

Attorneys for Plaintiff

**SUPREME COURT OF THE STATE OF OHIO –  
COUNTY OF MAHONING**

**Jamila Yasmine Bey EX REL KARLA ) Case No. 4:14 CV 00139**

**SELDON AND Ja’far Amir Bey EX REL )**

**LAURENCE SELDON ) COMPLAINT FOR:**

**) 1. LACK OF STANDING TO**

**) FORECLOSE;**

**) 2. FRAUD IN THE CONCEALMENT;**

**) 3. FRAUD IN THE INDUCEMENT;**

**) 4. INTENTIONAL INFLICTION OF**

**) EMOTIONAL DISTRESS;**

**) 5. QUIET TITLE;**

**) 6. SLANDER OF TITLE;**

**) 7. DECLARATORY RELIEF;**

**) 8. VIOLATIONS OF TILA;**

**) 9. VIOLATIONS OF RESPA;**

**) 10. VIOLATIONS OF HOEPA;**

**) 11. RECISSION.**

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**Defendants.**

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16 COMES NOW THE PLAINTIFF, Jamila Yasmine Bey EX REL KARLA SELDON AND  
17 Ja'far Amir Bey EX REL LAURENCE SELDON ("PLAINTIFF"), COMPLAINING OF  
18 THE DEFENDANTS AS NAMED ABOVE, AND EACH OF THEM, AS FOLLOWS:

19 **I. THE PARTIES**

20  
21 1. Plaintiff is now, and at all times relevant to this action, a resident of the County of  
22 MAHONING, State of OHIO.

23 2. Defendant, WELLS FARGO BANK, NA (herein referred to as "WELLS FARGO") is a  
24 National Banking Association, doing business in the County of MAHONING, State of OHIO.  
25 Plaintiff is further informed and believes, and thereon alleges, that WELLS FARGO is the  
26 Originator of the loan.

27 3. Defendant, HSBC BANK USA, NA (herein referred to as "HSBC BANK"), as Trustee  
28 for securitized trust WELLS FARGO MORTGAGE BACKED SECURITIES 2008-AR1  
TRUST (herein referred to as "2008-AR1 TRUST"). Plaintiff is informed and believes, and  
thereon alleges that, Defendant HSBC BANK, is a national banking association, doing business  
in the County of MAHONING, State of OHIO and is the purported Master Servicer for

1 Securitized Trust and/or a purported participant in the imperfect securitization of the Note  
2 and/or the Mortgage/Deed of Trust as more particularly described in this Complaint.

3 4. Defendant, WELLS FARGO BANK, NA. Plaintiff is informed and believes, and  
4 thereon alleges that, Defendant WELLS FARGO BANK, NA, is a corporation, doing business  
5 in the County of MAHONING, State of OHIO and is the purported Sponsor for Securitized  
6 Trust and/or a purported participant in the imperfect securitization of the Note and/or the  
7 Mortgage/Deed of Trust as more particularly described in this Complaint.

8 5. Defendant, WELLS FARGO ASSET SECURITIES CORPORATION. Plaintiff is  
9 informed and believes, and thereon alleges that, Defendant WELLS FARGO ASSET  
10 SECURITIES CORPORATION, is a corporation, doing business in the County of  
11 MAHONING, State of OHIO and is the purported Depositor for Securitized Trust and/or a  
12 purported participant in the imperfect securitization of the Note and/or the Mortgage/Deed of  
13 Trust as more particularly described in this Complaint.

14 6. Defendant, WELLS FARGO BANK, NA. Plaintiff is informed and believes, and  
15 thereon alleges that, Defendant WELLS FARGO BANK, NA, is a corporation, doing business  
16 in the County of MAHONING, State of OHIO and is the purported Master Servicer for  
17 Securitized Trust and/or a purported participant in the imperfect securitization of the Note  
18 and/or the Mortgage/Deed of Trust as more particularly described in this Complaint.

19 7. Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., aka  
20 MERS ("MERS"), Plaintiff is informed and believes, and thereon alleges, that MERS is a  
21 corporation duly organized and existing under the laws of OHIO, whose last known address is  
22 1818 Library Street, Suite 300, Reston, Virginia 20190; website: <http://www.mersinc.org>.  
23 MERS is doing business in the County of MAHONING, State of OHIO. Plaintiff is further  
24 informed and believes, and thereon alleges, that Defendant MERS is the purported Beneficiary  
25 under the Mortgage/Deed of Trust and/or is a purported participant in the imperfect  
26 securitization of the Note and/or the Mortgage/Deed of Trust, as more particularly described in  
27 this Complaint.

28 8. At all times relevant to this action, Plaintiff has owned the Property located at 2620  
STOCKER AVENUE YOUNGSTOWN, OH 44505 (the "Property").

9. Plaintiff does not know the true names, capacities, or basis for liability of Defendants  
sued herein as Does 1 through 100, inclusive, as each fictitiously named Defendant is in some

1 manner liable to Plaintiff, or claims some right, title, or interest in the Property. Plaintiff will  
2 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is  
3 informed and believe, and therefore allege, that at all relevant times mentioned in this  
4 Complaint, each of the fictitiously named Defendants are responsible in some manner for the  
5 injuries and damages to Plaintiff so alleged and that such injuries and damages were  
6 proximately caused by such Defendants, and each of them.

7 10. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
8 mentioned, each of the Defendants were the agents, employees, servants and/or the joint-  
9 venturers of the remaining Defendants, and each of them, and in doing the things alleged  
10 herein below, were acting within the course and scope of such agency, employment and/or  
11 joint venture.

## 12 **II. JURISDICTION**

13  
14 11. The transactions and events which are the subject matter of this Complaint all occurred  
15 within the County of MAHONING, State of OHIO.

16 12. The Property is located within the County of MAHONING, State of OHIO with an  
17 address of 2620 STOCKER AVENUE YOUNGSTOWN, OH 44505.

## 18 **III. INTRODUCTORY ALLEGATIONS**

19  
20 13. This is an action brought by Plaintiff for declaratory judgment, injunctive and  
21 equitable relief, and for compensatory, special, general and punitive damages.

22 14. Plaintiff, homeowner, disputes the title and ownership of the real property in question  
23 (the "Home"), which is the subject of this action, in that the originating mortgage lender, and  
24 others alleged to have ownership of Plaintiff's mortgage note and/or Mortgage/Deed of Trust,  
25 have unlawfully sold, assigned and/or transferred their ownership and security interest in a  
26 Promissory Note and Mortgage/Deed of Trust related to the Property, and, thus, do not have  
27 lawful ownership or a security interest in Plaintiff's Home which is described in detail herein.  
28 For these reasons, the Court should Quiet Title to the property in Plaintiff's name.

15. Additionally, Plaintiff homeowner brings causes of action against all defendants for  
fraud, intentional infliction of emotional distress, rescission, declaratory relief based, and  
violations of T.I.L.A., R.E.S.P.A., and H.O.E.P.A, upon the facts and circumstances

1 surrounding Plaintiff's original loan transaction and subsequent securitization. Defendants'  
2 violations of these laws are additional reasons this Court should quiet title in Plaintiff's  
3 property in Plaintiff and award damages, rescission, declaratory judgment, and injunctive relief  
4 as requested below.

5 16. From 1998 until the financial crash of 2008-2009, over 60 million home loans were  
6 sold by originating lender banks to investment banks to be securitized in a complex series of  
7 billions of transactions. The Plaintiff's home loan was one of the 60 million notes that were  
8 securitized.

9 17. Securitization is the process whereby mortgage loans are turned into securities, or  
10 bonds, and sold to investors by Wall Street and other firms. The purpose is to provide a large  
11 supply of money to lenders for originating loans, and to provide investments to bond holders  
12 which were expected to be relatively safe. The procedure for selling of the loans was to create  
13 a situation whereby certain tax laws known as the Real Estate Mortgage Investment Conduit  
14 (hereinafter "REMIC") Act were observed, and whereby the Issuing Entities and the Lenders  
15 would be protected from either entity going into bankruptcy. In order to achieve the desired  
16 "bankruptcy remoteness," numerous "True Sales" of the loans had to occur, in which loans  
17 were sold and transferred to the different parties to the securitization.

