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Court of Appeal Case No. 708236

Superior Court Case No. 13-2-19543-7 SEA

IN THE COURT OF APPEAL OF WASHINGTON
DIVISION I

ERIK MOSEID *et al*,
Plaintiffs and Appellants

vs.

U.S. BANK, NA *et al*,
Defendant and Respondent.

2011 MAY 22 AM 9:26
COURT OF APPEALS DIV I
STATE OF WASHINGTON

Appeal from the Washington Superior Court for King County
Honorable Monica Benton, Judge

AMENDED RESPONDENT'S BRIEF
BY
SELENE FINANCE LP AS SERVICER AND ATTORNEY IN FACT TO U.S.
BANK, TRUST, N.A. AS INDENTURE TRUSTEE OF CASTLE PEAK 2011-1
LOAN TRUST, MORTGAGE BACKED NOTES, SERIES 2011-1,
ERRONEOUSLY SUED AS U.S. BANK, N.A. AS TRUSTEE FOR SERIES #2011-1
CERTIFICATES

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1. STATEMENT OF FACTS

On November 17, 2006, in order to purchase the real property located at 12708 167th Place NE, Redmond, WA 98052 (“Property”), Appellants Erik Moseid and Dianna V. Moseid, husband and wife (collectively “Appellants”) executed a Note, secured by a recorded Deed of Trust (“Deed of Trust”), in the amount of \$600,000.00 (hereinafter “Loan” collectively) [CP 5, 69-85]. The Deed of Trust identified the lender as Credit Suisse Financial Corporation (“Credit Suisse”), the trustee as LSI Title, and the beneficiary under the Deed of Trust as Mortgage Electronic Registration Systems, Inc. (“MERS”), solely as nominee for Credit Suisse [CP 5]. Appellants defaulted under the terms of the Loan, and foreclosure proceedings were initiated.

An Assignment of the Deed of Trust was recorded that transferred all beneficial interest of Credit Suisse, through nominee MERS, to “U.S. National Bank, National Association, not in its individual capacity, but solely as Owner Trustee for CPCA Trust 1” was recorded on April 4, 2011 (“US Bank”) [CP 45, 87-89]. An Appointment of Successor Trustee that named Karen L. Gibbon, P.S. (“Gibbon”) as the appointed successor trustee was recorded by the assignee on or around July 5, 2011 [CP 45, 91]. Additional Assignments of Mortgage were recorded on December 28, 2011, March 8, 2013, and April 16, 2013 to correct various

typographical errors [CP 45-46, 93-99]. Selene Finance LP (“Selene”) is attorney in fact and servicer for US Bank [CP 42].

In order to stop the foreclosure sale, Appellants first filed an action in the Western District of Washington, Case No. 2:13-cv-00363-MJP on February 28, 2013 (“First Lawsuit”) alleging Wrongful Foreclosure, Breach of Contract, Intentional Infliction of Emotional Distress, Slander of Title, Breach of Fiduciary Duty, Breach of Quasi-Fiduciary Duty, Violation of Fair Debt Collection Practices Act (15 U.S.C. § 1601), Violation of Fair Credit Reporting Act (15 U.S.C. § 1681), and Violation of RESPA (12 U.S.C. § 2603) [CP 44, 157, Appendix 2-35]. Plaintiffs’ request for a Temporary Restraining Order (“TRO”) was denied on February 28, 2013 [CP 8, 44, 59-63]. Appellants did not oppose Respondents’ Motion to Dismiss and the motion was granted [CP 44, 65-67]. Appellants did not seek appellate review of this dismissal.

On October 23, 2012, due to Appellants’ continued default on the Loan, then in the amount of \$110,605.92, Gibbon recorded a Second Amended Notice of Trustee’s Sale having a sale date of March 1, 2013 [CP 46, 101-104]. On March 15, 2013, with the default still uncured and Appellants having failed to pursue mediation or effectively obtain a judicial pre-sale remedy, a Trustee’s Sale was held [CP 46, 106-108].

Appellants filed a second complaint in the Superior Court of Washington, King County, arising from the same nucleus of facts as the First Lawsuit alleging claims for wrongful foreclosure, and asking for cancellation of the Trustee's Deed Upon Sale or that it be set aside, damages from Wrongful Foreclosure, and damages of Estoppel of Reformation of Contract ("Second Lawsuit") [CP 51]. The Court in the Second Lawsuit granted Respondent's Motion to Dismiss with prejudice on July 29, 2013, finding that Appellants' Complaint failed to plead a cause of action [CP 162-163]. Appellants then filed this appeal.

2. STATEMENT OF THE CASE

Appellants obtained a loan in order to purchase the Property; the amount of the loan was \$600,000.00 when originated. Appellants defaulted after failure to tender funds for the payment due March 1, 2010, which is less than four years after Appellants obtained the loan [CP 102].

Appellants admit they fell behind on Loan payments due to periods of unemployment and reduced income [CP 5-7]. Appellants have continued to reside in the Property without payment to Respondent for a period of over four years, during which time Respondent was forced to make payments for property taxes consisting of \$3,197.07, in order to protect its security in interest in the property, at the time the Notice of Trustee's Sale was recorded. [CP 102].

Due to the failure of Appellants to cure the default, a lawful non-judicial foreclosure of the property was initiated pursuant to the terms of the Loan, and a Second Amended Notice of Trustee's Sale was recorded on October 25, 2012. At that time the amount of default was \$110,605.92. [CP 101-104].

Instead of taking steps to cure this default or pursue mediation, Appellants filed the First Lawsuit two days prior to the scheduled Trustee's Sale, which was initially scheduled on February 28, 2013 [CP 44, Appendix 6]. Appellants' request for a TRO was denied in the First Lawsuit because the Court found that Appellants were unlikely to succeed on the merits of Appellants' claims [CP 59-63].

Appellants did not oppose Respondent's Motion to Dismiss the First Lawsuit and Respondent's motion was granted on April 23, 2013 [CP 65-67]. Appellants did not amend their complaint, but instead filed the Second Lawsuit on or about May 13, 2013, which was two full months after the date the Trustee's Sale was held. [CP 106-108].

In the Second Lawsuit, giving rise to this Appeal, Respondent filed a Motion to Dismiss, to which Appellants filed an Opposition. [CP 42-57]. After oral argument an Order dismissing Appellants' Complaint, with prejudice, was issued by the Court on or about July 29, 2013 [CP 162-163].

Appellants' Opening Brief dated March 17, 2014 ("Opening Brief") inaccurately states that in the Second Lawsuits Appellants were denied leave to amend their Complaint, Page 8, but Appellants fail to mention that they never filed a motion to amend the complaint in the Second Lawsuit as required under CR 15, which is supported by the case docket. Further, a review of the *Verbatim Report of CD Recorded Proceedings* ("Transcript"), transmitted to this Court on or about January 29, 2014 by the Superior Court Clerk, confirms that Appellants never requested leave to amend the Complaint at any time during oral argument.

Another inaccuracy by Appellants, contained in the second full paragraph of Page 9 of Appellants' Opening Brief, is the contention that the Second Lawsuit is the "original complaint" on this matter, when in fact the Second Lawsuit was Appellants *second* attempt to litigate their wrongful foreclosure claim and the causes of action stemming therefrom.

Lastly, Appellants allege they were denied a loan modification by Citibank, never provided proof of any offer of a trial or permanent loan modification from any party named in any lawsuit, never filed a lawsuit against Citibank or named it as a defendant in either lawsuit, and removed all mention of Acqura in their Opening Brief. See Opening Brief, Pages 3-4, which references CP 6-7. Accordingly, these allegations are irrelevant for purposes of this appeal and cannot properly be considered here.

3. STATEMENT OF THE ISSUES

The issues stated in Appellants' appeal are as follows:

(1) Did the trial court abuse its discretion by declining to grant Appellants leave to amend their original complaint consistent with Appellants' request and CR 15?

(2) Did the trial court abuse its discretion (sic) insofar as its granting the CR 12(b)(6) motion was based on the waiver rule in RCW 61.24.040 (sic)?

(3) Did the trial court abuse its discretion (sic) insofar as its granting the CR 12(b)(6) motion was (sic) based upon Washington (sic) claim preclusion doctrine?

4. STANDARD OF REVIEW

The standard of review for denial of a motion to amend under is abuse of discretion: "Generally, courts are to freely allow parties to amend their pleadings: 'leave shall be freely given when justice so requires'...But a trial court may also consider whether pursuit of the new claim would be futile. A decision to grant or deny a motion to amend is reviewed for an abuse of discretion." *Shelton v. Azar, Inc.*, 90 Wash.App 923, 928, 954 P.2d 352 (Div. 1, 1998). See also *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154, 943 P.2d 1358 (1997); *Hines v. Todd Pac. Shipyards Corp.*, 127 Wn.App. 356, 374-75, 112 P.3d 522 (2005);

Deschamps v. Mason County Sheriff's Office, 123 Wn.App. 551, 563, 96 P.3d 413 (2004).

