

The Bank of New York Trust Company N.A. as Successor to JPMorgan Chase Bank as Trustee f/k/a Bank One, National Association, as Trustee, their successors and/or assigns (“Movant”).

2. Debtor agreed to the Order based on representations made in the Motion and in the Affidavit of Dory Goebel filed by the Movant in support of the Motion.
3. Specifically, the Motion and Affidavit contend that Movant is the authorized Servicer for Debtor’s mortgage Note, and that the Note is owned by “THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE, their successors and/or assigns”. Despite the fact that the alleged “owner” is identified as a Trustee, the actual trust is not identified in either the Motion or the Affidavit of Dory Goebel.
4. The Copy of the Note attached to the Proof of Claim filed in Debtor’s case is originally payable to “Aames Funding Corporation, A California Corporation” (hereinafter “Aames Funding”) and contains what appear to be two stapled-on statements entitled “Endorsement and Assignment of Note”, the first of which appears to be an endorsement from “Aames Capital Corporation, A California Corporation” to “RESIDENTIAL FUNDING CORPORATION”, and the second appears to be an endorsement by Aames Funding to “Aames Capital Corporation, A California Corporation” (hereinafter “Aames Capital”).¹ Nowhere on the Note is there an

¹ Although Debtor denies the authenticity of these endorsements, it would appear that even if authentic, they would not have the desired legal effect: The first endorsement, i.e. that which appears immediately below the signature line, purports to be an endorsement from Aames Capital, which was not the named payee on the note. Without concluding, Debtor notes that it is possible however, that these endorsements were stapled to the Note out-of-order, with the second endorsement, i.e. that which appears at the bottom of the page, being from Aames Funding (which was the named payee on the Note) to Aames Capital. Both endorsements were executed by the same two individuals, Ollie Lupisan and

endorsement to “THE BANK OF NEW YORK TRUST COMPANY”, “JPMORGAN CHASE BANK”, or “BANK ONE NATIONAL ASSOCIATION”, nor is there an endorsement to any other entity on the copy of the Note provided by Movant.

5. The Affidavit of Dory Goebel states that Ms. Goebel is a “Default Services Junior Officer for Homecomings Financial LLC”. Upon information and belief this statement is a **willful misrepresentation** made by the Affiant and the Movant in order to induce reliance by the Debtor and her counsel regarding the status of the loan.
6. More specifically, upon information and belief, Ms. Goebel has been, at all times pertinent hereto, an employee of either Fidelity National Foreclosure Solutions (“Fidelity”), or LPS Default Services Solutions, Inc. f/k/a Fidelity National Foreclosure Solutions (“LPS”).
7. Upon information and belief, Fidelity and LPS are entities known as third party “outsource providers” that mortgage servicers retain to provide services in connection with the administration of accounts that are in default and/or in bankruptcy.
8. Furthermore, upon information and belief, Ms. Goebel has never been employed directly or indirectly by the Movant, nor was she otherwise a legally designated officer (including “Default Services Junior Officer”) of the Movant with authority to execute documents on behalf of the Movant at the time she executed the Affidavit herein.
9. Indeed, as evidenced by the various affidavits attached hereto as Exhibit “A”, Ms. Goebel, in a variety of alleged legal capacities, has executed similar fraudulent affidavits that have been filed in courts around the country on behalf of several entities, including:

Carlito Del Mundo, and nothing on the face of either endorsement indicates the legal capacity in which either person executed the endorsements on behalf of the alleged endorsing party. Moreover, the fact that these “endorsements” were (apparently) *stapled to the Note* raises some doubt as to the authenticity of the endorsements.

- (a) "Default Services Junior Officer" for Homecomings Financial LLC (this case)
- (b) "Officer" of Franklin Credit Management Corp. (Johnson, Mauldin)
- (c) "Officer" of IndyMac Bank, F.S.B. (Mitzlaff, Collins, McDaniel, Patton)
- (d) "Bankruptcy Representative" of Homecomings Financial, LLC (Fagan)
- (e) "Attorney-in-fact" of Fremont Investment and Loan (Betancur)
- (f) "Assistant Secretary" of Option One Mortgage Corporation (Gilman, Marquez)
- (g) "AVP" for Washington Mutual Bank (Bledsoe)
- (h) "AVP" for "Fidelity National Foreclosure Solutions, which is Asst. Secretary for Option One Mortgage Corporation for Wells Fargo Bank, N.A., as Trustee..." (Antonopoulos)

10. Moreover, this is not the first instance in which Ms. Goebel's authority to serve as an affiant has been questioned in connection with a Bankruptcy Court proceeding. Indeed, on June 26, 2008, U.S. Bankruptcy Judge Magner (LAEB) sanctioned Ms. Goebel for filing a false affidavit in the Wilson case, Case No. 07-11862. See also, Judge Magner's opinion denying Motion to Quash Discovery, dated February 6, 2009, In re Wilson, 2009 WL304672 (LAEB 2009). A copy of the Transcript from the hearing in In re Wilson, in which Judge Magner awards sanctions against Ms. Goebel and others, is attached hereto as Exhibit "B". Additionally, U.S. Bankruptcy Judge Hardin (NYSB), in an opinion dated September 24, 2007, ruled that Ms. Goebel's affidavit in that case was false. In re Fagan, 376 B.R. 81 (NYSB 2007). And, on April 30, 2008, U.S. Bankruptcy Judge Morgenstern-Clarren (OHNB) declined to grant stay relief based on an affidavit executed by Ms. Goebel, based on several deficiencies, which are cited by the Court in the Order Declining to Enter Order for Relief from Stay on Affidavit,

attached hereto as Exhibit "C".

11. Ms. Goebel's affidavit in this case states that she "reviewed the books and records which reveal that JPMORGAN CHASE is the owner and holder of...[Debtor's Note]" and that such Note "was assigned by AAMES FUNDING CORPORATION ... to THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE" A copy of Ms. Goebel's affidavit filed in this case is attached hereto as Exhibit "D".
12. But for the fraudulent affidavit of Ms. Goebel, Debtor (and her counsel) would not have entered into the *in rem* Agreed Order.
13. Indeed, Debtor, through counsel, has been attempting to unravel the mysteries presented by this affidavit and the questionable copy of the Note, as well as other questions regarding Movant's accounting for her Mortgage loan since July of 2008, when Debtor first sent Movant a Qualified Written Request letter ("QWR letter") seeking information regarding the status of Debtor's mortgage. A copy of the July 2008 QWR letter is attached hereto as Exhibit "E".
14. However, Movant's September 3, 2008 letter in response to the July 2008 QWR letter provided information regarding the wrong property, erroneously referring to a property previously owned by Debtor located in Arlington, Texas (the property at issue in this instant Motion is located in Dallas). A copy of Movant's September 3, 2008 QWR Response Letter is attached hereto as Exhibit "F".
15. Upon receiving Movant's erroneous response to the July 2008 QWR letter, on September 9, 2008, counsel for Debtor sent a second QWR letter to Movant, advising Movant of its error in the first QWR response, and requesting that Movant provide a

proper response to the QWR. To date, no response to the second QWR has been received regarding the debtor's Dallas property. A copy of Debtor's Second QWR letter is attached hereto as Exhibit "G".

16. Rule 60(b) of the Federal Rules of Civil Procedure, applicable herein through Rule 9024 of the Federal Rules of Bankruptcy Procedure, authorizes the Court to provide relief from a "final judgment, order, or proceeding" in circumstances where there has been fraud, misrepresentation, or misconduct by an opposing party (Rule 60(b)(3)).
17. The misrepresentations by Ms. Goebel in her affidavit, and by Movant in submitting Ms. Goebel's affidavit with knowledge that she was not who she represented herself to be, constitute a knowing and willful fraud on the Court that make relief from the Agreed Order appropriate.

WHEREFORE, PREMISES CONSIDERED, Debtor prays that the Agreed Order Modifying Automatic Stay be vacated and for such other and further relief to which the Debtor may be entitled in law or equity.

Respectfully submitted,

/s/ Thad Bartholow
Bartholow & Bartholow
Thad Bartholow
TX Bar No. 24062602
11300 N. Central Expwy. Suite 301
Dallas, TX 75243
Phone/fax: 972-739-5255
ATTORNEY FOR DEBTOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the attached Motion to Vacate Agreed Order Modifying Automatic Stay has been served on the parties below, by ecf or by mailing a copy of same to them by first class mail on August 21, 2009.

/s/ Thad Bartholow
Thad Bartholow

Melissa L. Carter
PITE DUNCAN, LLP
525 E. Main Street
P.O. Box 12289
El Cajon, CA 92022-2289

June A. Mann
Mann & Stevens, P.C.
550 Westcott Street, Suite 560
Houston, Texas 77007

Homecomings Financial
PO Box 890036
Dallas, TX 75389

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the attached Affidavit was served upon the following parties in interest on April 11, 2007, by United States First Class Mail, postage prepaid:

Debtors' Attorney

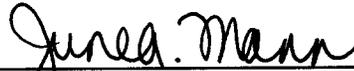
THEODORE O. BARTHOLOW, JR.
5 KELVINGATE
DALLAS, TEXAS 75225

Debtors

EULA W. BOWENS
P.O. BOX 170267
DALLAS, TX 75217

Trustee

THOMAS POWERS
125 E. JOHN CARPENTER FREEWAY
SUITE 1100, 11th FLOOR
IRVING, TX 75062



June A. Mann
Branch M. Sheppard

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
EULA W. BOWENS, Debtor	§	
	§	CASE NO. 06-34868-SGJ-13
HEMCOMINGS FINANCIAL, LLC, as	§	CHAPTER 13
servicer for THE BANK OF NEW YORK	§	
TRUST COMPANY N.A. AS	§	
SUCCESSOR TO JPMORGAN CHASE	§	
BANK AS TRUSTEE F/K/A BANK ONE,	§	
NATIONAL ASSOCIATION, AS	§	HEARING DATE AND TIME:
TRUSTEE, their successors and/or assigns,	§	MAY 3, 2007 AT 1:30 P.M.
Movant	§	
	§	
vs.	§	
	§	
EULA W. BOWENS, Debtor and	§	
THOMAS POWERS, Trustee,	§	
Respondents	§	

**AFFIDAVIT IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY
REQUESTING ONE (1) YEAR IN REM RELIEF AND 270 DAY BAR LANGUAGE**

**THE STATE OF MINNESOTA §
COUNTY OF DAKOTA §**

BEFORE ME, the undersigned authority, on this day personally appeared Dory Goebel

who is over the age of eighteen years, is fully qualified and authorized to give this Affidavit and has personal knowledge of the matters addressed herein. After being by me duly sworn on her/his oath deposed and stated:

1. "My name is Dory Goebel . I am an Default Services Junior Officer for **HEMCOMINGS FINANCIAL, LLC, as servicer for THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE, their successors and/or assigns** ("JPMORGAN CHASE"). I have access to the bankruptcy books and records for JPMORGAN

CHASE with regard to EULA W. BOWENS's loan with JPMORGAN CHASE. In the course of my employment, I have become familiar with the manner and method in which JPMORGAN CHASE maintains its books and records in its regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted.

