

70295-5

70295-5

NO. 70295-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JPMORGAN CHASE BANK, N.A.,

Respondent,

v.

MICHIKO STEHRENBURGER

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
HONORABLE JOHN P. ERLICK

AMENDED BRIEF OF APPELLANT

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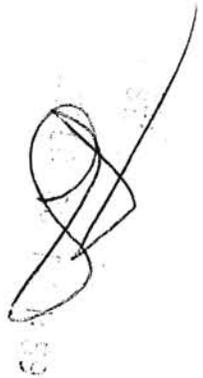


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RAP 18.1	Request for Attorney Fees on Appeal
RAP 2.4(f)	Scope of Review on Appeal: Decisions on certain motions not designated in Notice of Appeal, including CR 52(b) and CR 59
RAP 2.4(g)	Scope of Review on Appeal: Award of Attorney Fees RAP 2.5(a) Scope of Review on Appeal: (1) Lack of trial court jurisdiction (2) failure to establish facts upon which relief can be granted

OTHER AUTHORITIES

Article: Extending Enforcement Rights to Assignees of Lost, Destroyed or Stolen Negotiable Instruments Under U.C.C. Article 3: A Proposal for Reform

Author: Timothy R. Zinnecker
50 Kan. L. Review 111 (November 2001).....*App. 195*

INTRODUCTION

Appellant Stehrenberger appeals from the King County Superior Court's April 1, 2013 order granting summary judgment in favor of Respondent JPMorgan Chase Bank, N.A., in which it ruled that Chase is entitled to enforce a promissory note between Stehrenberger and a third-party lender that Chase has never physically possessed at any time. Chase is not the named payee on the note, nor is the note endorsed to Chase.

The flashpoint of controversy between the parties is whether Chase's lack of physical possession of the original, paper Stehrenberger Promissory Note – which the parties stipulate is a negotiable instrument under the Uniform Commercial Code (RCW 62A et seq.) – equates to Chase's lack of standing as a real party in interest that should bar recovery on its breach of contract claim.

Stehrenberger also seeks review of the trial court's April 1, 2013, dismissal of her counterclaims for Unjust Enrichment and violations of the Consumer Protection Act (RCW 19.86 et seq.) and striking of her cross-motion seeking a determination that Chase was neither the “holder” nor the “person entitled to enforce” the negotiable instrument without allowing oral argument, and review of the trial court's award of attorney fees and costs to Chase under the provisions of the Note.

ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred in granting summary judgment for Chase when it ruled that Chase is “entitled to enforce” the missing original paper Stehrenberger Promissory Note, a negotiable instrument under the Uniform Commercial Code (RCW 62A et seq.), as Chase has admitted that it has never had physical possession of the original paper negotiable instrument at any time nor any “Lost Note Affidavit” or other evidence accounting for its whereabouts. The trial court erred when it chose not to apply RCW 62A.3-309, which specifically governs the “Enforcement of Lost, Destroyed or Stolen Instruments” and specifically requires proof of physical possession of the original paper instrument prior to any loss, and instead it applied RCW 62A.3-203(b) regarding “transferee” rights, when no proof of any “transfer” by physical deliver was evident. The trial court erred when it then dismissed Stehrenberger's two counterclaims and struck Stehrenberger's pending cross-motion without allowing oral argument. Chase's lack of standing as a real party in interest and failure to meet its burden of proof under RCW 62A.3-309 to enforce the Stehrenberger Promissory Note were properly before the trial court, and Chase's motion for summary judgment should have been denied.

Assignment of Error No. 2: Related to the order granting summary judgment above, the trial court erred in dismissing Stehrenberger's counterclaims for Unjust Enrichment and violations of the Consumer Protection Act (RCW 19.86 et seq.) related to the underlying issues of whether or not Chase is "entitled to enforce" the Stehrenberger Note as a matter of law.

Assignment of Error No. 3: The trial court erred in awarding attorney fees and costs to Chase under RCW 4.84.330 and the attorney fee provisions of the Stehrenberger Note.

In the alternative, if this Court declines to apply RCW 62A.3-309 or to reverse summary judgment for Chase:

Assignment of Error No. 4: The trial court erred when it first denied Stehrenberger's motion seeking "adequate protection" from having to pay the same debt twice, as such "adequate protection" is statutorily required of the court under RCW 62A.3-309(b), and when it then awarded attorney fees and costs to Chase in full, absent written findings of fact or conclusions of law in support of its reasoning for overruling Stehrenberger's objections that one-third or more of Chase's \$98,446.76

attorney fees request was related to wasteful, duplicative activities caused by Chase's own actions in denying Stehrenberger's initial discovery requests related to proving its lack of physical possession at any time, which Stehrenberger, through subsequent discovery efforts, was ultimately able to get Chase to admit as true.

ISSUES PRESENTED

1. Under the proof of physical possession requirements of RCW 62A.3-309, which governs the “Enforcement of Lost, Destroyed or Stolen” negotiable instruments, is Chase entitled to enforce the Stehrenberger Promissory Note, when it admits that it is neither the payee nor the endorsee on the Note, and that it has never had physical possession of the original paper Stehrenberger Note at any time?
2. Did the trial court err in applying RCW 62A.3-203(b) instead of RCW 62A.3-309 when it determined that Chase is a “transferee” of the missing Stehrenberger Note from the FDIC and acquires its rights to enforce the Note from the FDIC, when “transfer” is defined under RCW 62A.3-203(a) as physical delivery, and Chase admits that the original paper Stehrenberger Note had ever been physically delivered by the FDIC to Chase at any time?

3. If Chase is not entitled to enforce the Note, and was not entitled to enforce the Note on the date that it first filed this action on February 15, 2011, does Chase lack standing as a real party in interest to enforce this Note, and if so, is this a failure of proof in support of elements essential to its breach of contract claim that now requires dismissal of its action against Stehrenberger?
4. If Chase is not entitled to enforce the Note, was Chase entitled to receive the trial court's award of its attorney fees and costs under the provisions of the Note and RCW 4.84.330?
5. If this Court finds that Chase is entitled to enforce the Note, does this Court also find that the trial court was statutorily required under RCW 62A.3-309(b) to provide Stehrenberger with some form of "adequate protection" against having to pay upon the same Note twice, prior to its entering judgment in Chase's favor?
6. Did the trial court abuse its discretion in awarding attorney fees and costs to Chase double the amount of the claim, without providing its reasoning for overruling Stehrenberger's objections to specific billed items related to duplicative, wasteful activities by Chase that caused delay and increased the cost of this litigation?

STATEMENT OF THE CASE

Appellant Stehrenberger entered into a promissory note for an unsecured business line of credit with Washington Mutual in October of 2007 (the “Note”), and made all payments on the Note to Washington Mutual Bank as agreed. On September 25, 2008, Washington Mutual Bank was abruptly closed down by its banking regulator and the Federal Deposit Insurance Corporation (“FDIC”) was appointed as its Receiver. Also on September 25, 2008, the FDIC entered into an agreement with Respondent JPMorgan Chase Bank, N.A. (“Chase”) to sell certain assets of Washington Mutual Bank to Chase through a Purchase and Assumption Agreement (“PAA”). The arrangement was not a corporate merger of the two banks. Chase indicates that “[Chase] did not own Washington Mutual at any time.” *CP 511 ¶ 3, Appendix (“App.”) 43*

In 2008, Chase contacted Stehrenberger and directed her to make payments on the Note to Chase instead of Washington Mutual Bank. Stehrenberger continued making timely payments to Chase as directed. In November 2010, as part of a loan modification offer, Chase provided Stehrenberger with copies of loan documents from its files. The parties exchanged communications in which Stehrenberger expressed concern about forged signatures and financial information discovered on the loan documents. Stehrenberger requested the opportunity to inspect the

original paper documents to have a neutral third-party forensic examiner make an objective determination as to whether the signature and documents were authentic. Chase stated that it did not have to produce the original paper documents and continued to demand payment. Stehrenberger requested assistance from the Washington Attorney General, which forwarded her request to Chase's banking regulator, which notified Chase of the issue.

In January 2013, Chase again contacted Stehrenberger and stated that Chase could not find the original paper Stehrenberger Note and that Chase was not required to have physical possession of the original paper Note, this time specifically citing RCW 62A.3-309.

Shortly thereafter, Chase filed this breach of contract action against Stehrenberger on February 15, 2011. *CP 1-13, App. 19* In August 2011, Stehrenberger contacted the FDIC's Receiver in Charge, Mr. Robert C. Schoppe, and Mr. Schoppe indicated that the FDIC had not taken physical possession of any of the Washington Mutual Bank loan papers during the FDIC Receivership and had no records of what Washington Mutual Bank owned on the date that it failed. *CP 167 ¶ 16*. Stehrenberger filed her Answer and Counterclaims on October 7, 2011 alleging that Chase lacked standing as the real party in interest to enforce the Note, and counterclaimed for Unjust Enrichment and violations of the

Consumer Protection Act, RCW 19.86 et seq. *CP 14-68* Chase filed its Answer to Counterclaims and discovery responses, admitting that Chase is not mentioned as the payee on the Stehrenberger Note, that there are no endorsements or other markings that mention Chase on the Note, and that Chase has never had physical possession of the original paper Stehrenberger Note. *CP 267-273, corresponding to CP 14-68; App.33-34*

On January 11, 2013, the parties then filed cross-motions: Chase's motion for summary judgment on its breach of contract claim with a hearing date set for February 15, 2013 oral argument *CP 588-834, App. 78* and Stehrenberger's motion for declaratory relief/partial summary judgment seeking a determination that Chase did not qualify as either the "holder" or the "person entitled to enforce" the Note *CP 840-875*. Stehrenberger filed her opposition to Chase's motion for summary judgment on February 6th, 2013 *CP 1056-1082, App. 104* and included objections to the admission of Chase's *Declaration of Raymond Diamond* for failure to comply with the personal knowledge requirements of CR 56(e). Chase filed a motion to strike Stehrenberger's "holder/person entitled to enforce" motion disputing the noted hearing date, but the trial court did not rule whether or not Stehrenberger's motion was to be stricken, and Stehrenberger's cross-motion remained pending hearing. By the CR 56 deadline to oppose Stehrenberger's motion, Chase had filed no

opposition on the merits nor any supporting affidavits in opposition. *See docket entries for oppositions filed for February 6, 2013, App. 304.*

Chase filed its Reply to Stehrenberger's opposition to Chase's motion for summary judgment on February 8, 2013. *CP 1105-1133, App. 187*

Stehrenberger filed subsequent objections to the admission of the copy of the negotiable instrument under RCW 5.46.010 *CP 1215-1221, App.*

130, to the admission of the Purchase and Assumption Agreement as

evidence of chain of ownership of the Note for insufficiency of

description of assets under RCW 62A.9A-108 *CP 1222-1233*, and to the

admission of the *Affidavit of the FDIC (Robert Schoppe)* in support of

Chase's motion for summary judgment, also for failure to comply with

the personal knowledge of CR 56(e) *CP 1234-1237, App. 128*. Although

additional motions were filed, none of those are at issue here.

At the 15-minute summary judgment hearing, the trial court granted

Chase's motion for summary judgment, then dismissed Stehrenberger's

counterclaims and struck all remaining pending motions without

opportunity for oral argument *RP 1-10, App. 215* including

Stehrenberger's pending cross-motion for declaratory relief/partial

summary judgment seeking a determination that Chase was not "holder"

or the "person entitled to enforce" the Note. The trial court declined any

oral argument on Stehrenberger's cross-motion, despite the oral argument requirement under LCR 56(c)(1).

Stehrenberger filed a motion for reconsideration on February 25, 2013. *CP 1318, App. 226* The trial court ordered on March 1, 2013 that Chase may respond to Stehrenberger's motion for reconsideration specifically limited to “whether summary judgment was properly granted to [Chase], pursuant to RCW 62A.3-309, without the submission of a lost note affidavit.” *CP 1368, App. 247* Chase filed its Response on the RCW 62A.3-309 matter on March 8, 2013 *CP 1369-1375, App. 248* and Stehrenberger filed her Reply March 15, 2013 *CP 1376-1408, App. 254*.

On April 1, 2013, the trial court issued its order granting Chase's summary judgment, *CP 1409-1416, App. 7* and then denied Stehrenberger's motion for reconsideration. *CP 1417, App. 6*

Stehrenberger filed a CR 59 motion seeking from the trial court the “adequate protection” from having to pay twice on the same Note required of the trial court prior to entry of judgment, as required under RCW 62A.3-309(b). *CP 1421-1430, App. 278* The trial court denied this motion also. *CP 1509, App. 17*

Chase filed a motion to fix attorney fees and a cost bill seeking \$98,446.76 in fees. *CP 1442-1486, CP 1487-1490* Stehrenberger filed her opposition on the basis of lack of standing and objections to specific

billed items as wasteful and duplicative activities. Stehrenberger objected to Chase's requests for over \$32,000 in attorney fees for its discovery-related efforts related to Stehrenberger disproving Chase's initial denial that "Chase had never had physical possession of the original paper Stehrenberger Promissory Note at any time." *CP 1510-1545, App. 287* Chase filed no reply to the opposition. The trial court granted Chase's motion for attorney fees on June 4, 2013. *CP 1546-1547, App. 299*

On April 30, 2013, within the 30-day deadline, Stehrenberger filed her Notice of Appeal of the trial court's April 1, 2013 orders granting summary judgment for Chase and denying reconsideration, dismissing Stehrenberger's Unjust Enrichment and Consumer Protection Act (RCW 19.86 et seq.) counterclaims, and striking all pending motions, including the striking of Stehrenberger's unopposed cross-motion for declaratory relief/partial summary judgment seeking the court's determination that Chase is neither the "holder" nor the "person entitled to enforce" the missing Note. *CP 1491-1508, App. 1*

SUMMARY OF ARGUMENT

This is a Uniform Commercial Code Article 3 dispute. The parties have stipulated that the Stehrenberger Promissory Note at the center of this dispute is a negotiable instrument under RCW 62A.3-104. *CP 143, App. 22* Chase has admitted that it has never had physical possession of the original paper Note at any time. *CP 869, App. 24, App. 33-43*

Under Washington's version of the Uniform Commercial Code (“UCC”), RCW 62A et seq., a promissory note that is a negotiable instrument is a physical asset, a one-of-a-kind object and a “reified right to payment” itself. *CP 1231, App. 239* In order for a person or entity to be entitled to enforce payments against the obligor upon this negotiable instrument, physical possession of the original paper document bearing the obligor's ink signature must be proved. While an exception to the physical possession requirement exists under RCW 62A.3-309, a mere photocopy of the instrument alone, without evidence of prior physical possession, will not suffice in place of the presence of the original for the sake of enforcing payment.

At its core, the dispute between these two parties concerns Stehrenberger's position that under RCW 62A.3-309, which specifically governs “Enforcement of Lost, Destroyed or Stolen Instruments” and designates the burden of proof upon Chase to show that it had physical

possession of the original Note prior to any loss, that Chase is not entitled to enforce the Stehrenberger Promissory Note – and from there, that Chase cannot prove the elements essential to its breach of contract claim.