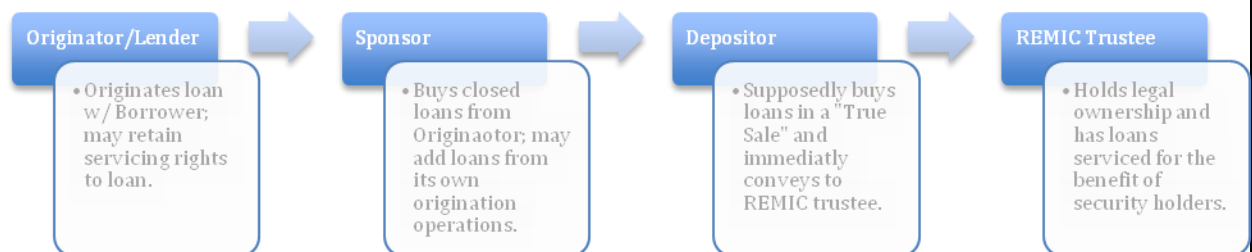
18 18. A "True Sale" of the loan would be a circumstance whereby one party owned the Note  
19 and then sold it to another party. An offer would be made, accepted and compensation given to  
20 the "seller" in return for the Note. The Notes would be transferred, and the Deeds of Trust  
21 assigned to the buyers of the Note, with an Assignment or Transfer made every step of the  
22 way, and, furthermore, each Note would be indorsed to the next party by the previous assignee  
23 or transferee of record.

24 19. Each REMIC Trust created by the investment banks, usually under OHIO Law, would  
25 be funded with thousands to tens-of-thousands of mortgage notes. In order to maintain their  
26 bankruptcy-protected status, REMIC's had to have closing dates by which every mortgage note  
27 and/or security device like a Mortgage of Mortgage/Deed of Trust was to be sold to the  
28 REMIC and had to be "owned" by the REMIC. Once the REMIC closed, it could accept no  
more mortgage notes under the terms of REMIC law, and it would begin selling securities  
backed by payments from homeowners on the notes it "owned".

20. How a particular mortgage loan ended up being transferred to a REMIC in the securitization process is governed by a contract known as a Pooling and Servicing Agreement (“PSA”). The PSA is a Trust Agreement required to be filed under penalty of perjury with the United States Securities and Exchange Commission (“SEC”) and which, along with another document, the Mortgage Loan Purchase Agreement (“MLPA”), is the operative securitization document created by the finance and securitization industry to memorialize securitization transactions.

21. When the Plaintiff in this case closed on his/her property, her original lender (or other entity claiming original or near original ownership of the note) signed a PSA that governed plaintiff’s particular mortgage note. The PSA agreement, as described in more detail below, detailed the closing date by which the homeowner’s loan must be “sold” to the REMIC, and described exactly how the homeowner’s note is to find its way from the original lender to the REMIC trust.

22. A typical PSA calls for a homeowner’s note to be transferred at least four times to different key parties before it comes into possession of the REMIC trustee. Here is a chart detailing the typical key party assignment chain required by a typical PSA:



23. As part of the process, the banks almost universally separated the promissory note from the Mortgage/Deed of Trust. Under the common law, the owner of the note has the right to payments on the note, and the owner of the Mortgage/Deed of Trust has the right to foreclose on the homeowner if the homeowner defaults on the note. Traditionally, before investment banks began securitizing mortgage notes, the holder of the note would universally hold the Mortgage/Deed of Trust. This made sense because the party with the right to collect payments on the note would want to be able to foreclose using the Mortgage/Deed of Trust if the homeowner defaulted.

1       24. However, to streamline the securitization process, the investment banks created an  
2 entity called Mortgage Electronic Registrations System (“MERS”), who is one of the  
3 defendants in this case. The investment banks, in addition to using MERS’ electronic database  
4 to track the buying, selling, and assignments of securitized mortgage notes (bypassing the  
5 county clerks’ offices), would transfer deeds of trust to MERS, thereby separating the mortgage  
6 note from the Mortgage/Deed of Trust. MERS would hold the Mortgage/Deed of Trust for  
7 whoever later claimed to be the “owner” of the homeowners’ mortgage note.

8       25. Plaintiff alleges that Defendants, and each of them, cannot show proper receipt,  
9 possession, transfer, negotiations, assignment and ownership of the borrower’s original  
10 Promissory Note and Mortgage/Deed of Trust, resulting in imperfect security interests and  
11 claims.

12       26. Plaintiff further alleges that Defendants, and each of them, cannot establish possession  
13 and proper transfer and/or indorsement of the Promissory Note and/or proper assignment of the  
14 Mortgage/Deed of Trust herein; therefore, none of the Defendants have perfected any claim of  
15 title or security interest in the Property. Defendants, and each of them, do not have the ability to  
16 establish that the mortgages that secure the indebtedness, or Note, were legally or properly  
17 acquired.

18       27. Plaintiff alleges that an actual controversy has arisen and now exists between the  
19 Plaintiff and Defendants, and each of them. Plaintiff desires a judicial determination and  
20 declaration of its rights with regard to the Property and the corresponding Promissory Note and  
21 Mortgage/Deed of Trust.

22       28. Plaintiff also seeks redress from Defendants identified herein for damages, for other  
23 injunctive relief, and for cancellation of written instruments based upon:

- 24           a. An invalid and unperfected security interest in Plaintiff’s Home hereinafter  
25           described;
- 26
- 27           b. Void “True Sale(s)” violating OHIO law and express terms of the Pooling and  
28           Servicing Agreement (“PSA”) governing the securitization of Plaintiff’s  
            mortgage;
- c. An incomplete and ineffectual perfection of a security interest in Plaintiff’s

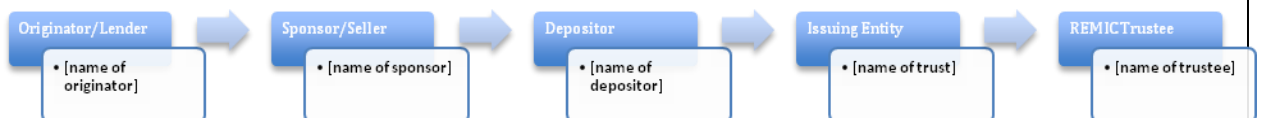
Home;

#### IV. SPECIFIC ALLEGATIONS

29. On or about FEBRUARY 27, 2008 (hereinafter referred to as “Closing Date”) Plaintiff entered into a consumer credit transaction with WELLS FARGO by obtaining a \$665,894,100 mortgage loan secured by Plaintiff’s principal residence, (Subject Property). This note was secured by a First Mortgage/Trust Deed on the Property in favor of WELLS FARGO.

30. Plaintiff’s loan was securitized, with the Note not being properly transferred to Defendant, HSBC BANK, acting as the Trustee for the 2008-AR1 TRUST Trust holding plaintiff’s note. Documents filed with the SEC by the securitization participants allegedly claim that the note and Mortgage/Deed of Trust at issue in this case were sold, transferred and securitized by Defendants, with other loans and mortgages with an aggregate principal balance of approximately \$68,669.00 into the 2008-AR1 TRUST Trust, which is a Common Law Trust formed pursuant to OHIO law. A detailed description of the mortgage loans which form the 2008-AR1 TRUST Trust is included in Form 424B5 (“the Prospectus”), which has been duly filed with the SEC and which can be accessed through the above mentioned footnote.