2. I have reviewed the books and records which reveal that JPMORGAN CHASE is the owner and holder of a Note ("Note") secured by a Deed of Trust of even date and executed by EULA MAE BOWENS, A SINGLE WOMAN on or about OCTOBER 22, 1998. The Note was assigned by AAMES FUNDING CORPORATION A CALIFORNIA CORPORATION, A CORPORATION to THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE. The original mortgagors also executed a Deed of Trust in connection with the Note and it was duly recorded. True and correct copies of the loan documents are attached hereto as Exhibit "A" and incorporated herein for all purposes.

3. As of **APRIL 4, 2007**, Debtor was in default on **THREE (3) contractual** payments of **TWO (2) at \$958.31** each and **ONE (1) at \$915.04**, plus **TWO (2) contractual** late charges in the amount of **\$25.62** each and **\$329.37** in suspense. As of November 6, 2006, the approximate payoff amount owed by Debtor to Movant was **\$34,565.46**. This sum includes principal balance, accrued interest, accrued late charges and escrow advances, but does not include attorneys' fees or related costs.

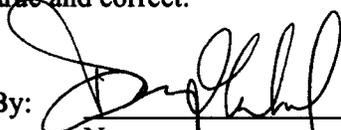
This is the third filing for bankruptcy relief involving the Property.

- (a) The first bankruptcy case was filed by Eula M. Bowens, the Debtor in this current case, on April 12, 1999, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, under Case No. 99-32823-HCA-13. The Debtor failed to timely remit the post-petition mortgage payments and Movant was forced to file a motion for relief. An agreed order was entered on May 16, 2000. An Order Granting Motion to Dismiss Case with Prejudice to Refiling for 180 Days was entered on February 12, 2001. This bankruptcy case was closed on March 15 2001.

- (b) On August 6, 2001, the Debtor in this current case, filed the second bankruptcy case in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, under Case No.01-36502-BJH-13. This bankruptcy was filed to stop a foreclosure sale scheduled for August 7, 2001. An Order Discharging Debtor was entered on September 20, 2006, and the case was closed on January 31, 2007.
- (c) On November 6, 2006, Debtor filed this current case, which is the third bankruptcy case involving the Property.

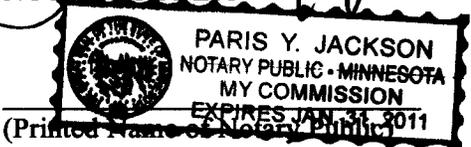
4. JPMORGAN CHASE has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees of at least \$800.00 for handling the Motion for Relief from Stay for which it is entitled to reimbursement under the terms of the Note.

5. The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct."

By: 
Name **Dory Goebel**
Default Services Junior Officer

SUBSCRIBED AND SWORN TO BEFORE ME, on April 10th, 2007.

My commission expires: 1-31-11


NOTARY PUBLIC

(Printed Name of Notary Public)

Marcy A. NOTE - DE 0104994 34625.7

Data ID: 429

Borrower: EULA MAE BOWENS

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),
ARTICLE XVI OF THE TEXAS CONSTITUTION

TEXAS HOME EQUITY NOTE
(Cash Out - Fixed Rate - First Lien)

Borrower's
Initials:

October 22, 1998

[City]

TEXAS
[State]

6110 CAPESTONE DRIVE
DALLAS, TEXAS 75217
[Property Address]

1. BORROWER'S PROMISE TO PAY

This is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (the "Extension of Credit"). In return for a loan that I have received, I promise to pay U.S. \$ 35,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is AAMES FUNDING CORPORATION A CALIFORNIA CORPORATION

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

I understand that this is not an open-end account that may be debited from time to time or under which credit may be extended from time to time.

The property described above by the Property Address is subject to the lien of the security instrument executed concurrently herewith (the "Security Instrument").

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 12.50 %. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note. It is agreed that the total of all interest and other charges that constitute interest under applicable law shall not exceed the maximum amount of interest permitted by applicable law. Nothing in this Note or the Security Instrument shall entitle the Note Holder upon any contingency or event whatsoever, including by reason of acceleration of the maturity or prepayment of the loan, to receive or collect interest or other charges that constitute interest in excess of the highest rate allowed by applicable law on the principal or on a monetary obligation incurred to protect the property described above authorized by the Security Instrument, and in no event shall I be obligated to pay interest in excess of such rate.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on December 1, 1998. 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. My monthly payments will be applied to interest before principal. If, on November 1, 2008, 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 monthly payments at 350 S. GRAND AVENUE, LOS ANGELES, CALIFORNIA 90071, or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 512.32.

LAP82726 8012870 NOTE
800104994 Bowens 103917892



TEXAS HOME EQUITY NOTE (Cash Out - Fixed Rate - First Lien) - Fannie Mae/Freddie Mac Uniform Instrument

Form 3244.1 01/98
(Page 1 of 4 Pages)

E. M. B

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment penalty or other charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes. Should the Note Holder agree in writing to such changes, my payments thereafter will be payable in substantially equal successive monthly installments.

5. LOAN CHARGES AND FEES

All agreements between Note Holder and me are expressly limited so that any interest, loan charges or fees (other than interest) collected or to be collected from me, any owner or the spouse of any owner of the property described above in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by applicable law.

If a law, which applies to this loan and which sets maximum interest, loan charges or fees, is finally interpreted so that the interest, loan charges or fees collected or to be collected in connection with this loan exceed the permitted limits, or a determination is made at any time by the Note Holder that interest, loan charges or fees collected or to be collected in connection with this loan exceed the permitted limit, then: (i) any such interest, loan charges or fees shall be reduced by the amount necessary to reduce the interest, loan charges or fees to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment. My acceptance of any such refund will constitute a waiver of any right of action I might have arising out of such overcharge.

It is the express intention of the Note Holder and me to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of this Note, the Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by applicable law, then such promise, payment, obligation or provision shall be reduced to the limit of such validity or eliminated as a requirement and such document shall be automatically reformed without the necessity of the execution of any new amendment or new document.

The provisions of this Section 5 shall supersede any inconsistent provision of this Note or the Security Instrument.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of TEN (10) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice by certified mail telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is deposited in the United States mail, postage prepaid and addressed to me at my last known address as shown by the records of the Note Holder. This Note may not be accelerated because of a decrease in the market value of the property described above or because of the property owner's default under any indebtedness not evidenced by this Note or the Security Instrument.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law including Section 50(a)(6), Article XVI of the Texas Constitution. Those expenses include, for example, reasonable attorneys' fees. I understand that these expenses are not contemplated to be incurred in connection with maintaining or servicing this Extension of Credit.

E. M. B.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given in writing by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address. However, if the purpose of the notice is to notify Note Holder of failure by the Note Holder to comply with Note Holder's obligations under this Extension of Credit, or noncompliance with any provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then notice by certified mail is required.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Subject to the limitation of personal liability described below, each person who signs this Note is responsible for ensuring that all of the Borrower's promises and obligations in this Note are performed, including the payment of the full amount owed. Any person who takes over these obligations is also so responsible.

I understand that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that this Note is given without personal liability against each owner of the property described above and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, the Note Holder can enforce its rights under this Note solely against the property described above and not personally against any owner of such property or the spouse of an owner.

If this Extension of Credit is obtained by such actual fraud, I will be personally liable for the payment of any amounts due under this Note. This means that a personal judgment could be obtained against me if I fail to perform my responsibilities under this Note, including a judgment for any deficiency that results from Note Holder's sale of the property described above for an amount less than is owing under this Note.

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Section 8 shall not impair in any way the right of the Note Holder to collect all sums due under this Note or prejudice the right of the Note Holder as to any promises or conditions of this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, the Security Instrument, dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. The Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed 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.

11. APPLICABLE LAW

This Note shall be governed by the laws of the State of Texas and any applicable federal law. In the event of any conflict between the Texas Constitution and other applicable law, it is the intent that the provisions of the Texas Constitution shall be applied to resolve the conflict. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

E. M. B.

CMTE

[REDACTED]

AAAGZE

AAMES FUNDING CORPORATION
ATTENTION: COLLATERAL CONTROL
350 S. GRAND AVENUE
LOS ANGELES, CA 90071

NETCO, INC.
1112 E. COPELAND RD. STE. 320
ARLINGTON, TX 76011

11/09/98 1277447 925.00
Deed of Trust

[Space Above This Line For Recording Data]

Data ID: 429

Borrower: EULA MAE BOWENS

THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

TEXAS HOME EQUITY SECURITY INSTRUMENT (Cash Out - First Lien)

This Security Instrument is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY INSTRUMENT is made on October 22, 1998. The grantor is EULA MAE BOWENS, A SINGLE WOMAN

The trustee is MICHAEL L. RIDDLE, whose address is 2323 BRYAN STREET, SUITE 1600 DALLAS, TX 75201 ("Trustee").

