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Division III
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Case No. 358691-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

WILLIAM MOORMAN,

Appellant,

v.

CLEAR RECON CORP.; U.S. BANK, National Association, as Trustee
for Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-
Through Certificates, Series 2006-2; HSBC BANK USA, N.A.; PHH
MORTGAGE CORPORATION, NATIONSTAR MORTGAGE and DOE
DEFENDANTS 1 through 20, inclusive,

Respondents.

APPELLANT WILLIAM MOORMAN'S AMENDED OPENING
BRIEF

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INTRODUCTION

This case is focused on the actions of loan servicers, HSBC BANK USA, N.A. (“HSBC”) and PHH MORTGAGE CORPORATION (“PHH”), who were never appointed as an agent by the alleged beneficiary, U.S. BANK, National Association, as Trustee for Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2006-2 (“U.S. Bank”) nor were they ever empowered through a Power of Attorney to act as an “attorney” or “attorney in fact” by U.S. Bank. In spite of that fact, PHH and HSBC caused to be signed a recorded a number of documents to initiate non-judicial foreclosures against Mr. Moorman’s property, including an Appointment of Successor Trustee. Further, it was only PHH and/or HSBC who initiated the non-judicial foreclosure by purporting to appoint CLEAR RECON CORP. (“CRC”) as the successor trustee and then instructing CRC to foreclose. This too was done in spite of the fact that neither one had the lawful authority to take those actions. CRC apparently never requested any documentation to support the assertions by PHH and HSBC as to their authority, and if it had done so, it would have known that no such authority existed.

If the Defendants’ arguments are accepted by this Court, then it would mean that the requirements of the Deed of Trust Act (“DTA”)

(RCW 61.24, *et seq.*) would be rendered meaningless and anyone who desired to initiate a non-judicial foreclosure, including by way of executing documents and causing them to be recorded in the public record, could do so even without lawful authority. That is not consistent with the requirements of the DTA nor of Washington case law.

Further, only Defendants PHH and HSBC moved for summary judgment and provided testimony and evidence, but they nevertheless asked for dismissal of the entire case, which was granted by the Court. Therefore, only PHH and HSBC should be permitted to file briefing in this appeal, since U.S. Bank and CRC were dismissed based exclusively on the briefing provided by PHH and HSBC.

STANDARD ON REVIEW

An appellate court is required to review the trial court's decision *de novo* and should independently determine whether the findings of fact support the conclusions of law. *Crystal China and Gold Ltd. v. Factoria Center Investments, Inc.*, 93 Wn.App. 606, 610, 969 P.2d 1093 (1999); *American Nursery Products, Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 222, 797 P.2d 477 (1990); *Martin v. Seattle*, 111 Wn.2d 727, 733, 765 P.2d 257 (1988); and *Persing, Dyckman & Toyne, Inc. v. George Schofield Co., Inc.*, 25 Wn.App. 580, 582, 612 P.2d 2 (1980). Here, the trial court's "factual findings" were not articulated in its order and the

comments from the bench were disconnected from the evidence presented and from the binding authority on the requirements of a non-judicial foreclosure and liability flowing from failure and/or refusal to adhere to Deed of Trust (“DTA”) requirements. Conclusions of law are reviewed *de novo*, as are the application of the facts to the law. *Skamania County v. Columbia River Gorge Commission*, 144 Wn.2d 30, 42, 26 P.3d 241 (2001).

The Supreme Court has routinely held that courts must consider DTA provisions in the homeowner’s favor because it eliminates many protections enjoyed by borrowers in judicial foreclosures. *Bain v. Metropolitan Mortg. Grp., Inc.*, 175 Wn.2d 83, 93, 285 P.3d 34 (2012) (citing *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)); *see also Schroeder v. Excelsior Management Group, LLC*, 177 Wn.2d 94, 105, 297 P.3d 677 (2013) and *Albice v. Premier Mortg. Svcs. of Wash., Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012). The DTA “must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers’ interests and the lack of judicial oversight in conducting non-judicial foreclosure sales.” *Bain*, 175 Wn.2d. at 93. When determining whether an issue of material fact exists on summary judgment, a court must construe all facts and inferences in favor of the nonmoving party. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d

545, 552, 192 P.3d 886 (2008); *McNabb v. Dep't of Corrs.*, 163 Wn.2d 393, 397, 180 P.3d 1257 (2008). A “material fact” for summary judgment purposes is one upon which all or part of the outcome of the litigation depends. *Hill v. Cox*, 110 Wn.App. 394, 41 P.3d 495 (Div. III 2002), *review denied* 147 Wn.2d 1024, 60 P.3d 92. Summary judgment is proper if reasonable minds could reach only one conclusion from the evidence presented. *Cano-Garcia v. King County*, 168 Wn.App. 223, 277 P.3d 34 (Div. II, 2012), *review denied* 175 Wn.2d 1010, 287 P.3d 594. Such was not the case here.

STATEMENT OF ISSUES

Were HSBC, PHH, U.S. Bank and CRC entitled to summary judgment when the following genuine issues of material fact were unresolved:

(1) There are genuine questions as to the identity of the noteholder and loan owner, in spite of the Elbert Declaration contents, which were limited to testimony of U.S. Bank exclusively in its role as the Custodian.

(2) Defendants asserted in documents recorded in Chelan County, in documents sent to Mr. Moorman, as well as in oral communications, that HSBC was the loan servicer that was trying to collect on the loan, even though the Notice of Default asserted it was PHH. This was contradicted by Mr. Moorman’s un rebutted testimony that all of his communications were with HSBC – not PHH.

(3) U.S. Bank, HSBC and PHH asserted that U.S. Bank is the loan owner and “beneficiary,” even though it did not perform any of the beneficiary functions required under the DTA. Both PHH and HSBC asserted that each is the servicer who has the authority to act as the “attorney in fact” for U.S. Bank and has signed documents on behalf of

U.S. Bank to that effect, but there is no documentation nor any testimony which supports those assertions.

(4) If CRC was not properly appointed as the successor trustee by the beneficiary because U.S. Bank did not sign the Appointment of Successor Trustee, and there is no evidence that its purported “attorney in fact” PHH had the lawful authority to sign the document, how could the two NOTS documents initiated, served and recorded have been in compliance with the DTA? And how can CRC escape liability for its refusal to require adherence to DTA requirements in connection with a request to foreclose?