The standard of review for dismissal under CR 12(b)(6) is de novo: Whether a dismissal is appropriate under CR 12(b)(6) is a question of law that an appellate court reviews de novo. Under 12(b)(6), dismissal is only appropriate if "it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery." *Tenore v. AT&T Wireless Servs.*, 136 Wash.2d 322, 330, 962 P.2d 104 (1998). *Burton v. Lehman*, 153 Wash.2d 416, 422, 103 P.3d 1230 (2005).

5. LEGAL ANALYSIS

A. **RULE CR 15(A) IS NOT APPLICABLE BECAUSE APPELLANTS NEVER REQUESTED LEAVE TO AMEND THEIR COMPLAINT**

Page 8 of Appellants' Opening Brief states they were denied the ability to amend the Complaint under CR 15(a). Respondents point out the fact that Appellants never attempted to amend the Complaint either in writing or at the hearing on Respondent's Motion to Dismiss.

Rule CR 15(a) states:

Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is

granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Appellants cite *Wilson v. Horsley*, 137 Wash.App.2d 500, 505, 974 P.2d 316 (1999) as support that “a trial court should freely grant leave to amend when justice so requires.” Opening Brief, Page 8. Page 9 of Appellants’ Opening Brief further argues that “the trial court’s failure to explain its reason for denying leave to amend may amount to an abuse of discretion.” *Rodriguez v. Loudeye Corp.*, 144 Wash.App 709, 729, 189 P.3d 168 (2008).

The facts in *Wilson v. Horsley* do not support Appellant’s contentions. Defendant Horsley made a motion to amend his responsive pleading after arbitration took place. The request was denied, within the trial court’s discretion, because allowing the amendment would be “grossly unfair” and prejudicial; the Court also pointed out that Horsley’s right to amend had expired. *Id.* at 507.

Appellants use of *Rodriguez* is similarly misplaced; unlike the case before this Court, the appellant in *Rodriguez* requested leave to amend his complaint, but failed to comply with CR15(a). The Appellate Court

affirmed the Trial Court's decision due to the failure. As a result, even here Appellants would not have a reviewable claim under *Rodriguez*.

Rodriguez does address facts similar to Appellants' actions in stating "the case upon which they [defendants] rely, *Washington Co-op. Chick Ass'n v. Jacobs*, involved a complete failure to request leave to amend. There, the trial court dismissed the complaint without leave to amend, and the plaintiff did not request leave to amend. On appeal, the court declined to consider the plaintiff's challenge to the trial court's denial of leave to amend because it was not submitted to the trial court." *Rodriguez* at 729 (citing *Washington Co-op. Chick Ass'n v. Jacobs*, 42 Wash.2d 460, 256 P.2d 294 (1953)).

Here, the Case Transcript, Superior Court Case Summary ("Docket"), and the Transcript from the hearing on Respondent's Motion to Dismiss, all show that Appellants never made a request to amend the Complaint, either in writing or verbally at the hearing.

Significantly, nowhere in Appellants' Opening Brief do Appellants set forth what any amendment would include that might cure the pleading defects noted in Respondent's Motion to Dismiss. This Court is not required to guess, and an amendment that will not cure legal defects will not be sufficient. *Northwest Animal Rights Network v. State*, 158 Wash.App 237, 247-48, 242 P.3d 891 (Div. 1, 2010) ("Here, the additional

allegations contained in the Network's second amended complaint would not cure the above-identified justiciability defects. Thus, the Network's amendment was futile. Accordingly the trial court did not abuse its discretion by denying the amendment.”).

Therefore Appellants’ argument fails as a matter of law and dismissal of the Complaint was proper.

B. THE COURT PROPERLY GRANTED RESPONDENT’S MOTION TO DISMISS UNDER 12(b)(6) BECAUSE THE COMPLAINT FAILED TO STATE A CAUSE OF ACTION FOR WHICH APPELLANTS COULD OBTAIN RELIEF:

Appellants contend that Respondent’s Motion to Dismiss under CR 12(b)(6) was improperly granted. Opening Brief, Page 9. However, case law supports the Court’s dismissal of Appellant’s Complaint because Appellants did not contain any facts that would support a claim for relief.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955 (2007)). See also *Panagacos v. Towery*, 501 Fed.Appx 620, 622 (Wash. 2012), *Evans v. Bank of New York Mellon*, 2011 WL 4007386 (E.D.Wash. 2011), *In re Wash. Mut., Inc. Securities, Derivative & ERISA Litigation*, 2011 WL 1158387 (W.D.Wash. 2011)(not reported in

F.Supp.2d) (*Christensen v. Swedish Hosp.*, 59 Wash.2d 545, 368 P.2d 897 (1962) involves pleading requirements for a tort claim and is not applicable here).

“The sole issue raised by a 12(b)(6) motion is whether the facts pleaded, if established, would support a claim for relief; no matter how improbable the facts alleged are, they must be accepted as true for purposes of the motion.” *Evans v. Bank of New York Mellon*, 2011 WL 4007386 at *2 (E.D.Wash. 2011) (citing *Neitzke v. Williams*, 490 U.S. 319, 326–27, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). “The trial court is not required to accept conclusory allegations or legal characterizations as being the truth.” *In re Stac Electronics Securities Litigation*, 89 F.3d 1399, 1403 (9th Cir.1996) (citing *In re VeriFone Sec. Litg.*, 11 F.3d 865, 868 (9th Cir. 1993): “Conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.”).

A complaint must plead something more than labels and conclusions, and a “formulaic recitation of the elements of a cause of action will not suffice.” *Bell Atl. Corp.*, 550 U.S. at 555–556. “Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)....” *Id.*

First, Appellants' Complaint admits that they executed the Note and Deed of Trust, that they experienced a loss of income for an extended period of time, and adversely offered their inability to make payments on the Loan [CP 5-7].

Second, the Record does not support Appellants' causes of action concerning an alleged improper denial of a loan modification. In fact, Citibank and Acqura,¹ the only parties claimed to have granted trial modifications but later denying permanent modifications [CP 6-7], were not named as defendants in either the First Lawsuit or Second Lawsuit despite allegation of their activities being the basis of Appellants' claim.

To the extent Appellants true issue goes to a claim of an improper denial of a permanent loan modification, Appellants did not name the correct parties in the Complaint, i.e. the parties who allegedly made that promise. The complaint was simply defective and dismissal with prejudice was appropriate. *See* 3A Karl B. Tegland, Washington Practice: Rules Practice, § CR 12 at 266 (discussing the paucity of cases addressing issue but noting federal rule that dismissal is with prejudice unless the trial court's specifies otherwise).”).

Third, Respondent was not legally obligated to modify Appellants loan [CP 50]; banks are not required to make loan modifications to each

¹ Acqura is not mentioned in Appellants' Opening Brief, but is named extensively throughout the Complaint subject to this appeal. See CP 6-7, Paragraph 14.

and every borrower who applies for a modification under HAMP, and courts have routinely held there is no private right to enforce HAMP. See e.g. *Hoffman v. Bank of America, N.A.*, 2010 WL 2635773, at 3 (N.D.Cal. 2010). Appellants confirm that Respondent considered but denied their request for a loan modification [CP 7-8]. Nothing more was required. This fact is important because Appellants' First Cause of Action, to set aside the Trustee's Sale, is based on Appellants failure to obtain a loan modification and not procedural irregularity ("Plaintiffs is (sic) is attempting to set aside this trustee's sale on grounds other than irregularities in the sale notice or procedure." [CP 9-10]).

Fourth, Appellants' Second Cause of Action in the Complaint seeks to cancel the Trustee's Deed Upon Sale based solely on conclusory allegations or legal characterizations instead of any triable issue: "The claims of Defendant are based upon a trustee's deed upon sale purportedly executed by Defendant Law Office and purporting to convey the property to Defendant...Although the trustee's deed upon sale may appear valid on its face, it is invalid, void and of no force or effect regarding Plaintiff's interests and rights in the Property for the reasons set out in Paragraph 25 of this Complaint." [CP 10]. Paragraph 25 states "Plaintiffs incorporates (sic) herein by reference each and every allegation contained in Paragraphs 1 through 21, and 23, inclusive, of this Complaint." [CP 10].

Paragraphs 1 through 21 and 23 contain Appellants' recitation of facts, not any reviewable claim.

Fifth, Appellants' Third Cause of Action in the Complaint, which only cites "failures, refusals, and neglect in conducting the purported foreclosure sale of March 8, 2013..." [CP 11] is directly contradicted by Appellants' statements in the First Cause of Action. In their First Cause of Action Appellants specifically state "Plaintiffs is (sic) attempting to set aside this trustee's sale on grounds *other than irregularities in the sale notice or procedure*" (emphasis added) [CP 9-10]. No reviewable claim is provided to support Appellants' Third Cause of Action and it failed as a matter of law.