The beneficiary is AAMES FUNDING CORPORATION A CALIFORNIA CORPORATION, A CORPORATION,

which is organized and existing under the laws of the State of CALIFORNIA, and whose address is 350 S. GRAND AVENUE LOS ANGELES, CA 90071 ("Lender").

Borrower owes Lender the principal sum of THIRTY-FIVE THOUSAND and NO/100----Dollars (U.S. \$ 35,000.00). This debt is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (referred to herein as the "Extension of Credit") and is evidenced by Borrower's note dated the same date as this Security Instrument (the "Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on November 1, 2008. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) 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 DALLAS COUNTY County, Texas:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

FW4044

JGM10696 8012870 CMTE
Bowers 103916767



which has the address of 6110 CAPESTONE DRIVE, TEXAS 75217 (Zip Code)

DALLAS, [City] ("Property Address").

TEXAS HOME EQUITY SECURITY INSTRUMENT (Cash Out - First Lien) - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3044.1 01/98 (Page 1 of 8 Pages)

E.M.B.

98219 06921

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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"; provided however, that the Property is limited to homestead property in accordance with Section 50(a)(6)(H), Article XVI of the Texas Constitution.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, 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.

Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) hazard insurance premiums for the Property and; (d) flood insurance premiums for the Property, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may 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 such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may 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. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may 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, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are not pledged as additional security for any sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion. Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under Paragraphs 1 and 2 shall be applied: first, to amounts payable under Paragraph 2; second, to interest due; third, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in Paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Paragraph 4. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard 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 floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with Paragraph 7.

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All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible. If the restoration or repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of the payments. If under Paragraphs 20 or 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower now occupies and uses the Property as Borrower's Texas homestead and shall continue to occupy the Property as Borrower's Texas homestead for at least one year after the date of this Security Instrument. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in Paragraph 17, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default and may be held personally liable for debt evidenced by the Note or this Security Instrument if Borrower gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a Texas homestead. 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.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender, so far as allowed by applicable law, may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Paragraph 7, Lender does not have to do so. No powers are granted by Borrower to the Lender or Trustee that would violate provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution or other applicable law.

Any amounts disbursed by Lender under this Paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, shall be paid to Lender to be applied to the sums secured by this Security Instrument.

In the event of a total or partial taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or 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 proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of such payments.

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10. 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 any successor in interest of Borrower shall not operate to release the original Borrower or Borrower's successors in interest from Borrower's obligations under the Note and this Security Instrument. Lender shall not be required to commence proceedings against any successor in interest or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraphs 16 and 23. Borrower's covenants and agreements shall be joint and several subject to the provisions of Paragraph 23. Any Borrower who co-signs this Security Instrument, but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument or to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution providing for execution hereof, in order to establish a valid lien, by the spouse of each owner of the Property; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. Lender's Right-to-Comply. It is Lender's and Borrower's intention to conform strictly to provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution.

All agreements between Lender and Borrower are hereby expressly limited so that in no event shall any agreement between Lender and Borrower, or between either of them and any third party, be construed not to allow Lender a reasonable time to comply, as provided in this paragraph 12, with Lender's obligations under the Extension of Credit. Borrower understands that the Extension of Credit is being made on the condition that Lender shall have a reasonable time to comply, as provided in this Paragraph 12, with any of the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. As a precondition to taking any action premised on failure of Lender to comply, Borrower will advise Lender of the noncompliance by a notice given as required by Paragraph 13, and will give Lender a reasonable time to comply. Borrower will cooperate in reasonable efforts to effectuate any compliance. Only after Lender has received said notice, has had a reasonable time to comply, and Lender has failed to comply, shall all principal and interest be forfeited by Lender, as required by Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution in connection with failure by the Lender to comply with its obligations under this Extension of Credit.

In the event that, for any reason whatsoever, any obligation of Borrower or of Lender pursuant to the terms or requirements hereof or of any other loan document shall be construed to violate any of the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then any such obligation shall be subject to the provisions of this Paragraph 12, and such document shall be automatically reformed, without the necessity of the execution of any amendment or new document, so that Borrower's or Lender's obligation shall be modified to conform to the Texas Constitution, and in no event shall Borrower or Lender be obligated to perform any act, or be bound by any requirement which would conflict therewith.

All agreements between Lender and Borrower are expressly limited so that any interest, loan charge or fee collected or to be collected (other than by payment of interest) from Borrower, any owner or the spouse of any owner of the Property in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by applicable law.

If a law, which applies to this loan and which sets maximum interest, loan charges or fees is finally interpreted so that the interest, loan charges or fees that the Lender has collected or is entitled to collect in connection with this loan exceed the permitted limits, or a determination is made at any time by Lender that interest, loan charges or fees that the Lender has collected or is entitled to collect in connection with this loan exceed the permitted limit, then: (i) any such interest, loan charges or fees shall be reduced by the amount necessary to reduce the interest, loan charges or fees to the permitted limit; and (ii) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. The Lender may choose to make this refund by reducing the principal Borrower owes 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. Borrower's acceptance of any such refund will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

It is the express intention of the Lender and Borrower to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of the Note, this Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by applicable law, then any promise, payment, obligation or provision shall be reduced to the limit of such validity, or eliminated as a requirement if necessary for compliance with such law, and such document shall be automatically reformed without the necessity of the execution of any new amendment or new document.

Lender's right-to-comply as provided in this Paragraph 12 shall survive the payoff of the Extension of Credit. The provision of this Paragraph 12 shall supersede any inconsistent provision of the Note or this Security Instrument.

E. M. B.

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13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given in writing by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given in writing by first class mail (but, by certified mail if the notice is given pursuant to Paragraph 12 hereof) to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph 13.

14. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of Texas. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Copies. Borrower shall be given at the time this Extension of Credit is made, a copy of all documents signed by the Borrower related to the Extension of Credit.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed 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.

17. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) five days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to the power of sale contained in this Security Instrument after entry of a court order permitting exercise of such power of sale; or (b) 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 occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses, insofar as allowed by Section 50(a)(6), Article XVI of the Texas Constitution, incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the 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 Paragraph 16.

18. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may 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 in accordance with Paragraph 13 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

19. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this Paragraph 19, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this Paragraph 19, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

E. M. B.

20. **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 Paragraph 16 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 will result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and 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. 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 any remedies permitted by applicable law. Insofar as allowed by Section 50(a)(6), Article XVI of the Texas Constitution, Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 20, including, but not limited to, court costs, reasonable attorneys' fees and costs of title evidence.

The lien evidenced by this Security Instrument may be foreclosed upon only by a court order. Lender may, at its option, follow any rules of civil procedure promulgated by the Texas Supreme Court for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"), as amended from time to time, which are hereby incorporated by reference. The power of sale granted herein shall be exercised pursuant to such Rules, and Borrower understands that such power of sale is not a confession of judgment or a power of attorney to confess judgment or to appear for the Borrower in a judicial proceeding.

21. **Power of Sale.** It is the express intention of Lender and Borrower that Lender shall have a fully enforceable lien on the Property. It is also the express intention of the Lender and Borrower that Lender's default remedies shall include the most expeditious means of foreclosure available by law. Accordingly, the Lender and Trustee shall have all the powers provided herein except insofar as may be limited by the Texas Supreme Court. To the extent the Rules do not specify a procedure for the exercise of a power of sale, the following provisions of this Paragraph 21 shall apply, if Lender invokes the power of sale. Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by applicable law. Lender shall provide a copy of the notice of sale to Borrower in the manner prescribed by applicable law. Sale shall be made at public vendue between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale. In the event of any conflict between such procedure and the Rules, the Rules shall prevail, and this provision shall automatically be reformed to the extent necessary to comply.

Trustee shall deliver to the purchaser who acquires title to the Property pursuant to the foreclosure of the lien a Trustee's deed conveying indefeasible title to the Property with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. 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, court costs and 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.

If the Property is sold pursuant to this Paragraph 21, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

Lender, at its option and with or without cause, may from time to time remove Trustee and appoint, by power of attorney or otherwise, a successor trustee to any Trustee appointed hereunder. 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.

22. **Release.** Within a reasonable time after termination and full payment of the Extension of Credit, the Lender shall cancel and return the Note to the owner of the Property and give the owner, in recordable form, a release of the lien securing the Extension of Credit or a copy of an endorsement of the Note and assignment of the lien to a lender that is refinancing the Extension of Credit. Owner shall pay only recording costs. **OWNER'S ACCEPTANCE OF SUCH RELEASE, OR ENDORSEMENT AND ASSIGNMENT, SHALL EXTINGUISH ALL OF THE LENDER'S OBLIGATIONS UNDER SECTION 50, ARTICLE XVI OF THE TEXAS CONSTITUTION.**

23. **Non-Recourse Liability.** Lender shall be subrogated to any and all rights, superior title, liens and equities owned or claimed by any owner or holder of any liens and debts outstanding immediately prior to execution hereof, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

Subject to the limitation of personal liability described below, each person who signs this Security Instrument is responsible for ensuring that all of Borrower's promises and obligations in the Note and this Security Instrument are performed.

Borrower understands that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that the Note is given without personal liability against each owner of the Property and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, the Lender can enforce its rights under this Security Instrument solely against the Property and not personally against the owner of the Property or the spouse of an owner.