(5) CRC and HSBC refused to continue the foreclosure sale so that the loan modification packet could be reviewed even though HSBC had the packet and its representatives advised Mr. Moorman that he would be approved for a loan modification. In the litigation, PHH asserted that it was the subservicer handling all loan servicing, but its declaration ignored completely the fact that all of Mr. Moorman’s communications, on the phone and in writing, were with HSBC. This also contradicts PHH’s assertions about being the sub-servicer for HSBC. Notably, HSBC did not provide the Court with any testimony at all.

(6) The contradictions between the evidentiary record and the arguments advanced by the Defendants, and the decision rendered by the trial court, precluded summary judgment on any issues, and certainly precluded granting summary judgment to U.S. Bank and CRC, which did not even participate in the briefing and argument.

STATEMENT OF THE CASE

Mr. Moorman has owned the Property since approximately 2004. He has lived in the Property at various times and at other times it has been a rental property. Because he can work remotely and is in the mortgage business, he is often able to stay at the Property even while he is working. CP 67-100. He obtained a loan from HSBC Mortgage Corporation on or about November 2, 2005, secured by the Property. In connection

therewith, he signed a Promissory Note and Deed of Trust identifying HSBC Mortgage as the “Lender” in the amount of \$1 million. *Id.*

Mr. Moorman made payments on the loan for a significant period of time and those payments were always made to HSBC. He did not know that the loan was sold to another entity and that HSBC was merely a servicer. *Id.* Mr. Moorman began to struggle financially during the financial crisis that began in 2008. He applied for a loan modification from HSBC because it was the entity who communicated with him about the loan and in 2011 he did obtain a “loan modification”. CP 102-106. However, the terms of this “modification” did little to change the loan terms except that the arrears on the loan were added to the principal balance. The interest rate and term of the loan remained the same (including the fact that interest rate could increase up to 10.625%), but the payment increased because of the increased loan balance. The “Loan Modification Agreement” identified HSBC as the entity with the authority to extend the offer and execute the document as well. But it was not a “modification” in any meaningful sense. *Id.*

Mr. Moorman made the required monthly payments until October 2013. He continued to struggle financially and could not make the increased mortgage payments. The economy simply had not recovered enough to cover all of his expenses and the value of the Property

continued to be significantly less than the amount of the mortgage. *Id.*

He got in touch again with HSBC representatives seeking to obtain another loan modification in order to save the home. He submitted the documents requested, but there were always purported problems with what he submitted. He attempted to respond to all of the requests for additional documentation as promptly as possible, but they were never-ending. *Id.*

Mr. Moorman received a Notice of Default (“NOD”) posted at the Property on or about October 28, 2015. CP 108-113. The NOD made a demand for amounts allegedly due and owing on the loan, including “net other fees” in the amount of \$247.50 and “Mtgr Rec Corp Adv” in the amount of \$378.92. He had no idea of the basis for these amounts and challenged their validity. CRC, the entity that issued the NOD to Mr. Moorman, demanded payment of \$2,841.43 for “foreclosure fees and costs”, which Mr. Moorman maintained was excessive in connection with nothing more than the issuance of the NOD. CP 289. After receiving the NOD, Mr. Moorman continued to speak with HSBC about a loan modification. CP 229-230.

Later he received a Notice of Trustee’s Sale (“NOTS”) posted at the Property on or about December 11, 2015. CP 281-287. The NOTS was prepared and served on Mr. Moorman by CRC. The original sale date was April 22, 2016 and the sale was postponed a few times. It was then set for

August 19, 2016. During that time, he was still communicating with HSBC about his loan modification application. *Id.*

Mr. Moorman's attorney, Ms. Huelsman, obtained the following documents that were recorded in the records of Chelan County, Washington in connection with those previous attempts at foreclosure. CP 198-200. Those documents include the following:

a. NOTS issued by Northwest Trustee Services, Inc. on **June 4, 2010** scheduling a foreclosure sale on September 3, 2010.

b. The 2010 NOTS asserted in its body that it was issued in reliance upon an Assignment of the Deed of Trust by MERS, on behalf of **HSBC Mortgage Corporation**, to **HSBC Mortgage Corporation**. This Assignment was recorded in Chelan County on **May 14, 2010**.

c. The 2010 NOTS foreclosure sale was discontinued by way of a Discontinuance of Trustee's Sale that was recorded in the records of Chelan County on **September 9, 2010**.

d. An Assignment of Deed of Trust executed on behalf of **HSBC Mortgage Corporation** on April 18, 2012 purported to assign the interest in the Deed of Trust to **HSBC Bank USA, N.A.**, and recorded in Chelan County, Washington on April 19, 2012.

e. An Assignment of Deed of Trust was executed on April 19, 2012 on behalf of **HSBC Bank USA, NA** purporting to assign the beneficial interest in Mr. Moorman's Deed of Trust to **U.S. Bank** and recorded in Chelan County, Washington on **April 20, 2012**.

f. A "corrective" Assignment of Deed of Trust was executed on **October 24, 2013** on behalf of **PHH** purporting to assign the beneficial interest in Mr. Moorman's Deed of Trust from **MERS, as nominee for HSBC Mortgage Corporation**, to **HSBC Mortgage Corporation**. This document was recorded even though there were other assignments already recorded purporting to assign the interest in the Deed of Trust to other entities (U.S. Bank in 2012). This Assignment was recorded in the records of Chelan County, Washington on **October 31, 2013**.

g. An Appointment of Successor Trustee was executed on **October 9, 2015** which purported to appoint CRC as the successor trustee. The Appointment is signed on behalf of **PHH Mortgage acting as "attorney in fact" for U.S. Bank** and was recorded in the records of

Chelan County, Washington on **October 15, 2015**.

h. A NOTS was signed by CRC on or about **December 11, 2015** purporting to initiate a nonjudicial foreclosure sale on behalf of **U.S. Bank**, and it was recorded in Chelan County on **December 15, 2015**.

