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No. 15-2-0040-7SEA

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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JOSEPH LUCAS, III; U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE LOAN  
TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-3;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; AND JOHN DOE 1-50

Respondents,

v.

Jeff Bailey

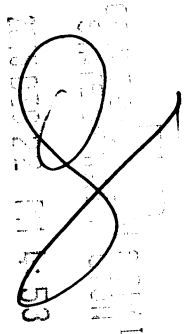
Appellant,

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APPELLANT'S BRIEF

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Jeff Bailey  
10743 56<sup>th</sup> Avenue  
Seattle, Washington 98178

A handwritten signature in black ink is written over a vertical stamp. The stamp contains the text "NOV 11 2015" and "11:16:53" in a vertical orientation.

## **TABLE**

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### **ASSIGNMENT OF ERROR**

1. Trial court erred in dismissing Appellant's complaint with prejudice by order issued on June 9, 2015, page 24 of Clerk's Papers.
2. Trial court's erred in terminating Appellant's contract by order issued on June 9, 2015, page 24 of Clerk's Papers.
3. Trial court erred in failing to grant Appellant's Motion for Continuance, pages 26-37 of Clerk's Papers.
4. Trial court erred in failing to exercise its discretion by the Court's order that was issued on July 9, 2015, pages 268&269, determining that Bailey's Motion for Reconsideration, beginning at page 26 of Clerk's Papers, was untimely.

### **STATEMENT OF CASE**

5. Bailey entered into a Real Estate Contract with Lucas III, in which Lucas III did grant to Bailey interest in said property and the right and obligation to defend the position of the contract and for possession of the property. See pages 1-3 of Clerk's Papers for Amended Complaint at point 7 & Exhibit 1 found at 161-175 of Clerk's Papers.
6. Bailey's contract is alleged to hold a junior position to the mortgage agreement between Respondents. Appellant is under no contractual or lawful obligation to submit to a void

and invalid mortgage encumbrance; and therefore Appellant does have the right and obligation to defend Appellant's interest and possession of subject property against any invalid encumbrance. See pages 1-3 referencing Amended Complaint, and Exhibit 1 at pages 161-175 of Clerk's Papers.

Trustee U.S. BANK, N.A. as trustee for ownit mortgage loan trust, mortgage loan asset backed certificates, series 2006-3 (Trustee) did knowingly and intentionally act contravene to the Trust and thus has knowingly attempted to legitimize a transaction that is void and not voidable; and thus intentionally interfered with Appellant's private real estate contract with Respondent Lucas III as a third party interloper with no interest in subject property.

Trustee, by its actions ultra vires that did violate various laws of both Washington and controlling New York law, as trust is a New York common law trust, and did intentionally interfere with Bailey's valid contract with Lucas III and did and shall cause injury and by the termination of Bailey's contract by knowingly presenting misrepresentations to the court. See pages 150 - 153 of Clerk's Papers, Motion for Reconsideration, point 4(d) et seq.

7. The courts erred in failing to grant Appellant's Continuance and granting Respondents' Motion to Dismiss with prejudice and thereby did not afford Appellants the opportunity to be heard and therefore violating Appellant's right to substantial due process. See pages 20 & 21 of Clerk's Papers-Motion to Continue & Order at pages 22 – 25 of Clerk's Papers that was issued June 12, 2015
8. Respondent Lucas III, breached contract by failing to pay mortgage as Plaintiff's payments were current when Respondent Lucas, III informed Bailey of Lucas III's intent to forego mortgage payments and file bankruptcy without attempting to work with Appellant to purchase subject property prior to or instead of filing for bankruptcy and causing the initiation of foreclosure proceedings. See Pages 1-3 for reference to Plaintiff's Amended Complaint at point 8, and Exhibit 1 found on pages 44-58.
9. Respondent Lucas III failed to detect the ultra vires act(s) of the Trustee and that the assignment to Trust is void ab initio by law. See Page 177-Motion for Reconsideration at points F & H, with Exhibit 2-assignment

10. Respondent Lucas III further failed to discern that the encumbrance that was held by MERS on behalf of OWNIT was extinguished according to controlling New York law.<sup>(see 4)</sup>

## ARGUMENT

11. The Trial court did err when it stripped Appellant of his right to enforce and defend Contract between Appellant and Defendant Lucas III by the order issued at page 24 of Clerk's Papers-Order granting Defendant's motion to dismiss with prejudice. The trial court's dismissal, specifically, with prejudice causes irreparable harm to Appellant's right and obligation to defend Appellant's interest in subject property and Appellant's right to due process. Appellant's contract with Respondent Lucas III provided Appellant with the right and obligation to possession and an interest in said property. Respondent Trustee, by way of counsel states that Appellant is a stranger to the mortgage loan, yet Respondent Lucas III did grant interest in subject property to Appellant and further, the U.S. Supreme Court has accepted that when a third nonparty has an interest in a matter, such as Appellant's interest in subject property, then a third nonparty's interest may arguably fall within the zone of interest to be protected.<sup>1</sup> Appellant's contract with Respondent Lucas III provides Appellant with the right and obligation to defend Appellant's interest at, but not limited to, clause 34g of said contract. The trial court erred in terminating Appellant's rights and obligation of said contract and dismissing such with prejudice.
12. The Trial court further erred when it granted the order for dismissal at pages 24 - Order granting motion to dismiss with prejudice because respondent Trustee acted ultra vires in contravention of the Trust by attempting to accept the assignment of Lucas III's Note after the Trust startup date. MERS is an unlawful beneficiary<sup>2</sup> and purports to assign the interest that it held to Trustee on or about January 5, 2012; six (6) years after the startup date of Trust according to Respondent Trustee's PSA that is filed in public records maintained by Securities and Exchange Commission.<sup>3</sup> Trustee's PSA dictates the specific authority availed to the Trustee and the PSA indicates that New York Law governs the Trust and therefore action of the Trustee. New York Law<sup>4</sup> plainly states that the ultra

vires acts of the Trustee in this instant is “void”<sup>5</sup> ab initio<sup>6</sup> and not merely voidable. The assignment did not lawfully occur and therefore Respondent Trustee cannot show that Trustee has been injured. The New York Appellant court reversed the trial court’s decision in favor of defendant Erobobo because Defendant failed to assert a defense of standing prior to appeal. Washington Courts hold a different view in that standing to assert a particular claim is a jurisdictional issue that may be raised for the first time on appeal.<sup>7</sup> In this matter the Plaintiff cannot show that Trustee and the Trust have endured an actual injury.

13. The Trial Court erred in denying, or failing to grant Bailey’s Continuance denying Appellant’s opportunity to be heard thus violating Bailey’s right to due process, at pages 20 & 21-Motion to Continue. Should the Court have merely dismissed Bailey’s complaint without prejudice may have served justice better.

Bailey has paid out over two hundred thousand dollars in order to possess and purchase this property. It is no fault of Bailey that the alleged Mortgage, though legally questionable, is defaulted. Bailey paid regular payments to Lucas III and because of some arbitrary decision by Lucas III, the court then further strips Bailey of recourse by granting such a dismissal.

14. Lucas III did willfully breach the contract and failed to uphold the agreement between Bailey and Lucas III. Lucas III filed bankruptcy, case no. 13-13656-MLB, in an attempt to escape the duties, responsibilities and obligations that are, among others, established within the Real Estate Agreement between Bailey and Lucas III among. Lucas III had a duty to uphold and defend the subject property due to the contractual agreement that was entered into with Bailey and Lucas III failed to do so. Lucas III’s failure to identify the various violations of Washington and Federal Laws, including Washington’s Consumer Protections Act is a violation of Lucas III’s duties and responsibility to maintain the agreement between Bailey and Lucas III. Respondent Lucas III actions and inactions are not only negligent but have caused and continue to cause significant harm to Bailey. See Plaintiff’s Amended Complaint, filed on January 28, 2015 referenced on pages 1-3 of Clerk’s Papers.