E. M. B.

If this Extension of Credit is obtained by such actual fraud, then, subject to Paragraph 11, Borrower will be personally liable for the payment of any amounts due under the Note or this Security Instrument. This means that a personal judgment could be obtained against Borrower, if Borrower fails to perform Borrower's responsibilities under the Note or this Security Instrument, including a judgment for any deficiency that results from Lender's sale of the Property for an amount less than is owing under the Note, thereby subjecting Borrower's other assets to satisfaction of the debt.

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Paragraph 23 shall not impair in any way the lien of this Security Instrument or the right of Lender to collect all sums due under the Note and this Security Instrument or prejudice the right of Lender as to any covenants or conditions of the Note and this Security Instrument.

24. **Proceeds.** The Borrower has not been required to apply the proceeds of the Extension of Credit to repay another debt except a debt secured by the Property or a debt to another lender.

25. **No Assignment of Wages.** The Borrower has not assigned wages as security for the Extension of Credit.

26. **Acknowledgment of Fair Market Value.** Lender and Borrower have executed a written acknowledgment as to the fair market value of Borrower's Property on the date the Extension of Credit is made.

27. **Rider(s) to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the riders were a part of this Security Instrument. [Check as applicable]

Texas Home Equity Adjustable Rate Rider

Texas Home Equity Condominium Rider

Texas Home Equity Planned Unit Development Rider

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

DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.

YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THIS LOAN WITHOUT PENALTY OR CHARGE.

Eula Mae Bowens(Seal)
EULA MAE BOWENS -Borrower

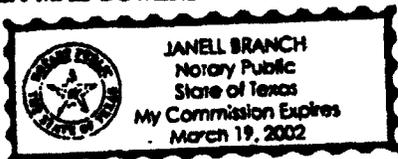
[Space Below This Line For Acknowledgment(s)]

State of TEXAS
County of

§
§

This instrument was acknowledged before me on the 22 day of October, 1998 by

EULA MAE BOWENS



Janell Branch
Notary Public
Janell Branch

[Personalized Seal]
My commission expires: 3-19-2002

(Printed Name)

to m 98219 06928

~~XXXXXXXXXXXXXXXXXXXX~~
Borrower: EULA MAE BOWENS

Data ID: 429

LEGAL DESCRIPTION

Paste legal description here then photocopy. Attach to the Security Instrument and file as one instrument.

LOT 3, BLOCK E/6260 OF RUSTIC HILLS ADDITION, FIRST INSTALLMENT, AN ADDITION TO THE CITY OF DALLAS, TEXAS, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 69188, PAGE 1240, MAP RECORDS, DALLAS COUNTY, TEXAS.

E. M. B.

98219 06929

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 07-05820-JAF
CHAPTER 13

IN RE:

VIVIAN D. JOHNSON

Debtor(s)

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF Minnesota

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebel,
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of* Movant, Franklin Credit Management Corp., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following

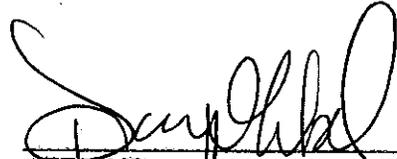
amounts:

- | | |
|--|-------------|
| (a) Principal balance on note and mortgage as of January 1, 2008 | \$54,076.99 |
| (b) 9 Payments @ \$737.98 [May 2007 to January 2008] | \$6,641.82 |

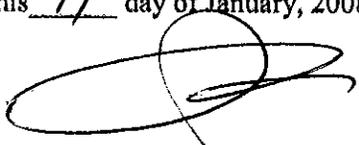
(c) Late Charges	\$480.42
(d) Bankruptcy Fees & Costs	\$800.00

TOTAL	\$61,999.23
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FUTHER AFFIANT SAYETH NAUGHT

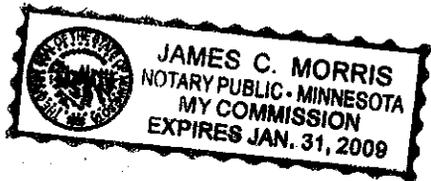

 AFFIANT Dory Goebel
 Vice President

Sworn to and subscribed before me
This 17 day of January, 2008.



Notary Public, State of MN At Large

Commissioned Name of Notary Public James Morris
 Personally known, or produced identification _____
 Type of Identification Produced _____



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-00302
CHAPTER 7

IN RE:

WILLIAM M. MITZLAFF
AKA WILLIAM MICHAEL MITZLAFF

Debtor(s)

_____ /

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF mn

COUNTY OF Dalwin

BEFORE ME, the undersigned authority, personally appeared Dory Goebel
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of Movant*, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

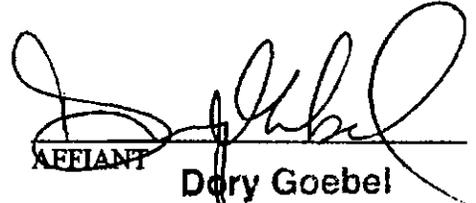
3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

- (a) Principal balance on note and mortgage as of February 26, 2008 \$51,848.02
- (b) 6 Payments @ \$544.70 [December 2007 to February 2008] \$3,268.20
- (c) Accumulated Late Charges \$190.68

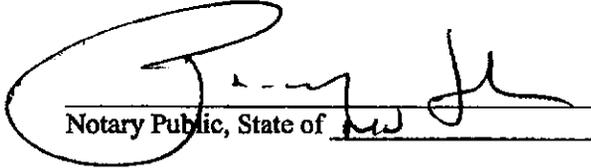
(d) Fees / Corporate Advance	\$71.50
(f) Bankruptcy Fees & Costs	\$800.00

TOTAL	\$56,178.40
--------------	--------------------

FUTHER AFFIANT SAYETH NAUGHT


 AFFIANT
Dory Goebel
 Assistant Secretary

Sworn to and subscribed before me
This 28 day of February, 2008.


 Notary Public, State of ND At Large

Commissioned Name of Notary Public Paris Y Jackson
 Personally known, or produced identification x
 Type of Identification Produced _____



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-1917-JAF
CHAPTER 7

IN RE:

THERON DOUGLAS COLLINS

PATRICE ROBERTS COLLINS
AKA PATRICE R. MANLEY

Debtor(s)

_____ /

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF Minnesota

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebel,
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of Movant*, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

- | | |
|---|-------------|
| (a) Principal balance on note and mortgage as of April 10, 2008 | \$46,362.04 |
| (b) 7 Payments @ \$318.74 [October 2007 to April 2008] | \$2,231.18 |

(c) Accumulated Late Charges	\$95.64
(d) Fees [Recording, Fax/Quote, Wire, E-Pay]	\$71.50
(e) Corporate Advances	\$1,727.50
(f) Escrow Advances	\$660.05
(g) Bankruptcy Fees & Costs	\$800.00

TOTAL **\$51,947.91**

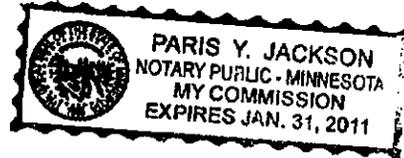
FUTHER AFFLIANT SAYETH NAUGHT

Dory Goebel
 AFFLIANT
Dory Goebel
 Assistant Secretary

Sworn to and subscribed before me
This 15 day of April, 2008.

Paris Y. Jackson
 Notary Public, State of Minnesota At Large

Commissioned Name of Notary Public Paris Y. Jackson
 Personally known, or produced identification x
 Type of Identification Produced _____



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT

In Re:

EILEEN FAGAN,

Debtor.

Case No.: 04-23460-ash
(Chapter 13)

Assigned to:
Hon. ADLAI S. HARDIN, JR.
Bankruptcy Judge

STATE OF MINNESOTA)
CITY OF MENDOTA HEIGHTS)

Dory Goebel, being duly sworn deposes and says:

1. I am a Bankruptcy Representative of HOMECOMINGS FINANCIAL, LLC, secured creditor ("Secured Creditor") herein, and as such, I am fully familiar with the facts and circumstances hereinafter set forth.
2. This affidavit is submitted in support of Secured Creditor's application for stay relief as set forth in the moving papers.
3. Secured Creditor is the holder of a mortgage covering the premises commonly known as 16 BREWSTER AVENUE, STONY POINT, NY 10980 ("Mortgaged Premises").
4. On the 21st day of September, 2004, Debtor EILEEN FAGAN filed a Petition under Chapter 13 of Title 11 U.S.C. § 101 et seq with this Court under case no. 04-23460-ash, and an Order for relief was duly entered.

5. The Note and Mortgage provide that the Debtor will be in default if he or she does not make full monthly payments on each due date. As of the 30th day of May, 2007, the Debtor has failed to make 4 post-petition payments in the amount of \$4,020.03 which represents the payments due the 1st day of February, 2007 through May, 2007 and has not cured said default.

6. That as of the 30th day of May, 2007, there was an unpaid principal balance owed on the Note and Mortgage in the sum of \$278,043.61, with interest thereon in the amount of \$20,553.51, plus late charges in the amount of \$946.28, for an estimated amount owing Secured Creditor in the amount of \$299,543.40. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make further advances for property taxes, insurance and related matters.

WHEREFORE, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises, together with such other, further and different relief as the Court may deem just in this matter.

/s/ Dory Goebel

Dory Goebel Default Services Junior Officer

Subscribed and sworn to before me
this 1st day of June, 2007.
/s/ Paris Y. Jackson

Paris Y. Jackson
Notary Public-Minnesota
My Commission
Expires Jan 31, 2011

FEIN, SUCH, KAHN & SHEPARD, PC.

