, 2013); *Aguilar v. WMC*  
13 *Mortgage Corp.*, No. 2:09-cv-1416-ECR-PAL, 2010 U.S. Dist. LEXIS 3385, 2010 WL 185951, at \*4  
14 (D. Nev. Jan. 15, 2010); *In re: MERS Litig.*, MDL Dkt. No. 09-2119-JAT, slip op. at 8-9 (D. Ariz. Mar.  
15 23, 2010). For this reason alone, Plaintiffs claim for relief must be dismissed for failure to state a valid  
16 claim.  
17

18 Second, declaratory relief is a derivative prayer for relief of Plaintiffs quiet title claim which, as  
19 set forth above, fails. Because Plaintiffs' quiet title claim fails to state a valid claim under Nevada law,  
20 their derivative prayer for declaratory relief also must be dismissed. *Cervantes v. Countrywide Home*  
21 *Loans, Inc.*, 2009 WL 6157160, at \*12 (D. Ariz.) (holding that because none of the substantive claims  
22 stated a claim for relief, claims for injunctive and declaratory relief must likewise fail"); *Vargas v.*  
23 *Countrywide Home Loans, Inc.*, Case No. CV 09-2309-JFW (CWX), Order (C.D. Cal. May 14, 2010)  
24 ("Plaintiff's claims for injunctive relief and declaratory relief are remedies, and not separate claims for  
25 relief. Because the underlying claims for relief against Defendants have been dismissed...any remedies  
26 that would have been available against Defendants are also necessarily dismissed").  
27  
28

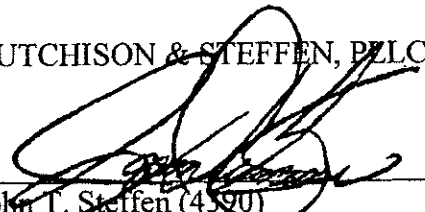
1 Given the above, the claim for relief for declaratory relief should be dismissed for failure to state  
2 a claim upon which relief can be granted.

3 **VI. CONCLUSION**

4 Based on the foregoing, Plaintiff respectfully requests that the Court grant its Motion To Dismiss  
5 with prejudice as to McDermott, Wedgewood, and Breckenridge as to all claims.

6 DATED this 2<sup>nd</sup> day of July 2018.  
7

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23 *Breckenridge Property Fund 2016 LLC*  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **MOTION TO DISMISS** via U.S. Mail to the parties designated below.

Leo Kramer  
Audrey Kramer  
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Hercules, CA 94547  
*Plaintiffs*

Kevin S. Soderstrom, Esq.  
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*Attorney for National Default Servicing Corporation*

DATED this 2<sup>nd</sup> day of July 2018.

  
An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS

DEFENDANT'S MOTION TO DISMISS

CASE NO.: 18-CV-00663

Exhibit No.	DOCUMENT TITLE	# OF PAGES
1	Order filed May 17, 2018 in Case 3:18-cv-00001-MMD-WGC	11

# **EXHIBIT 1**

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\*\*\*

LEO KRAMER, AUDREY KRAMER,  
Plaintiffs,

v.

JP MPRGAN CHASE BANK, N.A,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
NATIONAL DEFAULT SERVICING  
CORPORATION, WASHINGTON  
MUTUAL BANK, N.A., and DOES 1  
THROUGH 50 INCLUSIVE,

Defendants.

Case No. 3:18-cv-00001-MMD-WGC

ORDER

(ECF Nos. 17, 22, 43)

**I. SUMMARY**

This action is in part an attempt by Leo Kramer ("Kramer") and Audrey Kramer (collectively "Plaintiffs") to prevent a non-judicial foreclosure of their property. (See *generally* ECF No. 1.) Before the Court, and among other motions, are two motions to dismiss Plaintiffs' complaint ("the Complaint"), pursuant to Fed. Civ. P. ("Rule") 12(b)(6), by Defendants JPMorgan Chase Bank, N.A. ("Chase") and Mortgage Electronic Registration Systems, Inc. (MERS). (ECF Nos. 17, 22.) Plaintiffs filed responses to Chase's motion to dismiss ("Chase's Motion") (ECF Nos. 28, 31), and Chase replied (ECF No. 38).

Additionally before the Court is Plaintiffs' motion to strike MERS's motion to dismiss ("MERS's Motion"). (ECF No. 43.) The Court has reviewed MERS's response (ECF No. 45) and Plaintiffs' reply (ECF No. 50).

1 For the reasons discussed below, Plaintiffs' motion to strike (ECF No. 43) is denied,  
2 and both motions to dismiss (ECF Nos. 17, 22) are granted.

3 **II. BACKGROUND**

4 The following facts are derived from the Complaint and exhibits attached thereto,  
5 or are established by documents found in the public records (ECF Nos. 1, 17-6, 17-7, 17-  
6 8, 17-9, 17-11, 17-12, 17-13, 17-14)<sup>1</sup>:

7 In June 2005, Plaintiffs obtained a loan from Paul Financial, LLC ("Paul Financial")  
8 to purchase property located at 1740 Autumn Glen Street in Fernley Nevada (the  
9 "Property" or "Collateral Property"). (ECF No. 1 at 7, 52.) The loan was secured by a deed  
10 of trust ("First DOT") naming Paul Financial as the lender and MERS as beneficiary. (See  
11 ECF No. 1 at 51-53.) In May 2008, MERS substituted Executive Trustee Services, LLC  
12 ("ETS") as the trustee under the First DOT. (ECF No. 1 at 88-90.) Acting as the substituted  
13 trustee, ETS reconveyed the Property.<sup>2</sup> (*Id.* at 89.) Accordingly, the First DOT ceased to  
14 encumber the Property.

15 On May 1, 2008, Plaintiffs used the Property as collateral to obtain a \$176,000  
16 revolving line of credit (the "Loan") from Defendant Washington Mutual Bank, F.A.  
17 ("WaMu"). (ECF No. 1 at 6-8.) The deed of trust on the Property securing the WaMu Loan  
18 ("Second DOT") was publicly recorded. (*Id.* at 77.) In September 2008, the Federal Deposit  
19 Insurance Corporation ("FDIC") assumed receivership of WaMu and sold WaMu's assets  
20 and liabilities to Chase pursuant to a Purchase and Assumption Agreement ("the PAA").<sup>3</sup>

21 ///

22 <sup>1</sup>The Court may take judicial notice of "matters of public record." *Lee v. City of L.A.*,  
23 250 F.3d 668, 689 (9th Cir. 2001) (quoting *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279,  
1282 (9th Cir. 1986)); see also Fed. R. Evid. 201.

24 <sup>2</sup> The Substitution of Trustee and Full Reconveyance effectively allowed for ETS to  
25 be substituted as successor trustee, and allowed ETS to reconvey the Property to "the  
26 person or persons legally entitled thereto all estate now held by [ETS] under [the First  
27 DOT,]" who would be Plaintiffs. (See ECF No. 1 at 52-53, 88; see also *id.* at 78 (Plaintiffs  
28 representing to Washington Mutual Bank that Plaintiffs owned the Property, and that the  
Property was unencumbered.))

<sup>3</sup>The Court takes judicial notice of the PAA, which is available on the FDIC's  
website, at [https://www.fdic.gov/about/freedom/washington\\_mutual\\_p\\_and\\_a.pdf](https://www.fdic.gov/about/freedom/washington_mutual_p_and_a.pdf). See,

1 The PAA details that as part of Chase's acquisition, Chase obtained the rights and  
2 liabilities of WaMu, as lender and beneficiary, arising under all of the loan assets of WaMu,  
3 which would include the Second DOT. In November 2013, Chase substituted Defendant  
4 National Default Servicing Corporation ("NDSC") as trustee under the Second DOT. (ECF  
5 No. 1 at 9, 92.)

6 Kramer filed three bankruptcy petitions: Case No 10-43951, filed as a Chapter 11  
7 petition in April 2010, but *converted to a Chapter 7 filing*; Case No 11-49493 filed as a  
8 Chapter 13 petition in September 2011; and Case No 14-42866, filed as a Chapter 13  
9 petition in July 2014.<sup>4,5</sup> (ECF Nos. 17-6, 17-7, 17-8, 17-11, 17-12; *see also* ECF No. 1 at  
10 10, 96-100, 102.) In schedules filed in Case Nos. 10-43951 and 14-42866, Kramer  
11 acknowledged the Loan was secured and that Chase held a security interest in the  
12 Collateral Property.<sup>6</sup> (ECF No. 17-7 at 4; ECF No. 17-12 at 4, 9; ECF No. 1 at 97.)

13 ///

14 *e.g.*, *Allen v. United Fin. Mortg. Corp.*, 660 F. Supp. 2d 1089, 1093-94 (2009) (citing *New*  
15 *Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 702 n.22 (10th Cir. 2009) (taking judicial  
16 notice of data on web sites of federal agencies)). Because the PAA establishes only that  
17 Chase assumed WaMu's assets and liabilities, contrary to Plaintiffs' position, it is  
18 impertinent whether the link to the PAA, provided here, displays 39 pages, instead of 118  
pages which Plaintiffs allege is the actual length of the PAA and has not been made public.  
Plaintiffs do not contest that the 39-page PAA is a public record, nor do they aver that the  
allegedly longer 118-page PAA contradicts the 39-page PAA in pertinent part. (See ECF  
No. 28 at 2-3.)

19 <sup>4</sup>The Court takes judicial notice of the bankruptcy proceedings, as identified in  
20 exhibits attached to Chase's Motion, because the proceedings are matters of public  
21 record. Plaintiffs do not challenge the authenticity of the bankruptcy case documents. (See  
22 *generally* ECF Nos. 28, 31.)

23 <sup>5</sup>The bankruptcy court dismissed Case No. 11-49493. (See ECF No. 17-8.)

24 <sup>6</sup>Plaintiffs' response to Chase's Motion asserts that Plaintiffs "naïve[ly]" and  
25 "inadvertently" listed Chase as having a security interest in Kramer's bankruptcy  
26 schedules. (See ECF No. 31 at 24.) Citing to "Exhibit I," Plaintiffs claim they "discovered  
27 through this process that their Note associated with the Loan was not assigned to Chase.  
28 (*Id.*) However, Exhibit I, which only displays Chase's billing statements, does not  
undermine Chase's security interest in the Collateral Property. Plaintiffs also identify an  
Exhibit H to support their claim that the "alleged debt" was listed as "non-secure" in the  
Chapter 7 bankruptcy. (ECF No. 31 at 4.) However, as noted *infra*, debt discharge does  
not also discharge a creditor's secured interest in collateral property. Further, Exhibit H  
lists the Collateral Property under "Schedule D – Creditors Holding Secured Claims," and  
notes Chase as a creditor. (ECF No. 31 at 166). Exhibit H also separately lists  
WaMu/Chase under "Schedule F-Creditors Holding Unsecured Nonpriority Claims," but



1 Chase filed a proof of claim regarding the Loan in both Case No. 14-42866 and  
2 Case No. 11-49493, before the latter's dismissal. (ECF No. 17-9; ECF No. 17-13; see  
3 also ECF No. 17-8.) To the proof of claims Chase attached a copy of the WaMu Mortgage  
4 Plus Agreement and Disclosure relating to the Loan (the "Note"), and the Second DOT.  
5 (See ECF No. 17-9 at 4-23; ECF No. 17-13 at 9-31.) In Case No. 14-42866, Kramer  
6 proposed a Chapter 13 plan wherein Chase was recognized as a Class 3 creditor, and  
7 Kramer was to surrender his interest in the Collateral Property upon plan confirmation.  
8 (ECF No. 17-14 at 3.) Kramer received discharges in both Case No. 10-43951 and Case  
9 No. 14-42866, on June 16, 2011, and January 9, 2017, respectively. (ECF No. 17-6 at 2,  
10 13; ECF No. 1 at 11, 102.) At no point in the bankruptcy proceedings did Kramer assert  
11 claims against any of the Defendants herein. Nor did Kramer seek to have the lien  
12 evidenced in the Second DOT stripped from the Property to render the Loan "unsecured."

13 In October 2017, NDSC recorded a Notice of Default and Election to Sell Under the  
14 Deed of Trust. (ECF No. 1 at 11, 105.) In January 2018, Plaintiff initiated this action. The  
15 Complaint alleges fifteen (15) causes of action against "all Defendants," challenging the  
16 impending foreclosure (*see generally* ECF No. 1) and requesting damages (*id.* at 12). The  
17 Complaint does not allege that the Loan has been paid or that Plaintiffs are not in payment  
18 default under the terms of the Loan.

19 Chase moves for dismissal, contending, *inter alia*, Plaintiffs are judicially estopped  
20 from asserting claims in this Court against Chase and the various Defendants. (See ECF  
21 No. 17.) MERS argues it is entitled to dismissal because MERS had "no interest in  
22 transactions that allegedly give rise to Plaintiffs' claims." (ECF No. 22 at 3.) The Court  
23 finds that dismissal with prejudice is warranted as to all Defendants, on all of Plaintiffs'  
24 claims, as amendment would be futile.<sup>7</sup>

25 ///

26 nonetheless notes the claim as "Secured Credit Line," and does not list the Collateral  
27 Property (*id.* at 170).

28 <sup>7</sup>The Court takes note of Plaintiffs' argument that certain issues raised by Chase's  
Motion can be cured by the Court permitting amendment to the Complaint (ECF No. 31 at

1     **III.     PLAINTIFFS' MOTION TO STRIKE MERS'S MOTION TO DISMISS**

2             Plaintiffs' motion to strike is premised on their contention that MERS failed to serve  
3     its Motion in time for Plaintiffs to respond (see ECF No. 43 at 2), and that therefore  
4     Plaintiffs' right to due process was undermined (*id.* at 5; ECF No. 50 at 2). The Court  
5     disagrees.

6             On January 23, 2018, this Court ordered MERS to respond to the Complaint within  
7     twenty days after Plaintiffs posted their required security. (ECF No. 13.) Plaintiffs made  
8     their cash deposit on February 21, 2018. (ECF No. 15.) MERS filed its Motion on March  
9     12, 2018, within the twenty-day deadline. (*Compare* ECF No. 22 with ECF No. 13 and  
10    ECF No. 15.) MERS's Motion includes a certification that MERS's Motion was served on  
11    Plaintiffs by mail at the address Plaintiffs provided in the Complaint. (ECF No. 22 at 7; *see*  
12    *also* ECF No. 45 at 2.) Plaintiffs filed the motion to strike MERS's Motion on April 6, 2018.  
13    (*See* ECF No. 43.)

14            The day before Plaintiffs filed the motion to strike, MERS's counsel and Plaintiffs  
15    had exchanged emails wherein MERS, in addition to noting it had complied with its  
16    servicing obligations by mail, was "agreeable to setting a schedule for [Plaintiffs] to file a  
17    response to [MERS's Motion]." (ECF No. 45-1.) MERS expressed it was "agreeable" given  
18    Plaintiffs' claim of lack of receipt by mail. (*Id.*) MERS had also sent Plaintiffs a copy of its  
19    Motion by email on April 3, 2018. (ECF No. 43 at 4.) It appears Plaintiffs chose to file the  
20    instant motion to strike instead of accepting MERS's proposal.

21            The Court finds no merit to Plaintiffs' claim that MERS needed to engage in good  
22    faith effort to "meet and confer" before filing its Motion. (ECF No. 43 at 2, 6, ECF No. 50  
23    at 5.) In support of this claim, Plaintiffs cite to LR IA 1-3(f). (ECF No. 43 at 2.) However,  
24    neither LR IA 1-3(f) nor any rule of which the Court is aware requires parties to meet and  
25    confer prior to filing a motion to dismiss.

26    ///

27    ///

28    6), but ultimately finds these other issues irrelevant in light of the application of the judicial  
  estoppel bar.

1 Under the circumstances here, the Court disagrees with Plaintiffs that their right to  
2 due process was undermined by not having sufficient time to respond. This is really a  
3 problem of Plaintiffs' own choosing. Plaintiffs opted to file a motion to strike instead of  
4 working with MERS to give Plaintiffs more time to respond. Moreover, Plaintiffs provide no  
5 evidence contradicting MERS's attestation that it timely mailed its Motion.<sup>8</sup> Accordingly,  
6 Plaintiffs' motion to strike (ECF No. 43) is denied

#### 7 IV. THE MOTIONS TO DISMISS

##### 8 A. Legal Standard

9 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
10 relief can be granted." Rule 12(b)(6). A properly pleaded complaint must provide "a short  
11 and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(a)(2);  
12 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require  
13 detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic  
14 recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
15 (citing *Twombly*, 550 U.S. at 555.) "Factual allegations must be enough to rise above the  
16 speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a  
17 complaint must contain sufficient factual matter to "state a claim to relief that is plausible  
18 on its face." *Iqbal*, 556 U.S. at 678 (internal citation omitted).

19 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
20 apply when considering motions to dismiss. First, a district court must accept as true all  
21 well-pleaded factual allegations in the complaint; however, legal conclusions are not  
22 entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause  
23 of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a  
24 district court must consider whether the factual allegations in the complaint allege a  
25 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's

26 ///

27 <sup>8</sup> MERS' Motion was filed on the Court's docket. (ECF No. 22.) The next day, the  
28 Court issued a notice of the filing of a motion to dismiss and the need for the opposing  
party (i.e., Plaintiffs) to respond. (ECF No. 25.) Even if Plaintiffs did not receive a copy of  
MERS' Motion, the Court's notice should have alerted Plaintiff of the filing of such a motion.

1 complaint alleges facts that allow a court to draw a reasonable inference that the  
2 defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does not  
3 permit the court to infer more than the mere possibility of misconduct, the complaint has  
4 "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.* at 679 (internal  
5 quotation marks omitted). When the claims in a complaint have not crossed the line from  
6 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

7 Ordinarily, a complaint must contain either direct or inferential allegations  
8 concerning "all the material elements necessary to sustain recovery under *some* viable  
9 legal theory." *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745  
10 F.2d 1101, 1106 (7th Cir. 1989)). But, allegations in *pro se* complaints are held to less  
11 stringent standards than formal pleadings drafted by lawyers and must be liberally  
12 construed. See *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir. 2011).

13 "Generally, a district court may not consider any material beyond the pleadings in  
14 ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896  
15 F.2d 1542, 1555 n.19 (9th Cir. 1990). Where "matters outside the pleading are presented  
16 to and not excluded by the court," a Rule 12(b)(6) motion is to "be treated as one for  
17 summary judgment and disposed of as provided in Rule 56, and all parties shall be given  
18 reasonable opportunity to present all material made pertinent to such a motion by Rule  
19 56." Rule 12(b).

20 There are three exceptions to this rule: (1) a court may consider documents  
21 "properly submitted as part of the complaint" on a motion to dismiss;" (2) if "documents  
22 are not physically attached to the complaint," incorporation by reference is proper "if the  
23 documents' authenticity . . . is not contested" and 'the plaintiff's complaint necessarily  
24 relies' on them," *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001) (quoting *Parrino*  
25 *v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998)); and (3) "a court may take judicial  
26 notice of 'matters of public record.'" *Id.* (quoting *Mack v. S. Bay Beer Distribs.*, 798 F.2d  
27 1279, 1282 (9th Cir. 1986)).

28 ///

1           **B. Chase's Motion**

2           Chase argues that Plaintiffs are judicially estopped from asserting claims against  
3 it, as well as the other Defendants, because Plaintiffs failed to provide notice of their claims  
4 during the bankruptcy proceedings. (ECF No. 17 at 12-13.) The Court agrees.

5           "Judicial estoppel will be imposed when the debtor has knowledge of enough facts  
6 to know that a potential cause of action exists during the pendency of the bankruptcy, but  
7 fails to amend his schedules or disclosure statements to identify the cause of action as a  
8 contingent asset." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir.  
9 2001) (citing *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir.  
10 1992)) (additional citations omitted). In bankruptcy proceedings, potential claims a debtor  
11 may have against a creditor or lender are deemed assets. See *Hamilton v.*, 270 F.3d at  
12 785 (noting the debtor plaintiff's failure to list potential claims against creditor as an asset);  
13 *Hay*, 978 F.2d at 556 (the debtor plaintiff conceding its action is an asset of its bankruptcy  
14 estate). While *Hay* and *Hamilton* are summary judgment cases, there is no reason their  
15 analysis and conclusion would not apply in this case. Both cases support the proposition  
16 that judicial estoppel should be applied here.

17           In *Hay*, the Ninth Circuit recognized that *while the plaintiff did not know all the facts*,  
18 the plaintiff *knew enough* to require notification of the asset (the action/suit against a  
19 creditor) to the bankruptcy court. 978 F.2d at 557. The Ninth Circuit ruled that the plaintiff's  
20 failure to give the required notice estopped the plaintiff and justified the district court's  
21 grant of summary judgment to the defendants. *Id.*

22           *Hamilton* additionally recognized that it is immaterial that a debtor commences an  
23 action against a creditor or lender after filing for bankruptcy. 270 F.3d at 784. "The debtor's  
24 duty to disclose potential claims as assets does not end when the debtor files schedules,  
25 but instead continues for the duration of the bankruptcy proceeding." *Id.* at 785 (citations  
26 omitted). *Hamilton* also explains that courts "must invoke judicial estoppel to protect the  
27 integrity of the bankruptcy process," which includes preventing a debtor from deceiving  
28 the bankruptcy court, and acquiring an "unfair advantage" due to having enjoyed "the

1 benefit of both an automatic stay and a discharge of debt in the debtor's Chapter 7  
2 bankruptcy proceeding." *Id.*

3 The rulings and reasoning in *Hay* and *Hamilton* compel this Court to dismiss the  
4 Complaint. Here, as noted, Kramer was involved in Chapter 7 and Chapter 13 proceedings  
5 and received discharges. (ECF No. 17-6; ECF No. 1 at 11, 102.) Moreover, the Complaint  
6 is grounded in the assertions that the Collateral Property that secured the Loan was part  
7 of the bankruptcy proceedings and cannot be foreclosed upon, due to alleged fraud and  
8 irregularities, and that the Second DOT should be stripped from it. (See ECF No. 1.) The  
9 judicially noticed records show that during both the Chapter 7 and 13 bankruptcy  
10 proceedings Kramer acknowledged Chase's acquired security interest in the Collateral  
11 Property. (ECF No. 17-7 at 4; ECF No. 17-12 at 4,9; ECF No. 17-14 at 3; ECF No. 1 at  
12 97.) The July 2014 Chapter 13 plan in Case No. 14-42866 called for Kramer to surrender  
13 his interest in the Collateral Property to Chase. (ECF No. 17-14 at 3.)

14 Kramer (and by extension the Plaintiffs) knew sufficient facts by which he could  
15 anticipate a cause of action against Chase, especially given Kramer's now evident  
16 reservations about actually surrendering the Collateral Property. While bankruptcy  
17 discharge covering the Loan extinguished Kramer's personal liability for the Loan,  
18 bankruptcy discharge does not prevent foreclosure on the Collateral Property. *See Long*  
19 *v. Bullard*, 117 U.S. 617, 621 (1886); accord *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992)  
20 ("the creditor's lien stays with the real property until the foreclosure"); *Farrey v. Sanderfoot*,  
21 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive  
22 bankruptcy."); *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) ("[A] bankruptcy  
23 discharge extinguishes only one mode of enforcing a claim—namely, an action against  
24 the debtor *in personam*—while leaving intact another—namely, an action against the  
25 debtor *in rem*.").

26 Additionally, during the 2014 Chapter 13 bankruptcy proceeding, Kramer knew, or  
27 should have known, that Chase substituted NDSC as the trustee under the Second DOT,  
28 as the substitution occurred in November 2013. (See ECF No. 1 at 9.) Therefore, Kramer

1 (and by extension the Plaintiffs) knew enough to trigger his obligation to provide the  
2 bankruptcy court notice of his potential claims against Chase, WaMu, and NDSC.<sup>9</sup> Equity  
3 demands that Plaintiffs be judicially estopped from now asserting claims against these  
4 Defendants in this Court to avoid foreclosure on the Collateral Property. To rule otherwise  
5 would be to allow Kramer to circumvent the bankruptcy process.

6 In sum, the Court finds that Plaintiffs are judicially estopped from asserting the  
7 claims here against Chase, WaMu and NDSC. Claims against these Defendants will be  
8 dismissed.

9 **C. MERS's Motion**

10 The Court finds the Complaint is improperly instituted against MERS because  
11 MERS was not involved in the loan transaction giving rise to the claims asserted in the  
12 Complaint. Although Plaintiffs have not filed a response to MERS's Motion, a response is  
13 unnecessary given the fact that MERS was not involved in the Loan or the Second DOT.  
14 The loan transaction involving MERS was resolved when ETS executed the reconveyance  
15 of the Property. Moreover, the "robo-signing" and substitution of trustee claims asserted  
16 against MERS (ECF No. 1 at 8-9) have no merits. See, e.g., *Heidig v. PNC Bank N.A.*,  
17 2017 WL 4102465, \*3 n.6 (D. Nev. Sept. 15, 2017) (stating with respect to the plaintiffs'  
18 theory challenging assignments based on a "robo-signing" argument, "the Ninth Circuit  
19 has affirmed that a borrower lacks standing to allege such an argument because the  
20 borrower does not suffer an injury from the robo-signing"); *Closson v. Reconstruct Co.*,  
21 No. 2:11-cv-00146-KDJ-RJJ, 2012 WL 893746, at \*3-5 (D. Nev. Mar. 15, 2012) (holding  
22 that trustee was properly substituted by MERS because MERS has the right to substitute  
23 a new trustee in its capacity as nominee).

24 ///

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>9</sup> Chase essentially stands in the place of WaMu as the acquirer of WaMu's assets  
and liabilities (specifically the Note and Second DOT), and Chase substituted NDSC as  
the trustee under the Second DOT.

1 **V. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several cases  
3 not discussed above. The Court has reviewed these arguments and cases and determines  
4 that they do not warrant discussion as they do not affect the outcome of the motions before  
5 the Court.

6 It is therefore ordered that Plaintiffs' motion to strike MERS's Motion (ECF No. 43)  
7 is denied.

8 It is further ordered that Chase and MERS's motions to dismiss (ECF Nos. 17, 22)  
9 are granted.

10 It is further ordered that Plaintiffs' pending motions (ECF Nos. 30, 46, 55, 56) and  
11 objection (ECF No. 55) are denied as moot.

12 The Clerk is directed to enter judgment accordingly and close this case.

13 DATED THIS 17<sup>th</sup> day of May 2018.

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16 MIRANDA M. DU  
17 UNITED STATES DISTRICT JUDGE  
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FILED

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TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

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*Attorneys for Defendants*

*Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC*

**THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA**

LEO KRAMER, AUDREY KRAMER,

Plaintiff,

v.

NATIONAL DEFAULT SERVICING  
CORPORATION, ALYSSA MCDERMOTT,  
WEDGEWOOD INC., BRECKENRIDGE  
PROPERTY FUND 2016 LLC and DOES 1  
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663  
Dept No.: I

**JOINDER TO NATIONAL DEFAULT  
SERVICING CORPORATION'S MOTION  
TO DISMISS**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"),  
and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Defendants") by  
and through its counsel of record, Hutchison & Steffen, LLC, and hereby joins Defendant NATIONAL  
DEFAULT SERVICING CORPORATION's Motion To Dismiss.

1 The Defendants adopt and incorporate the Memorandum of Points and Authorities in NDSC's  
2 Motion as though fully set forth herein and requests that dismissal be granted in regards to the Plaintiffs'  
3 complaint.

4 DATED this 2<sup>nd</sup> day of July 2018.

6 HUTCHISON & STEFFEN PLLC

7  
8   
9 John T. Steffen (4390)

10 Matthew K. Schriever (10745)

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14 Wedgewood, LLC

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19 E-mail: caseynelson@wedgewood-inc.com

20 *Attorneys for Defendants*

21 *Alyssa McDermott, Wedgewood Inc., and*

22 *Breckenridge Property Fund 2016 LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **JOINDER TO NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO DISMISS** via U.S. Mail to the parties designated below.

Leo Kramer  
Audrey Kramer  
2364 Redwood Road  
Hercules, CA 94547  
*Plaintiffs*

Kevin S. Soderstrom, Esq.  
TIFFANY & BOSCO, PA  
10100 W. Charleston Blvd., Ste. 220  
Las Vegas, NV 89135  
*Attorney for National Default Servicing Corporation*

DATED this 2<sup>nd</sup> day of July 2018.

  
An Employee of HUTCHISON & STEFFEN

FILED

2018 JUL -5 AM 9:02

TANYA SCHEIDT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Tanya Scheidt*  
DEPUTY

1 LEO KRAMER  
2 AUDREY KRAMER  
3 2364 REDWOOD ROAD  
4 HERCULES, CA 94547  
5  
6 PLAINTIFFS IN PRO PER  
7

THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA

9  
10 LEO KRAMER, Pro se  
11 AUDREY KRAMER, Pro se  
12

)  
) Case No.: 18-CV-00663  
)

) PLAINTIFFS' OPPOSITION TO  
) DEFENDANT, NATIONAL DEFAULT  
) SERVICING CORPORATION'S MOTION  
) TO DISMISS PLAINTIFFS' COMPLAINT;  
) DECLARATION OF AUDREY KRAMER  
) FILED CONCURRENT HERewith;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES IN SUPPORT THEREOF  
)

) Date: TBA  
) Time: TBA  
) Dept: I  
)

13  
14  
15  
16  
17  
18 Plaintiffs,

19 vs.  
20

21 NATIONAL DEFAULT SERVICING  
22 CORPORATION, ALYSSA MC DERMOTT,  
23 WEDGWOOD INC., BRECKENRIDGE  
24 PROPERTY FUND 2016 LLC, and DOES 1  
25 THROUGH 50 INCLUSIVE,  
26  
27  
28

Defendants.