Lucas III’s breach may have been due to the intentional interference of Trustee. The Trustee and its counsel was well aware of Bailey’s agreement with Lucas III due to the

adversarial hearing that Bailey brought in said bankruptcy. Trustee and Trustee's counsel are experts in their respective fields; that is counsel is/are expert(s) in law and Trustee is deemed an expert in its duties, obligation and rules concerning the Trust. Trustee had foreknowledge that assignments must be conducted in a specific manner and any action contravention to the PSA is void ab initio according to the plain language of New York Law that governs the Trust. Trustee is such of an empty Trust in regard to this specific matter. Therefore the Respondent Trustee has at least two strikes of violations of law against its actions; 1) The Trustee acted in ultra vires of its regulations of PSA and filed or caused to be filed false documents in public records. 2) Governing law of Trust specifically states in plain language that any act contravention to the PSA is void, and thus has unclean hands due to misrepresentations to Lucas III and it's investors alike. Trustee's PSA is filled with rules and regulations regarding things like operation, ownership, transfer of Notes of the trust and identities of those entitled to payments and therefore requires the PSA to be fully vetted in order to clear the murky waters that are created by the actions Trustee and neglectful inactions of Lucas III.

Furthermore, it is established that Washington State law does not permit MERS to be a lawful beneficiary if it holds no interest in the note. Therefore it is not legally possible for Trustee to have had interest conveyed to it by the assignment from MERS. Any claim contrary to this premise has no founding in law or reason and is clearly described by the legal maxims, "Mandatarius terminos sobi positos transgredi non potest. A mandatory cannot exceed the bounds of his authority."<sup>8</sup> And "Nemo plus juris ad alienum transfere potest, quam ispe habent. One cannot transfer to another a right which he has not."<sup>9</sup>.

These actions by Respondent Trust violate Washington Consumer Protection Act for one because Washington's Supreme Court in Bain and the appellate court in Walker<sup>10</sup> stated clearly that MERS could not be a "lawful beneficiary" and possessed no beneficial interest to convey; yet Respondent Trustee is asserting rights that it never received. See - Amended Complaint referenced in Clerk's Paper pages 1-3 at points 16, 26 et seq. & 27 & Exhibit 3, found on page 177 of Clerk's Papers.

15. The trial court erred in its findings in the order at page 23 of Clerk's Papers, that is dated June 12, 2015 at point 4 when it stated that Appellant was not a party to Defendant's Mortgage Contract because it failed to consider Appellant's zone of interest that is

established by the Real Estate Agreement (Agreement) between Lucas III and Bailey. Clause 10 of said Agreement that POSSESSION. Buyer is entitled to possession of the property from and after the date of this Contract subject to any tenancies described in paragraph 34, and, Clause 34(g) – OPTIONAL PROVISION—DUE ON SALE. If Buyer, without written consent of Seller 34(g) permits a forfeiture or foreclosure or trustee or sheriffs sale of any of the Buyer’s interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due to and payable. In this instance, the trial court erred in establishing Trust as a privileged and protected special class of entity that is not subject to rule of law & policy at the cost of Plaintiff’s natural rights and the rights and obligations created by the Agreement between Lucas III and Bailey

16. Trustee’s wrongful interference has caused Plaintiff’s contract to be unduly terminated and canceled and thus has stripped Plaintiff of his right to and possession of subject property. See pages 23 & 24 of Clerk’s Papers for order issued June 12, 2015.
17. The trial court erred in amending the definition of “Note Holder” contrary or other than the agreement created by Lucas III, in which Bailey has an interest, found in Lucas III’s note, Exhibit 5 of Amended Complaint and referenced at page 3 of Clerk’s Papers. Respondent Lucas III’s Note clearly defines Note Holder in its plain language and states, ““I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer *and* who is entitled to receive payments under this Note is called the “Note Holder.””. [Emphasis added]

Respondents have clearly attempted to use State statutes to convolute the meaning and definition of Note Holder to not include the second component of the compounded definition of Note Holder to be that of merely a holder without the right to payments. It is clear from the Respondent Trustee’s PSA that the Trust is a Real Estate Mortgage Investment Conduit (REMIC) or pass through trust receives a special exempt classification concerning taxes.<sup>11</sup> The PSA clearly states that the Trust itself is not entitled to payments but is afforded the status of Note Holder in spite of not fitting the definition of such. Respondent Trustee’s Pooling and Servicing Agreement (PSA) provides that the “Certificateholders” are paid the principal and interest of loans, minus

fees paid to servicer and trustee and therefore Certificateholders are in fact the “Note Holder” in accordance with the terms of Defendant Lucas III’s note. PSA states in pertinent part;

”INVESTING IN THESE CERTIFICATES INVOLVES RISKS. YOU SHOULD NOT PURCHASE THESE CERTIFICATES UNLESS YOU FULLY UNDERSTAND THEIR RISKS AND STRUCTURE. SEE "RISK FACTORS" BEGINNING ON PAGE S-18 OF THIS PROSPECTUS SUPPLEMENT AND PAGE 1 OF THE ATTACHED PROSPECTUS.

These certificates will be beneficial interests in a trust fund, and will be backed only by the assets of the trust fund. Neither these certificates nor the assets of the trust fund will be obligations of Merrill Lynch, Pierce, Fenner & Smith Incorporated, LaSalle Bank National Association, Litton Loan Servicing LP or any of their affiliates. These certificates will not be insured or guaranteed by any governmental agency or any other entity.”

Page 1 of document filed at sec.gov and found in prospectus filed in public record at Securities and Exchange Commission records;

<http://www.sec.gov/Archives/edgar/data/809940/000095012306004634/y19348e424b5.tx>

t

18. The court erred in upholding an assignment by an “unlawful beneficiary” pursuant to Washington State law to Trust without standing by hearing and granting MERS and Trust Motion to Dismiss at Clerk’s Papers pages 4-19 filed on May 10, 2015; and order granting Motion to Dismiss on page 22 & 23 of Clerk’s Papers that was issued June 12, 2015. MERS has clearly been established and involved in this matter for the intention of misrepresenting the truth and conceal the real party in interest from all pertinent parties. MERS reveals in its TERMS and CONDITIONS at point “2 referenced filed with Amended Complaint pages 1-3 of Clerk’s Papers. The Member, at its own expense, shall promptly, or as soon as practicable, cause MERS to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System. MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a



nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law.”

19. The Court erred in its denial of Bailey’s Motion for Consideration and in its finding that Bailey’s Motion for Reconsideration was untimely at point #2 of Order on page 269 of Clerk’s Papers, issued on June 12, 2015. Bailey did file Motion for Consideration with the Court on June 25<sup>th</sup>, ten computed days after the court June 12<sup>th</sup> order. Washington Rules of Civil Procedure indicates that the time for computation will begin on the business day following the Order. The Order was issued on June 12<sup>th</sup>, a Friday, and therefore the next computation for time began on June 15<sup>th</sup> 2015 making June 25<sup>th</sup> the due date for Bailey’s Motion for Reconsideration. The court administrators acknowledge receipt of the Motion for Reconsideration in email communication with the parties and Bailey did file a proof of service showing that the mailing to the Parties was made on June 25<sup>th</sup> 2015. I true a correct copy of email communication is attached. Even, should the Motion be deemed untimely, the court is permitted discretion to accept tardy motions due to mistake, inadvertence, excusable neglect, amongst other reasons, per CR60b, in order to uphold due process as long as the rights of another are not irreparably harmed in the process and the court erred in its discretion to deny Plaintiff’s pleadings; and in this instant matter where Bailey is able to show that Trust, and MERS, have not been injured and therefore are not real parties in interest.

## CONCLUSION

22. It has become customary, within the State of Washington, to allow Corporations to arbitrarily allow Lenders, Servicers, Trustee and other non-party interlopers, that is, entities that are not the real parties in interest, to consistently trespass upon the rights of Homeowners, just as the Defendants have done in this matter. The Defendants are erroneously attempting to foreclose on the subject property;

23. Defendants have affected public record with deceptive practices, misconceptions and misrepresentations in order to effectively side-step the agreement between Appellant and Respondent Lucas III and steal subject Property;

24. With a reading in the plain language of the law it is clear that this matter is riddled with triable issues and therefore Respondents Trustee and MERS dismissal should have been denied and moved forward with discovery and then toward summary judgment for Plaintiff or trial.