Counsellors at Law

7 Century Drive - Suite 201

Parsippany, New Jersey 07054

(973) 538-9300

Attorneys for Secured Creditor

TAMMY L. TERRELL, ESQ.- 4062

FMT099

IN RE:

DANIEL G. BENTANCUR

Debtor.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Chapter : 13

Case No. 07-10160 NLW

**SUPPLEMENTAL CERTIFICATION BY
MORTGAGEE (Default in Chapter 13
Payments Outside of Plan)**

Hearing Date: November 5, 2007

I, Dory Goebel, hereby deposes and says:

1. I am the Attorney in Fact of FREMONT INVESTMENT AND LOAN.
2. Date Debtor's petition was filed on January 4, 2007.
3. (a) Amount of Debtor's monthly mortgage payment **\$3,013.19.**
(b) Amount of monthly late charges **\$103.18.**
(c) Total monthly payment including late charge **\$3,116.37.**
4. Debtor's last mortgage payment was applied to 07/01/07.
5. Debtor should have made 2 payments outside of the plan since the date of the filing petition.

6. Since the date of the filing, Debtor has made 6 payments.

7. Debtor is behind 3 months in payments outside of the plan, through the payment due October 01, 2007.

8. The total amount of delinquency outside of the plan is \$9,349.11. That amount is computed in the following manner:

$\$3,013.19 \times 3 = \$9,039.57$ (08/01/07 - 10/01/07 Monthly payments)

$\$103.18 \times 3 = \309.54 (08/01/07 - 10/01/07 Late charges).

9. The figures contained in this certification are current as of payment received on or before October 12, 2007.

10. Attached are true copies of the documents.

11. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 12, 2007

/s/ Dory Goebel
DORY GOEBEL
ATTORNEY IN FACT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-
2(c)

FEIN, SUCH, KAHN & SHEPARD PC
Counsellors at Law
7 Century Drive - Suite 201
Parsippany, New Jersey 07054
(973) 538-9300
Attorneys for Secured Creditor
FMT099

In Re:

DANIEL G. BENTANCUR

Debtor.

Case No.: 07-10160 NLW

Adv. No.:

Hearing Date: November 5, 2007

Judge: Honorable Novalyn L.
Winfield

**CERTIFICATION RE CALCULATION OF AMOUNTS DUE
NOTE AND MORTGAGE**

Dory Goebel of full age, as Attorney in Fact by FREMONT INVESTMENT
AND LOAN, hereby certifies the following information:

Recorded on December 12, 2005 in UNION County, in Book 11482 at
Page 0212

Property Address: 711 EMERSON AVENUE, ELIZABETH, NJ 07208

Mortgage Holder: FREMONT INVESTMENT

I. PAYOFF STATEMENT

Unpaid Principal Balance	_____	<u>\$311,880.00</u>
Interest	_____	<u>\$26,036.10</u>
Total Expense	_____	<u>\$3,024.02</u>
Total Suspense	_____	<u>\$(2,643.00)</u>
TOTAL DUE AS OF <u>10 / 11 / 07</u>	_____	<u>\$333,297.12</u>

II. EQUITY ANALYSIS (When Appropriate)

Estimated fair market value of real estate (as of 01/04/07) _

\$550,000.00*

Liens on the real estate:

1. Real estate taxes as of _____ \$ _____

2. First Mortgage (principal & interest)

as of 10/11/07 \$333,297.12

3. Second Mortgage (principal & interest)

as of 01/04/07 \$56,882.00

4. Other (specify on separate exhibit) \$ _____

TOTAL LIENS _ _ _ _ _ (\$390,179.12)

APPARENT EQUITY AS OF 10 / 12 / 07 _ \$159,820.88**

*Source: Schedule (e.g. appraisal, tax bill/assessment, contract of sale, debtor's schedules, etc.)

**If negative, insert zero(0).

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 12, 2007

/s/ Dory Goebel
DORY GOEBEL
ATTORNEY IN FACT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-
2(c)

FEIN, SUCH, KAHN & SHEPARD PC
Counsellors at Law
7 Century Drive - Suite 201
Parsippany, New Jersey 07054
(973) 538-9300
Attorneys for Secured Creditor
FMT099

In Re:

DANIEL G. BENTANCUR

Debtor.

Case No.: 07-10160 NLW

Adv. No.:

Hearing Date: November 5, 2007

Judge: Honorable Novalyn L.
Winfield

**CERTIFICATION RE POST PETITION PAYMENT HISTORY
ON THE NOTE AND MORTGAGE**

Dory Goebel of full age, as Attorney in Fact by FREMONT INVESTMENT
AND LOAN, hereby certifies the following information:

Recorded on December 12, 2005 in UNION County, in Book 11482 at
Page 0212

Property Address: 711 EMERSON AVENUE, ELIZABETH, NJ 07208

Mortgage Holder: FREMONT INVESTMENT

Mortgagors/Debtors: DANIEL G. BENTANCUR

POST PETITION PAYMENTS (Petition filed on 01/04/07)

Amount Due	Date Payment Was Due	How Payment Was Applied (Mo/Yr)	Amount Received	Date Payment Received	Check or Money Order Number
1. \$3,013.18	02/01/07	02/01/07	\$3,013.18	02/20/07	
2. \$3,013.18	03/01/07	03/01/07	\$3,013.18	05/02/07	
3. \$3,013.18	04/01/07	04/01/07	\$3,116.37	05/02/07	
4. \$3,013.18	05/01/07	05/01/07	\$3,013.18	05/10/07	
5. \$3,013.18	06/01/07	06/01/07	\$3,013.18	08/08/07	
6. \$3,013.18	07/01/07	07/01/07	\$3,013.18	08/13/07	
7. \$3,013.18	08/01/07	N/A	-0-	N/A	N/A
8. \$3,013.18	09/01/07	N/A	-0-	N/A	N/A
9. \$3,013.18	10/01/07	N/A	-0-	N/A	N/A
TOTAL					

[Continue on attached sheets if necessary]

*MONTHLY PAYMENTS PAST DUE: 3 x \$3,013.19 = \$9,039.57 (08/01/07 - 10/01/07 Monthly payments) and 3 x \$103.18 = \$309.54 (08/01/07 - 10/01/07 Late Charges) ; (MONTHLY PAYMENT + LATE CHARGE) = \$9,349.11 AS OF October 12, 2007.

Each Monthly Payment is comprised of:

(Attach sheets if payment amounts varies from figures set forth below)

Principal & Interest\$2,384.99
 Escrow\$731.38
 Total\$3,013.18

If the monthly payment has changed during the pendency of the case, please explain (attach separate sheet(s) if necessary):

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 12, 2007

/s/ Dory Goebel
 DORY GOEBEL
 ATTORNEY IN FACT

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: RE-06-168

RAC - Cum - 9/5/2007 ✓

OPTION ONE MORTGAGE CORP.

Plaintiff

v.

SUSAN GILMAN, et. al.,

Defendants.

STATE OF MAINE
Cumberland County Office
SUPERIOR COURT
SEP 05 2007
**ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

DONALD L. GARRETT
LAW LIBRARY

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This matter comes before the Court on Plaintiff's motion for summary judgment pursuant to M.R. Civ. P. 56(c).

BACKGROUND

Defendant Susan Gilman ("Gilman") is a resident of Gorham, Maine. In February 2005, Gilman purchased property located at 22 Hay Field Drive in Gorham.¹ She later obtained financing in the amount of \$380,000 from Residential Mortgage Services, Inc. ("RMS"), a Maine corporation. Gilman executed an adjustable rate rider and note, as well as a mortgage in favor of Residential Mortgage Services, Inc. in January 2006.² The mortgage eventually was assigned to Plaintiff Option One Mortgage Corporation ("Option One"), a corporation with a principal place of business in California. Option One is now the holder of the mortgage.

Other parties in interest also have liens on the Gorham property by virtue of contract work they performed for Gilman in connection with the construction

¹ The deed is recorded in the Cumberland County Registry of Deeds at Deed Book 22332, Page 125.

² The mortgage is recorded in the Cumberland County Registry of Deeds at Deed Book 23610, Page 181.

of her Gorham residence. Phinney Lumber Company (“Phinney”) of Gorham, Maine is a party in interest, having filed a Certificate of Lien for Contractor in the amount of \$38,698.46, dated February 3, 2006.³ Martin & Sons Plumbing & Heating (“Martin”) of Westbrook, Maine is a party in interest, and it filed a Statement and Certificate of Lien in the amount of \$3,472.60, dated March 17, 2006.⁴ Both Phinney and Martin had provided equipment and materials for work on Gilman’s property in 2005.⁵

Gilman was to begin sending her mortgage payments to Option One starting on March 1, 2006. Option One contends that it did not receive any payments on the loan after May 1, 2006. On June 5, 2006, Option One sent Gilman a notice of default and informed her how she could cure it. Because the default was not cured, Option One filed this action for foreclosure and sale in August 2006. It claims an amount due of \$403,769.44 as of November 2006. Gilman responded, seeking dismissal of Option One’s complaint.⁶ Phinney also filed an answer seeking dismissal of the complaint for failure to state a claim upon which relief could be granted. Phinney claims that its lien has priority, and that Maine mechanic’s lien law bars the claim because Option One knew of and consented to Gilman’s home construction. Lastly, Phinney notes that the total amount of its lien is \$41,200.05 as of the date of its affidavit.

Option One now moves for summary judgment. In its proposed judgment, it claims that it is the priority lien holder, followed by Martin and

³ The certificate is also recorded in Cumberland County at Deed Book 23651, Page 10.

⁴ This lien is recorded in Cumberland County at Deed Book 23767, Page 21.

⁵ Phinney also brought a complaint for damages in the district court, which has been transferred to this Court and consolidated with this action as RE07-118.

⁶ Gilman did not specify the basis upon which she sought dismissal, nor did she raise any affirmative defenses.

Phinney. Phinney and Martin both object, not to judgment generally, but to Option One's proposed judgment. They each contend that the mechanic's liens have priority over Option One's mortgage. Phinney submitted its own proposed judgment, with which Martin agrees, stating that the priority of lien holders is as follows: Martin, Phinney, and Option One.