Chase, on the other hand, has argued that it has rights to enforce the Note regardless of lack of physical possession, instead as an owner or assignee of the loan, by purchase of the rights from the FDIC as Receiver of the failed Washington Mutual Bank. *CP 588-613, App. 78-103* Chase argues that its ownership of the Stehrenberger Note is evidenced by a Purchase and Assumption Agreement dated September 25, 2008 and under federal law (12 U.S.C. § 1821(d)(2)(G)(i)(II)) related to the FDIC's Receivership rights in bulk-sale transactions of failed bank assets. Whether or not Chase actually purchased the Stehrenberger Note or is currently the lawful owner of it, in light of Chase's admissions in this case, *CP 451-511, App. 33-43*, are issues of fact still unresolved at the time the trial court disposed of the case in favor of Chase.

Under the UCC's Article 3, even if Chase were to be found to be an “owner” of this Note, those ownership rights are still only secondary to whether or not Chase has proof of physical possession of the original paper Note – and in that proof of physical possession, is the only means by which Chase can enforce this UCC Article 3 Note.

Because Chase is not the lender on this Note, admits that it did not pay the specified purchase price required under the terms of the Purchase and Assumption Agreement and has no loan schedule or inventory list identifying the Stehrenberger Note as among the assets purchased from the FDIC, *CP 451-511, App. 33-43* it is uncertain what injury or damages Chase could suffer as a basis for its breach of contract claim.

For the limited scope of this appeal, Stehrenberger respectfully requests that this Court apply the unambiguous physical possession requirements of RCW 62A.3-309 to the undisputed facts of Chase's lack of physical possession to determine that Chase is not entitled to enforce the Note, and that the trial court's order granting summary judgment, related orders and judgments, and award of attorney fees to Chase, be reversed.

ARGUMENT

At the February 15, 2013 summary judgment hearing, the trial court gave its verbal ruling in favor of Chase as a “transferee” of the Note and “holder in due course” from the FDIC:

“Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee, in this case J.P. Morgan Chase Bank, any right of the transferor, Washington Mutual Bank through the FDIC to enforce the instrument, including any right as a holder in due course...” *RP 0005 ¶ 4-6, App. 215*

“The [trial court] relies on the holding in Federal Financial Co. v. Gerard, 90 Wash.App. 169, at pages 176-177. Based upon the holding in that case, the statute set forth under the Uniform Commercial Code adopted in Washington under RCW 62A.3 and the laws under FDIC and FIRREA,¹ the [trial court] grants [Chase's] motion for summary judgment for collection of the subject note...” *RP 0006 ¶ 5-6, App. 215*

The trial court then issued its April 1, 2013 final order after the motion for reconsideration sequence was completed, as follows:

“The [trial court] finds that there is no material issue of fact with regard to JPMorgan Chase Bank's claim for breach of contract in regard to the promissory note executed by Michiko Stehrenberger in favor of Washington Mutual Bank, and that JPMorgan Chase is entitled to enforce the Note, and is therefore entitled to summary judgment on its claim for breach of contract.” *CP1410 ¶1, App. 7*

Assignment of Error No. 1: The trial court erred in granting summary judgment for Chase when it ruled that Chase is “entitled to enforce” the missing original paper Stehrenberger Promissory Note, a negotiable instrument under the Uniform Commercial Code (RCW 62A et seq.), as Chase has admitted that it has never had physical possession of the original paper negotiable instrument at any time nor any “Lost Note Affidavit” or other evidence accounting for its whereabouts. The trial court erred when it chose not to apply RCW 62A.3-309, which specifically governs the “Enforcement of Lost, Destroyed or Stolen

¹ Financial Institutions Reform, Recover and Enforcement Act of 1989, encompassing the the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(2)(G)(i)(II)

Instruments” and specifically requires proof of physical possession of the original paper instrument prior to any loss, and instead applied RCW 62A.3-203(b) regarding “transferee” rights instead, when no proof of any physical “transfer” was evident. The trial court erred when it then dismissed Stehrenberger's two counterclaims and struck Stehrenberger's pending cross-motion without allowing oral argument. Chase's lack of standing as a real party in interest and failure to meet its burden of proof under RCW 62A.3-309 to enforce the Stehrenberger Promissory Note were properly before the trial court, and Chase's motion for summary judgment should have been denied.

STANDARD OF REVIEW

An order granting summary judgment is reviewed de novo. Beaupre v. Pierce County, 161 Wn.2d 568, 571, 166 P.3d 712 (2007). Summary judgment is appropriate only when the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *CR 56*

A defendant in a civil action is entitled to summary judgment if he can show that there is an absence or insufficiency of evidence supporting an element that is essential to the plaintiff's claim. Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989). In such a situation, there

can be no genuine issue as to any material fact, because a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Young, 112 Wn.2d at 225.

A. The Uniform Commercial Code (Washington's RCW 62A.3) governs the enforcement of contracts that are negotiable instruments, and RCW 62A.3-309 specifically governs the enforcement of “Lost, Destroyed or Stolen Instruments.”

The parties stipulated that the Stehrenberger Note is a negotiable instrument as defined by RCW 62A.3-104. *CP 143, CP 859, App. 22*

Chase has admitted that it has never had physical possession of the original paper Stehrenberger Note at any time:

“Chase does not now possess the original [Stehrenberger] promissory note and it cannot tell if it ever took possession of the original promissory note.” *CP 156 ¶ 4,6*

“Chase is not aware that it ever had possession of the original promissory note so it does not know if this note was lost or misplaced by Chase, or were lost by WAMU [Washington Mutual Bank] and thus never delivered to Chase.” *CP 258 ¶ 4, App. 24*

RCW 62A.3-309 specifically governs the enforcement of lost negotiable instruments, and requires proof of physical possession at the time of the loss to be able to enforce the instrument:

“Enforcement of Lost, Destroyed or Stolen instruments.
(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when the loss of possession occurred...”

(b)A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 [“Proof of signatures and stats as holder in due course”] applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.”

A recent Ninth Circuit case interpreted the statute as follows:

“The plain meaning of RCW 62A.3-309(a) is that a person no longer in possession of an instrument is nonetheless entitled to enforce it if that person was in possession and entitled to enforce it when the loss of possession occurred.

Subsection (b) requires a proponent under subsection (a) to prove the terms of the instrument, *e.g.*, via a Lost Note Affidavit...”

In re Arnold John Allen, Jr. and Kimberley Faith Allen, 472 B.R. 559 at 566 (9th Cir. BAP 2012)

Chase has admitted that it has never had physical possession of the original paper Stehrenberger Note at any time, *CP 156 ¶ 4,6*, *CP 258 ¶ 4, App. 24, 71* from which it can reasonably be inferred that Chase was not therefore “in possession...when loss of possession occurred.”

Chase has also admitted that there is no Lost Note Affidavit for the Stehrenberger Note, either issued by Washington Mutual Bank as having been lost by Washington Mutual Bank prior to the date that it failed on September 25, 2008 *CP 873 ¶ 1, App. 42, 74* or issued by the FDIC as its

Receiver as having been lost by the FDIC at any time after the FDIC took control on September 25, 2008. *CP 872 ¶ 4, App. 42, 74*

The application of a statute to a fact pattern is a question of law fully reviewable on appeal. State v. Law, 110 Wn.App. 36, 39, 38 P.3d 374 (2002). If a statute's meaning is plain on its face, then the Court should give effect to that plain meaning as an expression of legislative intent. State ex rel. Citizens Against Tolls (CAT) v. Murphy, 151 Wn.2d 226, 242, 88 P.3d 375 (2004). The purpose of the possession requirement is to protect the obligor on the Note from multiple enforcement claims on the same Note. Premier Capital, LLC v. Gavin, 319 B.R. 27, 33 (1st Cir. 2004).

As mentioned above, RCW 62A.3-309(b) provides:

A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 [“Proof of signatures and stats as holder in due course”] applies to the case as if the person seeking enforcement had produced the instrument.

The statute's subsection (b) is clear that the burden of proof is on the “person seeking to enforce the instrument.” That person “must prove the person's right to enforce,” and only if that proof is made first would the person seeking to enforce then be able to obtain “holder in due course” status. This burden of proof remains squarely upon the “person seeking to enforce,” whether or not there are any other competing claims on the

same note. Marks v. Braunstein, 429 B.R. 248, 2010 U.S. Dist. LEXIS 95700 (“Although conflicting enforcement claims are not a concern in this particular case, the statutes' requirements still apply.”)

Chase had essentially argued that because no one else has yet come forth claiming to have the original paper Note, that Stehrenberger has failed to meet her burden of proof to show that someone else has the right to enforce the Note, and that therefore Chase is entitled to enforce it. This circular reasoning and attempt to shift the burden of proof to the defending party is improper, especially in light of Chase's sole access to the same records that may contain evidence of what Washington Mutual Bank did with this Note, and whether or not it had already been sold off prior to the September 25, 2008 closure date.

As a result of Chase's inability to show that the original paper Note was in the physical possession of Washington Mutual Bank on the date it failed and the FDIC stepped in as Receiver to sell whatever assets were left, the chain of physical possession (and resulting chain of enforcement rights) that Chase claims runs from Washington Mutual Bank to the FDIC to Chase was void at the outset.

While there does not appear to be controlling case law on RCW 62A.3-309 in Washington, other courts in other jurisdictions with identical provisions of UCC § 3-309 and substantially similar fact

patterns, below, have reached a similar conclusion – that without proof of physical possession of the original paper promissory note at any point in time, the entity seeking to enforce it is not entitled to enforce it.

The fact pattern similar in these other cases, down to their simplest elements, are as follow:

Defendant's Note is a negotiable instrument under UCC § 3
Plaintiff never had physical possession of the original paper Note
Plaintiff does not have a Lost Note Affidavit or other evidence proving Plaintiff had physical possession at the time of any loss
These courts used the same version of UCC § 3-309 as Washington's RCW 62A.3-309(a): “Enforcement of Lost, Destroyed or Stolen instruments. (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when the loss of possession occurred...”

In the District Court of District of Columbia, Joslin Company v. Robinson Broadcasting Company, LLC, 977 F.Supp. 491 (D.D.C.) (1997), that court ruled:

“D.C. Code § 28.3-309 provides that:
(a) A person not in possession of an instrument is entitled to enforce the instrument if (1) the person was in possession of the instrument and entitled to enforce it when the loss of possession occurred[...]

Plaintiff is not now in possession of the Note. Nor was plaintiff “in possession of the instrument and entitled to enforce it when the loss of possession occurred.” Indeed, plaintiff in this case never had actual possession of the note, and plaintiff concedes that the note was lost while the FDIC – not plaintiff – was in

possession. [..T]he language...clearly states that the person suing on a lost note is entitled to enforce the note only if that person “was in possession of the instrument *when the loss of possession occurred*. UCC § 3-309 [..T]he plain language of the provision mandates that the plaintiff suing on the note must meet two tests, not just one: it must have been *both* in possession of the note when it was lost and entitled to enforce the note when it was lost.” [emphasis in original][internal citations omitted]

The Joslin decision has since triggered an amended version of § 3-309 by the drafters of the Uniform Commercial Code that seeks to extend enforcement rights to assignees of negotiable instruments who have never had physical possession of the original at any time, but it appears that a majority of the State legislatures have declined to adopt that amendment, including Washington's. Therefore, Washington's version of RCW 62A.3-309 today is exactly the same as the § 3-309 version relied upon by the Joslin court in 1997.

A similar result was reached in State Street Bank and Trust Co. v. Lord, 851 So.2d 790, Fla. L. Weekly D1694 (Fla.App 4 Dist. 2003), also applying the same version of § 3-309 in Florida:

“[T]he record established that State Street never had possession of the original note and, further, that its assignor, EMC, never had possession of the note and, thus, was not able to transfer the original note to State Street.

Section 673.3091 provides, in part:

(1) A person not in possession of an instrument is entitled to enforce the instrument if: (a) The person was in possession of the instrument and entitled to enforce it when loss of possession

occurred [...]

Here, it is unrefuted that State Street was unable to meet the requirement of section 673.3091. The undisputed facts show that the note was lost before the assignment to State Street was made...State Street cannot succeed under the assignment theory. We recognize that this court, and the Third District, have held that the right of enforcement of a lost note can be assigned. Here, however, in contrast to *National Loan, Slizyk, and Deakter*, there is no evidence as to who possessed the note when it was lost...here, the undisputed evidence was that EMC, the assignor, never had possession of the notes and, thus, could not enforce them under section 673.3091 governing lost notes. Because EMC could not enforce the note under section 673.3091, it had no power of enforcement which it could assign to State Street. Were we to allow State Street to enforce the note because some unidentified person further back in the chain may possess the note, it would render the 673.3091 rule meaningless.
[internal citations omitted]

In *McKay v. Capital Resources*, 327 Ark. 737; 940 S.W.2d 869

(1997), that court's rationale was explained as follows:

“The McKays maintain that the record is void of any evidence that either Magnolia Federal or Capital Resources were ever holders of the original note, and that being so, the McKays are left with the possibility of the actual holder enforcing the note against them later. At this point, we underscore that Capital Resources, even without possessing the original note, could have under certain circumstances prevailed in this action against the McKays.

For example, under...§ 4-3-309, a lost, destroyed, or stolen instrument may be enforced, if the following is shown: (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred [...]

Capital Resources apparently never possessed McKays' original note as provided in § 4-3-309(a)(i). But even if it had, Capital

Resources was required to have proven all three factors specified in § 4-3-309(a). Consequently, Capital Resources could not enforce the original note's terms by the use of a copy. Even if all three requirements in § 4-3-309(a) had been proven, the trial court was still obligated to ensure that Capital Resources provided adequate protection to the McKays from any future claim, and this too was not done. See *Resolution Trust Corp. v. Love*, 36 F.3d 972 (10th Cir.1994) (RTC agreed to indemnify the debtor against further liability on the lost note). Capital Resources also urges that the trial court was correct in admitting the copy of the note as an exception under the best evidence rule. Ark. R. Evid. 1002 provides that the original is required to prove the contents of a document. However, under Rule 1003, a duplicate is admissible to the same extent as an original, unless a question of its authenticity is raised or it would be unfair to admit the duplicate in lieu of the original. Capital Resources contends the Rules of Evidence supersede the requirements of the UCC. But we find this argument without merit. First, as previously discussed, we mention the unfairness in these circumstances that, if a duplicate was allowed in place of the original note, the McKays could later be subjected to double liability if the actual holder of the note appeared. Next, we add that the Rules of Evidence are rules of the court involving legal proceedings, while the UCC is composed of statutes of law that established the rights and liabilities of persons.

Again, as previously discussed, Capital Resources, as an assignee of the McKays' note, could not sue on the underlying debt the McKays owed to Landmark Savings. For Capital Resources to have prevailed in enforcing the McKays' note, it was required either to produce the original or satisfy the requirements for a lost negotiable instrument under § 4-3-309(a) and (b). Because Capital failed to do either, we must reverse and remand.

Stehrenberger has similarly objected to the admission of the unauthenticated duplicate of the Note in place of the original RCW

5.46.010 *CP 1215-1221, App. 130*

As mentioned above, Chase admitted that it does not have any Lost Note Affidavit that would establish that the FDIC, as Chase's purported assignor, ever had physical possession of the original paper Stehrenberger Note, *CP 872 ¶ 4, App. 42, 74* or that there is any proof that Washington Mutual Bank itself had physical possession of the original paper Stehrenberger Note on the date that it failed on September 25, 2008. *CP 873 ¶ 1, App. 42, 74*

Without specific evidence of a valid chain of physical custody of the original paper Stehrenberger Note, it cannot reasonably be inferred that Chase acquired enforcement rights to the Stehrenberger Note from the FDIC. Of all of the documents Chase presented in support of its motion for summary judgment – the *Declaration of Raymond Diamond*, the FDIC-Chase Purchase and Assumption Agreement, the *Affidavit of the FDIC (Robert Schoppe)*, and the copies of other secondary transaction histories or account statements – none of these documents actually address head-on the central issue of whether physical possession had ever actually occurred.

