

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON
Case No.: 69352-2
(King County Superior Court No.: 12-2-01729-8)

DANIEL J. WATSON and KETWARIN ONNUJM,
Respondents/Cross-Petitioners,

v.

NORTHWEST TRUSTEE SERVICES, INC.,
Petitioner/Cross-Respondent

APPENDIX TO RESPONDENTS/CROSS-PETITIONERS' OPPOSITION AND
MOTION FOR DISCRETIONARY REVIEW

Michele K. McNeill, WSBA No. 32052
SKYLINE LAW GROUP, PLLC

Attorney for Respondents/Cross-Petitioners
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FILED
DIVISION 1
APR 13 2012
COURT OF APPEALS
STATE OF WASHINGTON

APPENDIX

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A-1

FILED
KING COUNTY, WASHINGTON

AUG 27 2012

SUPERIOR COURT CLERK
EILEEN L. MCLEOD
DEPUTY

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

WATSON

Plaintiff,

vs.

NORTHWEST TRUSTEE SERVICES

Defendant.

No. 12-2-01729-8 SEA

MEMORANDUM RULING

I. Facts

In April of 2003, Plaintiffs executed a promissory note for \$280,000 payable to ABN AMRO Mortgage, Inc. After mergers and business transactions, CitiMortgage came to own the Note, and appointed NWTS as a Successor Trustee.

The Plaintiffs fell behind in their payments, and on February 5, 2011, a Notice of Default and Loss Mitigation Declaration were sent to Plaintiffs. The plaintiffs were not notified prior to the issuance of the Notice of Default that they could obtain a foreclosure mediation referral from a HUD Counselor or attorney. The plaintiffs assert and the court must accept as true, for the purposes of this summary judgment motion, that had they received a notice containing this information that they would have obtained a foreclosure mediation referral from a HUD counselor or an attorney to stop the sale. And, indeed, the plaintiffs make some efforts to contact

ORDER - Page 1 of 10

Judge Kimberley D. Prochnau
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206) 296-9260

ORIGINAL

1 the lender by hiring in the fall of 2011 a California entity entitled the "National Help Legal
2 Center" to negotiate with the lender. It appears; however, that this entity is neither a HUD
3 approved counselor or attorney nor contrary to its representations to the plaintiffs that it was
4 stopping the sale that it never even made contact with the lender or trustee.

5 On March 22, 2011, a Notice of Trustee's Sale was recorded, setting a sale date of June 24,
6 2011.

7 However, on June 20, 2011, the Plaintiffs filed for bankruptcy, postponing the sale. This sale
8 was eventually cancelled because of the bankruptcy proceedings.

9 After bankruptcy proceedings had been completed, NWTS recorded, posted and mailed to the
10 plaintiffs an Amended Notice of Trustee's Sale on or about November 8, 2011. The notice set a
11 sale date of December 23, 2011.

12 Defendants did not contact the Plaintiffs prior to recording the Amended Notice of Trustee's
13 Sale. No new Notice of Default was sent to Plaintiffs.

14 The property was sold to a third party at the trustee's sale resulting in issuance of a Trustee's
15 deed and surplus funds being deposited into the court registry. Plaintiffs filed this Complaint for
16 Wrongful Foreclosure and Quiet Title on January 11, 2012 and were permitted by the Court to
17 amend their complaint on April 26, 2012. Plaintiffs allege that NWTS and CitiMortgage violated
18 the Foreclosure Fairness Act by failing to provide plaintiff with the pre-foreclosure notices
19 required by the FFA and by failing to exercise due diligence as required by the FFA before
20 recording the Amended Notice of Trustee's Sale. Defendants argue in this motion for summary
21 judgment that the FFA does not apply as the FFA did not go into effect until July 22, 2011.

22 Plaintiffs argue that the statute should be retroactively applied.

1 After hearing oral argument, the Court dismissed claims against CitiMortgage with prejudice
2 and invited additional briefing with respect to the claims against NWTIS. The court has now
3 considered this briefing.

4 **II. Analysis**

5 On July 22, 2011 the operative statute, the Washington Deed of Trust Act, RCW 61.24 was
6 amended by the Foreclosure Fairness Act. (FFA). The FFA states that a trustee, or beneficiary
7 may not issue a notice of default (and thus may not proceed with a trustee's sale) unless the
8 beneficiary or authorized agent attempts contact with the borrower by letter to provide the
9 borrower with specific information including the right to a meeting with the beneficiary before the
10 notice of default is issued. The FFA requires specific information (sometimes called a Pre-
11 Foreclosure Options letter), be provided to a borrower prior to issuance of the Notice of Default
12 and before a Trustee's sale can be scheduled or held. This letter must inform the borrower that
13 they have a right to meet with their lender before a notice of default may be issued and gives them
14 up to an additional 90 days to request and participate in such a meeting. The letter also must
15 inform the borrower of their right to meet with a HUD approved housing counselor or attorney
16 who can assist them with mediation, to meet with the lender, and/ or work with their lender to
17 seek a resolution such as a loan modification or some other work out plan. The letter must
18 provide toll-free numbers for the borrower to find HUD approved housing counselors as well as
19 civil legal aid resources. A resolution may include, but is not limited to, a loan modification, an
20 agreement to conduct a short sale, or a deed in lieu of foreclosure transaction, or some other
21 workout plan. RCW 61.24.030-.031. The FFA states that it "shall be requisite to a trustee's sale"
22 that at least 30 days before the notice of trustee's sale is recorded, transmitted or served, that a

1 written notice of default be transmitted to the borrower containing specific information outlined
2 in the statute.

3 Defendants assert that the FFA does not apply to this matter because the FFA did not take
4 effect until July 22, 2011—before the Amended Notice of Trustee’s Sale had been generated or
5 the Trustee’s Sale had occurred, but after the Notice of Default had been issued.

6 Defendants also assert that even if the FFA is applicable to this matter that plaintiffs were not
7 entitled to notice of pre-foreclosure options because the property was not an owner-occupied
8 residential property. However, Plaintiffs have produced some evidence to support their claim that
9 the property was their principal residence and therefore this particular issue cannot be determined
10 on summary judgment. For the purposes of the remainder of this ruling, the Court assumes that
11 the property was owner-occupied within the meaning of RCW 61.24.

12 Although the operative Notice of Trustee’s Sale (designating December 23, 2011 as the date
13 of sale) is styled as an “Amended” Notice, it meets all of the prerequisites of a notice setting a new
14 sale date pursuant to a subsequent notice of trustee’s sale under 61.24.130(4). Under the special
15 provisions concerning a bankruptcy, the trustee is not normally required to re-start the process
16 from the beginning but may issue a new Notice of Trustee’s Sale with a new sale date provided
17 the applicable deadlines are followed and the appropriate notice and recording made. The
18 *applicable deadlines and processes for notice and recording were followed in this case. However,*
19 the plaintiffs argue that this Notice of Sale and subsequent Trustee’s Sale was defective because
20 the Pre-Foreclosure Options letter requirement established by the FFA was not provided to the
21 Plaintiffs prior to issuance of the Notice of Default. Defendants argue that no such requirement
22 was in effect when the Notice of Default was issued and that the statute should not be construed
23 to be retroactive.

1 The Legislature must indicate that a statute is intended to operate retroactively; otherwise,
2 statutes are presumed to act prospectively. *State v. McClendon*, 131 Wn.2d 853, 861, 935 P.2d 1334
3 (1997). This presumption can be overcome in three ways:

- 4 1. The Legislature explicitly provides for retroactivity;
- 5 2. The amendment is "curative;" or
- 6 3. The statute is "remedial."

7 *Densley v. Dept. of Retirement Systems*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007).

8 A. Remedial Statutes

9 Although the Legislature did not explicitly state that The Foreclosure Fairness Act (FFA),
10 would be applied retroactively, and the FFA is not a curative statute¹, it does act as a remedial
11 statute. To be deemed remedial, a statute must relate to "practice, procedure, or remedies" and
12 must not "affect a substantive or vested right." *Miebach v. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d
13 1074 (1984). Here, the statute relates to the procedure for initiating a foreclosure sale.

14 A remedial statute will be applied retroactively if this application will "further its remedial
15 purpose." *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981). In the discussion of the
16 bill, the Legislature explained that high foreclosures rates are a serious problem in the state, and
17 that the legislation was intended to help provide ways to avoid foreclosure. S.S.H.B. 1362, Chapter
18 58, Laws of 2011. The amendment was enacted in order to help lower the rate of foreclosures².

19 One of the ways to do this is to provide more notice and options for the homeowner before

20 ¹ "An amendment is curative only if it clarifies or technically corrects an ambiguous
21 statute." *McGee Guest Home, Inc. v. Dept. of Social and Health Services of State of Wash.*, 142 Wn.2d 316,
22 325, 12 P.3d 144 (2000) (quoting *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461, 832, P.2d 1303
(1992)).

23 ² This is similar to the situation in *Macumber v. Shafer*, which dealt with the Homestead
24 statutes. The Court explained that the amendment in that case "was enacted in response to the
constant rise in the cost of living," as it provided for an increase in the amount of the homestead
exemption. The Court found that this was a remedial statute. *Macumber v. Shafer*, 96 Wn.2d 568,
570, 637 P.2d 645 (1981).

1 commencing foreclosure proceedings. Further, the Legislature stated that it intended to encourage
2 homeowners to utilize the skills and professional judgment of housing counselors as early as
3 possible in the foreclosure process. This instant case appears to be a textbook example of the
4 harms the Legislature was intending to cure. Plaintiffs were not referred prior to the start of the
5 foreclosure process to legitimate housing counselors or attorneys that might have assisted them in
6 either stopping the foreclosure or negotiating an alternative to a Trustee's Sale. Too late in the
7 process, Plaintiffs attempted to find assistance and instead ended up hiring an entity that lulled
8 them into a false sense of complacency and may have even defrauded them.³

9
10 *B. Transaction as One Continuous Action*

11 The Defendants contend that no new notice of default was needed, as they provided the
12 required notice before Plaintiffs filed for bankruptcy. They argue that by recording another Notice
13 of Trustee's Sale, they were still taking action under the same transaction, which was simply stalled
14 by the bankruptcy proceedings.

15 After the discharge of bankruptcy proceedings which has stayed a trustee sale, a new sale date
16 may be set. RCW 61.24.130(4). The trustee may simply continue a sale for not more than 120
17 days or may set a new sale date not less than 45 days from the date of the bankruptcy court order.
18 The parties appear to agree that the Notice of Sale was in conformity with the latter procedure, as
19 the 120 day period had expired. Unlike a continuance of sale under the first option, the trustee
20 must record, post, publish and serve the new notice of Trustee's Sale. The trustee complied with
21 these procedures. However, RCW 61.24.130(4) is predicated upon compliance with all of the

22 ³ Although the FFA had not yet been enacted before issuance of the Notice of Default
23 was issued, it appears the trustee was either prescient or was well informed as to the likely
24 requirements of the FFA. The form of the Notice of Default itself is identical or nearly identical
to the FFA requirements. It includes a suggestion that the plaintiff obtain professional resources
although it does not appear to provide contact information for such resources. The 2012
Legislature amended the statute (after the foreclosure proceedings were completed in this case) by
directing that such specific contact information be provided to borrowers. *See*, 2012 C 185 Sec. 9.

1 statutory prerequisites at the time of issuance of the Notice of Sale. The Notice of Sale was issued
2 after the FFA went into effect. While under *Meyers Way*, 80 Wn. App. 655, the trustee is not
3 required to re-initiate the foreclosure or issue a new Notice of Default merely because of new
4 facts that have arisen i.e. additional defaults or cures, this does not obviate the trustee's obligation
5 to comply with the law then in effect in issuing a new Notice of Sale.

6 If the Defendants had created a vested right before the amendment went into effect, the
7 provisions could not be applied retroactively. In order for a right to be vested, it must be more
8 than an expectation that the laws will continue as they are at the present time. *Miebach*, 102
9 Wn.2d at 181 (quoting *Gillis v. King Cy.*, 42 Wn.2d 373, 377, 255 P.2d 546 (1953)). Instead, the
10 right must be "a title, legal or equitable, to the present or future enjoyment of property..." Id.

11 In this case, the Defendants had recorded notice of the trustee sale, but had not yet sold the
12 property. This means that the Plaintiffs still had the opportunity to cure the default to avoid losing
13 possession of the property. RCW 61.24.040(2). Therefore, the Defendants had not created a
14 vested right to title.

15 The agency charged with implementation of the FFA and the development of rules
16 concerning the mediation program appears to consider the protections of the FFA to be
17 retroactive. See Department of Commerce, Foreclosure Fairness Act,
18 <http://www.commerce.wa.gov/site/1367.default.aspx> (Exhibit 4 to MSJ materials). ("the FFA
19 recognizes the eligibility of the homebuyer for mediation if: 1) the homeowner has received... a
20 Notice of Default and a Notice of Sale ..has not been recorded 2) The homeowner received a
21 NOD on or before July 22, 2011. These homeowners are eligible until 12:00 pm the day before
22 the foreclosure sale.") Without being advised of the right to mediation such as through a pre-
foreclosure options letter, , this right would be meaningless or would lead to unequal application

1 of the protections of the statute with only those borrowers “in the know” being afforded its
2 remedies. When a statute is ambiguous, “the construction placed upon a statute by an
3 administrative agency charged with its administration and enforcement, while not absolutely
4 controlling upon the courts, should be given great weight in determining legislative intent.” *Hama*
5 *Hama Co. v. Shoreline Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975). The special expertise of
6 administrative agencies is the “primary foundation and rationale” for this deference. *Id.* An
7 administrative agency may “fill in the gaps” but may not purport to amend a statute. *Id.* See, also,
8 18 Wa. Prac. Real Estate Sec. 20.1A (2d Ed.) (The FFA applies to “any property where on the
9 effective date of the act the notice of foreclosure had been sent but the property has not been
10 sold.”)

11 In the current case, it is nowhere specified whether the Foreclosure Fairness Act should be
12 applied retroactively. Therefore, the Department of Commerce’s position that mediation is
13 available to those who received notice prior to the amendment would be “filling in a gap” in the
14 statute and is entitled to deference.

15 Because the Deed of Trust Act dispenses with many protections enjoyed by borrowers under
16 judicial foreclosures, courts must strictly construe the statute in the borrower’s favor. *Albice v*
17 *Premier Mortgage*, 174 Wn.2d 560, 276 P.3d 1277 (2012).

18 *C. Alternatively – The FFA Need Not Be Applied Retroactively*

19 In the alternative, it is not necessary to find that the FFA applies retroactively. Instead, the
20 laws that were in effect at the time of the new Notice of Sale are simply being applied.

21 At the time the new Notice of Sale was issued, the FFA required that: “before the notice
22 of the trustee’s sale is recorded, transmitted, or served, the beneficiary has complied with RCW
23 61.24.031 and, if applicable, section 7 of this act.” Furthermore, the FFA requires that a sale must

1 be "conducted in compliance with all of the requirements" of RCW 61.24. RCW 61.24.040(7). At
2 the time of the new Notice of Sale, the FFA was in effect, and therefore, the trustee was required
3 to conduct the sale in compliance with all of its requirements. A statute operates prospectively
4 when "the precipitating event for operation of the statute occurs after enactment, even when the
5 precipitating event originated in a situation existing prior to enactment." Matter of Estate of
6 Burns, 131 Wn.2d 104, 110-11, 928 P.2d 1094 (1997). Here, the "precipitating event" was the
7 failure to provide information regarding Pre-Foreclosure Options before recording the second
8 notice of sale. Although steps toward foreclosure had been taken prior to the implementation of
9 the FFA, the "precipitating event" occurred after the amendment had become effective.

10 *D. Consumer Protection Act Claim*

11 The FFA states that: "It is an unfair or deceptive act in trade or commerce and an unfair
12 method of competition in violation of the consumer protection act, chapter 19.86 RCW,
13 for any person or entity to: (a) Violate the duty of good faith under section 7 of this act;
14 (b) fail to comply with the requirements of section 12 of this act; or (c) fail to initiate
15 contact with a borrower and exercise due diligence as required under RCW 61.24.031."

16 Neither Sec. 7 nor 12 of the FFA are applicable. Although the lender did not send the
17 pre-foreclosure options letter as required by RCW 61.24.031, creation of a new cause of
18 action (a per se violation of the Consumer Protection Act) affects a substantive right and
19 therefore the FFA is not retroactive with respect to the Consumer Protection Act claim.

20 Johnston v Beneficial, 85 Wn. 2d 637 (1975). Thus while the Trustee's sale did not
21 comply with the remedial portions of the FFA, it was not a per se violation of the
22 Consumer Protection Act.

A-2

1 pleading. A true and correct copy of the Declarations of Service on Defendants NWTs,
2 CitiMortgage, and NLHC are attached hereto as Exhibits 1-3.

3
4 3. In addition to pleadings outstanding, discovery in this matter has not yet occurred.
5 However, discovery is necessary to determine, at a minimum, whether Defendants CitiMortgage
6 and NWTs engaged in fraudulent conduct or were negligent in communicating false information
7 to Plaintiff and/or Plaintiff's authorized representatives. I intend to initiate discovery upon
8 receipt of responsive pleadings.

9
10 4. The Foreclosure Fairness Act's amendments to the Deed of Trust Act apply to all
11 owner-occupied residential properties where the homeowner has received a notice of pre-
12 foreclosure options and/or a notice of default (NOD) and the notice of Trustee sale has not been
13 recorded or where the homeowner received a NOD on or before July 22, 2011. A true and
14 correct copy of the Department of Commerce's criteria for application of the FFA is attached as
15 Exhibit 4.

16
17 I declare under penalty of perjury under the laws of the State of Washington that the
18 foregoing statements are true and correct.

19 DATED this 7th day of June, 2012.

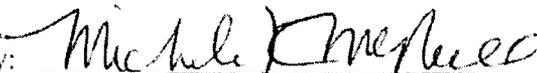
20 By: 
21 Michele K. McNeill

EXHIBIT 4

4

EXHIBIT 4

BEFORE YOU SUBMIT A REFERRAL: Each attorney and housing counselor has the responsibility to carefully review the circumstances of the homebuyer and confirm that all eligibility requirements of the Foreclosure Fairness Act (FFA) are met. After doing so, you should complete the Referral for Mediation form, including all required information. Failure to do so may delay or halt processing of the referral by the Department of Commerce (COM).

REVIEW ELIGIBILITY

- Owner Occupancy:** The FFA applies to only owner-occupied residential properties. The property must have been owner occupied as of the date of the initial contact under RCW 61.24.031.
- Beneficiary is not Exempt:** The FFA allows federally insured depository institutions that were not the beneficiary in more than 250 trustee sales of owner-occupied residential properties in the previous year to file annually in January for exempt status. *Exempt status is effective for all referrals for mediation which are received within the same calendar year that the exemption is effective.* Exempt status for the current year has no effect on referrals received in the previous year. To determine the exempt status of the beneficiary, see this [link](#).
- Foreclosure Status Eligibility:** The FFA recognizes the eligibility of the homebuyer for mediation if:
 1. The homeowner has received a Notice of Pre-foreclosure Options (NOPFO) and/or a Notice of Default (NOD), and a Notice of Sale on the Deed of Trust has not been recorded [Section 6 (3)(b)].
 2. The homeowner received a NOD on or before July 22, 2011. These homeowners are eligible until 12:00 p.m. the day before the foreclosure sale.
- Referrals during Bankruptcy:** If the homeowner is in bankruptcy, COM will accept referrals for a property subject to bankruptcy if one of the following two items accompanies the referral:
 1. Evidence of a relief from the stay
 2. A consent letter from the debtor to the beneficiary pursuant to RULE 4001-2 (Federal Rules of Bankruptcy Procedure) which meets the following criteria:
 - The letter is in writing
 - The letter is signed by either the debtor or their attorney

- The letter identifies the beneficiary on the deed of trust
- The letter contain words to the effect that the debtor consents to the beneficiary participating in a mediation under the FFA, and
- The letter contains words to the effect that mediation is for purposes of negotiation of a modification of the debt secured by the deed of trust.