DISCUSSION

1. Summary Judgment Standard.

Summary judgment is proper where there exist no genuine issues of material fact such that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *see also Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, 770 A.2d 653, 655. A genuine issue is raised "when sufficient evidence requires a fact-finder to choose between competing versions of the truth at trial." *Parrish v. Wright*, 2003 ME 90, ¶ 8, 828 A.2d 778, 781. A material fact is a fact that has "the potential to affect the outcome of the suit." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. At this stage, the facts are reviewed "in the light most favorable to the nonmoving party." *Lightfoot v. Sch. Admin. Dist. No. 35*, 2003 ME 24, ¶ 6, 816 A.2d 63, 65.

When contesting a party's statement of material facts, the opponent must provide support for its qualifications or denials by citing to the record. M.R. Civ. P. 56(h)(2). Failure to properly provide record citations gives this Court discretion to disregard the unsupported statements, and the Court is not required to evaluate parts of the record that are not specifically cited in the statement of material facts. M.R. Civ. P. 56(h)(4).

2. Is Summary Judgment Warranted on the Foreclosure Claim?

A party may seek a court-ordered foreclosure by sale when a breach of condition in a mortgage has occurred. 14 M.R.S. § 6321 (2005). “The foreclosure statute provides that ‘after hearing the court shall determine whether there has been a breach of condition in the plaintiff’s mortgage, the amount due thereon, including reasonable attorney’s fees and court costs, *the order of priority and those amounts, if any, that may be due to other parties that may appear. . .*’ ” *Dept. of Agriculture, food & Rural Resources v. Ouellette*, 2007 ME 117, ¶ 11, ___ A.2d ___ (quoting 14 M.R.S. § 6322 (2006) (emphasis added)). If a judgment of foreclosure is entered, the debtor is entitled to a 90-day redemption period from the date of the judgment. *Id.* § 6322. Option One contends there are no genuine issues of material fact regarding Gilman’s breach of conditions; therefore, it is entitled to a judgment of foreclosure. Its statement of material facts (“SMF”) establishes how the loan came into existence, and sets forth the amount it claims is due. **Option One’s SMF cites to specific portions of the affidavit of Dory Goebel, its Assistant Secretary.**⁷

Gilman filed a response which seems intended to serve both as a memorandum of law and as an opposition to the SMF. The majority of the filing contests Option One’s SMF, but does not include record citations for the denials or qualifications it makes, which it terms “objections.” Additionally, the response to the SMF improperly contains legal argument. Also, Gilman contends that Option One “is not the holder of the Note and Mortgage involved in this case and apparently was not at the time the case commenced,” so it lacks

⁷ Because she is custodian of Option One’s records, Goebel’s statements are deemed admissible as business records for purposes of this motion per M.R. Evid. 803(6).

standing to seek foreclosure. In her answer, however, Gilman did not raise the affirmative defense that Option One is not the mortgage holder and lacks standing to bring the foreclosure action. She is barred from raising the issue at this juncture.

As this Court will not consider the arguments and issues raised in Gilman's responsive filings, all of the facts in Option One's SMF are deemed admitted, including that Option One is the holder of the note and mortgage executed by Gilman in 2006 in the amount of \$380,000, and that Gilman is in default because she failed to make payments after May 1, 2006. Thus, Option One has properly established its entitlement to foreclosure through its memorandum, SMF, and affidavit.

3. Order of Priority of Lienholders.

Having determined that Option One is entitled to a judgment of foreclosure, this Court must determine the priority order of the three lien holders. Maine law provides that someone who, under a contract or with the owner's approval, provides materials and/or labor for building or improving a home has a mechanic's lien on the property. 10 M.R.S.A. § 3521 (2005). For a mechanic's lien to have priority over a mortgage, the mortgagee must "consent," or be aware of "the nature and extent of the work being performed on the mortgaged premises." *Gagnon's Hardware & Furniture, Inc. v. Michaud*, 1998 ME 265, ¶ 7, 721 A.2d 193, 194 (citing *Carey v. Boulette*, 158 Me. 204, 213, 182 A.2d 473, 478 (1962)).

In *Michaud*, the Law Court found that a bank, which had made a commercial loan to the defendant, did not know enough about the particulars of the project to have consented to the displacement of its mortgage in favor of a

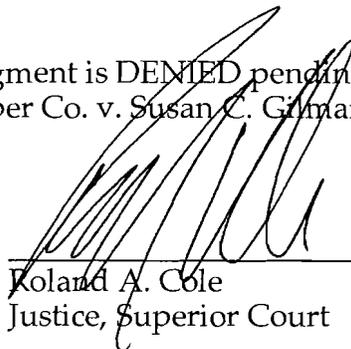
hardware store's lien for supplying materials. *Id.* ¶ 8, 721 A.2d at 195. As the bank had not technically consented, the trial court correctly found that the bank's mortgage took priority over the mechanic's lien. *Id.* ¶ 10, 721 A.2d at 195.

Because the original lender allegedly knew about the construction they performed, Martin and Phinney argue that the mortgage became subordinate to their liens. It makes sense that the original lender, RMS, may have known about the work because it occurred prior to the execution of the note and mortgage. There is insufficient evidence in this record, however, to establish what RMS knew about the work performed by Martin and Phinney to give the mechanic's liens priority over the mortgage. The mechanic's liens exist as a result of contracts between Gilman and the two service providers, and it is unclear whether the lender was aware of and consented to those contracts, although it is undisputed that the mortgage was recorded before the liens. Whether RMS consented to the liens, giving them priority over its mortgage, is a genuine issue of material fact incapable of resolution at this stage. This Court orders that a hearing be scheduled to determine the order of priority and amount due to lienholders.

The entry is:

Plaintiff's Motion for Summary Judgment is DENIED pending damages hearing in consolidation with Phinney Lumber Co. v. Susan C. Gilman, et. al., RE-07-118.

DATE: September 5, 2007



Roland A. Cole
Justice, Superior Court

JOHN GIFFUNE ESQ
PO BOX 586
PORTLAND ME 04112

*Residential
Mort.
Serv.*

THOMAS AINSWORTH ESQ
PO BOX 2412
SOUTH PORTLAND ME 04116

*Susan
Grimm*

MARCIA CORRADINI ESQ
PO BOX 4510
PORTLAND ME 04112

*Phinney
Lumber Co*

*Cummings Center, Suite 213C
Beverly, Massachusetts 01915*

Attn: John Doonan Esq

**Doonan, Graves, and Longoria, LLC
Attn: Maine Foreclosure Dept.
100 Cummings Center, Suite 213C
Beverly, MA 01915**

Plaintiff

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-02598
CHAPTER 7

IN RE:

AMANDA MARIE MCDANIEL
AKA AMANDA MARIE WATSON
AKA MANDI MARIE WATSON
AKA MANDI MARIE MCDANIEL

Debtor(s)

_____ /

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF MN

COUNTY OF Duluth

BEFORE ME, the undersigned authority, personally appeared Dory Goebel ,
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of Movant*, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

- | | |
|--|--------------|
| (a) Principal balance on note and mortgage as of May 9, 2008 | \$212,012.85 |
| (b) 5 Payments @ \$1,557.82 [January 2008 to May 2008] | \$7,789.10 |

(c) Accumulated Late Charges	\$728.90
(d) Fees [Recording, Fax/Quote, Wire, E-Pay]	\$61.50
(e) Corporate Advance	\$11.00
(f) Bankruptcy Fees & Costs	\$800.00

TOTAL **\$221,403.35**

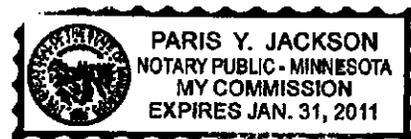
FUTHER AFFIANT SAYETH NAUGHT

Dory Goebel
 AFFIANT **Dory Goebel**
 Assistant Secretary

Sworn to and subscribed before me
 This 14 day of May, 2008.

Paris Y. Jackson
 Notary Public, State of MA At Large

Commissioned Name of Notary Public Paris y Jackson
 Personally known, or produced identification x
 Type of Identification Produced _____



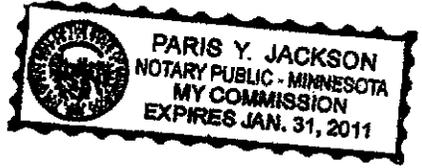
TOTAL DUE PLAINTIFF \$28,338.07

Monthly Payment Amount \$650.38

By: [Signature]
Dory Goebel AW

Sworn to and subscribed before me this 4 day of JAN, 2008.

[Signature]
NOTARY PUBLIC
My Commission Expires: 1-31-11
My Commission Number: 3110141
08-089171



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-02861-JAF
CHAPTER 7

IN RE:

ROBERT S. PATTON
AKA ROBERT SCOTT PATTON

KIMBERLY J. PATTON
AKA KIMBERLY JANE PATTON
AKA KIMBERLY JANE SCHAEFFER

Debtor(s)

_____ /

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF Minnesota

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebel,
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of Movant*, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

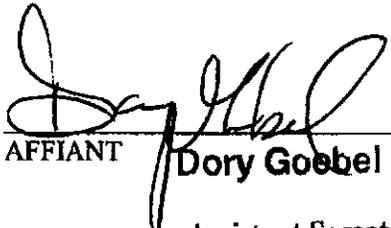
(a) Principal balance on note and mortgage as of May 22, 2008

\$348,000.00

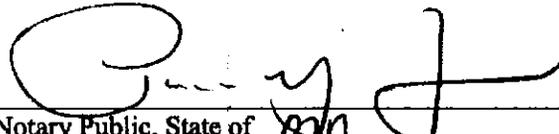
(b) 3 Payments @ \$3,000.59[March 2008 to May 2008]	\$9,001.77
(c) Accumulated Late Charges	\$304.50
(d) Fees [Recording, Fax/Quote, Wire, E-Pay]	\$51.00
(e) Bankruptcy Fees & Costs	\$800.00

TOTAL	\$358,157.27
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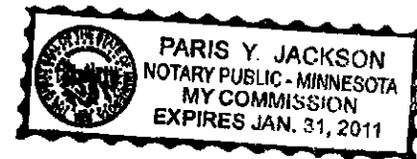
FUTHER AFFIANT SAYETH NAUGHT


 AFFIANT **Dory Goebel**
 Assistant Secretary

Sworn to and subscribed before me
This 28 day of May, 2008.