As a result, Chase did not meet its burden of proof to show that it is entitled to enforce the Note, and its summary judgment should have been denied for failure of this proof.

B. The trial court erred in applying RCW 62A.3-203(b) instead of RCW 62A.3-309 to the enforcement of a missing negotiable instrument.

At the February 15, 2013 summary judgment hearing, the trial court verbally ruled in favor of Chase as a “transferee” of the Note and “holder in due course” from the FDIC:

“Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee, in this case J.P. Morgan Chase Bank, any right of the transferor, Washington Mutual Bank through the FDIC to enforce the instrument, including any right as a holder in due course...” *RP 0005 ¶ 4-6, App. 215*

The trial court's ruling, however, ignores the definition of “transfer.” RCW 62A.3-203(a), immediately adjacent to RCW 62A.203(b), states that:

“An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.”

Accordingly, RCW 62A.1-201(b)(15) defines “delivery” as, “with respect to an instrument...means voluntary transfer of possession.”

The Alabama Supreme Court also interpreted “transfer” to mean “delivery” and explained that “transfer” cannot occur without first having physical possession, based upon Alabama's version of UCC § 3-203 provision, equivalent to Washington's RCW 62A.3-203:

“Under that section, a “transfer” of an instrument can be accomplished only by its “delivery” to the transferee. “Delivery,” in turn, requires a “voluntary transfer of possession” of the instrument. Ala.Code 1975, § 7-1-201(b)(15). If an instrument is

lost, destroyed, or stolen, it is no longer “possessed” by its owner and, as a result, cannot be “delivered” as required to effect a transfer of the instrument under § 7-3-203.”

Atlantic Nat. Trust, LLC v. McNamee, 984 So.2d 375 (Ala. 2007)

The trial court erred its application of the law because Chase does not meet the definition of a “transferee” of the FDIC under RCW 62A.3-203(b) because Chase never received physical “transfer” or delivery of the original paper Note from the FDIC. This error was immediately called to the trial court's attention at the hearing, when Stehrenberger requested to make her record and then stated:

“May I point out that...RCW 62A.3-203(a) defines “transfer” as physical delivery of a negotiable instrument; in this case it is undisputed that there was never a physical delivery made , and as a result J.P. Morgan Chase is not the “transferee” of the instrument under [RCW 62A.3]203(a).”

The trial court replied:

“Where a note has been lost, the holder of the note may nonetheless prosecute the claim based upon a lost note. J.P. Morgan stands in the shoes of Washington Mutual and FDIC.”

Stehrenberger responded:

“..[I]f you don't mind, with all due respect, for the record, there is no “lost note affidavit” that would evidence that the note was lost by Washington Mutual, or that Washington Mutual had possession on September 25, 2008, such that it could have been [physically] transferred or assigned on that date by the FDIC.”

The trial court concluded:

“The record indicates that the Note is not available by the transferee, J.P. Morgan Chase.” *RP 0008, lines 2-19, App. 215*

The trial court's reliance upon this Court's decision in Federal Financial Co. v. Gerard (“FFC”) was also misplaced because the facts of physical possession are different. In Federal Financial Co. v. Gerard, this Court determined that the plaintiff seeking to enforce the Gerard note was the “current holder” of it Federal Financial Co., at 172 ¶ 2 and refers to the Gerard note as “formerly *held* by the FDIC.” *Id.*, at 175 ¶ 4 [emphasis added]

The Washington State Supreme Court clarified in Bain v. Metropolitan Mortg. Group, Inc., 285 P.3d 34, 175 Wn.2d 83 (Wash. 2012) that “holder” with respect to a negotiable instrument, as “the person in possession if the instrument is payable to bearer or, in the case of any instrument payable to an identified person, if the identified person is in possession.” RCW 62A.1-201(b)(21(A))

Because Chase has never had physical possession, it is neither the current “holder” nor the “transferee” by way of receipt of physical delivery. Without first being a “holder” with physical possession, Chase cannot become the “holder in due course” of the Note, which RCW 62A.3-302 (a) defines as “....the holder of an instrument...”

The trial court did not recognize that Chase cannot neither be a “transferee” of the rights of the FDIC or Washington Mutual Bank, nor a

“holder in due course” on the Note without first having physical possession.

Stehrenberger filed her motion for reconsideration on February 25, 2013. The trial court then for the first time focused on the RCW 62A.3-309 lack of physical possession issue on March 1, 2013 it it ordered:

“Chase may respond to [Stehrenberger's] motion for reconsideration on the following issue: whether summary judgment was properly granted to [Chase], pursuant to RCW 62A.3-309, without the submission of a lost note affidavit.”
CP 1368, App. 247

After the parties completed the reconsideration motion sequence, the trial court on April 1, 2013 issued its orders granting Chase's summary judgment *CP 1409-1416, App. 7* and denying Stehrenberger's motion for reconsideration *CP 1417, App. 6*. The trial court declined to explain its reasoning as to how it had reconciled the record fact of Chase's lack of physical possession at any time with the proof of past physical possession required by RCW 62A.3-309, stating only that:

“The [trial court] finds that there is no material issue of fact with regard to JPMorgan Chase Bank's claim for breach of contract in regard to the promissory note executed by Michiko Stehrenberger in favor of Washington Mutual Bank, and that JPMorgan Chase is entitled to enforce the Note, and is therefore entitled to summary judgment on its claim for breach of contract.” *CP1410 ¶1, App. 7*

The trial court erred in declining to apply an unambiguous statute to the undisputed facts of Chase's lack of physical possession in this case,

and the order granting Chase's motion for summary judgment should be reversed.

C. The FDIC as Receiver could not “transfer” to Chase something that Washington Mutual Bank itself did not have.

Chase asserted that the FDIC, as Receiver of Washington Mutual Bank, had statutory authority under 12 U.S.C. § 1821(d)(2)(G)(i)(II) (Financial Institutions Reform, Recovery and Enforcement Act of 1989, “FIRREA”) to “transfer” the assets of Washington Mutual Bank to Chase on September 25, 2008.

Washington Mutual Bank itself did not have possession of the Stehrenberger Note on September 25, 2008, and the FDIC therefore could not physically transfer it. Without physical possession, the FDIC did not qualify as the “holder” (RCW 62A.1-201(b)(21(A)) of the original paper Note. Without first being the “holder” the FDIC could not become the “holder in due course” of the Note (RCW 62A.3-302(a)). As a result, Chase as a purported assignee cannot then derive any “holder in due course” status from the FDIC. The trial court erred when it ruled that under RCW 62A.3-203(b), Chase had acquired rights to enforce the Stehrenberger Note as a “transferee” and a “holder in due course.”

RP 0005 ¶4-6, App. 215

The statutory authority of FIRREA, purportedly authorizing the FDIC to physically “transfer” something that did not exist in its own physical

possession, cannot cure the defects in the broken chain of physical possession of this Note. As a result, the trial court's order granting summary judgment for Chase on the basis of RCW 62A.3-203(b) and FIRREA should be reversed.

D. The Uniform Commercial Code makes a stark distinction between the “owner” of a note and the “person entitled to enforce” it. Even for an “owner,” under Washington's RCW 62A.3-309, proof of *direct* physical possession by the “person seeking to enforce” is still required to be able to enforce a note that is a negotiable instrument.

Under RCW 62A.3, Chase cannot bypass the UCC's physical possession requirement simply by claiming that it as an “assignee” or purchaser-owner of the Stehrenberger Note and loan under the FDIC-Chase Purchase and Assumption Agreement. As explained in the Uniform Commercial Code Comments:

“A person who has an ownership right in an instrument might not be a person entitled to enforce the instrument. For example, suppose X is the owner and holder of an instrument payable to X. X sells the instrument to Y but is unable to deliver immediate possession to Y. Instead, X signs a document conveying all of X's right, title and interest in the instrument to Y. Although the document may be effective to give Y a claim to ownership of the instrument, Y is not the person entitled to enforce the instrument until Y obtains possession of the instrument. No transfer of the instrument occurs under Section 3-203(a) until it is delivered to Y.
West's Revised Code of Washington Annotated, Title 62A, 2003 edition, Comment to RCW 62A.3-203, p. 64 ¶ 1, *CP 1231, App. 239*

Chase has failed to establish how it came to be the actual owner of this specific Stehrenberger Note under the terms of the FDIC-Chase

Purchase and Assumption Agreement related to the receivership bulk-sale of Washington Mutual Bank assets. *CP 451-511, App. 33-43*

In its summary judgment motion, Chase cited to a number of cases in jurisdictions that rely on a different version of UCC §3-309 from Washington's RCW 62A.3-309. That other version, which appears to have been adopted in only 11 of the 50 states, allows an assignee that has never had physical possession of the original paper instrument to be able to enforce it as long as it can prove that it acquired ownership of it. Chase has presented insufficient evidence, however, to support that it ever acquired even ownership of this specific Note under the FDIC-Chase transaction and its summary judgment should have been denied.

In a failed-bank receivership scenario under Texas law, the court in Priesmeyer v. Pacific Southwest Bank, F.S.B., 917 S.W.2d 937 (Tex.App. Austin 1996) determined that the party attempting to enforce the note could not be awarded summary judgment as a matter of law, as a result of the bank witness's lack of personal knowledge regarding whether the specific note was among the bulk-acquisition of notes from a failed bank. Applying the equivalent of CR 56(e), the Priesmeyer court below determined that the witnesses' lack of personal knowledge of the specific Priesmeyer note barred its attempts at recovery as an "owner":

On December 29, 1988, Independence failed and the Federal

Savings and Loan Insurance Corporation ("FSLIC") was appointed its receiver. That same day, Pacific Southwest Bank ("Pacific") acquired substantially all of Independence's assets by a transfer and assignment agreement executed by Pacific and by the FSLIC as receiver for Independence. To obtain a summary judgment on the note, Pacific must have proven as a matter of law that it is the note's holder or owner.² Pacific is not a "holder" because the note is not indorsed to it. Pacific must therefore prove the transfer by which it acquired the note...to obtain a summary judgment, affidavit testimony must affirmatively show that it is based on personal knowledge. The mere recitation that the affidavit is based on personal knowledge is inadequate if the affidavit does not positively show a basis for such knowledge.

Pacific did not submit any documents showing the transfer of the note from Independence to the FSLIC or from the FSLIC to Pacific, nor could it locate the original note. Pacific based its motion for summary judgment on the affidavit of Barbara Briggs, a senior vice president at Pacific. Briggs averred that Pacific became the owner of the note pursuant to a transfer and assignment agreement executed by the FSLIC as receiver for Independence Savings and Loan Association. The blanket transfer and assignment agreement, a copy of which was attached to Briggs' affidavit, did not list individual notes...

At issue is whether the Priesmeyer note was among the assets of Independence when it failed. Briggs testified that the Priesmeyer note was among the assets transferred from the FSLIC to Pacific but did not describe how she personally knew that fact. Indeed,

² As of January 1, 1996, Texas had adopted the amended version of UCC § 3-309, which allows for an assignee of an instrument that was lost before the date of assignment to enforce without physical possession of the original paper instrument: "(a) A person who is not in possession of an instrument is entitled to enforce the instrument if: (1) the person seeking to enforce the instrument (A) was entitled to enforce the instrument when loss of possession occurred; or (B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred; (2) the loss of possession was not the result of a transfer by the person or a lawful seizure..." [emphasis added] Washington's version of UCC §3-309, RCW 62A.3-309, places emphasis solely on physical possession at the time of loss: "(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure..."

her affidavit is devoid of any facts showing personal knowledge of the note, other than her calculation of interest due. Nor did Briggs state any facts indicating that she personally knew that the note was among the assets of Independence when it went into receivership. We cannot conclude from this evidence that Pacific is the note's owner...Pacific has not conclusively proven its cause of action because it has not proven, as a matter of law, that it is the note's owner. It is especially important that Pacific prove that the note was among the assets transferred to the FSLIC since it could not produce the original note...We hold that Pacific did not prove as a matter of law that it was the owner of the note.

Priesmeyer v. Pacific Southwest Bank, F.S.B., 917 S.W.2d 937 (Tex.App.

Austin 1996). *CP 1248, App. 243*

Chase instead relied on the *Declaration of Raymond Diamond, App. 180*, an employee that claims to have personal knowledge of Chase's purported acquisition of the Stehrenberger Note from the FDIC, but whom Chase admits did not begin working at Chase until December 2009, *CP 1101, App. 184*, over a year after the FDIC-Chase transaction purported transferring the Stehrenberger Note took place on September 25, 2008. Stehrenberger both objected and moved to strike the declaration and its accompanying documents for failure to comply with CR 56(e). *CP 1080 ¶ 2, App. 128 ¶ 2, CP 1085-1104, App. 168* Further, Chase has admitted that “No schedule of all of the loans purchased...by Chase from Washington Mutual has been prepared...” *CP 862 ¶ 2, CP 869 ¶ 2, CP 454 ¶ 2* and “No breakdown was ever prepared for the purchase price paid for each loan,” *CP 869 ¶ 4* and “there is no

document that specifically mentions the Stehrenberger Note...”

[indicating that Chase is the owner of any loan or obligation related to Stehrenberger]. *CP 452; all discovery responses collected at App. 33-34*

Even if this Court were to determine that Chase is somehow the “owner” of the Stehrenberger Note, Chase is still not entitled to enforce payment upon a Note that is a negotiable instrument without having that proof of physical possession. Chase's motion for summary judgment should have been denied.

E. As a result, Chase lacks standing as a real party in interest to enforce this Note and cannot establish the existence of an enforceable contract between the two parties in this case. Chase's breach of contract claim must therefore be dismissed.

Without an essential element required for Chase's breach of contract claim – proof of an enforceable contract between the parties – the trial court should have denied Chase's motion for summary judgment.

Chase's breach of contract claim is its only cause of action. If this Court should accept the line of reasoning presented herein, Stehrenberger respectfully requests that this Court reverse the trial court's order granting summary judgment for Chase, and remand to the trial court with instructions that Chase's breach of contract claim be dismissed in its entirety.

Assignment of Error No. 2: Related to the order granting summary judgment above, the trial court erred in dismissing Stehrenberger's counterclaims for Unjust Enrichment and violations of the Consumer Protection Act (RCW 19.86 et seq.) related to the underlying issues whether or not Chase is “entitled to enforce” the Stehrenberger Note as a matter of law.

STANDARD OF REVIEW

An order granting summary judgment is reviewed de novo. Beaupre v. Pierce County, 161 Wn.2d 568, 571, 166 P.3d 712 (2007).

Stehrenberger's two counterclaims were dismissed as a direct result of the trial court's April 1, 2013 order granting of Chase's motion for summary judgment. *CP 1410 line 12, App. 7 line 12* The counterclaims had already survived Chase's earlier CR 12(b)(6) motion to dismiss on March 16, 2012 and continue to acquire further vitality after Chase's stipulation Chase does not contest that the “public interest” impact element of Stehrenberger's Consumer Protection Act (RCW 19.86 et seq.) counterclaim has already been met. *CP 1366, App. 32*

In light of the above, Stehrenberger requests that this Court reverse the dismissal of Stehrenberger's Unjust Enrichment and violations of the Consumer Protection Act (RCW 19.86 et seq.) and remand with instructions to the trial court that the discovery and other matters pending

at the time of the summary judgment order that disposed of this case be restored for further proceedings.