31. An expert, certified, forensic audit of the Plaintiff’s loan documents reveals that Plaintiff’s mortgage note was required to at least go through this assignment chain of key parties before it reached the REMIC trustee it was destined for:



32. The Plaintiff’s PSA requires that his/her note or Mortgage/Deed of Trust had to be indorsed and assigned, or transferred, respectively, to the trust and executed by multiple intervening parties in the above chain of assignment before it reached the REMIC Trustee.



1 33. Plaintiff executed a series of documents, including but not limited to a Note and  
2 Mortgage/Deed of Trust, securing the Property in the amount of note. The original beneficiary  
3 and nominee under the Mortgage/Deed of Trust was MERS.

4 34. Plaintiff is informed and believes, and thereon alleges, that the purchase mortgage on  
5 the Property, the debt or obligation evidenced by the Note and the Mortgage/Deed of Trust  
6 executed by Plaintiff in favour of the original lender and other Defendants, regarding the  
7 Property, was not properly assigned and/or transferred to Defendants operating the pooled  
8 mortgage funds or REMIC trusts in accordance with the PSA and/or OHIO law to the entities  
9 making and receiving the purported assignments to this trust.

10 35. Plaintiff alleges that the PSA requires that each Note or Mortgage/Deed of Trust had to  
11 be indorsed, assigned, or transferred, respectively, to the trust and executed by multiple  
12 intervening parties before it reached the Trust. Here, neither the Note and/or the  
13 Mortgage/Deed of Trust, or both, was assigned to the Securitized Trust by the closing date.  
14 Therefore, under the PSA, any assignments of the Mortgage/Deed of Trust beyond the  
15 specified closing date for the Trust are void.

16 36. Plaintiff further alleges that even if the Mortgage/Mortgage/Deed of Trust had been  
17 transferred into the Trust by the closing date, the transaction is still void as the Note would not  
18 have been transferred according to the requirements of the PSA, since the PSA requires a  
19 complete and unbroken chain of transfers/assignments to and from each intervening party.

20 37. Plaintiff is informed and believes, and thereon alleges, that the 2008-AR1 TRUST  
21 Trust had no officers or directors and no continuing duties other than to hold assets and to issue  
22 the series of certificates of investment in mortgage backed securities as described in the  
23 Prospectus identified herein below. A detailed description of the mortgage loans which form  
24 the 2008-AR1 TRUST Trust is included in Form 424B5 ("the Prospectus"), which has been  
25 duly filed with the SEC and which can be accessed through the below mentioned footnote.<sup>1</sup>

26 38. Plaintiff also alleges that the Note was secured by the Mortgage/Deed of Trust.  
27 Plaintiff alleges that as of the date of the filing of this Complaint, the Mortgage/Deed of Trust  
28 had not been legally assigned to any other party or entity.

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<sup>1</sup> <http://www.sec.gov/Archives/edgar/data/815018/000116231807000567/m0565424b5.htm>

1 39. Plaintiff is informed and believes, that Defendant HSBC BANK, alleges that it is the  
2 “holder and owner” of the Note and the beneficiary of the Mortgage/Deed of Trust. However,  
3 the Note and Mortgage/Deed of Trust identify the mortgagee and note holder as the original  
4 lending institution or Mortgage Originator. Documents state that the original lender allegedly  
5 sold the mortgage loan to 2008-AR1 TRUST Trust.

6 40. Plaintiff further alleges that no documents or records can be produced that demonstrate  
7 that prior to the closing date for 2008-AR1 TRUST Trust, the Note was duly indorsed,  
8 transferred and delivered to 2008-AR1 TRUST Trust, including all intervening transfers. Nor  
9 can any documents or records be produced that demonstrate that prior to the closing date, the  
10 Mortgage/Deed of Trust was duly assigned, transferred and delivered to 2008-AR1 TRUST  
11 Trust, via the trustee HSBC BANK, including all intervening transfers/assignments.

12 41. Plaintiff further alleges that any documents that purport to transfer any interest in the  
13 Note to 2008-AR1 TRUST Trust after the Trust closing date are void as a matter of law,  
14 pursuant to OHIO trust law and relevant portions of the PSA.

15 42. Plaintiff’s debt or obligation did not comply with OHIO law, and/or other laws and  
16 statutes, and, thus, do not constitute valid and enforceable “True Sales.” Any security interest  
17 in the Property was, thus, never perfected. The alleged holder of the Note is not the beneficiary  
18 of the Mortgage/Deed of Trust. The alleged beneficiary of Plaintiff’s Mortgage/Deed of Trust  
19 does not have the requisite title, perfected security interest or standing to proceed in a  
20 foreclosure; and/or is not the real party in interest, or agent or nominee of the real apt in  
21 interest, with regard to any action taken or to be taken against the Property.

22 43. Plaintiff is also informed and believes, and thereon allegess that at all times herein  
23 mentioned, and any assignment of a Mortgage/Deed of Trust without proper transfer of the  
24 obligation that it secures is a legal nullity.

25 44. In order for and defendant, including the trusteeof the Securitized Trust, to have a valid  
26 and enforceable secured claim against Plaintiff’s Home, the party claiming the right to  
27 foreclose must prove and certify to all parties that, among other things required under the PSA:

- 28 a. There was a complete and unbroken chain of indorsements and transfers of the  
Note from and to each party to the securitization transaction (which should be  
from the (A) Mortgage Originator to the (B) Sponsor to the (C) Depositor to the

1 (D) Trust/Trustee, and that all of these indorsements and transfers were  
2 completed prior to the Trust closing dates (see discussion below); and  
3

4 b. The Trustee of the Securitized Trust had actual physical possession of the Note  
5 at that point in time, when all indorsements and assignments had been  
6 completed. Absent such proof, Plaintiff alleges that the Trust cannot  
7 demonstrate that it had perfected its security interest in Plaintiff's Home that is  
8 the subject of this action. Therefore, if the Defendants, and each of them, did  
9 not hold and possess the Note on or before the closing date of the Trust herein,  
10 they are estopped and precluded from asserting any secured or unsecured claim  
11 in this case, through their agents or otherwise.  
12

13 45. Plaintiff is informed and believes, and thereon alleges, that pursuant to the terms of the  
14 PSA, the Mortgage Originator (i.e., the original lender herein) agreed to transfer and indorse to  
15 the Trustee for the Securitized Trust, without recourse, including all intervening transfers and  
16 assignments, all of its right, title and interest in and to the mortgage loan (Note) of Plaintiff's  
17 herein and all other mortgage loans identified in the PSA.

18 46. Plaintiff is further informed and believes, and thereon alleges, that the PSA provides  
19 that the transfers and assignments are absolute, were made for valuable consideration, to wit, in  
20 exchange for the certificates described in the PSA, and were intended by the parties to be a  
21 "bona fide" or a "True Sale." Since, as alleged herein below, True Sales did not actually occur,  
22 Plaintiff alleges that the Defendant Trustees are estopped and precluded from asserting any  
23 secured or unsecured claim in this case.

24 47. Plaintiff is further informed and believes, and thereon alleges, that as a result of the  
25 PSA and other documents signed under oath in relation thereto, the Mortgage Originator,  
26 sponsor and Depositor are estopped from claiming any interest in the Note that is allegedly  
27 secured by the Mortgage/Deed of Trust on Plaintiff's Home herein.

28 48. Plaintiff is informed and believes, and thereon alleges, that the Note in this case and  
the other mortgage loans identified in the PSA, were never actually transferred and delivered  
by the Mortgage Originator to the Sponsor or to the Depositor nor from the Depositor to the  
Trustee for the Securitized Trust. Plaintiff further alleges, on information and belief, that the

1 PSA herein provides that the Mortgage Files of the Mortgages were to be delivered to 2008-  
2 AR1 TRUST Trust, which Mortgage Files include the original Deeds of Trust, herein.