1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 Plaintiffs LEO KRAMER and AUDREY KRAMER, ("Plaintiffs"), submit the  
4 following memorandum of points and authority opposing the motion to dismiss by  
5 Defendant, NATIONAL DEFAULT SERVICING CORPORATION, and aver as  
6 follows:  
7

8  
9 I  
10 INTRODUCTION

11 Plaintiffs' cause of action for unlawful foreclosure is premised upon Defendants'  
12 fraudulent, and willful oppressive sale of Plaintiffs' real property in May 2018, and is  
13 not barred by the doctrine of res judicata because plaintiffs' cause of action for unlawful  
14 foreclosure is a new legal theory that could not have been litigated in the first lawsuit.  
15 The first lawsuit is currently pending appeal in the United States Court of Appeals for  
16 the Ninth Circuit. Plaintiffs have reasonably likelihood of prevailing on appeal in the  
17 United States Court of Appeals for the Ninth Circuit because the United States District  
18 court committed substantial prejudicial error and abuse of discretion. The fraudulent  
19 Assignment of deed of trust, which forms the basis of Defendant's Notice of Default of  
20 October 2017, was recently filed with Lyon County recorder's Office in April 2018,  
21 about Six months after NATIONAL DEFAULT SERVICING CORPORATION  
22 ("NDSC") filed the fabricated and fraudulent Notice of Default and failed to give  
23 Plaintiffs Notice before and after filing the Notice of default.  
24  
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1 Plaintiffs were not and are still not in breach of the \$176,000.00 revolving line of  
2 credit they obtained from Washington mutual Bank. Furthermore, Plaintiffs did not use  
3 up the entire \$176,000.00 revolving line of credit and the portion Plaintiffs utilized were  
4 paid off and discharged in Bankruptcy court in June 2011. The issue pertaining to the  
5 \$176,000.00 revolving line of credit which Plaintiff did not exhaust was adjudicated by  
6 a court of competent jurisdiction in the United States Bankruptcy Court in 2011 and  
7 Defendants are barred from re-litigating matter pertaining to the \$176,000.00 revolving  
8 line of credit. Neither JPMORGAN CHASE BANK nor WASHINGTON MUTUAL  
9 BANK funded plaintiffs' mortgage note as such, JPMORGAN CHASE BANK,  
10 NATIONAL DEFAULT SERVICING CORPORATION and their privies lack standing  
11 to sell Plaintiffs' real property.

12 Defendant National Default Servicing Corporation (hereinafter "NDSC")  
13 motioned this honorable court to dismiss the Complaint with prejudice of Leo Kramer  
14 and Audrey Kramer, (hereinafter collectively the "Plaintiffs") based on the doctrine of  
15 res judicata. In rebuttal to Defendant's motion, Plaintiffs wish to inform this Honorable  
16 Court that the doctrine of res judicata does not apply because Defendant, NDSC, failed  
17 to inform the Court of two very important factors which bar the claim of res judicata.

18 Plaintiffs' initial Complaint regarding the subject property, filed on Jan 2, 2018,  
19 in the Federal District Court of Reno Nevada (Case No.: 3:18-cv-0001) **DID NOT**  
20 allege a Cause of Action for '**UNLAWFUL FORECLOSURE**' and could not have  
21 alleged a cause of action for unlawful foreclosure because the unlawful non-judicial  
22

1 **foreclosure of Plaintiffs' real property did not** occur when Plaintiffs filed their first  
2 complaint and the cause of action for wrongful or unlawful non-judicial foreclosure  
3 could not have been litigated during the first lawsuit.

4  
5 The **FRAUDULENT 'UNLAWFUL FORECLOSURE'** and **FRAUDULENT**  
6 **'UNLAWFUL TRUSTEE SALE'** of Plaintiffs' property was reported by NDSC to  
7 have taken place on May 18, 2018, over (5) five months after Plaintiffs filed their initial  
8 complaint in Federal Court. A foreclosure sale had not yet taken place to claim a  
9 wrongful foreclosure cause of action in the January 2, 2018, Complaint. The Cause of  
10 Action filed in the instant case for **'UNLAWFUL FORECLOSURE'** is in fact a **NEW**  
11 **'CAUSE OF ACTION'** which could not have been filed with the first lawsuit.

12  
13  
14 Therefore, res judicata does not apply.

15  
16 Further, there is no finality on the previous case for unlawful debt collection  
17 practices act and other causes of action against Defendant, NATIONAL DEFAULT  
18 SERVICING CORPORATION in the first cause of action because that case is on  
19 Appeal with the United States Court of Appeals for the 9<sup>th</sup> Circuit and Plaintiffs have  
20 reasonable likelihood of prevailing on Appeal because the District Court judge  
21 committed substantial reversible and prejudicial error and miscarriage of justice  
22 demanding the reversal of the District Court's decision in its entirety.

23  
24  
25 Further, on May 24, 2018, Plaintiffs timely filed a Notice of Appeal for the above  
26 mentioned Federal Case (Case No. 3:18-CV-0001) with the United States Court of  
27 Appeals for the Ninth Circuit San Francisco (Appeal Case No.: 18-15059). **SEE**  
28

1 **EXHIBIT A.** Given that a final decision has not yet been rendered in the previous  
2 Federal District Case, the doctrine of res judicata cannot be applied in the instant Case  
3 that is currently before this honorable court (Case No.: 18-CV-00663). Additionally,  
4 the case in the Federal District Court of Reno Nevada (3:18-CV-0001) has not been  
5 decided on its' merits or deem to be final adjudication, thus until the United States  
6 Court of Appeals, 9<sup>th</sup> Circuit rules on the Federal Case (3:18-cv-0001) the doctrine of  
7 res judicata cannot be applied. Plaintiffs have reasonable likelihood of prevailing on  
8 Appeal. The District court committed prejudicial error and failed to allow Plaintiffs to  
9 amend their complaint. Given that the District Court Judge committed substantial  
10 reversible and prejudicial error and miscarriage of justice, that court's order and  
11 judgment is likely to be reversed in its entirety.  
12  
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## 17 **II** 18 **STATEMENT OF FACTS**

19 On or about June 2, 2005, Leo Kramer and Audrey Kramer, the Plaintiffs', as  
20 husband and wife, as joint tenants, purchased property located at 1740 Autumn Glenn  
21 Street in Fernley Nevada, County of Lyon (APN 022-052-02). The aforementioned  
22 property is the subject of Plaintiffs' Complaint. The purchase price of the subject  
23 property was \$204,448, whereby, Plaintiffs' made a down payment of approximately  
24 33% (\$67,948) and obtained a mortgage loan from Paul Financial, LLC in the amount  
25 of \$163,500, to complete the purchase transaction. **SEE EXHIBIT B** Paul  
26 Financial, LLC issued Plaintiffs a Deed of Trust accordingly. **SEE EXHIBIT C**  
27  
28



1 On or about April 4, 2008, Plaintiffs later obtained a Revolving Line of Credit  
2 through Washington Mutual Bank (WaMu) with a maximum credit limit of \$176,000.  
3 Plaintiffs at no time ever accessed the maximum credit limit of \$176,000, which was  
4 contracted in accordance with Plaintiffs' Credit Agreement Contract with WaMu. SEE  
5 **EXHIBIT D Please note:** Within 6 months after Plaintiffs entered into the Credit  
6 Agreement with WaMu, the Credit Agreement Contract with WaMu was BREACHED.  
7 WaMu BREACHED the agreement because Plaintiffs were unable to use the maximum  
8 credit limit of \$176,000. WaMu Bank became a defunct lending institution upon the  
9 FDIC taking receivership of WaMu on Sept 25, 2008. Succinctly, the Credit Agreement  
10 Contract Plaintiffs had with WaMu was for all practical purposes a '**Breach of**  
11 **Contract**' because WaMu failed to perform its obligation under the revolving line of  
12 credit agreement.

13 Plaintiffs wish for this court to know that the subject property is very unique to  
14 them, as Plaintiffs' are in their mid 60's, with serious health issues and the property was  
15 intended to be their retirement home. Plaintiffs maintain that they have at all times been  
16 the sole owners of the property and their names 'solely' have appeared on the Deed of  
17 Trust. Plaintiffs further maintain that they have never conveyed their property, nor has  
18 assignment of Plaintiffs' Deed Of Trust, beyond that of Paul Financial, LLC or WaMu,  
19 ever been 'lawfully' conveyed to anyone else. **PLEASE NOTE:** This fact is noted and  
20 acknowledge in an affidavit signed by Von Mai, Vice President of JPMorgan Bank,  
21 dated 6/24/2014 (*the document was never officially recorded*). However, this affidavit

1 was found as an attachment to the Notice of Default signed by Ivan Mora, Trustee Sales  
2 Supervisor for NDSC on 10/5/2017 and recorded on 10/6/2017 DOC # 571145. SEE

3 **EXHIBIT E**

4  
5 Plaintiffs pray this most honorable court will conduct a **very** careful review of the  
6 documents which have been recorded in Lyon County's Records Office against the  
7 subject property. Plaintiffs firmly believe that upon **careful** review of the actual  
8 documents recorded against the subject property this court will see the blatant  
9 fabrication of fraudulent documents filed with the Lyon County Recorder's Office in an  
10 attempt to **willfully, knowingly and unlawfully**, foreclose and steal Plaintiffs' home out  
11 from under them. Defendants have indeed committed fraud in order to foreclose on  
12 Plaintiffs' property.

13  
14 It is an extremely well-known fact that Chase Bank and other dubious cohorts  
15 relating to the banking industry have committed fraudulent foreclosures by fabricating  
16 documents and using robo-signers in order to carry out unlawful foreclosures. Federal  
17 Regulators have fined **BILLIONS OF DOLLARS AGAINST CHASE BANK FOR**  
18 **COMMITTING FRAUD, ROBO-SIGNING, SUBMITTING FALSE**  
19 **DOCUMENTATION & CONDUCTING UNLAWFUL FORECLOSURES.** But that  
20 did not stop Chase Bank, **JPMorgan Chase Fined \$48 Million For Failing To**  
21 **Comply With Robo-signing Settlement.** SEE EXHIBIT F **The Department of**  
22 **Justice reaches an additional \$50 MILLION DOLLARS SETTLEMENT with**  
23  
24  
25  
26  
27  
28

1 **Chase Bank**, who admitted to continuing to commit similar crimes against consumers  
2 in bankruptcy courts around the country. **SEE EXHIBIT G**

3 The following **RECORDED** 'Chain of Titles' on the subject property clearly  
4 shows the break in title, assignment discrepancies, fraudulent and fabrication of  
5 documents that have been falsely recorded against Plaintiffs' property:  
6

7 **PLEASE NOTE: (This is clearly evidenced by the Trustee names, dates of**  
8 **signatures and dates of recordings.)**  
9

10 1. **Purchase Transaction**—Paul Financial, LLC

11 The initial Trustee for the property assigned by Paul Financial, LLC was to:

12 **FOUNDATION CONVEYANCING, LLC**

13 MERS—Beneficiary

14 **Signed on 6/2/2008**

15 **Recorded on 6/8/05**

16 **DOC #353220 SEE EXHIBIT C**

17 2. **Revolving Line of Credit with WaMu Bank**--The second Trustee was assigned by

18 WAMU Bank to: **CALIFORNIA RECONVEYANCING COMPANY**

19 WaMu--Beneficiary

20 **Signed 4/4/2008**

21 **Recorded on 5/1/08**

22 **DOC #425436 SEE EXHIBIT D**

23 3. **Substitution of Trustee And Full Reconveyance**--requested by MERS resulting  
24 in the third Trustee for the property. MERS arbitrarily substitutes from

25 **FOUNDATION CONVEYANCING, LLC** to **EXECUTIVE TRUSTEE**

26 **SERVICES, LLC** ... COMPETELY OVERLOOKING AND NEVER

27 **ACKNOWLEDGING ... CALIFORNIA RECONVEYANCING COMPANY**  
28

1 Signed on 5/13/2008, by Vickie Ingamells, Assistant Secretary of MERS

2 Recorded on 5/19/08.

3 DOC #426240 SEE EXHIBIT H

4  
5 4. Substitution of Trustee--The fourth, final and unlawfully appointed Trustee for  
6 the property was substituted from 'CALIFORNIA RECONVEYANCING  
7 COMPANY, as the original Trustee', to NATIONAL DEFAULT SERVICING  
8 CORPORATION (NDSC). SKIPPING EXECUTIVE TRUSTEE SERVICES,  
9 LLC all the way back to the 2<sup>nd</sup>. Trustee--CALIFORNIA RECONVEYANCING  
10 COMPANY. This unlawful SUBSTITUTION OF TRUSTEE was assigned by  
11 JPMorgan Chase Bank N.A. (Chase Bank) by Carryn Baron, Vice President of  
12 Chase Bank.

13 Signed on 11/26/2013 by Carryn Baron, VP of Chase Bank

14 Recorded on 12/5/2013

15 DOC #515723 SEE EXHIBIT I

16  
17 Plaintiffs ask this honorable court, "How is this even possible"? How does Chase  
18 Bank SKIP assignments and jump into the chain of title? Chase Bank was never  
19 assigned title by anyone! What happened to the assignment of Executive Trustee  
20 Services, LLC? That assignment of Trustee seems to have been completely  
21 overlooked and ignored by Chase Bank and NDSC. Chase Bank is not the holder of the  
22 ORIGINAL NOTE, nor has assignment of the Deed of Trust ever been given to Chase,  
23 not even by the Federal Deposit Insurance Corporation ('FDIC'). This Court must  
24 question why Chase fraudulently fabricated and filed an Assignment of Deed of Trust  
25 and then filed it on April 10, 2018, (10) ten years after the seizure of WaMu Bank and  
26  
27  
28

1 Chase Bank's acquisition? Chase claims in the fraudulent fabricated DOT which was  
2 strategically and conveniently filed in April 2018, that, "*For value received*  
3 *Washington Mutual Bank, a Federal Association, the undersigned corporation*  
4 *hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association*  
5 *all beneficial interest under that certain Deed of Trust dated 04/04/2008 executed by*  
6 *Leo F. Kramer and Audrey E. Kramer Trustor, to California Reconveyance*  
7 *Company, A California Corporation Trustee, and recorded on 05/01/2008 as*  
8 *instrument No. 425436 of the Official Records of Lyon County, NV describing the*  
9 *land herein:*" SEE EXHIBIT J

12  
13 Chase basically UNLAWFULLY and FRAUDULENTLY self-assigned and  
14 granted Plaintiffs' Deed of Trust to themselves. The State of Nevada was one of the  
15 first states to consider fraudulent unlawful foreclosures to be a **FELONY**, as now do  
16 many other states. Chase is laughing at everyone, "ALL THE WAY TO THE  
17 BANK"!

18  
19 MOST IMPORTANTLY, based on the fact that Chase Bank presented to the  
20 court for the first time a **FRAUDULENT** Assignment on April 10, 2018, the Notice of  
21 Default Chase filed on 10/6/2017, was VOID, which means the Notice of Trustee Sale  
22 and Trustee Sale are also both VOID!

23  
24  
25 Plaintiffs would further like to point out to this Honorable Court that the State of  
26 Nevada Foreclosure Mediation Program Certification, required by the State of Nevada  
27 before a lender can foreclose on property was never provided to Plaintiffs. Plaintiffs  
28

1 only found this document when recently downloading documents recorded against their  
2 property. This document filed with Lyon County's Recorders Office on 3/22/2018  
3 DOC #578119, checks a box '**Grantor Non-compliance**'. It is difficult to respond to a  
4 document that one has never received. Additionally, please note this certification is not  
5 dated, signed nor is there any proof of service to Plaintiffs. **SEE EXHIBIT K**

7 Defendant, NDSC, who was chosen by and works directly for Chase Bank makes  
8 mention in their 'Motion To Dismiss' that Chase Bank is relying on their Purchase &  
9 Assumption Agreement (PAA) to foreclose on properties they have no real claim to.  
10 NDSC miss quotes the PAA by stating, "*Chase Bank obtained the rights and liabilities*  
11 *of WAMU, as lender and beneficiary, arising under all of the loan assets of WaMu,*  
12 *which would include the Second Deed of Trust.*" However, Chase has always  
13 carefully stated that they obtained '**Certain**' Assets & Liabilities. There are two very  
14 important factors that must be taken into account regarding the PAA. The PAA Chase  
15 has submitted to the courts is a partial document consisting of only (39) pages, however,  
16 the actual PAA is (118 pages). Contrary to Chase Bank's claim, the public has not  
17 been given access to the complete and authentic PAA. Further, Chase has not presented  
18 any court with a **complete, true, authenticated** or **certified** PAA. **SEE EXHIBIT L**  
19 As a matter of fact, Chase lost a Foreclosure Case at the Fourth District Court of Appeal  
20 because of numerous transfers of real estate debt. Further, the Fourth District Court of  
21 Appeal rejected Chase's PAA. **SEE: 'Cruz vs JPMorgan Chase Bank, N. A.'**—  
22 **Fourth District Court of Appeal.**

1 NDSC mentions that Plaintiff, Leo Kramer filed 3 bankruptcies. Plaintiffs would  
2 like this honorable court to know the circumstances of those bankruptcies. Plaintiffs  
3 have always prided themselves on meeting their financial responsibilities; however, due  
4 to very serious medical issues, coupled with the 2008 housing market crash, the  
5 Kramers found themselves no longer able to meet their financial obligations and sought  
6 expert legal help. Upon the advice of legal counsel Plaintiff, Leo Kramer filed a  
7 Chapter 11 Bankruptcy (Case # 10-43951) that was later converted to a Chapter 7  
8 bankruptcy. The alleged debt with WaMu was included in Plaintiff's Chapter 7  
9 Bankruptcy and was fully discharged in June 2011. **SEE EXHIBIT M**  
10 Unfortunately, Plaintiffs were subsequently wrongfully sued by a previous creditor of  
11 their Chapter 7 bankruptcy and after consulting with Plaintiffs' same attorney who  
12 represented them in the Chapter 11 & 7 Bankruptcies, Plaintiffs were advised by  
13 counsel to file a Chapter 13 Bankruptcy. It is important for this court to know and  
14 understand that after a protracted law suit, the creditor withdrew their claim with  
15 prejudice and the monies paid by Plaintiffs were refunded to them by the court  
16 appointed bankruptcy Trustee. **SEE EXHIBIT N**  
17 It is also important for this court to know that listing Chase Bank as a creditor in  
18 Plaintiff, Leo Kramer's Chapter 13 Bankruptcy was inadvertent by Plaintiffs' lawyers,  
19 and Chase Bank should not have been included in the Chapter 13 Bankruptcy.  
20 Plaintiffs offer proof of this fact by way of Chase's statements sent monthly to Plaintiffs  
21 noting the 'Chapter 7 Bankruptcy with a status of 'DISCHARGE'. **SEE**  
22  
23  
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1 **EXHIBIT O** At NO time did Chase Bank ever reference any other bankruptcies on  
2 their monthly statements they sent to Plaintiffs. Chase knew for years the alleged debt  
3 had been fully discharged on June 16, 2011, yet Chase Bank knowingly and willfully  
4 attempted to commit FRAUD on the bankruptcy court by submitting a phony proof of  
5 claim for monies Chase Bank knew was not owed to them. Any alleged debt owed was  
6 adjudicated in June of 2011. Moreover, Plaintiffs actually have a claim against Chase  
7 Bank & NDSC for the doctrine of res judicata given that the alleged debt was  
8 discharged in June 2011, involved a Breach of Contract, and at the very least required a  
9 judicial foreclosure because the WaMu Credit Agreement Contract was never a  
10 mortgage loan or note and required a detailed full accounting and judgment in order to  
11 collect or foreclose on Plaintiffs' property. Further, this Credit Agreement Contract  
12 falls under contract law and is therefore time barred, as the Nevada 6 year statute of  
13 limitations has passed.

### 18 **III** 19 **ARGUMENT**

#### 20 **A. PLAINTIFFS' CAUSE OF ACTION FOR UNLAWFUL OR** 21 **WRONGFUL NON-JUDICIAL FORECLOSURE IS NOT BARRED BY** 22 **THE DOCTRINE OF RES JUDICATA BECAUSE PLAINTIFFS' CAUSE** 23 **OF ACTION FOR UNLAWFUL FORECLOSURE IS A NEW LEGAL** 24 **THEORY THAT COULD NOT HAVE BEEN LITIGATED IN THE FIRST** 25 **LAWSUIT**

26 1. The cause of action for unlawful foreclosure has not been decided on the  
27 merits by a court of competent jurisdiction and could not have been filed in the  
28 first lawsuit that is pending Appeal at the 9<sup>th</sup> Circuit.



1 The United States Supreme Court has held that "Under the doctrine of res judicata,  
2 a judgment on the merits in a prior suit bars a second suit involving the same parties or  
3 their privies based on the same cause of action." Parklane Hosiery Co. v. Shore, 439  
4 U.S. 322, 326 n.5 (1979). Res judicata bars not only those matters which were actually  
5 litigated and decided, but any other matter which could have been litigated and decided.  
6 Comm'r of Internal Rev. v. Sunnen, 333 U.S. 591, 597 (1948). Here, Plaintiffs' cause of  
7 action for unlawful or wrongful non-judicial foreclosure could NOT have been litigated  
8 and decided because NATIONAL DEFAULT SERVICING CORPORATION  
9 fraudulently sold Plaintiffs property in May 2018, more than 5 months after the first  
10 lawsuit was filed. When the second lawsuit asserts on a different cause of action, the  
11 doctrine of res judicata is inapplicable. Winn v. Board of Pension Comm'rs, 149  
12 Cal.App.3d 532, 536-37, 197 Cal.Rptr. 111, 113-14 (2d Dist.1983).  
13  
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16

17 The doctrine of *res judicata* operates to bar litigation in a subsequent action  
18 where a plaintiff raised, or could have raised, the same claims in a prior action that  
19 resulted in a final judgment on the merits. W. Radio Servs. Co. v. Glickman, 123 F.3d  
20 1189, 1192 (9th Cir.1997). Here, Plaintiffs' cause of action for "Unlawful Foreclosure,  
21 which is premised upon Defendants' fraudulent, willful, oppressive sale of Plaintiffs'  
22 real property could not have been raised in the same claims in a prior action that  
23 resulted in erroneous dismissal of Plaintiffs' case which is now pending Appeal in the  
24 9<sup>th</sup> Circuit. Plaintiffs have a strong likelihood of prevailing on the merits on Appeal. In  
25 deciding the Plaintiffs' case the United States District court committed substantial abuse  
26  
27  
28

1 of discretion and substantial prejudicial error demanding the District Court Order and  
2 judgment in its entirety.

3 To determine whether *res judicata* precludes a plaintiffs' claims this Honorable  
4 court should apply the *res judicata* rules of the great state of Nevada. Under Nevada  
5 law, *res judicata* applies where "(1) the parties or their privies are the same, (2) the final  
6 judgment is valid, and (3) the subsequent action is based on the same claims or any part  
7 of them that were or could have been brought in the first case." *Five Star Capital Corp.*  
8 *v. Ruby*, 194 P.3d 709, 713 (Nev. 2008). In the instant case, Plaintiffs cause of action  
9 for wrongful foreclosure could not have been brought in the first case, which is  
10 currently pending appeal with the 9<sup>th</sup> Circuit, because Defendants fraudulent, willful,  
11 and oppressive non-judicial foreclosure of Plaintiffs' real property occurred in May of  
12 2018, after Plaintiffs' case was filed in January of 2018. Therefore, it is abundantly  
13 clear that plaintiffs' action is not barred by the doctrine of *res judicata*. Plaintiffs' case  
14 for wrongful or unlawful foreclosure has never been filed and could not have been  
15 brought in the first case because the fraudulent and unlawful non-judicial foreclosure of  
16 Plaintiffs' real property occurred in May of 2018. Further, there is no final judgment for  
17 fraudulent or unlawful non-judicial foreclosure of Plaintiffs' real property from any  
18 court of competent jurisdiction and Plaintiffs' case for wrongful foreclosure is not based  
19 on claims that were, or could have been raised in the Federal District Court of Reno  
20 Nevada action.  
21  
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1 **B. DEFENDANT'S RES JUDICATA CLAIM IS BARRED BY THE**  
2 **DOCTRINE FRAUDULENT CONCEALMENT EXCEPTION TO THE**  
3 **LAW OF RES JUDICATA**

4 **1. Defendant fraudulent concealed that they had the right to file notice**  
5 **of default and to sell Plaintiffs' real property**

6 Additionally, plaintiffs contend that because of Defendants' fraudulent  
7 concealment, the doctrine of "manifest injustice" exception to the doctrine of res  
8 judicata applied here, as such Defendant, NATIONAL DEFAULT SERVICING  
9 CORPORATION's motion to dismiss must be denied in its entirety in the interest of  
10 justice and due process of law.

11  
12 **A. Burden of Proof**

13 The party asserting the defense of res judicata bears the burden of proof as to the  
14 facts underlying the defense. Vella v. Hudgins, 20 Cal.3d 251, 257, 142 Cal.Rptr. 414,  
15 417, 572 P.2d 28, 31 (1977); Erlich v. Superior Court, 63 Cal.2d 551, 556-57, 47  
16 Cal.Rptr. 473, 476, 407 P.2d 649, 652 (1965). Here, Defendants have not demonstrated  
17 that Plaintiffs' cause of action for "Unlawful or Wrongful non-judicial Foreclosure" was  
18 filed and decided by a court of competent jurisdiction. Further, Defendant, National  
19 Default proffered no evidence to support its frivolous contentions regarding the  
20 "Unlawful non-judicial foreclosure of Plaintiffs' Real property. Additionally,  
21 Defendant provided no evidence to show that Plaintiffs' cause of action was litigated in  
22 a prior lawsuit.

1 In this case, Defendant, National Default Servicing Corporation, has not properly  
2 brought the issue of the doctrine of res judicata before the Court.

3 When the second lawsuit asserts on a different cause of action, the doctrine of res  
4 judicata is inapplicable. Winn v. Board of Pension Comm'rs, 149 Cal.App.3d 532, 536-  
5 37, 197 Cal.Rptr. 111, 113-14 (2d Dist.1983). As such, Plaintiffs respectfully request  
6 that this Honorable Court deny Defendants' defense of res judicata, Deny Defendant's  
7 motion to dismiss in its entirety and set the matter for jury trial.  
8  
9

10  
11 **B. ISSUES REGARDING THE \$176, 000.00 REVOLVING LINE OF**  
12 **CREDIT WHICH FORMS THE BASIS FOR THE UNLAWFUL NON-**  
13 **JUDICIAL FORECLOSURE BY DEFENDANTS IS BARRED BY THE**  
14 **DOCTRINE OF RES JUDICATA AND COLLATERAL ESTOPPEL**  
15 **BECAUSE ANY ISSUES RELATING TO THE LINE OF CREDIT WAS**  
16 **DISCHARGED IN BANKRUPTCY COURT IN 2011**

17 **The re-litigating of the line of credit**

18 A fundamental precept of common-law adjudication, embodied in the related  
19 doctrines of collateral estoppel and res judicata, is that a "right, question or fact  
20 distinctly put in issue and directly determined by a court of competent jurisdiction ...  
21 cannot be disputed in a subsequent suit between the same parties or their privies ...."440  
22 U.S. 147, 153 (1979). Under Nevada law, *res judicata* applies where "(1) the parties or  
23 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action  
24 is based on the same claims or any part of them that were or could have been brought in  
25 the first case." *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 713 (Nev. 2008).  
26  
27  
28

1 Here, it is abundantly clear that Defendant, NATIONAL DEFAULT  
2 SERVICING CORPORATION and its privies action pertaining the \$176,000.00  
3 revolving line of credit is barred by the doctrine of *res judicata*. The parties are the  
4 same, the final judgment in the United States Bankruptcy Court in case number: case #  
5 10-43951 is valid, and the instant action is based on claims that were, or could have  
6 been raised in the United States Bankruptcy Court action.  
7

8 The doctrine of *res judicata* proscribes the hearing of an issue pertaining to the  
9 \$176,000.00 revolving line of credit determined by a court of competent jurisdiction in a  
10 previous proceeding between the same parties and the same cause of action, and  
11 doctrine applies to questions of jurisdiction with same force as to other legal issues.  
12  
13 Alitalia-Linee Aeree Italiane-S.p.A. v. Second Judicial Dist. Court In and For Washoe  
14 County, 1976, 556 P.2d 544, 92 Nev. 638. Neither JPMORGAN CHASE BANK nor  
15 WASHINGTON MUTUAL BANK funded plaintiffs' mortgage note as such,  
16 JPMORGAN CHASE BANK, NATIONAL DEFAULT SERVICING CORPORATION  
17 and their privies lack standing to sell Plaintiffs' real property in a non-judicial  
18 foreclosure proceeding. "[C]ollateral estoppel ... means simply that when an issue of  
19 ultimate fact has once been determined by a valid and final judgment, that issue cannot  
20 again be litigated between the same parties in any future lawsuit." *Leather v. Ten*  
21 *Eyck*, 180 F.3d 420, 424 (2d Cir. 1999) (quoting *Schiro v. Farley*, 510 U.S. 222, 232  
22 (1994)). "Collateral estoppel, like the related doctrine of *res judicata*, has the dual  
23 purpose of protecting litigants from the burden of re-litigating an identical issue with the  
24  
25  
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1 same party or his privy and of promoting judicial economy by preventing needless  
2 litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). A fundamental  
3 precept of common-law adjudication, embodied in the related doctrines of collateral  
4 estoppel and res judicata, is that a "right, question or fact distinctly put in issue and  
5 directly determined by a court of competent jurisdiction ... cannot be disputed in a  
6 subsequent suit between the same parties or their privies ...." 440 U.S. 147, 153 (1979)  
7

8  
9 NATIONAL DEFAULT SERVICING CORPORATION and its privies are  
10 estopped from re-litigating the pertaining \$176,000.00 revolving line of credit.

11 Accordingly, res judicata is the proper preclusion doctrine to apply to the Bankruptcy of  
12 any purported consumer debt arising out of the \$176,000 line of credit.  
13

14  
15  
16 IV  
CONCLUSION

17 For each of the foregoing reasons, Plaintiffs pray this Court deny Defendant,  
18  
19 NATIONAL DEFAULT SERVICING CORPORATION's motion to dismiss in its  
20 entirety.  
21

22  
23 Date: 7/03/2018

24  
25 Date: 7/3/2018

26 Leo Kramer  
Leo Kramer, Pro se

27 Audrey Kramer  
Audrey Kramer, Pro-se  
28

1 LEO KRAMER  
2 AUDREY KRAMER  
3 2364 REDWOOD ROAD  
4 HERCULES, CA 94547  
5  
6 PLAINTIFFS IN PRO PER

7 THIRD JUDICIAL DISTRICT COURT  
8 LYON COUNTY, NEVADA  
9

10 LEO KRAMER, Pro se  
11 AUDREY KRAMER, Pro se

12  
13 Plaintiffs,

14 vs.

15  
16 NATIONAL DEFAULT SERVICING  
17 CORPORATION, ALYSSA MC DERMOTT,  
18 WEDGWOOD INC., BRECKENRIDGE  
19 PROPERTY FUND 2016 LLC, and DOES 1  
20 THROUGH 50 INCLUSIVE,  
21  
22 Defendants.