Assignment of Error No. 3: If this Court agrees that under RCW 62A.3-309, Chase was not entitled to enforce the Note and summary judgment should be reversed, then the trial court's award of attorney fees and costs under RCW 4.84.330 and the attorney fee provisions of the Note was improper and the order should be reversed or vacated. RAP 2.4(g)

STANDARD OF REVIEW

An order granting summary judgment is reviewed de novo. Beaupre v. Pierce County, 161 Wn.2d 568, 571, 166 P.3d 712 (2007).

As above, also related to its order granting summary judgment for Chase, the trial court awarded Chase attorney fees and costs under RCW 4.84.330 and the “Attorney Fee” provisions of the Stehrenberger Note.

If this Court chooses to apply RCW 62A.3-309 to reach the conclusion that Chase is not entitled to enforce the Stehrenberger Note, Stehrenberger requests that this Court reverse or vacate the accompanying order awarding all attorney fees and costs to Chase that were based upon the provisions of the same Note.

In the alternative, only if this Court declines to reverse summary judgment for Chase:

Assignment of Error No. 4: The trial court erred when it first denied Stehrenberger's motion seeking “adequate protection” from having to pay the same debt twice, as such “adequate protection” is statutorily required of the court under RCW 62A.3-309(b), and when it then awarded attorney fees and costs to Chase in full, absent written findings of fact or conclusions of law in support of its reasoning for overruling Stehrenberger's objections that one-third or more of Chase's \$98,446.76 attorney fees request was related to wasteful, duplicative activities caused by Chase's own actions in denying Stehrenberger's initial discovery requests related to proving its lack of physical possession at any time, that Stehrenberger through subsequent discovery efforts was ultimately able to get Chase to admit as true.

STANDARD OF REVIEW ON CR 59 MOTION
REQUESTING “ADEQUATE PROTECTION”

An order granting summary judgment is reviewed de novo. Beaupre v. Pierce County, 161 Wn.2d 568, 571, 166 P.3d 712 (2007).

As covered in Assignment of Error No. 1 above, RCW 62A.3-309(b) explicitly states:

“The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.”

The exact manner of “adequate protection” is up to the discretion of the trial court. However, whether or not to provide any at all is not. The plain language of RCW 62A.3-309(b) requires it of the court directly. The trial court denied Stehrenberger's CR 59 motion seeking leave to file a motion to alter or amend the judgment. Stehrenberger's CR 59 motion was filed prior to the trial court's entry of judgment on April 16, 2013.

The trial court erred in denying the motion and declining to take the steps required by RCW 62A.3-309 to provide Stehrenberger with adequate protection from the risk of having to pay twice on the missing Note, and as a result its denial of the CR 59 motion should be reversed.

STANDARD OF REVIEW ON

DISPUTED PORTIONS OF ATTORNEY FEE AWARD

Stehrenberger assigns error to the trial court's award of attorney fees under the abuse of discretion standard. Ethridge v. Hwang, 105 Wn.App. 447, 460, 20 P.3d 958 (2001).

The trial court's June 4, 2013 order awarding \$98,446.76 to Chase on a \$49,000 Note balance added only one sentence as its entire rationale:

“The [trial court] finds that these fees and costs were reasonable and necessary to prosecute plaintiff's claims in light of the defendant's protracted defense of this matter.” *CP 1546, App. 18*

In calculating fee awards, courts should be guided by the lodestar methodology. Mahler v. Szucs, 135 Wn.2d 398, 433, 957 P.2d 632, 966 F.2d 305 (1998), *modified* 957 P.2d 632. Under the lodestar methodology, a court must first determine that counsel expended a reasonable number of hours in securing a successful recovery for the client. Mahler. 135 Wn.2d at 434. The trial court should exclude wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims. Mahler. 135 Wn.2d at 434. The lodestar fee, calculated by multiplying the reasonable hourly rate by the reasonable number of hours incurred in obtaining the successful result, may be adjusted upward or downward in the trial court's discretion. Mahler, 135 Wn.2d at 434. As the Division 2 court summarized in Mayer v. Sto Industries, Inc., 98 P.3d 116, 123 Wn.App. 443 (Wash.App. Div. 2 2004), *modified* 132 P.3d 115 (Wash. 2006):

"The appellate courts exercise a supervisory role to ensure that discretion is exercised on articulable grounds." Eagle Point Condo. Owners Ass'n v. Coy, 102 Wash.App. 697, 715, 9 P.3d 898 (2000) (citing Mahler v. Szucs, 135 Wash.2d 398, 434-35, 957 P.2d 632 (1998) *modified* 957 P.2d 632]). The trial court must make findings of fact 123 Wn.App. 461 and conclusions of law on the record for its award to stand on appeal. Coy, 102 Wash.App. at 715, 9 P.3d 898 (citing Mahler, 135 Wash.2d at 433-35, 957 P.2d 632). This court remands the trial court's fee award when the findings and conclusions are entirely conclusory

and without explanation for the basis of the award. Coy, 102 Wash.App. at 715-16, 9 P.3d 898.

Chase filed its motion for attorney fees and costs seeking an amount of approximately double the \$49,000 plus interest amount on the Note that Chase was seeking to collect. *CP 1442-1486* Chase's counsel, through his declaration, stated that "Chase has incurred roughly \$32,000 in attorney fees to address the discovery in this case. Linkon Decl. ¶ 2." *CP 0277 ¶ 1* and then requested an award of attorney fees and costs of \$98,446.76. *CP 1449 ¶ 1*

Stehrenberger filed her opposition and objections, identifying specific items on Chase's billings that Stehrenberger asserted were improperly billed as a result of wasteful or duplicative activities unnecessary for the prosecution of the case. Stehrenberger requested that the award of attorney fees be reduced appropriately. *CP 1510-1545, App. 287*

The trial court granted Chase's motion for attorney fees with the single additional sentence above, referring only to a "protracted defense." From this single sentence, it is not clear whether or not careful consideration was given to the objections before the trial court awarded Chase's attorney fees of double the amount of the amount sought on the Note.

Stehrenberger respectfully requests that this Court either substitute its discretion for that of the trial court's and reduce the amount of the

attorney fee and cost award in an amount it deems appropriate, or reverse and remand to address the objections of the specific items earlier opposed.

REQUEST FOR ATTORNEY FEES ON APPEAL UNDER RAP 18.1

If this Court chooses to reverse the trial court's summary judgment order and find Stehrenberger to be the prevailing party, Stehrenberger hereby requests her costs and reasonable attorney fees, including attorney fees for limited representation under CR 4.2 and RPC 1.2(c), if applicable. This request for attorney fees is under RCW 4.84.330, the "Attorney's Fees; Expenses" provisions of the copy of the Note upon which Chase has sued, *CP 7 ¶ 7*, and *Kaintz v. PLG, Inc.*, 147 Wn.App. 782 (Wash. App. Div. 1 2008), which states:

"Mutuality of remedy is an equitable principle, recognized in the case law of Washington, that can support the award of attorney fees to the prevailing party in an action brought on a contract. Today we explicitly hold that this equitable principle can support such an award even in circumstances in which the party that prevailed did so by establishing that the contract at issue was unenforceable or inapplicable."

CONCLUSION

For the foregoing reasons, Appellant Stehrenberger respectfully requests that the Court reverse the trial court's order granting summary judgment in favor of Chase, vacate the related judgment, reverse the

award of attorney fees and costs to Chase, and reverse dismissal of her Unjust Enrichment and Consumer Protection Act (RCW 19.86) counterclaims with instruction to the trial court to reset the trial calendar to allow her to proceed on these theories.

If this Court determines that Chase lacks standing as a real party in interest to enforce the Note, or that the trial court otherwise lacked jurisdiction over Chase's claim, Stehrenberger additionally requests that this Court either dismiss directly, if so allowed, or remand with instructions to the trial court to dismiss Chase's breach of contract claim in its entirety and vacate all related judgments, orders, and attorney fee and cost awards in favor of Chase. In the event that these requests are improper, Stehrenberger respectfully requests in the alternative, any further relief that this Court determines to be equitable and just.

Respectfully submitted,

October 21, 2013



Michiko Stehrenberger
Appellant Pro Se
215 S. Idaho Street
Post Falls, ID 83854

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 21, 2013, I filed by postal mail, this **Amended Brief of Appellant** in Case No. 70295-5-1, as one original with one true and correct copy, with the Washington State Court of Appeals, Division I, with USPS.com tracking #**9405 5036 9930 0096 8469 70** to:

Washington Court of Appeals, Division I
600 University Street
One Union Square
Seattle, WA 98101-1176

and also served by mail on October 21, 2013 one true and correct copy of the Amended Brief of Appellant upon the Respondent, JPMorgan Chase Bank, N.A., via its counsel of record, by postal mail with USPS.com tracking #**9405 5035 9930 0096 7713 57** to:

Mr. Fred Burnside and Ms. Rebecca Francis
Davis Wright Tremaine, LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3047

I additionally served upon the Respondent, JPMorgan Chase Bank, N.A., via its counsel of record, by email including a download link to an online DropBox archive folder, available for immediately download, containing an electronic PDF copy of the Amended Brief of Appellant, to:

Mr. Fred Burnside, at FredBurnside@DWT.com
Ms. Rebecca Francis, at RebeccaFrancis@DWT.com
Mr. Steven K. Linkon, at SLinkon@RCOLegal.com

Dated October 21, 2013



Michiko Stehrenberger, Appellant pro se

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Mr. Fred Burnside, at FredBurnside@DWT.com
Ms. Rebecca Francis, at RebeccaFrancis@DWT.com
Mr. Steven K. Linkon, at SLinkon@RCOLegal.com

Dated October 21, 2013



Michiko Stehrenberger, Appellant pro se

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JPMORGAN CHASE BANK, N.A.,)	
Plaintiff,	)	No. 11-2-06768-8 SEA
)	
v.	)	NOTICE OF APPEAL TO THE COURT OF APPEALS,
	)	DIVISION I
MICHIKO STEHRENBARGER,)	
Defendant.)	
_____)	

Defendant Michiko Stehrenberger seeks review by the Court of Appeals, Division I, of the Orders and decisions as identified and set forth below, and as set forth in greater detail in the attached *Exhibit A*.

1. *Order Granting Plaintiff's Motion for Summary Judgment* (entitlement to enforce a negotiable instrument under RCW 62A.3), and accompanying *Order Denying Defendant's Motion for Reconsideration*, as entered April 1, 2013.
2. Judgment for Plaintiff, as entered April 17, 2013.
3. *Order Granting in part and Denying in part Plaintiff's Motion to Dismiss Defendant's Counterclaims* (dismissing Defendant's FDCPA counterclaim), as entered March 16, 2012 and *Order Denying Defendant's Motion for Reconsideration*, as entered April 9, 2012.

A copy of the decisions are attached.

DATED this 30th day of April, 2013.



Michiko Stehrenberger, Defendant pro se

NOTICE OF APPEAL - EXHIBIT A

Defendant Michiko Stehrenberger seeks review by the Court of Appeals, Division I, of the specific Orders and decisions identified and set forth below:

1. The trial court's *Order Granting Plaintiff JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment*, as was entered April 1, 2013 (Dkt. # 179) along with the trial court's accompanying *Order Denying Defendant's Motion for Reconsideration*, as entered April 1, 2013 (Dkt. # 180), which includes the trial court's dismissal of Defendant's counterclaims (Unjust Enrichment and RCW 19.86 Consumer Protection Act violation-related counterclaims) and the trial court's implicit denial and overruling (by lack of timely ruling upon) of Defendant's pending discovery motions, Defendant's motions for declaratory relief/partial summary judgment, Defendant's motion to file a supplement to counterclaims, and all other of Defendant's motions and objections, in which the trial court stated:

“The Court finds that there is no issue of material fact with regard to JPMorgan Chase Bank's claim for breach of contract in regard to the promissory note executed by Michiko Stehrenberger in favor of Washington Mutual Bank, and that JPMorgan Chase Bank is entitled to enforce the Note, is therefore entitled to summary judgment on its claim for breach of contract. [...] That Michiko Stehrenberger's counter claims for Unjust Enrichment and for violation of the Consumer Protection Act are without merit and should be dismissed and therefore JPMorgan Chase Bank is granted summary judgment as to Stehrenberger's counterclaims. Because this ruling granting summary judgment disposes of the issues in this case, the pending discovery motions, Defendant's motions for declaratory relief/partial summary judgment, Defendant's motion to file a supplement to counterclaims are moot and are off calendar.”¹

2. The trial court's Order denying (by lack of timely ruling upon) Defendant's *Motion for Leave pursuant to CR 59(j) and Motion to Amend/Alter Judgment (CR 59(h) and Amend Findings (CR 52(b))* (Dkt. # 181B)
3. The trial court's Order dismissing Defendant Stehrenberger's counterclaim alleging violations of the Fair Debt Collection Practices Act, as entered on March 16, 2012 (Dkt. # 51) and related *Order Denying Defendant's Motion for Reconsideration*, as entered April 9, 2013 (Dkt. # 53).
4. The trial court's overruling (by lack of timely ruling upon) all of Defendant Stehrenberger's objections, including, in part:

1 NOTE: The attached Exhibit “1” referencing the moving and opposition paper and pleadings to the April 1, 2013 *Order Granting Plaintiff's Motion for Summary Judgment* is incomplete and only shows the record as of 2-14-2013 (docket incomplete up through Dkt. # 165) rather than the complete docket as of the 4-1-2013 Order.

- Defendant's objections to the admission of a copy of a negotiable instrument (Stehrenberger Promissory Note) without production of the original negotiable instrument, for failure to comply with RCW 5.46.010 (Dkt. # 159-163)
 - Defendant's objection to the admission of the *Purchase and Assumption Agreement* (failure to comply with RCW 62A.9A-108 and 9A-203; purchase of the negotiable instrument not having been completed; Plaintiff not the owner)(Dkt. # 159-163).
 - Defendant's objection to the admission of the *Affidavit of the Federal Deposit Insurance Corporation* (Mr. Robert Schoppe) for failure to comply with the requirements of CR 56(e) (Dkt. # 159-163).
 - Defendant's Case Law Summaries/Opposition/Objections to case law cited by Plaintiff (Dkt # 159-163).
 - Defendant's objections to Plaintiff's Reply to Opposition (Motion for Summary Judgment), including Plaintiff's Unpled Causes of Action ("account stated" and "unjust enrichment") and objection to admission of the disputed "short version" of the *Purchase and Assumption Agreement* with regard to new information about a different version of a longer operative *Agreement* between the FDIC and Plaintiff, as referenced in a recent February 11, 2013 *Jolley* decision in the California Court of Appeal) (Dkt. # 166-167).
 - Defendant's objection to Plaintiff's references to the Ohio case dismissal due to the *Jolley* decision regarding other courts' improper taking of judicial notice of the terms and effects of the shorter version of the *Purchase and Assumption Agreement*. (Dkt. # 166-167).
 - Defendant's objection to the *Declaration of Raymond Diamond in support of Plaintiff's Motion for Summary Judgment* and accompanying exhibits, for failure to comply with CR 56(e) (Dkt. #137-144)
5. The trial court's denial (by lack of timely ruling upon) of Defendant Stehrenberger's motions, including:
- Defendant's *Motion to Compel Plaintiff's Discovery Requests* (Dkt. # 93) with scheduled hearing date of January 15, 2013 (motion not timely heard as scheduled, then removed from the calendar as moot on February 15, 2013).
 - Defendant's *Motion for Declaratory Relief/Partial Summary Judgment* (Non-Dispositive) related to "holder" and "person entitled to enforce" negotiable instrument determination (Dkt. # 113), with scheduled hearing date of January 15, 2013, to which Plaintiff filed no Opposition papers on the record (motion not timely heard as scheduled, then removed from the calendar as moot on February 15, 2013).
 - Defendant's *Motion for Declaratory Relief/Partial Summary Judgment* related to a "division" and "by operation of law" determination (Dkt. # 136), with a scheduled hearing date of February 5, 2013 (motion not timely heard as scheduled, then removed from the calendar as moot on February 15, 2013).