3 49. Based upon the foregoing, Plaintiff is further informed and believes, and thereon  
4 alleges, that the following deficiencies exist, in the “True Sale” and securitization process as to  
5 this Mortgage/Deed of Trust which renders invalid any security interest in the Plaintiff’s  
6 mortgage, including, but not limited to:

- 7 a. The splitting or separation of title, ownership and interest in Plaintiff’s Note and  
8 Mortgage/Deed of Trust of which the original lender is the holder, owner and  
9 beneficiary of Plaintiff’s Mortgage/Deed of Trust;
- 10  
11 b. When the loan was sold to each intervening entity, there were no Assignments  
12 of the Mortgage/Deed of Trust to or from any intervening entity at the time of  
13 the sale. Therefore, “True Sales” could not and did not occur;
- 14  
15 c. The failure to assign and transfer the beneficial interest in Plaintiff’s  
16 Mortgage/Deed of Trust to HSBC BANK , in accordance with the PSA of the  
17 Defendants, as Securitization Participants;
- 18  
19 d. The failure to indorse, assign and transfer Plaintiff’s Note and/or mortgage to  
20 Defendant HSBC BANK, as Trustee for 2008-AR1 TRUST Trust, in accordance  
21 with the PSA and applicable OHIO law and/or the Uniform Commercial Code;
- 22  
23 e. No Assignments of Beneficiary or Indorsements of the Note to each of the  
24 intervening entities in the transaction ever occurred under OHIO law, which is  
25 conclusive proof that no true sales occurred as required under the PSA filed with  
26 the SEC; and
- 27  
28 f. Defendants, and each of them, violated the pertinent terms of the PSA.

50. Plaintiff, therefore, alleges, upon information and belief, that none of the parties to  
neither the securitization transaction, nor any of the Defendants in this case, hold a perfected

1 and secured claim in the Property; and that all Defendants are estopped and precluded from  
2 asserting an unsecured claim against Plaintiff's estate

3 51. Furthermore, the terms of the finance transaction with WELLS FARGO are not clear  
4 or conspicuous, nor consistent, and are illegal which violates several statutes and is in essence  
5 creates a fraudulent and unenforceable loan. Further, this loan was underwritten without proper  
6 due diligence by WELLS FARGO as evidenced by their failure to verify borrower's income  
7 utilizing signed IRS Income Tax Disclosure Form 4506T which would have provided past  
8 borrower tax returns. WELLS FARGO also used a "GDW Cost of Savings" as the Index for  
9 the basis of this loan. Because the Lender controls this Index and it is directly based upon the  
10 average rate of interest WELLS FARGO parent company, it was not a valid index for the basis  
11 of the loan.

12 52. In addition, and unbeknownst to Plaintiff, WELLS FARGO illegally, deceptively  
13 and/or otherwise unjustly, qualified Plaintiff for a loan which WELLS FARGO knew or should  
14 have known that Plaintiff could not qualify for or afford by, for example, the underwriter has  
15 approved this loan based upon credit scores and the borrower's Stated Income only. Had  
16 WELLS FARGO used a more accurate and appropriate factor, such as Tax Forms and a more  
17 determinative level of scrutiny of determining comply with the requirement to provide Plaintiff  
18 with a Mortgage Loan Origination Agreement the debt to income ratio, Plaintiff would not  
19 have qualified for the loan in the first place. Consequently, WELLS FARGO sold Plaintiff a  
20 loan product that it knew or should have known would never be able to be fully paid back by  
21 Plaintiff. WELLS FARGO ignored long-standing economic principals of underwriting and  
22 instead, knowingly, liberally, greedily and without any regard for Plaintiff's rights sold  
23 Plaintiff a deceptive loan product.

24 53. There was no determination of the ability of the borrower to repay the loan, with  
25 complete disregard for the Guidance Letters issued by Federal Agencies and even Federal and  
26 State Law.

27 54. Additionally, Defendants, and each of them, neither explained the workings of the  
28 entire mortgage loan transaction, how the rates, finance charges, costs and fees were computed,  
nor the inherent volatility of the loan product(s) provided by Defendants.

1 55. The purpose of entering into the above-described mortgage loan transactions was for  
2 Plaintiff to eventually own the Property. That purpose was knowingly and intentionally  
3 thwarted and indeed made impossible by Defendants' combined actions as alleged herein.

4 **V. FIRST CAUSE OF ACTION:**

5 **LACK OF STANDING/WRONGFUL FORECLOSURE**

6  
7 **A. No Defendant has Standing to Foreclose**

8  
9 56. Plaintiff re-alleges and incorporatess by reference all preceding paragraphs as though  
10 fully set forth herein.

11 57. An actual controversy has arisen and now exists between Plaintiff and Defendants  
12 specified hereinabove, regarding their respective rights and duties, in that Plaintiff contends  
13 that Defendants, and each of them, do not have the right to foreclose on the Property because  
14 Defendants, and each of them, have failed to perfect any security interest in the Property, or  
15 cannot prove to the court they have a valid interest as a real party in interest to foreclose. Thus,  
16 the purported power of sale, or power to foreclose judicially, by the above specified  
17 Defendants, and each of them, no longer applies.

18 58. Plaintiff is informed and believes and there upon allege that the only individual who  
19 has standing to foreclose is the holder of the note because they have a beneficial interest. The  
20 only individuals who are the holder of the note are the certificate holders of the securitized  
21 trust because they are the end users and pay taxes on their interest gains; furthermore, all of the  
22 banks or other entities holding the note in the middle of the chain of transfers were paid in full.

23 59. Plaintiff further contends that the above specified Defendants, and each of them, do not  
24 have the right to foreclose on the Property because said Defendants, and each of them, did not  
25 properly comply with the terms of Defendants' own securitization requirements (contained in  
26 the PSA) and falsely or fraudulently prepared documents required for Defendants, and each of  
27 them, to foreclose as a calculated and fraudulent business practice.

28 60. Plaintiff requests that this Court find that the purported power of sale contained in the  
Note and Mortgage/Deed of Trust has no force and effect at this time, because Defendants'  
actions in the processing, handling and attempted foreclosure of this loan involved numerous  
fraudulent, false, deceptive and misleading practices, including, but not limited to, violations of

1 State laws designed to protect borrowers, which has directly caused Plaintiff to be at an  
2 equitable disadvantage to Defendants, and each of them. Plaintiff further requests that title to  
3 the Property remain in its name, with said Mortgage/Deed of Trust remaining in beneficiaries'  
4 name, during the pendency of this litigation, and deem that any attempted sale of the Property  
5 is "unlawful and void".

6 **B. Defendant MERS Cannot be a Real Party in Interest in a Securitized Mortgage**

7  
8 61. Since the creation of Plaintiff's Note herein and Mortgage/Deed of Trust, Defendant  
9 MERS was named the "beneficiary" of the Mortgage/Deed of Trust.

10 62. Plaintiff is informed and believes, and thereon alleges, that Defendant MERS lacks the  
11 authority under its corporate charter to foreclose a mortgage, or to own or transfer an interest in  
12 a securitized mortgage because MERS charter limits MERS' powers and duties to functioning  
13 as an electronic registration system of certain types of securities.

14 63. Plaintiff is informed and believes, and thereon alleges, that in order to conduct a  
15 foreclosure action, a person or entity must have standing.

16 64. Plaintiff is informed and believes, and thereon alleges, that pursuant to OHIO law, to  
17 perfect the transfer of mortgage paper as collateral, the owner should physically deliver the  
18 note to the transferee. Without physical transfer, the sale of the note is invalid as a fraudulent  
19 conveyance or as unperfected.

20 65. The Note in this action identifies the entity to whom it was payable, the original lender.  
21 Therefore, the Note herein cannot be transferred unless it is indorsed; the attachments to the  
22 notice of default do not establish that indorsements were made, nor are there any other notices  
23 which establish that the original lender indorsed and sold the note to another party.