Sixth, Appellants' Fourth Cause of Action contained in CP 11-12 (demanding "estoppel to deny reformation") appears to recite Respondent's denial of Appellants' loan modification as its only grounds ("The acts and practices of Defendants, and each of them, described in the foregoing paragraphs of this Complaint establish an agreement between Plaintiffs and Defendants, and each of them, to revise the loan arrangement and that Defendants are estopped to deny the agreement to revise the loan arrangement." Paragraph 33, CP 11].

Even Appellants' own exhibits to the Complaint, consisting of Respondent's letter acknowledging receipt of Appellants' application for a

loan modification and providing a point of contact, and the subsequent denial letter, belie any and all implication that Respondent misled Appellants with respect to the loan modification, gave an impression that a loan modification would be granted, or that Respondent granted a trial loan modification at any time [CP 37-40]. The exhibits on the Record are in direct contradiction of Appellants' statements and implications that Respondent offered a the Appellants a loan modification.

Because Appellants could not state any claims upon which relief could be granted, Appellants' arguments fail as a matter of law and dismissal of the Complaint was proper.

C. APPELLANTS CLAIMS WERE BARRED BY THE WAIVER DOCTRINE OF RCW 61.24.130:

Appellants' alternatively argue that the Court erred in granting Respondent's motion under CR 12(b)(6) by "declining leave to amend based upon RCW 61.24.040...". Opening Brief, Page 9. As established above, Appellants never requested leave to amend the Complaint. Accordingly there is no correlation between any request for leave to amend the Complaint and the waiver doctrine.

Respondents never directed the waiver doctrine to any specific section of Appellants' Complaint, so Appellants' last paragraph on Page 9 of the Opening Brief is unclear (Appellants state "the third claim for relief

in the Complaint[] seeks money damages only... [and] it doesn't apply because it requires an action to stay the trustee's sale be filed before the sale, and that's exactly what Appellants did here.”).

Appellants were not in a position to seek to stay of the foreclosure when the Complaint was filed in the Second Lawsuit and acknowledged this fact in the Complaint (Appellants stated that *as a result of the foreclosure sale* Appellants sustained “damages in an amount presently unknown, but upon information and belief, within the jurisdictional limits of this Court... [Appellants] will either amend this Complaint to set out the amounts of damages sustained when ascertained, or, alternatively, will conform this Complaint to proof at trial.” [CP 11]).

It is established that failure to obtain pre-sale remedies under the Washington Deed of Trust Act generally results in the waiver of one's right to object to a property sale. (RCW 61.24.130; see also *Plein v. Lackey*, 149 Wn. 2d 214, 67 P.3d 1061 (2003)).

Washington Courts have held that post-sale challenges to a nonjudicial foreclosure are waived when, a party: “(1) received notice of the right to enjoin the 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 Wash. App.

108, 114 (1988) (*Denied*, 111 Wn.2d 1004 (1988)); *Peoples Nat'l Bank of Wash. V. Ostrander*, 6 Wash. App. 28 (1971).

In 2009, the legislature enacted RCW 61.24.127 to set forth certain statutory exceptions to the waiver rule. While failure to bring a civil action to enjoin a non-judicial foreclosure does not necessarily waive a borrower's ability to bring forth a claim post-sale, the Deed of Trust Act is explicit in limiting the nature of such post-sale claims. 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).

Here Appellants admit they received pre-sale notice of the right to enjoin the sale when they filed the First Lawsuit in the Western District of Washington on February 28, 2013, which referenced the Notice of Trustee's Sale in their Complaint [Appendix #2-35]. The District Court denied Appellants' request for TRO because no grounds existed that showed Appellants would succeed on the merits of their case [CP 59-63].

In an attempt to judicially rescind Respondent's legally conducted foreclosure, Appellants then filed the Second Lawsuit based on implausible statements, conclusory allegations of law, and unwarranted inferences from unsupported claims. Having failed again, they now look to

this Court for the same relief, but cannot circumvent the waiver rule. The dismissal of Appellants' Complaint was proper.

D. COLLATERAL ESTOPPEL WAS APPROPRIATE BECAUSE APPELLANTS SECOND LAWSUIT AROSE FROM THE SAME NUCLEUS OF FACTS, AND NAMED ESSENTIALLY THE SAME DEFENDANTS, AS THEIR FIRST LAWSUIT:

Appellants' Second Lawsuit essentially brought suit against the same defendants named in the First Lawsuit, and for claims that arose from foreclosure of the Subject Property [CP 1, Appendix 2-35]. Appellants abandoned their case in the First Lawsuit, failed to defend against Respondent's motion to dismiss the complaint, and did not attempt to amend their complaint to address their deficiencies [Appendix 36-38].

"The doctrine of collateral estoppel differs from res judicata in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted." *Seattle-First Nat. Bank v. Kawachi*, 91 Wash.2d 223, 227, 588 P.2d 725 (1978) (citing *King v. Seattle*, 84 Wash.2d 239, 525 P.2d 228 (1974)). See also *Block v. City of Gold Bar*, 2014 WL 1210601 at*5 (Div.1 2014).

"A party seeking to apply collateral estoppel must show that (1) the issues in both proceedings are identical; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral

estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) applying collateral estoppel does not work an injustice on the party against whom it is applied.” *World Wide Video of Wash., Inc. v. City of Spokane*, 125 Wn.App. 289, 305, 103 P.3d 1265 (2005) (quoting *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 307, 96 P.3d 957 (2004)).

First, the issues in both proceedings are nearly identical. The First Lawsuit listed a cause of action for “Wrongful Foreclosure” from which all other causes of action flowed. For example, Appellants alleged that the Notice of Trustee’s Sale and assignments between the parties executed for purposes of foreclosure presented damages for Slander of Title [Appendix 7]. The Second Lawsuit seeks to rescind the foreclosure sale that the First Lawsuit sought to prevent from occurring.

Both cases stem from Appellant’s failure to tender payments under the terms of the Note and Deed of Trust, which resulted in foreclosure proceedings against the Subject Property. Although Appellants cloaked the different cases under statutes to suit each venue, both cases cite to the Deed of Trust, Assignments, and the Notice of Trustee’s Sale as the primary pieces of evidence.

Second, the earlier proceeding ended in a judgment on the merits. As noted prior, Appellants lost their First Lawsuit and never filed an appeal.

Third, Respondent can show there is privity between the parties in both the First and Second Lawsuit because Appellants were the plaintiffs in both lawsuits. The Defendants named in the First Lawsuit were Selene Finance LP, Credit Suisse Financial Corporation, Mortgage Electronic Registration Systems, Inc. (“MERS”), the Law Offices of Karen L. Gibbons, P.S., and US Bank Trust, National Association [CP 1-13, Appendix 2-35].

The Respondent Selene Finance LP was not listed in the caption of the Second Lawsuit, but *Selene is specifically included as a “party” in Paragraph 4 of the Second Lawsuit* [CP 2] and is referenced extensively throughout the Complaint. The Second Lawsuit also named Credit Suisse, US Bank, N.A., and the Law Offices of Karen Gibbons [CP 1-2]. In fact, the only difference between the two lawsuits is the omission of MERS from the Second Lawsuit. As a result, the parties in both lawsuits are the same.

Fourth, the application of collateral estoppel in the Second Lawsuit does not prejudice or “work an injustice” against Appellants. Appellants had ample opportunity to obtain pre-sale remedies when they filed the

First Lawsuit. Appellants arguably abandoned litigation of their First Lawsuit after denial of their request for a TRO, despite the fact that Appellants could have amended their complaint [Appendix36-38]. Despite no demonstrated change in circumstances in the time between the two cases, and prior to closure of the First Lawsuit, Appellants filed their Second Lawsuit [CP 51], with the only exception being a foreclosure sale was conducted while the First Lawsuit was pending.

This issue of collateral estoppel was succinctly addressed by the Court in *Walton v. Eaton*: “[T]he court must insure that the plaintiff does not use the incorrect procedure of filing duplicative complaints for the purpose of circumventing the rules pertaining to the amendment of complaints.” *Walton v. Eaton*, 563 F.2d 66, 71 (C.A.3 (Pa.) 1977).

Appellants should not be rewarded for their failure to prosecute and/or amend their Complaint in the First Lawsuit in being allowed to litigate the Second Lawsuit. Appellants failed to obtain pre-sale remedies, and their post-sale challenge is not allowed by statute. As a result, dismissal of Appellants’ Complaint was proper.

E. THE TRIAL COURT DID NOT MISINTERPRET CASE LAW:

Appellants’ contend that, with respect to the extinguishment of Appellants’ interest in the Subject Property after the foreclosure sale, the

trial court “misread the state supreme court’s decision” in *Albice v. Premier Mortg. Svcs. Of Wash., Inc.*, 157 Wash.App 912, 239 P.3d 1148 (Div. 2, 2010). Appellants are mistaken.