- Defendant's *Motion to Compel Plaintiff's Production of Deposition Witnesses* (Dkt. # 141) (motion not timely heard as scheduled, then removed from the calendar as moot on February 15, 2013).
 - Defendant's *Motion for Leave to File Supplemental Counterclaims pursuant to CR 15(d)*, along with Exhibit A (Supplemental Counterclaims) (Dkt. # 147-148) with a scheduled hearing date of February 14, 2013 (motion not timely heard as scheduled, then removed from the calendar as moot on February 15, 2013).
 - Defendant's *Motion to Strike the Declaration of Raymond Diamond in support of Plaintiff's Motion for Summary Judgment*, and accompanying exhibits (Dkt. # 109) due to failure to comply with CR 56(e), with a scheduled hearing date of February 15, 2013 (motion not heard as scheduled, then removed from the calendar as moot on February 15, 2013).
6. The trial court's related verbal ruling granting Plaintiff JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment, as ruled during oral argument on February 15, 2013 (Dkt. # 168), which includes the trial court's dismissal of Defendant's Counterclaims and its implicit denial and overruling (by lack of timely ruling upon) of Defendant's pending discovery motions, Defendant's motions for declaratory relief/partial summary judgment, Defendant's motion to file a supplement to counterclaims, and all other of Defendant's motions and objections, in which the trial court stated:

"[...] There are a multiplicity of other motions, including the defendant's motion for declaratory relief, motions for protective order, motions to compel, motions for leave to file, to supplement counterclaims, and motions to consolidate motions. What we are going to do is we are going to proceed on the summary judgment motion, on the plaintiff's part, and then we will address the remaining motions, depending upon the Court ruling.[...] The collection action brought by J.P. Morgan Chase is under a promissory note, which is based on this record, undisputedly entered into between Ms. Stehrenberger and the now failed Washington Mutual Bank. Under Washington law, RCW 62A.3-104, a note is a negotiable instrument under the Uniform Commercial Code. Accordingly, Washington courts look to the code to determine the rights of an assignee of a note. Those rights are defined in RCW 62A.3-203(b), which provides as follows: "Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee, in this case J.P. Morgan Chase Bank, any right of the transferor, Washington Mutual Bank through the FDIC to enforce the instrument, including any right as a holder in due course. But the transferee cannot acquire rights of a holder in due course by a transfer directly or indirectly from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument."

[...] The Court relies upon the holding in *Federal Financial Company v. Gerard*, 90 Wash.App 169, at pages 176-177. Based upon the holding in that case, the statute set forth under the Uniform Commercial Code adopted in Washington under RCW 62A.3, and the laws under FDIC and FIRREA, the Court grants plaintiff's motion for summary judgment for collection of the subject note, and will enter judgment in the amount owe and doing as of today's date.

The Court grants plaintiff's motion for summary judgment of dismissal of counterclaims based upon alleged fraud, illegality, breach of the Washington State Consumer Protection Act under RCW 19.86.010, et seq., and all other counterclaims of the defendant to counterclaim plaintiff as being unsupported based upon the uncontroverted facts in this record. The Court having ruled

and granted on plaintiff's motion for summary judgment, all other collateral motions are no longer relevant and are hereby stricken."

7. The trial court's Judgment for Plaintiff, as entered on April 17, 2013 (Dkt. # 183)
8. The trial court's Order granting Plaintiff's Motion to Fix Attorney's Fees as Costs of Suit, if any such Order is entered prior to the filing of this Notice of Appeal.
9. Any other trial court decisions (direct or implicit, if not ruled upon directly) that may be derived from the court record in Case No. 11-2-06768-8 SEA, if such decisions have not already been referenced above, that can assist the Court of Appeals in its determination of whether or not to reverse and remand.

A copy of the decisions that have been entered by the trial court as of the date of this Notice are attached:

- *Order Granting Plaintiff's Motion for Summary Judgment* (entitlement to enforce the negotiable instrument under RCW 62A.3) , and accompanying *Order Denying Defendant's Motion for Reconsideration*, as entered April 1, 2013.
- Judgment for Plaintiff, as entered April 17, 2013.
- *Order Granting in part and Denying in part Plaintiff's Motion to Dismiss Defendant's Counterclaims* (dismissing Defendant's FDCPA counterclaim), as entered March 16, 2012 and *Order Denying Defendant's Motion for Reconsideration*, as entered April 9, 2012.

DATED this 30th day of April, 2013



Michiko Stehrenberger
Defendant pro se

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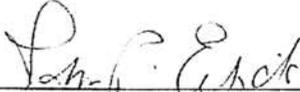
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JP MORGAN CHASE BANK,)	
)	
Plaintiff,	)	No. 11-2-06768-8 SEA
v.)	
	)	ORDER DENYING DEFENDANT'S MOTION
MICHIKO STEHRENBURGER,	)	FOR RECONSIDERATION
)	
Defendant.)	
)	

THIS MATTER is before the court on defendant Stehrenberger's Motion for Reconsideration of Order Granting Plaintiff's Motion for Summary Judgment, and the court having considered defendant's motion, plaintiff's response, and defendant's reply, and being fully advised in the premises, NOW THEREFORE,

IT IS ORDERED that defendant's motion for reconsideration is DENIED.

DATED this 1st day of April, 2013.



 John P. Erlick, Judge

ORIGINAL

The Honorable John P. Erlick
Dept. 51; W-1060
Hearing Date: February 15, 2013
Hearing Time: 10:15 am

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

v.

MICHIKO STEHREBERGER, an
individual,

Defendant.

No. 11-2-06768-8 SEA

[Proposed]

**ORDER GRANTING SUMMARY
JUDGMENT**

Clerk's Action Required

The Motion of Plaintiff JPMorgan Chase Bank for summary judgment came on regularly for hearing before this Court on February 15, 2013. Steven K. Linkon appeared on behalf of the moving party. Defendant Michiko Stehrenberger appeared by telephone.

After considering the moving and opposition papers, the pleadings referenced in Exhibit "1" attached hereto, arguments of counsel, and other matters presented to the Court, AND GOOD CAUSE APPEARING,

[ORDER CONTINUES ON NEXT PAGE]

1 IT IS HEREBY ORDERED

2 The Court finds that there is no material issue of fact with regard to JPMorgan
3 Chase Bank's claim for breach of contract in regard to the promissory note executed by
4 Michiko Stehrenberger in favor of Washington Mutual Bank, and that JPMorgan Chase
5 Bank is entitled to enforce the Note, and is therefore entitled to summary judgment on its
6 claim for breach of contract.

7 JPMorgan Chase Bank is owed under the Stehrenberger Note principal of
8 \$46,598.53 and past-due interest of \$2,810.79, as of June 11, 2011. The per diem rate
9 going forward is \$14.56. The court will enter a judgment for the amount due as of
10 February 15, 2013.

11 That Michiko Stehrenberger's counter claims for Unjust Enrichment and for
12 violation of the Consumer Protection Act are without merit and should be dismissed and
13 therefore JPMorgan Chase Bank is granted summary judgment as to Stehrenberger's
14 counterclaims.

15 Because this ruling granting summary judgment disposes of the issues of the case,
16 the pending discovery motions, Defendant's motions for declaratory relief/partial summary
17 judgment, Defendant's motion to file a supplement to counterclaims are moot and are off
18 calendar.

19 DATED this 1st day of April, 2013.

20 
21 The Honorable John P. Erlick

22 Presented by:

23 **RCO LEGAL, P.S.**

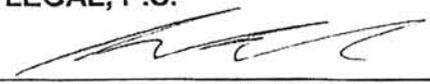
24 By: 
25 Steven K. Linkon, WSBA #34896
26 Attorneys for Plaintiff, JPMorgan
Chase Bank, N.A.

Exhibit "1"

Docket Number	Date	Description
1	02-15-2011	Complaint for Breach of Written Contract
22	10-10-2011	Defendant's Answer and Counterclaims
34	11-28-2011	Plaintiff JPMorgan Chase Bank N.A.'s Motion to Dismiss Defendant's Counterclaims Pursuant to CR 12(b)(6)
47	03-07-2012	Defendant's Response In Opposition To Motion to Plaintiff's Motion to Dismiss Defendant's Counterclaims Pursuant to CR 12(b)(6)
48	03-15-2012	Plaintiff's Reply to Defendant's Response to Motion to Dismiss Counterclaims Pursuant to CR 12(b)(6)
53	04-09-2012	Order Granting Plaintiff's Motion to Dismiss Defendant's Counterclaims Pursuant to CR 12(b)(6), in part, and Denying in Part
55	06-15-2012	Plaintiff JPMorgan Chase Bank N.A.'s Answer and Affirmative Defenses to Defendant's Counterclaims
94	01-07-2013	Defendant's CR 37(A)(2) Motion To Compel Plaintiff's Discovery Responses and To Permit additional {Limited} Discovery requests in time for the February 4, 2013 Discovery Cut-Off deadline
96	01-09-2013	Defendant's Motion and [Proposed] Order to Permit the Contents of the 23-Page Motion to Compel to be Considered by the Court for the Hearing
97	01-09-2013	Plaintiff JPMorgan Chase Bank N.A.'s Motion for Protective Order
101	01-10-2013	Plaintiff JPMorgan Chase Bank N.A.'s Amended Motion for Protective Order
105	01-10-2013	Plaintiff JPMorgan Chase Bank N.A.'s Opposition to Motion to Compel Further Responses
108	01-11-2013	Plaintiff JPMorgan Chase Bank N.A.'s Motion for Summary Judgment
109	01-11-2013	Declaration of Raymond Diamond in Support of Plaintiff's Motion for Summary Judgment

1	110	01-01-2013	Notice of Hearing/Summary Judgment
2			
3	112	01-11-2013	Note for Motion Docket
4	113	01-11-2013	Defendant's Motion for Declaratory Relief or Partial Summary Judgment (Non-Dispositive)
5			Related to Whether or Not Plaintiff is or Ever Was the Legal "Holder" of the Original Paper Negotiable Instrument (Stehrenberger Promissory Note)
6			And Whether or Not Plaintiff is the Proper "Person Entitled to Enforce" the Negotiable Instrument (Stehrenberger Promissory Note) Under RCW 62A.3-301 and RCW 62A.3-309
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10	114	01-14-2013	Defendant's Reply to Plaintiff JPMorgan Chase Bank, N.A.'s Opposition to Motion to Compel Further Response
11			
12	115	01-14-2013	Declaration of Michiko Stehrenberger Regarding Attempts to Reduce and Simply Plaintiff's Remaining Discovery Responses
13			
14	116	01-14-2013	Declaration of Michiko Stehrenberger and Exhibit: November 15, 2012 Ohio Court Order (Res Judicata Does Not Apply)
15			
16	117	01-15-2013	Plaintiff's Supplemental Opposition to Motion to Compel Further Responses
17			
18	118	01-15-2013	Plaintiff's Supplemental Evidence in Support of Motion for Protective Order
19			
20	119	01-15-2013	Plaintiff's Declaration of Service re: (1) Plaintiff JPMorgan Chase Bank, N.A.'s Supplemental Opposition to Motion to Compel Further Responses; and (2) Plaintiff JPMorgan Chase Bank, N.A.'s Supplemental Evidence in Support of Motion for Protective Order
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22			
23	120	01-15-2013	Plaintiff JPMorgan Chase Bank, N.A.'s Supplemental Evidence in Support of Motion for Summary Judgment
24	121	01-15-2013	Defendant's Reply to Plaintiff's Opposition to Motion to Compel Further Response
25			
26	122 (duplicate filing)	01-15-2013	Defendant's Reply to Plaintiff's Opposition to Motion to Compel Further Response

1	as Dkt#121)		
2	123	01-15-2013	Defendant's Reply to Plaintiff's Supplemental Opposition to Motion to Compel Further Response
3	124	01-16-2013	Declaration of Michiko Stehrenberger Identifying the Sources of the PEB Report and Case Decisions Cited within Defendant's Motion for Declaratory Relief Related to Whether or not Plaintiff is or Ever Was the Legal "Holder" of the Original Paper Negotiable Instrument, etc. And Whether or Not Plaintiff is the Proper "Person Entitled to Enforce" the Negotiable Instrument (Stehrenberger Promissory Note) Under RCW 62A.3- 301 and RCW 62A.3-309
10	125	01-16-2013	Declaration of Michiko Stehrenberger in Support of Defendant's Motion for Declaratory Relief, etc. Related to Whether or Not Plaintiff is or ever was the Legal "Holder" of the Original Paper Negotiable Instrument (Stehrenberger Promissory Note) . And Whether or Not Plaintiff is the Proper "Person Entitled to Enforce" the Negotiable Instrument (Stehrenberger Promissory Note) Under RCW 62A.3- 301 and RCW 62A.3-309 [CORRECTION ADDED: "I declare under penalty [of perjury]" – page 3]
17	126	01-16-2013	Defendant's Opposition to Plaintiff's Motion (And Amended Motion) for Protective Order
19	127	01-18-2013	Plaintiff JPMorgan Chase Bank, N.A.'s Reply to Opposition to Motion for Protective Order
20	128	01-18-2013	Plaintiff JPMorgan Chase Bank N.A.'s Motion to Strike Defendant's Motion for Declaratory Relief or Partial Summary Judgment
22	129	01-18-2013	Plaintiff JPMorgan Chase Bank N.A.'s Notice of Hearing/Motion to Strike Defendant's Motion for Declaratory Relief or Partial Summary Judgment
24	131	01-22-2013	Declaration of Michiko Stehrenberger: Defendant Served Plaintiff with "Notice to Preserve and Retain Evidence for Court Matter," etc.