COMPLETE THE REFERRAL FORM

- Trustee Contact Required:** COM is required by statute to notify the current trustee that a Referral for Mediation has been received. Your referral will not be processed until a trustee name and address are provided. You can research the name of the trustee at the County Recorder's office where the property is located.
- Dates for all Notifications:** Include the dates of ALL notifications received by the borrower - including the NOPFO, the NOD and the Notice of Sale.
- Borrower contact information:** Provide ALL contact information for the borrower including name, address, phone number and e-mail. The LAW requires that the mediator send notifications and certifications directly to the home buyer - even if they are represented by legal counsel.
- Your Signature is Required:** The signature of the referring attorney or housing counselor is required. Every Referral for Foreclosure Mediation should be signed – whether it is faxed, mailed or e-mailed to COM.

PROVIDE ADDITIONAL DETAILS IF NEEDED

- Preferred Location of Mediation:** If the borrower wishes to have the mediation conducted in a location OTHER THAN the county in which the property is located, please CLEARLY NOTE on the referral what location is preferred so that a mediator can be appropriately assigned.
- Attachments:** You may attach copies of the NOD, NOPFO and/or other documents referenced in the referral as supporting documentation of validity. This can sometimes speed up processing of your referral.

A-3

1 recorded on April 18th, 2003, under King County Recorder's No. 20030418001613. This deed is
2 attached hereto as **Exhibit 1.**

3
4 3. At all times material to this action, my wife and I were the fee title holders and
5 owners of record of the subject Property until December 23, 2011, when the Property was sold
6 by Defendant Northwest Trustee Services ("NWTS") on behalf of CitiMortgage at a nonjudicial
7 Trustee's sale.

8
9 4. At all times relevant to this matter, my wife and I occupied the Property. Proof of
10 this occupancy is established by a utility bill, attached hereto as **Exhibit 2,** and a copy of my
11 driver's license, attached hereto as **Exhibit 3.**

12
13 5. On February 5, 2011, a Notice of Default and Loss Mitigation Declaration were
14 mailed to us. A true and correct copy of the Notice of Default is attached hereto as **Exhibit 4.**

15
16 6. On March 22, 2011, NWTS recorded a Notice of Trustee Sale under King County
17 Record No. 20110233000728, scheduling the Trustee's Sale for June 24, 2011. The Notice of
18 Trustee Sale is attached hereto as **Exhibit 5.**

19
20 7. On June 20, 2011, my wife and I filed a Chapter 7 Petition in United States
21 Bankruptcy Court for the Western District of Washington, which resulted in postponement of the
22 Trustee sale. On September 22, 2011, the bankruptcy debts, including the mortgage serviced by
23 Defendant CitiMortgage was discharged. The order of discharge is attached hereto as **Exhibit 6.**

24
25 8. On November 8, 2011, NWTS filed an amended Notice of Trustee Sale which
listed the sale date as December 23, 2011, and is attached hereto as **Exhibit 7.** We received no

1 notice of pre-foreclosure options nor did we receive a notice of default after July 22, 2012
2 regarding the trustee Sale.

3
4 9. In the fall of 2011, I hired the National Legal Help Center in California to help
5 negotiate with CitiMortgage to stop the foreclosure and reinstate our mortgage. On December
6 22, 2012, NLHC sent me an email indicated that the trustee's sale scheduled for December 23,
7 2012 had been cancelled. A true and correct copy of that email is attached hereto as **Exhibit 8.**

8
9 10. On December 23, 2011, our property was sold by NWTs for \$348,000. This
10 trustee's sale took place 182 days after the originally scheduled sale date. At the time of the sale,
11 the county tax appraisal for the Property was \$443,000, and we owed CitiMortgage \$273,867.28
12 on the promissory note obligation. At the time of the sale, we were receiving rental proceeds
13 from our tenant, who shared the property with us. The Trustee's Deed is attached hereto as
14 **Exhibit 9.**

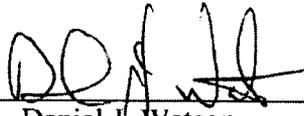
15
16 11. Had we known that the Trustee Sale on December 23, 2011 had not in fact been
17 cancelled, we would have initiated legal proceedings to stop the sale. Had we received the pre-
18 foreclosure notices required by the FFA, we would have taken advantage of the FFA and
19 obtained a foreclosure mediation referral from a HUD Counselor or an attorney to stop the sale.

20 //

21
22 //

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing statements are true and correct.

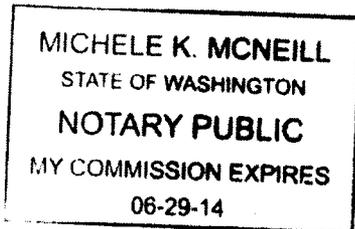
3
4 DATED this 7th day of June, 2012.

5 By: 
6 Daniel J. Watson

7 STATE OF WASHINGTON)
8) ss
9 COUNTY OF KING)

10 I certify that I know or have satisfactory evidence that DANIEL WATSON, is the person who appeared
11 before me, and said person acknowledged that he signed this instrument and acknowledged it to be ~~her~~
12 free and voluntary act for the uses and purposes mentioned in this instrument. his

13 Witness my hand and official seal, this 7th day of June, 2012.



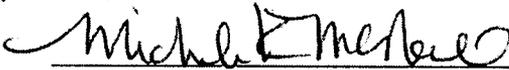
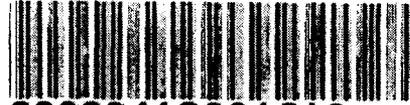
14 
15 Notary Public in and for the state of Washington,
16 Residing at Redmond
17 My appointment expires: 6-29-14

EXHIBIT 1



20030418001613

WASHINGTON TIT LTD
PAGE 001 OF 003
04/18/2003 14:03
KING COUNTY, WA

After recording return to:
DANIEL J WATSON & KETWARIN ONN
2821 10TH AVE W
SEATTLE WA 98119

E1952490

04/18/2003 13:52
KING COUNTY, WA
TAX \$8,238.00
SALE \$350,000.00

Filed for Record at the Request of
Washington Title Company N285133

PAGE 001 OF 001

WATT 285133 2

LPB-10 3/21

STATUTORY WARRANTY DEED

THE GRANTOR JOYCE GEARHART, a married person, PHYLLIS PRIDE,
married person and DORIS NOEL, *unmarried person*

each as their separate estate, for and in consideration of Ten Dollars and Other Good and Valuable Consideration in hand paid, conveys and warrants to DANIEL J. WATSON and KETWARIN ONNUM, husband & wife the following described real estate, situate in the

County of KING, State of Washington

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying northwesterly of Queen Anne Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington

Tax Account No. 253330021002

Dated this

By Joyce Gearhart
JOYCE GEARHART

By Phyllis Pride
PHYLLIS PRIDE

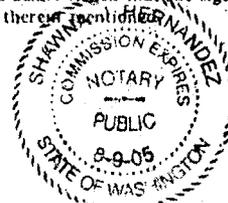
By Doris Noel, Joyce Gearhart
DORIS NOEL
as her attorney in fact
STATE OF WASHINGTON }
COUNTY OF KING }

By Joyce Gearhart as
her attorney in fact

On this day personally appeared before me Joyce Gearhart to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein intended.

Given under my hand and official seal this 16 day of April, 2003

Shawna J Hernandez
Notary Public in and for the State of Washington
residing at Seattle My commission expires: 08/09/05



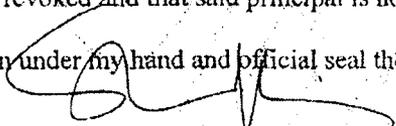
Exhibit

1

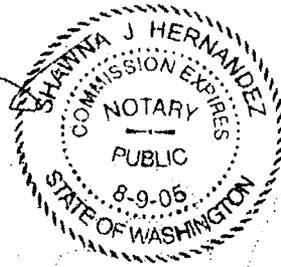
STATE OF WASHINGTON
COUNTY OF KING

On this 16 day of April 2003 before me personally appeared -
JOYCE M BEARHART to me know to be the individual who
executed the foregoing as Attorney in Fact for PHYLLIS M PRIDE
and acknowledged that she signed the same as his free and voluntary act and deed as
Attorney in Fact for said principal for the uses and purposes therein mentioned, and on
oath stated that the Power of Attorney authorizing the execution of this instrument has not
been revoked and that said principal is now living and not insane.

Given under my hand and official seal the day and year last above written.

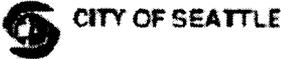

~~Julie Shropshire~~ SHAWNA J HERNANDEZ
Notary Public in and for the State of Washington

Residing at: Seattle
My Commission expires: August 9, 2005



Attorney in Fact

EXHIBIT 2



Seattle Public Utilities Bill

Questions? Call 206-864-3000 or 1-800-862-1183 (out of area calls only)
Write us? 700 5th Avenue, Suite 2777, PO Box 34027, Seattle, WA 98124-0027

Account
ID
087

Account number:
2-193063-178882

DANIEL WATSON
2821 10TH AVE W
SEATTLE WA 98119-2227

Summary of charges as of February 08, 2012

Payments received after February 08, 2012 are not reflected.

Previous balance	904.78
Payments applied: THANK YOU	904.78 (0)
Balance	0.00
Total of late fees	0.00
Current billing	482.33
TOTAL AMOUNT DUE ON February 29, 2012	\$482.33

Property owner:
DANIEL WATSON
Service address:
2821 10TH AVE W

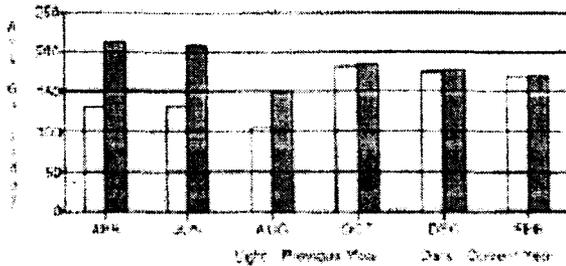
WINTER RATES ARE IN EFFECT FROM SEPTEMBER 16 THROUGH MAY 15

Moving? Call us on the day you move if you are reading your own meter.
To have us read your meter for a fee, call us at least 3 days in advance of your move.

Remember: Account openings and account closings cannot be backdated to a day before you contact us.

Customers are responsible for all charges until an account closes

Compare Your Water Usage



<p>This Period No. of days: 70</p> <p>Consumption in GPD: 16 Avg consumption/day: 0.23 GPD</p> <p>Consumption in gals: 11968 Avg consumption/day: 170.97 gals</p>	<p>Same Period Last Year No. of days: 62</p> <p>Consumption in GPD: 14 Avg consumption/day: 0.23 GPD</p> <p>Consumption in gals: 10072 Avg consumption/day: 162.60 gals</p>
--	--

1 GPD = 7.48 gallons

Please see all new notices at the bottom and mail it with your payment in the envelope when you pay.

Please do not use messages on the bill that claim to resolve customer issues. Write us on a separate sheet and include your account number.

Seattle Public Utilities Bill

Service address: 2821 10TH AVE W
Property owner: DANIEL WATSON
Account number: 2-193063-178882

DUE DATE: February 29, 2012

TOTAL AMOUNT DUE: \$482.33

Make check payable
and mail to:

Enter Amount Paid: \$ _____
with account number on check. Please do not send cash.

DANIEL WATSON
2821 10TH AVE W
SEATTLE WA 98119-2227

CITY OF SEATTLE
PO BOX 34016
SEATTLE WA 98124-1016

0100000229120200519736301766824000000000048233003

2

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

WA
USA

WASHINGTON

DRIVER LICENSE



4d LIC# WATSODJ442LW

DONOR ♥

1 WATSON

2 DANIEL JOSEPH

3 DOB 06-16-1956

4a Iss 06-09-2011

5 2821 18TH AVE W
SEATTLE WA 98119-2227

15 Sex M 16 Hgt 6-00

17 Wgt 200 18 Eyes HAZ

9 Class 9a End 3

12 Restrictions NONE

4b Exp 06-16-2013

DJW

5 DD WATSODJ442LW33111662B1361

Rev 09-16-2005

3

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

Notice of Default

To:

Daniel J. Watson
2821 West 10th Avenue
Seattle, WA 98119

Ketwarin Onnum
2821 West 10th Avenue
Seattle, WA 98119

Regarding the real property "Property" located at:

Property Address:
2821 West 10th Avenue
Seattle, WA 98119

If you are the owner of this property and you occupy it as your residence, you should take care to protect your interest in your home. This notice of default (your failure to pay or otherwise perform) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

Can you pay and stop the foreclosure process?

Do you dispute the failure to pay?

Can you sell your property to preserve your equity?

Are you able to refinance this loan or obligation with a new loan or obligation from another lender with payments, terms, and fees that are more affordable?

Do you qualify for any government or private homeowner assistance programs?

Do you know if filing for bankruptcy is an option? What are the pros and cons of doing so?

Do not ignore this notice; because if you do nothing, you could lose your home at a foreclosure sale. (No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until thirty days after this notice.) Also, if you do nothing to pay what you owe, be careful of people who claim they can help you. There are many individuals and businesses that watch for the notices of sale in order to unfairly profit as a result of borrowers' distress.

You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.

A) Property description:

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying Northwesterly of Queen Anne Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington.

B) Deed of Trust information: King County Auditor's File No.: 20030418001614; Recording Date: 04/18/03

C) Declaration of payment default: The beneficiary declares you in default for failing to make payments as required by your note and deed of trust.

D) Itemized account of the arrears:

Delinquent monthly payments beginning with the 10/01/10 installment.	\$10,115.25
Late charges:	\$322.36
Lender's Fees and Costs	\$142.59
Trustee's fees	\$405.00
Costs	
Title report (estimate)	\$995.36
Recording	\$0.00
Certified mail	\$14.00
Posting	\$70.00
Sale Costs	\$0.00
Total arrears and costs due today	\$12,064.56

E) Itemized account of all other specific charges, costs or fees that grantor or borrower is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale.

Additional monthly payment	\$2,023.05
Additional late charge	\$80.59

F) Amount required to cure payment defaults before notice of sale recorded: \$14,168.20

In addition, grantor or borrower must timely cure all other defaults before the note and deed of trust are deemed reinstated.

Payments and late charges continue to accrue and additional advances may be made. The sums stated above are estimates only. Before attempting to reinstate the loan, call us at 425-586-1900 to learn the exact amounts of monetary defaults and actions required to cure possible other defaults.

G) Effect of failure to cure: Failure to cure all alleged defaults within 30 days of mailing/personal service of this notice may lead to recordation, transmittal and publication of a notice of sale and the Property may be sold at public auction no less than 120 days from the date of this notice.

H) Effect of recording, transmitting and publication of the notice of sale: The effect of the recordation, transmittal and publication of the notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the Property for sale.

I) Effect of sale of the Property: The Trustee's sale of the Property will deprive the borrower, grantor and any successor in interest of all their interest in the Property.

J) Recourse to courts: The borrower, grantor, any guarantor or any successor in interest has recourse to the courts pursuant to RCW 61.24.130 to contest the default(s) on any proper ground.

K) Contact Information for Beneficiary (Note Owner) and Loan Servicer.

The beneficiary of the deed of trust is **CitiMortgage, Inc.**, whose address and telephone number are:

1000 Technology Drive MS 314
O'Fallon, MO 63368-2240
[REDACTED]

The loan servicer for this loan is CitiMortgage, Inc., whose address and telephone number are:

1000 Technology Drive, MS314
Ofallon, MO 63368-2240
[REDACTED]

L) Notice pursuant to the Federal Fair Debt Collection Practices Act: If you are the consumer who originally contracted the debt or if you assumed the debt, then you are notified that:

1. As of the date of this notice you owe \$254,006.53. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check. For further information, write to the address provided in Section 5 below or call us at 425-586-1900.
2. The creditor to whom the debt is owed CitiMortgage, Inc./CitiMortgage, Inc..
3. Unless within 30 days after receipt of this notice you dispute the debt or any portion of it, we will assume the debt to be valid.
4. If you notify us within 30 days after receipt of this notice that you dispute the debt or any part of it, we will request that the creditor obtain verification of the debt and mail it to you.
5. If you request within 30 days after receipt of this notice, we will request that the creditor provide you with the name and address of the original creditor, if different from the current creditor.
6. Written requests should be addressed to Northwest Trustee Services, Inc., Post Office Box 997, Bellevue, WA 98009-0997.

Dated: February 5, 2011

CitiMortgage, Inc.

By Northwest Trustee Services, Inc., its duly authorized agent

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

NORTHWEST TRUSTEE SERVICES, INC.
P.O. Box 997
BELLEVUE, WA 98009-0997

File No: 7301 26933
Borrower: Watson, Daniel J. and Onnum, Keiwarn
Client: CitiMortgage, Inc.

CLAIRE SWAZEY
[REDACTED]

1/10/11

4

EXHIBIT 5

5

EXHIBIT 5

**Electronically Recorded
20110322000728**

NORTHWEST TITLE NTS 65.00
Page 001 of 004
05/12/2011 12:32
King County, WA

After Recording, Return to:
Claire Swazey
Northwest Trustee Services, INC.
P.O. Box 997
Bellevue, WA 98009-0997

File No.: 7301.26933
Grantors: Northwest Trustee Services, Inc.
CitiMortgage, Inc.
Grantee: Daniel J. Watson and Ketwarin Onnum, husband and wife
Ref to DOT Auditor File No.: 20030418001614
Tax Parcel ID No.: 253330021002
Abbreviated Legal: Ptn Lts 5-8, Blk 2, Ferry's Addn, Seattle, Vol 1/175

Notice of Trustee's Sale

Pursuant to the Revised Code of Washington 61.24, et seq.

I.

On June 24, 2011, at 10:00 a.m. The northwest corner of the ground level parking area located under the Pacific Corporate Center building, 13555 SE 36th Street in the City of Bellevue, State of Washington, the undersigned Trustee (subject to any conditions imposed by the Trustee) will sell at public auction to the highest and best bidder, payable at time of sale, the following described real property "Property", situated in the County(ies) of King, State of Washington:

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying Northwesterly of Queen Anne Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington.

Commonly known as: 2821 West 40th Avenue
Seattle, WA 98119

which is subject to that certain Deed of Trust dated 04/14/03, recorded on 04/18/03, under Auditor's File No. 20030418001614, records of King County, Washington, from Daniel J. Watson, husband and wife and Ketwarin Onnum, as Grantor, to , as Trustee, to secure an obligation "Obligation" in favor of CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc., as Beneficiary.

*The Tax Parcel ID number and Abbreviated Legal Description are provided solely to comply with the recording statutes and are not intended to supplement, amend or supersede the Property's full legal description provided herein.

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the Obligation in any Court by reason of the Grantor's or Borrower's default on the Obligation.

III.

The Beneficiary alleges default of the Deed of Trust for failure to pay the following amounts now in arrears and/or other defaults:

	Amount due to reinstate by 03/17/2011
Monthly Payments	\$12,138.30
Late Charges	\$483.54
Lender's Fees & Costs	\$142.59
Total Arrearage	\$12,764.43
Trustee's Expenses (Itemization)	
Trustee's Fee	\$607.50
Title Report	\$995.36
Statutory Mailings	\$9.56
Recording Costs	\$0.00
Postings	\$70.00
Sale Costs	\$0.00
Total Costs	\$1,682.42
Total Amount Due:	\$14,446.85

Other known defaults as follows:

IV.

The sum owing on the Obligation is: Principal Balance of \$247,260.99, together with interest as provided in the note or other instrument evidencing the Obligation from 09/01/10, and such other costs and fees as are due under the Obligation, and as are provided by statute.

V.

The Property will be sold to satisfy the expense of sale and the Obligation as provided by statute. The sale will be made without representation or warranty, express or implied regarding title, possession, encumbrances or condition of the Property on June 24, 2011. The default(s) referred to in paragraph III, together with any subsequent payments, late charges, advances costs and fees thereafter due, must be cured by 06/13/11 (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the close of the Trustee's business on 06/13/11 (11 days before the sale date), the default(s) as set forth in paragraph III, together with any subsequent payments, late charges, advances, costs and fees thereafter due, is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after 06/13/11 (11 days before

the sale date), and before the sale by the Borrower, Grantor, any Guarantor or the holder of any recorded junior lien or encumbrance paying the entire balance of principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any made pursuant to the terms of the obligation and/or Deed of Trust.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME AND ADDRESS

Daniel J. Watson
2821 West 10th Avenue
Seattle, WA 98119

Ketwarin Onnum
2821 West 10th Avenue
Seattle, WA 98119

by both first class and either certified mail, return receipt requested on 02/05/11, proof of which is in the possession of the Trustee; and on 02/07/11, Grantor and Borrower were personally served with said written notice of default or the written notice of default was posted on a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee, whose name and address are set forth below, will provide in writing to anyone requesting it a statement of all foreclosure costs and trustee's fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their right, title and interest in the Property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

X.