) Case No.: 18-CV-00663

) DECLARATION OF AUDREY KRAMER IN  
) SUPPORT OF OPPOSITION TO MOTION  
) TO DISMISS

) Date: TBA  
) Time: TBA  
) Dept: 1

23  
24  
25 DECLARATION OF AUDREY KRAMER  
26  
27  
28

1 I, AUDREY KRAMER declare as follows:

- 2 1. I am over the age 18 years.
- 3 2. I have personal knowledge of the above entitled matter and if called as a witness, I could
- 4 and would competently testify thereto.
- 5 3. I make this declaration in support of the attached or above motion to dismiss filed by
- 6 defendant, National Default Servicing Corporation.
- 7 4. Plaintiffs cause of action for unlawful foreclosure is a new cause of action that could not
- 8 have been included in the First complaint filed by Plaintiffs.
- 9 5. Plaintiffs were not and are still not in breach of the \$176,000.00 revolving line of credit
- 10 which plaintiffs obtained from Washington mutual Bank.
- 11 6. Plaintiffs do not owe Washington Mutual Bank, JPMorgan Chase Bank or any of the
- 12 Defendants in this lawsuit.
- 13 7. Plaintiffs did not use the entire amount of \$176,000.00 of the revolving line of credit.
- 14 8. Per agreement, Plaintiffs were granted to use up to \$176,000.00 of the revolving line of
- 15 credit, but could not do so because Washington Mutual Bank became defunct and Plaintiffs
- 16 could not re-use the revolving line of credit as promised.
- 17 9. Neither JPMORGAN CHASE BANK nor WASHINGTON MUTUAL BANK funded
- 18 plaintiffs' mortgage note and such they have no standing to cause National Default
- 19 Servicing Corporation to sell Plaintiffs real property.
- 20 10. Plaintiffs were never given the State of Nevada Foreclosure Mediation Program
- 21 Certification, as is required by the State of Nevada prior to a foreclosure taking place.
- 22 11. JPMorgan Chase Bank filed for the first time a self-fabricated Assignment of Deed of Trust
- 23 on Plaintiffs' property in April 2018.

24 I declare under penalty of perjury under the laws of the United States of America and under the

25 laws of the State of Nevada that the foregoing is true and correct.

26 Executed: on 7/3/2018, at Concha Costa County, State of California

27 Audrey Kramer

28 AUDREY KRAMER



THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA

LEO KRAMER,  
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING  
CORPORATION, ALYSSA MC DERMOTT,  
WEDGWOOD INC., BRECKENRIDGE  
PROPERTY FUND 2016 LLC, and DOES 1  
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

[PROPOSED] ORDER DENYING  
DEFENDANT, NATIONAL DEFAULT  
SERVICING CORPORATION'S MOTION  
TO DISMISS PLAINTIFFS' COMPLAINT

The Court has considered Plaintiffs opposition to Defendant, NATIONAL DEFAULT SERVICING CORPORATION's motion to dismiss Plaintiffs complaint.

**IT IS HEREBY ORDERED** that, good cause appearing, Defendant, NATIONAL DEFAULT SERVICING CORPORATION., Motion to dismiss Plaintiffs complaint is hereby **DENIED**.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2018

The Hon. \_\_\_\_\_

JUDGE THIRD JUDICIAL DISTRICT COURT

1 **PROOF OF SERVICE**

2 *STATE OF CALIFORNIA )*  
3 *) SS:*  
4 *COUNTY OF CONTRA COSTA )*

5 I am employed in the County of Contra Costa, State of California. I am over the age of 18 and  
6 not a party to the within action; my business address is \_\_\_\_\_

7 On July 5, 2018, I served the foregoing document entitled:

8 PLAINTIFFS' OPPOSITION TO DEFENDANT, NATIONAL DEFAULT SERVICING  
9 CORPORATION'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT; MEMORANDUM OF  
10 POINTS AND AUTHORITIES IN SUPPORT THEREOF

11 on all parties in this action as follows:

12 **PLEASE SEE ATTACHED SERVICE LIST**

**The UPS Store**  
1511 Sycamore Ave. Ste M  
Hercules, CA 94547  
store2796@theupsstore.com



13 X **Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar"  
14 with the firm's practice of collection and processing for mailing. Under that practice it would be  
15 deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at  
16 Alameda, California in the ordinary course of business. I am aware that on motion of the party served,  
17 service is presumed invalid if the postal cancellation date or the postage meter is more than one day  
18 after day of deposit for mailing in this Proof of Service.

19        **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the  
20 telefax numbers on the attached Service List.

21        **By Personal Service.** I delivered such envelope by hand to the addressee(s).

22        **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an  
23 overnight courier service for next day delivery to the addressee(s) on the attached Service List.

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

26 Executed on July 5, 2018, at Hercules, California.

27 Mechello Hongo  
28 Name of Declarant

[Signature]  
Signature of Declarant

SERVICE LIST

Jason C. Kolbe, ESQ.

Kevin S. Soderstrom, ESQ.

Tiffany & Bosco, P.A.

10100 W Charleston Blvd, Ste. 220

Las Vegas, NV 89135

*Attorneys for Defendant,*

*National Default Servicing Corporation*

Casey Nelson,

2320 Potosi Street, Suite 130

Las Vegas, NV 89146

*In House Attorney for Defendant*

*Breckenridge Property 2016 Fund LLC*

## **EXHIBIT LIST:**

<b>EXHIBIT A</b>	<b>Notice of Appeal: United States 9<sup>th</sup> District Court of Appeals</b>
<b>EXHIBIT B</b>	<b>Purchase Contract from Fernley Ponderosa, LLC (Seller)</b>
<b>EXHIBIT C</b>	<b>Deed of Trust/Mortgage Note with Paul Financial, LLC</b>
<b>EXHIBIT D</b>	<b>Revolving Line of Credit Agreement with Washington Mutual Bank (WAMU)</b>
<b>EXHIBIT E</b>	<b>Notice of Default (NOD) from National Default Servicing Corporation  (NDSC With Chase Affidavit Attached)</b>
<b>EXHIBIT F</b>	<b>Articles Regarding Fines Levied Against Chase Bank</b>
<b>EXHIBIT G</b>	<b>Department of Justice Article Re: \$50 Million Dollar Settlement With Chase Bank</b>
<b>EXHIBIT H</b>	<b>Substitution of Trustee &amp; Full Reconveyance by MERS</b>
<b>EXHIBIT I</b>	<b>Substitution of Trustee To (NDSC) from JPMorgan Chase Bank</b>
<b>EXHIBIT J</b>	<b>Fraudulent Assignment of Deed of Trust from WAMU to Chase</b>
<b>EXHIBIT K</b>	<b>STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM</b>
<b>EXHIBIT L</b>	<b>Jolley vs JPMorgan Chase Bank Deposition  (Specifically Pgs. 71 &amp; 72)</b>
<b>EXHIBIT M</b>	<b>Chapter 7 Bankruptcy, 'Certified' Schedule of Creditors &amp; Discharge</b>
<b>EXHIBIT N</b>	<b>Chapter 13 Bankruptcy Discharge &amp; Refund</b>
<b>EXHIBIT O</b>	<b>Chase Monthly Statements Reflecting Chapter 7 BK w/Status of Discharge</b>

# EXHIBIT A

**Notice of Appeal: United States 9<sup>th</sup> District Court of Appeals**

# EXHIBIT A



Office of the Clerk  
**United States Court of Appeals for the Ninth Circuit**  
Post Office Box 193939  
San Francisco, California 94119-3939  
415-355-8000

Molly C. Dwyer  
Clerk of Court

May 24, 2018

---

No.: 18-15959  
D.C. No.: 3:18-cv-00001-MMD-WGC  
Short Title: Leo Kramer, et al v. JP Morgan Chase Bank NA, et al

---

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

**The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.**

**Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAY 24 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LEO KRAMER; AUDREY  
KRAMER,

Plaintiffs - Appellants,

v.

JP MORGAN CHASE BANK NA;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
NATIONAL DEFAULT  
SERVICING CORPORATION;  
WASHINGTON MUTUAL BANK,  
N.A.,

Defendants - Appellees.

No. 18-15959

D.C. No. 3:18-cv-00001-MMD-WGC  
U.S. District Court for Nevada, Reno

**TIME SCHEDULE ORDER**

The parties shall meet the following time schedule.

**Mon., July 23, 2018**

Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

**Thu., August 23, 2018**

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

**The optional appellant's reply brief shall be filed and served within 21 days of service of the appellees' brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.**

**Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.**

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Ruben Talavera  
Deputy Clerk  
Ninth Circuit Rule 27-7



# EXHIBIT B

**Purchase Contract from Fernley Ponderosa, LLC (Seller)**

# EXHIBIT B

DOC # 353219

06/08/2005

02:37 PM

Official Record

Requested By  
WESTERN TITLE COMPANY

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 2 Fee: \$15.00

Recorded By: MFK RPTT \$797.55

APN: 022-052-02  
RPTT \$797.55

WHEN RECORDED MAIL TO:  
Name LEO F. KRAMER  
Street 1740 Autumn Glen  
Address Fernley, NV 89408  
City, State  
Zip

MAIL TAX STATEMENTS TO:  
Name LEO F. KRAMER  
Street Same  
Address  
City, State  
Zip  
Order No. 00009691-111- EMB



0353219

(SPACE ABOVE THIS LINE FOR RECORDERS USE)

## GRANT, BARGAIN AND SALE DEED

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FERNLEY PONDEROSA, LLC., a Nevada limited liability company

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

**LEO F. KRAMER and AUDREY E. KRAMER, husband and wife as  
JOINT TENANTS**

and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of FERNLEY, County of Lyon, State of Nevada bounded and described as follows:

All that real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 62 of UPLAND RANCH ESTATES UNIT NO. 7, according to the map thereof, filed in the office of the County Recorder of Lyon County, State of Nevada, as Document No. 315377, on March 09, 2004.

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: June 2, 2005



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FERNLEY PONDEROSA, LLC a Nevada limited liability  
company

JAYNIE TAMURA GAINES, VICE PRESIDENT

STATE OF CALIFORNIA

} ss.

COUNTY OF SAN JOAQUIN

On JUNE 3, 2005, before me, TWILA M. SILVEIRA, personally  
appeared JAYNIE TAMURA GAINES, X personally  
known to me OR        proved to me on the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that ~~he~~ she executed the same in ~~his~~ her  
authorized capacity and that by ~~his~~ her signature on the instrument the person, or the entity upon behalf of  
which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature of Notary

# STATE OF NEVADA DECLARATION OF VALUE

Requested By  
WESTERN TITLE COMPANY

Lyon County - NV  
Mary C. Milligan - Recorder

Page 1 of 2 Fee: \$15.00  
Recorded By: MFK RPT: \$97.55

## FOR RECORDER

Document/Instrument #

Book: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

### 1. Assessor Parcel Number(s)

- a) 022-052-02  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

### 2. Type of Property:

- a) ☐ Vacant Land  
b) ☒ Single Fam. Res.  
c) ☐ Condo/Twnhse  
d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg.  
f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural  
h) ☐ Mobile Home  
i) ☐ Other \_\_\_\_\_

### 3. Total Value/Sales Price of Property:

\$ 204,488.00  
Deed in Lieu of Foreclosure Only (value of property): \$ \_\_\_\_\_  
Transfer Tax Value: \$ 204,488.00  
Real Property Transfer Tax Due: \$ 797.55

### 4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

### 5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exception, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_ Capacity: SELLER

JAYNIE TAMURA GARNES, VICE PRESIDENT Dated: June 2, 2005

Signature: Leo Kramer Capacity: BUYER

### SELLER (GRANTOR) INFORMATION (REQUIRED)

Print Name: FERNLEY PONDEROSA, LLC.

Address: 3202 W. MARCH LANE #A

City: STOCKTON

State: CA Zip: 95219

### BUYER (GRANTEE) INFORMATION (REQUIRED)

Print Name: LEO E. Kramer

Address: 1227 Ballena Blvd.

City: Alameda

State: CA Zip: 94501

### COMPANY/PERSON REQUESTING RECORDING (REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Western Title Company, Inc.  
Address: 55 N. Center #3 P. O. Box 710  
City/State/Zip: Fernley, NV 89408

Esc. #: 00009691-111-EMB



# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number(s)

- a) 022-052-02
- b)
- c)
- d)

### FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

## 2. Type of Property:

- a) ☐ Vacant Land
- b) ☒ Single Fam. Res.
- c) ☐ Condo/Twnhse
- d) ☐ 2-4 Plex
- e) ☐ Apt. Bldg.
- f) ☐ Comm'l/Ind'l
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- a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_
- b. Explain Reason for Exemption: \_\_\_\_\_

## 5. Partial Interest: Percentage being transferred: \_\_\_\_\_%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exception, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Jaymie Tamura Gaines Capacity: SELLER  
JAYMIE TAMURA GAINES, VICE PRESIDENT Dated: June 2, 2005 / JUNE 3, 2005

Signature: \_\_\_\_\_ Capacity: BUYER

### SELLER (GRANTOR) INFORMATION (REQUIRED)

Print Name: FERNLEY PONDEROSA, LLC.

Address: 3202 W. MARCH LANE #A

City: STOCKTON

State: CA Zip: 95219

### BUYER (GRANTEE) INFORMATION (REQUIRED)

Print Name: LEO E. Kramer

Address: 1227 Bollena Blvd

City: FERNLEY

State: NY Zip: 89408

### COMPANY/PERSON REQUESTING RECORDING (REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Western Title Company, Inc.  
Address: 55 N. Center #3 P. O. Box 710  
City/State/Zip: Fernley, NV 89408

Esc. #: 00009691-111-EMB



# EXHIBIT C

**Deed of Trust/Mortgage Note with Paul Financial, LLC**

# EXHIBIT C





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Lender's address is 1401 Los Gatos Drive, San Rafael, CA, 94903

(D) "Trustee" is Foundation Conveyancing, LLC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated June 02, 2005. The Note states that Borrower owes Lender One Hundred Sixty-Three Thousand Five Hundred and 0/100ths Dollars (U.S. \$163,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 01, 2045.

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

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

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

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input checked="" type="checkbox"/> Second Home Rider                    |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider                                |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify]<br>Prepay Penalty |

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time.

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in-trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Lyon [Name of Recording Jurisdiction]:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 022-052-02  
1740 Autumn Glen Street  
Farnley  
("Property Address"):

which currently has the address of  
[Street]  
[City], Nevada 89408-0000 [Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

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Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

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

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

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one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

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

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

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

Witnesses:

\_\_\_\_\_

Leo F. Kramer (Seal)  
Leo F. Kramer -Borrower

\_\_\_\_\_

Audrey E. Kramer (Seal)  
Audrey E. Kramer -Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

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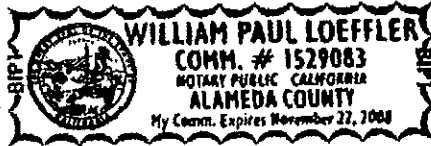


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STATE OF NEVADA <sup>we</sup> California  
COUNTY OF Lyon <sup>Alameda</sup>

This instrument was acknowledged before me on June 2, 2005  
Leo F. Kramer and Audrey E. Kramer



*by*  
*William Paul Loeffler*  
Copy

Mail Tax Statements To:  
Paul Financial, LLC  
1401 Los Gatos Drive  
San Rafael, CA, 94903

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## ADJUSTABLE RATE RIDER

(Monthly Treasury Average - Payment and Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 02nd day of June, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Paul Financial, LLC

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

1740 Autumn Glen Street, Fernley, NV, 89408

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE BORROWER'S MONTHLY PAYMENT INCREASES MAY BE LIMITED AND THE INTEREST RATE INCREASES ARE LIMITED.

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

### A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

### 2. INTEREST

#### (A) Interest Rate

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 1.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

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The interest rate I will pay may change on the first day of **August, 2005**, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Change Date." The new rate of interest will become effective on each Interest Change Date.

**(C) Interest Rate Limit**

My interest rate will never be greater than **12.500 %**.

**(D) The Index**

Beginning with the first Interest Change Date, my interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (h.15)" (the "Monthly Yields"). The "Twelve Month Average" is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

**(E) Calculation of Interest Rate Changes**

Before each Interest Change Date, the Note Holder will calculate my new interest rate by adding **Three and 500/1000** percentage points (**3.500 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limit stated in Section 2(C) above, the rounded amount will be my new interest rate until the next Interest Change Date.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on **August 01, 2005**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on **July 01, 2045**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **P.O. Box 7867, Santa Rosa, CA, 954070867**

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

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ **413.42**. This amount may change.

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Initials: **AK**

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Modified for Monthly Treasury Average (MTA)

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My monthly payment may change as required by Section 3(D) below beginning on the 1st day of August, 2006, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment will also change at any time Section 3(F) or 3(G) below requires me to pay the Full Payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." The Note Holder will then calculate the amount of my monthly payment due the month preceding the Payment Change Date multiplied by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, I may choose to pay the Limited Payment.

**(E) Additions to My Unpaid Principal**

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder will also add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to principal will be the rate required by Section 2 above.

**(F) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid principal can never exceed a maximum amount equal to one hundred ten percent (110 %) of the principal amount I originally borrowed. My unpaid principal could exceed that maximum amount due to the Limited Payments and interest rate increases. If so, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. The new monthly payment will be in an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my current interest rate in substantially equal payments.

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On the 5th Payment Change Date and on each succeeding 5th Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again. I will also begin paying the Full Payment as my monthly payment on the final Payment Change Date.

**4. NOTICE OF CHANGES**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will contain the interest rate or rates applicable to my loan for each month since the prior notice or, for the first notice, since the date of this Note. The notice will also include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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Initials: FK QEK

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Modified for Monthly Treasury Average (MTA)

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

Leo F. Kramer (Seal)  
Leo F. Kramer -Borrower

Audrey E. Kramer (Seal)  
Audrey E. Kramer -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

[Sign Original Only]

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Modified for Monthly Treasury Average (MTA)

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Lender: Paul Financial, LLC  
Address: 1401 Los Gatos Drive  
City, State Zip: San Rafael, CA, 94903

[ Space Above This Line For Recording Data ]

## PREPAYMENT PENALTY RIDER

This Prepayment Penalty Rider is made this 02nd day of June, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note (the "Note") to

Paul Financial, LLC  
("Lender") of the same date and covering the property described in the Security Instrument and located at:

1740 Autumn Glen Street, Fernley, NV, 89408  
[ Property Address ]

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

Borrower may make a full prepayment or a partial prepayment of principal at any time. However, if within the first 2 years after the date Borrower executes the Note, Borrower will pay a prepayment charge on the aggregate prepayments made within any consecutive twelve month period which exceed 20% of the original principal amount stated in the Note (the "Excess Principal"). The prepayment charge will equal the interest rate that would accrue during a six month period of the Excess Principal calculated at the rate of interest in effect under the terms of the note at the time of the prepayment.

No prepayment penalty will be assessed for any prepayment made after the Penalty Period.

The Note Holder's failure to collect a prepayment penalty at the time a prepayment is received shall not be deemed a waiver of such penalty and any such penalty calculated in accordance with this section shall be payable on demand.



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If a law, which applies to this loan and which sets a maximum prepayment charge or prohibits prepayment charges, is finally interpreted so that the prepayment charge to be collected in connection with this loan exceeds the permitted limits, then (i) any such prepayment charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, or (ii) if the prepayment charge is prohibited, no prepayment charge will be assessed or collected.

**DO NOT SIGN THE PREPAYMENT PENALTY RIDER BEFORE YOU READ IT. THIS PREPAYMENT PENALTY RIDER PROVIDES FOR THE PAYMENT OF A CHARGE IF YOU WISH TO REPAY THE LOAN PRIOR TO THE DATE PROVIDED FOR REPAYMENT.**

By signing below, Borrower accepts and agrees to the terms and covenants contained in the Prepayment Note Addendum.

Leo F. Kramer  
Leo F. Kramer

(Seal)  
-Borrower

Audrey E. Kramer  
Audrey E. Kramer

(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower



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## SECOND HOME RIDER

THIS SECOND HOME RIDER is made this 02nd day of June, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to Paul Financial, LLC

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

1740 Autumn Glen Street, Fernley, NV, 89408

[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

**6. Occupancy.** Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

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

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MULTISTATE SECOND HOME RIDER - Single Family -  
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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Initials: *JK A EK*

365R (0011)

VMP MORTGAGE FORMS - (800)521-7291



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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Second Home Rider.

Leo F. Kramer (Seal)  
Leo F. Kramer - Borrower

Audrey E. Kramer (Seal)  
Audrey E. Kramer - Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

\_\_\_\_ (Seal)  
- Borrower

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**Legal Description**

All that real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 62 of UPLAND RANCH ESTATES UNIT NO. 7, according to the map thereof, filed in the office of the County Recorder of Lyon County, State of Nevada, as Document No. 315377, on March 09, 2004.

Unofficial Copy



# EXHIBIT D

**Revolving Line of Credit Agreement with  
Washington Mutual Bank (WAMU)**

# EXHIBIT D



DOC # 425436

05/01/2008

02 11 PM

Official Record

Requested By  
TICOR TITLE CO OF CA

Lyon County - NV

Mary C Milligan - Recorder

Page 1 of 10 Fee \$48.00

Recorded By MCM RPTT

APN: 22-052-02

The undersigned hereby affirms that there is no  
Social Security Number contained in this document

Recording requested by and  
when recorded return to  
250 COMMERCE  
2ND FLOOR  
IRVINE, CA 92602  
ATTN: SERVICELINK



0425436

APN SEE EXHIBIT 'A'



Washington  
Mutual

WaMu Mortgage Plus

DEED OF TRUST

Loan Number 0792726861

THIS DEED OF TRUST is between  
LEO F. KRAMER AND AUDREY E. KRAMER

whose address is

1740 AUTUMN GLEN ST. FERNLEY, NV 89408-7204

("Grantor"), CALIFORNIA RECONVEYANCE COMPANY a CALIFORNIA  
corporation, the address of which is

9200 OAKDALE AVENUE CHATSWORTH, CA 91311

("Trustee"); and

WASHINGTON MUTUAL BANK, A FEDERAL ASSOCIATION, WHICH IS ORGANIZED AND  
EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND WHOSE ADDRESS  
IS 2273 N GREEN VALLEY PARKWAY, SUITE #14, HENDERSON, NV 89014 ("BENEFICIARY")  
AND ITS SUCCESSORS OR ASSIGNS

1 Granting Clause Grantor hereby grants, bargains, sells and conveys to Trustee in  
trust, with power of sale, the real property in LYON County, Nevada,  
described below and all interest in it Grantor ever gets

SHOWN ON EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF BY THIS  
REFERENCE 1740 AUTUMN GLEN ST, FERNLEY, NV 89408 LYON

ACCOMMODATION ONLY THIS INSTRUMENT FILED FOR RECORD  
BY TICOR TITLE COMPANY IS AN ACCOMMODATION  
ONLY IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION  
OR AS TO ITS EFFECTS UPON TITLE

580005539

Tax Parcel Number: SEE EXHIBIT 'A' together with all  
appurtenances, insurance proceeds, and condemnation proceeds related to it; all income, rents

4.3.9.7 (07/02/07) w8 4

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and profits from it, all plumbing, lighting, air conditioning and heating apparatus and equipment, and all fencing, blinds, drapes, floor coverings, built-in appliances and other fixtures at any time installed on or in or used in connection with such real property

All of the property described above will be called the "Property". If any of the Property is personal property, this Deed of Trust is also a Security Agreement which grants Beneficiary, as secured party, a security interest in all such property. Despite any other provision of this Deed of Trust, however, Beneficiary is not granted and will not have, a nonpurchase money security interest in household goods, to the extent such security interest would be prohibited by applicable law. As used herein "State" shall refer to the state of Nevada.

**2 Obligation Secured** This Deed of Trust is given to secure performance of each promise of Grantor contained herein and in a WaMu Mortgage Plus(TM) Agreement and Disclosure with Beneficiary with a maximum credit limit of \$176,000.00 (the "Credit Agreement"), including any extensions, renewals or modifications thereof and repayment of all sums borrowed by Grantor under the Credit Agreement, with interest from the date of each advance until paid at the rates provided therein. The Credit Agreement provides for variable and fixed rates of interest. Under the Credit Agreement, the Grantor may borrow, repay and re-borrow from time to time, up to the maximum credit limit stated above and all such advances shall be secured by the lien of this Deed of Trust. This Deed of Trust also secures payment of certain fees and charges payable by Grantor under the Credit Agreement, certain fees and costs of Beneficiary as provided in Section 9 of this Deed of Trust and repayment of money advanced by Beneficiary to protect the Property or Beneficiary's interest in the Property, including advances made pursuant to Section 6 below. The Credit Agreement provides that unless sooner repaid, the Debt is due and payable in full thirty (30) years from the date of this Deed of Trust (the "Maturity Date"). All amounts due under the Credit Agreement and this Deed of Trust are called the "Debt".

**3 Representations of Grantor** Grantor represents that

- (a) Grantor is the owner of the Property, which is unencumbered except by easements, reservations and restrictions of record not inconsistent with the intended use of the Property and any existing first mortgage or deed of trust given in good faith and for value, the existence of which has been disclosed in writing to Beneficiary, and
- (b) The Property is not presently and will not during the term of this Deed of Trust be used for any agricultural purposes.

**4 Promises of Grantor** Grantor promises

- (a) To keep the Property in good repair and not to remove, alter or demolish any of the improvements on the Property, without first obtaining Beneficiary's written consent,
- (b) To allow representatives of Beneficiary to inspect the Property at any reasonable hour and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property,
- (c) To pay on time all lawful taxes and assessments on the Property,
- (d) To perform on time all terms, covenants and conditions of any prior mortgage or deed of trust covering the Property or any part of it and pay all amounts due and owing thereunder in a timely manner,
- (e) To see to it that this Deed of Trust remains a valid lien on the Property superior to all liens except those described in Section 3(a) and to keep the Property free of all encumbrances which may impair Beneficiary's security. It is agreed that if anyone asserts the priority of any



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encumbrance other than those described in Section 3(a) over this Deed of Trust in any pleading filed in any action, the assertion alone shall be deemed to impair the lien of this Deed of Trust for purposes of this Section 4(e).

(f) To keep the improvements on the Property insured by a company satisfactory to Beneficiary against fire and extended coverage perils and against such other risks as Beneficiary may reasonably require, in an amount equal to the full insurable value of the improvements, and to deliver evidence of such insurance coverage to Beneficiary. Beneficiary shall be named as the loss payee on all such policies pursuant to a standard lender's loss payable clause. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in the same manner as payments under the Note or, at Beneficiary's sole option, released to Grantor. In the event of foreclosure or sale of the Property pursuant to the Trustee's power of sale, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the Sheriff's or Trustee's sale,

(g) To sign all financing statements and other documents that Beneficiary may request from time to time to perfect, protect and continue Beneficiary's security interest in the Property. Grantor irrevocably appoints Beneficiary as Grantor's attorney-in-fact to execute, file and record any financing statements or similar documents in Grantor's name and to execute all documents necessary to transfer title if there is a default, and

(h) To advise Beneficiary immediately in writing of any change in Grantor's name, address or employment.

**5 Sale, Transfer or Further Encumbrance of Property.** Loan is personal to Grantor and the entire Debt shall become immediately due and payable in full upon sale or other transfer of the Property or any interest therein by Grantor by contract of sale or otherwise including, without limit, any further encumbrance of the Property

**6 Curing of Defaults** If Grantor fails to comply with any of the covenants in Section 4, including all the terms of any prior mortgage or deed of trust, Beneficiary may take any action required to comply with any such covenants without waiving any other right or remedy it may have for Grantor's failure to comply. Repayment to Beneficiary of all the money spent by Beneficiary on behalf of Grantor shall be secured by this Deed of Trust, at Beneficiary's option, advance may be made against the Credit Agreement to pay amounts due hereunder, such shall not relieve Beneficiary from liability for failure to fulfill the covenants in Section 4. The amount spent shall bear interest at the rates from time to time applicable under the Credit Agreement and be repayable by Grantor on demand. Although Beneficiary may take action under this paragraph, Beneficiary is not obligated to do so.

#### **7 Remedies For Default**

(a) Prompt performance under this Deed of Trust is essential. If Grantor does not pay any installment of the Debt or other amount due hereunder on time or any other event occurs that entitles Beneficiary to declare the unpaid balance of the Debt due and payable in full under the Credit Agreement or if Grantor fails to comply with any other term, condition, obligation or covenant contained in the Credit Agreement or this Deed of Trust or any rider thereto or any other deed of trust, mortgage, trust indenture or security agreement or other instrument having priority over this Deed of Trust or if any representation of Grantor herein was false or misleading, the Debt and any other money whose repayment is secured by this Deed of Trust shall immediately become due and payable in full, at the options of Beneficiary and the total amount owed by Grantor shall thereafter bear interest at the rate(s) stated in the Credit Agreement. The parties agree that interest is to be compounded as set forth in this paragraph. Beneficiary may



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then or thereafter advise Trustee of the default and of Beneficiary's election to have the Property sold pursuant to Trustee's power of sale in accordance with applicable law and deliver to Trustee any documentation as may be required by law. After Trustee or Beneficiary gives any notices and the time required by applicable law, Trustee shall sell the Property, either in whole or in separate parcels or other part and in such order as Trustee may choose, at public auction to the highest bidder for cash in lawful money of the United States which will be payable at the time of sale all in accordance with applicable law. Anything in the preceding sentence to the contrary notwithstanding, Beneficiary may apply the Debt towards any bid at any such sale. Trustee may postpone any such sale by providing such notice as may be required by law. Unless prohibited by law, any person, including the Grantor, Beneficiary or Trustee, may purchase at any such sale. Trustee shall apply the proceeds of the sale as follows: (i) to the expenses of the sale, including a reasonable trustee's fee and lawyer's fee, (ii) to the obligations secured by this Deed of Trust, and (iii) the surplus, if any, shall go to the person(s) legally entitled thereto or, at Trustee's discretion, to the government or other official authorized by state law to accept such amounts.

(b) Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of execution of this Deed of Trust and any interest which Grantor subsequently acquired. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust. This recital shall be prima facie evidence of such compliance and conclusive evidence of such compliance in favor of bona fide purchasers and encumbrancers for value.

(c) To the extent permitted by law the power of sale conferred by this Deed of Trust is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be judicially foreclosed or sue on the Credit Agreement or take any other action available in equity or at law. In connection with any portion of the Property which is personal property, Beneficiary shall further be entitled to exercise the rights of a secured party under the Uniform Commercial Code as then in effect in the state of Nevada.

(d) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay, and

(e) If Grantor meets certain conditions, Grantor shall have the right to reinstate the Debt in accordance with applicable law within thirty-five (35) days after a notice of default and election to sell is recorded in the office of the county recorder in the county in which the Property is located and mailed by registered or certified mail, return receipt requested and with postage prepaid to Grantor, which thirty-five (35) day period commences on the first day following the day the recorded notice of default and election to sell is mailed.

**8 Condemnation; Eminent Domain** In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured by this Deed of Trust, shall be paid to Beneficiary to be applied to the obligation in the same manner as payments under the Credit Agreement.