#### APPENDIX

<sup>1</sup> National Credit Union Admin. v. First Nat. Bank & Trust Co., 522 U.S. 479, 493-494 (1998); and Douglas M. Branson V Port of Seattle File Date: 11/18/2004 Oral Argument Date: 02/24/2004

<sup>2</sup> Bain v. Metropolitan Mortgage Group, Inc. et al, no. 86206-1 (2012)

<sup>3</sup> <http://www.sec.gov/Archives/edgar/data/809940/000095012306004634/y19348e424b5.txt>

<sup>4</sup> Estate, Powers and Trusts §7-2.4 Act of trustee in contravention of trust

If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void.

<sup>5</sup> **In re: Saldivar**, Case No. 11-1-0689 (S.D. Tex.) (June 5, 2013)

<sup>6</sup> **Wells Fargo Bank, N.A. v Erobobo**, 2013 NY Slip Op 50675(U) (Sup. Ct. Kings, Apr. 29, 2013) - The assignment of the note and mortgage from Option One [the first assignee] rather than from the Depositor ABFC violates section 2.01 of the PSA which requires that the Depositor deliver to and deposit the original note, mortgage and assignments to the Trustee. The assignment of the Defendant's note and mortgage, having not been assigned from the Depositor to the Trust, is therefore void as in being in contravention of the PSA. The evidence submitted by Defendant that the note was acquired after the closing date and that assignment was not made by

the Depositor, is sufficient to raise questions of fact as to whether the Plaintiff owns the note and mortgage, and precludes granting Plaintiff summary judgment. (13)

<sup>7</sup> International Association of Firefighters, Local 1789, Respondent, v. Spokane Airports, Petitioner, 146 Wn.2d 207, (2002)

<sup>8</sup> Jenk. Cent. 53

<sup>9</sup> Dig. 50, 17, 54; 10 Pet. 161, 175.

<sup>10</sup> WALKER v. QUALITY LOAN SERVICE CORP, et al, no: 65975-8-1 (2013)

<sup>11</sup> IRC26 U.S.C. § 860G(d)(1) “Except as provided in section 860G(d)(2), ‘if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.’”

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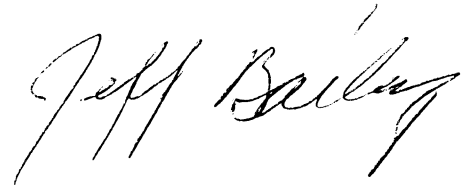
Jeff Bailey

12/11/2015

To: Appellate Court Judge:

Please be advised that the clerk left out parts of my case when preparing the designation of clerk's paper which is required for the brief.

I am adding the original complaint & referencing it, see Attachment.

A handwritten signature in black ink that reads "Jeff Bailey". The signature is written in a cursive style with a large, sweeping initial "J" and a distinct "B".

1 Jeff Bailey  
2 10743 56<sup>th</sup> Avenue  
3 Seattle, Washington 98178  
4

5 IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY  
6

7  
8 **Jeff Bailey**  
9 *Plaintiff*

Case No. 15-2-0040-7SEA

10 vs.

11 **JOSEPH LUCAS, III; U.S. BANK, N.A.**  
12 **AS TRUSTEE FOR OWNIT**  
13 **MORTGAGE LOAN TRUST,**  
14 **MORTGAGE LOAN ASSET BACKED**  
15 **CERTIFICATES, SERIES 2006-3;**  
16 **MORTGAGE ELECTRONIC**  
17 **REGISTRATION SYSTEMS INC; AND**  
18 **JOHN DOE 1-50**

19 *Defendants.*

**AMENDED COMPLAINT**  
FOR BREACH OF CONTRACT,  
WRONGFUL FORECLOSURE, AND TO  
QUIET TITLE

*DEMAND FOR TRIAL BY JURY*

20  
21  
22  
23 **AMENDED COMPLAINT**

FOR BREACH OF CONTRACT, WRONGFUL FORECLOSURE, AND TO QUIET TITLE

24 COMES NOW the plaintiff and states:

25  
26  
27 **I. IDENTITY OF PARTIES AND LAND**

- 28
1. Plaintiff Jeff Bailey is a resident of King County, Washington.
  2. Defendant Joseph Lucas, III (Lucas) is a resident of King County, Washington.
  3. Defendant **U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE LOAN TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-3**

1 (US BANK, TRUSTEE) is allegedly registered to do business in the State of Washington  
2 and at all times relevant to this action.

- 3 4. Defendant **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC.**  
4 (a/k/a "MERS") is a Delaware corporation with its principle place of business at 1818  
5 Library Street, Suite 300, Reston, Virginia 20190. Mortgage Electronic Registration  
6 Systems operates a MERS Registry. The MERS registered agent is Sharon McGann  
7 Horstkamp, Esq., and the mailing address for service is 1818 Library Street, Suite 300  
8 Reston, VA 20190. MERS is named on Defendant, Joseph Lucas III, security  
9 instrument as mortgagee and beneficiary, acting solely as nominee for OWNIT  
10 MORTGAGE SOLUTIONS, INC. and its successors and assigns in interest;
- 11 5. OWNIT MORTGAGE SOLUTIONS, INC. (OWNIT) is a corporation that was  
12 formed and organized under California law, in which MERILL LYNCH & CO.  
13 invested \$100 million in exchange for 20% ownership stake in 2005; and MERILL  
14 LYNCH & CO. acquired by BANK OF AMERICA subsequently acquired MERILL  
15 LYNCH & CO. in 2009 to form BANK OF AMERICA MERILL LYNCH.
- 16 6. Subject property is described as [APN 936870-0165-03] in King County,  
17 Washington and commonly known as 10743 56<sup>th</sup> Avenue South, Seattle Washington,  
18 with a legal description of;

19 **THE SOUTH HALF OF LOT 5, BLOCK 5, WHITE'S RAINIER BEACH**  
20 **GARDENS, ACCORDING TO PLAT THEREOF RECORDED IN**  
21 **VOLUME 13 OF PLATS, PAGE 38, RECORDS OF KING COUNTY**  
22 **WASHINGTON. SITUATE IN THE COUNT OF KING, STATE OF**  
23 **WASHINGTON.**

24  
25  
26 **II. FIRST CLAIMS FOR RELIEF**

27 **Breach of Contract**

- 1 7. On January 21<sup>st</sup> 2006, Jeff Bailey entered into a contract with Joseph Lucas III  
2 entailing that Defendant would sale by way of financing and eventually convey the  
3 subject property to Plaintiff according to the terms of said contract. See Plaintiff's  
4 Exhibit 1 – Contract between Plaintiff and Defendant Lucas.
- 5 8. Defendant Lucas has thus far been unavailable or refused to cooperate with Plaintiff  
6 in order for Plaintiff to acquire said property in accordance with the terms of the  
7 agreement between Plaintiff and Defendant Lucas.
- 8 9. Defendant Lucas holds interest in the subject property for the benefit of Plaintiff  
9 and is negligent in his obligations to protect this interest in subject property from  
10 third party intruders;

11  
12 **III. SECOND CLAIM FOR RELIEF**

13 **Void Order – Not Real Party in Interest**

14 10. On September 11, 2014, Judge Susan J. Craighead in the KING COUNTY  
15 SUPERIOR COURT did issue a void order in favor of Plaintiff U.S. BANK,  
16 TRUSTEE against Joseph Lucas III. See Plaintiff's Exhibit 2 – King County  
17 Superior Court Order