24 66. Furthermore, insofar as the parties to the securitization of Plaintiff's Note and  
25 Mortgage/Deed of Trust base their claim that the Note was transferred or assigned to  
26 Defendant HSBC BANK, the Trustee of the Securitized Mortgage herein, by the original  
27 lender, it is well established state law that the assignment of a Mortgage/Deed of Trust does not  
28 automatically assign the underlying promissory note and right to be paid and the security  
interest is incident of the debt.

67. Pursuant to state law, to perfect the transfer of mortgage papers as collateral for a debt,  
the owner should physically deliver the note to the transferee. Without physical transfer, the

1 sale of the note is invalid as a fraudulent conveyance, or as unperfected. The Note herein  
2 specifically identifies the party to whom it was payable to and the Note, therefore, cannot be  
3 transferred unless it is indorsed.

4 68. Defendants, and each of them, cannot produce any evidence that the Promissory Note  
5 has been transferred; therefore, Defendant MERS could only transfer whatever interest it had  
6 in the Mortgage/Deed of Trust herein. The Promissory Note and Mortgage/Deed of Trust are  
7 inseparable: an assignment of the Note carries the mortgage (ie, Mortgage/Deed of Trust) with  
8 it, while an assignment of the Mortgage/Deed of Trust alone is a nullity.<sup>2</sup> Therefore, if one  
9 party receives the Note and another party receives the Mortgage/Deed of Trust (as in this case),  
10 the holder of the Note prevails regardless of the order in which the interests were transferred.

11 69. Defendants MERS has failed to submit documents authorizing MERS, as nominee for  
12 the original lender, to assign the subject mortgage to the foreclosing trustee. Hence, MERS  
13 lacked authority as mere nominee to assign Plaintiff's mortgage, making any assignment from  
14 MERS defective.

15 70. In the instant action, MERS, as the nominee not only lacks authority to assign the  
16 mortgage, but cannot demonstrate the Trustee's knowledge or assent to the assignment by  
17 MERS to the foreclosing trustee.

18 71. Any attempt to transfer the beneficial interest of a trust deed without actual ownership  
19 of the underlying note, is void under law. Therefore, Defendant, MERS, cannot establish that it  
20 is entitled to assert a claim in this case. For this reason, as well as the other reasons set forth  
21 herein below, MERS cannot transfer an interest in real property, and cannot recover anything  
22 from Plaintiff.

23 72. Defendants, and each of them, through the actions alleged above, have or claim the  
24 right to illegally commence foreclosure under the Note on the Property via a foreclosure action  
25 supported by false or fraudulent documents. Said unlawful foreclosure action has caused and  
26 continues to cause Plaintiff's great and irreparable injury in that real property is unique.

27 73. The wrongful conduct of the above specified Defendants, and each of them, unless  
28 restrained and enjoined by an Order of the Court, will continue to cause great and irreparable

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<sup>2</sup> *HSBC Bank USA v. Hernandez*, 92 A.D.3d 843, 939 N.Y.S.2d 120 (2d Dep't 2012);  
*Citimortgage, Inc. v. Stosel*, 89 A.D.3d 887, 934 N.Y.S.2d 182 (2d Dep't 2011).



1 harm to Plaintiff. Plaintiff will not have the beneficial use and enjoyment of its Home and will  
2 lose the Property.

3 74. Plaintiff has no other plain, speedy or adequate remedy and the injunctive relief prayed  
4 for below is necessary and appropriate at this time to prevent irreparable loss to Plaintiff.  
5 Plaintiff has suffered and will continue to suffer in the future unless Defendants' wrongful  
6 conduct is restrained and enjoined because real property is inherently unique and it will be  
7 impossible for Plaintiff to determine the precise amount of damage it will suffer.

8 **VI. SECOND CAUSE OF ACTION:**  
9 **FRAUD IN THE CONCEALMENT**  
10

11 75. Plaintiff re-alleges and incorporatess by reference all preceding paragraphs as though  
12 fully set forth herein.

13 76. Defendants concealed the fact that the Loans were securitized as well as the terms of  
14 the Securitization Agreements, including, inter alia: (1) Financial Incentives paid; (2) existence  
15 of Credit Enhancement Agreements, and (3) existence of Acquisition Provisions. By  
16 concealing the securitization, Defendant concealed the fact that Borrower's loan changed in  
17 character inasmuch as no single party would hold the Note but rather the Notes would be  
18 included in a pool with other notes, split into tranches, and multiple investors would effectively  
19 buy shares of the income stream from the loans. Changing the character of the loan in this way  
20 had a materially negative effect on Plaintiff that was known by Defendant but not disclosed.

21 77. Defendant knew or should have known that had the truth been disclosed, Plaintiff  
22 would not have entered into the Loans.

23 78. Defendant intended to induce Plaintiff based on these misrepresentations and improper  
24 disclosures.

25 79. Plaintiff's reasonable reliance upon the misrepresentations was detrimental. But for  
26 failure to disclose the true and material terms of the transaction, Plaintiff could have been  
27 alerted to issues of concern. Plaintiff would have known of Defendants true intentions and  
28 profits from the proposed risky loan. Plaintiff would have known that the actions of Defendant  
would have an adverse effect on the value of Plaintiff's home.

80. Defendants' failure to disclose the material terms of the transaction induced Plaintiff to  
enter into the loans and accept the Services as alleged herein.

1 81. Defendants were aware of the misrepresentations and profited from them.

2 82. As a direct and proximate result of the misrepresentations and concealment Plaintiff  
3 was damaged in an amount to be proven at trial, including but not limited to costs of Loan,  
4 damage to Plaintiff's financial security, emotional distress, and Plaintiff has incurred costs and  
5 attorney's fees.

6 83. Defendants are guilty of malice, fraud and/or oppression. Defendants' actions were  
7 malicious and done willfully in conscious disregard of the rights and safety of Plaintiff in that  
8 the actions were calculated to injure Plaintiff. As such Plaintiff is entitled to recover, in  
9 addition to actual damages, punitive damages to punish Defendants and to deter them from  
10 engaging in future misconduct.

11 **VII. THIRD CAUSE OF ACTION:**  
12 **FRAUD IN THE INDUCEMENT**  
13

14 84. Plaintiff re-alleges and incorporatess by reference all preceding paragraphs as though  
15 fully set forth herein.

16 85. Defendants, intentionally misrepresented to Plaintiff those Defendants were entitled to  
17 exercise the power of sale provision contained in the Mortgage/Deed of Trust. In fact,  
18 Defendants were not entitled to do so and have no legal, equitable, or actual beneficial interest  
19 whatsoever in the Property.

20 86. Defendants misrepresented that they are the "holder and owner" of the Note and the  
21 beneficiary of the Mortgage/Deed of Trust. However, this was not true and was a  
22 misrepresentation of material fact. Documents state that the original lender allegedly sold the  
23 mortgage loan to 2008-AR1 TRUST Trust. Defendants were attempting to collect on a debt to  
24 which they have no legal, equitable, or pecuniary interest in. This type of conduct is  
25 outrageous. Defendants are fraudulently foreclosing on the Property which they have no  
26 monetary or pecuniary interest. This type of conduct is outrageous.

27 87. Defendant's failure to disclose the material terms of the transaction induced Plaintiff to  
28 enter into the loans and accept the Services as alleged herein.

88. The material misrepresentations were made by Defendants with the intent to cause  
Plaintiff to reasonably rely on the misrepresentation in order to induce the Plaintiff to rely on  
the misrepresentations and foreclosure on the Property. This material misrepresentation was

1 made with the purpose of initiating the securitization process as illustrated above, in order to  
2 profit from the sale of the Property by selling the note to sponsors who then pool the note and  
3 sell it to investors on Wall Street and other OHIO investment banks.

4 89. Defendants were aware of the misrepresentations and profited from them.

5 90. As a direct and proximate result of the misrepresentations and concealment, Plaintiff  
6 was damaged in an amount to be proven at trial, including but not limited to costs of Loan,  
7 damage to Plaintiff's financial security, emotional distress, and Plaintiff has incurred costs and  
8 attorney's fees.