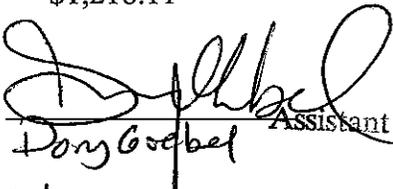

 Notary Public, State of mn At Large

Commissioned Name of Notary Public Paris Jackson
 Personally known, or produced identification ✓
 Type of Identification Produced _____

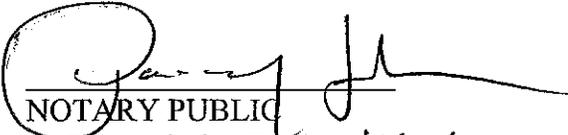


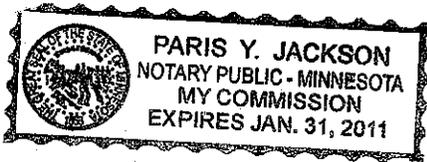
TOTAL DUE PLAINTIFF \$157,108.96

Monthly Payment Amount \$1,218.11

By: 
Dory Goebel Assistant Secretary

Sworn to and subscribed before me this 25 day of Feb, 2008.


NOTARY PUBLIC
My Commission Expires: 3/31/11
My Commission Number: 371014
07-84069T



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT
EASTERN DIVISION - CLEVELAND

IN RE:) CHAPTER 13
)
DINO ANTONOPOULOS) CASE NO. 07-16212
aka DINOS ANTONOPOULOS)
) JUDGE PAT E. MORGENSTERN-CLARREN
Debtor)
)
STATE OF Minnesota) **A F F I D A V I T**

COUNTY OF Dakota)
) ss

Dory Goebel, being first duly sworn,

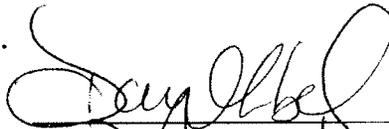
deposes and says, :

1. Affiant states that this Affidavit is made of their own personal knowledge and belief and it is true as he/she verily believes

2. That he/she is the ANP of Fidelity National Foreclosure Solutions, which is Asst. Secretary for OPTION ONE MORTGAGE CORPORATION for WELLS FARGO BANK, N.A., AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2002-3 ASSET-BACKED CERTIFICATES, SERIES 2002-3, a secured creditor herein and holder of the first mortgage on the real estate of the debtor, Dino Antonopoulos, and is authorized to make this Affidavit.

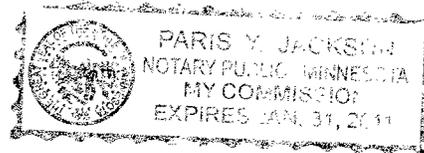
3. That, pursuant to an Order granted in this Court on December 28, 2008, the post-petition payments were to be made each and every month outside of the Chapter 13 plan, and that if payments were missed so that the delinquency equaled **thirty (30)** days, the stay of proceedings now in effect could be removed by the filing of an Affidavit and is the purpose of filing this Affidavit.

4. Since the filing of the Order, the debtor has become delinquent on the Stipulated/Agreed Order payments from 1/1/08 through 3/1/08 is \$649.89, on the post-petition payments from 1/1/08 through 4/1/08 is \$3,619.76, plus late charges from 1/1/08 through 3/1/08 is \$162.90.


BY Dorey Goebel - AVP

SWORN TO BEFORE ME, and subscribed in my presence this 4
day of April, 2008.

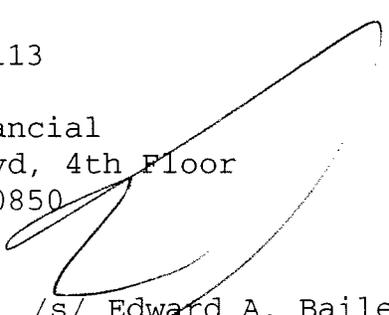

Notary Public



S E R V I C E

A copy of the foregoing Affidavit was served upon the following parties by ordinary U.S. Mail on April 14, 2008 at the addresses shown below:

1. Office of the U.S. Trustee
* Served Electronically *
2. Craig Shopneck, Trustee
Served via: ch13shopneck@ch13cleve.com
3. Melissa L. Resar, Esq.
614 West Superior Avenue,
Suite #1212
Cleveland, Ohio 44113-1306
4. Dino Antonopoulos, Debtor
2046 Lewis Drive
Lakewood, Ohio 44107
5. Cuyahoga County Treasurer
1219 Ontario St.
Room 300
Cleveland, OH 44113
6. Great Seneca Financial
702 King Farm Blvd, 4th Floor
Rockville, MD 20850



/s/ Edward A. Bailey
REIMER, LORBER & ARNOVITZ CO., L.P.A.
BY: Michael S. Arnovitz #0032934
BY: Edward A. Bailey #0068073
P.O. Box 968
Twinsburg, Ohio 44087
Phone No. 330-425-4201
Fax No. 330-425-2155
ebailey@reimerlaw.com



Reimer, Lorber & Arnovitz Co., L.P.A.
P.O. Box 968
2450 Edison Boulevard
Twinsburg, OH 44087
Voice 330.425.4201
Bankruptcy Fax 330.425.2155
Foreclosure Fax 330.487.0923

FILED
4/14/08
2008 Apr 28 PM 03:09

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

4/28/08

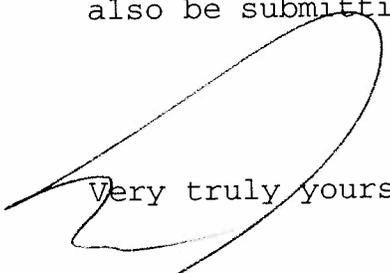
April 14, 2008

Melissa L. Resar, Esq.
614 West Superior Avenue, Suite #1212
Cleveland, Ohio 44113-1306

RE: Dino Antonopoulos
Case No. 07-16212
Our File No. B07-74690

Dear Ms. Resar:

With reference to the above matter, enclosed herein please find a copy of the **Affidavit** which we will be filing with the court **once the 10-day notice has expired**. Please note that we will also be submitting an **Order** granting final relief at that time.


Very truly yours,

Edward A. Bailey
EAB/sc
Enclosure

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT
EASTERN DIVISION - CLEVELAND

IN RE:) CHAPTER 13
)
 DINO ANTONOPOULOS) CASE NO. 07-16212
 aka DINOS ANTONOPOULOS)
) JUDGE PAT E. MORGENSTERN-CLARREN
 Debtor)
)
 STATE OF Minnesota) **A F F I D A V I T**
)
 COUNTY OF Dakota) ss

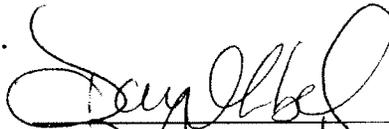
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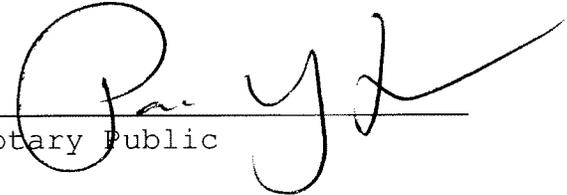
2. That he/she is the ANP of Fidelity National Foreclosure Solutions, which is Asst. Secretary for OPTION ONE MORTGAGE CORPORATION for WELLS FARGO BANK, N.A., AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2002-3 ASSET-BACKED CERTIFICATES, SERIES 2002-3, a secured creditor herein and holder of the first mortgage on the real estate of the debtor, Dino Antonopoulos, and is authorized to make this Affidavit.

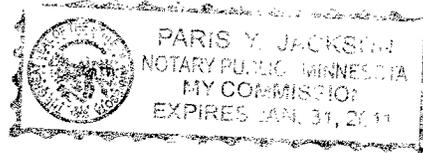
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BY Dorey Goebel - AVP

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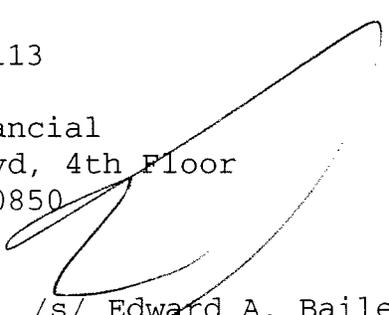

Notary Public



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6. Great Seneca Financial
702 King Farm Blvd, 4th Floor
Rockville, MD 20850



/s/ Edward A. Bailey
REIMER, LORBER & ARNOVITZ CO., L.P.A.
BY: Michael S. Arnovitz #0032934
BY: Edward A. Bailey #0068073
P.O. Box 968
Twinsburg, Ohio 44087
Phone No. 330-425-4201
Fax No. 330-425-2155
ebailey@reimerlaw.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS

* * * * *

IN THE MATTER OF: * NO. 07-11862
RON WILSON AND LARHONDA WILSON, * SECTION "A"
DEBTORS. * CHAPTER 13

* * * * *

Transcript of the proceedings taken in the above captioned matter on **Thursday, June 26, 2008**, the Honorable Elizabeth W. Magner, United States Bankruptcy Judge, presiding.