1	132	01-25-2013	Defendant's Opposition to Plaintiff's Motion to Strike Defendants Motion for Declaratory Relief or Partial Summary Judgment
2			
3	133 (duplicate filing as Dkt#132)	01-25-2013	Defendant's Opposition to Plaintiff's Motion to Strike Defendant's Motion for Declaratory Relief or Partial Summary Judgment
4			
5	134	01-28-2013	Declaration of Michiko Stehrenberger: Defendant Served Plaintiff with "Notice to Preserve and Retain Evidence for Court Matter", etc.
6			
7	135	01-28-2013	Defendant's Note for Motion Docket/Motion for Declaratory Relief/Partial Summary Judgment ("division" and "by operation of law")
8			
9	136	01-28-2013	Defendant's Motion for Declaratory Relief or Partial Summary Judgment ("Division" and "by operation of law")
10			
11	137	02-04-2013	Plaintiff JPMorgan Chase Bank N.A.'s Opposition and Motion to Strike Defendant's CR 57 Motion for Declaratory Relief or Partial Summary Judgment
12			
13	139	01-28-2013	Defendant's Opposition and Reply to Plaintiff's Motion to Strike Defendant's Motion for Declaratory Relief or Partial Summary Judgment
14			
15	141	02-04-2013	Defendant's Motion to Compel Plaintiff's Discovery Responses and Production of Deposition Witnesses as Were Timely Noticed January 28, 2013 for February 4, 2013
16			
17			
18	142	02-05-2013	Defendant's Opposition to Plaintiff JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment
19			
20	143 (duplicate filing as Dkt#142)	02-05-2013	Defendant's Opposition to Plaintiff JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment
21			
22	144	02-05-2013	Defendant's Amended Opposition to Plaintiff's Motion for Summary Judgment
23			
24	145	02-05-2013	Defendant's Motion to Compel Plaintiff's Discovery Responses and Production of Deposition Witnesses as were timely noticed January 23, 2013 for February 4, 2013 9:00 a.m. PST Deposition (1) Mr. Jason Klein (2) Records Custodians and/or Mr. Raymond Diamond as were to have been designated under CR 30(b)(6)
25			
26			

1	147	02-06-2013	Defendant's Motion for Leave to File Supplement to Counterclaims to clarify scope of pleadings and discovery, prior to hearings on Pending Defendant's Motions to Compel Discovery/Deposition Witnesses, Plaintiff's Motion for Protective Order, Defendant's Declaratory Relief Motions and Plaintiff's Summary Judgment Motion
2			
3	148	02-06-2013	Defendant's Amended Opposition to Plaintiff's Motion for Summary Judgment
4			
5	150	02-06-2013	Defendant's Motion to be Permitted to Appear by Telephone at 10:15 a.m. on February 15, 2013, Pursuant to CR 7(b)(5)
6			
7			And Motion to Consolidate Hearings on All Pending Motions for February 15, 2013 Prior to Any Ruling on Plaintiff's Motion for Summary Judgment
8			
9			And Motion to Extend Case Management Deadline for All Pre-Trial Dispositive Motions to be Heard by 3/11/2013
10			
11	151	02-08-2013	Defendant's Note for Motion Docket/Motion to Strike the Declaration of Raymond Diamond in support of Plaintiff's Motion for Summary Judgment (Dkt. #109) and accompanying exhibits
12			
13	152	02-08-2013	Defendant's Motion for Leave to file Supplement to Counterclaims Pursuant to CR 15(d)
14			
15	153	02-08-2013	Plaintiff JPMorgan Chase Bank N.A's Reply to Opposition to Motion for Summary Judgment
16			
17	154	02-11-2013	Declaration of Evidence of Michiko Stehrenberger: Entire Documents in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment, etc.
18			
19	155	02-11-2013	Declaration of Michiko Stehrenberger Identifying the Source of Documents in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment, etc.
20			
21	156	02-11-2013	Plaintiff JPMorgan Chase Bank N.A's Opposition to Defendant's Motion for Leave to File Supplement to Counterclaims Pursuant to CR 15(d)
22			
23	157	02-11-2013	Plaintiff JPMorgan Chase Bank N.A's Opposition to Defendant's Motion for Leave to File Supplement to Counterclaims Pursuant to CR 15(d)
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1	158	02-13-2013	Defendant's Objection to the Admission as Evidence of an Unauthenticated Copy of a Negotiable Instrument
2			
3	159	02-13-2013	Defendant's Case Law Summaries and Objections to Plaintiff's Citations to Case Law that do not Support Plaintiff's Position in its Motion for Summary Judgment
4			
5	160	02-13-2013	Defendant's Objection to the Admission as Evidence of an Unauthenticated Copy of a Negotiable Instrument (The Stehrenberger Promissory Note), etc.
6			
7	161	02-13-2013	Defendant's Objection to the Admission as Evidence of the Purchase and Assumption Agreement, etc.
8			
9	162	02-13-2013	Defendant's Objection to Plaintiff's Document: Affidavit of the FDIC, etc.
10	163	02-13-2013	Plaintiff's Opposition to Defendant's Motion to Strike the Declaration of Raymond Diamond
11			
12	164	02-14-2013	Defendant's Reply, Case Law Summaries, and Objections to Plaintiff's Opposition to Defendant's Motion to Strike the Declaration of Raymond Diamond
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14	165	02-14-2013	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Leave to File Supplement to Counterclaims Pursuant to CR 15(d)
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The Honorable John P. Erlick
Dept. 51; W-1060

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

v.

MICHIKO STEHRENBARGER, an
individual,

Defendant.

No. 11-2-06768-8 SEA
[Proposed]

JUDGMENT FOR PLAINTIFF

Clerk's Action Required

I. JUDGMENT SUMMARY

- 1. JUDGMENT CREDITOR: JPMorgan Chase Bank, N.A.
- 2. JUDGMENT DEBTOR: Michiko Stehrenberger
- 3. PRINCIPAL JUDGMENT AMOUNT: \$46,593.53 plus per diem interest ^{totaling} of \$2,810.79, as of June 11, 2011.
- 4. PRE-JUDGMENT INTEREST TO 6/11/2011: \$2,810.79
- 5. ATTORNEY'S FEES: To be sought by separate motion per RCW 4.84.010 and 4.84.330
- 6. COSTS: Per Cost Bill.
- 7. TOTAL JUDGMENT: **\$49,962.23**
- 8. JUDGMENT WILL BEAR INTEREST AT: 12%

ORIGINAL

ROUTH
CRABTREE
OLSEN, P.S. | 13555 SE 36th St., Ste 300
Bellevue, WA 98006
Telephone: 425.458.2121
Facsimile: 425.458.2131

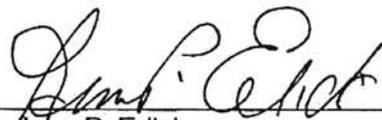
- 1 9. ATTORNEY FOR JUDGMENT CREDITOR: Steven K. Linkon
- 2 10. ATTORNEY FOR JUDGMENT DEBTOR: None
- 3

4 **II. JUDGMENT**

5 This action came on for hearing before the Court, on February 15, 2013, Hon. John
 6 P. Erlick, Judge presiding, on Plaintiff JPMorgan Chase Bank's Motion For Summary
 7 Judgment, and the evidence presented having been fully considered, the issues having
 8 been duly heard, and an Order granting Plaintiff's motion having been duly rendered on
 9 April 1, 2013,

10 IT IS ORDERED AND ADJUDGED that Plaintiff be awarded a judgment on its
 11 claim for breach of contract, that Defendant Michiko Stehrenberger take nothing on her
 12 counterclaims for Unjust Enrichment and for Violation of the Consumer Protection Act,
 13 and that Plaintiff recover its costs.

14 DATED this 16th day of April, 2013.

15 
 16 _____
 17 Judge John P. Erlick

18 Presented by:

19 **ROUTH CRABTREE OLSEN, P.S.**

20 By: 
 21 _____
 22 Steven K. Linkon, WSBA #34896
 23 Attorneys for Plaintiff JPMorgan Chase
 24 Bank, N.A.

25
26

The Honorable John Erlick
Department 51 – W-1060
WITHOUT ORAL ARGUMENT
Requested Hearing Date 4/19/2013

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JP MORGAN CHASE BANK, N.A.	)	No. 11-2-06768-8 SEA
)	
Plaintiff,	)	[PROPOSED] ORDER
v.	)	REGARDING DEFENDANT'S MOTION FOR LEAVE TO FILE
	)	MOTION TO ALTER OR AMEND JUDGMENT/ORDER
MICHIKO STEHRENBARGER,	)	UNDER CR 59(h) AND/OR CR 52(b)
an individual,)	
Defendant.)	
_____)	

ORDER

This matter having come before the Court on Defendant's Motion for Leave to file a Motion to Alter or Amend under CR 59(h) and/or CR 52(b).

The Court having considered Defendant's motion, this motion is:

 GRANTED DENIED

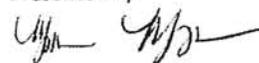
Dated this 3rd day of MAY, 2013



Judge

Judge John P. Erlick

Presented by:



Michiko Stehrenberger, Defendant pro se April 11, 2013

ORIGINAL

The Honorable John P. Erlick
Dept. 51; W-1060
WITHOUT ORAL ARGUMENT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JPMORGAN CHASE BANK, N.A.,	)	No. 11-2-06768-8 SEA
)	
Plaintiff,	)	[Proposed]
)	
v.	)	ORDER GRANTING PLAINTIFF
	)	JPMORGAN CHASE BANK'S
MICHIKO STEHRENBURGER, an individual,	)	MOTION TO FIX ATTORNEY FEES
	)	AS COSTS OF SUIT AS
Defendant.	)	PREVAILING PARTS

THIS MATTER came before the Court on the Plaintiff's Motion for an award of attorney's fees as costs against Defendant Michiko Stehrenberger under CR 54(d)(2) and RCW 4.84.330. The Court reviewed the motion and the pleadings filed herein and good cause appearing,

IT IS ORDERED that: Plaintiff's Motion to Fix Attorney Fees as Costs of Suit is granted. Chase is entitled to attorney's fees of \$98,446.76 as its costs awarded in this action. *The Court finds that these fees and costs were reasonable and necessary to prosecute plaintiff's claims in light of defendant's protracted defense of this matter.*
DATED this 4th day of July, 2013.

John P. Erlick
The Honorable John P. Erlick

 ORIGINAL

FILED

11 FEB 15 AM 10:06

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-06768-8 SEA

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**SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JPMORGAN CHASE BANK, N.A.

Plaintiff,

v.

MICHIKO STEHREBERGER, an
individual,

Defendant.

No.

**COMPLAINT FOR BREACH OF
WRITTEN CONTRACT**

Plaintiff, JPMORGAN CHASE BANK, N.A. ("CHASE") alleges:

JURISDICTION AND VENUE

1. This court has original jurisdiction over this matter under RCW 2.08.010 because the case involves a loan for money in excess of \$300.

2. Venue is proper in this judicial district, because the Defendant resides in King County (RCW 4.12.025).

THE PARTIES

3. Plaintiff CHASE is a National Banking Association duly organized under the laws of the United States.

///

1 11. As of February 4, 2011, Plaintiff was owed, under the Note, no less than
2 the principal sum of \$46,598.53, interest of \$961.43 and fees/charges of \$71.37; for a
3 total of \$47,631.33, plus per diem interest of \$14.56 from February 4, 2011, and
4 exclusive of the further accrual of interest, costs, charges and attorneys fees, all as
5 provided for in the Note.

6 12. Plaintiff has performed each and every term of the Note on its part
7 required to be performed.

8 13. Pursuant to the terms of the Note, Plaintiff is entitled to recover its
9 reasonable attorneys' fees and costs of collection in connection with the enforcement of
10 its rights under the Note. Plaintiff has been required to retain the law firm of Routh
11 Crabtree Olsen, P.S. to represent it in connection with this action and in the recovery of
12 the sums outstanding under the Note and intends to add the attorney's fees to the
13 outstanding balance of the Note.

14
15 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

16 1. For general damages of no less than \$47,631.33, plus per diem interest of
17 \$14.56 from February 4, 2011;

18 2. For reasonable attorneys' fees;

19 3. For costs of suit incurred herein incurred;

20 4. For such other and further relief as the Court may deem just and proper.

21
22 DATED: February 13, 2011.

23 **ROUTH CRABTREE OLSEN, P.S.**

24
25 By: 
26 Steven K. Linkon, WSBA 34896
Attorneys for JPMORGAN CHASE
BANK, N.A.

The Honorable John Erlick

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JP MORGAN CHASE BANK, N.A.	)	No. 11-2-06768-8 SEA
)	
Plaintiff,	)	STIPULATION OF THE PARTIES:
v.	)	(SATISFYING DEFENDANT'S SECOND
	)	REQUEST FOR PRODUCTION NO. 14)
)	
MICHIKO STEHREBERGER,	)	STEHREBERGER PROMISSORY NOTE
an individual,	)	IS A NEGOTIABLE INSTRUMENT
Defendant.	)	UNDER RCW 62A.3-309

**STIPULATION OF THE PARTIES: STEHREBERGER PROMISSORY NOTE
IS A NEGOTIABLE INSTRUMENT UNDER RCW 62A.3-104**

The parties, Plaintiff JP Morgan Chase Bank, N.A., by and through their counsel of record, Routh Crabtree Olsen, P.S. and Defendant Michiko Stehrenberger together stipulate their agreement that the Promissory Note, dated September 11, 2007 in the amount of \$50,000 executed by Michiko Stehrenberger to the order of Washington Mutual Bank is a negotiable instrument as defined by RCW 62A.3-104.

This Stipulation of the Parties satisfies Defendant's Second Request for Production No. 14 (as served 1-30-2012) and therefore releases Plaintiff from any further requirement to produce further documents in response to Defendant Second Request No. 14.

SIGNATURES ON FOLLOWING PAGE

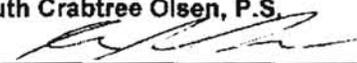
So stipulated:

JP MORGAN CHASE BANK, N.A.

Date: 3-5-2012

Represented by:

Routh Crabtree Olsen, P.S.

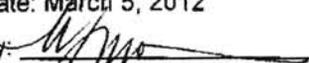
By: 

Steven K. Linkon, WSBA # 34896

Attorneys for Plaintiff,
JP Morgan Chase Bank, N.A.

MICHIKO STEHRENBARGER

Date: March 5, 2012

By: 

Michiko Stehrenbarger
Defendant, Pro Se

STIPULATION OF THE PARTIES: PROMISSORY NOTE IS NEGOTIABLE INSTRUMENT - p. 2 of 2 total

1 Question 1: What happened to the missing asset/loan (Schedule 3.1a?)
2 specifically mentioned in the WAMU Purchase and Assumption Agreement? (or any
3 other schedules that reference the specific loans purchased and on what dates?)

4 Response: It appears that this schedule was never prepared. Nor was there a
5 schedule of the loans purchased by Chase prepared. Further, by the terms of the
6 Purchase and Assumption Agreement, the Schedule 3.1a does not refer to loans, but
7 rather to subsidiaries of WAMU that were purchased by JP Morgan Chase Bank.

8 Question 2: What was the total amount paid (and date paid) by Chase to
9 acquire the Stehrenberger Promissory Note specifically (book value), or, if not available
10 specifically for the Stehrenberger Promissory Note, the book value paid for all of the
11 Washington Mutual loans as a group

12 Response: No breakdown was ever prepared for the purchase price paid for
13 each loan. The total consideration paid by JP Morgan Chase for the assets of WAMU
14 was \$1.9 Billion. This money was paid shortly after the September 25, 2008 closing
15 date of the transaction.

16 Question 3: Information about the original paper note and application and when
17 they were lost at Chase and lost by whom? (any documented loss reports, disciplinary
18 actions taken against the employees who lost them, etc.) or if not available in their
19 records - a statement whether or not Chase got physical possession of the
20 Stehrenberger original paper documents from Washington Mutual?

21 Response: Chase has no information as to whether it ever obtained the
22 original paper note and application for the Stehrenberger loan. These items are now
23 lost and Chase does not know whether these were lost by Chase, or were lost by
24 WAMU prior to the purchase by Chase and thus never delivered to Chase.

25 Question 4: If the loan was charged off, and when?

26 Response: The loan was charged off on June 1, 2011.

Question 5: The status/location of the "vault" or storage facility that held the
Washington Mutual original paper loan documents when Chase first took over?
(whether it still exists and who's in charge of the "vault" / storage of the original paper
loan documents, or whether they had possibly already been taken over or seized by the
storage place etc. or similar scenario before Chase took over ownership, as you'd
mentioned as a possibility?)