**9 Fees and Costs** Grantor shall pay Beneficiary's and Trustee's reasonable cost of searching records, other reasonable expenses as allowed by law and reasonable attorney's fees, in any lawsuit or other proceeding to foreclose this Deed of Trust, in any lawsuit or proceeding which Beneficiary or Trustee prosecutes or defends to protect the lien of this Deed of Trust, in defending of an action to enjoin foreclosure and, in any other action taken by Beneficiary to



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collect the Debt, including without limitation any disposition of the Property under the State Uniform Commercial Code; and, any action taken in bankruptcy proceedings as well as any appellate proceedings

10 **Reconveyance** Trustee shall reconvey the Property to the person entitled thereto, on written request of Beneficiary or following satisfaction of the obligations secured hereby and Beneficiary and Trustee shall be entitled to charge Grantor a reconveyance fee together with fees for the recordation of the reconveyance documents unless prohibited by law

11 **Trustee; Successor Trustee** Beneficiary may, unless prohibited by law, appoint a successor Trustee from time to time in the manner provided by law. The successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee

12. **Savings Clause** If a law, which applies to this Deed of Trust or the Credit Agreement and which sets maximum loan charges, is finally interpreted by a court having jurisdiction so that the interest or other loan charges collected or to be collected in connection with this Deed of Trust or the Credit Agreement exceed the permitted limits, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Grantor which exceeded permitted limits will be refunded to Grantor. Beneficiary may choose to make this refund by reducing the principal owed or by making a direct payment. If a refund reduces the principal, the reduction will be treated as a partial prepayment

13 **Miscellaneous** This Deed of Trust shall benefit and obligate the heirs, devisees, legatees, administrators, executors, successors and assigns of the parties hereto. The term "Beneficiary" shall mean the holder and owner of the Credit Agreement secured by this Deed of Trust, whether or not that person is named as Beneficiary herein. The words used in this Deed of Trust referring to one (1) person shall be read to refer to more than one (1) person if two (2) or more have signed this Deed of Trust or become responsible for doing the things this Deed of Trust requires. This Deed of Trust shall be governed by and construed in accordance with Federal law and, to the extent Federal law does not apply, the laws of the state of Nevada. If any provision of this Deed of Trust is determined to be invalid under law, the remaining provisions of this Deed of Trust shall nonetheless remain in full force and effect

14 **Beneficiary and Similar Statements** Beneficiary may collect a fee not to exceed the maximum amount permitted by law for furnishing the statement as provided by Nev. Rev. Stat. Ch. 107.310.

15 **Riders** If one or more riders are executed by Grantor and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

☒ Condominium Rider

☐ Other. \_\_\_\_\_  
(specify)

☐ Planned Unit Development Rider



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By signing below, Grantor accepts and agrees to the provisions of this Deed of Trust, and of any rider(s) executed by Grantor concurrently therewith

*San Francisco*  
DATED at April 1, 4 PM this 4<sup>th</sup> day of April, 4

*Leo F. Kramer*  
LEO F KRAMER

*Audrey E. Kramer*  
AUDREY E KRAMER

Mail tax statements to  
LEO F KRAMER  
1740 AUTUMN GLEN ST  
FERNLEY, NV 89408-7204

*Leo F. Kramer*  
Signature



425436

05/01/21  
007 of 1STATE OF CaliforniaCOUNTY OF San FranciscoOn 4/4/2008 before me, Mark R Mooney  
(Name of Notary Public)personally appeared Audrey E Kramer & Leo E Kramer

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

WITNESS my hand and official seal.

(Signature of Notary Public)

(This area for notarial seal)





425436

05/01/2  
008 of 1

STATE OF NEVADA California )  
 COUNTY OF San Francisco ) ss

0792726861

This instrument was acknowledged before me on 4/4/08  
 LEO F KRAMER  
 AUDREY E KRAMER

by  
 and  
 and  
 and  
 and  
 and

My commission expires 1/28/09

WITNESS my hand and official seal

[Signature]  
 Notary Public in and for the State of Nevada



## REQUEST FOR FULL RECONVEYANCE

Do not record. To be used only when Grantor's  
 indebtedness has been repaid and Credit Agreement cancelled

TO TRUSTEE \_\_\_\_\_

The undersigned is Trustee of the within Deed of Trust, and the legal owner and holder of the  
WaMu Mortgage Plus(TM) Agreement secured thereby Said Deed of Trust is hereby  
 surrendered to you for reconveyance and you are requested, upon payment of all sums owing to  
 you, to reconvey, without warranty, to the person(s) entitled thereto, the right, title and interest  
 now held by you thereunder

DATE \_\_\_\_\_

WASHINGTON MUTUAL BANK

By \_\_\_\_\_

Its \_\_\_\_\_





425436

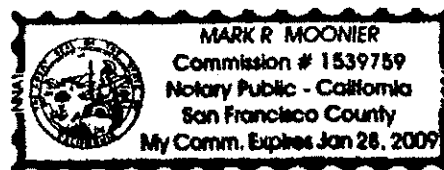
05/01/20  
009 of 10STATE OF CaliforniaCOUNTY OF San FranciscoOn 4/4/2008 before me, Mark R Moonier  
(Name of Notary Public)personally appeared Audrey Ekramer & Leo F. Ekramer

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

WITNESS my hand and official seal.

(Signature of Notary Public)

(This area for notarial seal)



**EXHIBIT "A"**

LT 62, SD UPLAND RANCH ESTATES UNIT NO 7, ACCORDING TO MAP THEREOF, FILED AS  
DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE OF NEVADA

APN 022-052-02

Unofficial Copy



# EXHIBIT E

**Notice of Default (NOD) from  
National Default Servicing Corporation  
(NDSC With Chase Affidavit Attached)**

# EXHIBIT E

DOC# 571145

10/06/2017

03:51PM

Official Record

Requested By  
SERVICELINK TITLE AGENCY INC.

Lyon County - NV

Dawna L. Warr - Recorder

Page: 1 of 7

Fee: \$288.00

Recorded By MFK

RPT: \$0.00



0571145

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC File No. : 12-31926-JP-NV

Title Order No. : 120135457-NV-GTO

APN: 022-052-02

**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 (5) business days prior to the date set for the sale of your property pursuant to NRS 107.080. 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).**

**NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee or the duly appointed substituted Trustee under a Deed of Trust dated 04/04/2008, executed by Leo F. Kramer and Audrey E Kramer, as Trustor, to secure certain obligations in favor of Washington Mutual Bank, a Federal Association as beneficiary recorded 05/01/2008 as Instrument No. 425436 (or Book, Page) of the Official Records of Lyon County, NV. Said obligations including ONE NOTE FOR THE ORIGINAL sum of \$176,000.00.**

**That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :**

**The installments of principal and interest which became due on 11/09/2010 and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee fee's, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off (and will increase until your account becomes current) as summarized in the accompanying Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.**

(257)



Notice of Default and Election to Sell Under Deed of Trust  
NDSC File No.: 12-31926-JP-NV  
Page 2

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 by 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 the 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:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, SUCCESSOR IN INTEREST BY  
PURCHASE FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER  
OF WASHINGTON MUTUAL BANK  
c/o National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020 Phone (602) 264-6101 Sales Website: [www.ndscorp.com/sales/](http://www.ndscorp.com/sales/)

Contact the following number to discuss Loan Modification Options: 866-550-5705

Attached hereto and incorporated herein by reference is the Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their Approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to the HUD web site at:  
<http://portal.hud.gov/portal/page/portal/HUD/localoffices>.

The Property Address: 1740 Autumn Glen St , Fernley NV 89408-7204

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.



571145

10/06/2017  
3 of 7

Notice of Default and Election to Sell Under Deed of Trust  
NDSC File No.: 12-31926-JP-NV  
Page 3

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to 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 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: 10-5, 2017

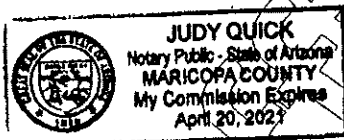
National Default Servicing Corporation, an Arizona Corporation, As Trustee for JPMorgan Chase Bank, National Association

  
By: Ivan Mora, Trustee Sales Supervisor

State of: Arizona  
County of: Maricopa

On 10-5, 2017, before me, the undersigned, a Notary Public for said State, personally appeared Ivan Mora, personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature



This is an attempt to collect a debt and any information obtained will be used for that purpose.

(259)

TS No: 12-31926-JP-NV

APN: 022-052-02

**Date**                      **Recording No.**                      **Assignee Name**

(NONE)

Dated this 24<sup>th</sup> day of June, 20 14

By: [Signature]  
Signature

Name: Von Mai Vice President  
Printed  
JP Morgan Chase Bank, N.A.

Subscribed and sworn to before me in said county this 24<sup>th</sup> day of June, 2014, by Von Mai.

Carol Anne Welch Notary Public  
Carol Anne Welch  
 State of Texas  
 County of Dallas  
 My Commission expires: 3/3/2008



Personally Known            OR  
Produced Identification           

~~Type of Identification Produced:~~



571145

10/06/2017  
4 of 7

TS No: 12-31926-JP-NV  
APN: 022-052-02

**AFFIDAVIT OF AUTHORITY IN SUPPORT OF NOTICE OF DEFAULT AND  
ELECTION TO SELL  
[NRS § 107.080]**

Borrowers Identified in Deed of Trust:  
Leo F. Kramer And Audrey E Kramer

Trustee Address:  
7720 N. 16th Street, Suite 300  
Phoenix AZ 85020

Property Address:  
1740 Autumn Glen St  
Fernley NV 89408-7204

Deed of Trust Document Instrument  
Number:  
425436

I, Von Mai, being first duly sworn, under penalty of perjury  
state as follows:

1. I am a Vice President of JPMorgan Chase Bank, National Association ("Chase"), the current beneficiary of the deed of trust or the authorized representative of the current beneficiary. I am over the age of 18 and competent to testify as to the matters stated herein.
2. I have access to Chase's electronic mortgage servicing system, documents and other records (together the "business records"), maintained in the ordinary course of the regularly conducted business activity of servicing mortgage loans. I have received training on how those business records are kept and maintained, and I make this Affidavit based on the personal knowledge I acquired by a review of the business records of Chase for the debt obligation for this Deed of Trust (identified in the caption above).





TS No: 12-31926-JP-NV  
APN: 022-052-02

3. The following subparagraphs list contact information that I understand is required to be provided in this Affidavit:

a. The full name and business address of the trustee for the Deed of Trust (identified in the caption above) is National Default Servicing Corporation, located at 7720 N. 16th Street, Suite 300, Phoenix, AZ 85020.

b. The full name and address of the servicer of the loan obligation for the Deed of Trust (identified in the caption above) is JPMorgan Chase Bank, National Association, located at 3415 Vision Drive Columbus, OH 43219.

c. The full name and address of the current beneficiary of record (and holder of the note) for the Deed of Trust (identified in the caption above) is JPMorgan Chase Bank, National Association, successor in interest by purchase from the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank, located at 3415 Vision Drive, Columbus OH 43219.

4. The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust.

5. I confirm that the servicer of the obligation or debt secured by the deed of trust has instructed the trustee to exercise the power of sale with respect to the property when permissible under Nevada law.

6. The beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written statement of:



TS No: 12-31926-JP-NV  
APN: 022-052-02

- a. The amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;
  - b. The amount in default;
  - c. The principal amount of the obligation or debt secured by the deed of trust;
  - d. The amount of accrued interest and late charges;
  - e. A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and
  - f. Contact information for obtaining the most current amounts due, including the local or toll-free number.
7. The Contact information provided for obtaining the most current amounts due in the written statement above, 1-888-290-4323 may also be contacted by the obligor or borrower of the obligation or debt for a recitation of the information contained in this affidavit.
8. I make the statements in this paragraph based on my personal knowledge acquired by a review of the business records of Chase, information contained in the records of the recorder of the county in which the property is located; or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS.
- a. The date, recordation number (or other unique designation of), the name of each assignee under each recorded assignment of the deed of trust is as follows:

# EXHIBIT F

**Articles Regarding Fines Levied Against Chase Bank**

# EXHIBIT F

## URL for this article:

[http://www.slate.com/blogs/moneybox/2015/03/03/jpmorgan\\_robo\\_signing\\_settlement\\_bank\\_pays\\_up\\_for\\_not\\_reviewing\\_bankruptcy.html](http://www.slate.com/blogs/moneybox/2015/03/03/jpmorgan_robo_signing_settlement_bank_pays_up_for_not_reviewing_bankruptcy.html)

# JPMorgan Adds Another \$50 Million to Its Gigantic Settlements Tally

By Alison Griswold



Should've had someone else review those papers ...

JPMorgan Chase, the bank that has already paid out more than \$27 billion in settlements over the past two years, is adding another \$50 million to that tally over a “robo-signing” scandal.

The Justice Department said Tuesday that JPMorgan will pony up \$50 million in cash, mortgage loan credits, and loan forgiveness after it failed to properly review more than 50,000 documents filed in bankruptcy court. The term in this case is robo-signing, and it means basically what it sounds like—employees robotically signing off on documents without actually reviewing them. In some cases, this is because robo-signers assume whatever they’re signing is correct, and don’t bother to go over it. In others, the problem is that the signers just aren’t qualified to be reviewing the stuff in the first place.

## Advertisement

With JPMorgan, the bank admitted to filing more than 50,000 payment-change notices in bankruptcy court that were signed in such a way between 2011 and 2013. At least 25,000 of those were signed by former employees or employees who had “nothing to do with” reviewing the documents, the Justice Department said.

“It is shocking that the conduct admitted to by Chase in this settlement, including the filing of tens of thousands of documents in court that never had been reviewed by the people who attested to their accuracy, continued as long as it did,” Stuart Delery, acting associate attorney general,

said in a statement. "Such unlawful and abusive banking practices can deprive American homeowners of a fair chance in the bankruptcy system, and we will not tolerate them."

**Get *Slate* in your inbox.**

While \$50 million is a drop in the bucket for an institution like JPMorgan, the bank is starting to feel the weight of its fines. During the latest quarter, JPMorgan posted a 6.6 percent decline in profit amid more than \$1 billion in legal costs. The institution's investment-banking side has suffered in particular, with a 16 percent drop in profits last year despite cost-cutting efforts. JPMorgan's CEO Jamie Dimon has declared banks "under assault." The homeowners whose documents were robo-signed probably felt the same way.

Alison Griswold is a ***Slate*** staff writer covering business and economics.

URL for this article:

<https://www.marketwatch.com/story/us-breaks-down-93-bln-robo-signing-settlement-2013-02-28>

# U.S. breaks down \$9.3 bln robo-signing settlement

By Ronald D. Orol

Published: Feb 28, 2013 11:27 a.m. ET

*Largest fine hits B. of A., which must provide \$2.9 bln in assistance*

WASHINGTON (MarketWatch) — Federal regulators on Thursday detailed a \$9.3 billion settlement with 13 banks over foreclosure abuses stemming from the so-called robo-signing scandal, a deal that government officials say is expected to help more than 3.8 million borrowers.

*Largest fine hits B. of A., which must provide \$2.9 bln in assistance*

**D. OROL** WASHINGTON (MarketWatch) — Federal regulators on Thursday detailed a \$9.3 billion settlement with 13 banks over foreclosure abuses stemming from the so-called robo-signing scandal, a deal that government officials say is expected to help more than 3.8 million borrowers.

*Reuters*

A sign placed by members of Occupy Cincinnati hangs on a door in the East Price Hill neighborhood during a demonstration to protest home foreclosures in Cincinnati, Ohio, March 24, 2012.

The settlement with ten of the banks was first announced on Jan. 7 and separate settlements with HSBC US:HBC and two other banks came later in the month.

At issue are deficient practices on mortgage servicing and processing, improper fees, wrongful denial of modification, and the robo-signing scandal — the practice of assigning bank employees to rapidly approve numerous foreclosures with only cursory glances at the glut of paperwork to determine if all the documents are in order.

The settlement includes \$3.6 billion in cash payments to 3.8 million borrowers, some of whom went through foreclosures.

Banks have agreed to provide an additional \$5.7 billion in other assistance to homeowners, such as modifications to their mortgages or cuts to the amount borrowers owe.

The largest banks, as expected, will pay the most.

- Bank of America Corp. BAC, +0.22% was ordered to provide \$1.1 billion into a fund to be used to provide cash payments to troubled borrowers and \$1.8 billion in other assistance to homeowners, such as modifications to mortgages or cuts to the amount borrowers owe.

- Wells Fargo & Co. WFC, -1.64% will pay \$766 million into the fund and \$1.2 billion in other assistance.

- ✓ • J.P. Morgan Chase JPM, +0.17% will pay \$753 million into the fund and \$1.2 billion in other assistance.

- Citigroup Inc. C, +0.18% will pay \$307 million into the fund and \$487 million in other assistance.

- Morgan Stanley MS, +0.51% will pay \$97 million into the fund and \$130 million for other assistance.

- Goldman Sachs GS, +0.37% will pay \$135 million into the fund and \$195 million for other assistance.

- Aurora Bank will pay \$93 million into the fund and \$149 million in other assistance.

- PNC Financial PNC, +1.39% will pay \$69 million into the fund and \$111 million in other assistance.

- Sovereign Bank, a unit of Banco Santander SAN, +1.52% SAN, +1.97% will pay \$6.1 million into the fund and \$10 million in other assistance.

- Metlife Bank MET, +0.77% will pay \$30 million into the fund and \$48 million in other assistance.

- U.S. Bancorp USB, -0.19% will pay \$80 million into a fund and \$128.1 million in other assistance.

- SunTrust STI, +0.56% will pay \$63 million into the fund and \$100 million for other assistance.

- HSBC, as previously reported, will pay \$96 million into the fund and \$153 million in other assistance to homeowners. Read about HSBC in \$249 million foreclosure settlement

The cash being provided for other assistance, including foreclosure prevention, is due Jan. 7, 2015.

h268

URL for this article:

<https://www.cbsnews.com/news/robo-signing-of-mortgages-still-a-problem/>

AP July 18, 2011, 8:54 PM

## "Robo-signing" of mortgages still a problem

Mortgage industry employees are still signing documents they haven't read and using fake signatures more than eight months after big banks and mortgage companies promised to stop the illegal practices that led to a nationwide halt of home foreclosures.

County officials in at least three states say they have received thousands of mortgage documents with questionable signatures since last fall, suggesting that the practices, known collectively as "robo-signing," remain widespread in the industry.

The documents have come from several companies that process mortgage paperwork, and have been filed on behalf of several major banks. One name, "Linda Green," was signed almost two dozen different ways.

Lenders say they are working with regulators to fix the problem but cannot explain why it has persisted.

Last fall, the nation's largest banks and mortgage lenders, including JPMorgan Chase, Wells Fargo, Bank of America and an arm of Goldman Sachs, suspended foreclosures while they investigated how corners were cut to keep pace with the crush of foreclosure paperwork.

Critics say the new findings point to a systemic problem with the paperwork involved in home mortgages and titles. And they say it shows that banks and mortgage processors haven't acted aggressively enough to put an end to widespread document fraud in the mortgage industry.

"Robo-signing is not even close to over," says Curtis Hertel, the recorder of deeds in Ingham County, Mich., which includes Lansing. "It's still an epidemic."

In Essex County, Mass., the office that handles property deeds has received almost 1,300 documents since October with the signature of "Linda Green," but in 22 different handwriting styles and with many different titles.

Linda Green worked for a company called DocX that processed mortgage paperwork and was shut down in the spring of 2010. County officials say they believe Green hasn't worked in the industry since. Why her signature remains in use is not clear.

"My office is a crime scene," says John O'Brien, the registrar of deeds in Essex County, which is north of Boston and includes the city of Salem.



In Guilford County, N.C., the office that records deeds says it received 456 documents with suspect signatures from Oct. 1, 2010, through June 30. The documents, mortgage assignments and certificates of satisfaction, transfer loans from one bank to another or certify a loan has been paid off.

Suspect signatures on the paperwork include 290 signed by Bryan Bly and 155 by Crystal Moore. In the mortgage investigations last fall, both admitted signing their names to mortgage documents without having read them. Neither was charged with a crime.

And in Michigan, a fraud investigator who works on behalf of homeowners says he has uncovered documents filed this year bearing the purported signature of Marshall Isaacs, an attorney with foreclosure law firm Orleans Associates. Isaacs' name did not come up in last year's investigations, but county officials across Michigan believe his name is being robo-signed.

O'Brien caused a stir in June at a national convention of county clerks by presenting his findings and encouraging his counterparts to investigate continued robo-signing.

The nation's foreclosure machine almost came to a standstill when the nation's largest banks suspended foreclosures last fall. Part of the problem, banks contended, was that foreclosures became so rampant in 2009 and 2010 that they were overwhelmed with paperwork.

The banks reviewed thousands of foreclosure filings, and where they found problems, they submitted new paperwork to courts handling the cases, with signatures they said were valid. The banks slowly started to resume foreclosures this winter and spring.

The 14 biggest U.S. banks reached a settlement with federal regulators in April in which they promised to clean up their mistakes and pay restitution to homeowners who had been wrongly foreclosed upon. The full amount of the settlement has not been determined. But it will not involve independent mortgage processing firms, the companies that some banks use to handle and file paperwork for mortgages.

So far, no individuals, lenders or paperwork processors have been charged with a crime over the robo-signed signatures found on documents last year. Critics such as April Charney, a Florida homeowner and defense lawyer, called the settlement a farce because no real punishment was meted out, making it easy for lenders and mortgage processors to continue the practice of robo-signing.

Robo-signing refers to a variety of practices. It can mean a qualified executive in the mortgage industry signs a mortgage affidavit document without verifying the information. It can mean someone forges an executive's signature, or a lower-level employee signs his or her own name with a fake title. It can mean failing to comply with notary procedures. In all of these cases, robo-signing involves people signing documents and swearing to their accuracy without verifying any of the information.

Most of the tainted mortgage documents in question last fall were related to homes in foreclosure. But much of the suspect paperwork that has been filed since then is for refinancing

or for new purchases by people who are in good standing in the eyes of the bank. In addition, foreclosures are down 30 percent this year from last. Home sales have also fallen. So the new suspect documents come at a time when much less paperwork is streaming through the nation's mortgage machinery.

None of the almost 1,300 suspect Linda Green-signed documents from O'Brien's office, for example, involve foreclosures. And Jeff Thigpen, the register of deeds in North Carolina's Guilford County, says fewer than 40 of the 456 suspect documents filed to his office since October involved foreclosures.

Banks and their partner firms file mortgage documents with county deeds offices to prove that there are no liens on a property, that the bank owns a mortgage or that a bank filing for foreclosure has the authority to do so.

The signature of a qualified bank or mortgage official on these legal documents is supposed to guarantee that this information is accurate. The paper trail ensures a legal chain of title on a property and has been the backbone of U.S. property ownership for more than 300 years.

The county officials say the problem could be even worse than what they're reporting. That's because they are working off lists of known robo-signed names, such as Linda Green and Crystal Moore, that were identified during the investigation that began last fall. Officials suspect that other names on documents they have received since then are also robo-signed.

It is a federal crime to sign someone else's name to a legal document. It is also illegal to sign your name to an affidavit if you have not verified the information you're swearing to. Both are punishable by prison.

In Michigan, the attorney general took the rare step in June of filing criminal subpoenas to out-of-state mortgage processing companies after 23 county registers of deeds filed a criminal complaint with his office over robo-signed documents they say they have received. New York Attorney General Eric Schneiderman's office has said it is conducting a banking probe that could lead to criminal charges against financial executives. The attorneys general of Delaware, California and Illinois are conducting their own probes.

The legal issues are grave, deeds officials across the country say. At worst, legal experts say, the document debacle has opened the property system to legal liability well beyond the nation's foreclosure crisis. So someone buying a home and trying to obtain title insurance might be delayed or denied if robo-signed documents turn up in the property's history. That's because forged signatures call into question who owns mortgages and the properties they are attached to.

"The banks have completely screwed up property records," says L. Randall Wray, an economics professor and senior scholar at the University of Missouri-Kansas City.

In the Massachusetts case, The Associated Press tried to reach Linda Green, whose name was purportedly signed 1,300 times since October. The AP, using a phone number provided by

lawyers who have been investigating the documents since last year, reached a person who said she was Linda Green, but not the Linda Green involved in the mortgage investigation.

In the Michigan case, a lawyer for the Orlans Associates law firm, where Isaacs works, denies that Isaacs or the firm has done anything wrong. "People have signatures that change," says Terry Cramer, general counsel for the firm. "We do not engage in 'robo-signing' at Orlans."

To combat the stream of suspect filings, O'Brien and Jeff Thigpen, the register of deeds in North Carolina's Guilford County, stopped accepting questionable paperwork June 7. They say they had no choice after complaining to federal and state authorities for months without getting anywhere.

Since then, O'Brien has received nine documents from Bank of America purportedly signed by Linda Burton, another name on authorities' list of known robo-signers. For years, his office has regularly received documents signed with Burton's name but written in such vastly different handwriting that two forensic investigators say it's highly unlikely it all came from the same person.

O'Brien returned the nine Burton documents to Bank of America in mid-June. He told the bank he would not file them unless the bank signed an affidavit certifying the signature and accepting responsibility if the title was called into question down the road. Instead, Bank of America sent new documents with new signatures and new notaries.

A Bank of America spokesman says Burton is an assistant vice president with a subsidiary, ReconTrust. That company handles mortgage paperwork processing for Bank of America.

"She signed the documents on behalf of the bank," spokesman Richard Simon says. The bank says providing the affidavit O'Brien asked for would have been costly and time-consuming. Instead, Simon says Bank of America sent a new set of documents "signed by an authorized associate who Mr. O'Brien wasn't challenging."

The bank didn't respond to questions about why Burton's name has been signed in different ways or why her signature appeared on documents that investigators in at least two states have deemed invalid.

Several attempts by the AP to reach Burton at ReconTrust were unsuccessful.

O'Brien says the bank's actions show "consciousness of guilt." Earlier this year, he hired Marie McDonnell, a mortgage fraud investigator and forensic document analyst, to verify his suspicions about Burton's and other names on suspect paperwork.

She compared valid copies of Burton's signature with the documents O'Brien had received in 2008, 2009 and 2010 and found that Burton's name was fraudulently signed on hundreds of documents.

Most of the documents reviewed by McDonnell were mortgage discharges, which are issued when a home changes hands or is refinanced by a new lender and are supposed to confirm that the previous mortgage has been paid off. Bank of America declined comment on McDonnell's findings.

In Michigan, recorder of deeds Hertel and his counterparts in 23 other counties found numerous suspect signatures on documents filed since the beginning of the year.

In June, their findings led the Michigan attorney general to issue criminal subpoenas to several firms that process mortgages for banks, including Lender Processing Services, the parent company of DocX, where Linda Green worked. On July 6, the CEO of that company, which is also under investigation by the Florida Attorney General's office, resigned, citing health reasons.

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## URL for this article:

<https://www.cbsnews.com/news/chase-stops-suits-against-credit-card-holders/>

By Alain Sherter MoneyWatch January 11, 2012, 3:35 PM

# Chase stops suits against credit-card holders

**COMMENTARY** Revelations last year that many of the nation's biggest banks were illegally evicting homeowners by "robo-signing" foreclosure documents triggered a flurry of federal and state investigations. Now, as American Banker reports, the scandal may be widening to another common type of consumer debt -- credit cards:

JPMorgan Chase & Co. has quietly ceased filing lawsuits to collect consumer debts around the nation, dismissing in-house attorneys and virtually shutting down a collections machine that as recently as nine months ago was racking up hundreds of millions of dollars in monthly judgments....

Robo-signing, or the high-volume production of signed legal documents, has been a key element of the governmental and media foreclosure reviews. Chase's current pullback raises at least the possibility that at least some banks may have documentation problems in other business lines:

JPMorgan Chase (JPM) isn't only abandoning efforts to hunt down outstanding credit-card payments -- it's also firing bank employees involved in recovering the debt. American Banker, a daily trade publication that follows the financial industry, says the Chase last year dismissed "numerous regional collections teams."

It's not clear why JPMorgan is withdrawing suits against credit-card users. The banking giant won't say. But the move follows several legal rulings in state courts that cast doubt on the validity of banks' credit-card claims. And in a federal whistle-blower complaint filed last year, a former vice president at JPMorgan, who worked on sales of overdue credit-card loans, alleged that bank employees robo-signed paperwork used to seek legal judgments against card users.

The executive, Linda Almonte, also said that many JPMorgan account holders owed less on their cards than the company claimed, and that some customers facing legal action had paid their card obligations in full. JPMorgan settled the suit, in which the executive claimed she was fired after alerting the bank that it was missing key legal documents required to sell credit-card debt, last spring after a court refused to dismiss the case.

Former exec accuses JPMorgan of illegal credit-card debt collections  
Bad robot: Big banks are still faking home-loan documents

Say on pay: Complaints about debt collectors surge

JPMorgan recently has backed off efforts to recover credit-card debt in at least six states, including California, Florida, Illinois, Maryland, New York and Washington, according to American Banker's Jeff Horwitz. As The Wall Street Journal reported last year, the company

dropped more than 1,000 lawsuits nationwide aimed at collecting on delinquent loans. One reason -- sloppy or fraudulent documents used to prove that JPMorgan had the right to proceed with the cases. One New York state judge told the WSJ that such practices are more common than in foreclosure cases, describing it as a "significant problem... that's widespread and yet given virtually no attention."

While it's not known exactly why JPMorgan is abandoning many credit-card claims, this much seems clear: the bank wouldn't leave money on the table willingly. Tracking down credit-card debt is big business for banks. Chase last year recovered \$1.4 billion on defaulted credit-card loans, American Banker notes. Going to court to collect the debt is also an excellent bet for banks, with lenders winning more than nine of 10 suits filed against account holders.

Also certain is that a major pull-back by JPMorgan in recovering credit-card obligations could seriously dent the company's bottom line. The bank's third-quarter collections, at \$266 million, were down 35 percent from the first quarter. Reuters' Felix Salmon writes:

[I]f Chase is willing to give up anything like \$100 million per quarter by effectively shutting down its collections operation, one can't help but suspect that the legal or reputational risk of keeping that operation in place was truly enormous.

For now, federal and state authorities have yet to target a major bank for how it collects credit-card debt. But some state legal officials have taken action against other debt collectors. In 2011, Minnesota's attorney general sued one of the nation's largest debt buyers, Midland Funding, and accused the firm of filing fraudulent, robo-signed affidavits used to recoup credit-card debt. In December, Midland's parent company, Encore Capital (ECPG), also settled charges by Texas officials that the company had engaged in robo-signing.

If erroneous or outright fraudulent paperwork is at the root of JPMorgan's move, the repercussions for the financial industry could be enormous. Robo-signing in foreclosure cases wasn't isolated to one or two big banks and mortgage loan servicers -- it was industrywide, as the national scale of the scandal indicates. Some experts believe that robo-signing may be widely prevalent in credit-card collections. As University of Illinois law professor Robert Lawless recently told a Senate panel on consumer financial protection:

Credit card collections may have replicated the robo-signing problems in the mortgage servicing industry. Indeed, given that many of the same players are involved and that credit card debt is sold in ways that is similar to mortgage debt, it would be surprising if the debt collection industry did not have robo-signing problems.