NOTICE TO OCCUPANTS OR TENANTS - The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the Deed of Trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060.

EXHIBIT 6

6

EXHIBIT 6

United States Bankruptcy Court

Western District of Washington
700 Stewart St, Room 6301
Seattle, WA 98101

Case No. 11-17287-TWD

Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Daniel J Watson
2821 10th Ave. W
Seattle, WA 98119

Ketwarin Wathom
aka Ketwarin Watson, aka Ketwarin
Onnum
2821 10th Ave. W
Seattle, WA 98119

Social Security/Individual Taxpayer ID No.:

xxx-xx-6150

xxx-xx-0907

Employer Tax ID/Other nos.:

DISCHARGE OF DEBTOR

The Debtor(s) filed a Chapter 7 case on June 20, 2011. It appearing that the Debtor is entitled to a discharge,

IT IS ORDERED:

The Debtor is granted a discharge under 11 U.S.C. § 727.

BY THE COURT

Dated: September 22, 2011

Timothy W Dore
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

6

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

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

Collection of Discharged Debts Prohibited

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

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

Debts That are Discharged

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

Debts That are Not Discharged

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

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

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

6

EXHIBIT 7

7

EXHIBIT 7

Beneficiary, the beneficial interest in which was assigned by to , under an Assignment/Successive Assignments recorded under Auditor's File No. .

*The Tax Parcel ID number and Abbreviated Legal Description are provided solely to comply with the recording statutes and are not intended to supplement, amend or supersede the Property's full legal description provided herein.

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the Obligation in any Court by reason of the Grantor's or Borrower's default on the Obligation.

III.

The Beneficiary alleges default of the Deed of Trust for failure to pay the following amounts now in arrears and/or other defaults:

		Amount due to reinstate by 11/08/2011
Monthly Payments		\$28,679.95
Late Charges		\$1,047.67
Lender's Fees & Costs		\$2,704.64
Total Arrearage	\$32,432.26	
Trustee's Expenses (Itemization)		
Trustee's Fee		\$607.50
Title Report		\$0.00
Statutory Mailings		\$0.00
Recording Costs		\$65.00
Postings		\$670.16
Sale Costs		\$832.85
Total Costs	\$2,175.51	
Total Amount Due:		\$34,607.77

Other known defaults are as follows:

IV.

The sum owing on the Obligation is: Principal Balance of \$247,260.99, together with interest as provided in the note or other instrument evidencing the Obligation from 09/01/10, and such other costs and fees as are due under the Obligation, and as are provided by statute.

V.

The Property will be sold to satisfy the expense of sale and the Obligation as provided by statute. The sale will be made without representation or warranty, express or implied regarding title, possession, encumbrances or condition of the Property on **December 23, 2011**. The default(s) referred to in paragraph III, together with any subsequent payments, late charges, advances costs and fees thereafter

due, must be cured by 12/12/11 (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the close of the Trustee's business on 12/12/11 (11 days before the sale date), the default(s) as set forth in paragraph III, together with any subsequent payments, late charges, advances, costs and fees thereafter due, is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after 12/12/11 (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor or the holder of any recorded junior lien or encumbrance paying the entire balance of principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any made pursuant to the terms of the obligation and/or Deed of Trust.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME AND ADDRESS

Daniel J. Watson
2821 West 10th Avenue
Seattle, WA 98119

Ketwarin Onnum
2821 West 10th Avenue
Seattle, WA 98119

by both first class and either certified mail, return receipt requested on 02/05/11, proof of which is in the possession of the Trustee; and on 02/07/11 Grantor and Borrower were personally served with said written notice of default or the written notice of default was posted on a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it a statement of all foreclosure costs and trustee's fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor, and all those who hold by, through or under the Grantor, of all their right, title and interest in the Property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

X.

NOTICE TO OCCUPANTS OR TENANTS - The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the Deed of Trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who

are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060.

The trustee's rules of auction may be accessed at www.northwesttrustee.com and are incorporated by this reference. You may also access sale status at www.northwesttrustee.com and www.USA-Foreclosure.com

EFFECTIVE: 11/07/2011

Northwest Trustee Services, Inc., Trustee

By *Claire M. Swazey*
Authorized Signature
P.O. BOX 997
Bellevue, WA 98009-0997
Contact: Claire Swazey
(425) 586-1900

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Claire M. Swazey is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Assistant Vice President of Northwest Trustee Services, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11/18/11

KRISTA N. MAYNOR
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
06-03-14

Krista N. Maynor
NOTARY PUBLIC in and for the State of
Washington, residing at Woodinville, WA
My commission expires 06/03/2014

NORTHWEST TRUSTEE SERVICES, INC, P.O. BOX 997, BELLEVUE, WA-98009-0997 PHONE (425) 586-1900 FAX (425) 586-1997

File No: 7301.26933
Client: CitiMortgage, Inc.
Borrower: Watson, Daniel J. and Onnum, Ketwarin

SERVING WA, OR, ID, AK, CA, NV, AZ, MT, HI

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

7

EXHIBIT 8

§

EXHIBIT 8

----- Forwarded Message -----

From: Omar Santana <Omar@legalprocessingcenter.net>
To: 'Dan Watson' <djwtson99@yahoo.com>
Sent: Thursday, December 22, 2011 1:01 PM
Subject: RE: Daniel Watson [Securitization Audit]
Dan,

Yes it has been handled. Yesterday I submitted a request to our Trustee Verification office to stop the sale date. I also pulled the Warranty Deed of your property from public records to make sure the sale date gets postponed as this is an essential document needed. I will keep you updated and will e-mail you with the new sale date once I receive this information.

Best regards,

Omar Santana

Operations Manager

National Legal Assistance

Direct: (855) 270-5421/ Fax: (888) 270-3861

Affordable Legal Assistance

National Legal Help

1740 East Garry Ave Suite 206 Santa Ana, Ca 92705 / Website: NationalLegalHelp.Com

Main Office: (855) LAW-5559/Fax: (888)350-0444

Toll Free Direct: (866)623-0001

Notice: This email communication is confidential, for use by the intended recipient only, and may include information subject to privilege. It is intended for use by the recipient only.

From: Dan Watson [mailto:djwtson99@yahoo.com]
Sent: Thursday, December 22, 2011 12:58 PM
To: Omar Santana
Subject: RE: Daniel Watson [Securitization Audit]

8

Hello Omar,

I had a real estate agent knock on my door this morning concerning the foreclosure sale tomorrow morning. Is this being handled?

Let me know.

Dan Watson 206-372-7342

--- On Fri, 12/16/11, Omar Santana <Omar@legalprocessingcenter.net> wrote:

From: Omar Santana <Omar@legalprocessingcenter.net>
Subject: RE: Daniel Watson [Securitization Audit]
To: "Dan Watson" <djwatson99@yahoo.com>
Date: Friday, December 16, 2011, 7:00 PM

Daniel,

Yes I'm aware of that sale date and will take care of that and postpone it for you. If there's any documents missing I will let you know but we should be able to stop that sale date.

Best regards,

Omar Santana

Operations Manager

National Legal Assistance

Direct: (855) 270-5421/ Fax: (888) 270-3861

Affordable Legal Assistance

National Legal Help

1740 East Garry Ave Suite 206 Santa Ana, Ca 92705 / Web-site: NationalLegalHelp.com

Main Office: (855) LAW-5559/Fax: (888) 270-0443

Toll Free Direct: (866)623-0001

Notice: This email communication is confidential, for use by the intended recipient only and may include information subject to attorney-client privilege. It is intended for you by the recipient only.

From: Dan Watson [mailto:djwatson99@yahoo.com]
Sent: Friday, December 16, 2011 6:56 PM
To: Omar Santana
Subject: Re: Daniel Watson [Securitization Audit]

Hello Omar,

I had not heard from NLHC for a few weeks now. Are you aware that there is a Foreclosure sale scheduled on my property for December 23, 2011.

Please let me know what is going on.

8

Dan Watson 206-372-7342

--- On Thu, 12/15/11, Omar Santana <Omar@legalprocessingcenter.net> wrote:

From: Omar Santana <Omar@legalprocessingcenter.net>
Subject: Daniel Watson [Securitization Audit]
To: djwatson99@yahoo.com
Date: Thursday, December 15, 2011, 2:08 PM

Good afternoon Daniel,

Attached to this e-mail is your Securitization Audit report with the errors and discrepancies found on your loan. We're working on getting the Civil Complaint and Lis Pendens prepared by one of our attorneys.

Please feel free to contact me with any questions or concerns.

Best regards,

Omar Santana

Operations Manager

National Legal Assistance

Direct: (855) 270-5421/ Fax: (888) 270-3861

Affordable Legal Assistance

National Legal Help

1740 East Garry Ave Suite 206 Santa Ana, Ca 92705 / Website: NationalLegalHelp.Com

Main Office: (855) LAW-5559 / Fax: (888) 330-0444

Toll Free Direct: (866) 623-0001

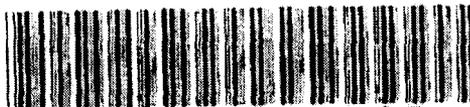
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EXHIBIT 9

9

EXHIBIT 9

After Recording Return To:
to Apple Equities, LLC
11410 NE 124th St #433
Kirkland, WA 98034



20120110001118

WFG NATIONAL TITLE
PAGE-001 OF 002
01/10/2012 14:50
KING COUNTY, WA

E2525908

01/10/2012 14:50
KING COUNTY, WA
TAX \$10.00
SALE \$0.00

PAGE-001 OF 001

File No.: 7301 26933/Watson, Daniel J. and Ketwarrn, Ketwarrn

Trustee's Deed

Courtesy Recording ONLY
No liability for validity and/or accuracy
assumed by WFG National Title Co.

The GRANTOR, Northwest Trustee Services, Inc., as present Trustee under that Deed of Trust (defined below), in consideration of the premises and payment recited below, hereby grants and conveys, without representation or warranty, expressed or implied, to Apple Equities, LLC, as GRANTEE, all real property (the Property), situated in the County of King, State of Washington, described as follows:

Tax Parcel No.: 253330021002

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying Northwesterly of Queen Anne Boulevard; SITUATE in the City of Seattle, County of King, State of Washington.

RECITALS:

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon the Grantee by that certain Deed of Trust between Daniel J. Watson, husband and wife and Ketwarrn Onnum, as Grantor, to as Trustee, and CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc., Beneficiary, dated 04/14/03, recorded 04/18/03, under Auditor's/Recorder's No. 20030418001614, records of King County, Washington.
2. The Deed of Trust was executed to secure, together with other undertakings, the payment of one or more promissory note(s) ("Note") in the sum of \$280,000.00 with interest thereon, according to the terms thereof, in favor of CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc. and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.
3. The Deed of Trust provided that the Property is not used principally for agricultural or farming purposes and the Grantor has no actual knowledge that the Property is used principally for agricultural or farming purposes.
4. Default having occurred in the obligations secured and/or covenants of the Deed of Trust grantor, as set forth in Notice of Trustee's Sale described below, which by the terms of the Deed of Trust make operative the power to sell, the thirty-day advance Notice of Default was transmitted to the Deed of Trust grantor, or his successor in interest, and a copy of said Notice was posted or served in accordance with law.
5. CitiMortgage, Inc., being then the holder of the indebtedness secured by the Deed of Trust, delivered to said Grantor a written request directing Grantor to sell the Property in accordance with law and the terms of the Deed of Trust.
6. The defaults specified in the "Notice of Default" not having been cured, the Grantor, in compliance with the terms of the Deed of Trust, executed and on 03/22/11, recorded in the office of the

Auditor of King County, Washington, a "Notice of Trustee's Sale" of the Property under Auditor's File No. 20110322000728

7. The Grantor, in the "Notice of Trustee's Sale", fixed the place of sale as The northwest corner of the ground level parking area located under the Pacific Corporate Center building, 13555 SE 36th Street, City of Bellevue, State of Washington a public place, at 10:00 o'clock a.m., and in accordance with the law caused copies of the statutory "Notice of Trustee's Sale" to be transmitted by mail to all persons entitled thereto and either posted or served prior to 90 days before the sale; further, the Grantor caused a copy of said "Notice of Trustee's Sale" to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the date of sale, and once between the fourteenth and the seventh day before the date of sale; and further, included with the Notice, which was transmitted to or served upon the Deed of Trust grantor or his successor in interest, a "Notice of Foreclosure" in substantially the statutory form, to which copies of the Note and Deed of Trust were attached.

8. During foreclosure, no action by the Beneficiary, its successors or assigns was pending on an obligation secured by the Deed of Trust

9. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in chapter 61.24 RCW.

10. The defaults specified in the "Notice of Trustee's Sale" not having been cured ten days prior to the date of Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on December 23, 2011, the date of sale, which was not less than 190 days from the date of default in the obligation secured, the Grantor then and there sold the Property at public auction to said Grantee, the highest bidder therefore, for the sum of \$348,000.00 cash

This conveyance is made without representations or warranties of any kind, expressed or implied. By recording this Trustee's Deed, Grantee understands, acknowledges and agrees that the Property was purchased in the context of a foreclosure, that the trustee made no representations to Grantee concerning the Property and that the trustee owed no duty to make disclosures to Grantee concerning the Property, Grantee relying solely upon his/her/their/its own due diligence investigation before electing to bid for the Property.

DATED: December 29, 2011

NORTHWEST TRUSTEE SERVICES, INC.

BY: *[Signature]*
Jeff Stenman, Assistant Vice President

State of Washington)
County of King)

I Julie Bouffleur, Notary certify that I know or have satisfactory evidence that Jeff Stenman is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged (he/she) as the Assistant Vice President of Northwest Trustee Services, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 29, 2011

JULIE BOUFFLEUR
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
02-23-13

[Signature]
NOTARY PUBLIC in and for the State of
Washington, residing at King Co.
My commission expires: 2/23/2013

A-4

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

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,

Plaintiffs,

vs.

NORTHWEST TRUSTEE SERVICES,
INC., CITIMORTGAGE, INC.,
NATIONAL LEGAL HELP CENTER,
INC., and JOHN DOE 1-10,

Defendants.

No. 12-2-01729-8SEA

AMENDED COMPLAINT FOR:

WRONGFUL FORECLOSURE,
NEGLIGENCE, BREACH OF
FIDUCIARY DUTY, AND VIOLATION
OF CONSUMER PROTECTION ACT

DANIEL J. WATSON, Plaintiff, alleges and complains against Defendants,
Northwest Trustee Services, Inc., CitiMortgage Inc., National Legal Help Center, Inc.,
and John Doe 1-10 separately and together as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the parties and subject matter of this
lawsuit.

1.2 Jurisdiction and venue are proper in King County, Washington because
this action involves contracts negotiated and executed in King County, Washington
and the sale of real property located in King County, Washington.

AMENDED COMPLAINT FOR WRONGFUL
FORECLOSURE - I

SKYLINE LAW GROUP PLLC
2135 - 112th Avenue NE
Bellevue, WA 98004
Telephone: 425-455-4307
Facsimile: 425-401-1833

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II. PARTIES

2.1 Plaintiffs, Daniel J. Watson and Ketwarin Onnum.

DANIEL J. WATSON and KETWARIN ONNUM, (hereinafter "Plaintiffs") are Washington State residents and reside in King County, Washington. Plaintiffs acquired fee title to real property commonly known as 2821 10th Ave W., Seattle, Washington, 98119 pursuant to a Statutory Warranty Deed recorded on April 18th, 2003 under King County Recorder's No. 20030418001613, a copy of which is attached, marked **Exhibit 1**, and incorporated herein by reference as if fully set forth here. The legal description of the real property (hereinafter the "Property") is:

That portion of Lots, 5,6,7, and 8 Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying northwesterly of Queen Anne Boulevard;
SITUATE in the city of Seattle, County of King, State of Washington.
Tax Parcel No. 2533300210-02

2.2 Defendant, Northwest Trustee Services Inc.

Defendant Northwest Trustee Services (hereafter "NTS") is a Washington corporation with a home office in Bellevue, Washington and conducts business in King County, Washinton. NTS is the successor trustee of a deed of trust recorded on April 18, 2003 under King County Recorder's No. 20030418001614 (hereinafter "DoT"), a copy of which is attached hereto, marked **Exhibit 2**, and incorporated by reference as if fully setforth here. NTS is subject to the jurisdiction and venue of this court by its recording of various documents against Plaintiffs' Property and its other activities as alleged in this complaint.

1 **2.3 Defendant, CitiMortgage Inc.**

2 Defendant CitiMortgage Inc. s/b/m to ABN Ambro Mortgage Group, INC.
3 (hereinafter "CitiMortgage") is a New York Corporation that conducts business in
4 Washington State. CitiMortgage as a successor by merger to ABN Ambro Mortgage
5 Group, INC. had a legal and equitable interest in Plaintiffs' Property at all times
6 relevant to this action up until the nonjudicial Trustee's sale of the Property to a third
7 party on December 23, 2011. CitiMortgage is the party whom Defendant NTS was
8 acting on behalf of when it initiated and held the Trustee's sale of Plaintiffs' Property
9 and its other acts and omissions alleged in this complaint.
10

11 **2.4 Defendant National Legal Help Center, Inc.**

12 Defendant National Legal Help Center, Inc. (hereinafter "NLHC"), is a California
13 corporation, entity number C3349760, that conducts business in the State of
14 Washington. NLHC performed loan related services for Plaintiffs that involved
15 Plaintiffs' Property situated in King County Washington.
16

17 **III. STATEMENT OF FACTS**

18 **3.1** Plaintiffs at all times material to this action were the fee title holders and
19 owners of record of the subject Property until December 23, 2011 when the Property
20 was sold by NTS on behalf of CitiMortgage at a nonjudicial Trustee's sale (hereinafter
21 "the sale") to a third party.
22

23 **3.2** Defendant NLHC was working on Plaintiffs' behalf to modify their
24 CitiMortgage loan secured by the Property.
25
26

1 **3.3** Plaintiffs were in possession of and maintained improvements on the
2 subject property at all times relevant to this matter until they and their tenant were
3 evicted from the Property by the third party buyer following NTS and CitiMortgage's
4 sale of Plaintiffs' Property.

5
6 **3.4** On March 22, 2011, NTS recorded a Notice of Trustee Sale under King
7 County Record No. 20110322000728 (hereinafter NoTS1), a copy of which is attached
8 hereto as **Exhibit 3** and incorporated by reference as if fully set forth here.

9 **3.5** On November 8, 2011, NTS recorded an Amended Notice of Trustee Sale
10 under King County Record No. 20111108001313 (hereinafter "NoTS3")¹, a copy of
11 which is attached hereto as **Exhibit 4** and incorporated by reference as if fully set forth
12 here.

13
14 **3.6** Defendants NTS and CitiMortgage did not initiate contact with Plaintiffs
15 and exercise due diligence as required by the FFA at RCW 61.24.031 prior to
16 recording the NoTS3.

17 **3.7** Defendants NTS and CitiMortgage did not provide Plaintiffs with the pre-
18 foreclosure notices required by Washington's Foreclosure Fairness Act (hereinafter
19 "FFA") at RCW 61.24.030 and RCW 61.24.031 prior to the December 23, 2011 sale
20 of the Property.

21
22 **3.8** Defendant NTS referenced the NoT1 but not the NoT3 in its Trustee's
23 Deed recorded on January 10, 2012, a true and correct copy of which is attached

24
25 ¹ NTS recorded two Amended Notice of Trustee Sale documents against Plaintiffs'
26 Property on the same date, but only the second Amended Notice is referenced here for
brevity.