9 91. Defendants are guilty of malice, fraud and/or oppression. Defendants' actions were  
10 malicious and done willfully in conscious disregard of the rights and safety of Plaintiff in that  
11 the actions were calculated to injure Plaintiff. As such Plaintiff is entitled to recover, in  
12 addition to actual damages, punitive damages to punish Defendants and to deter them from  
13 engaging in future misconduct.

14 **VIII. FOURTH CAUSE OF ACTION:**  
15 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
16

17 92. Plaintiff re-alleges and incorporatess by reference all preceding paragraphs as though  
18 fully set forth herein.

19 93. The actions of Defendants, as set forth herein, have resulted in the Plaintiff being  
20 threatened with the loss of the Property.

21 94. This outcome has been created without any right or privilege on the part of the  
22 Defendants, and, as such, their actions constitute outrageous or reckless conduct on the part of  
23 Defendants.

24 95. Defendants intentionally, knowingly and recklessly misrepresented to the Plaintiff  
25 those Defendants were entitled to exercise the power of sale provision contained in the  
26 Mortgage/Deed of Trust. In fact, Defendants were not entitled to do so and have no legal,  
27 equitable, or actual beneficial interest whatsoever in the Property.

28 96. Defendants' conduct – fraudulently attempting to foreclose or claimng the right to  
foreclose on a property in which they have no right, title, or interest – is so outrageous and  
extreme that it exceeds all bounds which is usually tolerated in a civilized community.

1 97. Such conduct was undertaken with the specific intent of inflicting emotional distress  
2 on the Plaintiff, such that Plaintiff would be so emotionally distressed and debilitated that  
3 he/she would be unable to exercise legal rights in the Property; the right to title of the Property,  
4 the right to cure the alleged default, right to verify the alleged debt that Defendants are  
5 attempting to collect, and right to clear title to the Property such that said title will regain its  
6 marketability and value.

7 98. At the time Defendants began their fraudulent foreclosure proceedings, Defendants  
8 were not acting in good faith while attempting to collect on the subject debt. Defendants, and  
9 each of them, committed the acts set forth above with complete; utter and reckless disregard of  
10 the probability of causing Homeowners to suffer severe emotional distress.

11 99. As an actual and proximate cause of Defendants' attempt to fraudulently foreclose on  
12 Plaintiff's home or claim of the right to foreclose on Plaintiff's home, the Plaintiff has suffered  
13 severe emotional distress, including but not limited to lack of sleep, anxiety, and depression.

14 100. Plaintiff did not default in the manner stated in the Notice of Default, yet  
15 because Defendants' outrageous conduct, Plaintiff have been living under the constant  
16 emotional nightmare of losing the Property.

17 101. As a proximate cause of Defendants' conduct, Plaintiff has experienced many  
18 sleepless nights, severe depression, lack of appetite, and loss of productivity at its place of  
19 employment.

20 102. The conduct of Defendants, and each of them, as herein described, was so vile,  
21 base, contemptible, miserable, wretched, and loathsome that it would be looked down upon and  
22 despised by ordinary people. Plaintiff is therefore entitled to punitive damages in an amount  
23 appropriate to punish Defendants and to deter other from engaging in similar conduct.

24 **IX. FIFTH CAUSE OF ACTION:**

25 **SLANDER OF TITLE**

26  
27 103. Plaintiff re-alleges and incorporatess by reference all preceding paragraphs as  
28 though fully set forth herein.

104. Plaintiff incorporates here each and every allegation set forth above.  
Defendants, and each of them, disparaged Plaintiff's exclusive valid title by and through the  
preparing, posting, publishing, and recording of the documents previously described herein,

1 including, but not limited to, the Notice of Default, Notice of Trustee's Sale, Trustee's Deed,  
2 and the documents evidencing the commencement of judicial foreclosure by a party who does  
3 not possess that right.

4 105. Said Defendants knew or should have known that such documents were  
5 improper in that at the time of the execution and delivery of said documents, Defendants had  
6 no right, title, or interest in the Property. These documents were naturally and commonly to be  
7 interpreted as denying, disparaging, and casting doubt upon Plaintiff's legal title to the  
8 Property. By posting, publishing, and recording said documents, Defendants' disparagement of  
9 Plaintiff's legal title was made to the world at large.

10 106. As a direct and proximate result of Defendants' conduct in publishing these  
11 documents, Plaintiff's title to the Property has been disparaged and slandered, and there is a  
12 cloud on Plaintiff's title, and Plaintiff has suffered, and continues to suffer, damages in an  
13 amount to be proved at trial.

14 107. As a further proximate result of Defendants' conduct, Plaintiff has incurred  
15 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and  
16 Plaintiff will incur additional charges for such purpose until the cloud on Plaintiff's title to the  
17 property has been removed. The amounts of future expenses and damages are not ascertainable  
18 at this time.

19 108. As a further direct and proximate result of Defendants' conduct, Plaintiff has  
20 suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress,  
21 resulting in the loss of sleep and other injuries to his and her health and well-being, and  
22 continues to suffer such injuries on an ongoing basis. The amount of such damages shall be  
23 proven at trial.

24 109. At the time that the false and disparaging documents were created and published  
25 by the Defendants, Defendants knew the documents were false and created and published them  
26 with the malicious intent to injure Plaintiff and deprive them of their exclusive right, title, and  
27 interest in the Property, and to obtain the Property for their own use by unlawful means.

28 110. The conduct of the Defendants in publishing the documents described above  
was fraudulent, oppressive, and malicious. Therefore, Plaintiff is entitled to an award of  
punitive damages in an amount sufficient to punish Defendants for their malicious conduct and  
deter such misconduct in the future.

1 **X. SIXTH CAUSE OF ACTION:**

2 **QUIET TITLE**

3 111. Plaintiff's title to the above-described property is derived as follows: On or about  
4 FEBRUARY 27, 2008 (hereinafter referred to as "Closing Date") Plaintiff entered into a  
5 consumer credit transaction with WELLS FARGO by obtaining a \$665,894,100 mortgage loan  
6 secured by Plaintiff's principal residence, (Subject Property). This note was secured by a First  
7 Trust Deed on the Property in favor of WELLS FARGO.

8 112. All Defendants named herein claim an interest and estate in the property adverse  
9 to plaintiff in that defendant asserts he is the owner of the note secured by the Mortgage/Deed  
10 of Trust to the property the subject of this suit.

11 113. All Defendants named herein claims an interest and estate in the property  
12 adverse to plaintiff in that defendant asserts he is the owner of Mortgage/Deed of Trust  
13 securing the note to the property the subject of this suit.

14 114. The claim of all defendant are without any right whatsoever, and defendants  
15 have no right, estate, title, lien or interest in or to the property, or any part of the property.

16  
17 115. The claim of all defendant herein named, and each of them, claim some estate,  
18 right, title, lien or interest in or to the property adverse to plaintiff's title, and these claims  
19 constitute a cloud on plaintiff's title to the property.

20 116. Plaintiff, therefore, alleges, upon information and belief, that none of the parties  
21 to neither the securitization transaction, nor any of the Defendants in this case, hold a perfected  
22 and secured claim in the Property; and that all Defendants are estopped and precluded from  
23 asserting an unsecured claim against Plaintiff's estate.

24 117. Plaintiff requests the decree permanently enjoin defendants, and each of them,  
25 and all persons claiming under them, from asserting any adverse claim to plaintiff's title to the  
26 property; and

27 118. Plaintiff request the court award plaintiff costs of this action, and such other  
28 relief as the court may deem proper.

**XI. SEVENTH CAUSE OF ACTION:**

**DECLARATORY RELIEF**

1        119.        Plaintiff re-alleges and incorporatess by reference all preceding paragraphs as  
2 though fully set forth herein.