Albice states that a “proper foreclosure action extinguishes the debt and transfers title to the property to the beneficiary of the deed of trust or to the successful bidder at a public foreclosure sale....We construe the Act to further three objectives: (1) the nonjudicial foreclosure process should remain efficient and inexpensive; (2) the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure; and (3) the process should promote the stability of land titles” *Id.* at 920.

Respondent lawfully conducted its Trustee’s Sale during the First Lawsuit [CP 48, 106-107], extinguished all interest Appellants had in the Subject Property and vested the interest in a party other than Appellants before the Second Lawsuit was filed [CP 48]. Appellants did not question the procedural aspects of the trustee’s sale in the Second Lawsuit, and in fact, conversely state they do not dispute any aspect of compliance with the Deeds of Trust Act (RCW 61.24): “Plaintiffs is (sic) is attempting to set aside this trustee’s sale on grounds other than irregularities in the sale notice or procedure.” [CP 9-10].

Appellants cannot now raise procedural irregularities in the Trustee's Sale on appeal after specifically disclaiming them in the trial court Complaint.

Appellants' arguments as to the Trial Court's interpretation fail as a matter of law and dismissal of the Complaint was proper.

6. CONCLUSION

Appellants have intolerably abused the judicial system with this continued litigation, and have resided in the Subject Property since March 1, 2010 without payment of any rent. This equates to a loss of thousands of dollars for Respondent in lost economic opportunities in expenditures for property taxes, insurance, and legal costs in defense of the litigation.

Appellants' issues have already been litigated in two separate forums, and Appellants' Opening Brief offers no viable basis in fact or law to warrant a different outcome.

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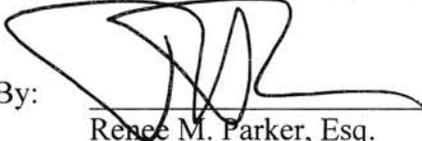
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For the reasons set forth herein, Respondent respectfully requests that this honorable Court affirm the July 29, 2013 Order on Defendants' "Motion to Dismiss Plaintiffs' Complaint to Set Aside Trustee's Sale, Cancellation of Trustee's Deed Upon Sale, Wrongful Foreclosure, and Estoppel of Reformation of Contract."

Dated: May 19, 2014

Respectfully submitted,
WRIGHT, FINLAY & ZAK, LLP

By: 

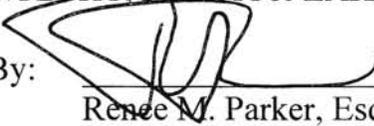
Renee M. Parker, Esq.
Attorneys for Defendant and Respondent,
SELENE FINANCE LP

CERTIFICATE OF WORD COUNT

The text of this brief consists of 5,037 words as count in the Microsoft Word 2010 word-processing program used to generate this brief.

Dated: May 19, 2014

Respectfully submitted,
~~WRIGHT, FINLAY & ZAK, LLP~~

By:  _____
Renee M. Parker, Esq.
Attorneys for Defendant and Respondent,
SELENE FINANCE LP

APPENDIX

FILED ENTERED
LODGED RECEIVED

FEB 28 2013

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY



13-CV-00363-CMP

SEAS 4783
Sujw

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

ERIK MOSEID AND DIANNA MOSEID, *Pro Per*

Plaintiffs,

v.

SELENE FINANCE LP, a Delaware Limited Liability Company;

CREDIT SUISSE FINANCIAL CORPORATION, a New York Corporation

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, a Delaware Corporation

LAW OFFICES OF KAREN L GIBBSON, P.S., a Washington Professional Services Corporation;

US BANK TRUST, NATIONAL ASSOCIATION, a Foreign Corporation;

And JOHN DOES (Investors) 1-10,000, *et al*,

Defendants

Case No. **C13-0363 MJP**

COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION; WRONGFUL FORECLOSURE; BREACH OF CONTRACT; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; SLANDER OF TITLE; BREACH OF FIDUCIARY DUTY; BREACH OF QUASI-FIDUCIARY DUTY; VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C § 1601, ET SEQ , VIOLATIONS OF FAIR CREDIT REPORTING ACT 15 USC § 1681; VIOLATIONS OF RESPA, 12 U.S.C § 2603. ET SEQ. AND DEMAND FOR TRIAL BY JURY

COMES NOW, Plaintiffs, ERIK MOSEID AND DIANNA MOSEID, *pro per*, for this Complaint against the Defendants hereby complains and alleges as follows:

I. PARTIES

1.1 We, Plaintiffs, ERIK MOSEID AND DIANNA MOSEID, are residents of King County, Washington as such establishing the jurisdiction of this honorable court.

1.2 Defendant, SELENE FINANCE LP., Defendant is a Delaware Limited Liability, licensed corporation and is licensed to operate in the State of Washington, however did hereby conduct business by, among other things, acting as a "debt collector" as defined by FDCPA, 15 USC § 1601. Et seq. Said corporation did conduct business by, among other things, engaging in mortgage lending activities, obtaining security interests in real property located in the state of Washington. These activities included acting as a "debt collector" as defined by FDCPA, 15 USC § 1601. Et seq., The Defendant is also a credit lender and as such governed under the law by The Fair Credit Reporting Act 15 USC §1681 et seq. and also reports these accounts to national credit reporting agencies i.e. Trans Union, Equifax, Experian and Innovis as well as all national credit reporting agencies.

1.3 Defendant, CREDIT SUISSE FINANCIAL CORPORATION, is a for-profit Corporation incorporated in the State of New York. Defendant- CREDIT SUISSE FINANCIAL CORPORATION is registered with the WASHINGTON Secretary of State as CREDIT SUISSE FINANCIAL CORPORATION and is in good standing. At all times material hereto, Defendant- CREDIT SUISSE FINANCIAL CORPORATION did hereby conduct business by, among other things, acting as a "debt collector" as defined by FDCPA, 15 USC § 1601. Et seq. Said corporation did conduct business by, among other things, engaging in mortgage lending activities, obtaining security interests in real property located in the state of Washington. These activities included acting as a "debt collector" as defined by FDCPA, 15 USC § 1601. Et seq., The Defendant is also a credit lender and as such governed under the law by The Fair Credit Reporting Act 15 USC §1681 et seq. and also reports these accounts to national credit reporting agencies i.e. Trans Union, Equifax, Experian and Innovis as well as all national credit reporting agencies..

1.4 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereinafter referred to as "MERS") Defendant, is a Delaware corporation that is NOT licensed to conduct business in the State of Washington, however, but purports to obtain security interests in real property located in the State of Washington, and purports to have acquired an interest in Plaintiffs' real property first as a "nominee" but also as a "beneficiary" under the terms of the CREDIT SUISSE FINANCIAL CORPORATION Deed of Trust executed by Plaintiffs without clear recorded documentation to do so.

1.5 Defendant, LAW OFFICES OF KAREN L GIBBSON, P.S is a for-profit a Washington Professional Services Corporation incorporated in the State of Washington. Defendant- LAW OFFICES OF KAREN L GIBBSON, P.S is registered with the WASHINGTON Secretary of State and is in good standing. however said corporation purports to obtain security interests in real property located in the State of Washington, as well as purporting to have acquired an interest in Plaintiffs' real property as a "Trustee" under the terms of the CREDIT SUISSE FINANCIAL CORPORATION Deed of Trust (hereinafter referred to as "DT") executed by Plaintiffs.

1.6 US BANK TRUST, NATIONAL ASSOCIATION is a Foreign corporation, a licensed corporation, however at this date according to the Secretary of State of Washington, is NOT registered with the State of Washington, and is NOT licensed to operate in the State of Washington, however did hereby conduct business by, among other things, acting as a "debt collector" as defined by FDCPA, 15 USC § 1601. Et seq. Said corporation did conduct business by, among other things, engaging in mortgage lending activities, obtaining security interests in real property located in the state of Washington. These activities included acting as a "debt collector" as defined by FDCPA, 15 USC § 1601. Et seq., The Defendant is also a credit lender and as such governed under the law by The Fair Credit Reporting Act 15 USC §1681 et seq. and also reports these accounts to national credit reporting agencies i.e. Trans Union, Equifax, Experian and Innovis as well as all national credit reporting agencies.