18  
19 11. The order is void because the Plaintiff, subsequent to said order, found new  
20 evidence at public records that are maintained at sec.gov by way of an EDGAR  
21 system search of the trust name that evidences that the Defendant US BANK,  
22 TRUSTEE does not have standing as they were never entitled to the payments from  
23 Defendant Joseph Lucas III; and therefore the Court lacked jurisdiction over the  
24 Defendant Lucas III. The terms of said Trust are stated herein merely for the  
25 purpose of evidence for the right to determine the identity of the entity to which  
26 Defendant Lucas may be obligated, and to ensure that the terms and obligations of  
27 Defendant Lucas agreements are maintained between Plaintiff and Defendant Lucas  
28 and those to whom Plaintiff may be obliged through Defendant's Lucas'  
obligations. The evidence of which is as follows:

1 a. Defendant, U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE LOAN  
2 TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-  
3 3 's Prospectus holds an immense number of pages in its recordings at the  
4 Securities & Exchange Commission (SEC), and the Trust Agreement, as well  
5 as the Indenture Agreement, possesses a most pertinent "Persons Deemed  
6 Owners Clause" which states:

7 i. Section 4.04 **Persons Deemed Owners**. [t]he Issuer, the Indenture  
8 Trustee, the Paying Agent and any agent ... may treat the Person in  
9 whose name any Note is registered ... **as the owner of such Note for**  
10 **the purpose of receiving payments of principal and interest**, if any,  
11 on such Note and for all other purposes whatsoever, ..." [Emphasis  
12 added]; and,

13 b. These documents identify the "**Persons Deemed Owners**" as the same party  
14 as the "Note Holder", and as defined in the Defendant Lucas III's Note. The  
15 Trust Agreement identifies the Investors, or Certificate Holders of the Trust  
16 are the *real parties in interest*; states the following concerning the matter:

17 i. Section 5.01 - **Distributions**. (a) On each Payment Date, the  
18 Certificate Paying Agent shall distribute to the Certificateholders, on a  
19 pro rata basis based on the Certificate Percentage Interests thereof, all  
20 funds on deposit in the Certificate Distribution Account and available  
21 therefor (as provided in Section 3.05 of the Indenture, in accordance  
22 with the statement for such Payment Date provided by the Securities  
23 Administrator pursuant to Section 7.05 of the Indenture) for such  
24 Payment Date as reduced by any amount then owing to the Owner  
25 Trustee hereunder and any Expenses of the Trust then remaining  
26 unpaid;



1 c. The Trust Agreement further stipulates who is authorized to act on behalf of  
2 the "Certificateholders" (Note Holder(s)) of the trust, in a very limited scope, as  
3 follows;

4 i. § 4.01 - The Indenture Trustee may for all purposes (including the  
5 making of payments due on the Notes) deal with the Depository as the  
6 authorized representative of the Beneficial Owners with respect to the  
7 Offered Notes for the purposes of exercising the rights of Holders of  
8 the Notes hereunder. [t]he rights of Beneficial Owners with respect to  
9 the Offered Notes shall be limited to those established by law and  
10 agreements between such Beneficial Owners and the Depository and  
11 Depository Participants.

12 12. This void order, for lack of inpersonam jurisdiction, hinders the execution of the  
13 contract between Plaintiff and Defendant Joseph Lucas, III; and The Defendant's  
14 Lucas III, "Note" is a central element to this matter, and the most pertinent fact in  
15 this matter is the "Note Holder" as defined by said Note:

16 a. "I understand that the Lender may transfer this Note. The Lender or anyone  
17 who takes this Note by transfer *and* who is entitled to receive payments under  
18 this Note is called the "Note Holder." [Emphasis added.] - See Exhibit 5  
19 - Promissory Note.

20 b. Paragraph 7(c) Notice of Default - "If I am in default, the Note Holder may  
21 send me a written notice telling me that if I do not pay the overdue amount by  
22 a certain date, the Note Holder may require me to pay immediately the full  
23 amount of Principal which has not been paid and all the interest that I owe on  
24 that amount ...." [Emphasis added];

25  
26 13. Plaintiff will provide evidence to this Honorable Court that will show that  
27 Defendant Lucas has established a "privity of contract" with a party other than the  
28 parties that are attempting foreclosed on subject property. This "**privity of  
contract**" is established by the terms of Defendant Lucas III's Note; and

1 14. Plaintiff herein states that Defendant Lucas III, has established and failed to uphold  
2 obligations to the contract between Plaintiff and Defendant Lucas, by failing to  
3 protect and enforce the “privity of contract” that Defendant Lucas has established  
4 with the “Persons Deemed Owners”; and

5 15. Plaintiff shall further prove that the “Persons Deemed Owners” are in fact the real  
6 party in interest and that Defendant US BANK, TRUSTEE has failed to obtain any  
7 delegation of authority from the real party in interest.

8 16. Plaintiff further states, and shall prove at trial, that at the time of the assignment of  
9 the Deed of Trust from Defendant’s MERS to Defendant OWNIT on April 4<sup>th</sup>, 2012,  
10 that OWNIT did not own note and was not entitled to the payments of Defendant  
11 Joseph Lucas III, as Defendant OWNIT had already transferred Defendant Lucas’  
12 Note to Defendant US BANK, TRUSTEE, according to public records maintained  
13 by sec.gov by way of EDGAR.

14  
15  
16 **IV. THIRD CLAIM FOR RELIEF**

17 **Privity of Contract**

18  
19 17. Plaintiff will provide evidence to this Honorable Court that will show that Plaintiff  
20 has established an agreement and “privity of contract” with Defendant Lucas which  
21 has established a privity of contract with a party other than the parties that  
22 foreclosed on the subject property. This “**privity of contract**” is established by the  
23 terms of Defendant Lucas’ Note;

24 18. Defendants have conspired to create a scheme that interferes with the contract  
25 between Plaintiff and Defendant Lucas and the ownership and possession of said  
26 property by arbitrarily **redefining the terms of Defendant Lucas’ Note** in order to  
27 unlawfully interfere and to hinder the terms and obligations of Plaintiff contract(s),  
28 in order to steal subject property;

1 19. Defendants have misrepresented certain facts in order to establish the appearance of  
2 legitimate standing. The admission of the Defendant US BANK, TRUSTEE that  
3 Defendants are or have been Holders of the Note merely, is an admission against  
4 the interest of the Defendant;

5 20. Pursuant to the Note, Defendant Lucas defined the term "Note Holder" as follows:  
6 "The Lender or anyone who takes this Note by transfer **and** who is *entitled to*  
7 *receive payments under this Note* is called the "*Note Holder*";  
8

9 21. Defendant US BANK, TRUSTEE has conceded to being the note holder only. The  
10 Defendant has provided no delegation of authority provided by the "real party in  
11 interest" that is entitled to receive Borrowers' payments. The Defendants' admission  
12 of holding the Note and nothing more acts as an admission running against the  
13 Defendants' interest. See Exhibit 5 - Note

14 22. Under the terms of the Note, only the party entitled to Borrowers' payments has the  
15 authority to commence a foreclosure. - See Exhibit 5 – Note 1 Paragraph 7(C)  
16 *Notice of Default*;

17  
18 a. "If I am in default, *the Note Holder* may send me a written notice telling me  
19 that if I do not pay the overdue amount by a certain date, *the Note Holder*  
20 may require me to pay immediately the full amount of Principal which has  
21 not been paid and all the interest that I owe on that amount ..." [*Emphasis*  
22 *added*];

23 23. Since Defendants admit to being the holder of the note merely, and nothing more,  
24 this is an admission against the interest of the Defendant. This "holder" status provides  
25 no rights of enforcement. Plaintiff request that the Court recognize the State of  
26 Washington's Commercial Code, under RCW §62A.3-110;

27 a. 3-110. (a) The person to whom an instrument is initially payable is  
28 determined by the intent of the person, whether or not authorized, signing as,  
or in the name or behalf of, the issuer of the instrument. The instrument is

1 payable to the person intended by the signer even if that person is identified  
2 in the instrument by a name or other identification that is not that of the  
3 intended person. If more than one person signs in the name or behalf of the  
4 issuer of an instrument and all the signers do not intend the same person as  
5 payee, the instrument is payable to any person intended by one or more of  
6 the signers;

- 7 b. (c) A person to whom an instrument is payable may be identified in any  
8 way, including by name, identifying number, office, or account number. For  
9 the purpose of determining the holder of an instrument, the following rules  
10 apply:

11 24. The Trust Agreement identifies the "Note Holder" and the entities with the exclusive  
12 power to delegate authority, and has only done so in a very limited scope:

- 13 a. "Subject to the provisions of Section 3.09 with respect to Book-Entry  
14 Certificates, the Depositor [Structured Asset Securities Corporation], Master  
15 Servicer [Aurora Loans], ... and Trustee [U.S. Bank], may treat the Person in  
16 whose name any Certificate is registered upon the books of the Certificate  
17 Registrar *as the owner of such Certificate, ...*"; [Emphasis added]
- 18 b. Section 4.04 Persons Deemed Owners. [t]he Issuer, the Indenture Trustee,  
19 the Paying Agent and any agent ... may treat the Person in whose name any  
20 Note is registered ... *as the owner of such Note for the purpose of receiving*  
21 *payments of principal of and interest.* if any, on such Note and for all  
22 other purposes whatsoever, ...' ; [Emphasis added]
- 23 c. And section 4.01 has established that the Depository will serve as authorized  
24 representative for the Certificateholders:

25 § 4.01 - The Indenture Trustee may for all purposes (including the making of  
26 payments due on the Notes) deal with the Depository as the authorized  
27 representative of the Beneficial Owners with respect to the Offered Notes for the  
28 purposes of exercising the rights of Holders of the Notes hereunder. [t]he rights of  
Beneficial Owners with respect to the Offered Notes shall be limited to those

1 established by law and agreements between such Beneficial Owners and the  
2 Depository and Depository Participants;

3 i. Section 5.01 - Distributions. (a) On each Payment Date, the  
4 Certificate Paying Agent shall distribute to the Certificateholders,  
5 on a pro rata basis based on the Certificate Percentage Interests  
6 thereof, all funds on deposit in the Certificate Distribution Account  
7 and available therefor (as provided in Section 3.05 of the  
8 Indenture, in accordance with the statement for such Payment Date  
9 provided by the Securities Administrator pursuant to Section 7.05  
10 of the Indenture) for such Payment Date as reduced by any amount  
then owing to the Owner Trustee hereunder and any Expenses of  
the Trust then remaining unpaid;

11 d. To further establish that Defendant was not the “real party in interest” and  
12 was not entitled to the Borrower’s payments; Plaintiff asks the Court to  
13 recognize Section 3.06 of the Trust Agreement:

14 i. § 3.06 - **Persons Deemed Owners.** [t]he Depositor [unknown], the  
15 Master Servicer , ..., the Trustee, ... and any agent of any of them may  
16 treat the Person in whose name any Certificate is registered ... *as*  
17 *owner of such Certificate* for the purpose of receiving distributions  
18 ... and for all other purposes whatsoever, and neither the Depositor,  
19 the Master Servicer, the Trustee. ... nor any agent of any of them shall  
20 be affected by notice to the contrary; [*Emphasis added*]

21  
22 25. Concerning the *identity of the creditor relating to clauses of the Trust agreement*  
23 *sections, and the role and authority of the Trustee can be found respectively at 3.09,*  
24 *4.01, 4.04. & 5.01;*

25 a. *(iv) No provision of this Agreement shall require the Trustee ...*  
26 *to expend or risk its own funds or otherwise incur any financial*  
27 *liability in the performance of any of its duties hereunder;*  
28 [*Emphasis added*]

1 b. "(h) The Trustee shall not ... have any duty (A) to see to any  
2 recording, filing,, or to see to the maintenance of any such  
3 recording or filing ... 48; [Emphasis added]

4 c. (j) Notwithstanding anything in this Agreement to the contrary,  
5 none of the Securities Administrator, any Paying Agent or the  
6 Trustee shall be liable for special, indirect or consequential  
7 losses or damages of any kind whatsoever (including, but not  
8 limited to, lost profits), 49; [Emphasis added]

9  
10 26. Plaintiff understands, and the evidence clearly indicates, that the Investors of the  
11 trust were the parties entitled to the payments and the Certificateholders have not  
12 issued any such **delegation of authority**, and no notice to the contrary shall affect  
13 the status of said ownership. **Any assignment must be signed by the investors;**

14  
15 a. Defendants US BANK, TRUSTEE are aware that they are not the real party in  
16 interest, but nevertheless, Defendant US BANK did intentionally take actions  
17 in order to deceive the Court, Defendant Lucas and Plaintiff and create the  
18 illusion that would cause Defendants to appear to be the "real party in  
19 interest":

20 i. Page 37 of the Trust Agreement serves as evidence against  
21 Defendants and establishes their "**Guilty knowledge**":

22 "§ 2.01 (c) (ii) With respect to each MERS Mortgage Loan, the Master  
23 Servicer [i.e. Aurora], at the expense of the Depositor and with the  
24 cooperation of the applicable Servicer, **shall cause the Servicer to take**  
25 **such actions as are necessary to cause the Trustee to be clearly**  
26 **identified as the owner of each such Mortgage Loan** on the records of  
27 **MERS for purposes of the system of recording transfers of beneficial**  
28 **ownership of mortgages maintained by MERS": [Emphasis added.]**

1 27. In order for the [State] Court proceedings to be valid, Courts require that all “real  
2 parties in interest” be named in a proceeding or the Court cannot acquire personal  
3 jurisdiction. The State of Washington requires that the statutory requirements be  
4 strictly followed in order to administer a non-judicial sale. - ( *See Albice v.*  
5 *Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 568, 276 P.3d 1277 (2012)*  
6 *(citing Udall, 159 Wn.2d at 915-16)*;

7 Because there was no delegation of authority that was recorded with the Land records  
8 of San Mateo County expressing any such Delegation of Authority of a conveyance of  
9 interest in land to, or from, the Certificateholders from, or to, any other entity, the  
10 Defendant US BANK is unable to establish any legal right to enforce the terms of  
11 Defendant Lucas’ Note;

## 12 **V. FOURTH CLAIM FOR RELIEF**

### 13 **Impairing Contractual Obligations**

14  
15  
16 28. Plaintiff assert his rights to uphold the terms and obligations of the contract  
17 between Plaintiff and Defendant Lucas and therefore requires Defendant Lucas  
18 must assert his obligation to object to any third party hindrance of the terms,  
19 obligations and definitions that are established by Defendant Lucas’ Note. States  
20 are not permitted to create laws that impair the obligation of contracts, pursuant to  
21 United States Constitution Article I, Section 10, Clause 1. RCW 61.24.005(2)  
22 hinders the definitions of the “terms” as determined by the Defendant Lucas' Note  
23 and permits a mere holder, such as Defendant US BANK. TRUSTEE, to initiate the  
24 power of sale within the Deed of Trust. The State has no such power to impair  
25 Defendants' contracts by changing its terms and therefore is unconstitutional;

26 29. **The terms of the Note only allows for the party entitled to "borrowers"**  
27 **payments or their acknowledged and recorded agent to initiate a trustee sale**  
28 **pursuant to the terms of the contract;**

1 30. The Plaintiff is herein asserting and hereby protecting the interest held by  
2 Defendant Lucas for the benefit of Plaintiff by way of an established “privity of  
3 contract” between the Plaintiff and Defendant Lucas;

4  
5 31. The terms of the Deed of Trust are not enforceable under Washington State law,  
6 pursuant to Washington Commercial Code at RCW 62A.3-203(b), as it addresses  
7 the transfer of a bearer instrument by a person other than its issuer for the purpose  
8 of giving another person the right to enforce its terms. This statute is relevant  
9 because Defendant Lucas’ Note and Deed of Trust are bearer instruments, and  
10 every assignment from MERS is a prelude to enforcement: (See Exhibit 3 –  
11 Assignment Instrument #20120404001648)

12 a. RCW 62A.3203(b) Transfer of an instrument, whether or not the transfer is  
13 a negotiation, vests in the transferee any *right of the transferor to enforce*  
14 *the instrument, including any right as a holder in due course, ...*”;

15 [Emphasis added]