1 hereto as **Exhibit 5** and incorporated by reference as if fully set forth here (hereinafter
2 "Trustee's Deed"). Defendant NTS also stated in the Trustee's Deed that "[a]ll legal
3 requirements and all provisions of [Plaintiffs'] Deed of Trust have been complied with,
4 as to acts to be performed and notices to be given, as provided in chapter 61.24
5 RCW."
6

7 **3.9.** Defendant NLHC was hired by Plaintiff to perform a Securitization Audit,
8 Forensic Investigation, issue a Demand Letter, and file a Civil Complaint and TRO
9 related to Plaintiffs' CitiMortgage loan and the Property.

10 **3.10** Defendant NLHC represented to Plaintiff in writing that the December
11 23, 2011 Trustee sale listed in the NoTS3 had been postponed. Defendant NLHC
12 failed to take any action to stop the foreclosure or to put Plaintiff on notice of any need
13 to stop the foreclosure.
14

15 **3.11** Defendant NLHC failed to take advantage of Washington's FFA. NLHC
16 failed to inform Plaintiff of his rights pursuant to the FFA. The FFA requires specific
17 notice procedures before a Notice of Trustee Sale can be recorded and before a
18 Trustee's sale in Washington can be held. The FFA authorizes an attorney or certified
19 HUD Counselor to refer a borrower and beneficiary of the borrower's mortgage into
20 mediation overseen by Washington State's Department of Commerce. The purpose of
21 the mediation is to work out a loan modification or to allow a borrower time to sell their
22 property and thereby avoid foreclosure.
23

24 **3.12** Defendant NLHC holds itself out to the public as a legal firm with in-
25 house counsel. Upon information and belief, NLHC does not have a licensed
26

1 NLHC failed to take action to stop the foreclosure of Plaintiffs' Property or to put
2 Plaintiff on notice of any need to stop the foreclosure.

3 **5.3** Defendant NLHC owed Plaintiff a high duty of care.

4 **5.4** Defendant NLHC represented to Plaintiff that the December 23, 2011
5 Trustee Sale had been postponed when in fact it had not been postponed.

6 **5.5** Defendant NLHC knew or should have known that the December 23, 2011
7 Trustee Sale had not been postponed.

8 **5.6** Defendant NLHC breached their duty of care owed to Plaintiff.

9 **5.7** Plaintiff was irreparably harmed as a result of NLHC's negligence and
10 breach of fiduciary duty.
11

12
13 **VI. THIRD CAUSE OF ACTION:**
14 **VIOLATION OF WASHINGTON'S MORTGAGE BROKER PRACTICES ACT,**
15 **CHAPTER 19.146 RCW**
16 **(As Against NLHC and John Doe 1-10)**

17 **6.1** Plaintiff realleges and incorporates ¶¶ 1.1 through 5.7 as if fully and
18 completely set forth here.

19 **6.2** John Does 1-10 is a natural person who for direct or indirect
20 compensation or gain or in the expectation of direct or indirect compensation or gain
21 performs residential mortgage loan modification services or holds himself or herself
22 out as being able to perform residential mortgage loan modification services.

23 **6.3** John Doe 1-10 received direct or indirect compensation or expected direct
24 or indirect compensation to perform residential loan modification services for Plaintiff
25
26

1 and/or held themselves out as being able to perform residential loan modification
2 services for Plaintiff.

3 **6.4** The residential mortgage loan modification services provided by NLHC
4 and John Doe 1-10 includes negotiating, attempting to negotiate, arranging,
5 attempting to arrange, or otherwise offering to perform a residential mortgage loan
6 modification.

7
8 **6.5** NLHC is responsible for the actions of John Doe 1-10 that worked for the
9 benefit of or under the supervision of NLHC.

10 **6.6** NLHC and John Doe 1-10 accepted compensation from Plaintiff in
11 violation of Washington's Mortgage Broker Practices Act.

12 **6.7** NHLC and John Doe 1-10 directly or indirectly employed a scheme,
13 device, or artifice to defraud or mislead Plaintiff.

14 **6.8** NHLC and John Doe 1-10 engaged in an unfair and deceptive practice.

15 **6.9** NHLC and John Doe 1-10 breached their duty of good faith, honesty,
16 equity and duty to preserve the integrity of the mortgage broker business.

17 **6.10** The act or omissions of NHLC and John Doe 1-10 caused Plaintiff to
18 suffer irreparable harm.

19
20
21 **VII. FOURTH CAUSE OF ACTION:**
22 **VIOLATION OF WASHINGTON'S CONSUMER PROTECTION ACT,**
23 **CHAPTER 19.18 RCW**
24 **(As Against all Defendants)**

25 **7.1** Plaintiff realleges and incorporates ¶¶ 1.1 through 6.10 as if fully and
26 completely set forth here.

A-5

The Honorable Judge Kimberly Prockman
Hearing Date: June 22, 2012 SUPERIOR COURT CLERK
Hearing Time: 10am E-FILED
Moving Parties: Defendants NWTs and CitiMortgage
CASE NUMBER: 12-2-01729-8 SEA

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

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,
Plaintiff,

No. 12-2-01729-8 SEA

v.

**AMENDED JOINT MOTION FOR
SUMMARY JUDGMENT BASED
UPON AMENDED COMPLAINT**

NORTHWEST TRUSTEE SERVICES, INC.;
CITIMORTGAGE INC.; NATIONAL LEGAL
HELP CENTER, INC., and JOHN DOES 1-10,
Defendants.

I. RELIEF REQUESTED

COMES NOW Defendants Northwest Trustee Services, Inc. ("NWTs") and CitiMortgage, Inc. ("CitiMortgage") by and through their attorneys of record, Routh Crabtree Olsen, P.S., and Jordan Ramis, P.C., and moves the Court for an order granting summary judgment against Plaintiffs Daniel J. Watson and Ketwarin Onnum ("Plaintiffs") pursuant to Civil Rule 56. Plaintiffs fail to raise any genuine issues as to any material fact, and Defendants NWTs and CitiMortgage are entitled to summary judgment as a matter of law. As the Amended Complaint contains new allegations, NWTs and CitiMortgage respectfully submit this Amended Motion for Summary Judgment to address the additional allegations.

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II. STATEMENT OF FACTS

Watson Loan Transaction. On or about April 14, 2003, for valuable consideration, Plaintiffs executed a promissory note ("Note") in the amount of \$280,000.00 payable to ABN AMRO Mortgage, Inc. ("AMRO"). Declaration of Jeff Stenman in Support of Motion for Summary Judgment, ¶ 4 ("Stenman Decl.") A true and correct copy of the Note is attached to the Stenman Decl. as Exhibit 1 and is hereby incorporated by reference.

On or about April 17, 2003, in order to secure repayment of the Note, Plaintiffs executed a deed of trust ("Deed of Trust") encumbering real property located at 2821 West 10th Avenue, Seattle, WA 98118 (the "Property"). Stenman Decl. ¶ 5.

The Deed of Trust was recorded on April 18, 2003 in the Official Records of King County, Washington as Instrument No. 20030418001614. A true and correct copy of the Deed of Trust is attached to the Stenman Decl. as Exhibit 2 and is hereby incorporated by reference. (*See also* Amended Complaint, Ex. 2).

Merger of ABN AMRO Mortgage Group, Inc. into CitiMortgage, Inc. On or about August 21, 2007, AMRO and CitiMortgage adopted an agreement and plan of merger ("Plan of Merger"). Declaration of Francesca Kay Wurm, ¶¶ 2-3 ("Wurm Decl.") Pursuant to the Plan of Merger, AMRO merged into CitiMortgage, leaving CitiMortgage as the successor by merger to AMRO. A true and correct copy of the Plan of Merger is attached to the Wurm Decl. as Exhibit 3 and is hereby incorporated by reference.

Appointment of NWTS as Successor Trustee. On or about October 11, 2007, CitiMortgage, as successor by merger to AMRO, appointed NWTS as successor trustee under the Deed of Trust. The Appointment of Successor Trustee was recorded on October 12, 2007 in the Official Records of King County, Washington as Instrument No. 20071012001733. Stenman

1 Decl. ¶ 6. *See also* Amended Complaint, Ex. 4.

2 **Notice of Default.** Plaintiffs fell into default under the terms of the Note and Deed of
3 Trust by failing to perform monthly payment obligations beginning with the October 1, 2010
4 installment. Stenman Decl. ¶ 7. On February 5, 2011, a Notice of Default and Loss Mitigation
5 Declaration were mailed by first class and certified mail, return receipt requested, to Plaintiffs at
6 their last known addresses. Stenman Decl. ¶ 7. A true and correct copy of the Notice of Default
7 is attached as Exhibit 4 to the Stenman Decl. and is hereby incorporated by reference.

8
9 **Notice of Trustee's Sale.** On March 22, 2011, NWTS recorded a Notice of Trustee's Sale
10 in the Official Records of King County, Washington as Instrument No. 20110322000728. (*See*
11 Amended Complaint, Ex. 6) The Notice of Trustee's Sale designated June 24, 2011 as date of the
12 nonjudicial foreclosure. *Id.*

13
14 **The Watson Bankruptcy.** On June 20, 2011, Plaintiffs filed a Chapter 7 petition in the
15 United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy
16 Court"). A true and correct copy of the Docket for Bankruptcy Case No. 11-17287-TWD is
17 attached to the Stenman Decl. as Exhibit 5 and is hereby incorporated by reference. *See also*
18 Stenman Decl. ¶ 9.

19 As a result of the bankruptcy filing, NWTS postponed the trustee's sale multiple times
20 with a final postponement date of September 30, 2011. *Id.* ¶ 9. The postponed trustee's sale was
21 ultimately cancelled due to the ongoing bankruptcy proceeding. *Id.* On October 31, 2011, the
22 Bankruptcy Court terminated Plaintiffs' Chapter 7 bankruptcy by standard discharge. *See*
23 Stenman Decl., Ex. 5, Pg. 1.

24
25 **Amended Notice of Trustee's Sale.** On November 8, 2011, NWTS recorded an Amended
26 Notice of Trustee's Sale in the Official Records of King County, Washington as Instrument No.

1 20111108001313. (See Amended Complaint, Ex. 3) See also Stenman Decl. ¶ 10.

2 The Amended Notice of Trustee's Sale designated December 23, 2011 as date of the
3 nonjudicial foreclosure. See *id.* On or about November 8, 2011, NWTS mailed by certified and
4 first class mail the Amended Notice of Trustee's Sale to the Plaintiffs. Stenman Decl. ¶ 11. On or
5 about November 9, 2011, NWTS posted the Notice of Trustee Sale on the Property. *Id.*

6
7 ***Non-judicial Foreclosure.*** On December 23, 2011, NWTS conducted a non-judicial
8 foreclosure sale of the Property. Stenman Decl. ¶ 12. Apple Equities, LLC was the high bidder at
9 the sale, resulting in the issuance of a Trustee's Deed to Apple Equities, LLC dated December
10 29, 2011. *Id.*

11 On February 15, 2012, pursuant to RCW § 61.24.080, NWTS deposited the surplus funds
12 resulting from the trustee's sale with the King County Superior Court Clerk in the amount of
13 \$73,183.72. Stenman Decl. ¶ 13. The surplus funds matter is filed under King County Superior
14 Court Cause No. 12-2-05796-6 SEA. *Id.*

15
16 ***Procedural Posture.*** On January 11, 2012, Plaintiffs filed their Complaint for Wrongful
17 Foreclosure and Quiet Title in the current proceeding. See Dkt. No. 1. On March 6, 2012,
18 Defendants CitiMortgage and NWTS filed their Motion for Summary Judgment. Dkt. # 22. On
19 March 22, 2012, Plaintiffs filed a motion to amend the Complaint which was granted by the
20 Court on April 26, 2012. See Dkt. No. 27.

21
22 **III. STATEMENT OF THE ISSUES**

23 A. If a trustee's sale has been stayed as a result of a bankruptcy filing, the trustee may set a
24 new sale date not less than 45-days after the date of the order discharging the debtor. On
25 October 23, 2011, Plaintiffs' bankruptcy was terminated by standard discharge. NWTS
26 recorded an Amended Notice of Trustee's Sale on November 8, 2011, designating
December 23, 2011 as the new sale date. As the trustee's sale occurred 53-days after the
bankruptcy discharge, is there any genuine issue of material fact as to the timeliness of
the foreclosure sale?

1 B. On July 22, 2011, the Foreclosure Fairness Act went into effect, amending the
2 Washington Deed of Trust Act ("DTA"). On February 5, 2011, a Notice of Default was
3 issued to the Plaintiffs. Is there any genuine issue of material fact as to whether the
4 Notice of Default was subject to the notice of pre-foreclosure options letter requirement
5 established by the Foreclosure Fairness Act amendments?

6 C. The DTA and interpretive case law require a borrower to enjoin a trustee's sale to
7 preserve any claims arising out of the sale. However, the DTA sets forth an exception for
8 a Consumer Protection Act ("CPA") claim regardless of whether injunctive relief was
9 maintained so long as the property was owner-occupied residential real property.
10 Plaintiffs admit in the Amended Complaint that the property was being used as a rental
11 property at the time of the sale. Can Plaintiffs maintain the CPA claim given that they
12 failed to enjoin the sale and the foreclosed property was rented out to a tenant?

13 D. Plaintiffs' Consumer Protection Act ("CPA") claim is predicated on an unfair or
14 deceptive act in relation to the non-judicial foreclosure of the Property. Should the Court
15 grant NWTs and CitiMortgage summary judgment as to CPA claim where Plaintiffs have
16 failed to demonstrate any violations of the DTA?

17 IV. EVIDENCE RELIEF UPON

18 This motion is based upon:

- 19 1. Pleadings and documents filed with the court;
- 20 2. Exhibits attached hereto;
- 21 3. The Declaration of Jeff Stenman;
- 22 4. The Declaration of Francesca Kay Wurm; and
- 23 5. This motion and memorandum of law in support thereof.

24 V. LEGAL ARGUMENT

25 Pursuant to CR 56(c), summary judgment is appropriate when "there is no genuine issue
26 as to any material fact and ... the moving party is entitled to a judgment as a matter of law."

27 *Ranger Ins. Co. v. Pierce County*, 164 Wash.2d 545, 552, 192 P.3d 886 (2008). Summary
28 judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and
29 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to
30 any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

1 When determining whether an issue of material fact exists, the court must construe all
2 facts and inferences in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wash.2d 195,
3 201, 961 P.2d 333 (1998). A genuine issue of material fact exists where reasonable minds could
4 differ on the facts controlling the outcome of the litigation. *Wilson v. Steinbach*, 98 Wash.2d 434,
5 437, 656 P.2d 1030 (1982).

6
7 A “material fact” for purposes of summary judgment includes a fact essential to support a
8 claim. *McDonald v. Murray*, 83 Wn.2d 17, 19, 515 P.2d 151 (1973). Importantly, the
9 nonmoving party “may not rely on speculation, [or] argumentative assertions that unresolved
10 factual issues remain.” *Ranger Ins. Co. v. Pierce County*, 164 Wash.2d at 552.

11 **B. There is no Genuine Issue of Material Fact as to the Defendants’ Compliance**
12 **with the Deed of Trust Act**

13 In support of the Wrongful Foreclosure claim, the Plaintiffs allege multiple deficiencies
14 with the trustee’s sale. Analyzing the pleadings and documents of which the court may take
15 judicial notice reveal that there are no genuine issues of material fact as to whether the non-
16 judicial foreclosure was conducted in compliance with the Washington Deed of Trust Act.

17
18 **1. The Trustee’s Sale was Timely as a Matter of Law**

19 Plaintiffs allege that since the trustee’s sale was held 182-days after the originally
20 scheduled sale date, the sale violated the 120-day postponement deadline set forth in RCW §
21 61.24.040. (Amended Complaint, ¶ 4.2). Summary Judgment is appropriate as Plaintiffs fail to
22 recognize the statutory procedures that apply when a trustee’s sale is stayed due to a borrower
23 filing for protection under the federal bankruptcy code.

24
25 Washington’s Deed of Trust Act allows a trustee to continue a non-judicial foreclosure
26 sale for not more than a total of 120 days. *See* RCW § 61.24.040(6). However, the Deed of Trust
Act provides additional guidelines if a borrower or grantor files for protection under the federal

1 bankruptcy code. *See* RCW § 61.24.130(4). If a trustee's sale has been stayed due to a
2 bankruptcy petition filing, a trustee may proceed with a trustee's sale following termination of
3 any injunction or stay on any date to which such sale has been properly continued within the
4 120-day limitation. *See id.* § 61.24.130(5).

5
6 Alternatively, the trustee may set a new sale date by recording a notice of trustee's sale so
7 long as the sale date is at least 45-days after the date of the bankruptcy court's order granting
8 relief from stay, discharging the debtor, or dismissing the case. *See* RCW § 61.24.130(4).

9 In this case, Plaintiffs fail to parse the distinction between continuing a sale and setting a
10 new sale date pursuant to a subsequent notice of trustee's sale. If a trustee decides to continue a
11 sale, a notice of postponement must be provided in accordance with RCW § 61.24.040(6).
12 However, if a trustee decides to issue a new notice of trustee's sale and set a new sale date, it
13 must among other things, record the statutory notice and comply with the posting and publication
14 requirements. *Id.* § RCW § 61.24.040(1)–(5).

15
16 Here, on October 31, 2011, the Bankruptcy Court terminated Plaintiffs' Chapter 7
17 bankruptcy by standard discharge. *See* Stenman Decl., Ex. 5, Pg. 1. Notably, the discharge
18 occurred more than 120-days after June 24, 2011, the sale date set forth by the original Notice of
19 Trustee's Sale. On November 8, 2011, NWTS recorded an Amended Notice of Trustee's Sale,
20 designating December 23, 2011 as the new sale date. (Amended Complaint, ¶ 3.5).

21
22 As the original Notice of Trustee's Sale was rendered untimely due to the bankruptcy
23 filing, NWTS recorded an Amended Notice of Trustee's Sale in accordance with the statutory
24 procedure set forth in RCW § 61.24.130(4). Plaintiffs fail to raise any genuine issue of material
25 fact as to whether the new sale date set by the Amended Notice of Trustee's Sale complied with
26 the 45-day statutory limitation, and thus the trustee's sale was timely as a matter of law.

1 **2. The Pre-Foreclosure Options Letter Requirement Established by the**
2 **Foreclosure Fairness Act is not Applicable to the Present Proceeding**

3 Plaintiffs allege that NWTs and CitiMortgage violated the Foreclosure Fairness Act
4 (“FFA”) by (1) failing to provide Plaintiff with the pre-foreclosure notices required by the FFA,
5 and (2) by failing to exercise due diligence as required by the FFA prior to recording the
6 Amended Notice of Trustee’s Sale. (Amended Complaint, ¶¶ 3.6–3.7, 4.3). However, the
7 undisputed facts as well as the terms of the Deed of Trust Act as amended by the FFA reveal that
8 the FFA requirement cited by the Plaintiffs is inapplicable.

9 The Foreclosure Fairness Act amended the Deed of Trust Act effective July 22, 2011,
10 incorporating additional statutory safeguards in order to protect and assist homeowners from
11 unnecessary foreclosures. SSHB 1362, Chapter 58, Laws of 2011. Pursuant to the FFA
12 amendments, a trustee, beneficiary, or authorized agent cannot issue a notice of default prior to
13 satisfying the initial contact requirements. *See* RCW § 61.24.031(1)(a).

14 The initial contact requirement directs a beneficiary or authorized agent to make “initial
15 contact” with the borrower by letter to provide the borrower with certain information, including
16 the right to request a meeting to discuss options to avoid foreclosure. *See id.* §
17 61.24.031(1)(b)–(f). This letter has been referred to as the “Notice of Pre-Foreclosure Options”
18 letter by the Washington Department of Commerce.¹

19 Notably, the initial contact requirement only applies to deeds of trust that are recorded
20 against “owner-occupied residential real property.” RCW § 61.24.031(7)(a). In turn, owner-
21 occupied residential real property is defined by statute as property that is the principal residence
22
23
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25

26 ¹ Department of Commerce, Memorandum re: Notice of Pre-Foreclosure Options, June 1, 2011.
<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9831&Mid=846&wversion=Staging>

1 of the borrower that consists solely of a single-family residence, a residential condominium unit,
2 or a residential cooperative unit. *Id.* § 61.24.005(10), (13).