3        120.        An actual controversy has arisen and now exists between Plaintiff and  
4 Defendants concerning their respective rights and duties regarding the Note and  
5 Mortgage/Trust Deed.

6        121.        Plaintiff contends that pursuant to the Loans, Defendants do not have authority  
7 to foreclose upon and sell the Property.

8        122.        Plaintiff is informed and believes and upon that basis alleges that Defendants  
9 dispute Plaintiff's contention and instead contend they may properly foreclose upon the  
10 Property.

11        123.        Plaintiff therefore request a judicial determination of the rights, obligations and  
12 interest of the parties with regard to the Property, and such determination is necessary and  
13 appropriate at this time under the circumstances so that all parties may ascertain and know their  
14 rights, obligations and interests with regard to the Property.

15        124.        Plaintiff requests a determination of the validity of the Mortgage/Trust Deeds as  
16 of the date the Notes were assigned without a concurrent assignation of the underlying Trust  
17 Deeds.

18        125.        Plaintiff requests a determination of the validity of the NOD (Notice Of  
19 Default).

20        126.        Plaintiff requests a determination of whether any Defendant has authority to  
21 foreclose on the Property.

22        127.        Plaintiff requests all adverse claims to the real property be must determined by a  
23 decree of this court.

24        128.        Plaintiff requests the decree declare and adjudge that plaintiff is entitled to the  
25 exclusive possession of the property.

26        129.        Plaintiff requests the decree declare and adjudge that plaintiff owns in fee  
27 simple, and is entitled to the quiet and peaceful possession of, the above-described real  
28 property.

      130.        Plaintiff requests the decree declare and adjudge that defendants, and each of  
them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to  
the real property or any part of the property.

**XII. EIGHTH CAUSE OF ACTION:**  
**VIOLATION OF TILA AND HOEPA, 15 U.S.C. § 1601, ET. SEQ.**

131. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

132. Plaintiff allege that the loan that is the subject matter of this complaint was and is a consumer-credit transaction within the meaning of TILA and HOEPA.

133. Defendants violated TILA/HOEPA by failing to provide Plaintiff with accurate material disclosures required under TILA/HOEPA and not taking into account the intent of the State Legislature in approving this statute which was to fully inform home buyers of the pros and cons of adjustable rate mortgages in a language (both written and spoken) that they can understand and comprehend; and advise them to compare similar loan products with other lenders. It also requires the lender to offer other loan products that might be more advantageous for the borrower under the same qualifying matrix.

134. Any and all statute[s] of limitations relating to disclosures and notices required pursuant to 15 U.S.C. § 1601, et.seq. were tolled due to Defendants' failure to effectively provide the required disclosures and notices.

135. As a further direct and proximate result of defendants' conduct, Plaintiff lost substantial equity in their home, in that they were unable to refinance when their home had a higher appraisal value.

136. As a direct and proximate result of defendants' conduct, Plaintiff were unable to refinance their home or to obtain any modification of their loan, which has resulted in Plaintiff being permanently burdened by the fraudulent loan made by defendants.

137. An actual controversy now exists between Plaintiff, who contends she has the right to rescind the loan on the Subject Property alleged in this Complaint, and based on information and belief, Defendants deny that right.

138. As a direct and proximate result of Defendants' violations Plaintiff have incurred and continue to incur damages in an amount according to proof but not yet ascertained including without limitation, statutory damages and all amounts paid or to be paid in connection with the transaction.



1 139. Defendants were unjustly enriched at the expense of Plaintiff who is therefore  
2 entitled to equitable restitution and disgorgement of profits obtained by Defendants.

3 140. Defendants' actions in this matter have been willful, knowing, malicious,  
4 fraudulent and oppressive, entitling Plaintiff to punitive damages in an amount appropriate to  
5 punish Defendants and to deter others from engaging in the same behavior.

6 **XIII. NINTH CAUSE OF ACTION:**  
7 **VIOLATION OF RESPA, 1 U.S.C. § 2601 ET. SEQ.**  
8

9 141. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as  
10 though fully set forth herein.

11 142. The loan to Plaintiff was a federally regulated mortgage loan as defined in  
12 RESPA.

13 143. Housing and Urban Development's (HUD's) 1999 Statement of Policy  
14 established a two-part test for determining the legality of lender payments to mortgage brokers  
15 for table funded transactions and intermediary transactions under RESPA:

16 a) Whether goods or facilities were actually furnished or services were actually performed  
17 for the compensation paid and;

18  
19 b) Whether the payments are reasonably related to the value of the goods or facilities that  
20 were actually furnished or services that were actually performed.

21  
22 144. In applying this test, HUD believes that total compensation should be scrutinized to  
23 assure that it is reasonably related to the goods, facilities, or services furnished or performed to  
24 determine whether it is legal under RESPA. The interest and income that Defendants have  
25 gained is disproportionate to the situation Plaintiff find themselves in due directly to  
26 Defendant's failure to disclose that they will gain a financial benefit while Plaintiff suffer  
27 financially as a result of the loan product sold to Plaintiff.

28 145. No separate fee agreements, regarding the use of WELLS FARGO Cost of  
Savings" as the Index for the basis of this loan, Disclosures of additional income due to interest  
rate increases or the proper form and procedure in relation to the Borrower's Rights to Cancel  
were provided.

1 146. Defendants violated RESPA because the payments between the Defendants were  
2 misleading and designed to create a windfall. These actions were deceptive, fraudulent and self  
3 serving.

4 147. As a proximate result of Defendants' actions, Plaintiff has been damages in an  
5 amount not yet ascertained, to be proven at trial.

6 **XIV. TENTH CAUSE OF ACTION:**

7 **RECISSION**

8  
9 148. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
10 fully set forth herein.

11 149. Plaintiff is entitled to rescind the loan and all accompanying loan documents for all  
12 of the foregoing reasons: 1) TILA Violations; 2) Failure to provide a Mortgage Loan  
13 Origination Agreement; 3) Fraudulent Concealment; 4) Fraudulent Inducement; ; 5) failure to  
14 abide by the PSA; 6) making illegal or fraudulent transfers of the note and Mortgage/Deed of  
15 Trust; and 5) Public Policy Grounds, each of which provides independent grounds for relief.

16 150. The Truth In Lending Act, 15 U.S.C §1601, et.seq. extends Plaintiff's right to  
17 rescind a loan to three years from the date of closing if the borrower received false or  
18 incomplete disclosures of either the loans terms or Borrower's right to rescind. Here,  
19 Defendants have failed to properly disclose the details of the loan. Specifically, the initial  
20 disclosures do not initial TILA disclosures, and lack of diligence and collusion on the part of  
21 the broker, lender and underwriter to place Plaintiff in a loan she could not afford and would  
22 ultimately benefit Defendants following the negative amortization that accrued.

23 151. The public interest would be prejudiced by permitting the alleged contract to stand;  
24 such action would regard an unscrupulous lender.

25 152. As a proximate result of Defendants' actions, Plaintiff has been damaged in an  
26 amount not yet ascertained, to be proven at trial.

27 WHEREFORE, Plaintiff prays for rescission of the stated loan in its entirety.

28 **PRAYER FOR RELIEF**

WHEREFORE Plaintiff, will ask for the following for each Cause of Action to be awarded:

1                   **FIRST CAUSE OF ACTION - STANDING**

- 2           1. For Compensatory Damages in an amount to be determined by proof at trial;
- 3           2. For Special Damages in an amount to be determined by proof at trial;
- 4           3. For General Damages in an amount to be determined by proof at trial;
- 5           4. For Punitive Damages as allowed by law;
- 6           5. For Restitution as allowed by law;
- 7           6. For Attorney's Fees and Costs of this action;
- 8           7. For Declaratory Relief, including but not limited to the following Decrees of this Court
- 9           that:
- 10               a. Plaintiff, Plaintiff is the prevailing party;
- 11               b. The Trustees of the Trusts have no enforceable secured or unsecured claim
- 12               against the Property;
- 13               c. The Sponsor has no enforceable secured or unsecured claim against the
- 14               Property;
- 15               d. The Depositor has no enforceable secured or unsecured claim against the
- 16               Property;
- 17               e. The Mortgage Originator has no enforceable secured or unsecured claim against
- 18               the Property;
- 19               f. Determines all adverse claims to the real property in this proceeding;
- 20               g. Plaintiff is entitled to the exclusive possession of the property;
- 21               h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession
- 22               of, the above-described real property.
- 23               i. Defendants, and each of them, and all persons claiming under them, have no
- 24               estate, right, title, lien, or interest in or to the real property or any part of the
- 25               property.