I would take the point a step further. If robo-signing, already known to be rampant in foreclosures, is found to be common in credit-card collections, it raises questions about how financial institutions recover all manner of personal debt, including car, student and other loans. It would be a legal nightmare. It also suggests an urgent need for reform -- new rules, expanded consumer protections, tighter enforcement -- of a debt-collection system that is clearly buckling under its own weight.

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# EXHIBIT G

**Department of Justice Article Re:  
\$50 Million Dollar Settlement With Chase Bank**

# EXHIBIT G

## **U.S. Trustee Program Reaches \$50 Million Settlement with JPMorgan Chase to Protect Homeowners in Bankruptcy**

Settlement Addresses Robo-Signing and Other Improper Practices in Bankruptcy Cases

The Department of Justice's U.S. Trustee Program (USTP) has entered into a national settlement agreement with JPMorgan Chase Bank N.A. (Chase) requiring Chase to pay more than \$50 million, including cash payments, mortgage loan credits and loan forgiveness, to over 25,000 homeowners who are or were in bankruptcy. Chase will also change internal operations and submit to oversight by an independent compliance reviewer. The proposed settlement has been filed in the U.S. Bankruptcy Court for the Eastern District of Michigan, where it is subject to court approval.

In the proposed settlement, Chase acknowledges that it filed in bankruptcy courts around the country more than 50,000 payment change notices that were improperly signed, under penalty of perjury, by persons who had not reviewed the accuracy of the notices. More than 25,000 notices were signed in the names of former employees or of employees who had nothing to do with reviewing the accuracy of the filings. The rest of the notices were signed by individuals employed by a third party vendor on matters unrelated to checking the accuracy of the filings.

Chase also acknowledges that it failed to file timely, accurate notices of mortgage payment changes and failed to provide timely, accurate escrow statements.

"It is shocking that the conduct admitted to by Chase in this settlement, including the filing of tens of thousands of documents in court that never had been reviewed by the people who attested to their accuracy, continued as long as it did," said Acting Associate Attorney General Stuart F. Delery. "Such unlawful and abusive banking practices can deprive American homeowners of a fair chance in the bankruptcy system, and we will not tolerate them."

"This settlement should signal once again to banks and mortgage servicers that they cannot continue to flout legal requirements, compromise the integrity of the bankruptcy system and abuse their customers in financial distress," said Director Cliff White of the U.S. Trustee Program. "It should be acknowledged that Chase responded to the U.S. Trustee's court actions by conducting an internal investigation and taking steps to mitigate harm to homeowners. But years after uncovering improper mortgage servicing practices and entering into court-ordered settlements to fix flawed systems, it is deeply disturbing that a major bank would still make improper court filings and fail to provide adequate and timely notices to homeowners about payments due. Other servicers should take note that the U.S. Trustee Program will continue to police their practices and will work to ensure that those who do not comply with bankruptcy law protections for homeowners will pay a price, just as Chase has done in this matter."



Payments, Credits and Contributions of More Than \$50 Million:

In the proposed settlement, Chase agrees to provide payments, credits and contributions totaling more than \$50 million:

- Chase will provide \$22.4 million in credits and second lien forgiveness to about 400 homeowners who received inaccurate payment increase notices during their bankruptcy cases.
- Chase will pay \$10.8 million to more than 12,000 homeowners in bankruptcy through credits or refunds for payment increases or decreases that were not timely filed in bankruptcy court and noticed to the homeowners.
- Chase will pay \$4.8 million to more than 18,000 homeowners who did not receive accurate and timely escrow statements. This includes credits for taxes and insurance owed by the homeowners and paid by Chase during periods covered by escrow statements that were not timely filed and transmitted to homeowners.
- Chase will pay \$4.9 million, through payment of approximately \$600 per loan, to more than 8,000 homeowners whose escrow payments Chase may have applied in a manner inconsistent with escrow statements it provided to the homeowners.
- Chase will contribute \$7.5 million to the American Bankruptcy Institute's endowment for financial education and support for the Credit Abuse Resistance Education Program.

Changes to Internal Operations: In the proposed settlement Chase also agrees to make necessary changes to its technology, policies, procedures, internal controls and other oversight systems to ensure that the problems identified in the settlement do not recur.

Oversight by Independent Reviewer: Amy Walsh, a partner with the law firm Morvillo LLP, has been selected to serve as independent reviewer to verify that Chase complies with the settlement order. The independent reviewer will file public reports with the bankruptcy court.

No Effect on Additional Relief by Homeowners: This settlement does not affect the rights of any homeowners to seek any relief against Chase that they may deem appropriate.

Chase Contact Information: Homeowners with questions about the settlement may contact Chase at 866-451-2327.

The settlement is the culmination of actions taken by the U.S. Trustee Program in districts around the country concerning Chase's improper practices in bankruptcy cases, including robo-signing. Director White commended the U.S. Trustee Program team in the field and headquarters who expertly identified, investigated, litigated and settled this matter, including Deputy Director and General Counsel Ramona Elliott, National Creditor Enforcement Coordinator Gail Geiger and Trial Attorneys Diarmuid Gorham and Kelley Callard.

The U.S. Trustee Program is the component of the Justice Department that protects the integrity of the bankruptcy system by overseeing case administration and litigating to enforce the bankruptcy laws. The U.S. Trustee Program has 21 regions and 93 field office locations.

# EXHIBIT H

**Substitution of Trustee & Full Reconveyance by MERS**

EXHIBIT H

DOC # 426240

05/19/2008

02 13 PM

Official Record

Requested By  
GMAC MORTGAGE

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 3 Fee \$19.00

Recorded By CDL RPTT

Assessor's/Tax ID No 022-052-02

Recording Requested By  
GMAC MORTGAGE, LLC

When Recorded Return To  
LEO F KRAMER  
1229 BALLENA BLVD  
ALAMEDA, CA 94501-3668



0426240

**SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE**

Greenwich # 0359184644 "KRAMER" Lender ID 41455/0000389247 Lyon, Nevada PIF  
04/29/2008

MERS #: 100270600003892476 VRU #: 1-888-679-6377

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT SUBMITTED  
FOR RECORDING DOES NOT CONTAIN A SOCIAL SECURITY NUMBER

Mortgage Electronic Registration Systems, Inc ("MERS") is the Owner and Holder of the Note secured by the Deed of Trust Dated 06/02/2005, made by LEO F KRAMER AND AUDREY E KRAMER as Trustor, with FOUNDATION CONVEYANCING, LLC as Trustee, for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC ("MERS") as Beneficiary, which said Deed of Trust was recorded 06/08/2005 in the Office of the County Recorder of Lyon State of Nevada, as Instrument No 353229 wherein said Owner and Holder hereby substitutes EXECUTIVE TRUSTEE SERVICES, LLC as Trustee in lieu of the above-named Trustee under said Deed of Trust

Property Address 1740 AUTUMN GLEN ST, FERNLEY, NV 89408

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc ("MERS") 1595 SPRING HILL ROAD, VIENNA, VA 22182 as owner and EXECUTIVE TRUSTEE SERVICES, LLC 15435 SAN FERNANDO MISSION BLVD, SUITE 208, , MISSION HILLS, CA 91345 as Substituted Trustee, have caused this instrument to be executed, each in its respective interest,

\*MMS\*MMSGMAC\*05/13/2008 05 13 44 PM\* GMAC17GMAC00000000000000002310605\*  
NVLYON\* 0359184644 NVSTATE\_TRUST\_SUB \* MMS\*MMSGMAC\*

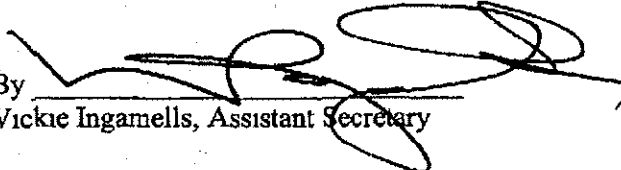


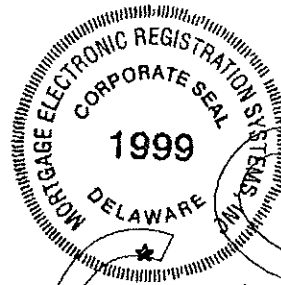
426240

05/19/2008  
002 of 3

## SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE Page 2 of 3

Mortgage Electronic Registration Systems, Inc ("MERS")  
On May 13th, 2008

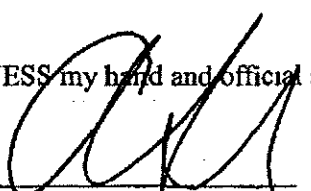
By   
Vickie Ingamells, Assistant Secretary

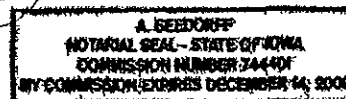


STATE OF Iowa  
COUNTY OF Black Hawk

On May 13th, 2008, before me, A. SEEDORFF, a Notary Public in and for Black Hawk in the State of Iowa, personally appeared Vickie Ingamells, Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal,

  
A SEEDORFF  
Notary Expires 12/14/2009 #744401



EXECUTIVE TRUSTEE SERVICES, LLC hereby accepts said appointment as Trustee under said Deed of Trust and as Successor Trustee pursuant to the request of said Owner and Holder and in accordance with the provisions of said Deed of Trust does hereby reconvey without warranty to the person or persons legally entitled thereto all estate now held by it under said Deed of Trust

By EXECUTIVE TRUSTEE SERVICES, LLC as Trustee  
On May 13th, 2008

  
Christie Bouchard, LIMITED SIGNING OFFICER

\*MMS\*MMSGMAC\*05/13/2008 05 13 44 PM\* GMAC17GMAC000000000000002310605\*  
NVLYON\* 0359184644 NVSTATE\_TRUST\_SUB \* MMS\*MMSGMAC\*

1282



426240

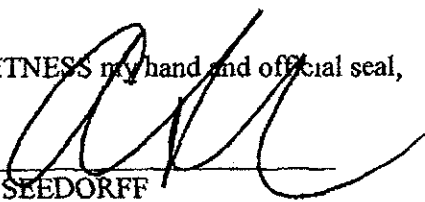
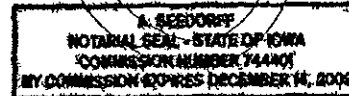
05/19/2001  
003 of 3

## SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE Page 3 of 3

STATE OF Iowa  
COUNTY OF Black Hawk

On May 13th, 2008, before me, A SEEDORFF, a Notary Public in and for Black Hawk in the State of Iowa, personally appeared Christie Bouchard, LIMITED SIGNING OFFICER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal,

  
A SEEDORFF  
Notary Expires 12/14/2009 #744401

\*MMS\*MMSGMAC\*05/13/2008 05 13 45 PM\* GMAC17GMAC00000000000000002310605\*  
NVLYON\* 0359184644 NVSTATE\_TRUST\_SUB \*MMS\*MMSGMAC\*

(243)



# EXHIBIT I

**Substitution of Trustee To (NDSC) from  
JPMorgan Chase Bank**

# EXHIBIT I

## Official Record

Requested By  
LSI TITLE AGENCY INC.

Lyon County - NV

Mary C. Milligan - Recorder

Page: 1 of 1

Fee: \$14.00

Recorded By MCM

RPT: \$0.00



0515723

RECORDING REQUESTED BY:  
National Default Servicing CorporationWHEN RECORDED MAIL TO:  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC File No. : 12-31926-JP-NV

APN No. : 022-052-02

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## SUBSTITUTION OF TRUSTEE

WHEREAS, Leo F. Kramer And Audrey E Kramer was the original Trustor(s), CALIFORNIA RECONVEYANCE COMPANY, A CALIFORNIA CORPORATION was the original Trustee and WASHINGTON MUTUAL BANK, A FEDERAL ASSOCIATION was the original Beneficiary under that certain Deed of Trust dated 04/04/2008 and recorded on 05/01/2008 as Instrument No. 425436 of the Official Records of Lyon County, State of NV and

WHEREAS, the undersigned is the present beneficiary under the said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned hereby substitutes NATIONAL DEFAULT SERVICING CORPORATION, An Arizona Corporation, whose address is 7720 N. 16<sup>th</sup> Street, Suite 300, Phoenix, Arizona 85020, as Trustee under said Deed of Trust. Said Substitute Trustee is qualified to serve as Trustee under the laws of this state.

Whenever the context hereof requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

JPMorgan Chase Bank, National Association

Dated: 11-26-13

*Caryn Barron*  
By: CARYN BARRON  
Its: Vice President

STATE OF Texas  
COUNTY OF Dallas

On November 26, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Caryn Barron who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

*Lynda Denise Marshall*  
Lynda Denise Marshall  
exp: 6-20-15



LYNDA DENISE MARSHALL  
My Commission Expires  
June 20, 2015





# EXHIBIT J

**Fraudulent Assignment of Deed of Trust  
from WAMU to Chase**

# EXHIBIT J

Doc #: 578946

04/10/2018 08:53 AM Page: 1 of 1

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

Lyon County, NV  
Dawna L. Warr, Recorder

Fee: \$38.00 RPTT: \$0.00  
Recorded By: mkassebaum

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020

NDSC NO.: 12-31926-JP-NV

APN: 022-052-02

PROP ADDRESS: 1740 Autumn Glen St, Fernley NV 89408-7204

ASSIGNMENT OF DEED OF TRUST

For Value Received, Washington Mutual Bank, a Federal Association the undersigned corporation hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association all beneficial interest under that certain Deed of Trust dated 04/04/2008 executed by Leo F. Kramer and Audrey E Kramer Trustor, to California Reconveyance Company, A California Corporation Trustee, and recorded on 05/01/2008 as Instrument No. 425436 of the Official Records of Lyon County, NV describing the land therein:

AS PER DEED OF TRUST MENTIONED ABOVE.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: April 4, 2018

JPMorgan Chase Bank, National Association, as Attorney In fact for the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank F/K/A Washington Mutual Bank, FA

Debbie A. Swartz  
By: Debbie A. Swartz  
Its: Vice President

STATE OF Louisiana  
PARISH OF Ouachita

On April 4, 2018, 2018, before me, Amy Gott, a Notary Public for said State, personally appeared Debbie A. Swartz who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

AMY GOTT  
OUACHITA PARISH, LOUISIANA  
LIFETIME COMMISSION  
NOTARY ID # 66396

Signature: [Signature]

Amy Gott #66396

# EXHIBIT K

## STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM

# EXHIBIT K

**Doc #: 578119**

03/22/2018 03:13 PM Page: 1 of 2

**OFFICIAL RECORD**

Requested By: SERVICELINK TITLE AGENCY INC

**Lyon County, NV**

**Dawna L. Warr, Recorder**

Fee: \$38.00 RPTT: \$0.00

Recorded By: lharrington

When recorded, return to;  
National Default Servicing Corporation  
7720 N. 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ. 85020

12-31926-JP-NV  
022-052-02

**STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM  
CERTIFICATE**

Do Not Remove Cover Sheet

Part of the Original Document



**HOME MEANS NEVADA, INC.**  
*A Non-Profit Entity Established by the  
 State of Nevada, Department of Business and Industry*

**Board of Director**

*President – Shannon Chamber  
 VP – Perry Faigi  
 Member at-large – Robin Sweet  
 Member at-large – Verice Campbe  
 Member at-large – Jennifer Yli*

## STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM CERTIFICATE

APN: 022-052-02**Recording requested by:**

National Default Servicing Corporation

7720 North 16th Street, Suite 300

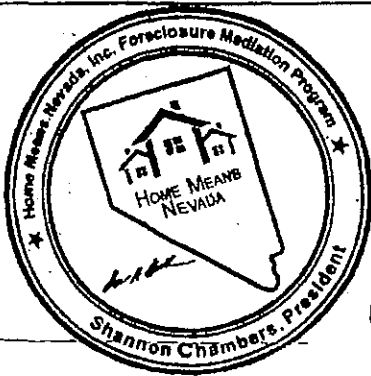
Phoenix AZ 85020

**When recorded, mail to:**

National Default Servicing Corporation

7720 North 16th Street, Suite 300

Phoenix AZ 85020



☐ **Mediation Waiver:** The Beneficiary may proceed with foreclosure process.

☐ **No Agreement:** A Foreclosure Mediation Conference was held on . The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with foreclosure process.

☐ **Relinquish the Property:** A Foreclosure Mediation Conference was held on . The parties homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.

☒ **Grantor Non-Compliance:** The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference, failed to produce the necessary disclosure forms, did not file petition, or did not pay the fees required by the district court. The Beneficiary may proceed with the foreclosure process.

☒ **Certificate Reissuance:** The Beneficiary may proceed with foreclosure process.

☐ **Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 10/06/2017 Proof of Service Date: 10/16/2017

**Property Owner(s):**Audrey E. KramerLeo F. Kramer**Property Address:**

1740 Autumn Glen St.  
Fernley, NV 89408

**Trustee:**

National Default Servicing  
Corporation

Instrument Number: 425436**Deed of Trust Document Number:**

Book Page

Foreclosure Mediation Program Certificate Number: 2018-01-27-0001 Issue Date: 01/27/2018

# EXHIBIT L

**Jolley vs JPMorgan Chase Bank**  
**Deposition (Specifically Pgs. 71 & 72)**

# EXHIBIT L

Date: 10/11/2011  
To: JEFFREY A. THORNE C/O VERNON BRADLEY, ESQ.  
From: DIRECTOR OF PRODUCTION  
RE: SCOTT CALL JOLLEY vs.  
CHASE HOME FINANCE, LLC, ET AL.  
File: 68760  
Deposition of: JEFFREY THORNE  
Deposition Date: 10/04/2011  
cc: All counsel present

Enclosed is a condensed copy of your deposition transcript in the above-referenced matter, a Declaration under Penalty of Perjury certificate and an errata sheet to note your changes to the transcript, if necessary. Your notarized signature is requested as acknowledgment that you have read the transcript.

Please complete the following steps within 30 days of the date of this memorandum:

- Read the enclosed copy of the transcript of your deposition
- Make any corrections necessary on the errata sheet only. If you do not wish to make changes, write 'No Changes' on the top of the errata sheet.
- Sign the bottom of the errata sheet
- Sign and date the certificate
- Return only the signed errata sheet. The condensed transcript is yours to keep.

If the signed errata sheet is not returned within 30 days of the date on this memorandum, the transcript will be forwarded to the deposing attorney.

RETURN REQUESTED DOCUMENTS TO:

Esquire - Sacramento  
2151 River Plaza Drive  
Suite 300  
Sacramento, CA 95833

Please direct questions regarding this memorandum to Esquire - Sacramento Client Support at 800.610.0505 or [ClientCare@esquire resolutions.com](mailto:ClientCare@esquire resolutions.com).



ESQUIRE  
an Alexander Gallo Company

2151 River Plaza Drive  
Suite 300  
Sacramento, CA 95833

<p>IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN</p> <p>SCOTT CALL JOLLEY, Plaintiff, vs. CHASE HOME FINANCE, LLC, et al., Defendants.</p> <p>DEPOSITION OF JEFFREY A. THORNE</p> <p>October 4, 2011 10:19 a.m.</p> <p>2151 River Plaza Drive Suite 300 Sacramento, California</p> <p>Daniel E. Blair, CSR No. 4368</p>	<p>INDEX OF EXAMINATION</p> <table> <thead> <tr> <th>EXAMINATION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>By Ms. Kelly</td> <td>7</td> </tr> <tr> <td>By Mr. Bradley</td> <td>55</td> </tr> <tr> <td>By Ms. Kelly</td> <td>73</td> </tr> </tbody> </table>	EXAMINATION	PAGE	By Ms. Kelly	7	By Mr. Bradley	55	By Ms. Kelly	73																									
EXAMINATION	PAGE																																	
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By Mr. Bradley	55																																	
By Ms. Kelly	73																																	
<p>APPEARANCES OF COUNSEL</p> <p>For Plaintiff SCOTT CALL JOLLEY: Law Offices of Vernon L. Bradley Vernon L. Bradley, Esq. Waldo Point Harbor 54 Liberty Dock Sausalito, California 94965-3106 415.331.4441 415.331.4443 Fax</p> <p>For the Defendant CHASE HOME FINANCE, LLC: Law Offices of Sohnen &amp; Kelly Patricia M. Kelly, Esq. Suite 230 2 Theatre Square Orinda, California 94563 925.258.9300 925.258.9315 Fax Netlaw@pacbell.net</p>	<p>INDEX OF EXHIBITS</p> <table> <thead> <tr> <th>Exhibit</th> <th>Description</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>Facsimile Transmittal to Kelly from Bradley, 9/29/11; Plaintiff's Expert Witness Disclosure Statement for Jeffrey A. Thorne; six pages</td> <td>41</td> </tr> <tr> <td>B</td> <td>Deposition Subpoena, five pages</td> <td>41</td> </tr> <tr> <td>C</td> <td>Letter to Sonstrom (sic) from Bradley, 5/8/06, five pages</td> <td>42</td> </tr> <tr> <td>D</td> <td>Email to Jolley from Thorne, 8/15/06, three pages</td> <td>43</td> </tr> <tr> <td>E</td> <td>Email to Thorne from Dibasilio, 8/30/06, four pages</td> <td>44</td> </tr> <tr> <td>F</td> <td>Request for Modification to Existing Loanborrower, three pages</td> <td>21</td> </tr> <tr> <td>G</td> <td>Email to Del Rosario from Thorne, 9/20/06, four pages</td> <td>45</td> </tr> <tr> <td>H</td> <td>Email to Jolley from Thorne, 9/21/06, one page</td> <td>46</td> </tr> <tr> <td>I</td> <td>Modification Agreement to Note/Mortgage/Deed of Trust, DEF0810 and DEF0811</td> <td>46</td> </tr> <tr> <td>J</td> <td>Email to Del Rosario from Thorne, 12/3/08, one page</td> <td>47</td> </tr> </tbody> </table>	Exhibit	Description	Page	A	Facsimile Transmittal to Kelly from Bradley, 9/29/11; Plaintiff's Expert Witness Disclosure Statement for Jeffrey A. Thorne; six pages	41	B	Deposition Subpoena, five pages	41	C	Letter to Sonstrom (sic) from Bradley, 5/8/06, five pages	42	D	Email to Jolley from Thorne, 8/15/06, three pages	43	E	Email to Thorne from Dibasilio, 8/30/06, four pages	44	F	Request for Modification to Existing Loanborrower, three pages	21	G	Email to Del Rosario from Thorne, 9/20/06, four pages	45	H	Email to Jolley from Thorne, 9/21/06, one page	46	I	Modification Agreement to Note/Mortgage/Deed of Trust, DEF0810 and DEF0811	46	J	Email to Del Rosario from Thorne, 12/3/08, one page	47
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<p>1 INDEX OF EXHIBITS</p> <p>2 Exhibit Description Page</p> <p>3 K Fax to Jolley from Thorne, 48</p> <p>4 1/31/08, two pages</p> <p>5 L Fax to Del Rosario from Jolley, 48</p> <p>6 2/15/08, one page</p> <p>7 M Letter to Jolley from Wilson, 48</p> <p>8 2/26/08, one page</p> <p>9 N Letter to Jolley from Wilson, 49</p> <p>10 3/19/08, one page</p> <p>11 O Letter to Songstroem (sic) from 49</p> <p>12 Bradley, 3/21/08, one page</p> <p>13 P Letter to Jolley from Wilson, 50</p> <p>14 3/25/08, one page</p> <p>15 Q Letter to Jolley from Washington 50</p> <p>16 Mutual, 5/5/08, one page</p> <p>17 R Letter to Jolley from Wilson, 51</p> <p>18 6/18/08, one page</p> <p>19 S Fax to Thorne from Bradley, 32</p> <p>20 11/26/08, one page</p> <p>21 T Email to Del Rosario from Thorne, 32</p> <p>22 12/3/08, one page</p> <p>23 U Notice of Default letter to Jolley 51</p> <p>24 from Chase Construction Loss</p> <p>25 Mitigation Dept., 7/16/09, two pages</p>	<p>1 DEPOSITION OF JEFFREY A. THORNE</p> <p>2 October 4, 2011</p> <p>3</p> <p>4 JEFFREY A. THORNE,</p> <p>5 having been first duly sworn, testifies as follows:</p> <p>6 (Exhibits A through V marked.)</p> <p>7 EXAMINATION</p> <p>8 BY MS. KELLY:</p> <p>9 Q. Good morning.</p> <p>10 A. Morning.</p> <p>11 Q. My name is Patricia Kelly. I'm an attorney for</p> <p>12 Chase Home Finance in a lawsuit filed against it by</p> <p>13 Scott Call Jolley.</p> <p>14 Have you had your deposition taken before?</p> <p>15 A. No.</p> <p>16 Q. I will go through a couple of the ground rules.</p> <p>17 First I want to remind you you're under oath.</p> <p>18 Do you understand that?</p> <p>19 A. Yes.</p> <p>20 Q. And that everything being said in this room is</p> <p>21 being taken down by the reporter unless we agree to go</p> <p>22 off on a break. Okay?</p> <p>23 A. Yes.</p> <p>24 Q. And this means a couple of things: One is we</p> <p>25 need to answer audibly and loudly so the reporter can</p>
<p>1 INDEX OF EXHIBITS</p> <p>2 Exhibit Description Page</p> <p>3 V Various Documents, 89 pages 52</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 take down accurately what has been said. Okay?</p> <p>2 A. Okay.</p> <p>3 Q. It also means I have to wait until you're done</p> <p>4 with your answer. If I'm not waiting, let me know</p> <p>5 you're not finished. You also need to wait until I'm</p> <p>6 done with my question before you give your answer.</p> <p>7 Okay?</p> <p>8 A. Okay.</p> <p>9 Q. And that's important because everything is</p> <p>10 being taken down. And if you give an answer to a</p> <p>11 question and you haven't understood the question, in the</p> <p>12 booklet it will look like you did understand the</p> <p>13 question. So if you don't understand or didn't hear my</p> <p>14 question, make sure you tell me to repeat it. Okay?</p> <p>15 A. Okay.</p> <p>16 Q. And if it's not clear, tell me that it's not</p> <p>17 clear so I can rephrase it. Okay?</p> <p>18 A. Okay.</p> <p>19 Q. Everything is being taken down in the booklet.</p> <p>20 Afterwards you're given a chance to look at the booklet.</p> <p>21 Now, you can't change my questions, but you can change</p> <p>22 your answers, and you can change or correct answers.</p> <p>23 Changing it would be if you said one thing today and you</p> <p>24 give a different answer by changing it in the booklet.</p> <p>25 Okay?</p>

<p>1 A. Okay.</p> <p>2 Q. And you can correct your answer also if for</p> <p>3 some reason it wasn't taken down correctly, to change</p> <p>4 the answer to what you said today.</p> <p>5 A. Okay.</p> <p>6 Q. Do you have any questions before we start?</p> <p>7 A. No.</p> <p>8 MR. BRADLEY: Just I'd like on the record that</p> <p>9 he is appearing as a designated expert witness for the</p> <p>10 plaintiff.</p> <p>11 MS. KELLY: But not in this deposition. This</p> <p>12 is the deposition of a percipient witness, not an expert</p> <p>13 witness.</p> <p>14 MR. BRADLEY: Okay. I'd think you'd want to</p> <p>15 take them at the same time, but fine.</p> <p>16 MS. KELLY: Okay.</p> <p>17 Q. And if you do have any questions at any time</p> <p>18 during the deposition, just let me know. Okay?</p> <p>19 A. Okay.</p> <p>20 Q. Because I want to make sure you understand what</p> <p>21 is said and you're giving me your best answer. Okay?</p> <p>22 A. Okay.</p> <p>23 MR. BRADLEY: What's going to be confusing,</p> <p>24 though, if you get into areas, though, where you're</p> <p>25 asking him his opinion as a former high-level official</p>	<p>11</p> <p>1 senior construction loan consultant. That was my</p> <p>2 position. I was asked in May of 2005 to travel back and</p> <p>3 forth from Sacramento, spending four days a week in</p> <p>4 Chatsworth where the construction lending division was</p> <p>5 located, to share my expertise in construction lending</p> <p>6 and revamp their construction department because they</p> <p>7 were not properly running the department. And that was</p> <p>8 asked of me by Kerry Killinger, the president of</p> <p>9 Washington Mutual and the executive VP.</p> <p>10 So as per my title, I was a senior loan</p> <p>11 consultant, was my real title</p> <p>12 Q. And over what period of time did you hold that</p> <p>13 title?</p> <p>14 A. I held that -- I did that new work from May of</p> <p>15 2005 until I left the company in July of 2006.</p> <p>16 Q. What job did you do immediately before May of</p> <p>17 2005?</p> <p>18 A. I was a senior loan consultant. I was a</p> <p>19 regular loan officer bringing in loans; that I'd been</p> <p>20 doing for 20-some-odd years.</p> <p>21 Q. So you went from senior loan consultant to</p> <p>22 senior construction loan consultant; is that right?</p> <p>23 A. Well, I was senior loan consultant the whole</p> <p>24 time I was with the company.</p> <p>25 Q. Okay.</p>
<p>10</p> <p>1 of WaMu running their construction department, you're</p> <p>2 getting into expert opinion. It's very hard to separate</p> <p>3 them out. I understand you probably want an additional</p> <p>4 deposition or you specifically want an expert</p> <p>5 deposition, not a designated, but I think it's going to</p> <p>6 be very difficult and I'll end up objecting every time</p> <p>7 you get into an opinion.</p> <p>8 MS. KELLY: Okay. Why don't we wait till the</p> <p>9 question; and then if you think it's appropriate, you</p> <p>10 can make an objection.</p> <p>11 MR. BRADLEY: All right. And also the question</p> <p>12 that he's entitled to be compensated at \$110 an hour as</p> <p>13 an expert.</p> <p>14 MS. KELLY: Right. But this is not an expert</p> <p>15 deposition.</p> <p>16 MR. BRADLEY: Okay.</p> <p>17 MS. KELLY: Okay.</p> <p>18 Q. So I'm entitled to your best recollection. If</p> <p>19 you don't recall the answer to a question, that's</p> <p>20 perfectly fine to say you don't recall. However, if you</p> <p>21 have any basis at all for giving me an answer, I'm</p> <p>22 entitled to your best testimony. Okay?</p> <p>23 A. Can I clarify something?</p> <p>24 Q. Sure.</p> <p>25 A. My position at WaMu on a daily basis was a</p>	<p>12</p> <p>1 A. Which began in 9 of '02.</p> <p>2 MR. BRADLEY: I guess you became de facto head</p> <p>3 of the construction --</p> <p>4 THE WITNESS: I more -- what more or less</p> <p>5 happened is everybody was to sort of move out of the</p> <p>6 way, let me in, see what was going on, and make changes</p> <p>7 that were necessary to make the department run properly,</p> <p>8 and make corrections that were necessary to make the</p> <p>9 department work, because I have done this in the past</p> <p>10 through other institutions.</p> <p>11 MR. BRADLEY: Is that just for California or 38</p> <p>12 states?</p> <p>13 THE WITNESS: All 38 states.</p> <p>14 Q. BY MS. KELLY: And when did that start?</p> <p>15 A. May of '05.</p> <p>16 Q. And you stayed in that position until June of</p> <p>17 2006; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. And what did you do after June of '06?</p> <p>20 A. The bank decided to start closing down mortgage</p> <p>21 lending, and I left the company.</p> <p>22 Q. Did you ever work for Chase?</p> <p>23 A. No, I did not.</p> <p>24 Q. How did you first get involved in Scott Call</p> <p>25 Jolley's loan?</p>