1.7 At all times mentioned herein, the Defendants, and each of them, were the agents, servants, representatives and/or employees of each of the remaining, Defendants and were acting within the course and scope of such agency or employment. The exact terms and conditions of the agency, representation or employment relationships are presently unknown to the Plaintiffs at present, however when the information is ascertained, leave of court will be sought to insert the appropriate allegations

II. JUDICIAL NOTICE

2.1 Plaintiffs moves this Honorable Court to take Mandatory Judicial Notice under the Federal Rules of Civil Procedure Rule 201 (d) of the following:

a. The United States Supreme Court, in *Haines v Kerner* 404 U.S. 519 (1972), said that all litigants defending themselves must be afforded the opportunity to present their evidence and that the Court should look to the substance of the complaint rather than the form.

b. In *Platsky v CIA*, 953 F.2d 26 (2nd Cir. 1991), the Circuit Court of Appeals allowed that the District Court should have explained to the litigant proceeding without a lawyer, the correct form to the Plaintiffs so that he could have amended his pleadings accordingly. Plaintiffs respectfully reserve the right to amend this complaint.

c. Under the Federal Rules of Evidence 1002 and 1003 governing the admissibility of duplicates, any photocopies brought in as evidence are considered to be forgeries. It is unfair to admit a photocopy in the place of an original as there are information contained within the original that is not in a photocopy, specifically the only legally binding chain of title to the promissory note.

d. Under Uniform Commercial Code- ARTICLE 3 -§3-308, all signatures presented that is not on an original format (with the original wet ink signature) is hereby denied and is inadmissible.

III. FACTUAL ALLEGATIONS

1 3.1 Plaintiffs has been a victim of the mortgage lending mess created by Wall Street, mortgage lenders, and
2 servicers, Defendants named in this complaint, those who engage in an established pattern and business
3 practices designed and intended to deceive and mislead homeowners regarding application of their
4 payments and the amounts owing under promissory notes and deeds of trust, and upon the courts and
county recorders offices regarding their ownership interest in the promissory notes and deeds of trust
under which they are collecting fees and/or initiating foreclosures.

5 3.2 Plaintiffs applied for and obtained a Home loan from Defendant CREDIT SUISSE FINANCIAL
6 CORPORATION in November of 2006. In connection with the making of the loan, Plaintiffs executed a
7 Deed of Trust for Defendant CREDIT SUISSE FINANCIAL CORPORATION, which was recorded in
8 the records of King County, Washington on November 29, 2006 under recording number
9 20061129001410. A copy of the Deed of Trust is attached hereto and incorporated herein by reference as
Exhibit "1". That Deed of Trust ("DT") contained a false representation on its face when it represented
that Defendant MERS was a beneficiary under said DT.

10 3.3 Paragraph E

11 3.3.1 "...the Beneficiary of this security instrument is MERS, (Mortgage Electronic
12 Registration Systems, Inc.)..."

13 3.4 The Washington Deed of Trust Act has defined a "Beneficiary" as the holder of the instrument or
14 document evidencing the obligations secured by the deed of trust, excluding persons holding the same as
15 security for a different obligation" Laws of 1998 ch 295 1(2), Codified as RCW 61.24.004(2). Thus, in the
16 terms of the certified question, if MERS, never held the Promissory Note nor the DT, then it is not a
17 "lawful Beneficiary" Refer to State of Washington Supreme Court Ruling, dated August 16, 2012 #86206-
18 1 consolidated with #86207-9 Bain vs. Metropolitan Mortgage, MERS, et al, attached as Exhibit 2 and
incorporated herein by reference.

19 3.5 As will be demonstrated below, in the legal Brief by amici curiae attached to and incorporated herein by
20 reference as Exhibit "3", in addition see citing in attached brief by Gregory Taylor Appellant v. Deutsche
21 Bank National Trust Company as Trustee for FFMLT 2006-FF4, Mortgage Pass-Through Certificates,
22 Series 2006-FF4 Appellate APPEAL IN CAUSE NO. 05-2008-CA-065811 supports defendants MERS
23 lack of Standing attached hereto and incorporated herein by reference as Exhibit "4".

24 3.6 MERS in NOT the beneficiary under the DT, and has never had ownership nor possession of the
25 Promissory Note which is the obligation which is secured by the DT, and MERS has never been entitled to
receive any remuneration from Plaintiffs' Loan Proceeds. The statement that MERS is the "Nominee" is

1 nonsensical language which serves no relevance in a real estate transaction and most certainly, MERS has
2 no beneficial interest under the DT.

3 3.7 Defendant LAW OFFICES OF KAREN L GIBBSON, P.S filed a Notice of Trustee's Sale scheduling a
4 Trustee's Sale to be held on March 1, 2013, in the office of the King County Auditor on October 25, 2012,
5 under recording number 20121025002258 behalf of Defendant MERS without verifying the validity of
6 said beneficial interest and the role of MERS as a purported "Lender" or "Beneficiary". Said Notice is
7 attached hereto and incorporated herein as Exhibit 5.

8 3.8 Regarding the issue of Defendant MERS alleged status as a "beneficiary" under Defendant CREDIT
9 SUISSE FINANCIAL CORPORATION Deed of Trust executed by Plaintiffs its own records demonstrate
10 the falsity of the information on the document. There is an overwhelming amount of case law emerging
11 throughout the country which supports the fact that MERS is NOT a Beneficiary and furthermore has no
12 rights or ability to transfer interests or authority in a Deed of Trust to another party. See citing in attached
13 Brief by amici curiae, in addition see citing in attached brief by Gregory Taylor Appellant v. Deutsche
14 Bank National Trust Company as Trustee for FFMLT 2006-FF4, Mortgage Pass-Through Certificates,
15 Series 2006-FF4 Appellate APPEAL IN CAUSE NO. 05-2008-CA-065811 as well as State of
16 Washington Supreme Court Ruling in Exhibit 2 supports defendants MERS lack of standing.

17 3.9 On or about June 5, 2012 Plaintiffs did serve via 1st Class Certified Mailing Return Receipt Requested a
18 Dispute of Debt as defined in Fair Credit Reporting Act 15 USC §1681, et seq. , a Demand of Validation
19 under Fair Debt Collection Practices Act 15 USC § 1601, and a Qualified Written Request - Real Estate
20 Settlement Procedures Act (RESPA) 12 U.S.C. § 2605(e); Regulation X at 24 C.F.R. § 3500 et seq. Truth-
21 In-Lending-Act (TILA) § 1604(e), 15 U.S.C. §§ 1601 et seq. (1968) and 1692 et seq., Constructive Legal
22 Notice of Lawful Debt Demand in an attempt to validate the true entity holding beneficial interest.

23 **IV. INFLECTION OF EMOTIONAL DISTRESS**

24 4.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth
25 herein.

4.2 Defendants named in this complaint's conduct with regard to Plaintiffs constitute the tort of outrage and
entitles Plaintiffs to damages in an amount to be established at the time of trial.

4.3 In the alternative, all of the corporate Defendants' conduct with regard to Plaintiffs constitutes the tort of
intentional infliction of emotional distress and/or reckless disregard for the infliction of emotional distress,
which entitles Plaintiffs to an award of damages in an amount to be established at the time of trial.

V. SLANDER OF TITLE

1
2 5.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth
3 herein.

4 5.2 All Defendants have caused to be recorded numerous false documents in the records of Pierce County,
5 Washington, including the original Deed of Trust executed by Plaintiffs containing false statements with
6 regards to MERS' beneficial interest in said Deed of Trust executed by Plaintiffs, Assignments,
7 Appointment of Successor Trustee, and Notices of Trustee's Sale, which impaired Plaintiffs' title and
8 which constitutes slander of title.

9 5.3 Furthermore, the actions of Defendants regarding the recording of the documents, in contravention of the
10 laws of the State of Washington, and the recording of these false documents, having negative impact upon
11 and impair the credit scores of Plaintiffs such that it prevents Plaintiffs the ability to obtain financing in
12 the form of a new mortgage loan or other lines of credit.

13
14 VI. BREACH OF FIDUCIARY DUTY OR QUASI-FIDUCIARY DUTY

15 6.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth
16 herein.

17 6.2 Defendants are obligated through their fiduciary duty or quasi-fiduciary duty to Plaintiffs, including but
18 not limited to, providing Plaintiffs with fair and honest disclosure of all facts that might be presumed to
19 influence him in regard to its actions, including those facts favorable to a creditor and adverse to
20 Plaintiffs' interest as it relates to the mortgage loan. Defendants also had a duty to report truthful
21 information on documents that they recorded in the records of Pierce County, Washington and to act in
22 conformity with the laws of the State of Washington and federal laws relation to mortgage servicing, and
23 they did not do so.

24 VII. VIOLATION OF CONSUMER PROTECTION ACT

25 7.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth
herein.

7.2 Defendants have engaged in a pattern of unfair business practices in violation of the Washington
Consumer Protection Act, RCW 19.86 et seq., Entitling Plaintiffs to damages, treble damages and
reasonable attorney fees and costs pursuant to the statute.

1 7.3 Plaintiffs alleges that Defendants' actions and inactions have impaired and damaged him, entitling
2 Plaintiffs to damages to be proven at the time of trial.

3 **VIII. COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND ISSUANCE OF A**
4 **PRELIMINARY INJUNCTION**

5 8.1 By way of the filing of a separate motion, Plaintiffs will move for issuance of temporary restraining order
6 and a preliminary injunction in order to stop the foreclosure sale.