The contents of the numerous Assignments that were created and caused to be recorded by Defendants PHH and HSBC in order to pursue non-judicial foreclosures contradict each other and were false. *Id.* The Defendants maintained, through the testimony of U.S. Bank employee Sorell Elbert, that U.S. Bank is currently the noteholder and has been since **December 21, 2005**. If that is true, then why was HSBC causing Assignments containing false information to be recorded in Chelan County if the beneficial interest in the Deed of Trust was assigned to U.S. Bank in April 2012? Then it was allegedly assigned by PHH, acting as “attorney-in-fact” for HSBC Mortgage Corporation to itself. PHH, an entity that contended it was nothing more than a **subservicer** for the true **servicer**, HSBC, participated in executing documents for one reason – so that the foreclosure would be done in the name of HSBC, as though it was the noteholder. This is a violation of the DTA. *Id.* RCW 61.24.040. Notably, there is no documentation or testimony about PHH being appointed as an “attorney in fact” for HSBC.

PHH then executed the Appointment of Successor Trustee as an “attorney in fact” for U.S. Bank, the alleged “beneficiary” on **October 15,**

2015 to appoint CRC as the new trustee for purposes of initiation of a non-judicial foreclosure. CP 611. No documentation of the alleged relationship between PHH and U.S. Bank was provided to the Court at summary judgment. In fact, the Motion was only brought by PHH and HSBC – not U.S. Bank or CRC – and begins in the first paragraph by contending that HSBC is the noteholder. CP 460. This statement is expressly contradicted by the Elbert Declaration on behalf of U.S. Bank. CP 612-613.

Ms. Spare, the PHH declarant, also makes contradictory assertions. CP 573-575. First, at Paragraph 3, Ms. Spare makes reference to having knowledge of Nationstar’s systems, even though that entity has been dismissed from this lawsuit because of assertions that it has no relationship to Mr. Moorman’s loan. *Id.*; CP 447-448 & 455-456. She then asserts that PHH was servicing the loan for U.S. Bank. *Id.* at ¶¶ 7 & 10. The only support for Ms. Spare’s assertions about PHH’s role as a subservicer is a letter sent to Mr. Moorman *Id.* at ¶8. In Paragraph 10, Ms. Spare asserts that U.S. Bank is the noteholder and that the note includes an allonge which is signed in blank by “Silver State”. *Id.*; CP 574. There is no Allonge attached to the copy of Mr. Moorman’s Note provided to the Court by Ms. Elbert. CP 616-621. There is no reference to “Silver State” anywhere on that Note. *Id.* At oral argument, Mr. Lorber, on behalf of the Defendants, asserted this was information from another declaration that

had no place in this case, and was the fault of counsel (TR 6:21-7:4). That may well be true, but it also makes clear that Ms. Spare did not care about nor read the contents of her Declaration when she signed, nor did she review the exhibits attached thereto. *Id.*

The refusal of Ms. Spare and PHH to provide any documentation of the alleged “attorney in fact” relationship between PHH and U.S. Bank and/or PHH and HSBC is particularly glaring since she was the signer of the Appointment of Successor Trustee on October 9, 2015. CP 611. She did not testify that she was aware of the existence of any documentation demonstrating the alleged relationship between PHH and U.S. Bank and did not provide any such documentation with her Declaration. *Id.*

The Defendants did not provide the Court with a copy of the Trust Agreement related to U.S. Bank in support of their factual assertions. Mr. Moorman had to provide it. CP 626-713. The Master Servicer is identified as Aurora Loan Services, LLC, an entity which has since been acquired by Nationstar. *Id.* Notably, Mr. Moorman was notified in December 2016 that Nationstar would be his new loan servicer and it was added as a defendant to this lawsuit. However, counsel for Nationstar advised Ms. Huelsman that the servicing of the loan would remain with **PHH** (not HSBC, which had always been the servicer) and Nationstar was dismissed without prejudice. CP 447-450; 455-456; 660. At Page 55, HSBC is identified as a

“Servicer”, among others. CP 680. However, a current report about disbursements being made to the Trust only identifies Nationstar as the servicer. CP 715-725.

U.S. Bank contends that it, as the custodian, received Mr. Moorman’s original Note on December 21, 2005. CP 612-613. The Trust Agreement makes clear that the Depositor, Structured Asset Securities Corporation (CP 681), was the entity that was required to transfer the original Notes and other loan documents to one of the custodians (CP 651) “[c]oncurrently with the execution and delivery of this Agreement”. CP 681-683. The Trust Agreement is dated February 1, 2006. CP 626. This raises the question of how U.S. Bank could obtain possession and acquire noteholder status **prior** to the transfer of the Note to the Trust, consistent with the requirements of the Trust Agreement. It appears that according to the Trust Agreement, the Depositor was the entity that was the noteholder until at least **February 1, 2006**. CP 626-713. While this is well before the attempted foreclosures, it raises significant additional questions about the testimony provided to the Court by U.S. Bank. *Id.*

The duties of the Master Servicer are outlined beginning at Page 131 in the Trust Agreement. CP 699-711. At Page 132, Section 9.04(a)(iv) outlines the broad power given to the Master Servicer and Servicers to “effectuate a foreclosure”. They are empowered to execute documents to

put loans in or out of MERS and into the name of the Master Servicer or the Servicer as they desire. CP 700. However, none of this contractual language can change the requirements of the Washington Deed of Trust Act. RCW 61.24., *et seq.* This is especially true when there remain significant questions about the identity of the servicers as regards this loan in light of the conflicting information Mr. Moorman has received about Nationstar's role, and the inconsistent assertions about the roles played by PHH and HSBC. Notably, the Trust Agreement specifically disavows any contractual relationship between servicers and the Trustee, U.S. Bank. CP 733. There is no Power of Attorney or other document within the Trust that gives "agent" powers to the servicers on behalf of U.S. Bank, nor is there any evidence at all that the alleged noteholder, U.S. Bank, ever actually acts as a principal for purposes of overseeing and controlling the actions of its purported agents – the Master Servicer (unknown), Servicer (HSBC) and alleged Subservicer (PHH). In fact, the Trust Agreement makes clear that U.S. Bank only receives payments and monthly reports from the servicers. It does absolutely nothing at all to monitor the activities of the various servicers. Therefore, there cannot be any agency relationship whatsoever. CP 733.