26                   **SECOND CAUSE OF ACTION – FRAUD IN THE CONCEALMENT**

- 27           1. For Compensatory Damages in an amount to be determined by proof at trial;
- 28           2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;

1                   **THIRD CAUSE OF ACTION – FRAUD IN THE INDUCEMENT**

- 2           1. For Compensatory Damages in an amount to be determined by proof at trial;
- 3           2. For Special Damages in an amount to be determined by proof at trial;
- 4           3. For General Damages in an amount to be determined by proof at trial;
- 5           4. For Punitive Damages as allowed by law;
- 6           5. For Restitution as allowed by law;

7                   **FOURTH CAUSE OF ACTION – I.I.E.D.**

- 8           1. For Compensatory Damages in an amount to be determined by proof at trial;
- 9           2. For Special Damages in an amount to be determined by proof at trial;
- 10          3. For General Damages in an amount to be determined by proof at trial;
- 11          4. For Punitive Damages as allowed by law;
- 12          5. For Restitution as allowed by law;

13                  **FIFTH CAUSE OF ACTION – SLANDER OF TITLE**

- 14          1. For Compensatory Damages in an amount to be determined by proof at trial;
- 15          2. For Special Damages in an amount to be determined by proof at trial;
- 16          3. For General Damages in an amount to be determined by proof at trial;
- 17          4. For Punitive Damages as allowed by law;
- 18          5. For Restitution as allowed by law;
- 19          6. For Attorney’s Fees and Costs of this action;
- 20          7. For Declaratory Relief, including but not limited to the following Decrees of this Court
- 21           that:
- 22               a. Plaintiff, Plaintiff is the prevailing party;
- 23               b. The Trustees of the Trusts have no enforceable secured or unsecured claim
- 24               against the Property;
- 25               c. The Sponsor has no enforceable secured or unsecured claim against the
- 26               Property;
- 27               d. The Depositor has no enforceable secured or unsecured claim against the
- 28               Property;
- e. The Mortgage Originator has no enforceable secured or unsecured claim against
- the Property;
- f. Determines all adverse claims to the real property in this proceeding;

- 1 g. Plaintiff is entitled to the exclusive possession of the property;
- 2 h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession
- 3 of, the above-described real property.
- 4 i. Defendants, and each of them, and all persons claiming under them, have no
- 5 estate, right, title, lien, or interest in or to the real property or any part of the
- 6 property.

7 **SIXTH CAUSE OF ACTION – QUIET TITLE**

- 8 1. For Compensatory Damages in an amount to be determined by proof at trial;
- 9 2. For Special Damages in an amount to be determined by proof at trial;
- 10 3. For General Damages in an amount to be determined by proof at trial;
- 11 4. For Punitive Damages as allowed by law;
- 12 5. For Restitution as allowed by law;
- 13 6. For Attorney's Fees and Costs of this action;
- 14 7. For Declaratory Relief, including but not limited to the following Decrees of this Court
- 15 that:
- 16 a. Plaintiff, Plaintiff is the prevailing party;
- 17 b. The Trustees of the Trusts have no enforceable secured or unsecured claim
- 18 against the Property;
- 19 c. The Sponsor has no enforceable secured or unsecured claim against the
- 20 Property;
- 21 d. The Depositor has no enforceable secured or unsecured claim against the
- 22 Property;
- 23 e. The Mortgage Originator has no enforceable secured or unsecured claim against
- 24 the Property;
- 25 f. Determines all adverse claims to the real property in this proceeding;
- 26 g. Plaintiff is entitled to the exclusive possession of the property;
- 27 h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession
- 28 of, the above-described real property.
- i. Defendants, and each of them, and all persons claiming under them, have no  
estate, right, title, lien, or interest in or to the real property or any part of the  
property.

1                   **SEVENTH CAUSE OF ACTION – DECLARATORY RELIEF**

- 2           1. For Compensatory Damages in an amount to be determined by proof at trial;
- 3           2. For Special Damages in an amount to be determined by proof at trial;
- 4           3. For General Damages in an amount to be determined by proof at trial;
- 5           4. For Punitive Damages as allowed by law;
- 6           5. For Restitution as allowed by law;
- 7           6. For Attorney’s Fees and Costs of this action;
- 8           7. For Declaratory Relief, including but not limited to the following Decrees of this Court
- 9           that:
- 10               a. Plaintiff, Plaintiff is the prevailing party;
- 11               b. The Trustees of the Trusts have no enforceable secured or unsecured claim
- 12               against the Property;
- 13               c. The Sponsor has no enforceable secured or unsecured claim against the
- 14               Property;
- 15               d. The Depositor has no enforceable secured or unsecured claim against the
- 16               Property;
- 17               e. The Mortgage Originator has no enforceable secured or unsecured claim against
- 18               the Property;
- 19               f. Determines all adverse claims to the real property in this proceeding;
- 20               g. Plaintiff is entitled to the exclusive possession of the property;
- 21               h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession
- 22               of, the above-described real property.
- 23               i. Defendants, and each of them, and all persons claiming under them, have no
- 24               estate, right, title, lien, or interest in or to the real property or any part of the
- 25               property.

26                   **EIGHTH CAUSE OF ACTION – VIOLATION OF T.I.L.A.**

- 27           1. For Compensatory Damages in an amount to be determined by proof at trial;
- 28           2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;

6. For Attorney's Fees and Costs of this action;
7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;
  - c. The Sponsor has no enforceable secured or unsecured claim against the Property;
  - d. The Depositor has no enforceable secured or unsecured claim against the Property;
  - e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;
  - f. Determines all adverse claims to the real property in this proceeding;
  - g. Plaintiff is entitled to the exclusive possession of the property;
  - h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
  - i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

**NINTH CAUSE OF ACTION – VIOLATION OF R.E.S.P.A.**

1. For Compensatory Damages in an amount to be determined by proof at trial;
2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;
6. For Attorney's Fees and Costs of this action;
7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;

- c. The Sponsor has no enforceable secured or unsecured claim against the Property;
- d. The Depositor has no enforceable secured or unsecured claim against the Property;
- e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;
- f. Determines all adverse claims to the real property in this proceeding;
- g. Plaintiff is entitled to the exclusive possession of the property;
- h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
- i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

**TENTH CAUSE OF ACTION - RECISSION**

- 1. For Compensatory Damages in an amount to be determined by proof at trial;
- 2. For Special Damages in an amount to be determined by proof at trial;
- 3. For General Damages in an amount to be determined by proof at trial;
- 4. For Punitive Damages as allowed by law;
- 5. For Restitution as allowed by law;
- 6. For Attorney's Fees and Costs of this action;
- 7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;
  - c. The Sponsor has no enforceable secured or unsecured claim against the Property;
  - d. The Depositor has no enforceable secured or unsecured claim against the Property;
  - e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;



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- f. Determines all adverse claims to the real property in this proceeding;
- g. Plaintiff is entitled to the exclusive possession of the property;
- h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
- i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

Dated: \_\_\_\_\_

Ja'far Amir Bey & Jamila Yasmine Bey,

\_\_\_\_\_  
Authorized Representatives for LAURENCE JAMES SELDON  
& KARLA DENISE SELDON