16 b. RCW 62A.3-203(d) sets forth the rule of law that if anything less than the  
17 entire beneficial interest is conveyed, the transferee can receive no greater  
18 interest than that which was held by the transferor. This rule of law applies  
19 to MERS assignments that were recorded on October 4, 2011. US BANK,  
20 TRUSTEE cannot receive any greater interest than MERS had when it was  
21 in a position to transfer. *If the holder of a beneficial interest cannot be*  
22 *established, the interest being conveyed is also illusory and inadequate for*  
23 *enforcement*;

24  
25 **32. RCW 61.24.005(2) is in conflict with the terms of the Note and therefore is**  
26 **repugnant to United States Constitution Article I, Section 10, Clause 1**

27 33. No property interest can be valid until it is locally recorded. Mandatory recording  
28 statutes are almost as prevalent as the statute of frauds. The forfeiture remedy in a



1 mandatory recording statute copies the statute of frauds. If a sale is not recorded  
2 where the property is situated, the "borrowers'" approved interest in land does not  
3 move. A failure to record nullifies a sale's validity at the county recorder's office.  
4 - See RCW 65.08.070;

5 34. Washington's Statute of Frauds expresses the requirements for transfers of estates  
6 in real property at RCW 64.04.010, 020 & RCW 59.04.010 & 59.18.210:

- 7
- 8 a. Every conveyance of real estate, or any interest therein, and every contract  
9 creating or evidencing any encumbrance upon real estate, shall be by deed:  
10 PROVIDED, That when real estate, or any interest therein, is held in trust,  
11 the terms and conditions of which trust are of record, and the instrument  
12 creating such trust authorizes the issuance of certificates or written evidence  
13 of any interest in said real estate under said trust, and authorizes the transfer  
14 of such certificates or evidence of interest by assignment by the holder  
15 thereof by a simple writing or by endorsement on the back of such certificate  
16 or evidence of interest or delivery thereof to the vendee, such transfer shall  
17 be valid, and all such assignments or transfers hereby authorized and  
18 heretofore made in accordance with the provisions of this section are hereby  
19 declared to be legal and valid.
- 20 b. Every deed shall be in writing, signed by the party bound thereby, and  
21 acknowledged by the party before some person authorized by \*this act to  
22 take acknowledgments of deeds.
- 23 c. Tenancies from year to year are hereby abolished except when the same are  
24 created by express written contract. Leases may be in writing or print, or  
25 partly in writing and partly in print, and shall be legal and valid for any term  
26 or period not exceeding one year, without acknowledgment, witnesses or  
27 seals.  
28

1 35. The statute of fraud requires: (1) a writing relinquishing the last recorded owner's  
2 interest in the security instrument; and (2) this writing must be signed by an  
3 authorized officer of the owner. When formalities for the statute of frauds are  
4 followed, the new owner acquires the original lender's contractual relationship with  
5 the borrower. This is known as the borrower approved interest in land. Foreclosure  
6 statutes require the acquisition of the borrower approved interest in land as a pre-  
7 requisite for asserting the statutory power of sale. If this borrower approved interest  
8 in land is not acquired, foreclosure cannot be pursued;

9 36. MERS has never acquired the borrower's approved interest in land, because the  
10 formalities of the statute of frauds were never followed. There is not even a  
11 signature on the Deed of Trust confirming a relationship between the original lender  
12 and MERS. As a result, MERS has not acquired the original lender's contractual  
13 relationship with the borrower and the borrower approved interest in land. MERS  
14 cannot convey an interest that it never acquired;

15 37. MERS reveals in its TERMS and CONDITIONS:

- 16
- 17 a. 2. The Member, at its own expense, shall promptly, or as soon as practicable,  
18 cause MERS to appear in the appropriate public records as the mortgagee of  
19 record with respect to each mortgage loan that the Member registers on the  
20 MERS® System. MERS shall serve as mortgagee of record with respect to  
21 all such mortgage loans solely as a nominee, in an administrative capacity, for  
22 the beneficial owner or owners thereof from time to time. MERS shall have  
23 no rights whatsoever to any payments made on account of such mortgage  
24 loans, to any servicing rights related to such mortgage loans, or to any  
25 mortgaged properties securing such mortgage loans. MERS agrees not to  
26 assert any rights (other than rights specified in the Governing Documents)  
27 with respect to such mortgage loans or mortgaged properties. References  
28 herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of

1 trust and beneficiary under a deed of trust and any other form of security  
2 instrument under applicable state law.

3 b. 6. MERS and the Member agree that: (i) the MERS® System is not a vehicle  
4 for creating or transferring beneficial interests in mortgage loans, (ii) transfers  
5 of servicing interests reflected on the MERS® System are subject to the  
6 consent of the beneficial owner of the mortgage loans, and (iii) membership in  
7 MERS or use of the MERS® System shall not modify or supersede any  
8 agreement between or among the Members having interests in mortgage loans  
9 registered on the MERS® System.

10 c. **Section 6.06 - Owner Trustee Not Liable for Certificates or Related**  
11 **Documents.** The recitals contained herein and in the Certificates (other than  
12 as set forth in Section 6.03 herein and the signatures of the Owner Trustee on  
13 the Certificates) shall be taken as the statements of the Depositor, and the  
14 Owner Trustee assumes no responsibility for the correctness thereof. Other  
15 than as set forth in Section 6.03, the Owner Trustee makes no representations  
16 as to the validity or sufficiency of this Trust Agreement, of any Basic  
17 Document or of the Certificates (other than the signatures of the Owner  
18 Trustee on the Certificates) or the Notes, or of any Related Documents, or of  
19 MERS or the MERS® System. The Owner Trustee shall at no time have any  
20 responsibility or liability with respect to the sufficiency of the Owner Trust  
21 Estate or its ability to generate the payments to be distributed to  
22 Certificateholders under this Trust Agreement or the Noteholders under the  
23 Indenture, including compliance by the Depositor or the Seller with any  
24 warranty or representation made under any Basic Document or in any related  
25 document or the accuracy of any such warranty or representation, or any  
26 action of the Certificate Paying Agent, the Certificate Registrar, the Securities  
27 Administrator or the Indenture Trustee taken in the name of the Owner  
28 Trustee:

1 38. The true beneficial owners of Defendant Lucas' Note are the investors, each  
2 holding a proportional and typically miniscule interest in Defendant Lucas' note  
3 and security instrument. The only parties with something to gain or lose from the  
4 outcome of Defendant Lucas' loan are these investors. Investors are exclusively  
5 entitled to Defendant Lucas' payments. Under terms in the Note, these investors  
6 are the Note Holder, and they alone are entitled to accelerate payments and initiate  
7 foreclosure;

8 39. The Investors, or Certificate Holders of the Trust are the *real parties in interest*;

- 9
- 10 a. Section 27 et al, from this brief, concerning the *identity*  
11 *of the creditor relating to clauses of the Trust agreement*  
12 *sections: 3.09, 4.01, 4.04, & 5.01;*
- 13 b. *(iv) No provision of this Agreement shall require the*  
14 *Trustee ... to expend or risk its own funds or otherwise*  
15 *incur any financial liability in the performance of any*  
16 *of its duties hereunder; [Emphasis added]*
- 17 c. *"(h) The Trustee shall not ... have any duty (A) to see to*  
18 *any recording, filing,, or to see to the maintenance of any*  
19 *such recording or filing ... 48; [Emphasis added]*
- 20 d. *(j) Notwithstanding anything in this Agreement to the*  
21 *contrary, none of the Securities Administrator, any*  
22 *Paying Agent or the Trustee shall be liable for special,*  
23 *indirect or consequential losses or damages of any kind*  
24 *whatsoever (including, but not limited to, lost profits),*  
25 *49; [Emphasis added]*

26 40. Plaintiff asks that the court recognize the inability of MERS to hold any interest  
27 greater than merely legal title, which is no ownership interest whatsoever. and that  
28 this is also affirmed in MERS' own Terms and Conditions. - See Exhibit 4 -  
*MERS Terms and Conditions, paragraph 6;*

1 a. 6. "MERS and the Member agree that: (i) the MERS® System is not a  
2 vehicle for creating or transferring beneficial interests in mortgage loans,  
3 (ii) transfers of servicing interests reflected on the MERS® System are  
4 subject to the consent of the beneficial owner of the mortgage loans, and  
5 (iii) membership in MERS or use of the MERS® System shall not modify  
6 or supersede any agreement between or among the Members having  
7 interests in mortgage loans registered on the MERS® System";

8 41. U.S. Bank's assertion to have a valid security interest in order to foreclose and  
9 auction subject Property is incorrect. MERS held no ownership interest;

10 42. Defendant OWNIT had already transferred the Note and had given up all right to  
11 payments and enforcement at the time of MERS' improper assignment to  
12 Defendant US BANK, TRUSTEE. Therefore, Defendants have no ownership  
13 interest whatsoever in the Note nor the Deed of Trust; and  
14

15 43. Therefore any claim in interest is unfounded in fact.