Mr. Moorman maintained that the nonjudicial foreclosure sale which was scheduled to take place on Friday, August 19, 2016 was not

being done in conformity with the requirements of the DTA. RCW 61.24, *et seq.* (“DTA”). The Appointment of Successor Trustee was not signed by the “beneficiary,” as defined in the DTA. RCW 61.24.005(2); 61.24.010(2) and there is no proof at all that there was ever any agency or attorney in fact relationship between any of the Defendants. The identity of the loan owner and “noteholder,” the entity with the right to initiate a nonjudicial foreclosure under Washington law, whether directly or through the actions of an “agent,” remains in question. The Assignments contain contradictions about the identity of the “beneficiary.” Even though Assignments are not required under Washington law, the contradictory documents were recorded and relied upon by the Defendants in connection with initiating the nonjudicial foreclosure sales at issue.

CRC apparently never asked for documentation supporting the assertion on the Appointment document that PHH had been appointed as the “attorney in fact” for U.S. Bank. If it had done so, the fact that PHH did **not** have the authority to sign the Appointment because it had never been appointed as an “attorney in fact” by U.S. Bank.¹

Mr. Moorman also communicated with CRC about his pending loan modification which was being processed by HSBC and asked them to continue the sale because of the pending application. CRC refused to do

¹ CRC did not file its own motion for summary judgment nor present any evidence related to its actions, but was nevertheless dismissed by the trial court.

so. Similarly, Mr. Moorman was only communicating with HSBC about that loan modification. Mr. Moorman continues to maintain that CRC breached its duties to Mr. Moorman as the alleged foreclosure trustee and he was precluded from litigating issues against it because of the dismissal by the trial court resulting from her complete disregard of the lack of evidence by the Defendants to support their position. CP 422.

Mr. Moorman sought injunctive relief to prevent the August 19, 2016 sale but he did so without sufficient notice to the parties as required under the DTA. CP 422-423. A hearing was held on that Motion, but the Court found that he was precluded from injunctive relief because of the late notice. CP 443-444. The sale did not occur on August 19, 2016 and Mr. Moorman began communicating with Defendant CRC about curing the arrears. CP 422-423. Mr. Moorman wanted a loan modification but since it appeared that this was not going to happen, he was exploring obtaining a hard money loan from a private party to pay the arrears. *Id.* This information was communicated to the attorneys for CRC and there were exchanges regarding this potential. Ms. Huelsman left it up to Mr. Moorman to try to obtain that financing and let her know when he had obtained it. In the meantime, she did not engage in discovery in order to avoid increasing attorneys' fees. CP 443-444. However, Mr. Moorman apparently believed that he was waiting for something more from Ms.

Huelsman and in the meantime, a new NOTS document was issued. *Id.*

The new NOTS set a sale date of **February 17, 2017**. CP 426-435.

The newest NOTS included demands for payments in order to stop the sale that cannot be charged in advance of the actual sale, as well as the charges from the previous NOTS. The new charges included an auctioneer fee of \$100.00, when the auction had not yet occurred; a postponement fee of \$200.00 when the sale had not been postponed; another charge for recording of the Appointment of Successor Trustee even though this fee was already included in the fees in connection with the previous attempts at foreclosure; title insurance fees and a “date down” fee were both added to the amounts demanded, even though the charges from the previous foreclosure had already been added to the balance. The fact that the duplicate fees from the previous foreclosure were also added is evidenced in the “corporate advances” separately demanded in the amount of \$2,286.54. *Id.*

In the meantime, Mr. Moorman received notice that the servicing of the loan was transferred to Nationstar. CP 423. The interest rate on the loan can only change once per year, yet the demands for payment made by CRC, HSBC and then Nationstar, including the amounts demanded in both of the NOTS documents, reflect demands that change every six months, every nine months and otherwise. *Id.* The mailing charges have increased

by more than \$200.00 and there were other additional fees improperly added to the amounts demanded. *Id.*

Mr. Moorman knew that he was not entitled under the law to a loan modification, but he had been told by representatives of HSBC that he would be approved for a loan modification based upon the documentation he provided when he talked to them by phone in connection with the previous foreclosure. *Id.* He had been told that there is an in-house prohibition with HSBC on reviewing loan modification paperwork if there is less than fifteen (15) days before a foreclosure sale. *Id.* Further, the fact that Mr. Moorman has been talking for years to HSBC – not PHH – about a loan modification belies PHH’s assertions that it is handling all of the subservicing of this loan. *Id.* There was no testimony from HSBC before the Court and Ms. Spare did not say one word about the loan modification submissions in her Declaration on behalf of PHH. CP 573-611. Mr. Moorman also specifically asked the staff at CRC that the nonjudicial foreclosure sale be postponed because he was waiting for an answer on the loan modification application. The person with whom he spoke at CRC advised that they would not postpone the sale unless they were instructed to do so by someone at HSBC. There was no mention of PHH. CP 422-423. Mr. Moorman made a telephone connection to HSBC to try to get another postponement, as had been done before during review of a loan

modification, but the person with whom he spoke refused to give the instruction to postpone. *Id.* Since it had previously been postponed in order to allow for review of the loan modification materials, Mr. Moorman had believed up until Friday, August 12, 2016 that the sale would be postponed. CP 64. It was only late on that Friday that he made arrangements to consult with an attorney, which resulted in the late filed motion relating to the previously non-judicial foreclosure. *Id.*

The subsequent Motion for TRO and supporting pleadings were timely filed, Mr. Moorman obtained injunctive relief and he made all required monthly payments to the Court Registry. CP 736-737. Mr. Moorman had at least \$200,000.00 worth of equity in the Property even with the balance owed on the mortgage loan and he was trying to save the Property and the equity therein. He incurred out of pocket costs in the form of attorneys' fees in order to investigate his claims related to the actions of the Defendants in the amount of \$400.00, as well as \$6,000.00 in attorneys' fees and costs he paid previously in seeking injunctive relief as a separate flat fee. *Id.* In connection with the second attempt at obtaining injunctive relief, including attendance at hearings, Mr. Moorman paid his attorney an additional \$3,000.00 flat fee. *Id.* Those attorneys' fees were not for work on pursuing his Consumer Protection Act claims. Rather, they were related entirely to an initial consultation and work on

obtaining injunctive relief in order to prevent the sale and mitigate his damages by preserving the equity in the Property. *Id.*

ARGUMENT

A . Defendants Violated Multiple Provisions of the Deed of Trust Act and are therefore Liable to Mr. Moorman.