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<p>1 A. While I was in the position at Chatsworth's 2 office, Mr. Jolley had been calling into the 3 construction department saying his loan was not right, 4 that there was something wrong, and that there was money 5 that was supposed to be coming to him. 6 And one of the disbursement clerks brought me 7 the file and said Mr. Jolley is not happy. He requested 8 an inspection for some money, and we're not giving any 9 to him because the work that is to be completed is not 10 done. 11 Q. Do you remember who it was that brought the 12 file to you? 13 A. No, I do not. 14 Q. After this conversation, what if anything did 15 you do with respect to Mr. Jolley's loan? 16 A. They then gave me the file. I sat down with 17 the file and balanced out the file, and found that there 18 was about \$350,000 in limbo that should have been 19 Mr. Jolley's money. But someone, to balance the 20 computer in disbursements, just sort of placed it in 21 categories. Mr. Jolley's loan was not a ground-up 22 construction loan. 23 Q. What do you mean by that? 24 A. Meaning that you have a bare piece of dirt, you 25 put in a foundation, you put up walls, you put on a</p>	<p>15 1 your loan to value based on the new appraised value, and 2 loan off of that figure, so he can gain equity right 3 away. 4 And in that market, at that time, things were 5 appraising higher, and they were getting some excess 6 cash to do excess work on those properties. It wouldn't 7 work in this market. Like if you spent \$20,000 on a 8 kitchen today, you're not going to get \$20,000 equity in 9 the kitchen, if you have a kitchen. So you just threw 10 \$20,000 away. 11 Q. Do you remember more specifically what the 12 problem was that you found out when you first got 13 Mr. Jolley's loan? 14 A. That there were -- there was monies placed in 15 line items that were not line items in which they were 16 going to disburse funds. They had nothing to do with 17 his project. 18 Q. So what did you do in response? 19 A. Contacted Mr. Jolley to find out what his real 20 numbers were and what the real costs were of what was 21 going to be disbursed. 22 Q. Do you recall what was said in that 23 conversation with Mr. Jolley? 24 A. Not specifically. 25 Q. How about generally?</p>
<p>14 1 roof. Mr. Jolley's loan was a remodel loan. So of his 2 home there was work to be done, but some of the work 3 that was already done, you're not going to pay for 4 because that work was going to remain in place. 5 Example, it has windows. There was no 6 indication that windows were going to change. So on a 7 cost breakdown, you would have zero dollars in windows, 8 if that was one of the items that you were not going to 9 change. Or the roof. If you weren't going to change 10 that, you'd put zero dollars. You'd only put dollars 11 and cents in line items that you were actually going to 12 be asking money for. 13 Q. So initially when you got the file, did you 14 find that there were disbursements that Mr. Jolley was 15 entitled to that weren't being made? 16 A. I found that he had overfunded, meaning that he 17 had paid too much money. The difference on a straight 18 construction loan is you calculate your loan to value 19 based on the cost of the land plus the cost of 20 construction, and you base your loan to value based off 21 of that. 22 Mr. Jolley's loan, being a remodel loan, you 23 don't -- he purchased the existing dwelling for a 24 certain price, but you don't take that into account. 25 You take a new appraised value of the dwelling, base</p>	<p>16 1 A. Just generally, I can get you the cost 2 breakdown of the line items of what monies we're 3 supposed to have and what monies are being disbursed out 4 of what categories for construction. 5 Q. Is that something Mr. Jolley said to you? 6 A. Mm-hmm. 7 Q. At some point did he provide that information? 8 A. Yes, he did. 9 Q. Do you remember the next contact you had with 10 Mr. Jolley about the situation? 11 A. At that point, those line items were complete. 12 The information was forwarded back to the disbursement 13 department so that they could take those funds, 14 distribute them to the proper line item so that the 15 requests for disbursements that Mr. Jolley was sending 16 in could be disbursed. 17 Q. Do you recall who specifically that information 18 was given to? 19 A. No, I don't. We had a bunch of disbursement 20 clerks. 21 Q. What occurred next with respect to Mr. Jolley's 22 loan? 23 A. He then received disbursements on the work that 24 had been completed based on the inspection that had been 25 made.</p>



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<p>1 Q. Do you recall at any point there got to be some 2 disagreement about disbursements on that loan? 3 A. Oh, there were lots of disagreements on the 4 disbursements of the loan. 5 Q. Okay. You gave the information to some clerk 6 who was supposed to be doing disbursements, right? 7 A. Mm-hmm. 8 Q. And at some point there got to be a dispute, 9 right? 10 A. There got to be a dispute as to what percentage 11 was completed, what work was on site, what work wasn't 12 on site. I mean, there were many disputes between WaMu 13 and Mr. Jolley as to what was on or off site, as to what 14 should be paid and what shouldn't be paid. 15 Q. Do you recall after you gave the file back to 16 that clerk what the first dispute was? 17 A. No, I don't. 18 Q. Do you recall how the file got back to you? 19 A. The file came back to me again after the clerk 20 said to me the house is going to be bigger than what was 21 originally planned. And I said, He's not building by 22 the plans? I said, What plans is he building by? 23 Because normally a set of plans, cost breakdown and a 24 description of materials have to be given to us to 25 appraise the house. I said, So what are we doing then?</p>	<p>17 1 way that could be done would be a new appraisal 2 completed. So I had asked for a new cost breakdown, new 3 description of materials, and a set of the new plans to 4 forward to an appraiser to appraise the house as a 5 completed product. And the appraisal came in, I 6 believe, a little more than a million one, million two 7 higher for the added square footage. 8 Q. Then what, if anything, was done in response to 9 the fact that that appraisal had come in higher? 10 A. I then reviewed his credit file and determined 11 that he was still within the qualifying parameters for a 12 larger loan, given the higher payment that he would have 13 had to qualify for, including the higher taxes and a 14 higher insurance, and put together a memo explaining all 15 that. 16 I believe the memo was three or four pages 17 long. And made a recommendation to senior management 18 that we grant a modification to the loan for increasing 19 the loan amount and place the additional funds in the 20 LIP account for completion of construction on the new 21 square footage. 22 Q. Do you recall the last time you saw that memo? 23 A. In review the other day. 24 Q. Okay. So it's one of the documents that you 25 saw on Friday, right?</p>
<p>18 1 Well, the loan consultant -- and I have to clarify 2 this -- to do a construction loan, you have to be 3 certified in construction lending to do a construction 4 loan. 5 Q. Okay. 6 A. Okay. The loan consultant that did the loan 7 was not certified to do construction loans. But she 8 made a comment to Mr. Jolley, along with a comment from 9 the appraiser, that if you add a few more square feet to 10 the house, you'll get a better value. 11 Q. I'm sorry. Was that a comment by the loan 12 consultant to the appraiser or something the appraiser 13 said to Mr. Jolley? 14 A. Both the appraiser and the loan consultant said 15 to Mr. Jolley. So Mr. Jolley had his plans reconfigured 16 and then began building this larger home. 17 Q. And you got informed of this, right? To your 18 understanding, why did this get brought to your 19 attention? 20 A. Because we weren't going to have enough money 21 to build the house. 22 Q. So was there a request for a loan modification 23 at that time? 24 A. Well, there was a request for more funds to 25 build out this extra portion of the home. And the only</p>	<p>20 1 A. Yes. 2 Q. And do you recall approximately the date of 3 that memo? 4 A. I honestly don't. 5 Q. Okay. So you made a recommendation, right? 6 A. Uh-huh. 7 Q. And what, if anything, was done in response to 8 your recommendation? 9 A. The recommendation was taken, reviewed and 10 approved. 11 Q. And who approved it? 12 A. That had to go to executive level. And to be 13 honest with you, I forget who was in executive level at 14 that time. There was some moving around. The 15 underwriters in the office signed off on it. Usually 16 once they signed off on it, it was a done deal. 17 They were in agreement with me, and very rarely 18 is there something I sign off on that they didn't sign 19 off on. So then executive management just reviewed my 20 work, because they put me in the position, and they read 21 the memo and signed off on it. 22 Q. Was then a loan modification entered into or 23 some other action taken? 24 A. The loan modification was entered into. 25 Q. Do you know approximately when this was?</p>



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<p>1 A. I want to say January, February '07.  2 Q. I don't want to --  3 A. I don't know exactly.  4 Q. -- trick you, so I'm looking for the loan  5 modification.  6 MR. BRADLEY: The memo he wrote, three pages,  7 you said you had spotted in your documents. I would  8 think that's a significant document to help pinpoint  9 when he wrote it.  10 Q. BY MS. KELLY: I'm sorry. What was your  11 last -- the answer to the last question?  12 A. My belief was January or February.  13 Q. Of '07?  14 A. Yeah. But I can't be specific.  15 Q. Okay. With respect to what Mr. Bradley just  16 said, if you look at the exhibits, can you identify for  17 me the memo you just described?  18 A. It's Exhibit F, is the memo I wrote.  19 Q. So having seen Exhibit F and with respect to  20 what you testified about the loan modification, can you  21 give me some idea as to the date you wrote Exhibit F?  22 A. It had to be before the 12th of September.  23 Q. And is that because there is a reference on  24 page three to a meeting on the 12th?  25 A. Yeah.</p>	<p>1 Q. What do you recall being said during that  2 conference call?  3 A. I more or less went over this memo. It was  4 more or less to make them feel good that I had  5 thoroughly gone through the file and that the numbers  6 worked. And that we weren't going outside any  7 parameters of which the loan had already been approved.  8 The loan to value was still within the 77 percent, the  9 debt ratio was still the same, the credit score actually  10 was higher. So we were well within the numbers.  11 Q. And the result of this conversation was that  12 there was a loan modification, correct?  13 A. Correct.  14 Q. Did any problems with Mr. Jolley's loan occur  15 after the loan modification? Or was everything resolved  16 by that point?  17 A. Well, there was some time that was passing for  18 the work to get done. They had removed an initial  19 contractor on the job, a new -- Cheryl had been removed  20 from the job. A new person had been put on as  21 contractor on the job. There were some problems getting  22 some materials at that point.  23 The cost breakdown had just been readjusted to  24 the work that was left to be completed. We made sure  25 that the cost breakdown was set to what work needed to</p>
<p>1 Q. I'm sorry. That was a telephone conference on  2 the 12th?  3 A. Right.  4 Q. Do you recall what, if anything, was said  5 during that conference on September 12th?  6 A. Robin Bennett was my credit risk officer, which  7 was the senior management person that I had to get an  8 okay from. And -- but this was -- this was another  9 year, though. So I'm trying to figure out -- five went  10 into six -- May 5th. Because I left in June of '06. So  11 this happened in September '07. So it happened sometime  12 after. It didn't happen right away.  13 Q. If you look at page two, there's a  14 recommendation that the loan be modified to extend it to  15 September 1st, '07.  16 A. Uh-huh.  17 Q. Does this indicate to you that the memo was  18 written sometime in '06?  19 A. It was written sometime in '06, but it  20 references -- yeah, it would be '06. Because it  21 references me no longer being an employee, which I left  22 in 6/06. And it names a construction period of 7/1/07.  23 That makes sense. And so there was a conversation on  24 September 12th, '06, with a conference call with Robin  25 and Jed and Rose Mary and Mabelle.</p>	<p>1 be completed. But there may have been some other work  2 done that was not listed.  3 Q. At this point were you dealing directly with  4 Mr. Jolley or Mr. Bradley, or were you dealing with  5 someone in Washington Mutual?  6 A. With both. I was in contact with both at all  7 times.  8 Q. How did it come about that you continued to  9 work on Mr. Jolley's loan after you left Washington  10 Mutual?  11 A. Washington Mutual more or less said you're not  12 leaving us with this file. You're the only one that  13 knows what's really going on on this. And we would like  14 you to stay through and see this through. So I -- there  15 were several times that I was flown back down to  16 Chatsworth to go through and in some instances rebalance  17 the file.  18 Q. And what do you mean by rebalance the file?  19 A. Line items that had closed out, there were  20 monies left in them that they didn't need anymore, so  21 those monies could be transferred to other line items to  22 help pay for those line items. There were cost overruns  23 on some line items, and use that additional fund to pay  24 those other additional line items.  25 Q. So after you left Washington Mutual Bank, was</p>



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<p>25</p> <p>1 It your understanding that you were representing 2 Washington Mutual Bank, Mr. Jolley, or representing 3 neither of those? 4 A. I was representing Mr. Jolley for the most 5 part, but working with Washington Mutual. I was, you 6 know, I was a middle man. 7 Q. So you weren't representing Washington Mutual, 8 right? 9 A. No, I was not. But I had a good rapport with 10 them. So it made for me to be able to get things 11 accomplished, and that was -- that was at their point of 12 time -- now, remember I left in June of '06 was when 13 they started to decide to discontinue their mortgage 14 operations. And by mid '07, they were not originating 15 any more loans, and they had staffing issues of people 16 that were doing work that just did not understand the 17 work. 18 Q. What is your understanding as to why they had 19 those staffing issues? 20 A. Because they were trying to fill holes with 21 leftover people, because other people were going out and 22 getting jobs because they knew sooner or later their job 23 was going to go. And in that market at that point in 24 time, if they could find a job somewhere else, they were 25 getting it. So they were just putting anybody in those</p>	<p>27</p> <p>1 Q. What is your understanding as to why the file 2 got to risk management? 3 A. They hit term on the construction period. 4 Q. And is it your understanding that that was the 5 term set forth in the modification agreement? 6 A. Mm-hmm. 7 Q. Yes, please. 8 A. Oh, yes. 9 Q. I forgot that instruction, that we need to 10 answer audibly so the reporter can take it down. 11 A. Yes. 12 Q. Okay. So the loan got elevated to Mabette or 13 transferred to Mabette, right? 14 A. Yes. 15 Q. And then what happened to this loan? 16 A. Then I worked with Mabette as to where we were 17 in the point of construction, where we were in the point 18 of disbursement, and how we could keep moving forward 19 and obtain extensions on the loan necessary to complete 20 the work. 21 Q. So there was a request by Mr. Jolley that there 22 be extensions on the loan? 23 A. Uh-huh. Yes. Sorry. 24 Q. Thank you. 25 At the time you got involved with Mabette, what</p>
<p>26</p> <p>1 positions. 2 And then there were a lot of them that had a 3 heavy workload and just really couldn't get to the work. 4 And on more complicated files such as this, sometimes 5 they didn't even want to touch them. 6 Q. So is it your understanding in 2006, that 7 Washington Mutual was not providing adequate training to 8 its employees? 9 A. It was not providing any training. 10 Q. And did you tell Mr. Bradley that at some 11 point? 12 A. I told him they're just sort of stuffing people 13 in places, and there's a different person every time. 14 And they don't understand what's going on. Eventually, 15 the file got to a point where it was risk management, 16 and then like I had a solid contact, which was Mabette. 17 Q. Was Mabette in risk management at the time you 18 dealt with her? 19 A. Yeah, she was in risk management for 20 construction lending. 21 Q. When did you start dealing with her, if you 22 recall? 23 A. I don't recall. 24 Q. Was it prior to you leaving Washington Mutual? 25 A. No.</p>	<p>28</p> <p>1 problems were there with respect to Mr. Jolley's loan, 2 if any? 3 A. At that point in time the only real problem was 4 that it needed an extension because it wasn't done at 5 that point. 6 Q. Do you know approximately when that was? 7 A. Oh, that was probably September '07. Because 8 we had extended it to July '07, and they usually don't 9 do anything -- well, let's put it this way: It probably 10 would have been September '07, because they stop 11 disbursements when they come due, and Mr. Jolley 12 probably put in for some money and couldn't get any 13 money at that point. 14 Q. So do you recall if a loan modification then 15 was entered into? 16 A. A second one? 17 Q. Right. A second one. 18 A. It wouldn't have been a loan modification. It 19 would have been an extension agreement. 20 Q. Oh, okay. Thank you. 21 A. And, yes, there was an extension agreement for, 22 I believe, three months. 23 Q. I'm sorry. For how long? 24 A. Three months. 25 Q. When did that start?</p>



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<p>29</p> <p>1 A. Well, it dates back to the original date of 2 expiration, which would have been 7/1. So it would have 3 gone to 10/1. And there was normally a charge for that. 4 And I believe the first one they waived it. 5 Q. And after that initial extension, construction 6 still was not completed, right? 7 A. Correct. 8 Q. So then what happened? 9 A. Another extension was needed. 10 Q. And do you know if one was given? 11 A. There was one given. But there was a fee 12 involved. And as to the amount of the fee, I don't 13 recall. The norm was an eighth of a percent per month. 14 Q. Is it your recollection that Mr. Jolley was 15 informed that he was to pay the fee that was the normal 16 fee charged of others? 17 A. Yes. 18 Q. Do you recall if there was a loan extension 19 after the one that first was granted? 20 A. I believe so. 21 Q. Then do you believe he paid a fee for that one? 22 A. I believe so. 23 Q. What point of time are we up to? 24 A. We're up to '08, somewhere around January, 25 February.</p>	<p>31</p> <p>1 loan. How did that come about? 2 A. That came later in 2008, after Chase took over 3 and I went to work for the FDIC. 4 Q. Was Mr. Jolley ever given any loan extension 5 during the time that Chase had the loan? 6 A. Not to my knowledge. 7 Q. Do you know if he ever requested any loan 8 extensions during the time that Chase had the loan? 9 A. I believe he did. 10 Q. But you're not sure, right? 11 A. But I'm not positive. Because that was right 12 at the -- IndyMac Bank had just gone down, and then FDIC 13 closed WaMu. Let's see. IndyMac was in July. WaMu was 14 in September, I believe, when Chase took over. And then 15 I heard some conversations back and forth probably 16 between September and November, because December 5th I 17 got called out to go close some banks. So it would have 18 been during that period. 19 Q. Conversations, you mean, regarding Mr. Jolley's 20 loan? 21 A. Right. 22 Q. And what conversations did you hear during that 23 period? 24 A. Just that Chase wasn't willing to work, and 25 that they wanted to foreclose on the property.</p>
<p>30</p> <p>1 Q. Do you recall if another loan extension was 2 entered into? 3 A. I don't believe any more extensions had been 4 done at that time, because the bank was in a position 5 that they just needed the house to be completed, because 6 the loan itself was a construction rollover loan where 7 they were guaranteed a permanent mortgage. And they 8 just needed the house done. 9 Q. Could you go back on that? I'm sorry. Could 10 you explain again why it was that they needed the house 11 done? 12 A. Because they weren't going to give any more 13 extensions, and they needed to roll it over to the 14 permanent finance. 15 Q. And would they do that only if the house was 16 completed? 17 A. Only if they received a notice of completion. 18 Q. And when you say they needed to roll it over, 19 what was it that made them need to do that? 20 A. Well, they had expired on all their extensions. 21 So they just -- they wanted it done. 22 Q. Do you know if Mr. Jolley ever provided the 23 bank with a notice of completion for construction? 24 A. Not during the time that I was involved. 25 Q. At some point you stopped being involved in the</p>	<p>32</p> <p>1 MR. BRADLEY: Why don't we take a three- to 2 five-minute break? 3 MS. KELLY: Sure. 4 (Recess.) 5 MS. KELLY: Okay. We're back. 6 Q. I'm handing the witness Exhibits S and T. The 7 T happens to be the same as J, but, oh, well. 8 Okay. And the reason I'm giving them to you is 9 they both have dates after September of 2008. 10 A. Okay. 11 Q. So please read them to yourself. 12 A. Okay. I remember that now. 13 Q. Okay. That's the reason we do this. 14 A. Yeah. This was just before I went to the FDIC. 15 Q. And the witness is referring to exhibit number, 16 or exhibit numbers -- 17 A. S and T. 18 Q. Okay. So focusing on the period after Chase 19 took over Jolley's loan in September of 2008, what 20 communications do you recall regarding Mr. Jolley's 21 loan? 22 A. Mr. Jolley, there was some additional work or 23 increase in costs in some of the work that was being 24 done on the property. The project had been delayed 25 three to four months by the City of Tiberon, a</p>



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<p>1 Mr. Bloomquist in the building office, that they didn't 2 feel that they had the proper plans of the house that 3 was being built at the time.</p> <p>4 Mr. Bloomquist, I spoke with, had received the 5 plans and was taking 90, 120 days to review. He put a 6 stop order on the project. That was -- I have on here 7 10/31. And I'm believing that's -- yeah, '07. So he 8 would not let anybody else work on the project. He made 9 them put up that orange mesh fencing -- the neighbors 10 threw a fit -- and not let anybody go on the site until 11 he was done reviewing it. So there was a stoppage at 12 the time.</p> <p>13 With a stoppage, now Chase could not disburse 14 any more money on the project. So it took some time for 15 Mr. Bloomquist and his staff to review the plans, okay 16 the plans, and allow construction to begin again, which 17 I believe occurred right towards the first of November, 18 first of December, somewhere in that area.</p> <p>19 Q. Of 2008, or '07?</p> <p>20 A. That would have been 2000 -- it would have been 21 2008. 2008. There was money in the LIP account for 22 some bills to be paid. There was liens being placed. 23 Let me clarify. I've been using the acronym LIP, 24 loan-in-process account. That's funds being held for 25 disbursement.</p>	<p>1 ties with Chase, didn't know who was in charge of whom 2 around there, and she had to be honest and said that she 3 really didn't know either, because they were still doing 4 transition stuff, and she said it's somebody back east. 5 I don't really know. They don't come out that often, 6 and we really don't know who we report to, but we're 7 just working daily and doing our job.</p> <p>8 So I explained to her the situation, told her 9 that there's this extra money is needed, the house will 10 be done, you can pay the bills directly, you don't have 11 to give the money, because normally the borrower gives 12 the -- the bank gives the money to the borrower to pay 13 the bills. Mr. Jolley would be happy to give you the 14 bills, have you pay the bills and finish this up, so it 15 could roll over to a permanent loan.</p> <p>16 And the last I heard at that point -- now, that 17 was December 3rd, '08, when I sent that message to 18 Mabelle -- it sounded like it wasn't going to happen. 19 That Chase was not in the mood to put out any more money 20 on this project or make any more extensions or do 21 anything with this loan. As far as they were concerned, 22 it was in default.</p> <p>23 Q. As far as you knew, was it in default at that 24 time?</p> <p>25 A. To my understanding it had to be, because they</p>
<p>1 Q. Thank you.</p> <p>2 A. There were funds to be disbursed in the 3 account, but Mr. Jolley was right at his maximum 4 disbursement level because there is a ten percent 5 retention on construction loans. Once they hit that ten 6 percent retention level, disbursements stops disbursing 7 money again until the project is complete also.</p> <p>8 Based on the work that had been done, that I 9 had reviewed by the inspectors, they were a little 10 further along, and I was also provided a more current 11 appraisal. And that appraisal came out to a little over 12 \$4 million. So the value had gone up again from a 3.1, 13 3.2, to about a 4.3 million dollar home. So there was 14 more value in that property because there had been 15 upgrades to it, and there had to be a replacement of the 16 roof, and there was some added concrete.</p> <p>17 The house sat out where you had to drive over 18 piers to get into the garage. So it sat back off the 19 road. You had to have iron and build this pier to drive 20 into the house that sat on a hillside. So the cost 21 overran again. And there were mechanic's liens that 22 were outstanding that needed to be paid or they were 23 going to start liening the property.</p> <p>24 Looking at the information I had again, I 25 contacted Mabelle. And since now, mind you, I had no</p>	<p>1 hadn't finished -- there was no notice of completion 2 files and it had not converted over. Because without an 3 extension, you're in default because you don't have -- 4 you're not done within your construction period. And to 5 my knowledge, there were no extensions ever granted by 6 Chase.</p> <p>7 Q. And was it also your understanding that 8 Mr. Jolley had stopped making mortgage payments?</p> <p>9 A. I had no clue on that.</p> <p>10 Q. And so your last dealings with Chase were 11 around December 3rd, as reflected in Exhibit T, right?</p> <p>12 A. Right.</p> <p>13 Q. Did Mr. Jolley ever pay you for your services?</p> <p>14 A. I was paid a fee, yes.</p> <p>15 Q. Do you know over what period of time that was?</p> <p>16 A. That was early on; back in 2006, I was paid a 17 fee.</p> <p>18 Q. So that was just right after you left 19 Washington Mutual?</p> <p>20 A. Right.</p> <p>21 Q. Do you know in total how much he paid you?</p> <p>22 A. Approximately \$7,000.</p> <p>23 Q. Why did your employment with Washington Mutual 24 end?</p> <p>25 A. Because they had decided to close their lending</p>



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<p>1 division down. So I left and did my own consulting 2 firm. 3 Q. So was it an involuntary or voluntary leaving? 4 A. It was a voluntary. No, I have a good record 5 with them. The door was always open for me. 6 Q. During the time you were working with Chase, 7 did you believe that Chase was treating Mr. Jolley 8 improperly? 9 A. My feeling was that Chase wasn't working with 10 him at all. 11 Q. Did you believe Chase was violating any of its 12 own internal rules in not working with him? 13 A. Can I clarify that? 14 Q. Sure. 15 A. Working for the FDIC, there's things that I 16 know about institutions that are taken over and what 17 institutions are supposed to do and what institutions 18 aren't supposed to do. And there's an agreement that's 19 made between the FDIC and Chase. The document is 20 probably 118 pages long, and it specifically states that 21 Chase is to work directly with the customers to do as 22 much as possible to modify any loans as possible so that 23 no foreclosures are made and borrowers are kept in their 24 homes. 25 Q. Anything else lead you to believe that Chase</p>	<p>37 1 happening, did you believe he was being treated 2 improperly? 3 MR. BRADLEY: Like what? The disbursements -- 4 Q. BY MS. KELLY: Well, other than what -- 5 MR. BRADLEY: -- promise? 6 Q. BY MS. KELLY: -- you've told me? 7 A. I've told you the story. No, I don't think 8 there's anything different than that. 9 Q. Other than with respect to Mr. Jolley, did you 10 ever act as a medium between the individual and 11 Washington Mutual? 12 A. Other than Mr. Jolley? 13 Q. Right. 14 A. Well, yeah, there were other ones that occurred 15 while I was in the capacity that I was in Los Angeles, 16 when they were flying me back and forth, that I took 17 care of. 18 Q. How about after you left Washington Mutual? 19 A. No. 20 Q. Do you recall any time when Mr. Jolley was 21 given permission to get a second loan? 22 A. I believe the norm was that you were not able 23 to get a second behind a construction loan, but 24 Washington Mutual was going to grant him the ability to 25 do that.</p>
<p>38 1 was treating Mr. Jolley improperly? 2 A. Not that I would -- I never really knew what 3 else Chase was doing, so no. 4 Q. Did you believe that Washington Mutual was 5 treating Mr. Jolley improperly? 6 A. Yes. 7 Q. In what way? 8 A. When it started from the very beginning, this 9 loan was improperly put together and it was put together 10 on false pretenses of something that could not have been 11 done based on the numbers that were given. And the 12 people that were involved should have known that, based 13 on what was going to be done, that the work that was to 14 be done could not have been completed at the amount 15 quoted. 16 So from the get-go, this loan was doomed from 17 the very beginning. It was a makeable loan, if the 18 proper people that were qualified to do this type of 19 work put it together. Mr. Jolley was very qualified for 20 this loan. 21 Q. Was Mr. Jolley treated improperly in any other 22 way by Washington Mutual? 23 MR. BRADLEY: Any other way other than the 24 overall loan? 25 Q. BY MS. KELLY: Well, at the time that this was</p>	<p>40 1 Q. Do you recall any conversations with Rose Mary 2 Talavera that you haven't talked to us about today? 3 A. I didn't talk to Rose Mary very much about -- 4 she -- she really didn't want anything -- she was the 5 manager of the department down there, but she didn't 6 really want to get involved with this and what was going 7 on and the changes that were being made and stuff. I 8 was more or less her ally in working together to make 9 her department run smoother. 10 Q. Do you recall any more communications you had 11 with Mabette, other than what you told us about today? 12 A. No. 13 Q. How about any communications with Robin 14 Bennett? 15 A. No. 16 Q. Do you recall any communications with 17 Mr. Jolley, other than what you've told us about today, 18 if any? 19 A. No. 20 Q. How about communications with Mr. Bradley; do 21 you recall any such communications about Mr. Jolley's 22 loan? 23 A. Either Scott had called me or Mr. Bradley had 24 called me, and we went through documents, everything 25 that's here. Nothing different.</p>