7 8.2 In order to obtain an injunction, a Plaintiffs must show that: (1) he has a clear legal or equitable right; (2)
8 that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of
9 are either resulting in or will result in actual and substantial injury to him. *Kucera v. State, Dept. of*
10 *Transportation*, 140 Wn.2d 200, 209, 995 P 2d 63 (2000). Such criteria is evaluated by balancing the
11 relative interests of the parties, and if appropriate, the interest of the public. Ultimately, the decision to
12 grant a preliminary injunction is within the sound discretion of the trial court, with such discretion to be
13 exercised according to circumstances of each particular case. *Washington Fed'n of State Employees v.*
14 *State*, 99 Wn.2d 878, 887 (1983) (citations omitted).

15 **IX. VIOLATIONS OF FAIR DEBT COLLECTION PRACTICES ACT**

16 9.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth
17 herein.

18 9.2 The Defendants SELENE FINANCE LP, CREDIT SUISSE FINANCIAL CORPORATION and US
19 BANK TRUST, NATIONAL ASSOCIATION are all credit lenders and as such are governed under the
20 law by The Fair Credit Reporting Act 15 USC § 1681, et seq. and also reports these accounts to the
21 national credit reporting agencies i.e. Trans Union, Equifax, Experian and Innovis all national credit
22 reporting agencies. The State of Washington abides by and adheres to these laws. Specifically the Fair
23 Credit reporting Act 15 USC § 1681, et seq. and FDCPA and §1681p of the FCRA. The Defendants are
24 governed under these laws.

25 9.3 The Plaintiffs denies ever having any contractual agreement for credit, loans or services relationship with
these Defendants.

9.4 Even if the Plaintiffs did have such an agreement, which the Plaintiffs deny, the alleged debt is not in
question. However the fact as to how it was or was not validated and wrongful actions of the Defendants
in an attempt to collect a debt and credit reporting of the alleged debt, violated the civil right of the

1 Plaintiffs and the law as outlined in The Fair Credit Reporting Act 15 USC § 1681, et seq. Fair Debt
2 Collection Practices Act §1601 et seq.

3 9.5 No evidence of any account/debt has been received from Defendants NMS, BNKM to indicate any
4 evidence of any alleged debt.

5 9.6 Defendants SELENE FINANCE LP, CREDIT SUISSE FINANCIAL CORPORATION AND US BANK
6 TRUST, NATIONAL ASSOCIATION have entered derogatory information into the Plaintiffs Trans
7 Union and Experian and Equifax Credit Reports indicating that both of the alleged Defendants were
8 attempting to collecting on the alleged account simultaneously and each were also reporting derogatory
9 information that the alleged account was past due and Foreclosure has been initiated. Without providing
10 documentation or evidence of the alleged account Defendant did perform continuous collection activity
11 prior to providing said documentation or evidence of the alleged account. To date, the false reports
12 remain an item on Plaintiffs credit report, as Defendants continue to report negative and false information
13 with regard to Plaintiffs' account(s).

14 **X. VIOLATIONS OF THE FAIR CREDIT REPORTING ACT**

15 10.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth
16 herein.

17 10.2 According to the Fair credit reporting Act, section 623. Responsibilities of furnishing information to
18 consumer reporting agencies 15 USC § 1681s-2

19 10.2.1 (a) Duty of furnishing information to provide accurate information

20 10.2.1.1 (1) Prohibition.

21 10.2.1.1.1 (A) Reporting information with actual knowledge of errors. A person shall not
22 furnish any information relating to a consumer to any consumer-reporting
23 agency if the person knows or consciously avoids knowing that the information
24 is inaccurate.

25 10.2.1.2 (8) Reporting information after notice and confirmation of errors. A person shall not
furnish information relating to a consumer to any consumer-reporting agency if

(i) The person has been notified by the consumer, at the address specified by
the person for such notices, that specific information is inaccurate; and (ii) the
information is, in fact, inaccurate.

10.2.1.3 (2) Duty to correct and update information. A person who

10.2.1.3.1 (A) Regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

10.2.1.3.2 (B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate, shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

10.2.1.4 (3) Duty to provide notice of dispute. If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

10.2.1.4.1 (b) Duties of furnishing information upon notice of dispute.

10.2.1.4.2 (1) In general. After receiving notice pursuant to section 611(a)(2) § 1681i of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall (A) conduct an investigation with respect to the disputed information;

10.2.1.4.3 (b) Review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§1681i]

10.2.1.4.4 (c) Report the results of the investigation to the consumer reporting agency, and

10.2.1.4.5 (d) If the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

1 10.2.1.5 (2) Deadline. A person shall complete all investigations, reviews, and reports
2 required under paragraph (1) regarding information provided by the person to a
3 consumer reporting agency, before the expiration of the period under section
4 611(a)(1) [§1681i] within which the consumer reporting agency is required to
5 complete actions required by that section regarding that information.

6 10.2.1.6 The Defendants have reported this account to all three bureaus and have updated
7 same for a period of six months in all three bureaus with erroneous and inaccurate
8 information through today as they have not provided validation of the alleged
9 debt/account.

10 10.3 Failure to mark the account in Dispute

11 10.3.1 According to the Fair Credit Reporting Act, section 623, Responsibilities of furnishing
12 information to consumer reporting agencies [15 USC § 1681s-2]

13 10.3.1.1 (a) Duty of furnishing information to provide accurate information

14 10.3.1.1.1 (1) Prohibition

15 10.3.1.2 (A) Reporting information with actual knowledge of errors. A person shall not
16 furnish any information relating to a consumer to any consumer-reporting agency if
17 the person knows or consciously avoids knowing that the information is inaccurate.

18 10.3.1.3 (B) Reporting information after notice and confirmation of errors. A person shall
19 not furnish information relating to a consumer to any consumer-reporting agency if

20 10.3.1.3.1 a. The person has been notified by the consumer at the address specified by the
21 person for such notices that specific information is inaccurate; and

22 10.3.1.3.2 b. The information is, in fact, inaccurate

23 10.3.1.4 (C) Duty to correct and update information. A person who

24 10.3.1.4.1 (A) regularly and in the ordinary course of business furnishes information to
25 one or more consumer reporting agencies about the person's transactions or
experiences with any consumer, and

10.3.1.4.2 (B) has furnished to a consumer reporting agency of that determination and
provide to the agency any corrections to that information, or any additional

information, that is necessary to make the information provided by the person
to the agency complete and accurate

XI. VIOLATIONS OF THE REAL ESTATE SETTLEMENTS PROCEDURES ACT

11.1 Plaintiffs repeat and re-allege each and every item and allegation above as if fully and completely set forth herein.

11.2 Defendants SELENE FINANCE LP, CREDIT SUISSE FINANCIAL CORPORATION, US BANK TRUST, NATIONAL ASSOCIATION and MERS are all required to comply with the requirements of the Real Estate Settlement Procedures Act ("RESPA"), 12 USC § 2601, et seq. in connection with the servicing of Plaintiffs' mortgage loan. Plaintiffs maintain that after numerous attempt to do so, have not been provided with timely and truthful information regarding the ownership and/or servicing of this mortgage loan by any Defendants once the loan was purportedly transferred for ownership and/or servicing improperly by Defendant MERS or whomever may be the current holder of said Promissory note, which is currently unknown due to the above listed Defendants refusal to provide Plaintiffs with a complete and accurate chain of title (beneficial interest).

11.3 Furthermore, notice of any of above purported transfers of ownership and/or servicing rights have not been provided to Plaintiffs in writing at least 15 days before the effective date of the transfer or at all. Plaintiffs' only notice was by way of a Notice of Trustee Sale posted on the door of the property. All of these actions violated RESPA, 12 USC § 2605.

XII. JURY DEMAND

12.1 Pursuant to Civil Rule 38, Plaintiffs demand a jury by trial on all issues and the required fee has or will be paid.

XIII. PRAYER FOR RELIEF

Wherefore, having set forth various causes of action against Defendants, Plaintiffs move for the following relief:

13.1 That judgment be entered against all of the Defendants awarding Plaintiffs damages in an amount to be established at the time of trial;

1 13.2 That the actions of all the Defendants be determined to be unfair and deceptive business practices in
2 violation of RCW 19.86, et seq. and that this Court award all such relief to Plaintiffs as he may e entitled to under
the Consumer Protection Act, including Treble damages and an award of costs and attorney's fees (if any);

3 13.3 That the Plaintiffs be awarded consequential damages, including attorney's fees (if any) incurred to bring
4 this action and all other attorney's fees (if any) incurred in defending against the actions of the Defendants
described more particularly above, in an amount to be fully established at the time of trial;

5 13.4 That the Plaintiffs be awarded their fees and cost pursuant to the written agreements upon which the
6 Defendants are attempting to rely;

7 13.5 That the Plaintiffs be awarded statutory damages available under any applicable statues, including
8 RESPA, 12 USC § 2605;

9 13.6 Plaintiffs demands judgment in the amount to be determined at the time of trail for Violations of Fair
10 Credit Reporting Act 15 USC §1681;

11 13.7 Plaintiffs Demands judgment in an amount to be determined at the time of trial for violations of Fair Debt
12 Collection Practices Act 15 USC § 1601; and

13 13.8 That the Court awards such other relief as it deems just and proper.