1. Deed of Trust Act Requirements.

The Washington DTA has three objectives: (1) that the nonjudicial foreclosure process remains efficient and inexpensive; (2) that the process provides an adequate opportunity for interested parties to prevent wrongful foreclosure; and (3) that the process promotes the stability of land titles. RCW 61.24, *et seq.*; *Cox v. Helenius*, 103 Wn.2d 383, 387-88, 693 P.2d 683 (1985). *See also* RCW 61.24.030(6). “Because the deed of trust foreclosure process is conducted without review or confirmation by a court, the fiduciary duty imposed on the trustee is exceedingly high.” *Id.* at 388-89. In *Cox*, the Supreme Court noted that even if the plaintiffs had not properly acted to restrain the sale, it would have nevertheless been voided because of the trustee’s action. *Id.* Here, the analysis should be the same even though this case is not exclusively focused on the actions of the purported trustee. Defendants did not adhere to DTA requirements.

Where parties purporting to conduct a nonjudicial foreclosure sale of residential real property fail to conform to the requirements of the DTA,

their actions are without legal effect and the sale is invalid. *See Albice v. Premier Mrtg.*, 174 Wn.2d 560, 568, 276 P.3d 1277 (2012) (“*Without statutory authority, any action taken is invalid.*”); *Rucker v. Novastar, Inc.*, 177 Wn.App. 1, 16-17 (2013) (“the vacation of a foreclosure sale is *required* where a trustee has conducted the sale without statutory authority”); *id.* (“[i]f the failure of a properly-appointed trustee to follow statutory procedures can result in the vacation of a sale, *this remedy is equally appropriate where an entity conducts a trustee sale in the complete absence of authority*”). (Emphasis added). Since the requisites to a trustee’s sale were never met in this case, Supreme Court case law makes clear that even a completed a sale can be found invalid when it does not meet the requirements. *See, Albice, supra*, (sale not in compliance with the statute is invalid); *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 106-07, 297 P.3d 677 (2013) (claims arising from violation of requisites to a trustee’s sale in RCW 61.24.030 not barred by waiver; requisites set forth in statutory list “*are not, properly speaking, rights held by the debtor*; instead, they are limits on the trustee’s power to foreclose without judicial supervision”) (emphasis added); *Walker v. Quality Loan Serv. Corp of Wash.*, 176 Wn.App. 294, 309-10, 308 P.3d 716 (2013) (“[W]hen an unlawful beneficiary appoints a successor trustee, the putative trustee lacks the legal authority to record and serve a notice of

trustee's sale.”); “Such actions by the improperly appointed trustee, we have explained, constitute ‘material violations of the DTA.’” *Rucker*, 177 Wn.App. 1, 15-17, (citing to *Walker*); *Barrus v. ReconTrust Co.*, No. 11-1578-KAO, Dkt. No. 114, *13-15 (Bkrty. W.D. Wash., May 6, 2013).

2. Applying the Consumer Protection Act to DTA Requirements.

When analyzing Consumer Protection Act (“CPA”) claims, a plaintiff must prove five elements: “(1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or their business or property; (5) causation.” *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, (1986). Beginning with *Bain v. Metropolitan Mortg. Grp., Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012), the Washington Supreme Court has been clear that a homeowner may pursue a CPA claim for violations of the DTA. *Bain*, at 98-110, noting that “characterizing MERS as the beneficiary has the capacity to deceive” and that there is certainly a presumption that the public interest element is met because MERS is involved in “an enormous number of mortgages in the country”. *Id.* The same analysis applies here to the multiple misrepresentations made about the identity of Mr. Moorman’s noteholder and most importantly, the record is not clear about the noteholder identity. Further, representations

were made about PHH being the “attorney in fact” for U.S.Bank, yet there is no documentation which supports that assertion. In fact, the Trust Agreement expressly disavows any such agency relationships. Thus, there were genuine issues of material fact that precluded summary judgment. *Sato v. Century 21*, 101 Wn.2d 599, 681 P.2d 242 (1984); *St. Paul Ins. Co. v. Updegrave*, 33 Wn.App. 653, 656 P.2d 1130 (1983); *Talmadge v. Aurora Chrysler Plymouth, Inc.*, 25 Wn. App. 90, 605 P.2d 1275 (1979).

Under the CPA, specific monetary damages are not necessary, but a court is nevertheless required to award a prevailing plaintiff attorneys’ fees. *Mason v. Mortgage America*, 114 Wn.2d 842, 792 P.2d 142 (1990). Mr. Moorman testified as to his out of pocket damages relating to investigation of his claims and \$9,000.00 in fees paid to obtain injunctive relief, as well as the fact that misrepresentations were made to him about being reviewed and approved for a loan modification. CP 230-231,155-156. *Frias v. Asset Foreclosure Services, Inc.*, 181 Wn.2d 412, 334 P.3d 529 (2014). CP 45-46.

a. Unfair and deceptive practices.

The Supreme Court noted in *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 295 P.3d 1179 (2013) that CPA claims can be brought against defendants for acts that are “unfair **or** deceptive”, including in the context of a non-judicial foreclosure sale. *Klem* at 11. *Klem* went on to cite

extensively and discuss its decision in *Panag v. Farmers Ins. Co. of WA*, 166 Wn.2d 27, 48, 204 P.3d 885 (2009) to expressly clarify that a violation of the CPA may be brought because of a “. . . an act or practice that has the capacity to deceive the substantial portions of the public, or an unfair or deceptive practice not regulated by statute but in violation of public interest.” *Klem* at 16. In describing the “unfair or deceptive” standard, the Supreme Court quoted from this portion of *Panag*:

It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would have undertaken an endless task. It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of the country.

Klem, at 16, citing to *Panag*, 166 Wn.2d at 48 (quoting *State v. Schwab*, 103 Wn.2d 542, 558, 693 P.2d 108 (1985) (Dore, J. dissenting) (quoting H.R. Conf. Rep. No. 1142, 63d Cong., 2d Sess. 19 (1914))). The Court further noted that “an act or practice can be unfair without being deceptive” and that the statute clearly allows claims for “unfair acts **or** deceptive acts or practices.” *Klem*, at 16-17. Citing to *Panag*, the *Walker* Court also noted that a plaintiff had valid claims even without a completed foreclosure because he had suffered harm:

In *Panag v. Farmers Insurance Co. of Washington*, our Supreme Court held, “[T]he injury requirement is met upon

proof the plaintiff's 'property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.'" Investigative expenses, taking time off from work, travel expenses, and attorney fees are sufficient to establish injury under the CPA.