Response: Chase has no information in regard to any storage facilities used by
WAMU for the Stehrenberger loan or for the loans that comprised the small business
line of credit unit of which the Stehrenberger loan was part.

PROMISSORY NOTE

Michiko Stehrenberger

\$50,000.00
9/11/2007

For value received, Michiko Stehrenberger, a sole proprietorship ("Obligor"), promises to pay to the order of WASHINGTON MUTUAL BANK, a federal association ("Bank"), in the lawful money of the United States, the principal amount of Fifty Thousand and 00/100 Dollars (\$50,000.00), together with interest thereon from the date hereof until paid in full.

Payments. Obligor shall pay this Note in consecutive monthly installments, on or before the 3rd day of each month, as follows: (1) commencing September 3, 2007 in thirty-six (36) consecutive monthly installments of interest only to and including August 3, 2010 (the "Interest-Only Period"); (2) commencing September 3, 2010 and at all times thereafter, in monthly payments of principal and interest calculated in accordance with the terms of the Business Line of Credit Summary of Terms and the Business Line of Credit Note and Agreement, both of which are incorporated herein by this reference (together with any other documents executed in connection with Account No. 718570401, collectively referred to herein as the "Loan Documents"). To the extent that there is any inconsistency in the terms of this Note and the Loan Documents, the terms of this Note shall govern.

Interest. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the annual interest rate, adjusted daily, published from time to time in The Wall Street Journal as the "Prime Rate" in the "Money Rates" section, as of any date of determination (the "Index"). The Index is not necessarily the lowest rate charged by Bank on its loans. If the Index becomes unavailable during the term of this Note, Bank may designate a substitute index after notice to Obligor. Bank will tell Obligor the current Index rate upon Obligor's request. The interest rate change will not occur more often than each day. Obligor understands that Bank may make loans based on other rates as well. The Index currently is 8.25%. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate equal to the Index plus 3.00%, resulting in an initial rate of 11.25%. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

Unless otherwise agreed or required by applicable law, payments will be applied first to accrued and unpaid interest, then to principal and any remaining amounts to any unpaid collection costs and late charges. The annual interest rate for this Note is computed on a 365/360 day basis; that is, by applying the ratio of annual interest over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All payments shall be made to Bank

at Washington Mutual Bank, PO Box 78065, Phoenix, AZ 85062-8065 or such other address as Bank may designate in writing.

Interest. It is the intention of the parties hereto to conform strictly to usury laws applicable to the Bank. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the United States and the State of Texas), then in that event, notwithstanding anything to the contrary herein or in any other document executed in connection herewith, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to Bank that is contracted for or taken, reserved, charged or received hereunder or under any other document executed in connection herewith shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be credited by the Bank on the principal amount hereof (or if the principal amount hereof shall have been paid in full, refunded by Bank to Obligor, as required); and (ii) in the event that the maturity of this Note is accelerated by reason of an election by Bank resulting from any Event of Default, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Bank may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for herein or otherwise shall be cancelled automatically as of the date of such acceleration or prepayment, and if previously paid, shall be credited by Bank on the principal amount hereof (or if the principal amount of this Note has been paid in full, refunded by Bank to Obligor, as required). Without limiting the foregoing, all calculations of interest taken, reserved, contracted for, charged, received or provided for in this Note which are made for the purpose of determining whether the interest rate exceeds the maximum rate permitted by applicable law shall be made, to the extent allowed by law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the loan evidenced hereby, all interest at any time taken, reserved, contracted for, received or provided for under this Note or any document executed in connection herewith. To the extent that Section 303 of the Texas Finance Code is relevant for the purpose of determining the maximum rate of interest the Bank hereby elects to determine the applicable rate ceiling under such statute by the weekly ceiling rate from time to time in effect, subject to the Bank's right to subsequently to change such method in accordance with applicable law. Chapter 346 of the Texas Finance Code shall not apply to this Note.

Prepayment. Obligor agrees that all fees and other prepaid finance charges are earned fully as of the date of the Note and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Obligor may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Bank in writing, relieve Obligor of Obligor's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Obligor agrees not to send Bank any payments marked "paid in full", "without recourse", or similar language. If Obligor sends a payment with such marking, Bank may accept it without losing any of Bank's rights under this Note, and Obligor will remain obligated to pay any further amount owed to Bank. All written communications concerning disputed

amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Washington Mutual Bank, PO Box 78065, Phoenix, AZ 85062-8065.

Late Charge. If a payment is ten (10) days or more late, Obligor will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$25.00, whichever is greater.

Interest. If a law which applies to this Note that sets forth maximum interest or other loan charges is finally interpreted so that the interest or other loan charges contracted for charged or received in connection with this Note or any document executed in connection herewith exceed the permitted limits to be contracted for under applicable law, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit to be contracted for; and (ii) any sums already collected from the undersigned which exceed the permitted limits to be contracted for will be refunded to the Obligor to the extent permitted by applicable law. Bank may, to the extent permitted by law, choose to make this refund by reducing the principal owed under this Note or by making a direct payment to Obligor. It is agreed that the total of all interest and other charges that constitute interest shall not exceed the maximum amount allowed to be contracted for by applicable law. Nothing in this Note shall entitle Bank upon any contingency (including but not limited to, payoff statements, prepayment, default, demand for payment or acceleration of maturity) to contract for, charge or receive interest or other charges that may constitute interest in excess of the maximum amount allowed to be contracted for by applicable law, and all such contracts, charges and receipts are hereby made subject to and automatically constrained by the limitations set forth above. To the extent permitted by applicable law, Bank may calculate interest and charges by amortizing, prorating, allocating and spreading. Any excess ever contracted for, charged or received, shall be automatically subject to refund or cancellation so as to bring the amount of interest and charges within lawful limits.

Default. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Obligor fails to make any payment when due under this Note.

Other Defaults. Obligor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Bank and Obligor.

Default in Favor of Third Parties. Obligor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Obligor's property or Obligor's ability to repay this Note or perform Obligor's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Bank by Obligor or on Obligor's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Obligor's existence as a going business, the insolvency of Obligor, the appointment of a receiver for any part of Obligor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Obligor, or the death of Obligor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Obligor or by any governmental agency against any collateral securing the Note. This includes a garnishment of any of Obligor's accounts, including deposit accounts, with Bank.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Adverse Change. A material adverse change occurs in Obligor's financial condition, or Bank believes the prospect of payment or performance of this Note is impaired.

Bank's Rights. Upon default, Bank may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Obligor will pay that amount.

Attorneys' Fees; Expenses. Bank may hire or pay someone else to help collect this Note if Obligor does not pay. Obligor will pay Bank that amount. This includes, subject to any limits under applicable law, Bank's attorneys' fees and Bank's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Obligor also will pay any court costs, in addition to all other sums provided by law.

Governing Law. This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington.

Dishonored Item Fee. Obligor will pay a fee to Bank of \$25.00 if Obligor makes a payment on this Note and the check or preauthorized charge with which such payment is made is later dishonored.

Notices. Except as otherwise provide herein, all notices hereunder must be in writing. Notice to Obligor shall be sent to your last known address in our records. Notice to any one of you shall be deemed to be notice to all of you. Notice to Bank shall be sent to the address shown on the last billing statement received by you.

Right of Setoff. Obligor grants to Bank a contractual security interest in, and hereby assigns, conveys, delivers, pledges and transfers to Bank all of Obligor's right, title and interest in and to, Obligors' accounts with Bank (whether checking, savings, business checking or some other account) including without limitation, all accounts Obligor may open in the future, but excluding all IRA, SEP, Keogh and certain trust accounts. To the extent permitted by applicable law, Bank reserves a right of setoff in all Obligor's accounts with Bank (whether checking, savings, or some other account). This includes all accounts Obligor holds jointly with someone else and all accounts Obligor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Obligor authorizes Bank, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts without notice.

Successor Interests. The terms of this Note shall be binding upon Obligor, and upon Obligor's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Bank and its successors and assigns. Without prior notice to or the consent of Obligor, Bank reserves the right to sell or transfer this Note to another lender, entity or person. Obligor's rights under this Note may not be transferred or assigned.

General Provisions. Bank may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Obligor and each party hereto understands and agrees that, with or without notice to Obligor, Bank may with respect to Obligor: (a) make one or more additional secured or unsecured loans or otherwise extend additional credit; (b) alter, compromise, renew, extend, accelerate, or otherwise change one or more times the due date for payment or other terms any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (c) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (d) apply such security and direct the order or manner of sale thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Bank in its discretion may determine; (e) release, substitute, agree not to sue, or deal with any one or more of Obligor's sureties, endorsers, or other guarantors on any terms or in any manner Bank may choose; and (f) determine how, when and what application of payments and credits shall be made on any other indebtedness owing by such other Obligor. Obligor and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waives presentment, protest, demand for payment, and notice of dishonor. The nonexercise by the holder of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Bank may renew or extend (repeatedly and for any length of time) this

loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Bank's security interest in the collateral; and take any other action deemed necessary by Bank without the consent of or notice to anyone. All such parties also agree that Bank may modify this Note without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several. In the event that any provision of this Note shall be held to be void, voidable, or unenforceable, the remaining provisions shall remain in full force and effect.

Representations and Warranties of Obligor.

a. Obligor represents and warrants that this Note evidences a reimbursement obligation owing to Bank in connection with a business credit and business accounts.

b. Obligor has received independent legal advice from attorneys of its choice or has had the opportunity to consult with counsel of its choice with respect to this Note.

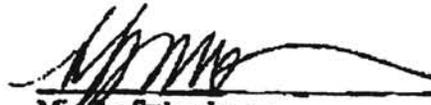
c. In connection with the execution of this Note, Obligor has not relied upon any statement, representation, or promise of Bank not expressly contained herein.

d. The terms of this Note are contractual and are the result of negotiation among the parties. Each party has cooperated in the drafting and preparation of this Note. This Note shall be interpreted according to its fair meaning, and not in favor of any party, including the preparer of this Note.

e. This Note has been carefully read and the contents thereof are known and understood by Obligor. This Note is signed freely and voluntarily by each party executing it.

f. There has been, and will be, no assignment or transfer of any interest in any claims that each party may have against the other(s) and each of the parties hereto agrees as to the other(s) to indemnify and hold the other(s) harmless from any claims, liability, demand, damages, actions, causes of action, expenses or attorneys' fees incurred by the other(s) as a result of any person or entity asserting such assignment or transfer or any rights or claims under any such assignment or transfer.

**THIS NOTE AND ANY OTHER DOCUMENTS EXECUTED IN CONNECTION
HEREWITH REPRESENT THE FINAL AGREEMENT BETWEEN THE
PARTIES AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE
LAW, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,
CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE
PARTIES. THERE ARE NO UNWRITTEN OR ORAL AGREEMENTS
BETWEEN THE PARTIES.**



02/4.2004

Michiko Stehrenberger

The Honorable John Erlick

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

JP MORGAN CHASE BANK, N.A.	)	No. 11-2-06768-8 SEA
)	
Plaintiff,	)	STIPULATION OF THE PARTIES:
v.	)	RE PUBLIC INTEREST IMPACT
	)	ELEMENT OF DEFENDANT'S
	)	CONSUMER PROTECTION ACT
MICHIKO STEHRENBARGER,	)	CLAIM
an individual,)	
)	
Defendant.)	
_____)	

Plaintiff JP Morgan Chase Bank, N.A., ("Chase") by and through their counsel of record, Routh Crabtree Olsen, P.S. and Defendant Michiko Stehrenberger together stipulate that Chase will not contest the "public interest impact" element of Stehrenberger's Consumer Protection Act Counter Claim under RCW 19.86 et seq..

So stipulated:

Date: January 16, 2013

JP Morgan Chase Bank, N.A.



 Steven K. Linkon, WSBA # 34896
 Attorneys for Plaintiff,
 JP Morgan Chase Bank, N.A.

MICHIKO STEHRENBARGER


 By: _____
 Michiko Stehrenberger
 Defendant pro se

1 completed all purchase negotiations and payments with the FDIC related to the
2 Washington Mutual Bank loans and lines of credit related to the Purchase and
3 Assumption Agreement.¹

4 ¹ The Purchase and Assumption Agreement made between the FDIC and JPMorgan Chase Bank, N.A. and dated
5 September 25, 2008

6 **RESPONSE TO REQUEST NO. 3:**

7 Ambiguity Objection. Burden Objection. Relevancy Objection. Producing documentation
8 of these facts would be extremely burdensome while providing no meaningful
9 information that is relevant to this case.

10
11 **REQUEST NO. 4:** Any documents and communications related to any amendments or
12 extensions of the "settlement date" showing the purpose of either party's¹ request for
13 such amendments or extensions related to the Purchase and Assumption Agreement²
14 later than September 30, 2010.

15
16 ¹ The FDIC, JPMorgan Chase Bank, N.A. and / or their representatives

17 ² The Purchase and Assumption Agreement made between the FDIC and JPMorgan Chase Bank, N.A. and dated
18 September 25, 2008

18 **RESPONSE TO REQUEST NO. 4:**

19 Ambiguity Objection. Burden Objection. Relevancy Objection. Producing documentation
20 of these facts would be extremely burdensome while providing no meaningful
21 information that is relevant to this case.

22
23 **REQUEST NO. 5:** All documents and communications, including agreements or
24 contracts, between JPMorgan Chase Bank, N.A. and the Federal Deposit Insurance
25 Corporation as Receiver for Washington Mutual Bank, specifically indicating that
26 JPMorgan Chase Bank, N.A. is the owner of any loan or any obligation related to

1 Michiko Stehrenberger.¹

2 ¹Note: Defendant through this Request, herein specifically authorizes the FDIC and JPMorgan Chase Bank, N.A. for
 3 their release of her loan information to herself for the purpose of this litigation. Defendant herein specifically
 4 releases the FDIC and JPMorgan Chase Bank, N.A. for liability related to their release of Defendant Stehrenberger's
 5 personal loan information specifically to Stehrenberger herself. Because the requested records are not information
 6 subject to the bank examination privilege or the government deliberative process privilege, is not otherwise
 7 confidential, proprietary, trade secret or commercially sensitive financial and business information, does not request
 8 personally identifiable information or other personal data of other customers of financial institutions, or other
 9 information protected from disclosure by reasons of rights to privacy under the Washington and United States
 10 Constitutions and federal statutes (Privacy Act of 1974, U.S.C. § 552a). The requested records are therefore not
 11 exempt from disclosure. However, Defendant includes a proposed stipulation of counsel and proposed protective
 12 order that would prevent public access to any confidential documents of third party borrowers and requests that
 13 Plaintiff return them to Defendant signed and executed, or revised in a form acceptable to Plaintiff for the parties to
 14 sign and execute if mutually agreed, within 3 days of the date of Plaintiff's receipt of these requests, so that all
 15 documents may be produced without further delay in time for the deadline.