14 13.9 Defendants return the GENUINE ORIGINAL PROMISSORY NOTE and ALL MONEY PAID (by
15 Plaintiffs to Defendants, with a full disclosure of accounting of such) to Plaintiffs forthwith;

16 13.10 If Defendants are not able to return the GENUINE ORIGINAL PROMISSORY NOTE to Plaintiffs
17 forthwith then Defendants are therefore admitting to Defendants' unlawful attempt to convert real property without
cause and/or right.

18 13.11 Defendants present to Plaintiffs and this Court an Affidavit stipulating that Defendants have NO RIGHTS
19 to the real property in question.

20 13.12 If Defendants do not STATE THE CLAIM UNDER PENALTY OF PERJURY that Defendants are the
21 CREDITOR in this instant matter, Defendants agree to accept Judgment by Default in favor of Plaintiffs.

22 13.13 If Defendant- LAW OFFICES OF KAREN L GIBBSON, P.S does not STATE THE CLAIM UNDER
23 PENALTY OF PERJURY that Defendant- LAW OFFICES OF KAREN L GIBBSON, P.S is not earning directly
24 or indirectly or through any means whatsoever any material fees, percentages, kickbacks, credits or other material
25 benefits inconsistent with its position as an objective third party functionary, Defendant- LAW OFFICES OF

1 KAREN L GIBBSON, P.S is therefore admitting that the Defendant- LAW OFFICES OF KAREN L GIBBSON,
2 P.S is being or has been unjustly enriched by the sale and recording of Trustee Deed.

3 The Plaintiffs verified that these statements are true and correct to the best of his knowledge under
4 penalty of perjury.

5 RESPECTFULLY SUBMITTED: This ~~28~~th day of ~~January~~^{February}, in the year, of our Lord, 2013.
6 *Erik Moseid*

7 by *Erik Moseid*
8 Erik Moseid, *Pro Per*

9 by *Dianna Di Moseid*
10 Dianna Moseid, *Pro Per*

11 12708 167TH PLACE NORTHEAST
12 REDMOND, WASHINGTON 98052

13 Phone (206) 849-5365
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25

Verified Affidavit

IN WITNESS WHEREOF, we, ERIK MOSEID AND DIANNA MOSEID declare that we, having written the foregoing and know its contents to be true, certain, correct and complete, sworn to before our Creator and in the presence of two witnesses whose autographs appear below. The above is given freely and is under our full unlimited commercial liability.

Further, Affiants sayeth Naught.

Erik Moseid
Erik Moseid (seal)

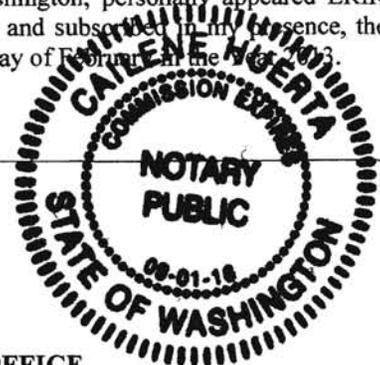
Dianna Moseid
Dianna Moseid (seal)

JURAT

State of WASHINGTON)
County of King) sworn and subscribed:

Before me, a Notary Public duly authorized by the State of Washington, personally appeared ERIK MOSEID AND DIANNA MOSEID, who have stated, affirmed to and subscribed in my presence, the contents of the foregoing Affidavit, as their testament on this 28th day of February of the year 2013.

Signature: *Caulue Huerta*
(seal)



VERIFIED NOTICE

ACCEPTANCE OF OATH OF OFFICE

NOTICE TO PRINCIPALS IS NOTICE TO AGENTS, NOTICE TO AGENTS IS NOTICE TO PRINCIPAL

To Agents and Actors for the state of Washington, Agents and Actors for the several states and Agents for the United States, their successors in interest, or assigns:

With respect, your Plainffs herby duly accepts your Oath of Office, being your open and binding offer of contract to form a firm and binding, private contract between you and Affiants. It is Plainffs' understanding that when you said "so help me God", you did swear, and are bound by your word that you would perform all of your promises including, but not limited to, your promise to uphold the Constitution of the united States of America and the Constitution of the State of Washington, which includes protecting all of your Plainffs' rights as an honorable man or woman, whose word is his or her bond, and your promise to honor your private contract with this Plainffs,

1 completed by this notice of acceptance, by keeping your promises, and not allow any third-party agents acting
without delegated or regulatory authority, to interfere in your duty to Plaintiffs.

2 This implied contract comes into full force by your actions to trespass upon the rights and freedoms of the lawful
living man and woman, ERIK MOSEID AND DIANNA MOSEID, whom you have openly sworn to protect.

3 Should any listed officer or agent fail to rebut this Acceptance of Oath of Office contract, this document shall serve
4 as your agreement by contract as written by tacit procurement.

5 **ACKNOWLEDGEMENT**

6
7
8 STATE OF Washington)
) Scilicet
9 COUNTY OF King)

10 On February 28th, 2013 before me Cailene Huerta, a Notary
11 Public personally appeared ERIK MOSEID AND DIANNA MOSEID who proved to be on the basis of
12 satisfactory evidence to be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
13 to me that he/she/they executed the same in his/her/their authorized capacity (ies) and by his/her/their signature on
14 the instrument the person(s) acted, or executed the instrument. I certify under PENALTY OF PERJURY under the
laws of the State of [Notary State] that the foregoing paragraph is true and correct.

15 WITNESS my hand and official seal.

16 Signature Cailene Huerta



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19 (Seal)

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Exhibit #1 - Deed of Trust

Return to: SMI-CREDIT SUISSE FINANCIAL
ATTENTION: MAILSTOP - TD 127
9700 BISSONNET, SUITE 1500
HOUSTON, TX 77036



20061129001410

CHICAGO TITLE DT 48.00
PAGE 01 OF 017
11/28/2006 13:28
KING COUNTY, WA

, more fully described on Legal Description attached on Page 13.

Property Tax Parcel Number: 252605913307

A PTN OF SW 1/4 OF NW 1/4 OF S 25-26-05
(Space Above This Line for Recording Data)

Loan No: 700482791

Data ID: 926

Borrower: DIANNA V MOSEID

DEED OF TRUST

122035.4 (7)
MIN: 100251207004827916

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated November 17, 2006, together with all Riders to this document.

(B) "Borrower" is DIANNA V MOSEID AND ERIK MOSEID, WIFE AND HUSBAND. Borrower is the trustor under this Security Instrument.

(C) "Lender" is CREDIT SUISSE FINANCIAL CORPORATION. Lender is A CORPORATION organized and existing under the laws of the State of DELAWARE. Lender's address is 302 CARNEGIE CENTER, PRINCETON, NEW JERSEY 08540.

(D) "Trustee" is LSI TITLE.

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

DLAM *EM*

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3048 1/01

(Page 1 of 13 Pages)



P+0700482791+0729+01+13+WACHNADT

Loan No: 700482791

Data ID: 926

(F) "Note" means the promissory note signed by Borrower and dated November 17, 2006. The Note states that Borrower owes Lender SIX HUNDRED THOUSAND and NO/100----Dollars (U.S. \$ 600,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than December 1, 2036.

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

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

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

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

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

BUM *an*

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3048 1/01 (Page 2 of 13 Pages)



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Loan No: 700482791

Data ID: 926

TRANSFER OF RIGHTS IN THE PROPERTY

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

, more fully described on Legal Description attached on Page 13.

which currently has the address of 12708 167TH PLACE NE,

REDMOND, WASHINGTON

[Street]

98052
[Zip Code]

("Property Address"):

[Handwritten signatures]

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3048 1/01 (Page 3 of 13 Pages)



P+0700482791+0726+03+13+WACNYADT

Loan No: 700482791

Data ID: 926

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

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

DUM *EW*

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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Loan No: 700482791

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3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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Loan No: 700482791

Data ID: 926

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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Loan No: 700482791

Data ID: 926

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

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

23. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. **Substitute Trustee.** In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. **Use of Property.** The Property is not used principally for agricultural purposes.

26. **Attorneys' Fees.** Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

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Loan No: 700482791
Borrower: DIANNA V MOSEID

Data ID: 926

LEGAL DESCRIPTION

Provide legal description here. Attach to the document to be recorded and file as one instrument.