3 In this case, the Notice of Default was issued to Plaintiffs on February 5, 2011. Stenman
4 Decl. ¶ 7. As the FFA amendments went into effect July 22, 2011, the initial contact letter or
5 notice of pre-foreclosure options letter requirement was not a prerequisite to the issuance of the
6 Notice of Default. Accordingly, the Plaintiffs' claim that CitiMortgage and NWTS failed to
7 comply with the FFA pre-foreclosure notice requirement lacks merit as a matter of law.
8

9 Additionally, even assuming *arguendo* that the FFA amendments did apply to the Notice
10 of Default, the FFA initial contact requirement does not apply as the Property is not "owner-
11 occupied residential real property". Plaintiffs expressly admit that the property was generating
12 rental income. (Amended Complaint, ¶¶ 3.13, 4.5).
13

14 **C. Plaintiffs are Precluded by the Waiver Doctrine from Maintaining a Post-Sale
15 CPA Claim**

16 Pursuant to the waiver doctrine, Plaintiffs are precluded from maintaining a post-sale
17 CPA claim given that they failed to restrain the trustee's sale and the Property was not owner-
18 occupied at the time it was foreclosed.

19 In interpreting the DTA, the Washington Supreme Court has stated that the statutory
20 procedure set forth in RCW § 61.24.130 to restrain a trustee's sale is "the only means by which a
21 grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and
22 foreclosure." *Plein v. Lackey*, 149 Wash.2d 214, 225-26, 67 P.3d 1061 (2003) (emphasis added).
23

24 Pursuant to the waiver doctrine, Washington courts have held that post-sale challenges to
25 a nonjudicial foreclosure are waived when a party: "(1) received notice of the right to enjoin the
26 sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and
(3) failed to bring an action to obtain a court order enjoining the sale." *Steward v. Good*, 51

1 Wash.App. 509, 515-17, 754 P.2d 150 (1988); *Koegel v. Prudential Mut. Sav. Bank*, 51
2 Wash.App. 108, 114, 752 P.2d 385 (1988); *Peoples Nat'l Bank of Wash. v. Ostrander*, 6
3 Wash.App. 28, 491 P.2d 1058 (1971).

4 In 2009, the legislature enacted RCW § 61.24.127 to set forth certain statutory exceptions
5 to the waiver rule. Thus, while failure to bring a civil action to enjoin a nonjudicial foreclosure
6 does not necessarily waive a borrower's ability to bring forth a claim post-sale, the Deed of Trust
7 Act is explicit in limiting the nature of such post-sale claims.² These claims cannot seek any non-
8 monetary relief: "The claim may not seek any remedy at law or in equity other than monetary
9 damages." *Id.* § 61.24.127(2)(b) (emphasis added).

11 Notably, the statutory exceptions to the waiver rule do not apply when to the foreclosure
12 of property that is not owner-occupied residential real property. RCW § 61.24.127(3).
13 "Residential real property" is defined by the DTA as "property consisting solely of a single-
14 family residence, a residential condominium unit, or a residential cooperative unit." RCW §
15 61.24.005(13).

17 Here, Plaintiffs expressly admit that the property was generating rental income and was
18 being rented out to a tenant at the time of foreclosure. (Amended Complaint, ¶¶ 3.13, 4.5). There
19 is also no genuine dispute as to whether Plaintiffs failed to restrain the trustee's sale of the
20 Property. It is also clear from the Amended Complaint that Plaintiffs had actual notice of the
21 alleged defenses, if any, to the sale and the right to restrain the sale by virtue of the statutorily
22 provided notices. Additionally, Plaintiffs had constructive notice as the Amended Notice of
23 Trustee's Sale and Notice of Trustee's Sale were both recorded in the public record.
24

25
26 ² The post-sale claims are limited to (1) common law fraud or misrepresentation, (2) consumer protection
act violations, (3) failure of the trustee to materially comply with the Deed of Trust Act, and (4) violation
of RCW § 61.24.026. See RCW § 61.24.127(1).

1 Accordingly, NWTS and CitiMortgage are entitled to summary judgment as Plaintiffs are
2 precluded from maintaining a post-sale CPA claim on a foreclosed rental property. Similarly, to
3 the extent Plaintiffs seek injunctive relief against NWTS and CitiMortgage, Plaintiffs' are
4 statutorily precluded from seeking any non-monetary damages.

5
6 **D. NWTS and CitiMortgage are Entitled to Summary Judgment as to Plaintiffs'
CPA claim**

7 Even assuming Plaintiffs' had enjoined the sale and the property was owner-occupied
8 residential real property, summary judgment as to the CPA claim is appropriate as the trustee's
9 sale complied with the Deed of Trust Act as a matter of law.

10
11 The Consumer Protection Act ("CPA") prohibits "[u]nfair methods of competition and
12 unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020.
13 To state a prima facie claim under the CPA, a plaintiff must "establish five distinct elements: (1)
14 unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact;
15 (4) injury to plaintiff in his or her business or property; and (5) causation." *Hangman Ridge*
16 *Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780 (1986). Failure to satisfy
17 even one of the elements is fatal to a CPA claim. *Sorrel v. Eagle Healthcare*, 110 Wn.App. 290,
18 298, 38 P.3d 1024 (2002).

19
20 A per se unfair trade practice exists when a statute that has been declared by the
21 Legislature to constitute an unfair or deceptive act in trade or commerce has been violated.
22 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 786, 719 P.2d
23 531 (1986).

24
25 Pursuant to the Deed of Trust Act, as applicable to the present proceeding, it is a per se
26 unfair act in trade or commerce to fail to initiate contact through the notice of pre-foreclosure
options letter. See RCW § 61.24.135(2)(c). As set forth above, the Foreclosure Fairness Act

1 amendments did not apply to the Notice of Default at the time it was issued.³ Accordingly,
2 Plaintiffs must satisfy each of the five elements of a prima facie CPA claim.

3 Here, Plaintiffs cannot satisfy the unfair trade or practice element as they have failed to
4 demonstrate that there is a genuine issue of material fact as to the Defendants NWTS and
5 CitiMortgage's compliance with the Deed of Trust Act.
6

7 Additionally, Plaintiffs cannot establish a causal link between the allegedly unfair or
8 deceptive acts and the injury suffered by Plaintiffs. The Wrongful Foreclosure claim is
9 predicated on an erroneous interpretation of the statutory non-judicial foreclosure procedure⁴ and
10 the assumption that the Foreclosure Fairness Act amendments applied to the issuance of the
11 Notice of Default. In regards to causation, Plaintiffs do not dispute their default under the terms
12 of the Note. Notably, but for Plaintiffs' default on their contractual obligations, the Property
13 would not have been sold pursuant to a trustee's sale.
14

15 As the CPA claim is entirely derivative of the alleged Deed of Trust violations, Plaintiffs'
16 cannot establish all five of the CPA claim elements as a matter of law.

17 VI. CONCLUSION

18 Plaintiffs' Wrongful Foreclosure and Consumer Protection Act claims present no genuine
19 issues of material fact. Based on the foregoing, NWTS and CitiMortgage respectfully request
20 that this Court enter summary judgment in favor of NWTS and CitiMortgage as to all causes of
21 action.
22

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³ *Supra* Part V.B.2.

⁴ *Supra* Part V.B.1.

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VII. PROPOSED ORDER

A proposed order granting the requested relief accompanies this motion.

DATED this 27 day of April, 2012.

ROUTH CRABTREE OLSEN, P.S.

JORDAN RAMIS, P.C.

By 
Sakae Sakai, WSB # 44082
Attorney for Defendant Northwest
Trustee Services, Inc.

By /s/ Scott S. Anders
Scott S. Anders, WSB # 19732
Attorney for Defendant CitiMortgage, Inc.

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

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,

Plaintiffs,

vs.

NORTHWEST TRUSTEE SERVICES, INC.;
CITIMORTGAGE, INC.; NATIONAL LEGAL
HELP CENTER, LLC.; and JOHN DOE 1-10

Defendants.

NO. 12-2-01729-8 SEA

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS NORTHWEST
TRUSTEE SERVICES AND
CITIMORTGAGE'S JOINT MOTION
FOR SUMMARY JUDGMENT**

I. RELIEF REQUESTED

Plaintiffs, DANIEL J. WATSON and KETWARIN ONNUM, by and through their attorney of record, respectfully request that the Court DENY Defendants' Motion for Summary Judgment, or in the alternate, continue said motion until such time as discovery has been completed, and grant such other relief as this Court deems equitable and just. Genuine issues of material fact exist which preclude Defendants' Motion for Summary Judgment.

II. STATEMENT OF GROUNDS

1. Daniel J. Watson and Ketwarin Onnum (hereinafter "Plaintiffs"). are Washington State residents and reside in King County, Washington. Plaintiffs acquired fee title to real property commonly known as 2821 10th Ave. W., Seattle WA 98119 (hereinafter "Property")

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

SKYLINE LAW GROUP PLLC
2155 112th Avenue NE
Bellevue, Washington 98004
Telephone (425) 455-4307
Facsimile (425) 401-1833

1 pursuant to a Statutory Warrant Deed recorded on April 18th, 2003, under King County
2 Recorder's No. 20030418001613. *Affidavit of Daniel Watson*, ¶ 2, Exh. 1.

3 2. Plaintiffs at all times material to this action were the fee title holders and owners
4 of record of the subject Property until December 23, 2011, when the Property was sold by
5 Defendant Northwest Trustee Services ("NWTS") on behalf of CitiMortgage at a nonjudicial
6 Trustee's sale (hereinafter "the sale.") to a third party. *Id.*, ¶ 3.

7 3. The property was occupied by the Plaintiffs at all times relevant to this matter.
8 Plaintiffs also rented out a portion of the property to a tenant. *Id.*, ¶ 4, Exhs. 2-3.

9 4. On February 5, 2011, a Notice of Default and Loss Mitigation Declaration were
10 mailed to Plaintiffs. *Id.*, ¶ 5, Exh. 4.

11 5. On March 22, 2011, NWTS recorded a Notice of Trustee Sale under King County
12 Record No. 20110322000728 (hereinafter "NoTS1"). *Id.*, ¶ 6, Exh. 5. The Trustee's sale was
13 scheduled to take place on June 24, 2011. *Id.*

14 6. On June 20, 2011, Plaintiffs filed a Chapter 7 Petition in United States
15 Bankruptcy Court for the Western District of Washington. *Id.*, ¶ 7. This resulted in the
16 postponement of the initial Trustee sale. *Id.*

17 7. On July 22, 2011, Washington's Foreclosure Fairness Act ("FFA" or "Act")
18 amended the Deed of Trust Act, Chapter 61.24 RCW. The FFA applies to all owner-occupied
19 residential properties where there has not yet been a notice of foreclosure received by the
20 property owner and to all owner-occupied properties where on the effective date of the Act the
21 notice of foreclosure has been served but the property had not yet been sold. *See Decl. of*
22 *McNeill*, Exh. 4. (*Dept. of Commerce FFA Program Eligibility Criteria*,
23 <http://www.commerce.wa.gov/site/1367/default.aspx>).

1 8. The FFA requires specific notices to be issued to a borrower before a Trustee's
2 sale can be scheduled or held. These pre-foreclosure notice requirements substantially changed
3 the procedures required for a lender to issue both a Notice of Default and a Notice of Trustee's
4 sale. RCW § 61.24.030-031.

5 9. On September 22, 2011, Plaintiffs' bankruptcy debts, including the mortgage
6 serviced by Defendant CitiMortgage, were discharged. *See Aff. of Watson*, ¶ 7, Exh. 6.

7 10. On November 8, 2011, Defendant NWTs recorded an Amended Notice of
8 Trustee Sale under King County Record No. 20111108001313 (hereinafter "NoTS3"). *Id.*, ¶ 8,
9 Exh. 7. The sale date was listed as December 23, 2011. *Id.*

10 11. Prior to recording NoTS3, Defendants NWTs and CitiMortgage did not initiate
11 contact with Plaintiffs and exercise due diligence, nor did they issue a Notice of Default that
12 complied with the requirements of RCW § 61.24.031. *Id.*, ¶ 8.

13 12. Defendants NWTs referenced the NoTS1 but not the NoT3 in its Trustee's Deed
14 recorded on January 10, 2012. *Id.*, Exh. 9. Defendants NWTs also stated in the Trustee's Deed
15 that "[a]ll legal requirements and all provisions of [Plaintiffs'] Deed of Trust have been complied
16 with, as to acts to performed and notices to be given, as provided in chapter 61.24." *Id.*
17 However, the evidence shows that Defendants NWTs and CitiMortgage did not comply with the
18 requirements of RCW § 61.24, as amended by the FFA.
19

20 13. In the Fall of 2011, Plaintiffs hired the National Legal Help Center (hereinafter
21 "NLHC") in California to help negotiate with CitiMortgage to stop the foreclosure and reinstate
22 Plaintiffs' mortgage. On December 22, 2012, Plaintiffs received an email from NLHC indicating
23 that the trustee's sale scheduled for December 23, 2012 had been canceled. *Aff. of Watson*, ¶ 9,
24 Exh. 8.
25

1 14. On December 23, 2011, Plaintiffs' Property was sold by NWTs for \$348,000.
2 *Cite.* The trustee's sale took place 182 days after the originally scheduled sale date. *Id.*, Exh. 9.
3 At the time of the sale, the county tax appraisal for the Property was \$443,000, and Plaintiffs
4 owed CitiMortgage \$273,867.28 on the promissory note obligation. *Id.*, ¶ 10. At the time of the
5 sale, Plaintiffs were receiving rental proceeds from a tenant, who shared the property with them.
6 *Id.*

7 15. Had the Plaintiffs known that the Trustee Sale on December 23, 2011 had not in
8 fact been cancelled, they would have initiated legal proceedings to stop the sale. *Id.*, ¶ 11. Had
9 the Plaintiffs received the pre-foreclosure notices required by the FFA, they would have taken
10 advantage of the FFA and obtained a foreclosure mediation referral from a HUD Counselor or
11 attorney to stop the sale. *Id.*

12 16. The Amended Complaint was filed on May 7, 2012. *See Decl. of McNeill.* ¶ 2.
13 NWTs was served with the Amended Complaint on May 7, 2012. *See Decl. of McNeill.* Exh. 1.
14 CitiMortgage was served with the Amended Complaint on May 11, 2012. *Id.*, Exh. 2. No
15 Answers have been served or filed in response. *See Id.* NLHC, another Defendant in this matter,
16 was just served with a Summons and the Amended Complaint on May 15, 2012. *Id.*, Exh. 3
17 They too have not filed a responsive pleading.

18 17. In addition to pleadings outstanding, discovery in this matter has not yet occurred,
19 but discovery is necessary to determine, at a minimum, whether Defendant CitiMortgage
20 engaged in fraudulent conduct or was negligent in communicating false information to Plaintiff
21 and/or Plaintiff's authorized representatives. *See Decl. of McNeill.* ¶ 3. Plaintiff's counsel
22 intends to initiate discovery upon receipt of responsive pleadings. *See Id.*

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III. STATEMENT OF ISSUES

1. Should Defendants' Motion for Summary Judgment be denied where there exists a genuine issue of material fact as to whether Plaintiffs' property was an "owner-occupied residence" as defined in the Deed of Trust Act?

2. Should Defendants' Motion for Summary Judgment be denied where the Notice of Trustee Sale recorded on November 8, 2011 (NoTS3) was subject to the required notice of pre-foreclosure options of the FFA?

3. Should Defendants' Motion for Summary Judgment be denied where Defendants NWTS and CitiMortgage failed to comply with the Deed of Trust Act as amended by the FFA?

4. Should Defendants' Motion for Summary Judgment be denied when Defendants NWTS and CitiMortgage violated the Consumer Protection Act by failing to comply with the pre-foreclosure requirements of the FFA as well as by representing that they had fully complied with the Deed of Trust Act?

5. Should Defendants' Motion for Summary Judgment be denied when the Defendants violated the Consumer Protection Act by representing to the NLHC that the trustee's sale of December 23, 2011 had been cancelled?

6. Should Defendants' Motion for Summary Judgment be denied when the trustee's sale of December 23, 2011 violated the 120-day postponement deadline set forth in RCW § 61.24.040?

7. In the alternate, should Defendants' Motion for Summary Judgment be continued to such time as discovery in this matter has been completed or Plaintiff has had a reasonable amount of time to complete discovery?

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IV. EVIDENCE RELIED UPON

Plaintiff relies upon the Affidavit of Daniel Watson and the Exhibits attached thereto, Declaration of Michele McNeill and the Exhibits attached thereto, and the records and files herein.

V. ARGUMENT AND AUTHORITY

A. Standard for Summary Judgment

On review of a motion for summary judgment, the court must decide whether the affidavits, facts, and record have created an issue of fact and, if so, whether such issue of fact is material to the cause of action. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986) (citing *Lamon v. McDonnell Douglas Corp.*, 91 Wash.2d 345, 352, 588 P.2d 1346 (1979)). Specific facts not based on speculation or argumentative assertions that show a genuine issue for trial will defeat a motion for summary judgment. *Seven Gables Corp.*, 106 Wn.2d 1, 13; CR 56 (e). The trial court must consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. *Wallace v. Lewis County*, 134 Wash.App. 1, 137 P.3d 101 (citing *Wilson v. Steinbach*, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982)). Additionally, in the absence of a genuine issue of fact, the court may, on its own, grant summary judgment in favor of the nonmoving party when denying a moving party's motion for summary judgment. *See, e.g. Health Ins. Pool v. Health Care Auth.*, 129 Wn.2d 504, 507, 919 P.2d 62 (1996).

B. Defendants NWTs and CitiMortgage Were Obligated to Comply with the Foreclosure Fairness Act Because the Plaintiff's Property was an Owner-Occupied Residence and was in Foreclosure But Had Not Yet Been Sold.

1. *Plaintiffs' Property Was an "Owner-Occupied Residence" for Purposes of the Foreclosure Fairness Act.*

1 Defendants assert that Plaintiffs were not entitled to notice of pre-foreclosure options as
2 mandated by the FFA at RCW § 61.24.030-031. because the Property was not an “owner-
3 occupied residential property.” as defined in RCW § 61.24.005(10), (13). This assertion does
4 not withstand even a cursory examination of the relevant law and supporting evidence.

5 In support of their claim that the Property was not an “owner-occupied” residence,
6 Defendants rely solely on the fact that a tenant lived with the Plaintiffs on the Property.
7 RCW § 61.24.005(10) defines property that is “owner-occupied” as “property that is the
8 principal residence of the borrower.” Here, the Property was at all times relevant to this matter
9 the Plaintiffs’ principal residence, and Plaintiffs have furnished documentation that establishes
10 this fact. *Aff. of Watson*, Exhs. 2-3.

11 Defendants have no foundation in law or in fact for the apparent assertion that an owner-
12 occupied property ceases to be the owner’s principal residence if a tenant co-resides with the
13 owner at the property. Furthermore, Defendants have offered no evidence demonstrating other
14 real property as the Plaintiffs’ principal residence. The Plaintiffs have shown that the Property
15 was an “owner occupied” residence and therefore subject to the notice of pre-foreclosure options
16 of the FFA.
17

18 2. *NoTS3 Had to Comply with the FFA because Plaintiffs’ Property Had Not Yet*
19 *Been Sold at the Time the FFA Was Enacted.*

20 Defendants correctly observe that the Notice of Default issued to the Plaintiffs on
21 February 5, 2011 was not subject to the FFA’s notice of pre-foreclosure options because the FFA
22 did not go into effect until July 22, 2011. However, NoTS3, which was issued on November 8,
23 2011, was subject to all of the requirements of the FFA, and failure by Defendants to comply
24 with the FFA after it went into effect is actionable.
25

1 The FFA's amendments to the Deed of Trust Act apply to all owner-occupied residential
2 properties where the homeowner has received a notice of pre-foreclosure options and/or a notice
3 of default (NOD) and the notice of Trustee sale has not been recorded or where *the homeowner*
4 *received a NOD on or before July 22, 2011. See Decl. of McNeill, Exh. 4. (Dept. of Commerce*
5 *FFA Program Eligibility Criteria, <http://www.commerce.wa.gov/site/1367/default.aspx>). If a*
6 *homeowner received a NOD before July 22, 2011, they are eligible to be referred into an FFA*
7 *mediation up until 12:00pm the day before the foreclosure sale. See Id. The purpose of the*
8 *mediation is to provide the homeowner and lender a forum for working out an alternative to*
9 *foreclosure. See e.g., RCW 61.24.163 (7). However, a homeowner like the Plaintiffs cannot*
10 *very well take advantage of an FFA mediation if they do not know about the right to obtain one.*

12 Defendants NWTs issued a notice of default on February 5, 2011, and scheduled a
13 Trustee Sale for June 24, 2012. *See Aff. of Watson, Exhs. 4-5. The sale was postponed when*
14 *Plaintiffs filed for Chapter 7 bankruptcy in federal court. See Aff. of Watson, ¶ 7. By the time*
15 *the bankruptcy was discharged on September 22, 2012, the FFA's requirement of notice of pre-*
16 *foreclosure options had been in effect for two months. Accordingly, Defendant's NoTS3 was*
17 *subject to the FFA when it was recorded on November 8, 2011.*

18 **C. Defendants Violated the Deed of Trust Act When They Recorded NoTS3 Without**
19 **Having Issued Plaintiffs Notice of Pre-foreclosure Options or Notice of Default That**
20 **Complied with the Amended Deed of Trust Act.**

21 A crucial amendment to the Deed of Trust Act is found at RCW § 61.24.030(9), which
22 mandates that, as a prerequisite to the recording of a notice of trustee's sale, the beneficiary has
23 complied with RCW § 61.24.031, otherwise known as the notice of pre-foreclosure options.
24 Defendants NWTs and CitiMortgage admit in their Motion for Summary Judgment that they did
25 not provide these notices prior to recording NoTS3 on November 8, 2011.