....

Because Walker pleads facts that, if proved, could satisfy all five elements, we conclude that the trial court erred by dismissing his CPA claim.

Walker v. Quality Loan Serv. Corp of Wash., 176 Wn.App. 294, 309-10, 308 P.3d 716 (2013), citing to *Panag*, 166 Wn.2d at 53; *see also*, *Rucker v. Novastar, Inc.*, 177 Wn.App. 1 (2013) (“[W]hen an unlawful beneficiary appoints a successor trustee, **the putative trustee lacks the legal authority to record and serve a notice of trustee’s sale;**” “such actions by the improperly appointed trustee, we have explained, constitute ‘material violations of the DTA.’”). The Defendants acted intentionally to avoid the requirements of the DTA by executing contradictory and false assignments for recording and using those documents to support attempts at non-judicial foreclosure. PHH in particular falsely asserted that it was the “attorney in fact” for U.S. Bank, yet neither it or PHH provided any documentation in support of that assertion. That may be because the **only** evidence provided by U.S. Bank came from it **solely** in its capacity as “Custodian.” CP 612-621.

Just as in *Rucker*, CRC was not appointed by the alleged “beneficiary”, U.S. Bank, but by PHH acting as “attorney in fact” on

behalf of an entity that did **not** provide it with that legal authority. Nor was PHH ever appointed as an “agent” to act for U.S. Bank consist with the requirements of this Court’s guidance in *Bain*. There cannot be an “agency” relationship when there is no principal exercising control over the alleged “agent” and when there is no documentation of the existence of such relationship. *Bain*, 175 Wn.2d at 106. It is actually quite telling that even in their Reply, the Defendants were only able to make arguments about U.S. Bank’s authority to act because it was the “beneficiary,” contending that it could do so through third parties because it had “delegated” that authority to HSBC and/or PHH. CP 754-755 (Spare, Dec., CP 754). The Defendants only citation in support of that position was a copy of a letter sent to Mr. Moorman about loan servicing. CP 606-609. As Mr. Moorman demonstrated in his pleadings, even the Trust Agreement did not support such assertions.

Just as in *Rucker*, CRC, the purported foreclosing trustee, was **not** appointed by the “beneficiary,” but by the loan servicer or subservicer as an “attorney in fact” without it ever having been appointed as such and without an appointment as an “agent”. CP 611.

A “Holder” of a negotiable instrument is defined in Washington as:
RCW 62A.1-201...

(21) "Holder" with respect to a negotiable instrument,

means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

RCW 62A.1-201(21)(A). *See also*, RCW 61.24.005(2). Since the Defendants maintain that U.S. Bank was the “beneficiary”, it was required to execute the Appointment of Successor Trustee (RCW 61.24.010(2)); Beneficiary Declaration (RCW 61.24.030(7)); and it was supposed to be the entity that gave direction to the properly appointed trustee to foreclose (RCW 61.24.030; .031; .040). Consistent with the Supreme Court’s decision in *Bain*, parties who utilize the DTA cannot alter its requirements by contract.

The trial court accepted the Defendants’ position that being nothing more than a loan servicer was equal to having been provided with authority under a Power of Attorney and/or being appointed as an agent, and then acting consistently with that appointment evidencing an actual principal/agent relationship. *See, Bain* at 97-98. If this position is accepted by this Court, it would mean that the *Bain* case stands for the proposition that Washington law allows the use of agents in spite of plain language in the certain statutes that do not provide for such actions. Even more importantly, it would result in the requirements that parties who purport to have a principal/agent relationship actually have one where the principal

directs and controls the actions of the agent becoming meaningless. *Moss v. Vadman*, 77 Wn.2d 396, 402-03, 463 P.2d 159 (1970).

The trial court accepted the Defendants' arguments about having authority to act for U.S. Bank without requiring that they provide evidence consistent with the requirements outlined by the Supreme Court in *Bain*, 175 Wn.2d at 107 (“[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal”) (quotation marks and citation omitted) (emphasis in original). Here, there is no evidence at all of “control” of U.S. Bank’s alleged agent, PHH and/or HSBC, by U.S. Bank and in fact, the only testimony provided by U.S. Bank is as regards its role as a “custodian.” CP 574-575. As *Bain* acknowledges, there are portions of the DTA which allows the use of “authorized agents” to perform certain specific acts (RCW 61.24.030; .031(1)(a), (b); .050(2); .143; and .163(8)(a)). The actions complained of herein do **not** include those sections of the DTA. The remainder of the DTA ***does not empower an agent to act in the beneficiary’s stead***. See, *In re Swanson*, 115 Wn.2d 21, 27, 804 P.2d 1 (1990) (“Where the legislature uses certain statutory language in one instance, and different language in another, there is different legislative intent.”). When Legislature intends to allow the use of “authorized agents” to perform certain actions under the DTA, it says so very clearly.

The Defendants distort the law in its attempt to bootstrap those specific provisions of the DTA allowing authorized agents to take certain actions into a generalized conclusion that the DTA, and *Bain*, freely allows beneficiaries to delegate their responsibilities to unsupervised “agents.” But, even supposing that an agent *could* lawfully take an action like appointing a successor trustee on behalf of the beneficiary, material questions of fact prevent them from obtaining summary judgment as the Defendants have not provided any evidence which demonstrates the existence of a principal-agent relationship nor of the alleged “attorney-in-fact” relationship that PHH used in connection with signing the Appointment of Successor Trustee. CP 611. In fact, all of the evidence presented to the Court makes clear that PHH and/or HSBC performed all loan servicing functions and never communicated with U.S. Bank at all, nor that anyone at U.S. Bank ever provided either of those entities with a Power of Attorney or other document appointing them as an “attorney-in-fact.” Wells Fargo actually knew the location of the Note and/or about the existence of the POA. This is particularly important since the Trust Agreement disavows such relationships. CP 691-692. *Bain*, 175 Wn.2d at 106, requires that ““an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, *with a correlative manifestation of consent by the other party*

to act on his behalf and subject to his control” (citing *Moss v. Vadman*, 77 Wn.2d 396, 402-03, 463 P.2d 159 (1970)) (emphasis added). None of that was present here.