## 16 VI. AUTHORITIES

17 44. *Bain v. Metropolitan Mortgage Group, Inc. et al*, no. 86206-1 (2012); and

18 45. *WALKER v. QUALITY LOAN SERVICE CORP, et al*, no: 65975-8-1 (2013)

19 a. 44 & 45 reference cases confirming MERS lacks interest and rights to assign  
20 because it was never entitled to borrowers payments

21 46. Court held that a quiet title action, not an action to vacate the judgment, was the  
22 appropriate means for the grantee of a judgment debtor to clear the title of land  
23 sold under a *void judgment*. *Krutz*, 25 Wash. at 572-74, 577-78. In *Krutz*, the  
24 judgment and subsequent sheriff's sale were void for improper service. *Krutz*, 25  
25 Wash. at 566-78. The court stated that the grantee, who purchased from the  
26 judgment debtor, was not a party to the prior judgment and could not have brought  
27 a motion to vacate the *void judgment*. *Krutz*, 25 Wash. at 566-78. Similarly,  
28

1 Mueller, having an interest in the property as the purchaser from Griffin's estate,  
2 made a collateral attack on the validity of the sheriff's sale through this quiet title  
3 action. See *Krutz v. Batts*, 18 Wash. 460, 51 P 1054 (1898)

4  
5 47. A judgment is void when the court does not have personal or subject matter  
6 jurisdiction, or "lacks the inherent power to enter the order involved." *Petersen*, 16  
7 Wash. App. at 79 (citing *Bresolin*, 86 Wash. 2d at 245; *Anderson*, 52 Wash. 2d at  
8 761)

9  
10 48. A trial court has no discretion when faced with a void judgment, and must vacate  
11 the judgment "whenever the lack of jurisdiction comes to light." *Mitchell v. Kitsap*  
12 *County*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990)

13  
14 49. A void judgment is always subject to collateral attack. *Bresolin v. Morris*, 86  
15 Wash. 2d 241, 245, 543 P.2d 325 (1975)

### 16 CONCLUSION

17 **50.** It has become customary, within the State of Washington, to allow Corporations to  
18 arbitrarily allow Lenders, Servicers, Trustee and other non-party interlopers, that  
19 is, entities that are not the real parties in interest, to consistently trespass upon the  
20 rights of Homeowners, just as the Defendants have done in this matter. The  
21 Defendants are erroneously attempting to foreclose on the subject property;

22  
23 **51.** Defendants have affected public record with deceptive practices, misconceptions  
24 and misrepresentations in order to effectively steal subject Property;

### 25 REQUEST FOR RELIEF

26  
27 WHEREFORE, for all of the above. Plaintiff moves the court and makes request for:  
28

1 52. As to Defendant Lucas, Plaintiff exclusively request that the Court specifically  
2 compel performance in accordance with the terms of the agreement between  
3 Defendant Lucas and Plaintiff, and no damages.

4 53. Declaratory Relief, including but not limited to the following Decrees of this  
5 Court, stating that:

6 54. Plaintiff is the prevailing party, and;

- 7
- 8 a. The Trustees of the Trusts have no enforceable secured or unsecured claim  
9 against the subject Property;
  - 10 b. The Sponsor has no enforceable secured or unsecured claim against the  
11 subject Property;
  - 12 c. The Depositor has no enforceable secured or unsecured claim against the  
13 subject Property;
  - 14 d. The Mortgage Originator has no enforceable secured or unsecured claim  
15 against the subject Property;
  - 16 e. Determine all adverse claims to the real property in this proceeding;
  - 17 f. For permanent injunction against Defendants from foreclosing against  
18 subject property; or
  - 19 g. Overturn the wrongful foreclosure;
  - 20 h. That Plaintiff is entitled to the exclusive possession of the subject property;
  - 21 i. That Plaintiff owns in fee simple, and is entitled to the quiet and peaceful  
22 possession of the above-described real property;
  - 23 j. That Defendants, and each of them, and all persons claiming under them,  
24 have no estate, right, title, lien, or interest in or to the real property, or any  
25 part of the property; and  
26  
27  
28

- 1 **55.** Any further relief, except as to Defendant Lucas, which the court may deem  
2 appropriate, including as follows:
- 3 a. Compensatory damages, including general and special damages, according  
4 to proof;
- 5 b. That the Defendants be permanently estopped from foreclosing;
- 6 c. That any writ of possession in favor of Defendants be overturned and deemed  
7 void; and
- 8  
9  
10 d. Any such further relief which the court may deem appropriate.  
11

12 **DEMAND FOR TRIAL BY JURY**

13 Plaintiff hereby request a jury trial on all points and issues raised in this complaint.  
14

15 Dated on this 28<sup>th</sup> day of January, 2015,  
16  
17

18 \_\_\_\_\_  
19 Jeff Bailey  
20

21 **EXHIBITS 1 – 5**

22 **EXHIBIT 1 – CONTRACT BETWEEN PLAINTIFF AND DEFENDANT LUCAS**

23 **EXHIBIT 2 – ORDER FROM KING COUNTY SUPERIOR COURT**

24 **EXHIBIT 3 – Assignment Instrument #20120404001648**

25 **EXHIBIT 4 – MERS TERMS AND CONDITIONS**

26 **EXHIBIT 5 - DEFENDANT LUCAS PROMISSORY NOTE**



**Fwd: Bailey v. Lucas, et al. #15-2-00407-7 SEA**

Monday, November 30, 2015 1:12 PM

**From:** "Jeff Bailey" <chickenl.jb@icloud.com>

**To:** jd\_game2000@yahoo.com

1 Files 934KB Download All  
934KB

Image-  
Attachments

Save

Sent from my iPhone

Begin forwarded message:

**From:** "Reese, Ricki" <Ricki.Reese@kingcounty.gov>  
**Date:** July 9, 2015 at 9:28:44 AM PDT  
**To:** "Sakae S. Sakai" <ssakai@houser-law.com>, "jd\_game2000@yahoo.com" <jd\_game2000@yahoo.com>  
**Cc:** "gregoryalbert@gmail.com" <gregoryalbert@gmail.com>  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

Good morning:

Attached find a copy of the Order Denying Motion for Reconsideration and to Vacate or Amend Order signed by Judge Downing on the above cause (scanned upside down to avoid jamming in the machine).

Ricki

---

**From:** Reese, Ricki  
**Sent:** Tuesday, June 30, 2015 8:31 AM  
**To:** 'Sakae S. Sakai'; 'jd\_game2000@yahoo.com'  
**Cc:** 'gregoryalbert@gmail.com'  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

We have also received a second set of working copies via Priority Mail that appear to be a duplicate of the first motion paperwork, with the exception of a Note for Motion that included a date, about three pages of additional exhibits and blank, stamped envelopes that should have been addressed. I've given the set to our court clerk this once for filing as the originals-which do not come to the Court with the exception of original, proposed orders you're asking the Court to sign. Please remember original documents to be filed must be forwarded to the King County Clerk's Office as I indicated in my email below.