1 RCW § 61.24.031 sets out initial contact requirements that a lender must follow before
2 issuing a notice of default. The initial contact must occur no less than thirty days before a notice
3 of default is issued, and must be made by both letter and telephone. RCW § 61.24.031(1)(a-b).
4 The letter must contain the following information: that the borrower must respond within thirty
5 days of the date of the letter and that failure to do so may result in a notice of default and loss of
6 the borrower's home; that if the borrower responds, he or she will have an additional sixty days
7 before a notice of default may be issued; that the borrower should contact a housing counselor or
8 attorney and that failure to do so could result in losing the opportunity to meet with the lender or
9 participate in mediation in front of a neutral third party; toll-free telephone numbers from the
10 U.S. HUD Department, statewide foreclosure hotline, and statewide civil legal aid hotline; that a
11 housing counselor may be available at little or no cost; and instructions on how to respond to the
12 letter. RCW § 61.24.031(1)(c)(i-iv).

14 Once the initial letter has been sent, RCW § 61.24.031(5)(a) imposes a duty of due
15 diligence on the beneficiary which requires it to attempt to contact the borrower by telephone at
16 least three times at different hours and on different days. The calls must be made to the primary
17 and secondary telephone numbers on file with the beneficiary or authorized agent. *Id.* If the
18 borrower fails to respond after completing the telephone call requirements, the beneficiary or
19 authorized agent must send a certified letter, return receipt requested, which reiterates the
20 borrower's opportunity for mediation, and which provides the following information: options
21 available to borrowers who wish to avoid foreclosure and steps to take; financial documents
22 borrowers should collect and present in order to avoid foreclosure; and toll-free telephone
23 numbers for borrowers to discuss their options with their beneficiary or authorized agent, as well
24 as the toll-free telephone number for a department-approved housing counseling agency.
25

1 RCW § 61.24.031(5)(c), 61.24.031(5)(e)(i-iv). A lender who fails to comply with these
2 provisions has not met their duty of due diligence. *Id.*

3 Prior to issuing a notice of trustee's sale, a notice of default must have been issued at
4 least thirty days in advance which includes a declaration from the beneficiary or authorized
5 agent, under penalty of perjury, "that it has contacted the borrower as provided in"
6 RCW § 61.24.031(1), and that "it has tried with due diligence to contact the borrower under"
7 RCW § 61.24.031(5). RCW § 61.24.031(2). The statute also lays out the basic language and
8 format of this declaration in the "Foreclosure Loss Mitigation Form" found at RCW §
9 61.24.131(9), which requires the beneficiary or authorized agent to confirm compliance with
10 RCW § 61.24.031. Issuance of a compliant notice of default requires inclusion of this
11 declaration and is a prerequisite to the recording of a valid notice of trustee sale. RCW §
12 61.24.030(9), 61.24.031(2).

14 For Defendants' NoTS3 to have been valid, the amended Deed of Trust act required them
15 to first provide Plaintiffs with the notice of pre-foreclosure options, which is a prerequisite to the
16 issuance of a valid notice of default. It then required Defendants to issue a notice of default—
17 which included a sworn declaration that Defendants complied with the FFA at
18 RCW § 61.24.031—no less than thirty days before recording the notice of trustee sale.
19 Defendants admit and the evidence shows that the Defendants never provided notice of pre-
20 foreclosure options or a notice of default that complied with the FFA. Therefore, the NoTS3 was
21 issued in violation of the amended Deed of Trust Act. and Defendants' Motion for Summary
22 Judgment should be denied.

24 **D. Defendants NWTS and CitiMortgage Violated the Washington Consumer
25 Protection Act.**

1 1. *Defendants' Failure to Initiate Contact With a Plaintiff and Exercise Due*
2 *Diligence Prior To Recording NoTS3 Is A Per Se Violation of the CPA.*

3 In order to bring an action for violation of the CPA, a plaintiff must show that the
4 defendant (1) engaged in an unfair or deceptive act or practice; (2) that the act occurred in the
5 conduct of defendant's trade or commerce; (3) that the act affected the public interest; (4) that
6 the plaintiff was injured; and 5) that the defendant's action caused the plaintiffs' injury.

7 *Hangman Ridge v. Safeco Title*, 105 Wn.2d 778, 719 P.2d 531 (1986). The first two elements of
8 a cause of action for a violation of the CPA--an unfair and deceptive act in conduct of trade or
9 commerce--can be met by showing that the alleged act constitutes a *per se* unfair trade practice.

10 *Ledcor Industries (USA), Inc. v. Mutual of Enumclaw Ins. Co.*, 150 Wn.App. 1, 206 P.3d 1255
11 (2009). A *per se* unfair trade violation occurs when a statute, which has been declared by the
12 legislature to constitute unfair or deceptive acts in trade or commerce, is violated. *Urban v. Mid-*
13 *Century Ins.*, 29 Wn.App. 798, 905 P.2d 404 (1995). Defendants are liable for violation of the
14 CPA if the remaining elements of the five part test are also established. *Indus. Indem. Co. of the*
15 *Northwest, Inc. v. Kallevig*, 114 Wn.2d 907, 923, 792 P.2d 520 (1990).
16

17 The public interest prong is satisfied by "a showing that a statute has been violated which
18 contains a specific legislative declaration of public interest impact." *Hangman Ridge*, 105
19 Wn.2d at 791. A plaintiff is injured when he can show loss of use of property which is causally
20 related to an unfair or deceptive act, including injury without specific monetary damages. *Panag*
21 *v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 57, 204 P.3d 885, 899 (2009). An injury is
22 caused by a defendant when the plaintiff establishes that, but for the defendant's unfair or
23 deceptive practice, the plaintiff would not have suffered an injury. *Id.* at 58-59 (citing *Indoor*
24 *Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 84, 170 P.3d
25 10, 22 (2007)).

1 Under the amended Deed of Trust Act, failure to initiate contact with a borrower and
2 exercise due diligence as required under RCW 61.24.031 is a *per se* violation of the CPA and
3 constitutes an unfair or deceptive act or practice. RCW 61.24.135(2). Under RCW § 61.34.040,
4 “the legislature finds that the practices covered by this chapter are matters vitally affecting the
5 public interest for the purpose of applying chapter 19.86 RCW.”

6 As set forth above, in order to lawfully record a notice of trustee sale under the amended
7 Deed of Trust Act which became effective on July 22, 2011, Defendants were first required to
8 issue notice of pre-foreclosure options and a subsequent notice of default. Defendants failure to
9 do so constitutes a *per se* violation of the CPA and establishes the first two elements of a claim
10 for violation of the CPA. Furthermore, because RCW § 61.24.040 declares that the Deed of
11 Trust Act covers matters affecting the public interest, Defendants’ violation of the statute also
12 establishes the public interest prong necessary to bring a CPA claim. The injury and causality
13 elements of a CPA claim are met because the injury to Plaintiffs—wrongful foreclosure denying
14 them of possession and use of their property—is precisely the type of injury contemplated by the
15 statute. The Plaintiffs also had equity in the Property that, but for the wrongful foreclosure, they
16 would have received by selling the home at a fair market value. This value, based on King
17 County Tax Auditor’s Appraisal, and to be supported by experts at trial, is estimated to be at
18 least \$100,000 over the purchase price paid at the Trustee sale on December 23, 2011. *See Aff.*
19 *of Watson*, ¶ 10. Because Defendants’ failure to provide notice of pre-foreclosure options and
20 notice of default was a deceptive act occurring in trade or commerce, affecting the public
21 interest, and caused injury to Plaintiffs, Defendants are liable for violation of the CPA.
22
23

24 2. *Defendants NWTS and CitiMortgage Representation That They Had Fully*
25 *Complied with RCW § 61.24 Is A Prima Facie Violation of the CPA.*

1 Where a defendant's actions do not constitute a *per se* unfair or deceptive act occurring in
2 trade or commerce and affecting the public interest, the first three elements of a CPA claim must
3 be independently established. The first element of the act, an unfair or deceptive act, can be met
4 by showing that the act "had the capacity to deceive a substantial portion of the public." *Brown*
5 *ex rel. Richards v. Brown*, 157 Wn.App. 803, 239 P.3d 602 (Div. 1 2010). Whether an act is
6 unfair or deceptive is a matter of law. *Panag*, 166 Wn.2d 27, 47. A plaintiff need not show the
7 act in question was intended to deceive, only that it had the capacity to deceive a substantial
8 portion of the public. *Id.* A misrepresentation made to only one person can have the capacity to
9 deceive many if the representation is made in a standard form contract or to a sales representative
10 who will subsequently convey the misrepresentation to many potential buyers. *State v. A.N.W.*
11 *Seed Corp.*, 116 Wn.2d 39, 802 P.2d 1353 (1991). Although the CPA does not define "unfair or
12 deceptive act or practice," implicit in the definition of "deceptive" under the CPA is the
13 understanding that the practice misleads or misrepresents something of material importance.
14 *Nguyen v. Doak Homes, Inc.*, 140 Wn.App. 726, 734, 167 P.3d 1162, 1166 (Div. 1 2007).
15 Deception exists "if there is a representation, omission, or practice that is likely to mislead a
16 reasonable consumer." *Panag*, 166 Wn.2d 27.

18 As for establishing the second element—conduct occurring in trade or commerce—the
19 CPA was intended to be construed broadly. *Stephens v. Omni Ins. Co.*, 138 Wn.App. 151, 173,
20 159 P.3d 10, 22 (Div. 1 2007). Establishing the third element—that the act affected the public
21 interest—is dependent on whether the act was a consumer or private transaction. For a consumer
22 transaction, a court considers five factors, including: (1) whether the alleged acts were
23 committed in the course of the defendant's business; (2) whether the acts are part of a pattern or
24 generalized course of conduct; (3) whether repeated acts were committed prior to the act
25

1 involving the plaintiff; (4) whether there is a real and substantial potential for repetition of
2 defendant's conduct after the act involving the plaintiff; and (5) whether the act complained of
3 involved a single transaction. many consumers were affected or were likely to be affected by it.
4 *Bloor v. Fritz*, 143 Wn.App. 718, 180 P.3d 805 (Div. 2 2008), review granted 163 Wn.2d 1033,
5 187 P.3d 268 (2008). Not all five factors need be present in order to find that an act affected the
6 public interest. *Mayer v. Sto Industries, Inc.*, 123 Wn.App. 443, 98 P.3d 116 (Div. 2 2004).

7
8 In the case of a private transaction, a court will determine the public interest impact by
9 evaluating four factors: (1) whether the alleged acts were committed in the course of defendant's
10 business; (2) whether the defendant advertised to the public in general; (3) whether the defendant
11 actively solicited this particular plaintiff, indicating potential solicitation of others; and (4)
12 whether plaintiff and defendant have unequal bargaining positions. *Michael v. Mosquera-Lacy*,
13 165 Wn.2d 595, 200 P.3d 695 (2009). Not all four factors need be present in order find that an
14 act affected the public interest. *Id.* Examples of a private dispute include insurance and real
15 estate transactions. *Hangman Ridge*, 105 Wn.2d 778, 790.

16 Here, Defendants' Trustee's Deed, recorded on January 10, 2012, stated that "[a]ll legal
17 requirements and all provisions of [Plaintiffs'] Deed of Trust have been complied with, as to acts
18 to be performed and notices to be given, as provided in Chapter 61.24 RCW." As set forth
19 above, Defendants did not comply with all the requirements of RCW § 61.24, in particular RCW
20 § 61.24.030 and 64.24.031. Defendants' assertion to the contrary was precisely the type of
21 misrepresentation of something of material importance constituting "deceptive" conduct
22 contemplated in the case law. Additionally, it constitutes a representation that would mislead a
23 reasonable consumer and Defendants' intent to deceive is irrelevant. Furthermore, the act
24 occurred in trade or commerce as CitiMortgage was engaged in its business of servicing
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1 mortgages and NWTS was similarly engaged in its capacity as a trustee. Accordingly,
2 Defendants' claim in the Trustee's Deed that they had fully complied with RCW § 61.24 when
3 they had in fact failed to do so is an unfair or deceptive act occurring in trade or commerce.

4 Defendants' conduct in this matter concerns a real estate transaction, so it is appropriate
5 to determine whether it affects the public interest by considering it under the four-factor private
6 transaction analysis. As set forth above, the alleged acts occurred in the course of Defendants'
7 business. Defendants both advertise to the public in general by, at a minimum, maintaining
8 websites in which they offer their respective services to both current and prospective customers.
9 Defendants actively solicited Plaintiffs as well as thousands of other mortgagors when they
10 merged with AMRO Mortgage Group, Inc. and became successor mortgagees by merger.
11 Finally, Plaintiffs and Defendants occupied unequal bargaining positions because Plaintiffs had
12 no option to choose the entity that would ultimately hold and service their mortgage. Simply put,
13 Plaintiffs were powerless both to prevent CitiMortgage from becoming the successor by merger
14 as well as incapable of preventing CitiMortgage from designating NWTS as the successor
15 trustee.
16

17 Plaintiffs have already shown that Defendants' acts caused them injury. If the moving
18 Defendants' had simply complied with RCW § 61.24, the Plaintiffs' would not have lost their
19 Property on December 23, 2011, and would have worked out a solution either to keep the home
20 or to sell it and recover a substantially large sum from the sale of their Property that had over
21 \$179,000 in available equity. Accordingly, because Plaintiffs can establish all five elements of a
22 CPA claim, Defendants are liable for violation of the CPA.
23

- 24 3. *Defendants NWTS and CitiMortgage May Have Violated the Consumer*
25 *Protection Act by Representing to NLHC That the Trustee's Sale of December 23,*
2011 Had Been Cancelled When in Fact it Was Not.

1
2 As set forth above, in 2011, Plaintiffs hired the NLHC in California to help negotiate
3 with CitiMortgage to stop the foreclosure. Plaintiffs received an email from NLHC indicating
4 that the trustee's sale scheduled for December 23, 2011 had been cancelled. Discovery is
5 necessary to determine whether Defendant CitiMortgage and/or NWTS engaged in fraudulent
6 conduct or were negligent in communicating false information to Plaintiff and/or Plaintiff's
7 authorized representatives regarding the December 23, 2011 Trustee sale. Because there is a
8 genuine issue of material fact as to whether the moving Defendants represented a false statement
9 of fact to NLHC that placed the Plaintiffs in a position of believing the sale had been cancelled,
10 Defendants' Motion for Summary Judgment should be denied.

11 **E. The Trustee's Sale of December 23, 2011 Was Invalid Because it Occurred After the**
12 **120-day Postponement Deadline Set Forth in RCW § 61.24.040.**

13 Under RCW § 64.21.040(6), a trustee may not continue the trustee's sale for a period
14 exceeding 120 days. Additionally, since Defendants' filing of the Motion for Summary
15 Judgment, the Washington Supreme Court has issued a ruling which affirms that lenders must
16 strictly comply with the 120-day time period for conducting a trustee's sale. *Albice v. Premier*
17 *Mortgage Services of Washington, Inc.*, 2012 WL 1881022 (May 24, 2012).

18 Because the Deed of Trust Act dispenses with many of the protections afforded to
19 borrowers under judicial foreclosures, lenders must strictly comply with the statutes and courts
20 must strictly construe the statutes in the borrower's favor. *Albice*, 2012 WL 1881022 (Wash.)
21 (citing *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-916, 154 P.3d 882 (2007)).
22 Procedural irregularities, such as those divesting a trustee of its statutory authority to sell the
23 property, can invalidate the sale. *Id.* A plain reading of RCW § 61.24.040(6) "permits a trustee
24
25

1 to continue a sale once or more than once but unambiguously limits the trustee from continuing
2 the sale past 120 days." *Id.* A trustee's sale taking place beyond the 120 days permitted by
3 RCW § 61.24.040(6) is invalid. *Id.*

4 The *Albice* Court further held that:

5 When a party's authority to act is prescribed by a statute and the statute
6 includes time limits, as under RCW 61.24.040(6), failure to act within that time
7 violates the statute and divests the party of statutory authority. Without statutory
8 authority, any action taken is invalid. As we have already mentioned and held,
9 under this statute, strict compliance is required. *Udall*, 159 Wn.2d at 915-916.
10 Therefore, strictly applying the statute as required, we agree with the Court of
11 Appeals and hold that under RCW 61.24.040(6), a trustee is not authorized, at
12 least not without reissuing the statutory notices, to conduct a sale after 120 days
13 from the original sale date, and such a sale is invalid.

11 *Id.*

12 Here, Defendants initially scheduled the trustee's sale for June 24, 2011. Under
13 the plain language of RCW § 61.24.040(6), they could conduct a valid trustee's sale no
14 later than October 22, 2011, without first reissuing the required statutory notices. As set
15 forth above, the trustee's sale took place 182 days later on December 23, 2011, without
16 Defendant having properly reissued these notices. Accordingly, the trustee's sale on
17 December 23, 2011, was invalid and the foreclosure was wrongful.

18 **F. Alternatively, Defendants' Motion for Summary Judgment Should**
19 **Be Continued Until Such Time as Discovery Has Been Completed and/or Plaintiffs**
20 **Have Had a Reasonable Time to Conduct Discovery.**

21 Genuine issues of material fact remain as to whether or not Defendants NWTs and
22 CitiMortgage conducted a wrongful foreclosure and violated the CPA. Defendants' motion is
23 further premature as no discovery has yet occurred.

24 This Court has discretionary power to grant Plaintiffs a continuance of the Defendants'
25 Motion for Summary Judgment. *Trummel v. Mitchell*, 156 Wn.2d 653, 670, 131 P.3d 305 (2006)

1 (citing *Balandzich v. Demeroto*, 10 Wn. App. 718, 720, 519 P.2d 994 (1974)). In exercising its
2 discretion, a court may properly consider the necessity of reasonably prompt disposition of the
3 litigation, the needs of the moving party, the possible prejudice to the adverse party, the prior
4 history of the litigation, including prior continuances granted the moving party, any conditions
5 imposed in the continuances previously granted and any other matters that have a material
6 bearing upon the exercise of the discretion vested in the court. *Id.* at 670-71.

7
8 A continuance of Defendants' Motion for Summary Judgment will not cause any undue
9 burden or prejudice to Defendants. Plaintiffs Amended complaint was only recently filed and
10 served on all parties. None of the Defendants have filed a responsive pleading. Plaintiffs will
11 suffer undue harm and prejudice should Defendants' Motion for Summary Judgment not be
12 continued. Accordingly, Defendants' Motion for Summary Judgment should be continued until
13 such time as discovery has been completed and/or Plaintiffs have had a reasonable opportunity to
14 complete discovery.