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<p>1 Q. Do you know what Swift &amp; Company is?</p> <p>2 A. Swift &amp; Company, well, it's actually Marshall &amp;</p> <p>3 Swift. Marshall &amp; Swift is a guideline for estimating</p> <p>4 values of homes that are under construction based on</p> <p>5 what materials are going to be used.</p> <p>6 Q. That's a computer program?</p> <p>7 A. It's a booklet and a computer program. You can</p> <p>8 use either/or.</p> <p>9 Q. Did you ever tell Mr. Bradley that what</p> <p>10 happened to Mr. Jolley was predatory lending?</p> <p>11 A. No.</p> <p>12 Q. Did you think at the time it was happening that</p> <p>13 this was predatory lending?</p> <p>14 A. No.</p> <p>15 Q. Would you look at Exhibit A.</p> <p>16 A. Okay.</p> <p>17 Q. So is page five of Exhibit A --</p> <p>18 MR. BRADLEY: We're going into the</p> <p>19 expert-witness category?</p> <p>20 MS. KELLY: No.</p> <p>21 Q. Is page five a copy of your resume?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And it's accurate of what date?</p> <p>24 A. It's accurate as of today.</p> <p>25 Q. Would you look at Exhibit B. Starting on page</p>	<p>4.1</p> <p>1 involved in Mr. Jolley's loan?</p> <p>2 A. When it got -- what happened is when it got to</p> <p>3 -- yeah. Well, he sent it to the construction</p> <p>4 department so they could try and figure out what's going</p> <p>5 on. The construction department really couldn't figure</p> <p>6 out what was going on with the disbursement department.</p> <p>7 The disbursement department brought it to me for me to</p> <p>8 look at. And I had to agree with Mr. Bradley's numbers,</p> <p>9 that the numbers were misappropriated.</p> <p>10 Q. Okay. So you agree with the numbers in</p> <p>11 Exhibit C?</p> <p>12 A. Yes.</p> <p>13 Q. And you conveyed that conclusion to</p> <p>14 Mr. Bradley; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Seeing this exhibit, does it make you recall</p> <p>17 anything other than what you've testified to today?</p> <p>18 A. No.</p> <p>19 Q. Would you look at Exhibit D then. And is</p> <p>20 Exhibit D a copy of an email exchange between you and</p> <p>21 Mr. Jolley?</p> <p>22 A. Yes.</p> <p>23 Q. And seeing this, does this refresh your</p> <p>24 recollection as to any communications, other than what</p> <p>25 you've told us about?</p>
<p>4.2</p> <p>1 three, there's a request for documents.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. And you have seen Exhibit B before today,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And did you bring all the documents that you</p> <p>9 had in your possession responsive to the document demand</p> <p>10 in Exhibit B?</p> <p>11 A. Yes.</p> <p>12 Q. And those are the ones you gave me last Friday,</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 MS. KELLY: And, Mr. Bradley, they're the ones</p> <p>16 I gave you this morning.</p> <p>17 MR. BRADLEY: Right.</p> <p>18 Q. BY MS. KELLY: Would you look at Exhibit C.</p> <p>19 Have you seen Exhibit C before today?</p> <p>20 A. Yes.</p> <p>21 Q. And when did you see it first?</p> <p>22 A. This was sort of what got this started. Jed,</p> <p>23 the attorney for Washington Mutual, sent me a copy of</p> <p>24 this.</p> <p>25 Q. So this is what -- Exhibit C is what got you</p>	<p>4.4</p> <p>1 A. No.</p> <p>2 Q. And you have no reason to think that the emails</p> <p>3 were sent on any date other than the dates listed in the</p> <p>4 email, right?</p> <p>5 A. Correct.</p> <p>6 Q. Exhibit E, please. And that's an email</p> <p>7 exchange between you and Karen -- her last name is</p> <p>8 Dibasilio.</p> <p>9 A. Uh-huh, yes.</p> <p>10 Q. And that exchange took place on the dates</p> <p>11 listed in the email, right?</p> <p>12 A. Yes.</p> <p>13 Q. And does this refresh your recollection as to</p> <p>14 anything communicated about this loan other than what</p> <p>15 you testified to?</p> <p>16 A. Yes. I mean that's correct.</p> <p>17 Q. Nothing new?</p> <p>18 A. Nothing new.</p> <p>19 Q. Okay. Exhibit F. And you've testified about</p> <p>20 Exhibit F today already.</p> <p>21 A. Yes.</p> <p>22 Q. Have we gone through everything today; is there</p> <p>23 anything else you recall about what's set forth in</p> <p>24 Exhibit F?</p> <p>25 A. No.</p>



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<p>1 Q. And Exhibit G. It looks like the first page of 2 Exhibit G is an email exchange between you and Mabette, 3 correct? 4 A. Correct. 5 Q. And I'm not sure if page two was attached to 6 that email. 7 A. Yeah, it was. 8 Q. Oh, okay. And page two of Exhibit G is a fax 9 cover sheet from Mr. Jolley to you, right? 10 A. Yes. 11 Q. And to the best of your knowledge, it was on 12 the date reflected on that cover sheet, correct? 13 A. Yes. 14 Q. What's the third page of Exhibit G? 15 A. That is a disbursement schedule. The 16 written-in numbers is the amount that the borrower 17 wishes to have disbursed from that line category. 18 Example, line 11 shows an amount in -- undisbursed of 19 14,000, and he requested 2,480.08 be disbursed; line 36 20 (sic), there's 48,000 in that category, that 48,000 be 21 disbursed; and the following page, contingency reserve 22 shows 100,029.48, that 100,029.48 be disbursed for a 23 total request of disbursement of 150,509.56. 24 Q. Let me see if I've got this right. The 25 handwritten numbers are requests for disbursements; is</p>	<p>45 1 stamp date of October of 2006 on the top. 2 A. Well, if you go down further in section one, 3 this is for the amendment to the modification to convert 4 to a permanent finance, would make it August 1st, 2007. 5 Regular monthly payment. So it increased the 6 interest-only payments up to August 1st, 2007. 7 Q. I'm sorry. What was supposed to happen on 8 August 1st, 2007, then? 9 A. It automatically converts to a permanent 10 finance. 11 Q. And what was your understanding as to why that 12 did not happen? 13 A. They extended the period of time for 14 construction and the interest-only period. 15 Q. And that's because the construction wasn't 16 completed as of July 1st, 2007? 17 A. Right. 18 Q. Seeing this document, does it refresh your 19 recollection of anything that occurred, other than what 20 you've told us today? 21 A. That's what it is. 22 Q. And if you look at Exhibit J. It's the same as 23 Exhibit T, which we looked at earlier. 24 A. Uh-huh. 25 Q. And does that refresh your recollection as to</p>
<p>46 1 that right? 2 A. Correct. 3 Q. Seeing Exhibit G, does that refresh your 4 recollection as to anything that occurred, other than 5 what you've told us about today? 6 A. Best of my knowledge, no. It is what it is. 7 Q. Would you look at Exhibit H, please. Exhibit H 8 is an email exchange between you and Mr. Jolley, 9 correct? 10 A. Correct. 11 Q. To the best of your recollection, were the 12 problems between Washington Mutual and Mr. Jolley 13 resolved as of September of 2006? 14 A. The ones that were for disbursements at that 15 time, yes. 16 Q. And after seeing Exhibit H, does that refresh 17 your recollection about any communications other than 18 what you've told us today? 19 A. Yeah, that's -- I told him everything that he 20 had requested was ready to go. 21 Q. And Exhibit I is a copy of the modification 22 agreement between Washington Mutual and Jolley entered 23 into in 2007 or the end of 2006, right? 24 A. The end of 2007. 25 Q. It's not dated, but it's got a file -- recorded</p>	<p>48 1 anything that occurred, other than what you told us 2 today? 3 A. No, this is in regards to cost overruns. 4 Q. And it was in or about December of 2008 that 5 you stopped dealing with this loan; is that right? 6 A. Correct. 7 Q. Exhibit K. What is Exhibit K? 8 A. Their delinquency list. They have requested 9 funds, and they did not have all the items that were 10 necessary to disburse funds. 11 Q. Do you know if Mr. Jolley ever provided all the 12 items requested? 13 A. I have no clue. 14 Q. Does this document refresh your recollection as 15 to any communications about Mr. Jolley's loan, other 16 than what you've told us today? 17 A. No. Just that I had notified him what Mabette 18 had told me. 19 Q. Exhibit L, I don't know that it has anything to 20 do with you. Have you seen it before? 21 A. No. 22 Q. Exhibit M, have you seen this document before? 23 A. Yeah, this is one of their extensions. 24 Q. Do you know if it was ever signed by 25 Mr. Jolley?</p>



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<p>1 A. I believe so. This is 2008.</p> <p>2 Q. If you look at Exhibit N, it also appears to be</p> <p>3 an extension, but that one seems to be signed. It is</p> <p>4 signed.</p> <p>5 A. Yeah, this would have been the extension, then,</p> <p>6 yes.</p> <p>7 Q. Exhibit --</p> <p>8 A. N is the same as M but signed.</p> <p>9 Q. And you told us everything you recall about the</p> <p>10 extensions, right?</p> <p>11 A. Right.</p> <p>12 Q. Exhibit O, please. Have you seen Exhibit O</p> <p>13 before?</p> <p>14 A. I may or may not. I don't particularly recall</p> <p>15 this. But Jed and I may have spoke about it. Jed</p> <p>16 usually called me whenever he received something.</p> <p>17 Q. So you don't recall seeing it back in 2008,</p> <p>18 right?</p> <p>19 A. Right.</p> <p>20 Q. Now that you've read it, did you agree with the</p> <p>21 statements in this letter at the time of March of 2008?</p> <p>22 A. Which statements?</p> <p>23 Q. The ones that Mr. Bradley puts in there. Let's</p> <p>24 say one through 11, if you have an opinion.</p> <p>25 A. One, yes; two, yes; three, yes; four, yes;</p>	<p>1 size of the project.</p> <p>2 Q. So it was on a case-by-case basis?</p> <p>3 A. Yes. They were portfolioing these loans.</p> <p>4 Q. I'm sorry. What did you just say?</p> <p>5 A. They were portfolioing the loans. So they were</p> <p>6 keeping them on their books. So they weren't selling</p> <p>7 them off, securitizing them. So they sort of did what</p> <p>8 they wanted to with them until they were completed</p> <p>9 loans, and then securitize them off and sell them off.</p> <p>10 Q. Exhibit R, please.</p> <p>11 A. I don't know if he's applying that one or not.</p> <p>12 Q. Exhibit S. May I see what you have for S?</p> <p>13 A. (Indicating.)</p> <p>14 Q. Oh, okay. You saw that exhibit earlier in the</p> <p>15 deposition, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Exhibit T. You saw that exhibit earlier</p> <p>18 in the deposition as well, right?</p> <p>19 A. Yes.</p> <p>20 Q. And that's an email exchange between you and</p> <p>21 Mabette, right?</p> <p>22 A. Uh-huh.</p> <p>23 Q. (Indicating.)</p> <p>24 A. Yes. I'm sorry.</p> <p>25 Q. Exhibit U, have you seen that one before?</p>
<p>1 five, yes; six, yes; seven, yes; eight, yes; nine, yes;</p> <p>2 ten, yes; and 11, yes. That was a bad storm year.</p> <p>3 Q. Do you agree with the first sentence -- did you</p> <p>4 agree with the first sentence of the last paragraph in</p> <p>5 Exhibit O?</p> <p>6 A. There were delays on WaMu's behalf that slowed</p> <p>7 the project, yes. I don't know whether it's 16 months</p> <p>8 or not. But there was -- there was delays because of</p> <p>9 WaMu's funding.</p> <p>10 Q. Okay. Exhibit P, please. Does Exhibit P</p> <p>11 refresh your recollection as to anything occurring,</p> <p>12 other than what you've told us about?</p> <p>13 A. No. That was the extension.</p> <p>14 Q. Exhibit Q, I don't know if you've seen that</p> <p>15 before.</p> <p>16 A. I knew these were sent out to all construction</p> <p>17 borrowers. As to whether Mr. Jolley got one, I didn't</p> <p>18 know.</p> <p>19 Q. Back in May of 2008, was it WaMu's practice or</p> <p>20 procedure to grant a construction extension only one</p> <p>21 time?</p> <p>22 A. No.</p> <p>23 Q. Was there any number of times that extensions</p> <p>24 were typically granted?</p> <p>25 A. There were numerous times, depending on the</p>	<p>1 A. No, I have not.</p> <p>2 Q. And Exhibit V are documents you provided to me</p> <p>3 on Friday last?</p> <p>4 A. Right.</p> <p>5 Q. If you look down a number of pages to a memo</p> <p>6 that starts with: Good Morning All. It's an email to</p> <p>7 Mr. Jolley from you, I gather.</p> <p>8 A. Okay.</p> <p>9 Q. Can you tell me approximately when this was</p> <p>10 written?</p> <p>11 A. Probably September '07. That's the best I can</p> <p>12 do. I'm trying to remember when the NCUA called me on</p> <p>13 the institution in Minnesota. I believe that's about</p> <p>14 right. That's about August, September. Yeah.</p> <p>15 Q. Do you recall about when you started dealing</p> <p>16 with Mr. Bradley as compared to Mr. Jolley about this</p> <p>17 loan?</p> <p>18 A. It was -- Mr. Bradley called a lot of the time.</p> <p>19 Mr. Jolley would call when it had to do with more of his</p> <p>20 financial stuff. More on the project Mr. Bradley would</p> <p>21 call me because he was closer to the project and could</p> <p>22 get stuff done. Mr. Jolley was in the Utah area. So he</p> <p>23 didn't have hands-on what exactly what was going on. So</p> <p>24 I could get more information quicker from Mr. Bradley.</p> <p>25 Q. So you dealt with both of them --</p>



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<p>1 A. Yeah.</p> <p>2 Q. -- during the same time period?</p> <p>3 A. Yeah.</p> <p>4 Q. After you left Washington Mutual, did you ever</p> <p>5 ask Washington Mutual for any information regarding</p> <p>6 Mr. Jolley's loan that wasn't provided to you?</p> <p>7 A. Yes.</p> <p>8 Q. And what was that?</p> <p>9 A. Current inspection sheets of what work had been</p> <p>10 done.</p> <p>11 Q. So that's -- you asked Washington Mutual for</p> <p>12 those?</p> <p>13 A. Mm-hmm, yes.</p> <p>14 Q. Yes?</p> <p>15 A. Sorry.</p> <p>16 Q. And who did you ask for those?</p> <p>17 A. Mabelle, usually.</p> <p>18 Q. Did she not provide them or there was a delay</p> <p>19 in providing that information?</p> <p>20 A. Oh, they usually provided them. I would just</p> <p>21 have to call and get copies of them. Or as soon as they</p> <p>22 were ordered and came in, she would fax it to me.</p> <p>23 Q. Did she ever refuse to give you anything that</p> <p>24 you asked for?</p> <p>25 A. No.</p>	<p>1 Q. And Chase would not agree to do that, right?</p> <p>2 A. Correct.</p> <p>3 MS. KELLY: I don't have any other questions.</p> <p>4 MR. BRADLEY: Okay if we could take like a</p> <p>5 five-minute break? I think I can finish up in</p> <p>6 30 minutes and we'll all get out of here.</p> <p>7 MS. KELLY: Works for me.</p> <p>8 (Recess.)</p> <p>9 EXAMINATION</p> <p>10 BY MR. BRADLEY:</p> <p>11 Q. Okay. Mr. Thorne, let's digress to the</p> <p>12 beginning of the loan. In a letter here to Jed</p> <p>13 Sonstroom on May 8th, 2006, I describe to him a document</p> <p>14 that was produced by Washington Mutual that said if you</p> <p>15 want to be reimbursed for these prepaids, check a box,</p> <p>16 and that Mr. Jolley had checked the box and requested</p> <p>17 that he get reimbursed for \$381,461.33.</p> <p>18 Do you recall that in the documents?</p> <p>19 A. Yes.</p> <p>20 Q. Was Jolley misled by the initial loan people</p> <p>21 and would that be Henpenny and Rocelios? (Phonetic)</p> <p>22 A. It would have been the loan consultant that</p> <p>23 when they wrote up the document request, they would have</p> <p>24 had to specify that those items that were checked were</p> <p>25 reimbursable items.</p>
<p>1 Q. Did she ever fail to give you anything that you</p> <p>2 asked for?</p> <p>3 A. No.</p> <p>4 Q. Did you ever ask Chase for any information that</p> <p>5 it refused to give you?</p> <p>6 A. Well, Mabelle was part of Chase after the</p> <p>7 takeover. So, no.</p> <p>8 Q. Did you ever ask WaMu to take any action that</p> <p>9 was not taken?</p> <p>10 A. There were times that they would not waive the</p> <p>11 extension fee, that I requested the extension fee be</p> <p>12 waived.</p> <p>13 Q. Anything else?</p> <p>14 A. Other than that, no. In fact, they even -- I</p> <p>15 requested that they go over their 90 percent</p> <p>16 disbursement level to a 95, and they granted that.</p> <p>17 Q. Were there any other requests that you made</p> <p>18 that were granted by WaMu or Chase that were outside of</p> <p>19 their typical policy guidelines?</p> <p>20 A. No.</p> <p>21 Q. Did you ever ask Chase to take any action which</p> <p>22 it did not take?</p> <p>23 A. To waive the extension and grant a larger loan</p> <p>24 based on a new appraisal to finish the project based on</p> <p>25 cost overruns.</p>	<p>1 Q. All right. And then do you recall the ladies,</p> <p>2 was it one woman named Rocelios and another one</p> <p>3 Henpenny?</p> <p>4 A. I don't remember their names.</p> <p>5 Q. Or Bunepenny?</p> <p>6 A. Bune -- I honestly don't remember the names.</p> <p>7 Q. Okay. And do you know whether they were</p> <p>8 construction loan brokers?</p> <p>9 A. I do know they were not approved to do</p> <p>10 construction loans.</p> <p>11 Q. Okay. And as a result -- you say in the normal</p> <p>12 construction loan there are several ways of doing a</p> <p>13 construction loan. It's ground-up, where you buy a</p> <p>14 place of land and you have plans prepared for the</p> <p>15 construction and they make a loan to you on the basis of</p> <p>16 the purchase of the land and the construction costs?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And the instance where Jolley had a</p> <p>19 preexisting house that he had purchased where he put</p> <p>20 down a downpayment -- I believe the initial purchase</p> <p>21 price was a million six, and he put down 20 percent down</p> <p>22 or approximately \$330,000 -- would a construction loan</p> <p>23 be different with that scenario?</p> <p>24 A. Yes.</p> <p>25 Q. How?</p>



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<p>1 MS. KELLY: Mr. Bradley, are you asking this 2 witness being a percipient witness or an expert witness? 3 MR. BRADLEY: Well, he -- no, I'm just talking 4 about for now the loan from its inception. He's 5 testified to these facts during your direct. I'm only 6 asking him to amplify on what he previously testified to 7 you. And that was, he described the difference in the 8 two different loans. 9 And we've, you know -- he described the down 10 payments and the reimbursables. But that didn't happen. 11 And so I'm just amplifying what your deposition 12 testimony was. If that was, in your opinion, expert 13 testimony, we need a check from you. 14 MS. KELLY: No, I wasn't asking as an expert 15 witness. But I need clarification from you that this is 16 not an expert deposition. So don't ask hypotheticals. 17 Okay? 18 MR. BRADLEY: I don't think I am. I'm asking 19 for -- 20 MS. KELLY: Okay. 21 MR. BRADLEY: -- evidence related to this case 22 and his interpretation of that evidence. Because he 23 participated in the modification of the initial loan. 24 MS. KELLY: Well, you can ask about 25 interpretation, as far as what he did in response to</p>	<p>57 1 was a wrong decision on the part of Washington Mutual? 2 A. The disburseables, there should not have been -- 3 the disbursement money should have been disbursed at the 4 close of escrow. 5 Q. To him? 6 A. To him. 7 Q. Right. 8 A. And not placed in who-knows-what categories 9 that they placed them in. 10 Q. All right. And then in the process of doing 11 the original loan, they arbitrarily assigned money to 12 categories where weren't requested money and had further 13 cut down the balance of the loan available or the cash 14 available to him? 15 A. Taking the money that he was to receive from 16 what I could see is they placed those monies in 17 categories, which to my best recollection were arbitrary 18 categories that possibly had nothing to do with the 19 construction, which lowered the amount of money he had 20 to build the home. 21 Q. Okay. Is there a standard in the industry that 22 if you make a construction loan you want to make sure 23 that there's enough money to actually do the 24 construction? 25 MS. KELLY: Objection. This is expert witness</p>
<p>58 1 that interpretation. Does that make sense? 2 MR. BRADLEY: Not really. Let me try to go on 3 here. 4 MS. KELLY: Okay. 5 Q. BY MR. BRADLEY: If the loan was done right 6 initially, I think you testified, would he be reimbursed 7 those reimbursable items? 8 A. Yes, he would. 9 Q. Okay. And there is a requirement, I'm told 10 from the documents, and at least from Washington Mutual, 11 that there had to be -- Mr. Jolley had to have something 12 in the game. He had to have money in the game. 13 Would his downpayment that he made on the 14 initial purchase where he bought the property with a 15 WaMu loan, would his downpayment qualify for having 16 money in the game as a downpayment? 17 A. Based on the numbers that I have, he gained 18 some equity based on the purchase of the property, the 19 construction of the work that is to be done, which 20 creates a new value. So he has -- because of the market 21 at that point, he has gained equity value at that point. 22 Q. So it wasn't necessary he come up with new cash 23 or cash down? 24 A. There was no need for additional cash. 25 Q. So the use of this disburseables, as it were,</p>	<p>59 1 testimony. 2 MR. BRADLEY: I'm just asking for his 3 background. He was head of the construction department 4 for WaMu, and I'm asking for his understanding of the 5 policy of WaMu Bank that aren't they supposed to make a 6 construction loan knowing all the facts that a person 7 can actually build the house out with that money; 8 there's enough money available to finish the project. 9 I'm asking about if that was a policy -- 10 MS. KELLY: Okay. 11 MR. BRADLEY: -- of the bank. 12 MS. KELLY: As long as we're not turning this 13 into an expert deposition, we can go ahead. Okay. 14 MR. BRADLEY: Sure. 15 MS. KELLY: Okay. 16 THE WITNESS: It was the policy of Washington 17 Mutual to make sure that you were within 110 to 115 18 percent of the Marshall &amp; Swift cost. 19 Q. BY MR. BRADLEY: Okay. And had anybody run 20 this loan initially through Marshall &amp; Swift to 21 establish what that number would be? 22 A. No one runs it through Marshall &amp; Swift. The 23 appraiser gives a figure when they do the appraisal as 24 to what that Marshall &amp; Swift number -- 25 Q. Is.</p>



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<p>1 Q. Okay. Would the notice of liens against the 2 property with subsequent judgments impair his credit and 3 ability to borrow? 4 A. Yes. 5 MS. KELLY: And I'm maintaining a line of 6 objections to this. 7 MR. BRADLEY: Okay. 8 MS. KELLY: Okay? 9 MR. BRADLEY: That's not a problem. 10 MS. KELLY: Okay. 11 Q. BY MR. BRADLEY: Were you concerned at the time 12 you left WaMu that there were things that WaMu was doing 13 that were a violation of lending regulations put out by 14 the treasury department, the controller of the currency? 15 A. No, not necessarily. 16 Q. Okay. Would you say that it was simply the 17 negligence of WaMu's employees in creating this initial 18 loan that caused Jolley to have to ask for an extension 19 and a modification of the loan? 20 MS. KELLY: Objection. Expert opinion, but as 21 long as it's not an expert deposition, go ahead and ask 22 your questions. 23 Do you need it read back? 24 THE WITNESS: Yeah. 25 (Record read.)</p>	69	<p>1 Was it two million or do you know an approximate dollar 2 amount? 3 A. The last loan I remember was 2.4. 4 Q. So at an appraised value of 4.3, there was 5 available at least \$900,000 in equity? 6 A. Without calculating, yeah, roughly. 7 Q. Okay. And then with the passage of time and 8 the collapse of the real estate market, that money was 9 lost to Jolley? 10 MS. KELLY: Same objections. 11 THE WITNESS: That I can't speculate based on 12 the market. 13 Q. BY MR. BRADLEY: Okay. Now, this 118-page 14 document, can you again describe to me what its contents 15 was? 16 A. There's two documents. They're the same 17 document. And it is the right to purchase a financial 18 institution. That's the purchase agreement. One of 19 them is 35 pages long that is recorded and made public 20 by the FDIC, and the other is a continuation of the 35 21 pages up to the 118 pages that spells out an agreement 22 between the purchasing institution and the FDIC as to 23 how they are to handle the customers upon the purchase 24 of the bank; i.e., how the foreclosures are to be 25 handled, work out agreements that they're supposed to</p>
<p>1 THE WITNESS: Yes. 2 Q. BY MR. BRADLEY: And do you think Chase's 3 refusal to lend additional funds on this loan created a 4 situation where Jolley ultimately went into default? 5 MS. KELLY: Same objection to all these 6 questions. 7 THE WITNESS: Okay. Let me word this 8 correctly. Due to cost overruns and the time that it 9 had taken to complete the home, and the rising cost of 10 material, Chase not giving an additional 400,000 based 11 on the appraisal that had been made, yes, it caused the 12 default, would cause the default. 13 Q. BY MR. BRADLEY: Okay. If he had gotten the 14 400,000 additional funds, in your opinion would he have 15 been able to complete the project and perhaps sell the 16 house for \$4.3 million? 17 MS. KELLY: Same objection. 18 THE WITNESS: I have no clue what he would have 19 been able to sell it for. 20 MR. BRADLEY: Right. 21 THE WITNESS: He would be able to complete the 22 house based on the numbers that were given. 23 Q. BY MR. BRADLEY: Assuming an appraised value of 24 \$4.3 million, and the underlying loan of -- well, do you 25 remember what it was ultimately, this modified loan?</p>	70	<p>1 make. Are they supposed to make an offer? They have to 2 make certain offers in writing. They have to present 3 them to the FDIC to show that they're working with them 4 in good faith. They just can't go in and just start 5 foreclosing on everybody that's not paying. 6 Q. And it's your testimony that there was such an 7 agreement that Chase signed with the FDIC when it took 8 over WaMu, this document? 9 A. Yeah, at the facility that I was at, that was 10 one of the documents I had access to through my system, 11 and I saw that document. 12 Q. Okay. And then where would a copy of that 13 document be? The first 32 pages, I think you said, were 14 made public, but the balance of them were withheld from 15 the public. 16 A. Right. It would be at FDIC. 17 Q. Okay. And could those be subpoenaed? 18 A. I'm sure they could. 19 Q. And you would refer to it as the right to 20 purchase document? 21 A. Right. 22 MR. BRADLEY: All right. I have happily no 23 more questions. But we will -- I'm sure they'll want to 24 take your expert deposition. They like two bites at the 25 apple.</p>



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<p>73</p> <p>1 MS. KELLY: I have one question, I think.</p> <p>2 EXAMINATION</p> <p>3 BY MS. KELLY:</p> <p>4 Q. You don't know the actual training provided to</p> <p>5 the loan consultants that dealt with Jolley with respect</p> <p>6 to construction loans?</p> <p>7 A. We used to have a training department that you</p> <p>8 had to go through. It was like a three-day training</p> <p>9 course to be certified to do construction loans. And</p> <p>10 WaMu disbanded that. And only those people that had</p> <p>11 that previous certification were allowed to continue on.</p> <p>12 So, in reality, all that was left was one</p> <p>13 individual nationwide that would sit down one day with</p> <p>14 certain people. And we weren't really adding anybody to</p> <p>15 the list because we have enough people to do</p> <p>16 construction loans to train anybody else. So we had</p> <p>17 plenty of people, and we had enough in each region</p> <p>18 across the 38 states that would -- you were to -- the</p> <p>19 other loan officers were to or loan consultants were to</p> <p>20 refer them off. And to those loan consultants, because</p> <p>21 of the payment schedule that was on those, we would pay</p> <p>22 back the other loan consultant referred to us a portion</p> <p>23 of our commissions.</p> <p>24 So, no, there was no set training schedule and,</p> <p>25 no, they were not adding anybody else. And this person</p>	<p>75</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2</p> <p>3 I, Daniel E. Blair, a Certified Shorthand Reporter</p> <p>4 in and for the State of California, do hereby certify:</p> <p>5</p> <p>6 That the foregoing witness was by me duly sworn;</p> <p>7 that the deposition was then taken before me at the time</p> <p>8 and place herein set forth; that the testimony and</p> <p>9 proceedings were reported stenographically by me and</p> <p>10 later transcribed into typewriting under my direction;</p> <p>11 that the foregoing is a true record of the testimony and</p> <p>12 proceedings taken at that time.</p> <p>13</p> <p>14 IN WITNESS WHEREOF, I have subscribed my name on</p> <p>15 October 12, 2011.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Daniel E. Blair, CSR No. 4388</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>74</p> <p>1 that did this loan did not receive the training.</p> <p>2 MS. KELLY: I don't have any other questions.</p> <p>3 Do you have another question?</p> <p>4 MR. BRADLEY: No, I don't.</p> <p>5 MS. KELLY: Okay.</p> <p>6 THE REPORTER: Do you need a copy, Mr. Bradley?</p> <p>7 MR. BRADLEY: I certainly do. I just loved</p> <p>8 this deposition.</p> <p>9 (The deposition concluded at 1:00 p.m.)</p> <p>10 ...</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>76</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Our Assignment No. 418084</p> <p>3 Case Caption: Jolley vs. Chase Home Finance, LLC</p> <p>4</p> <p>5 DECLARATION UNDER PENALTY OF PERJURY</p> <p>6 I declare under penalty of perjury that I have read</p> <p>7 the entire transcript of my Deposition taken in the</p> <p>8 captioned matter or the same has been read to me, and</p> <p>9 the same is true and accurate, save and except for</p> <p>10 changes and/or corrections, if any, as indicated by me</p> <p>11 on the DEPOSITION ERRATA SHEET hereof, with the</p> <p>12 understanding that I offer these changes as it still</p> <p>13 under oath.</p> <p>14 Signed on the _____ day of _____, 20____</p> <p>15</p> <p>16</p> <p>17 Jeffrey A. Thorne</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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<p>61</p> <p>1 A. -- should be.</p> <p>2 Q. Okay. So do you have knowledge when the</p> <p>3 initial loan was made and the loan documents prepared,</p> <p>4 did Washington Mutual lose the loan documents for a</p> <p>5 period of 18 months?</p> <p>6 A. That I have no knowledge of.</p> <p>7 Q. Okay. And did you tell me that you attended a</p> <p>8 conference of banks at a resort area, I believe Hawaii,</p> <p>9 but at a resort area where Washington Mutual got up in</p> <p>10 front of a group of lenders and explained what training</p> <p>11 they put their people through to do loans?</p> <p>12 A. That was done by a colleague of mine in</p> <p>13 construction lending. I believe the seminar was held in</p> <p>14 San Diego. And they said no.</p> <p>15 Q. Washington Mutual got up before all their</p> <p>16 fellow lenders and explained that they had no training</p> <p>17 at all for their people?</p> <p>18 A. Right. They used to, and they disbanded that</p> <p>19 training.</p> <p>20 Q. Would you expect that there would be a standard</p> <p>21 in the industry that you would train your loan people</p> <p>22 how to make loans?</p> <p>23 A. That's why there was a limited number of people</p> <p>24 that were allowed to do construction loans, because they</p> <p>25 were -- when you were a hired -- if you had background</p>	<p>63</p> <p>1 A. Right.</p> <p>2 Q. You mentioned a document. It was 118 pages</p> <p>3 long. Can you describe that document? Is there a</p> <p>4 heading on it?</p> <p>5 A. Let me clarify my employment with the FDIC.</p> <p>6 Q. Okay.</p> <p>7 A. I went to work for a company called RSM</p> <p>8 McGladery --</p> <p>9 Q. Okay.</p> <p>10 A. -- as a contract employee to the FDIC that</p> <p>11 required me to pass all FDIC clearance requirements. I</p> <p>12 was one of the very few that did have FDIC signing</p> <p>13 authority at the time that I was working under contract</p> <p>14 with them.</p> <p>15 Q. And what did that signing authority give you</p> <p>16 power to do?</p> <p>17 A. I could sign out reconveyances, deeds, release</p> <p>18 notes, sign titles, sign checks for the FDIC. It was a</p> <p>19 pretty powerful pen.</p> <p>20 Q. Okay. And how would you characterize a</p> <p>21 construction loan in the FDIC world; was a construction</p> <p>22 loan considered a mortgage, considered debt, considered</p> <p>23 lines of credit? What kind of animal was it?</p> <p>24 A. A construction loan at the FDIC, when a bank</p> <p>25 failed, it was considered a line of credit.</p>
<p>62</p> <p>1 In construction lending, you were allowed to do</p> <p>2 construction loans. At the time, if you did not have</p> <p>3 the background, and significant background, you were not</p> <p>4 allowed to do them.</p> <p>5 There was a list. Somehow Mr. Jolley's loan --</p> <p>6 I believe his loan consultant was tied to a very</p> <p>7 powerful loan group and got pushed through the system.</p> <p>8 Q. That was a powerful group within the bank?</p> <p>9 A. Very powerful.</p> <p>10 Q. So they just ignored their own internal</p> <p>11 standards and requirements and just pushed it through?</p> <p>12 A. Happened every day. There was a little list</p> <p>13 called priority. And if their name was on priority, it</p> <p>14 just went through.</p> <p>15 Q. How did you get to get on that list, priority?</p> <p>16 A. I don't know. But it stopped when I got there.</p> <p>17 Q. Okay. And were the people that made up that</p> <p>18 list, did they stand to benefit by these loans going</p> <p>19 through? Did they get commissions or --</p> <p>20 A. Well, they got commissions, but they got faster</p> <p>21 turn times on their underwriting, faster turn times on</p> <p>22 their docs, faster turn times on their disbursements.</p> <p>23 Q. Okay. Now, when the FDIC came in, you -- after</p> <p>24 leaving Washington Mutual, you went to work for the</p> <p>25 FDIC?</p>	<p>64</p> <p>1 Q. Okay. And for the FDIC to insulate the new</p> <p>2 lender from any liability from the old lender, is there</p> <p>3 some document that the new lender would have to send out</p> <p>4 to the borrower to absolve them from liability?</p> <p>5 A. No. The -- well, the FDIC repudiated anything</p> <p>6 that was a line of credit, construction loan or letter</p> <p>7 of credit, which then stopped any further liability from</p> <p>8 the new purchaser of the bank.</p> <p>9 Q. Okay. But was there something that Chase had</p> <p>10 to do to the borrower to cut off liability?</p> <p>11 A. Chase didn't have to do anything. The FDIC --</p> <p>12 Q. Okay.</p> <p>13 A. -- did.</p> <p>14 Q. FDIC. And if they didn't send out this</p> <p>15 repudiation letter -- is that it?</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- then the new bank would be on the hook for</p> <p>18 any acts or liability of the old bank?</p> <p>19 A. Because it would then be considered a mortgage</p> <p>20 at that time.</p> <p>21 Q. Okay. So not debt, but a mortgage?</p> <p>22 A. Right.</p> <p>23 Q. Okay. And when Chase took over, they took over</p> <p>24 the responsibility of either rolling this loan into</p> <p>25 permanent financing or increasing the loan amount to</p>