Ricki

---

**From:** Reese, Ricki  
**Sent:** Tuesday, June 30, 2015 7:41 AM  
**To:** 'Sakae S. Sakai'; 'jd\_game2000@yahoo.com'  
**Cc:** 'gregoryalbert@gmail.com'  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

If you received it yesterday, that will set the date for consideration on July 8<sup>th</sup> and your response would be due by noon two court days prior, Monday, July 6<sup>th</sup>.

Ricki

---

**From:** Sakae S. Sakai [mailto:ssakai@houser-law.com]  
**Sent:** Monday, June 29, 2015 5:14 PM  
**To:** Reese, Ricki; 'jd\_game2000@yahoo.com'  
**Cc:** 'gregoryalbert@gmail.com'  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

Ricki,

We have received a copy of the "Motion for Reconsideration and to Vacate or Amend Order" Please let us know once a briefing schedule is set by the Court. Thanks

**Sakae S. Sakai**  
**Attorney**  
**HOUSER**  
& ALLISON, APC  
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Seattle, WA 98101  
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Boston, Las Vegas, Newark, New York, Phoenix, Portland, Seattle & Twin Cities.

Admitted to Practice in Washington and Hawaii.

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**From:** Reese, Ricki [<mailto:Ricki.Reese@kingcounty.gov>]  
**Sent:** Monday, June 29, 2015 11:58 AM  
**To:** Sakae S. Sakai; [jd\\_game2000@yahoo.com](mailto:jd_game2000@yahoo.com)  
**Cc:** [gregoryalbert@gmail.com](mailto:gregoryalbert@gmail.com)  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

Good morning:

Thank you for sending this email and including me. Mr. Bailey, any party or counsel is required to follow the King County Local Civil Rules when filing motion paperwork. You must file the original motion with the King County Clerk's Office, serve a copy on all parties/opposition, forward motion paperwork to the judge and keep a copy for yourself. As you can see in the email string below, we have received our working copy however it was without a date for consideration on it which triggers the date of response and the date for a ruling.

Please be sure to follow these steps and counsel, please advise us when you have received them so we can determine the date for consideration and responses. Please also remember any responses to any email communication to the Court must include all parties so you will need to "reply all".

Thanks,  
Ricki Reese,  
Bailliff to Judge William L. Downing

**From:** Sakae S. Sakai [<mailto:ssakai@houser-law.com>]  
**Sent:** Monday, June 29, 2015 11:51 AM  
**To:** [jd\\_game2000@yahoo.com](mailto:jd_game2000@yahoo.com)  
**Cc:** Reese, Ricki; [gregoryalbert@gmail.com](mailto:gregoryalbert@gmail.com)  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

Jeff,

I've been informed by the Court that you sent a Motion for Reconsideration to the Court. I have not received a copy of this motion, nor do I see that one has been filed. Please send the Motion for Reconsideration to all parties entitled to service. Thanks

Sakae S. Sakai  
Attorney  
**HOUSER**  
& ALLISON, APC  
1601 Fifth Ave., Ste 850  
Seattle, WA 98101  
P: (206) 596-7838 F: (206) 596-7839  
[www.houser-law.com](http://www.houser-law.com)  
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**From:** Reese, Ricki [<mailto:Ricki.Reese@kingcounty.gov>]  
**Sent:** Friday, June 26, 2015 2:19 PM  
**To:** Sakae S. Sakai; [gregoryalbert@gmail.com](mailto:gregoryalbert@gmail.com)  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

There is a separate "Proof of Service" included in the motion paperwork we received for each of you indicating the paperwork was mailed on June 25th. We would not forward the paperwork and it's about an inch thick. There is a phone number for Mr. Bailey listed on the Note for Motion (206-786-5509). Let me know if/when you receive the motion and we can move the date for consideration accordingly.

Ricki

**From:** Sakae S. Sakai [<mailto:ssakai@houser-law.com>]  
**Sent:** Friday, June 26, 2015 2:13 PM  
**To:** Reese, Ricki; [gregoryalbert@gmail.com](mailto:gregoryalbert@gmail.com)  
**Subject:** RE: Bailey v. Lucas, et al. #15-2-00407-7 SEA

Hi Ricki,

Our office has not received a copy of the Motion for Reconsideration. My understanding was that the Order granting the motion to dismiss was entered on June 12, 2015 and I did not see one filed in ECR.

Can you send me a copy of the Motion for Reconsideration? Thanks

Sakae S. Sakai  
Attorney  
**HOUSER**  
& ALLISON, APC  
1601 Fifth Ave., Ste 850  
Seattle, WA 98101  
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**From:** Reese, Ricki [<mailto:Ricki.Reese@kingcounty.gov>]  
**Sent:** Friday, June 26, 2015 2:07 PM  
**To:** [gregoryjalbert@gmail.com](mailto:gregoryjalbert@gmail.com); Sakae S. Sakai  
**Subject:** Bailey v. Lucas, et al. #15-2-00407-7 SEA

Good afternoon:

We are in receipt of a Motion for Reconsideration brought by plaintiff, Jeff Bailey, on the above matter. As we received it today, we'll deem it noted for consideration without oral argument for July 7<sup>th</sup> (plaintiff didn't put a date on the Note for Motion). Judge Downing is requesting a response from counsel. I don't have an email address for Mr. Bailey so if one of you do please forward this communication to him.

Thanks,  
Ricki

**Ricki Reese**  
Bailiff to Judge William L. Downing  
King County Superior Court  
516 Third Avenue, E-762  
Seattle, WA 98104  
206-477-1585  
[ricki.reese@kingcounty.gov](mailto:ricki.reese@kingcounty.gov)

PLEASE NOTE NEW PHONE NUMBER

Forwarded Message: [mime-attachment](#)

## [ No Subject ]

Thursday, July 9, 2015 9:19 AM

**From:** "kcochE733E746@kingcounty.gov" <kcochE733E746@kingcounty.gov>  
**To:** "Reese : Ricki" <Ricki.Reese@kingcounty.gov>

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**PROOF OF SERVICE**

Jeff Bailey

vs.

**JOSEPH LUCAS, III; U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE LOAN TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-3; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; AND JOHN DOE 1-50**

I am a Citizen of the United States of America and domiciled in the County of King. I am over the age of eighteen and not a party to the within action; my domicile is in Seattle, Washington.

On Dec 22, I MAILED/EMAILED/or caused to be delivered, the within:

**APPELLANT'S BRIEF**

to the parties in the within action by MAIL causing such document(s) to be delivered by United States Postal Mail to the office(s) or person(s) of the addressees(s) as follows:

To: Gregory J Jalbert  
1007 24th Ave 2200  
Seattle WA 98154

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

Executed on December 22 2015, at Seattle, Washington.

Nancy Lopez  
DECLARANT

**PROOF OF SERVICE**

Jeff Bailey

vs.

**JOSEPH LUCAS, III; U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE LOAN TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-3; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; AND JOHN DOE 1-50**

I am a Citizen of the United States of America and domiciled in the County of King. I am over the age of eighteen and not a party to the within action; my domicile is in Seattle, Washington.

On Dec 22, I MAILED/EMAILED/or caused to be delivered, the within:

**APPELLANT'S BRIEF**

to the parties in the within action by MAIL causing such document(s) to be delivered by United States Postal Mail to the office(s) or person(s) of the addressees(s) as follows:

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1601 5<sup>TH</sup> AVENUE, STE 850  
SEATTLE, WASHINGTON 98101  
ATTN: SAKAE S. SAKAI /  
ROBERT W. NORMAN, JR

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

Executed on December 22 2015 at Seattle, Washington.

Maria Lopez  
DECLARANT

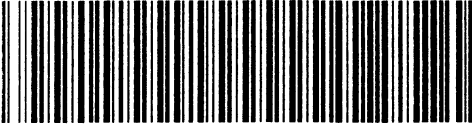
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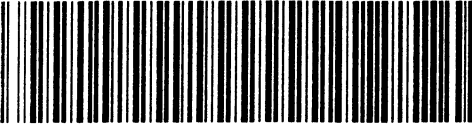
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	Insured Value: \$ 0.00		seattle, WA, 98101, US
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