15 VI. CONCLUSION

16 Defendants' Motion for Summary Judgment should be denied or in the alternate,
17 continued until such time as discovery has been completed and/or Plaintiffs have had a
18 reasonable opportunity to complete discovery. Additionally, the Court has equitable authority to
19 grant summary judgment in favor of the Plaintiffs where no genuine issues of material fact exist
20 and Plaintiffs are entitled to judgment as a matter of law. Plaintiffs have produced enough
21 evidence in support of this Opposition to show that the Property at issue was "owner-occupied
22 residential property." The Defendants have nothing to refute this fact. Defendants' Amended
23 Notice of Trustee Sale recorded on November 8, 2011 was subject to the requirements of the
24 FFA. The FFA has specific notice requirements that are designed to inform homeowners of
25

1 important rights under the Act, including the right to be referred into mediation to work out an
2 alternative to foreclosure. The Defendants violated the FFA and the Consumer Protection Act
3 when they failed to provide the Plaintiffs with the statute's required notice of pre-foreclosure
4 options. The Defendants violated the Consumer Protection Act when they represented in the
5 Trustee's Deed that they had fully complied with the requirements of RCW § 61.24 when in fact
6 they had not. A genuine issue of material fact also exists as to whether the moving Defendants
7 violated the Consumer Protection Act or committed fraud by representing to the National Legal
8 Help Center that the trustee's sale of December 23, 2011 had been cancelled when in fact it had
9 not been cancelled.
10

11 For the above reasons, this Court should deny Defendants' Motion for Summary
12 Judgment or in the alternate, should grant summary judgment in favor of the Plaintiffs or grant
13 the Plaintiffs a continuance until such time as discovery has been completed and/or Plaintiffs
14 have had a reasonable opportunity to complete discovery.

15 **VII. PROPOSED ORDER**

16 A Proposed Order granting the relief will be presented prior to hearing.

17 Dated this 7th day of June, 2012.

18 SKYLINE LAW GROUP PLLC

19 By: 
20 Michele K. McNeill, WSBA # 32052
21 Attorney for Plaintiffs
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FILED

12 JUN 20 PM 2:30

The Honorable Judge Kimberley Prochnau
KING COUNTY
Hearing Date: June 29, 2012
Hearing Time: 10:00 a.m.

CASE NUMBER: 12-2-01729-8 SEA

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

DANIEL J. WATSON and KETWARIN ONNUM,
husband and wife,

Plaintiffs,

v.

NORTHWEST TRUSTEE SERVICES, INC.;
Assumed business name AMRO MORTGAGE
INC.; CITIMORTGAGE INC.; FAIRPLAY
FORECLOSURES WASHINGTON, LLC,

Defendants.

Case No. 12-2-01729-8 SEA

DEFENDANTS REPLY TO PLAINTIFFS'
RESPONSE TO DEFENDANTS
SUMMARY JUDGMENT

I. ISSUES

A. The courts give legislative enactments amending existing statutes prospective application unless the legislature provides clear intent that the legislation is to apply retroactively. The Foreclosure Fairness Act ("FFA") contained an effective date of July 22, 2011, in the enabling legislation. Do the provisions of the FFA apply to events before July 22, 2011, when the legislation contains no clear legislative intent for retroactive application?

B. The Deed of Trust Act ("DTA") contains a special provision for how the foreclosure trustee re-notices the foreclosure sale following a discharge or dismissal of the borrower from the bankruptcy court. Case law further states that the foreclosure trustee does not need to reinitiate the foreclosure process following the borrowers' bankruptcy. Do the trustee and lender violate the Consumer Protection Act ("CPA") by following the statute and case law?

C. A party must rely on admissible evidence and properly authenticated documents in its attempt to defend against a motion for summary judgment. The plaintiffs do not authenticate all documents provided to the court and relies on self-serving statements. Must the court consider self-serving statements and unauthenticated documents provided by the plaintiffs in considering whether to grant summary judgment?

1 The Washington State Legislature did not even pass SSHB 1362 until April 14, 2011. *Dec.*
2 *of Gray*, Ex. B. The effective date for the legislation was declared to be July 22, 2011. *Id.*, pp. 1.¹

3 “Typically, new legislation, including amendments to existing law, is given prospective
4 application unless there is clear intent to apply the law retroactively.” *Kitsap Alliance of Property*
5 *Owners v. Central Puget Sound Growth Management Bd.*, 166 Wn. App. 250, 259, 255 P.3d 696
6 (Div. II 2011), *citing*, *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wash.2d 42, 47, 785
7 P.2d 815 (1990); *Sprint Intern. Communications Corp. v. Dept. of Revenue*, 154 Wn. App. 926, 226
8 P.3d 253 (Div. II 2010).

9 A perusal of SSHB 1362 demonstrates that the Legislature did not in any way indicate that
10 the SSHB 1362 should apply retroactively. The only clear legislative intent is that the provisions to
11 implement the administrative framework should be implemented immediately.

12 With no legislative intent to make the application retroactive it becomes evident that the statute in
13 place at the time that the foreclosure process started is the DTA in effect prior to July 22, 2011.

14 As the plaintiffs’ argument goes, the Defendants should have to comply with the FFA by
15 issuing notices and following procedures that were not even voted on when the Notice of Default and
16 Loss Mitigation material were sent to the plaintiffs in accordance with the then existing law.

17 Again, the plaintiffs do not contend that the Defendants failed to comply with the
18 requirements in place before the effective date of the act. Prior to the FFA the Defendants were not
19 required to undertake any of the actions that the plaintiffs argue should have been carried out such as
20 the initial contact requirements changed by the FFA, the duty to inform the plaintiffs of the mediation
21 program prior to a Notice of Default, and other new requirements. *Dec. of Gray*, Ex. B.

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25 ¹ Sections 11, 12, and 16 of SSHB 1362 took effect immediately on the date of enactment, April 14,
2011. Immediate effect sections were related to agencies setting up framework for the administration
of programs not concerning any issues related to this case.

1 The question for the court becomes whether the intervening bankruptcy triggers any
2 requirement that the process for a trustee's foreclosure sale must be reinitiated from the very
3 beginning and thus require the issuance of the notices under the FFA.

4 **B. Re-issuance of Notice of Trustee's Sale After Bankruptcy Discharge in Accordance with
State Law Is Not A Violation of the CPA**

5 The DTA provides a special provision related to notices of trustee's sale following a
6 dismissal or discharge from bankruptcy proceedings that the plaintiffs ignore. RCW 61.24.130 (4).
7 *Dec. of Gray, Ex. C.*

8 Based on the statutory language, the foreclosure trustee needs to wait at least 45 days, publish
9 notice in a legal newspaper in the county where the real property is located, and issue comply with
10 the requirements of RCW 61.24.040 (1)(a-f). *Dec. of Gray, Ex. C.*

11 Courts have specifically ruled that the trustee does not need to start the process over from the
12 very beginning. No requirement calls for the trustee to reinitiate foreclosure procedures after a
13 bankruptcy even when changes in interest added to the amount for financial cure following dismissal
14 or discharge of a debtor's bankruptcy case. *Meyers Way Development Ltd. Partnership v. University
15 Sav. Bank* 80 Wash.App. 655, 671, 910 P.2d 1308 (Div. I 1996), *rec. den., rev. den.*, 130 Wash.2d
16 1015, 928 P.2d 416. The statute governing the setting of new sale date following end of bankruptcy
17 proceedings, which provided for shortened notice period, does not require identical notices of default
18 issued before and after bankruptcy proceeding, and its requirement that a new notice of sale be given
19 contemplated developments that could arise while sale was stayed due to the bankruptcy filing. *Id.*

20 Based on the statute, the foreclosure trustee must issue a new notice at least 45 days after the
21 end of the bankruptcy proceedings. The trustee does not have to give the full 90 day notice otherwise
22 required but in this instance the trustee did give 92 days' notice. The statute does not require, nor
23 does it appear anywhere, that a new notice of default be issued.
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II. ADDITIONAL FACTS/DOCUMENTS

The Defendants, CitiMortgage, Inc. ("Citi"), and Northwest Trustee Services, Inc. ("NWTS"), provide a Plaintiff generated property valuation and declarations demonstrating no third party contact with the Defendants regarding Plaintiffs' loan. The documents provided are as follows:

- 1) Declaration of Francesca Kay Wurm (Citi had no contact with any 3rd party).
- 2) Declaration of Claire Swazey (NWTS had no contact with any 3rd party).
- 3) Declaration of Priscilla Gray (Bankruptcy Petition and Schedules showing property value under penalty of perjury– Exhibit A; Legislation SSHB 1362 attached as Exhibit B; RCW 61.24 130(4), (61.24.040(1)(a) through (f) attached as Exhibit C.)

The plaintiffs' request that the court not grant summary judgment so plaintiffs can find out if the National Legal Help Center ("NLHC") had any contact with the Defendants regarding the alleged cancellation of the 12/23/11 Trustee's Foreclosure Sale. The additional declarations address this concern.

The plaintiffs' efforts to point out that the real property was "owner-occupied" do not change the outcome, but only change the steps. *Response*, pp. 6-7. The Defendants were entitled to rely on the Plaintiffs' allegations in the complaint as amended.

III. ANALYSIS

The plaintiffs' entire case rests on the amendment of RCW 61.24 ("DTA") to include the changes the Legislature made in adding the requirements of the FFA. Each and every argument of the Plaintiffs is based upon the new requirements of the FFA that did not apply at the time this foreclosure began.

A. Legislative Amendment Did Not Alter Required Actions for Citi or NWTS

The plaintiffs acknowledge that the Notice of Default and the Loss Mitigation Declaration were mailed to them on February 5, 2011. The plaintiffs nowhere make any claim that the Defendants violated the DTA in effect as of February 5, 2011.

1 The next step is to see what notice the trustee issued and if it complied with the statute.
2 Looking at the Amended Notice of Trustee's Sale recorded with the King County Auditor under
3 recording number 20111108001313² demonstrates that the trustee used the proper form prescribed by
4 statute. It is also evident that the notice was recorded properly. The plaintiffs do not allege that the
5 mailing is deficient and the Declaration of Claire Swazey demonstrates that all notices were properly
6 mailed.

7 **C. Court Should Not Consider Self-Serving Statements or Inadmissible Evidence in**
8 **Relation to Summary Judgment Motion**

9 A nonmoving party attempting to preclude a summary judgment may not rely on speculation,
10 argumentative assertions that unresolved factual matters remain, self-serving statements, or in having
11 its affidavits considered at their face value, for upon the submission by the moving party of adequate
12 affidavits the nonmoving party must set forth specific facts that sufficiently rebut the moving party's
13 contentions and disclose that a genuine issue as to a material fact exists. *See, Retired Public*
14 *Employees Council of Washington v. Charles*, 148 Wash.2d 602, 62 P.3d 470 (2003), *Strong v.*
15 *Terrell*, 147 Wn. App. 376, 195 P.3d 977 (Div. II 2008); *American Linen Supply Co. v. Nursing*
16 *Home Bldg. Corp.*, 15 Wn. App. 757, 551 P.2d 1038 (Div. I 1976) (conclusory statement of fact will
17 not suffice to rebut motion for summary judgment). Also, a trial court may not consider inadmissible
18 evidence when ruling on a summary judgment motion. *King County Fire Protection Dists. Nos. 16,*
19 *36, & 40 v. Housing Auth.*, 123 Wash.2d 819, 826, 872 P.2d 516 (1994).

20 The plaintiffs submitted the affidavit of Mr. Watson in support of the response. In the
21 affidavit Mr. Watson states in paragraph 11 that:

22 "Had we known the Trustee Sale on December 23, 2011 had not in fact been
23 cancelled [sic], we would have initiated legal proceedings to stop the sale,"
24 and "Had we received the pre-foreclosure notices required by the FFA, we
would have taken advantage of the FFA and obtained a foreclosure
mediation referral from a HUD counselor or an attorney to stop the sale."

25 ² ER 201, *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709 (Div. I 2008)(court may take judicial
notice of items that are a matter of public record whose accuracy cannot be reasonably questioned).

1 These statements are clearly self-serving and not allowed under the summary judgment case
2 law. The plaintiffs assert that they received notice on December 22, 2011, by NLHC that the
3 foreclosure sale had been canceled. *Response*, p. 3. Yet in order to obtain a temporary restraining
4 order (“TRO”) of the trustee’s foreclosure sale, the plaintiffs would have had to have given the
5 trustee at least five days notice of a hearing for a TRO. RCW 61.24.130 (2). The Plaintiffs had to
6 exercise the TRO option before the alleged cancelation and the actual sale. The Plaintiffs clearly
7 chose not to exercise this option despite the self-serving statement that they would have pursued that
8 option. *Dec. of Watson*, Ex. 7, ¶IX. Additionally, the e-mails from NLHC are not properly
9 authenticated.

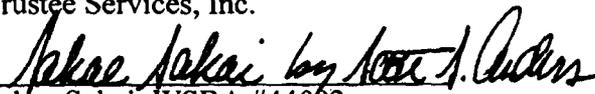
10 As for the declaration provided by counsel, the Department of Commerce form is not the law
11 but a document generated by Commerce. The law by stating that the FFA law mandatorily applies
12 when the homeowner received a Notice of Default before July 22, 2011, is inaccurate. The law only
13 applies prospectively and, in addition, the law only says that, “A borrower who has received a notice
14 of default on or before the effective date this section [sic] *may* be referred to mediation under section
15 7 of this act by a housing counselor or attorney. *Dec. of Gray*, Ex. B, Sec. 8, p. 21. This is not a
16 mandatory requirement and cannot be forced upon Citi or NWTs.
17

18 Dated this 20th day of June, 2012.

19 JORDAN RAMIS PC
20 Attorneys for Defendants CitiMortgage, Inc.
21 and AMRO Mortgage, Inc.

22 
Scott S. Anders, WSBA # 19732

ROUTH CRABTREE OLSEN, P.S.
Attorneys for Defendant Northwest
Trustee Services, Inc.

23 
24 Sakae Sakai, WSBA #44082 *WSBA #19732*

1 **DECLARATION OF SERVICE**

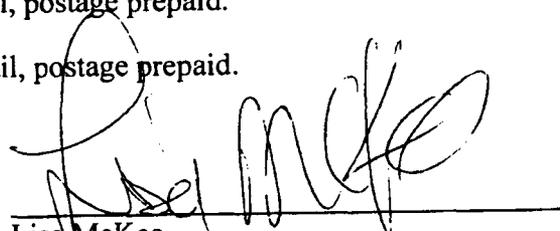
2 I hereby certify that on the date shown below, I served a true and correct copy of the
3 foregoing DEFENDANTS REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS
4 SUMMARY JUDGMENT on:

5
6 Michele K. McNeill
7 Skyline Law Group, PLLC
8 2155 112th Ave NE
9 Bellevue WA 98004
10 Of Attorneys for Plaintiffs

11 Sakae Samuel Sakai
12 Routh Crabtree Olsen P.S.
13 13555 SE 36th St Ste 300
14 Bellevue, WA 98006-1489
15 Of Attorneys for Defendant Northwest Trustee Services, Inc.

- 16 by first class mail, postage prepaid.
17 by hand delivery.
18 by facsimile transmission.
19 by facsimile transmission and first class mail, postage prepaid.
20 by electronic transmission and first class mail, postage prepaid.

21 DATED: June 20, 2012.

22
23
24
25

Lisa McKee
Legal Secretary to Scott S. Anders

DECLARATION OF SERVICE

JORDAN RAMIS PC
Attorneys at Law
1498 SE Tech Center Pl Ste 380
Vancouver WA 98683
Telephone: 360.567.3900 Fax: 360.567.3901
51283-70557 483211_1.DOC\LDM/6/20/2012

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The Honorable Judge Kimberly Prochnau

KING COUNTY

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CASE NUMBER: 12-2-01729-8 SEA

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

9 DANIEL J. WATSON and KETWARIN
10 ONNUM, husband and wife,
11
12 Plaintiff,

No. 12-2-01729-8 SEA

11 v.

**SUPPLEMENTAL BRIEF IN FAVOR
OF AMENDED JOINT MOTION FOR
SUMMARY JUDGMENT**

12 NORTHWEST TRUSTEE SERVICES, INC.;
13 CITIMORTGAGE INC.; NATIONAL LEGAL
14 HELP CENTER, INC., and JOHN DOES 1-10,
15 Defendants.

16 COMES NOW Defendant Northwest Trustee Services, Inc. ("NWTS"), by and through
17 its counsel of record, Sakae S. Sakai of Routh Crabtree Olsen, P.S., and submits this
18 Supplemental Brief in support of its Amended Joint Motion for Summary Judgment on the
19 remaining issues in this matter.

20 **I. STATEMENT OF RELEVANT FACTS**

21 *Notice of Trustee's Sale.* On March 22, 2011, NWTS recorded a Notice of Trustee's Sale
22 in the Official Records of King County, Washington as Instrument No. 20110322000728. *See*
23 Amended Complaint, Ex. 6. ("NOTS-1") The Notice of Trustee's Sale designated June 24, 2011
24 as date of the nonjudicial foreclosure. *Id.*

25 *The Bankruptcy.* On June 20, 2011, Plaintiffs filed a Chapter 7 petition in the United
26 States Bankruptcy Court for the Western District of Washington (the "Bankruptcy Court").
Amended Declaration of Jeff Stenman in Support of Amended Motion for Summary Judgment, ¶

1 9. Dkt # 32. (“Stenman Decl.”).

2 As a result of the bankruptcy filing, NWTS postponed the trustee’s sale multiple times
3 with a final postponement date of September 30, 2011. *Id.* The postponed trustee’s sale was
4 ultimately cancelled due to the ongoing bankruptcy proceeding. *Id.*

5 ***Post-Bankruptcy Notice of Trustee’s Sale.*** On October 31, 2011, the Bankruptcy Court
6 closed the Plaintiffs’ Bankruptcy proceeding. *See* Stenman Decl., Exhibit 4.

7 On November 8, 2011, NWTS recorded an Amended Notice of Trustee’s Sale in the
8 Official Records of King County, Washington as Instrument No. 20111108001313. Amended
9 Complaint, ¶ 3.5. (“NOTS-2”) The NOTS-2 designated December 23, 2011 as date of the
10 nonjudicial foreclosure. *See id.*

11 On or about November 8, 2011, NWTS mailed by certified and first class mail the
12 NOTS-2 to the Plaintiffs. Stenman Decl. ¶ 11. On or about November 9, 2011, NWTS posted the
13 NOTS-2 on the Property. *Id.*

14 ***Non-judicial Foreclosure.*** On December 23, 2011, NWTS conducted a non-judicial
15 foreclosure sale of the Property. Stenman Decl. ¶ 12.

16 ***Procedural Posture.*** On April 27, 2012, Defendants NWTS and CitiMortgage, Inc. filed
17 their Amended Joint Motion for Summary Judgment. Dkt. # 31. On June 29, 2012, an Order was
18 entered granting Summary Judgment as to all causes of action with the exception of whether the
19 trustee’s sale conducted by NWTS violated the 120-day postponement period. *See* Dkt # 45.

20 **II. STATEMENT OF THE ISSUE**

21 Whether the trustee’s sale on December 23, 2011 violated the 120-day continuance rule
22 set forth in RCW § 61.24.040(6).

23 **III. LEGAL ARGUMENT**

24 Washington’s Deed of Trust Act (“DTA”) allows a trustee to continue a non-judicial
25 foreclosure sale for not more than a total of 120 days. *See* RCW § 61.24.040(6). In this case,
26 Plaintiffs allege that the trustee’s sale violated the 120-day rule. However, analyzing the DTA

1 procedures applicable to a trustee's sale, when that sale is stayed due to a bankruptcy, reveals
2 that the trustee's sale was timely.

3 **A. The DTA provides a trustee with two separate options in the situation where a**
4 **trustee's sale has been stayed as a result of a bankruptcy filing.**

5 First, once the bankruptcy court has granted relief from stay, closed or dismissed the
6 case, or has discharged the debtor with the effect of removing the stay, the trustee may set a new
7 sale date not less than 45-days from the date of the bankruptcy court order. RCW § 61.24.130(4).
8 Importantly, the trustee can only set this sale by issuing a new notice of trustee's sale at least 30-
9 days before the new sale date. *Id.* § 61.24.130(4)(a). This requires among other things, recording,
10 posting, publishing, and serving the new notice of trustee's sale. *See id.* § 61.24.040(1)(a)-(f).