Handwritten initials

(Page 13 of 13 Pages)



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CHICAGO TITLE INSURANCE COMPANY

Order No.: 001222035

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;
THENCE SOUTH 2°14'19" WEST ALONG THE WEST LINE THEREOF 30.00 FEET;
THENCE SOUTH 88°38'07" EAST PARALLEL WITH THE NORTH LINE OF SAID SUBDIVISION 1048.43 FEET;
THENCE SOUTH 34°19'36" WEST 234.15 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 30°04'04" EAST 496.40 FEET TO THE NORTH LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 25;
THENCE NORTH 88°44'18" WEST ALONG SAID NORTH LINE, 202.89 FEET TO THE NORTHWEST CORNER OF SAID EAST HALF;
THENCE SOUTH 2°13'02" WEST ALONG THE WEST LINE OF SAID EAST HALF 163.16 FEET TO THE NORTHERLY MARGIN OF NORTHEAST 124TH STREET;
THENCE SOUTH 64°07'59" WEST ALONG THE NORTHERLY MARGIN 148.80 FEET;
THENCE NORTH 13°57'24" WEST 528.05 FEET;
THENCE NORTH 67°15'00" EAST 114.97 FEET;
THENCE NORTH 50°15'45" EAST 151.40 FEET TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, UNDER AND ACROSS THE NORTH 30.00 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND OVER, UNDER AND ACROSS A STRIP OF LAND 30.00 FEET IN WIDTH, THE NORTHWESTERLY LINE THEREOF BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER;
THENCE SOUTH 2°14'19" WEST ALONG THE WEST LINE THEREOF 30.00 FEET;
THENCE SOUTH 88°38'07" EAST PARALLEL WITH THE NORTH LINE OF SAID SUBDIVISION 1048.43 FEET TO THE TRUE POINT OF BEGINNING OF THIS LINE DESCRIPTION;
THENCE SOUTH 24°19'36" WEST 234.15 FEET;
THENCE SOUTH 50°15'45" WEST 151.40 FEET;
THENCE SOUTH 57°16'00" WEST 329.56 FEET TO THE END OF THIS LINE DESCRIPTION;

EXCEPT ANY PORTION THEREOF LYING WITHIN THE MAIN TRACT.

LEGAL/RDA/0999

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Loan No:700482791
Borrower:DIANNA V MOSEID

Data ID: 926

ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In The Wall Street Journal)—Rate Caps)
(Interest Only / ARM)

THIS ADJUSTABLE RATE RIDER is made this 17th day of November, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to CREDIT SUISSE FINANCIAL CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

12708 167TH PLACE NE
REDMOND, WASHINGTON 98052
(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.125 %. The Note also provides for changes in the interest rate and the monthly payments as follows:

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest only by making payments every month for the first 120 payments (the "Interest-Only Period") in the amount sufficient to pay the interest as it accrues. Every month thereafter I will pay principal and interest by making payments in an amount sufficient to fully amortize the outstanding principal balance of the Note at the end of the Interest-Only Period over the remaining term of the Note. The principal and interest payment I pay may change as the interest rate I pay changes pursuant to Section 4 of this Note.

I will make monthly payments on the first day of each month beginning January 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on December 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my payments at 302 CARNEGIE CENTER, PRINCETON, NEW JERSEY 08540, or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial interest-only monthly payments will be in the amount of U.S. \$ 3,062.50. This amount may change.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of December, 2011, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

DM

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Loan No: 700482791

Data ID: 926

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE and ONE/FOURTH percentage points (3.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

Except as provided in Section 3(A) above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.1250 % or less than 3.2500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2.00 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 12.1250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

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

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

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

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

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

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

By Signing Below, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Dianna V. Mosbed(Sca)
 DIANNA V MOSEBED -Borrower

Erik Mosbed(Sca)
 ERIK MOSEBED -Borrower

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Loan No: 700482791

Data ID: 926

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY,
EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT
OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

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

Dianna V. Moseid (Seal)
DIANNA V MOSEID - Borrower

Erik Moseid (Seal)
ERIK MOSEID - Borrower

[Space Below This Line For Acknowledgment]

State of ~~CALIFORNIA~~ Washington §
County of KING §

On this day personally appeared before me DIANNA V MOSEID AND ERIK MOSEID to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 20th day of November, 2006.

[Seal]



Karen L. Mauck
Notary Public in and for the State of WA
residing at Snohomish

Karen L. Mauck
(Printed Name)

My commission expires: 11-2-2007

ADAAA em

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3048 1/01 (Page 12 of 13 Pages)



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Exhibit #2 – FI Appeal Brief to MERS Assignment, Lack of Standing, etc.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIK MOSEID and DIANNA MOSEID,

Plaintiffs,

v.

SELENE FINANCE LP, et al.

Defendants.

CASE NO. C13-363 MJP

ORDER GRANTING MOTION TO
DISMISS

This matter comes before the Court on Defendant's motion to dismiss all of Plaintiff's claims pursuant to Fed. R. Civ. P. 12(b)(6) with prejudice. (Dkt. No. 6.) Plaintiff did not respond to the motion. The Court reviewed the motion, the Complaint (Dkt. No. 1) and all related documents and GRANTS the motion to dismiss without prejudice.

Background

Pro Se Plaintiffs Erik Moseid and Dianna Moseid filed a complaint seeking a temporary restraining order and permanent injunction, wrongful foreclosure, breach of contract,

1 intentional infliction of emotional distress, slander of title, breach of fiduciary duty, breach of
2 quasi-fiduciary duty, violation of the Fair Debt Collection Practices Act, violations of the Fair
3 Credit Reporting Act, and violations of RESPA on February 28, 2013 around 1:00 p.m. (Dkt.
4 No. 1.) They filed at the same time a motion for a temporary restraining order (“TRO”) (Dkt. No.
5 2), seeking to stop the foreclosure sale of their home, scheduled for March 1, 2013. (Dkt. No. 1-1
6 at 138.) The Court denied the motion for a temporary restraining order. (Dkt. No. 3.)

7
8 Plaintiffs applied for a home loan from defendant Credit Suisse Financial Corporation
9 (“Credit Suisse”) in 2006 and executed a Deed of Trust, listing the beneficiary as Mortgage
10 Electronic Registration System (“MERS”). (Dkt. No. 2 at 2.) On or about May 27, 2011,
11 Plaintiffs received a notice from Credit Suisse of transfer to creditor Defendant US Bank Trust,
12 “solely as owner trustee for CPCA Trust 1 [sic.],” making them the trustee effective March 30,
13 2011. (*Id.* at 3.) Plaintiffs allege there is no assignment of the Deed of Trust recorded in King
14 County and no Defendant has provided documentation showing US Bank’s interest as creditor,
15 lender or holder of the promissory note or deed of trust executed by the Plaintiffs. (*Id.*) Plaintiffs
16 do not dispute they owe the amount in default, \$598,290.00. (Dkt. No. 1-1 at 138.)

17 Defendants move to dismiss all of Plaintiffs’ claims with prejudice for failure to state a
18 claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. No. 6 at 2.)
19 Defendants argue Plaintiffs include no facts regarding alleged wrongdoing by any Defendant, do
20 not reference any facts related to the subject property, loan, or Deed of Trust, and do not allege
21 any facts regarding the origination of the loan. (*Id.* at 7.) Instead, Defendants say Plaintiffs
22 merely recite pleading requirements for numerous causes of action. (*Id.*) Plaintiffs submitted no
23 briefing in response to the motion. Plaintiffs have not acted in the case since the denial of the
24 temporary restraining order.

1 Analysis

2 Local Civil Rule 7(b)(2) says "If a party fails to file papers in opposition to a motion,
3 such failure may be considered by the court as an admission that the motion has merit." Because
4 Plaintiff failed to respond, Defendants' allegations on all claims are deemed to have merit
5 pursuant to CR 7(b)(2). The motion to dismiss is GRANTED and all claims in this case are
6 DISMISSED. The claims are dismissed without prejudice.

7 Conclusion

8 Because Plaintiffs have not responded to Defendants' motion to dismiss, Defendant's
9 allegations are deemed to have merit and this case is DISMISSED in its entirety, without
10 prejudice.

11
12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated this 23rd day of April, 2013.

14
15 

16 Marsha J. Pechman
17 Chief United States District Judge

AFFIDAVIT OF SERVICE

The undersigned declares as follows:

On May 21, 2014, I served the foregoing documents: **RESPONDENT'S BRIEF BY SELENE FINANCE LP AS SERVICER AND ATTORNEY IN FACT TO U.S. BANK, TRUST, N.A. AS INDENTURE TRUSTEE OF CASTLE PEAK 2011-1 LOAN TRUST, MORTGAGE BACKED NOTES, SERIES 2011-1, ERRONEOUSLY SUED AS U.S. BANK, N.A. AS TRUSTEE FOR SERIES #2011-1 CERTIFICATES, APPENDIX** on the following individuals by U.S. Mail, Postage Prepaid:

Erik Moseid
12708 167th Place N.E.
Redmond, Washington 98052
Tel: (206) 849-5365
Appellant in Pro Per

Dianna Moseid
12708 167th Place N.E.
Redmond, Washington 98052
Tel: (206) 849-5365
Appellant in Pro Per

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAY 22 AM 9:38

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

DATED: this ^{21st} 9th day of May, 2014, at Newport Beach, California.



Steven E. Bennett