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<p>1 provide necessary funding or basically to act in the 2 stead of Washington Mutual? 3 MS. KELLY: Objection. You're asking for a 4 legal conclusion. 5 MR. BRADLEY: Well, I'm asking for a 6 consequential conclusion. I mean, he was in between the 7 two banks, and because there's no letter of repudiation 8 from the FDIC ever given to Jolley, nor exists, 9 Washington Mutual's sins are visited upon Chase, 10 contrary to your theory. It's the law. 11 MS. KELLY: Okay. It's a legal issue. 12 MR. BRADLEY: Well, it's also a factual issue, 13 because I'm now going to ask him: Did you participate 14 in the bridge between Washington Mutual and Chase as far 15 as Jolley was concerned? 16 MS. KELLY: You can ask that question. 17 MR. BRADLEY: Yes. 18 Q. Did you? 19 A. No, I did not. 20 Q. Did you know that Jolley requested of Chase an 21 additional \$400,000 to finish the project? 22 A. Yes, I did. 23 Q. And were you aware that Chase turned him down? 24 A. Yes, I knew that it was turned down. 25 Q. And you say at that point all Chase was</p>	<p>65 1 the notice of default? 2 MS. KELLY: You're asking if it did, not if it 3 would, right? 4 MR. BRADLEY: Yeah. 5 MS. KELLY: Could you rephrase the question? 6 MR. BRADLEY: Well, let's start off with would. 7 Q. Would it create a cascading effect that the 8 filing of a notice of default would cascade down to the 9 point that he would be isolated in the lending world and 10 not be able to acquire necessary funds? 11 MS. KELLY: But you're asking for an expert 12 opinion, not a percipient witness. 13 MR. BRADLEY: No. He's in the banking 14 industry. He reviews people's credit to make a 15 determination of whether they're eligible for a loan. 16 He did it in this instance. Said Jolley's credit was 17 excellent, and it had improved. And I'm only asking for 18 his understanding of the aftereffect of Chase's notice 19 of default. 20 MS. KELLY: With respect to Mr. Jolley. 21 MR. BRADLEY: Yeah. 22 Q. Would that have isolated him in the credit 23 world so as not being able to access funds elsewhere? 24 MS. KELLY: So the question, though, has to be 25 did it actually affect him, not --</p>
<p>66 1 concerned about or concerned with was just foreclosing? 2 A. That was my understanding. 3 Q. In a normal construction loan, the mortgage 4 payments or the monthly payments, aren't they taken out 5 of the loan proceeds as the construction progresses? 6 A. On a construction loan, funds are set aside for 7 an interest reserve that during the construction period 8 the interest payments on the loan are made from that 9 interest reserve until the funds are exhausted. 10 Q. Okay. And then when the funds are exhausted, 11 what happens then? 12 A. Then it's the borrower's responsibility to make 13 the interest payments. 14 Q. Just interest, not principal? 15 A. Correct. 16 Q. Okay. And -- 17 A. Well, wait. Let me clarify. When -- in some 18 situations, depending upon the lender, they can ask for 19 principal and interest payments. And that's dependent 20 upon how the note reads. 21 Q. And would Chase be aware that filing a notice 22 of default would impair Jolley's credit? 23 A. I would imagine. 24 Q. And would it cause a cascading effect of 25 prohibiting him from getting funds elsewhere because of</p>	<p>67 1 the notice of default? 2 MS. KELLY: You're asking if it did, not if it 3 would, right? 4 MR. BRADLEY: Yeah. 5 MS. KELLY: Could you rephrase the question? 6 MR. BRADLEY: Well, let's start off with would. 7 Q. Would it create a cascading effect that the 8 filing of a notice of default would cascade down to the 9 point that he would be isolated in the lending world and 10 not be able to acquire necessary funds? 11 MS. KELLY: But you're asking for an expert 12 opinion, not a percipient witness. 13 MR. BRADLEY: No. He's in the banking 14 industry. He reviews people's credit to make a 15 determination of whether they're eligible for a loan. 16 He did it in this instance. Said Jolley's credit was 17 excellent, and it had improved. And I'm only asking for 18 his understanding of the aftereffect of Chase's notice 19 of default. 20 MS. KELLY: With respect to Mr. Jolley. 21 MR. BRADLEY: Yeah. 22 Q. Would that have isolated him in the credit 23 world so as not being able to access funds elsewhere? 24 MS. KELLY: So the question, though, has to be 25 did it actually affect him, not --</p>



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# EXHIBIT M

**Chapter 7 Bankruptcy, 'Certified'**  
**Schedule of Creditors & Discharge**

# EXHIBIT M

UNITED STATES BANKRUPTCY COURT  
Northern District of California (Oakland)

In re:

Leo Frederick Kramer  
1229 Ballena Blvd  
Alameda, CA 94501

Case Number: 10-43951 EDJ 7

Chapter: 7

Debtor(s)

Debtor/Joint Debtor Social Security Number(s):  
xxx-xx-0908

DISCHARGE OF DEBTOR AND FINAL DECREE

It appearing that the debtor(s) is/are entitled to a discharge, **IT IS ORDERED:**  
The debtor(s) is/are granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

It further appears that the trustee, Lois I. Brady in the above-entitled case has filed a report of no distribution and said Trustee has performed all other and further duties required in the administration of said estate; accordingly, it is hereby

**ORDERED** that the chapter 7 case of the above-named debtor is closed; that the Trustee is discharged and relieved of said trust.

Dated: 6/16/11

By the Court:

Edward D. Jellen  
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Doc # 77

United States Bankruptcy Court  
Northern District of California

I certify that this is a true and full copy of the original document now existing among the records of this Court. Edward Emmons, Clerk of Court

Dated 6/20/11

By [Signature] Deputy Clerk

## EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

### Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:]* A creditor who violates this order can be required to pay damages and attorney's fees to the debtor. [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the discharged debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

### Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

### Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes (applies to cases filed on or after 10/17/2005);
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans (applies to cases filed on or after 10/17/2005).

**This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.**

## Notice Recipients

District/Off: 0971-4

User: accounts

Date Created: 6/16/2011

Case: 10-43951

Form ID: ODSC7fi

Total: 39

**Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:**

cr Suntrust Mortgage, Inc.

TOTAL: 1

**Recipients of Notice of Electronic Filing:**

ust	Office of the U.S. Trustee/Oak	USTPRegion17.OA.ECF@usdoj.gov
aty	Alan S. Wolf	wdk@wolffirm.com
aty	Darlene C. Vigil	ndcaecf@BDFGroup.com
aty	Dominique Sopko	ecf@sagariaw.com
aty	Matthew R. Kretzer	matt.r.kretzer@usdoj.gov
aty	Richard J. Bauer, Jr.	rbauer@mileslegal.com
aty	Scott J. Sagaria	ECFGotNotices@Gmail.com

TOTAL: 7

**Recipients submitted to the BNC (Bankruptcy Noticing Center):**

db	Leo Frederick Kramer	1229 Ballena Blvd	Alameda, CA 94501
cr	Wells Fargo Bank, N.A.	c/o BDFTW	20955 Pathfinder Rd., Ste. 300 Diamond Bar, CA 91765
cr	BAC Home Loans Servicing, LP...	Miles, Bauer, Bergstrom & Winters, LLP	1231 E. Dyer Road, Suite 100 Santa Ana, CA 92705
tr	Lois I. Brady	P.O. Box 12425	Oakland, CA 94604
smg	Labor Commissioner	1515 Clay St.	Room 801 Oakland, CA 94612
smg	State Board of Equalization	Collection Dept.	P.O. Box 942879 Sacramento, CA 94279
smg	CA Employment Development Dept.	Bankruptcy Group MIC 92E	P.O. Box 826880 Sacramento, CA 94280-0001
smg	CA Franchise Tax Board	Special Procedures Bankruptcy Unit	P.O. Box 2952 Sacramento, CA 95812-2952
10830683	Angius & Terry Collections, LLC.	1451 River Park Drive, Suite 125	Sacramento, CA 95815
11430730	BAC Home Loans Servicing, LP...	Miles, Bauer, Bergstrom & Winters, LLP	1231 E. Dyer Road, Suite 100 Santa Ana, CA 92705
10830684	Ballena Bay Townhouse Association	c/o Angius & Terry Collections, LLC.	1451 River Park drive # 125 Sacramento, CA 95815
11791331	Ballena Bay Townhouse Association	c/o Massingham & Associates	2247 National Avenue Hayward, CA 94545
10918917	Ballena Bay Townhouse Association No. 1	c/o Angius & Terry Collections, LLC.	1451 River Park Drive # 125 Sacramento, CA 95815
10830685	Bank Of America	Attn: Bankruptcy NC4-105-02-77	Po Box 26012 Greensboro, NC 27410
10830686	Bank Of The West	Attn: Bankruptcy	Po Box 1566 Manitowoc, WI 54221
10830687	Bank One/Chase	8333 Ridgpoint Dr	Irving, TX 75063
10867223	Bank of America, N.A.	PO Box 26012	NC4-105-03-14 Greensboro, NC 27420
10843531	Bellena Bay Townhouse Association	c/o Angius & Terry Collections, LLC.	1451 River Park Drive # 125 Sacramento, CA 95815
11791332	Chase	POB 94014	Palatine, IL 60094
10830688	Chase	Po Box 15298	Wilmington, DE 19850
10932255	Chase Bank USA, N.A.	PO Box 15145	Wilmington, DE 19850-5145
10830689	Countrywide Home Lending	Attention: Bankruptcy CA6-919-01-41	Po Box 5170 Simi Valley, CA 93062
11926925	Donald White Tax - Collector	1221 Oak St.	Oakland, CA 94612
10830690	Expo/cbsd	Po Box 6497	Sioux Falls, SD 57117
10851586	Internal Revenue Service	Insolvency Group 2	P.O. Box 21126 Stop N781 Philadelphia, PA 19114
10830691	Massingham & Associates	2247 National Avenue	Hayward, CA 94545
10904064	SUNTRUST MORTGAGE, INC.	1001 Semmes Avenue	Richmond, VA 23224
10830692	Suntrust Mortgage/cc 5	Attention: Bankruptcy	Po Box 85092 Richmond, VA 23286
10923069	Wachovia Mortgage	Attn: BK Dept	PO Box 659558 San Antonio, TX 78265-9558
10830693	Washington Mutual Mortgage/ Chase	Attention: Bankruptcy Dept. JAXA 2035	7255 Bay Meadows Way Jacksonville, FL 32256
10830694	World Savings & Loan	Attn: Bankruptcy	4101 Wiseman Blvd San Antonio, TX 78251

TOTAL: 31

# United States Bankruptcy Court

## Northern District of California

# Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): <b>Kramer, Leo Frederick</b>	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) <b>xxx-xx-0908</b>	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): <b>1229 Ballena Blvd Alameda, CA</b>	Street Address of Joint Debtor (No. and Street, City, and State):
ZIP Code <b>94501</b>	ZIP Code
County of Residence or of the Principal Place of Business: <b>Alameda</b>	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
ZIP Code	ZIP Code

Location of Principal Assets of Business Debtor  
(if different from street address above):

<b>Type of Debtor</b> (Form of Organization) (Check one box) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<b>Nature of Business</b> (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other  <b>Tax-Exempt Entity</b> (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13  <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding  <b>Nature of Debts</b> (Check one box) <input checked="" type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.
<b>Filing Fee</b> (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

# Statistical/Administrative Information

☐ Debtor estimates that funds will be available for distribution to unsecured creditors.  
☒ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

# Estimated Number of Creditors

<input checked="" type="checkbox"/> 1-49	<input type="checkbox"/> 50-99	<input type="checkbox"/> 100-199	<input type="checkbox"/> 200-999	<input type="checkbox"/> 1,000-5,000	<input type="checkbox"/> 5,001-10,000	<input type="checkbox"/> 10,001-25,000	<input type="checkbox"/> 25,001-50,000	<input type="checkbox"/> 50,001-100,000	<input type="checkbox"/> OVER 100,000
--	--------------------------------	----------------------------------	----------------------------------	--------------------------------------	---------------------------------------	--	--	---	---------------------------------------

# Estimated Assets

<input checked="" type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion
---	--	---	---	--	---	--	---	---	--

# Estimated Liabilities

<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input checked="" type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion
--	--	---	---	---	---	--	---	---	--

THIS SPACE IS FOR COURT USE ONLY

United States Bankruptcy Court  
Northern District of California

I certify that this is a true and full copy of the original document now existing among the records of this Court. Edward Emmons, Clerk of Court

Dated 4/24/18

By [Signature] Deputy Clerk

**Voluntary Petition**

Name of Debtor(s):

Kramer, Leo Frederick

(This page must be completed and filed in every case)

**All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)**

Location Where Filed: - None -	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:

**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)**

Name of Debtor: - None -	Case Number:	Date Filed:
District:	Relationship:	Judge:

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).

**X** /s/ Scott J. Sagaria  
Signature of Attorney for Debtor(s)  
Scott J. Sagaria 217981

**April 7, 2010**  
(Date)

**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

- ☐ Yes, and Exhibit C is attached and made a part of this petition.  
☒ No.

**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☒ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

**Information Regarding the Debtor - Venue**

(Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
- ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**

(Check all applicable boxes)

- ☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(Name of landlord that obtained judgment)

(Address of landlord)

- ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and
- ☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.
- ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).



**Voluntary Petition***(This page must be completed and filed in every case)*

Name of Debtor(s):

Kramer, Leo Frederick

**Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Leo Frederick KramerSignature of Debtor Leo Frederick Kramer

X

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

April 7, 2010

Date

**Signature of Attorney\***X /s/ Scott J. Sagaria

Signature of Attorney for Debtor(s)

Scott J. Sagaria 217981

Printed Name of Attorney for Debtor(s)

Sagaria Law, P.C.

Firm Name

333 West San Carlos StreetSuite 1700San Jose, CA 95110

Address

Email: SagariaBK@SagariaLaw.com408-279-2288 Fax: 408-279-2299

Telephone Number

April 7, 2010

Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X

Signature of Foreign Representative

Printed Name of Foreign Representative

Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

**United States Bankruptcy Court**  
**Northern District of California**

In re Leo Frederick Kramer

Debtor(s)

Case No.

Chapter

11

**EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH  
CREDIT COUNSELING REQUIREMENT**

**Warning:** You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

*Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.*

☒ 1. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☐ 2. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

☐ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Summarize exigent circumstances here.]* \_\_\_\_\_

**If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.**

☐ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

☐ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

☐ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

☐ Active military duty in a military combat zone.

☐ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

**I certify under penalty of perjury that the information provided above is true and correct.**

Signature of Debtor: /s/ Leo Frederick Kramer  
Leo Frederick Kramer

Date: April 7, 2010

**United States Bankruptcy Court**  
**Northern District of California**

In re Leo Frederick Kramer

Debtor(s)

Case No.

Chapter

11

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
Bank Of America Attn: Bankruptcy NC4-105-02-77 Po Box 26012 Greensboro, NC 27410	Bank Of America Attn: Bankruptcy NC4-105-02-77 Po Box 26012 Greensboro, NC 27410	CreditLineSecured		310,790.00 (Unknown secured)
Bank Of The West Attn: Bankruptcy Po Box 1566 Manitowoc, WI 54221	Bank Of The West Attn: Bankruptcy Po Box 1566 Manitowoc, WI 54221	Recreational		131,299.00 (Unknown secured)
Bank One/Chase 8333 Ridgepoint Dr Irving, TX 75063	Bank One/Chase 8333 Ridgepoint Dr Irving, TX 75063	CreditLineSecured		175,274.00 (Unknown secured)
Chase Po Box 15298 Wilmington, DE 19850	Chase Po Box 15298 Wilmington, DE 19850	CreditCard		1,693.00 (Unknown secured)
Countrywide Home Lending Attention: Bankruptcy CA6-919-01-41 Po Box 5170 Simi Valley, CA 93062	Countrywide Home Lending Attention: Bankruptcy CA6-919-01-41 Po Box 5170 Simi Valley, CA 93062	ConventionalRealEstateMortgage		60,870.00 (Unknown secured)
Expo/cbsd Po Box 6497 Sioux Falls, SD 57117	Expo/cbsd Po Box 6497 Sioux Falls, SD 57117	ChargeAccount		65,983.00
Suntrust Mortgage/cc 5 Attention: Bankruptcy Po Box 85092 Richmond, VA 23286	Suntrust Mortgage/cc 5 Attention: Bankruptcy Po Box 85092 Richmond, VA 23286	ConventionalRealEstateMortgage		710,000.00 (Unknown secured)
Washington Mutual Mortgage/ Chase Attention: Bankruptcy Dept. JAXA 2035 7255 Bay Meadows Way Jacksonville, FL 32256	Washington Mutual Mortgage/ Chase Attention: Bankruptcy Dept. JAXA 2035 7255 Bay Meadows Way Jacksonville, FL 32256	CreditLineSecured		174,398.00 (Unknown secured)

Debtor(s)

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**  
(Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
World Savings & Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251	World Savings & Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251	Conventional Real Estate Mortgage		1,182,077.00  (Unknown secured)

**DECLARATION UNDER PENALTY OF PERJURY  
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, **Leo Frederick Kramer**, the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date April 7, 2010

Signature /s/ Leo Frederick Kramer  
Leo Frederick Kramer  
Debtor

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.*

United States Bankruptcy Court  
Northern District of California

In re Leo Frederick Kramer

Debtor(s)

Case No.

Chapter

11

CREDITOR MATRIX COVER SHEET

I declare that the attached Creditor Mailing Matrix, consisting of 2 sheets, contains the correct, complete and current names and addresses of all priority, secured and unsecured creditors listed in debtor's filing and that this matrix conforms with the Clerk's promulgated requirements.

Date: April 7, 2010

/s/ Scott J. Sagaria

Signature of Attorney

Scott J. Sagaria 217981

Sagaria Law, P.C.

333 West San Carlos Street

Suite 1700

San Jose, CA 95110

408-279-2288 Fax: 408-279-2299

Kramer, Leo -

Angius & Terry Collections, LLC.  
1451 River Park Drive, Suite 125  
Sacramento, CA 95815

Ballena Bay Townhouse Association  
c/o Massingham & Associates  
2247 National Avenue  
Hayward, CA 94545

Bank Of America  
Attn: Bankruptcy NC4-105-02-77  
Po Box 26012  
Greensboro, NC 27410

Bank Of The West  
Attn: Bankruptcy  
Po Box 1566  
Manitowoc, WI 54221

Bank One/Chase  
8333 Ridgepoint Dr  
Irving, TX 75063

Chase  
Po Box 15298  
Wilmington, DE 19850

Countrywide Home Lending  
Attention: Bankruptcy CA6-919-01-41  
Po Box 5170  
Simi Valley, CA 93062

Expo/cbsd  
Po Box 6497  
Sioux Falls, SD 57117

Kramer, Leo -

Massingham & Associates  
2247 National Avenue  
Hayward, CA 94545

Suntrust Mortgage/cc 5  
Attention: Bankruptcy  
Po Box 85092  
Richmond, VA 23286

Washington Mutual Mortgage/ Chase  
Attention: Bankruptcy Dept. JAXA 2035  
7255 Bay Meadows Way  
Jacksonville, FL 32256

World Savings & Loan  
Attn: Bankruptcy  
4101 Wiseman Blvd  
San Antonio, TX 78251



# EXHIBIT N

**Chapter 13 Bankruptcy Discharge & Refund**

# EXHIBIT N

Case: 14-40006 Doc#: 116 Filed: 01/00/17 Entered: 01/00/17 22:01:22 Page 1 of 2

♦ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;

♦ debts for most fines, penalties, forfeitures, or criminal restitution obligations;

♦ some debts which the debtors did not properly list;

♦ debts provided for under 11 U.S.C. § 1322(b)(5) and on which the last payment or other transfer is due after the date on which the final payment under the plan was due;

♦ debts for certain consumer purchases made after the bankruptcy case was filed if obtaining the trustee's prior approval of incurring the debt was practicable but was not obtained;

♦ debts for restitution, or damages, awarded in a civil action against the debtor as a result of malicious or willful injury by the debtor that caused personal injury to an individual or the death of an individual; and

♦ debts for death or personal injury caused by operating a vehicle while intoxicated.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of a chapter 13 discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

In re:

LEO FREDERICK KRAMER

Debtor(s)

Case No. 14-42866-CN 13

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**CHAPTER 13 STANDING TRUSTEE'S FINAL REPORT AND ACCOUNT**

Martha G. Bronitsky, chapter 13 trustee, submits the following Final Report and Account of the administration of the estate pursuant to 11 U.S.C. § 1302(b)(1). The trustee declares as follows:

- 1) The case was filed on 07/03/2014.
- 2) The plan was confirmed on 12/22/2014.
- 3) The plan was modified by order after confirmation pursuant to 11 U.S.C. § 1329 on NA.
- 4) The trustee filed action to remedy default by the debtor in performance under the plan on NA.
- 5) The case was completed on 08/26/2015.
- 6) Number of months from filing to last payment: 14.
- 7) Number of months case was pending: 30.
- 8) Total value of assets abandoned by court order: NA.
- 9) Total value of assets exempted: \$409,118.49.
- 10) Amount of unsecured claims discharged without payment: \$25,366.69.
- 11) All checks distributed by the trustee relating to this case have cleared the bank.

**Receipts:**

Total paid by or on behalf of the debtor	\$2,700.00
Less amount refunded to debtor	\$1,354.13

**NET RECEIPTS:****\$1,345.87****Expenses of Administration:**

Attorney's Fees Paid Through the Plan	\$0.00
Court Costs	\$0.00
Trustee Expenses & Compensation	\$66.37
Other	\$0.00

**TOTAL EXPENSES OF ADMINISTRATION:****\$66.37**

Attorney fees paid and disclosed by debtor:	\$0.00
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**Scheduled Creditors:**

Creditor Name	Class	Claim Scheduled	Claim Asserted	Claim Allowed	Principal Paid	Int. Paid
ANGIUS & TERRY LLP	Unsecured	22,646.19	NA	NA	0.00	0.00
BALLENA BAY TOWNHOUSE ASSOC	Unsecured	0.00	NA	NA	0.00	0.00
BALLENA BAY TOWNHOUSES ASSO	Unsecured	97,325.79	49,027.46	0.00	1,279.50	0.00
BANK OF AMERICA	Secured	59,326.99	NA	NA	0.00	0.00
FRANCHISE TAX BOARD	Priority	0.00	NA	NA	0.00	0.00
JPMORGAN CHASE BANK	Secured	176,000.00	201,627.92	0.00	0.00	0.00
SUN COUNTRY COMMUNITY	Unsecured	4,000.00	NA	NA	0.00	0.00
UNITED STATES TREASURY	Priority	0.00	NA	NA	0.00	0.00

<b>Summary of Disbursements to Creditors:</b>			
	<u>Claim Allowed</u>	<u>Principal Paid</u>	<u>Interest Paid</u>
<b>Secured Payments:</b>			
Mortgage Ongoing	\$0.00	\$0.00	\$0.00
Mortgage Arrearage	\$0.00	\$0.00	\$0.00
Debt Secured by Vehicle	\$0.00	\$0.00	\$0.00
All Other Secured	\$0.00	\$0.00	\$0.00
<b>TOTAL SECURED:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Priority Unsecured Payments:</b>			
Domestic Support Arrearage	\$0.00	\$0.00	\$0.00
Domestic Support Ongoing	\$0.00	\$0.00	\$0.00
All Other Priority	\$0.00	\$0.00	\$0.00
<b>TOTAL PRIORITY:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>GENERAL UNSECURED PAYMENTS:</b>	<b>\$0.00</b>	<b>\$1,279.50</b>	<b>\$0.00</b>

<b>Disbursements:</b>		
Expenses of Administration	<u>\$66.37</u>	
Disbursements to Creditors	<u>\$1,279.50</u>	
<b>TOTAL DISBURSEMENTS :</b>		<b><u>\$1,345.87</u></b>

12) The trustee certifies that, pursuant to Federal Rule of Bankruptcy Procedure 5009, the estate has been fully administered, the foregoing summary is true and complete, and all administrative matters for which the trustee is responsible have been completed. The trustee requests a final decree be entered that discharges the trustee and grants such other relief as may be just and proper.

Dated: 01/13/2017

By: /s/ Martha G. Bronitsky

Trustee

**STATEMENT:** This Unified Form is associated with an open bankruptcy case, therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

UST Form 101-13-FR-S (9/1/2009)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing CHAPTER 13 STANDING TRUSTEE'S FINAL REPORT AND ACCOUNT was served on the parties listed below by ordinary U.S. Mail or served electronically through the Court's ECF System at the e-mail address registered with the Court on this 13th day of January, 2017.

LEO FREDERICK KRAMER  
121 CARDINAL WAY  
HERCULES, CA 94547

SAGARIA LAW PC  
2033 GATEWAY PLACE 5TH FL  
SAN JOSE, CA 95110

ELECTRONIC SERVICE - United States Trustee

Date: January 13, 2017

/s/ Trustee Martha G. Bronitsky

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Trustee Martha G. Bronitsky  
Chapter 13 Trustee  
PO Box 5004  
Hayward, CA 94540



# EXHIBIT O

**Chase Monthly Statements Reflecting  
Chapter 7 BK w/Status of Discharge**

# EXHIBIT O



**Bankruptcy Information**

Loan Number

3600026861

Statement Period

11/12/2017 - 12/12/2017

Property Address

1740 AUTUMN GLEN ST  
FERNLEY NV 89408LEO F KRAMER  
121 CARDINAL WAY  
HERCULES, CA 94647-1802**ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY****Account Information**

Bankruptcy Chapter:	7
Bankruptcy Status	Discharged
Contractual Due Date (For Informational Purposes Only)	11/09/2010
Interest Rate	5.15000%
Late Charge Fee (per month)	\$36.69
Current Maturity Date	05/2038
Current Principal Balance <sup>1</sup>	\$167,765.82

<sup>1</sup> This is your Principal Balance only, not the amount required to pay your loan in full.

**Year-To-Date Payments**

Total	\$0.00
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**Important Messages**

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-520-6447.

**Bankruptcy Information**

Loan Number

3500026861

Statement Period

08/13/2017 - 09/12/2017

Property Address

1740 AUTUMN GLEN ST  
FERNLEY NV 89408LEO F KRAMER  
121 CARDINAL WAY  
HERCULES, CA 94547-1602**ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY****Account Information**

Bankruptcy Chapter:	7
Bankruptcy Status	Discharged
Contractual Due Date (For Informational Purposes Only)	11/09/2010
Interest Rate	5.15000%
Late Charge Fee (per month)	\$36.69
Current Maturity Date	05/2038
Current Principal Balance <sup>1</sup>	\$167,756.82

<sup>1</sup> This is your Principal Balance only, not the amount required to pay your loan in full.

**Year-To-Date Payments**

Total	\$0.00
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**Important Messages**

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-520-6447.

**Bankruptcy Information**

Loan Number

3500026861

Statement Period

07/13/2017 - 08/12/2017

Property Address

1740 AUTUMN GLEN ST  
FERNLEY NV 89408LEO F KRAMER  
121 CARDINAL WAY  
HERCULES, CA 94547-1602**ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY****Account Information**

Bankruptcy Chapter:	7
Bankruptcy Status	Discharged
Contractual Due Date (For Informational Purposes Only)	11/09/2010
Interest Rate	5.15000%
Late Charge Fee (per month)	\$36.40
Current Maturity Date	05/2038
Current Principal Balance <sup>1</sup>	\$167,755.82

<sup>1</sup> This is your Principal Balance only, not the amount required to pay your loan in full.

**Year-To-Date Payments**

Total	\$0.00
-------	--------

**Important Messages**

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-520-6447.

**Bankruptcy Informa**

Loan Number	3500026861
Statement Period	05/14/2017 - 06/12/2017
Property Address	1740 AUTUMN GLEN ST FERNLEY NV 89408

LEO F KRAMER  
121 CARDINAL WAY  
HERCULES, CA 94547-1602

**ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY****Account Information**

Bankruptcy Chapter:	7
Bankruptcy Status	Discharged
Contractual Due Date (For Informational Purposes Only)	11/09/2010
Interest Rate	4.90000%
Late Charge Fee (per month)	\$33.78
Current Maturity Date	05/2038
Current Principal Balance <sup>1</sup>	\$167,755.82

<sup>1</sup> This is your Principal Balance only, not the amount required to pay your loan in full.

**Year-To-Date Payments**

Total	\$0.00
-------	--------

**Important Messages**

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-243-8851.