11 Alternatively, a trustee can proceed with a trustee's sale following termination of the
12 bankruptcy stay so long as such sale has been properly continued in accordance with the 120-day
13 rule set forth in RCW 61.24.040(6). *Id.* § 61.24.130(5). Unlike the first option, a trustee does not
14 need to record a new notice of trustee's sale. The trustee may proceed so long as the original sale
15 date set forth in the pre-bankruptcy notice of trustee's sale has not been continued by the trustee
16 more than 120-days to accommodate the bankruptcy.

17 In this case, there is no genuine issue of material fact as to whether (1) NWTS recorded
18 the NOTS-1, setting a sale date for June 24, 2011, (2) whether the Plaintiffs filed for bankruptcy
19 on June 20, 2011, staying the June 24, 2011 sale date, and (3) whether the bankruptcy was closed
20 on October 31, 2011. There is also no dispute as to whether NWTS recorded a new notice of
21 trustee's sale, or NOTS-2, on November 8, 2011. *See Amended Complaint*, ¶ 3.5.

22 Given the undisputed facts, it is evident that NWTS followed the statutory procedure set
23 forth in RCW § 61.24.130(4). Once the bankruptcy was closed on October 31, 2011, NWTS
24 recorded the NOTS-2 on November 8, 2011. The new sale date set forth in the NOTS-2 was
25 December 23, 2011, which satisfied the requirement that the new sale be set at least 45-days
26 from the date of the bankruptcy court order closing the bankruptcy. *See id.*

1 Notably, Plaintiffs dispute whether NWTS violated the 120-day continuance rule, and do
2 not allege that NWTS violated RCW § 61.24.130(4). As the NOTS-2 set the new sale date for
3 December 23, 2011, the *same day the trustee's sale occurred*, there is no genuine issue of
4 material fact as to whether the sale violated the 120-day continuance rule given that the sale
5 scheduled for December 23, 2011 was never continued.

6 **B. Recording a New Notice of Trustee's Sale is not a Continuance of a Prior Sale**
7 **Date set by a Previous Notice of Trustee's Sale**

8 Analyzing the difference between continuing a sale and recording a new notice of
9 trustee's sale provides clarity as to this issue. Ultimately, the notice of trustee's sale designates a
10 specific sale date. The continuance process allows a trustee to postpone the sale date set by the
11 notice of trustee's sale.

12 **1. Continuing a Pre-existing Sale versus Setting a New Sale**

13 The DTA sets forth specific procedures a trustee must follow in order to continue a
14 trustee's sale. The effect the continuance, the trustee must give notice of the new time and place
15 of the sale by mail, oral proclamation, or publication. *See* RCW § 61.24.040(6). Importantly, the
16 trustee continues a sale date designated in the notice of trustee's sale. *See id.* § 61.24.040(4).

17 In comparison, the DTA imposes separate requirements when a trustee issues a notice of
18 trustee's sale. Among other things, the trustee must serve a notice to specific parties, record the
19 notice, publish the notice, and also post the notice in a conspicuous place on the foreclosed
20 property. *See* RCW § 61.24.040(1), (3). The trustee must also provide a separate "Notice of
21 Foreclosure" setting forth reinstatement and arrearage figures. *Id.* § 61.24.040(2).

22 Importantly, RCW § 61.24.130(4) sets forth steps a trustee must follow in recording a
23 new notice of trustee's sale, not for continuing an old sale set by a pre-bankruptcy notice of
24 trustee's sale. Summary judgment is appropriate as the NOTS-2 is *not* a continuance of the
25 NOTS-1, but instead, is a new notice of trustee's sale designating a new sale date and time.

26 ///

1 **2. Plaintiffs' Interpretation of the DTA would Render RCW § 61.24.130(3)**
2 **and (4) Meaningless**

3 The DTA expressly provides the trustee with specific procedures to follow in the
4 situation where a borrower files for bankruptcy or restrains the sale. If the bankruptcy or
5 litigation then takes more than 120-days, the DTA directs the trustee to record a new sale date
6 through issuance of a new notice of trustee's sale. *See* RCW § 61.24.130(3) and (4).

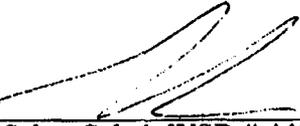
7 To apply the Plaintiffs' argument would render RCW § 61.24.130(3) and (4) meaningless
8 as any bankruptcy or litigation that takes more than 120-days would result a violation of the 120-
9 day continuance rule for any subsequent trustee's sale. This would be in direct violation of the
10 principle of statutory interpretation that "Statutes must be interpreted and construed so that all
11 language used is given effect, with no portion rendered meaningless or superfluous." *Davis v.*
12 *Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999).

13 **VII. PROPOSED ORDER**

14 A proposed order granting the requested relief accompanies this motion.

15 DATED this 12 day of July, 2012.

16
17 **ROUTH CRABTREE OLSEN, P.S.**

18
19
20 By 

21 Sakae Sakai, WSB # 44082
22 Attorney for Defendant Northwest
23 Trustee Services, Inc.



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CASE NUMBER: 12-2-01729-8 SEA

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

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,

Plaintiffs,

vs.

NORTHWEST TRUSTEE SERVICES, INC.;
CITIMORTGAGE, INC.; NATIONAL LEGAL
HELP CENTER, LLC.; and JOHN DOE 1-10

Defendants.

NO. 12-2-01729-8 SEA

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS NORTHWEST
TRUSTEE SERVICES AND
CITIMORTGAGE'S JOINT MOTION
FOR SUMMARY JUDGMENT**

I. RELIEF REQUESTED

Plaintiffs, DANIEL J. WATSON and KETWARIN ONNUM, by and through their attorney of record, submit this Supplemental Brief in Support of its Opposition to Defendants' Joint Motion for Summary Judgment on the remaining issues in the matter. Genuine issues of material fact exist which preclude Defendants' Motion for Summary Judgment.

II. STATEMENT OF RELEVANT FACTS

1. On February 5, 2011, a Notice of Default and Loss Mitigation Declaration were mailed to Plaintiffs. *Id.*, ¶ 5, Exh. 4.

ORIGINAL

1 2. On March 22, 2011, NWTS recorded a Notice of Trustee Sale under King County
2 Record No. 20110322000728 (hereinafter "NoTS1"). *Id.*, ¶ 6, Exh. 5. The Trustee's sale was
3 scheduled to take place on June 24, 2011. *Id.*

4 3. On June 20, 2011, Plaintiffs filed a Chapter 7 Petition in United States
5 Bankruptcy Court for the Western District of Washington. *Id.*, ¶ 7. This resulted in the
6 postponement of the initial Trustee sale. *Id.*

7 4. On July 22, 2011, Washington's Foreclosure Fairness Act ("FFA" or "Act")
8 amended the Deed of Trust Act, Chapter 61.24 RCW. The FFA requires specific notices to be
9 issued to a borrower before a Trustee's sale can be scheduled or held. These pre-foreclosure
10 notice requirements substantially changed the procedures required for a lender to issue both a
11 Notice of Default and a Notice of Trustee's sale. RCW 61.24.030-031.

12 5. On September 22, 2011, Plaintiffs' bankruptcy debts, including the mortgage
13 serviced by Defendant CitiMortgage, were discharged. *See Aff. of Watson*, ¶ 7, Exh. 6.

14 6. On November 8, 2011, Defendant NWTS recorded an Amended Notice of
15 Trustee Sale under King County Record No. 20111108001313 (hereinafter "NOTS-2¹"). *Id.*, ¶ 8,
16 Exh. 7. The sale date was set for December 23, 2011. *Id.*

17 7. Prior to recording NOTS-2, Defendants NWTS did not initiate contact with
18 Plaintiffs and exercise due diligence, nor did they issue a Notice of Default that complied with
19 the requirements of RCW 61.24.031. *Id.*, ¶ 8.
20
21

22
23
24 ¹ There were two Amended Notice of Trustee Sale documents recorded on the same date, so technically the second
25 Amended Notice of sale is the third Notice, but since NW Trustee Services has referred to the third Amended Notice
as "NOTS-2" we will refer to it the same to avoid confusion.

1 8. Defendants NWTS referenced the NoTS1 but not the NOTS-2 in its Trustee's
2 Deed recorded on January 10, 2012. *Id.*, Exh. 9. Defendants NWTS also stated in the Trustee's
3 Deed that "[a]ll legal requirements and all provisions of [Plaintiffs'] Deed of Trust have been
4 complied with, as to acts to performed and notices to be given, as provided in chapter 61.24." *Id.*
5 However, the evidence shows that Defendants NWTS did not comply with the requirements of
6 RCW 61.24, as amended by the FFA.

7
8 9. On December 23, 2011, Plaintiffs' Property was sold by NWTS for \$348,000.
9 The trustee's sale took place 182 days after the originally scheduled sale date. *Id.*, Exh. 9.

10 10. Had the Plaintiffs received the pre-foreclosure notices required by the FFA, they
11 would have taken advantage of the FFA and obtained a foreclosure mediation referral from a
12 HUD Counselor or attorney to stop the sale. *Id.*

13 11. On April 27, 2012, Defendants NWTS and CitiMortgage filed a Joint Motion for
14 Summary Judgment. On June 7, 2012, Plaintiffs filed an Opposition to Defendants' Joint Motion
15 for Summary Judgment.

16 12. On June 29, 2012, a hearing was held, with oral argument, on Defendants' Joint
17 Motion for Summary Judgment. Defendant CitiMortgage was dismissed as to all claims. The
18 Court requested that Plaintiffs and Defendant NWTS provide supplemental briefs regarding the
19 procedures NWTS was required to follow to properly issue a Notice of Trustee Sale after
20 Plaintiffs discharge in bankruptcy and the 120 day limit for postponement of a Trustee Sale had
21 lapsed. The Court also held that whether Plaintiffs' CPA claims could withstand summary
22 judgment was dependent on whether the Court found NWTS to have violated the FFA.
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III. STATEMENT OF ISSUE

1. Did Defendant NWTS comply with the Deed of Trust Act, as amended by the Foreclosure Fairness Act, when it issued its Notice of Trustee Sale on November 8, 2012?

IV. EVIDENCE RELIED UPON

Plaintiff relies upon the Affidavit of Daniel Watson and the Exhibits attached thereto, Declaration of Michele McNeill and the Exhibits attached thereto, and the records and files herein.

V. ARGUMENT AND AUTHORITY

Because the Deed of Trust Act, chapter 61.24 RCW, dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, "lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor." *Albice v. Premier Mortg. Services of Washington, Inc.*, 276 P.3d 1277, 1281 (Wash. May 24, 2012); *Amresco independence Funding, Inc. v. SPS Props., LLC*, 129 Wn.App. 532, 537, 119 P.3d 884 (2005). A trustee is not authorized to conduct a sale after 120 days from the original sale date "without reissuing the statutory notices." *Albice*, 276 P.3d at 1282.

A. The NOTS-2 Was Intended To Be a Continuance in Violation of the 120 day rule or it was a New Notice and NWTS Failed to Comply with the Notice and Publication Requirements.

RCW 61 .24.130(4) does not apply if the trustee's sale has been continued under RCW 61.24.040(6). *First-Citizens Bank & Trust Co. v. Cordet*, 2011 WL 4929041, *2 (Wash.App. Div. 2). While most steps in a nonjudicial foreclosure are stayed by a grantor's bankruptcy filing, continuances of the sale date are not. *Matter of Roach*, 660 F.2d 1316, 1318-19 (9th Cir. 1981). If the 120 day continuance period has not expired before relief from the bankruptcy stay

1 is granted or the stay lifted, RCW 61.24.130(5) provides that the trustee may proceed under the
2 initial notice of sale on any date within the 120 day period.

3 If the 120 day period has expired before relief from the bankruptcy stay is granted or the
4 stay lifted, RCW 61.24.130(4) allows the trustee to set a new sale date *not less than* 45 days after
5 the stay expires or relief from the stay is granted (emphasis added). At least 30 days before the
6 sale the trustee must record, mail and post or serve the new notice of trustee's sale in compliance
7 with RCW 61.24.040(1)(a)-(f). RCW 61.24.130(4)(a). The trustee must publish the new notice of
8 sale on two separate occasions in a legal newspaper in the county where the property is situated.
9 RCW 61.24.130(4)(b). As with any new notice, the trustee can continue the sale for up to 120
10 days. RCW 61.24.130(6).

11 But, RCW 61.24.130(4) is predicated on a proper notice of default having been issued
12 prior to the notice of Trustee's sale. Had NWTS been within the 120 day continuance rule, then
13 the NOTS-2 would relate back to the notice of default that was issued prior to the enactment of
14 the FFA. But, once NWTS had to issue a new notice of sale, it was required to reissue a notice
15 of default in compliance with RCW 61.24.030(1)-(9), as amended by the FFA. *Albice*, 276 P.3d
16 at 1282.

17 In the present matter, NWTS admits that the December 23, 2011 sale date was beyond
18 the 120 day continuance period. If the NOTS-2 was intended to be a continuance of the NoTS1,
19 then the NOTS-2 was void and the sale wrongful. If, on the other hand, the NOTS-2 was a
20 "new" notice then the NOTS-2 was still void and the sale wrongful because NWTS failed to
21 publish the notice as required by RCW 61.24.130(4)(b) and it failed to reissue the statutory
22 notice of default as required by *Albice*.

23 Although NWTS refers to its NOTS-2 as a "new" notice, the notice itself is entitled
24 "Amended Notice of Trustee Sale", and the Trustee Deed refers to the NoTS1 not the NOTS-2.

1 If the NOTS-2 was in fact a new notice, then why the need to amend the initial notice, and why
2 refer to the NoTS1 in the Trustee Deed? Because NWTS did not consider the NOTS-2 a new
3 notice. The NOTS-2 was intended to continue the original sale date which is why NWTS failed
4 to publish the NOTS-2 as required by RCW 61.24.130(4)(b). When a notice of trustee sale is
5 continued, re-publishing of the notice is not required. RCW 61.24.040(6). And, if the NOTS-2
6 was in fact a new notice of sale, then NWTS was required to reissue a notice of default pursuant
7 to *Albice* and publish the NOTS-2 which it admits in its brief it did not do (and discovery would
8 ultimately have disclosed). Thus, either way you look at it, NWTS failed to comply with the
9 foreclosure requirements by either violating the 120 day continuance rule or by violating the
10 post-stay publication requirements of RCW 61.24.130(4)(b) or by failing to reissue a notice of
11 default that under *Albice* is required when a new notice of sale is issued outside the 120 day
12 continuance period.

13 **B. In Order To Properly Record a New Notice of Trustee's Sale on November 8, 2011,**
14 **Defendant NWTS Had To Comply With The FFA, Which Went Into Effect on July**
15 **21, 2011.**

16 Defendant NWTS acknowledges that NOTS-2 recorded on November 8, 2011, fell
17 outside the 120-day time limit imposed by RCW § 61.24.040(6). According to NWTS, "the
18 NOTS-2 is *not* a continuance of the NOTS- 1, but instead, is a new notice of trustee's sale
19 designating a new sale date and time." *See Defendant's Supplemental Brief in Favor of Amended*
20 *joint Motion of Summary Judgment*, p.4. This very fact is fatal to NWTS' argument, because at
21 the time NOTS-2 was issued, the FFA was in effect, and set forth new requirements that a lender
22 or their agent must follow in order to properly record a notice of trustee's sale.

23 NWTS did not provide Watson with the notice of default required by *Albice* and RCW
24 61.24.030(8) before it recorded its "new" notice of Trustee's sale. NWTS did not fulfill the
25

1 requirements of RCW 61.24.030(9) that must be met before a notice of default can be issued.
2 NWTS admits that it did not reissue a statutory notice of default prior to recording the NOTS-2.
3 NWTS failed to comply with the initial contact and due diligence requirements of RCW
4 61.24.031(5) that are required prior to issuing a notice of default and notice of trustee's sale.
5 RCW 61.24.031(1)(a). The initial contact requirements include a letter with the following
6 language:

7 "You must respond within thirty days of the date of this letter. IF YOU DO NOT
8 RESPOND within thirty days, a notice of default may be issued and you may lose
9 your home in foreclosure.

10 IF YOU DO RESPOND within thirty days of the date of this letter, you will have
11 an additional sixty days to meet with your lender before a notice of default may
12 be issued.

13 You should contact a housing counselor or attorney as soon as possible. Failure to
14 contact a housing counselor or attorney may result in your losing certain
15 opportunities, such as meeting with your lender or participating in mediation in
16 front of a neutral third party. A housing counselor or attorney can help you work
17 with your lender to avoid foreclosure.

18 *If you filed bankruptcy or have been discharged in bankruptcy, this*
19 *communication is not intended as an attempt to collect a debt from you*
20 *personally, but is notice of enforcement of the deed of trust lien against the*
21 *property. If you wish to avoid foreclosure and keep your property, this notice sets*
22 *forth your rights and options." . . .*

23 RCW 61.24.031(c)(1)(emphasis added). Thus, even borrowers who have filed bankruptcy or
24 have been discharged in bankruptcy are entitled to receive this initial contact letter before a new
25 notice of trustee's sale can be recorded.

The NOTS-2 was invalid either because it was a continuance of the initial notice and
outside the 120 day period or because NWTS failed to publish the NOTS-2 in a legal newspaper
as required by RCW 61.24.030(4)(b) or because NWTS failed to comply with the new initial

1 contact and statutory notice of default requirements before it issued its new notice of trustee's
2 sale.

3
4 **C. Because Defendant NWTS Violated the FFA, It Also Violated the Washington
5 Consumer Protection Act.**

6 As set forth above and in Plaintiffs' Opposition, NWTS failed to comply with the new
7 initial contact and statutory notice of default requirements before it issued its new notice of
8 trustee's sale. Accordingly, Plaintiffs' CPA claim should survive summary judgment.

9 **VI. PROPOSED ORDER**

10 A Proposed Order granting the relief requested accompanies this brief.

11 Dated this 27th day of July, 2012.

12 SKYLINE LAW GROUP PLLC

13
14 By: Michele K McNeill
15 Michele K. McNeill, WSBA # 32052
16 Attorney for Plaintiffs

A-10

RCW 61.24.005
Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.
- (2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.
- (3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.
- (4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.
- (5) "Department" means the department of commerce or its designee.
- (6) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.
- (7) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.
- (8) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.
- (9) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.
- (10) "Owner-occupied" means property that is the principal residence of the borrower.
- (11) "Person" means any natural person, or legal or governmental entity.
- (12) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.
- (13) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.
- (14) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property.
- (15) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW.
- (16) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).
- (17) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

[2011 c 364 § 3; 2011 c 58 § 3. Prior: 2009 c 292 § 1; 1998 c 295 § 1.]

Notes:

Reviser's note: This section was amended by 2011 c 58 § 3 and by 2011 c 364 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings -- Intent -- 2011 c 58: "(1) The legislature finds and declares that:

(a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;

(b) Prolonged foreclosures contribute to the decline in the state's housing market, loss of property values, and other loss of revenue to the state;

(c) In recent years, the legislature has enacted procedures to help encourage and strengthen the communication between homeowners and lenders and to assist homeowners in navigating through the foreclosure process; however, Washington's nonjudicial foreclosure process does not have a mechanism for homeowners to readily access a neutral third party to assist them in a fair and timely way; and

(d) Several jurisdictions across the nation have foreclosure mediation programs that provide a cost-effective process for the homeowner and lender, with the assistance of a trained mediator, to reach a mutually acceptable resolution that avoids foreclosure.

(2) Therefore, the legislature intends to:

(a) Encourage homeowners to utilize the skills and professional judgment of housing counselors as early as possible in the foreclosure process;

(b) Create a framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible; and

(c) Provide a process for foreclosure mediation when a housing counselor or attorney determines that mediation is appropriate. For mediation to be effective, the parties should attend the mediation (in person, telephonically, through an agent, or otherwise), provide the necessary documentation in a timely manner, willingly share information, actively present, discuss, and explore options to avoid foreclosure, negotiate willingly and cooperatively, maintain a professional and cooperative demeanor, cooperate with the mediator, and keep any agreements made in mediation." [2011 c 58 § 1.]

Short title -- 2011 c 58: "This act may be known and cited as the foreclosure fairness act." [2011 c 58 § 2.]