Mr. Moorman maintains that because of the insufficiency of the documentation used in connection with the nonjudicial foreclosure at issue in this case, these Defendants have engaged in “unfair **and** deceptive” practices. Further, these actions were intentional because the documentation used in support of the foreclosure was defective on its face. The “Appointment of Successor Trustee” was not signed by the “Beneficiary” but rather by an alleged “attorney in fact” who did not have any such authority from U.S. Bank. Because the foreclosure was wrongfully initiated, any demand for fees related to that foreclosure was also unfair and deceptive. Mr. Moorman demonstrated to the trial court that he could prove the unfair and deceptive requirements of a CPA claim. *See, Frias*, 181 Wn.2d 412.

b. Occurring in trade or commerce.

All of the Defendants’ actions were done in the course of performing their business of owning and/or servicing a mortgage loan secured by real property located in Washington and receiving payments from and/or title to real property related thereto. Their actions were done in connection with trying to foreclosure on Mr. Moorman’s property,

consistent with its business document, the Trust Agreement. The documents were recorded in the records of King County, Washington and were used in support of the completed foreclosure. Thus, the complained of acts occurred in the course of trade or commerce.

c. Public Interest Element.

Proof of the public interest element may be proven through evidence of actual injury to others or a finding that it “had the capacity to injure other persons” or “has the capacity to injure other persons.” RCW 19.86.093. Proof that the Defendants’ business practices will and has injured others is evident in its assertions that they did comply with Washington law and their request that the trial court affirm its actions, which are in direct contravention of DTA requirements. The Supreme Court found in *Bain*, 175 Wn.2d 83, *Frias v. Asset Foreclosure Services, Inc.*, 181 Wn.2d 412, and *Lyons v. U.S. Bank National Ass’n*, 181 Wn.2d 775, 336 P.3d 1142 (2014) that provision of and reliance upon the same sort of false information and noncompliant documentation is “unfair” and “deceptive” under the CPA, as did the Court of Appeals in *Walker* and *Rucker*. Numerous other DTA cases decided by the Supreme Court require that language in the DTA be construed strictly in the homeowner’s favor because it eliminates many protections enjoyed by borrowers in judicial foreclosures. *Bain*, 175 Wn.2d. at 93 (citing *Udall v. T.D. Escrow*

Servs., Inc., 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)); *see also* *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013); *Albice v. Premier Mortg. Svcs. of Wash., Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012). DTA “must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers’ interests and the lack of judicial oversight in conducting non-judicial foreclosure sales.” *Bain*, 175 Wn.2d. at 93.

The Defendants herein have contended that their actions were done in conformity with the requirements of the DTA and therefore have proven through their responses to Mr. Moorman’s allegations that they have already and will engage in the same actions in the future. This means that the Defendants’ standard business practices have and are necessarily harming others, and have the potential to harm others, by subjecting them to wrongfully initiated non-judicial foreclosures. RCW 19.86.093.

d. Mr. Moorman was damaged and injured by the actions of the Defendants.

Mr. Moorman testified extensively about his injuries and damages, including his out of pocket damages relating to investigating his claims and seeking injunctive relief in order to mitigate his damages and prevent the loss of his real property. These actions were entirely separate from the work on pursuing his claims for violations of the Consumer Protection

Act. Except for arguments that Mr. Moorman was entirely responsible for his damages because he defaulted on the loan and misrepresenting the nature of Mr. Moorman's attorneys' fees incurred, his testimony about his damages and his injury, in the form of the repeated refusals to accept his loan modification documentation and the time that he spent constantly trying to get that situation resolved, was unrefuted by the Defendants.

“Even when there is no completed foreclosure sale and no allegation that plaintiff has paid foreclosure fees, it is possible for a plaintiff to suffer injury to business or property caused by alleged DTA violations that could be compensable under the CPA.” *Frias v. Asset Foreclosure Services, Inc.*, 181 Wn.2d 412, 430, citing to *Panag v. State Farm Ins. Co. of WA*, 166 Wn.2d 27, 57 (2009); *Lyons*, 336 P.3d at 1142 (emphasis added). Mr. Moorman has been trying to save his home and have been injured and damaged through that process by the Defendants as outlined in his Declarations. CP 61-65 and 155-156.

e. Causation

Mr. Moorman demonstrated that his injury and damages were caused by the Defendants' actions. The Defendants cited to *Blair v. Northwest Tr. Servs., Inc.*, 193 Wn.App. 18, 37 (Wash. Ct. App. 2016), which held that the particular plaintiff in that case could not prove his injury for all of the violations of the requirements of the DTA that this

Court identified in its opinion. While the Supreme Court declined review of *Blair*, a careful review of that decision makes clear that that decision did not properly interpret Washington Supreme Court precedent and it contravenes other Supreme Court opinions. The *Blair* Court's analysis of the requirements of RCW 61.24.030(7) was correct and completely consistent with the Washington Supreme Court's decision in *Trujillo v. NW Trustee Servs., Inc.*, 183 Wn.2d 820, 355 P.3d 1100 (2015). In *Trujillo*, the Supreme Court specifically noted in Footnote 10 that the clarification of the law requested by the Washington Attorney General's Office was correct and consistent with the Court's position. The actions in question are measured at the time that the party(ies) took the complained of action or failed to act. *Trujillo*, 183 Wn.2d at 834, n. 10. The *Blair* Court found that "Because NWTS relied on the ambiguous beneficiary declaration prior to recording, transmitting, or serving the notice of trustee's sale, it violated RCW 61.24.030(7)(a)." *Blair*, at 37-39. The Court then went on to analyze whether or not Mr. Blair met the injury elements of a CPA claim and concluded that he met that element because he had incurred attorneys' fees and costs associated with consulting with an attorney to investigate the authority to foreclose. *Id.* But on the question of whether Mr. Blair proved the casual element of a CPA claim, the Court held:

To satisfy the causation element, a "plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury." *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 84, 170 P.3d 10 (2007). This requires "a causal link between the misrepresentation and the plaintiffs injury." *Id.* at 83. The existence of a causal link is usually a factual question. *Id.*

Id. However, the Court then went on to find that Mr. Blair could not prove the causal connection because he did not testify about the impact of the beneficiary declaration upon him. *Id.* But this conclusion is disconnected from the facts of nonjudicial foreclosures and misconstrues what is properly identified as the "unfair or deceptive act." RCW 19.86.020.