14 **RESPONSE TO REQUEST NO. 5:**

15 There is no document that specifically mentions the Stehrenberger Note by name.
 16 Rather, the Purchase and Assumption Agreement among the Federal Deposit
 17 Insurance Corporation and JPMorgan Chase Bank, dated as of September 25, 2008,
 18 and concerning Washington Mutual Bank (defined as the "Failed Bank"), recites (at Par.
 19 3.1 (pg.9)) that Chase purchased *all of the assets* of the Failed Bank (real, personal
 20 and mixed, wherever located and however acquired) . . . whether or not reflected on the
 21 books of the Failed Bank as of Bank Closing." (Emphasis supplied).
 22

23 In addition, the Affidavit of Robert C. Schoppe of the Federal Deposit Insurance
 24 Corporation, executed October 2, 2008, recites that "Pursuant to the terms and
 25 conditions of a Purchase and Assumption Agreement between the FDIC as receiver of
 26

1 Washington Mutual and JPMorgan Chase Bank, National Association ("JPMorgan
2 Chase"), dated September 25, 2008 (the "Purchase and Assumption Agreement"),
3 JPMorgan Chase acquired certain of the assets, including all loans and loan
4 commitments of Washington Mutual." Par. 4. "As a result, on September 25, 2008,
5 JPMorgan Chase became the owner of the loans and loan commitments of Washington
6 Mutual by operation of law." Par. 5.

8 In addition, Chase has the complete file for the Stehrenberger loan, including
9 copies of the Promissory Note, Streamlined Business Credit Application and
10 Agreement, Business Line of Credit Note and Agreement, Master Account Agreement,
11 Summary of Terms and Letter from WAMU to STEHREBERGER re: Line of Credit
12 Approval (4/12/2007) and transaction history for the Note. Each of these documents
13 has been previously produced.

15 **REQUEST NO. 6:** All pages of the Schedule 3.1a "Assets Purchased by Assuming
16 Bank" that is referred to in the Purchase and Assumption Agreement between the FDIC
17 and JPMorgan Chase Bank, N.A. dated September 25, 2008.

18 **RESPONSE TO REQUEST NO. 6:**

19 Relevancy Objection. By the terms of the Purchase and Assumption Agreement, the
20 Schedule 3.1a does not refer to loans, but rather to subsidiaries of WAMU that were
21 purchased by JPMorgan Chase Bank. This information is not relevant to the instant
22 case. Further, it appears that this schedule was never prepared. Therefore, Chase has
23 no documents responsive to this Request, because no such Schedule 3.1 exists.
24
25
26

1 **REQUEST NO. 7:** All documents and communications related to “all loans and loan
2 commitments, of Washington Mutual [Bank],” as referred to by the “Affidavit of the
3 Federal Deposit Insurance Corporation” dated October 2, 2008.

4 **RESPONSE TO REQUEST NO. 7:**

5
6 Ambiguity Objection. Burden Objection. Relevancy Objection. No schedule of all of the
7 loans purchased by Chase from Washington Mutual has been prepared, therefore,
8 Chase has no documents responsive to this Request.

9 **REQUEST NO. 8:** All documents and communications showing on which **calendar**
10 **date** that JPMorgan Chase Bank, N.A. **first** took physical possession of the original,
11 paper, ink-signed Promissory Note.

12 **RESPONSE TO REQUEST NO. 8:**

13
14 Chase does not now possess the original promissory note and can not tell if it ever took
15 possession of the original promissory note, and therefore, Chase has no documents
16 responsive to this Request.

17 **REQUEST NO. 9:** All documents and communications showing identifying any
18 individual person who have witnessed Chase's taking physical possession of the
19 original, paper, ink-signed Promissory Note.

20 **RESPONSE TO REQUEST NO. 9:**

21
22
23 Chase does not now possess the original promissory note and can not tell if it ever took
24 possession of the original promissory note. Plaintiff has no documents identifying any
25 individual person who witnessed Chase's taking physical possession of the original,
26 paper, ink-signed Promissory Note.

1 person or of all persons held responsible² by Plaintiff for the "loss or misplacement" of
 2 the original one-of-a-kind Stehrenberger Promissory Note.³

3 ¹ including but not limited to any loss reports, Form X-17 filings, personnel file notations, departmental reports

4 ² whether or not any such person(s) received any disciplinary action

5 ³ the Promissory Note that mentions Washington Mutual and Michiko Stehrenberger that Plaintiff's attached as its Exhibit 1 in court filings on or about February 15, 2011 and November 28, 2011.

6 **RESPONSE TO REQUEST NO. 12:**

7
 8 Relevancy Objection. Chase does not know if anyone was responsible for the "loss or
 9 misplacement" of the original Stehrenberger Promissory Note. Therefore, Chase has no
 10 documents responsive to this request.

11 **REQUEST NO. 13:** All documents and communications,¹ identifying the circumstances
 12 regarding the "loss or misplacement" of the original, paper, ink-signed, one-of-a-kind
 13 Stehrenberger Promissory Note.²

14 ¹ including but not limited to any loss reports, Form X-17 filings, personnel file notations, departmental reports

15 ² the Promissory Note that mentions Washington Mutual and Michiko Stehrenberger that Plaintiff's attached as its Exhibit 1 in court filings on or about February 15, 2011 and November 28, 2011.

16
 17 **RESPONSE TO REQUEST NO. 13:**

18 Chase is not aware that it ever had possession of the original promissory note so it
 19 does not know if the note was lost or misplaced by Chase and Chase has no
 20 documents responsive to this request.

21 **REQUEST NO. 14:** Any documents and communications, including but not limited to,
 22 any Revised Code of Washington sections, that show that the Stehrenberger
 23 Promissory Note does not meet RCW 62A.3-104's definition of a "negotiable
 24 instrument."
 25
 26

RESPONSE TO REQUEST NO. 14:

Ambiguity Objection. Relevancy Objection. Chase objects to the question to the extent that this request calls for a legal conclusion. Chase has previously produced a copy of the promissory note.

REQUEST NO. 15: All documents and communications that show the **exact dollar amount** paid by JPMorgan Chase Bank, N.A. to the FDIC to purchase any loan or rights to enforce any obligation related specifically to the Stehrenberger Promissory Note.¹

¹ the Promissory Note that mentions Washington Mutual and Michiko Stehrenberger that Plaintiff's attached as its Exhibit 1 in court filings on or about February 15, 2011 and November 28, 2011.

RESPONSE TO REQUEST NO. 15:

Chase paid \$1.9 Billion to purchase all of the loans and assets of Washington Mutual Bank. There was no allocation of the purchase price paid by Chase for the loans and assets of Washington Mutual among any specific loan so Chase has no documents responsive to this request.

REQUEST NO. 16: All documents and communications that show the **exact dollar amount** of "Book Value" paid by Chase to the FDIC to purchase any loan or rights to enforce any obligation related specifically to the Stehrenberger Promissory Note.¹

¹ the Promissory Note that mentions Washington Mutual and Michiko Stehrenberger that Plaintiff's attached as its Exhibit 1 in court filings on or about February 15, 2011 and November 28, 2011.

RESPONSE TO REQUEST NO. 16:

1 Ambiguity Objection. There was no allocation of the purchase price paid by Chase for
 2 the loans and assets of Washington Mutual among any specific loan or asset so Chase
 3 has no documents responsive to this request.

4 **REQUEST NO. 17:** All documents and communications that show **the total,**
 5 **combined dollar amount of "Book Value"** paid by Chase to the FDIC to purchase
 6 any loan or rights to enforce any obligations related to specific, separate, and individual
 7 Washington Mutual Bank loans and lines of credit.

8 **RESPONSE TO REQUEST NO. 17:**

9 Relevancy Objection. There was no allocation of the purchase price paid by Chase for
 10 the loans and lines of credit of Washington Mutual among any specific loan or line of
 11 credit so Chase has no documents responsive to this request.
 12

13 **REQUEST NO. 18:** All documents and communications that show the dollar amount
 14 paid by Chase to the FDIC to acquire each specific, separate and individual loan related
 15 to the Purchase and Assumption Agreement.
 16

17 **RESPONSE TO REQUEST NO. 18:**

18 Relevancy Objection. There was no allocation of the purchase price paid by Chase for
 19 each specific, separate and individual loan related to the Purchase and Assumption
 20 Agreement so Chase has no documents responsive to this request.
 21

22 **REQUEST NO. 19:** All documents and communications that show **the total,**
 23 **combined dollar amount of the face value (principal dollar amount of the loan**
 24 **value on each loan or line of credit)** of all of the Washington Mutual Bank loans and
 25
 26

1 **Morgan Chase Bank, NA potentially acquiring any Washington Mutual Bank loans**
2 **or lines of credit for \$1.88 billion-\$1.9 billion** on or around September 25, 2008.

3 Specifically, any discussions related to purchase negotiations and potential reasons for
4 reduced pricing to acquire loans/lines of credit at less than the face value of the
5 loans/lines of credit.

6 (Relevance: CPA/Unfair and Deceptive Business Practices counterclaim)

7 **RESPONSE TO REQUEST NO. 28:** Ambiguity Objection. Relevancy Objection.
8 Burden Objection.

9
10 **REQUEST NO. 29:** All documents in Plaintiff's possession, custody, or under its control
11 directly or indirectly, including in the possession, custody, or under the control of any of
12 its agents or representatives acting on its behalf, **that Plaintiff intends to use as**
13 **evidence in support of any assertion that JP Morgan Chase Bank, N.A. had**
14 **physical possession of the original, paper, on-of-a-kind Stehrenberger**
15 **Promissory Note negotiable instrument at any time, specifying any exact calendar**
16 **dates or time period between September 25, 2008 up through the date of**
17 **Plaintiff's response to this Request.**

18
19 **RESPONSE TO REQUEST NO. 29:** Chase does not believe that it has any
20 documents that are responsive to this request.

21
22
23 **REQUEST NO. 30:** All documents in Plaintiff's possession, custody, or under its control
24 directly or indirectly, including in the possession, custody, or under the control of any of
25 its agents or representatives acting on its behalf, **that Plaintiff intends to use related**
26 **to any witnesses Plaintiff intends to include in support of any assertion that JP**

1 **Morgan Chase Bank, N.A. had physical possession of the original, paper, on-of-a-**
2 **kind Stehrenberger Promissory Note negotiable instrument at any time,**
3 **specifying any exact calendar dates or time period between September 25, 2008**
4 **up through the date of Plaintiff's response to this Request.**

5
6 **RESPONSE TO REQUEST NO. 30:** Chase does not believe that it has any
7 documents that are responsive to this request.

8 **REQUEST NO. 31:** All documents in Plaintiff's possession, custody, or under its control
9 directly or indirectly, including in the possession, custody, or under the control of any of
10 its agents or representatives acting on its behalf, **that Plaintiff intends to use as**
11 **evidence in support of any assertion that the Federal Deposit Insurance**
12 **Corporation, as Receiver of Washington Mutual Bank, had physical possession of**
13 **the original, paper, on-of-a-kind Stehrenberger Promissory Note negotiable**
14 **instrument at any time, specifying any exact calendar dates or time period up to and**
15 **including September 25, 2008 up through the date of Plaintiff's response to this**
16 **Request.**

17
18 **RESPONSE TO REQUEST NO. 31:** Chase has no documents that are responsive
19 to this request.

20
21 **REQUEST NO. 32:** All documents in Plaintiff's possession, custody, or under its control
22 directly or indirectly, including in the possession, custody, or under the control of any of
23 its agents or representatives acting on its behalf, **that Plaintiff intends to use related**
24 **to any witnesses Plaintiff intends to include in support of any assertion that the**
25 **Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank,**
26 **had physical possession of the original, paper, on-of-a-kind Stehrenberger**
Promissory Note negotiable instrument at any time, during any time period up to

1 and including September 25, 2008 and up through the date of Plaintiff's response to
2 this Request.

3 **RESPONSE TO REQUEST NO. 32:** Chase has no documents that are responsive
4 to this request.

5 **REQUEST NO. 33:** All documents in Plaintiff's possession, custody, or under its control
6 directly or indirectly, including in the possession, custody, or under the control of any of
7 its agents or representatives acting on its behalf, related to any "**lost note affidavits**"
8 **or similar documents related to lost or missing promissory notes for all**
9 **Washington Mutual Bank-originated loans or lines of credit, requested or**
10 **received by Plaintiff from the Federal Deposit Insurance Corporation, as Receiver**
11 **of Washington Mutual Bank**, on or after September 25, 2008 and up through the date
12 of Plaintiff's response to this Request.

13 **RESPONSE TO REQUEST NO. 33:** Relevancy Objection. Burden Objection.
14 Without waiving these objections Chase further responds that there is no lost note
15 affidavit for the Stehrenberger Note.
16

17 **REQUEST NO. 34:** All documents in Plaintiff's possession, custody, or under its
18 control directly or indirectly, including in the possession, custody, or under the control of
19 any of its agents or representatives acting on its behalf, related to any "**lost note**
20 **affidavits**" **or similar documents related to lost or missing promissory notes for**
21 **all Washington Mutual Bank-originated loans or lines of credit, executed or**
22 **signed by Plaintiff or its agents, representatives, or counsel**, on or after September
23 25, 2008 and up through the date of Plaintiff's response to this Request.
24
25
26

1 **REQUEST NO. 51:** All documents in Plaintiff's possession, custody, or under its
 2 control directly or indirectly, including in the possession, custody, or under the control of
 3 any of its agents or representatives acting on its behalf, **related to Plaintiff's actions**
 4 **or due diligence to verify which original paper negotiable instruments related to**
 5 **Washington Mutual Bank loans and lines of credit were in Plaintiff's physical**
 6 **possession on or after September 25, 2008.**

7 **RESPONSE TO REQUEST NO. 51:** Relevancy Objection. Burden Objection.

8 **REQUEST NO. 52:** All documents in Plaintiff's possession, custody, or under its
 9 control directly or indirectly, including in the possession, custody, or under the control of
 10 any of its agents or representatives acting on its behalf, **related to Plaintiff's actions**
 11 **or due diligence to verify which original paper negotiable instruments related to**
 12 **Washington Mutual Bank loans and lines of credit were in Washington Mutual**
 13 **Bank's physical possession prior to September 25, 2008.**

14 **RESPONSE TO REQUEST NO. 52:** Relevancy Objection. Burden Objection.

15 Without waiving this objection, Chase further responds that it did not own Washington
 16 Mutual at any time, and it did not purchase the Washington Mutual Loans from the
 17 FDIC prior to September 25, 2008.

18 **REQUEST NO. 53:** All documents in Plaintiff's possession, custody, or under its
 19 control directly or indirectly, including in the possession, custody, or under the control of
 20 any of its agents or representatives acting on its behalf, **related to Plaintiff's general**
 21 **internal policies or procedures, or operational manuals, or steps, related to**
 22 **examination of assets, examination of possible problems with future**
 23 **enforceability of loans and lines of credit, analysis and decisions related to**
 24 **Plaintiff's due diligence research in regard to potential acquisition of any other**
 25
 26

[CORRECTED] CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 16, 2013, I filed by postal mail, this [non-Amended] **Brief of Appellant** in Case No. 70295-5-I, as one original with one true and correct copy, with the Washington State Court of Appeals, Division I, with USPS.com tracking **#9405 5036 9930 0093 7219 59** to:

Washington Court of Appeals, Division I
600 University Street
One Union Square
Seattle, WA 98101-1176

and also served by mail on October 16, 2013 one true and correct copy of the [non-Amended] Brief of Appellant upon the Respondent, JPMorgan Chase Bank, N.A., via its counsel of record, by postal mail with USPS.com tracking **#9405 5035 9930 0093 7291 60** to:

Mr. Fred Burnside and Ms. Rebecca Francis
Davis Wright Tremaine, LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3047

[Correction: No emailed versions of the [non-Amended] Brief of Appellant were sent on October 16, 2013]

Dated October 16, 2013



Michiko Stehrenberger, Appellant pro se