The *Blair* Court incorrectly concluded that the "unfair and deceptive act" at issue in that case was the execution of the improper beneficiary declaration. In fact, the actual "unfair and deceptive" act was reliance upon the ambiguous beneficiary declaration to issue the Notice of Trustee's Sale and the scheduling of a foreclosure auction, which Mr. Blair was required to enjoin. Here, the beneficiary declaration so it is not an issue in this case. However, the Defendants and the trial court relied upon *Blair* as to the causation analysis, so it is important for this Court to understand its alleged relevance to the claims in this case. The foreclosing trustee's reliance upon an ambiguous declaration as part of its regular business activities was eviscerated by the Supreme Court in *Trujillo* and *Lyons*. "A foreclosure trustee must 'adequately inform' itself regarding the

purported beneficiary's right to foreclose, including, at a minimum, a 'cursory investigation' to adhere to its duty of good faith." *Lyons* at 789; citing to *Walker v. Quality Loan Serv. Corp of Wash.*, 176 Wn.App. 294, 309-10, 308 P.3d 716 (2013). Thus, the *Blair* Court ignoring the import of that defective document is not consistent with other Supreme Court decisions.

As the Supreme Court noted in *Trujillo*,

Following our recent decision in *Lyons v. U.S. Bank National Ass'n*, 181 Wn.2d 775, 336 P.3d 1142 (2014), we hold that **a trustee cannot rely on a beneficiary declaration containing such ambiguous alternative language**. *Trujillo* therefore alleged facts sufficient to show that CRC breached the DTA and also to show that that breach could support the elements of a Consumer Protection Act (CPA) claim.

Trujillo at 820 (emphasis added). In this case, the Appointment of Successor Trustee, which was **required** in order for CRC to initiate a foreclosure, was **not** signed by the "beneficiary," even on its face. CP 611. It was signed by someone on behalf of U.S. Bank by PHH, who falsely represented that it was an "attorney in fact" for U.S. Bank. *Id.* This assertion by PHH was untrue because there is no documentation whatsoever of any such authority as between PHH and U.S. Bank, or even HSBC and U.S. Bank. U.S. Bank did **not** provide any testimony about its role other than as a "custodian" through the Elbert Declaration. CP 612-613. Neither the trial court nor this court should accept the Defendants'

unsupported arguments that legal authority existed where there is no testimony or documentation of such a relationship.

The Defendants also cited to the Supreme Court decision in *Brown v. Dept. of Commerce*, 184 Wn.2d 509, 539, 359 P.3d 771 (2015) in support of their position, but that case was focused on the issues relating to loan ownership vs the “noteholder” (beneficiary – RCW 61.24.005(2)) in the particular context of loans owned by Fannie Mae and Freddie Mac.² Here, there remain questions about noteholder status unlike those involved with GSEs. Mr. Moorman has outlined extensively the problems with the documentation in this case and it has no correlation to the *Brown* decision. Just as the Supreme Court found in *Lyons*, there was no authority to foreclose based upon the available documents and for that reason alone, Ms. Lyons could proceed with her CPA claims. The *Lyons* Court never indicated in its opinion that Ms. Lyons needed to testify that she relied upon the beneficiary declarations nor could she since it is not a document that a borrower sees, but rather, it is a required document that must be produced in order to proceed with a non-judicial foreclosure. But for the use of defective, false and contradictory Assignments and the execution of

² There are agreements entered into between the GSEs and loan servicers which allow the servicers to assert only in the context of a bankruptcy case or a foreclosure that they are the noteholder. This business practice was endorsed by the Supreme Court and emphasized the Court’s interest when interpreting the DTA on who is the “noteholder.”

a defective Appointment of Successor Trustee by someone without authority to do so under Washington law, the attempted non-judicial foreclosures that are the subject of this litigation would not have occurred. This means that Mr. Moorman has made the “causal” connection between the actions of these Defendants and his injuries, and thus have demonstrated that he can meet all of the elements of his CPA claim.

CONCLUSION

Genuine issues of material fact remained unresolved at the time that the Order was entered. There is no support in Washington law for the Defendants’ position that PHH and/or HSBC could act as an agent and/or attorney in fact without being appointed with such authority by U.S. Bank. For these reasons, Mr. Moorman maintains that summary judgment should have been denied and this matter must be remanded to the trial court.

Respectfully submitted this July 9, 2018.

A handwritten signature in black ink that reads "Melissa A. Huelsman". The signature is written in a cursive style with a horizontal line underneath the name.

Melissa A. Huelsman, WSBA # 30935
Attorney for Appellant William Moorman

CERTIFICATE OF SERVICE

I, Tony Dondero, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of the United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on Monday, July 9, 2018, I caused the foregoing document attached to this Certificate of Service plus any supporting documents, declarations and exhibits to be served upon the following individuals via the methods outlined below:

Aldridge Pite, LLP Kim Hood, WSBA No. 42903 9311 SE 36th St Ste 100 Mercer Island, WA 98040 Ph: 206-707-9603 Fax: 206-232-2655 Email: khoo@aldridgepite.com Attorney for Clear Recon	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Other: <u>Regular U.S. mail, postage prepaid</u>
John S. Devlin III, WSBA No. 23988 Abraham K. Lorber, WSBA No. 40668 Lane Powell PC 1420 Fifth Avenue, Suite 4200 Seattle, WA 98101 206-223-7000 devlinj@lanepowell.com lorbera@lanepowell.com Attorneys for PHH Mortgage Corp. & HSBC Bank USA	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Other: <u>Regular U.S. mail, postage prepaid</u>

I certify under penalty of perjury under the laws of the State of Washington that the foregoing statement is both true and correct.

Dated this Monday, July 9, 2018, at Seattle, Washington.

A handwritten signature in cursive script, appearing to read "Tony Dondero".

Tony Dondero, Paralegal

LAW OFFICES OF MELISSA HUELSMAN

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