AUDIO OPERATOR: Sean McGinn

TRANSCRIPTIONIST: Dorothy Bourgeois
84425 Terrell Road
Bogalusa, Louisiana 70427
(985) 886-1015

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES:

Harrington & Myers
By: Kirk Myers, Esquire
2901 North Causeway Boulevard, Suite 303
Metairie, Louisiana 70002

Representing the Debtors

The Boles Law Firm
By: D. Clay Wirtz, Esquire
1818 Avenue of America
Monroe, Louisiana 71201

Representing Option One Mortgage Corporation

1 P R O C E E D I N G S

2 (Thursday, June 26, 2008)

3 THE CLERK: Proceeding this 26th day of June, 2008,
4 Case Number 07-11862, Wilson.

5 THE COURT: Appearances, please.

6 MR. MYERS: Kirk Myers for the debtor, Your Honor.

7 MR. WIRTZ: Your Honor, Clay Wirtz.

8 THE COURT: All right. Mr. Myers, do you want to
9 start?

10 MR. MYERS: I would be happy to, Your Honor.

11 It's actually his motion. It's a Motion to Lift and
12 it's coming up on our defense where we're indicating that we're
13 current and I'm not sure that's being contested any longer.

14 THE COURT: All right.

15 MR. MYERS: By way of history, which is why I kind of
16 came in and fought the continuance of it and I don't believe
17 that was Mr. Wirtz's fault, but I didn't like how Option One
18 was addressing the issue.

19 Option One filed a Motion to Lift Stay. Originally,
20 we came in filed a response and said we were current. The
21 Court denied that for hearing as a result of no affidavit being
22 filed with the original motion for relief.

23 Option One then turned around and re-filed
24 essentially the exact same motion for relief saying again that
25 we're not current. The same individual, this Goebel, indicated

1 that they hadn't received any payments, which is kind of sort
2 of what started off the whole ball of wax, and made the debtors
3 go find a lot of proof of payments. A lot of it was sent in
4 certified mail. Mr. Wirtz has shown me today where they had
5 sent some back, and he's got money orders, he's got checks.
6 Clearly payments --

7 THE COURT: Meaning they were holding the money
8 orders and checks. Mr. Wirtz --

9 MR. MYERS: I believe. There was some question that
10 maybe it was received after, but based on my certified mail
11 that we'd previously submitted to the Court with return
12 receipts, we have a track record with Western Union payments
13 being made that exceed the affidavit. The problem that we've
14 got is when I see these affidavits, and I think that's where
15 the Court was headed, you say "I'm holding money." You don't
16 say, "We've not received any payment at all."

17 THE COURT: Right.

18 MR. MYERS: And then it's a lot harder for a debtor
19 to start to work its way back up.

20 The fact that Ms. Goebel and then through Mr. Wirtz,
21 and he explained the problems that they've had, it turns out
22 this turns out to be a Fidelity National situation. So, he
23 doesn't have directives and I'll let him speak to that, but
24 he's deprived of direct contact. That's that whole Texas case
25 and I can't remember the name, it starts with a "P," but --

1 THE COURT: Parsley.

2 MR. MYERS: There you go. Thank you. And I knew the
3 Court was familiar with that. He's deprived direct client
4 contact and now I have a big mess and that's what they're up,
5 as I understand it from reviewing at least one of the records,
6 in Ohio on two false affidavits in Ohio today which is I
7 presume why they're not here. But, quite frankly, I told
8 Mr. Wirtz that. He called me and explained he was in a bind
9 and to file the Motion to Continue, but the fact that they've
10 put false affidavits in another court doesn't really get me out
11 of coming to my court and didn't endear a lot of sympathy for
12 them. And then when I found out they actually continued at
13 their own motion and then they wanted to argue that they didn't
14 have notice and they didn't timely come in and ask for it, it
15 was just a really big mess. And I really thought it was a play
16 to get more time for another reason rather than the legitimate
17 reason.

18 Nothing's been filed into the record rebutting
19 debtor's contentions that we're current, which was I understood
20 that one of the big reasons why the Court wanted to have this
21 continued hearing. We had also continued the second lift stay
22 hearing two or four weeks to give them time to rebut the
23 records and it was on that second continuance that the Court
24 created this rule. But again, and I'll let Mr. Wirtz go to
25 that issue, I don't believe that they're contesting that as of

1 today that my debtor is not current. And he'd previously
2 acknowledged to me that they were talking about stipulating
3 that they're current through June.

4 As far as where I'm at on this file, I would request
5 attorney's fees of \$900. Essentially we did four hearings, but
6 one of those was to come to Court and go through all the
7 records and say we're going to continue to another hearing.

8 THE COURT: All right.

9 MR. MYERS: Three a pop, I did not keep time records
10 on it, but that's what I'm doing my basis on.

11 I'll turn it over to Mr. Wirtz unless you have a
12 question for me.

13 THE COURT: Let's talk to Mr. Wirtz. Okay,
14 Mr. Wirtz --

15 MR. WIRTZ: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. WIRTZ: As Your Honor is aware, I'm very sorry
18 that this situation -- that I'm in the situation where people
19 that you've called into court are not here to testify as to
20 their accounting practices and answer any other questions that
21 you have for them. I'll let Your Honor lead that discussion
22 and questioning in a moment.

23 I would like to say that I have received directly
24 back from Option One checks, personal checks and money orders
25 totaling \$7,513.53, which I have in the file.

1 THE COURT: So uncashed, Mr. Wirtz?

2 MR. WIRTZ: That's correct.

3 THE COURT: Okay.

4 MR. WIRTZ: That's correct. And I'm only stating
5 that for the record so that Mr. Myers and his clients have the
6 benefit of that and the Court has the benefit of that, because
7 Mr. Myers is correct, based upon what I've seen in terms of the
8 May and the June proof of payment or at least the transmission
9 of payment, I am willing to stipulate that they're current
10 through June provided that, you know, these checks are
11 negotiable --

12 MR. MYERS: Your Honor, on the checks, the last time
13 we were in court we tendered cash money that my understanding
14 was made out those checks. We tendered --

15 THE COURT: In other words substituted for the
16 checks.

17 MR. MYERS: Yeah. And I've got money orders that we
18 sent certified mail. This would be your June -- they received
19 on June 18th for \$1,546 and I have a check that we don't think
20 cleared for May --

21 Correct?

22 UNIDENTIFIED SPEAKER: Correct.

23 MR. MYERS: So, the May check that he received on --
24 and, Your Honor, all these are being sent certified mail return
25 receipt. On May 16th that check was good and I've got June

1 money here, so I don't know where that hits your dollars, but
2 the May check is definitely good. But we tendered, knowing
3 that those checks hadn't cleared off, to serve like money, we
4 tendered that new money in court last time, Your Honor.

5 THE COURT: All right, let's start with are these
6 money orders or certified checks?

7 MR. MYERS: It's a combination between Western Union,
8 money order, cashier's check, and personal checks.

9 THE COURT: Okay.

10 MR. MYERS: And what he's talking about now were
11 personal checks.

12 THE COURT: All right.

13 MR. MYERS: The money orders are obviously good. And
14 you've got the money orders in your file that we gave Tim
15 Farrelly from last time.

16 THE COURT: All right.

17 MR. WIRTZ: That's correct, Your Honor. Again,
18 personal checks, money orders, and cashier's checks I have in
19 my file totally that number that I quoted, \$7,513.53.

20 THE COURT: Okay, and the arrearage was \$7,146,
21 correct?

22 MR. WIRTZ: I'm sorry?

23 THE COURT: The arrearage that your client alleged
24 was \$7,146, right?

25 MR. WIRTZ: The post-petition -- well, --

1 THE COURT: I mean I'm looking at an accounting loan
2 history that was filed by Option One, you signed it, that said
3 that "Option sent their attorney of records funds totally
4 \$3,483. These funds are not enough to reinstate the post-
5 petition arrearages of \$7,146." Are you telling me now you've
6 got additional payments so you've gotten checks back for
7 \$7,513, which is more than --

8 MR. WIRTZ: Your Honor, I think it depends on the
9 time that you're talking about. I'm simply stating from the
10 history of the plan which you know the beginning payment was
11 due in October, that is what I have in my file that is, you
12 know, that I plan and I think Mr. Myers would want me to apply.

13 THE COURT: Okay, I want to go through this though.
14 Let's start with tell me what you have in terms of money orders
15 that were received from your client or checks and please
16 specify the amount, the date of the money order, and whether
17 it's a cashier's check, a money order --

18 MR. WIRTZ: Okay.

19 THE COURT: -- or personal check.

20 MR. MYERS: And if I could start at the very
21 beginning I want to make sure we've got these two, the first
22 two were Western Union. So, the first one was picked up by
23 them on October 20th, '07 at 3:41 --

24 THE COURT: Well, I'm looking at their filing, so
25 let's just start --

1 MR. MYERS: Okay.

2 MR. WIRTZ: Okay, in my file and I'll just read it
3 for the record I have cashier's check Number 9427116 dated
4 January 26, 2008 in the amount of \$1,000.

5 THE COURT: Okay, even?

6 MR. WIRTZ: I have personal check Number 1181 written
7 on account -- well, I'm not exactly sure how they do their
8 account on this check, but --

9 THE COURT: That's okay, just give me a date.

10 MR. WIRTZ: -- it's January 25th, 2008 in the amount
11 of \$312.

12 THE COURT: Okay.

13 MR. WIRTZ: And then I have personal check
14 Number 1180 also dated January 25th of '08 in the amount of
15 \$546.84.

16 THE COURT: Okay.

17 MR. WIRTZ: The next check I have is a personal check
18 Number 1207 in the amount \$77.33.

19 THE COURT: Wait, \$77.33. What was the date of the
20 check?

21 MR. WIRTZ: February 23rd, 2008.

22 THE COURT: Thank you.

23 MR. WIRTZ: And it says it's for late charges for
24 February.

25 THE COURT: Okay.

1 MR. WIRTZ: The next item is a cashier's check
2 Number 9322069 dated February 23rd, 2008 in the amount of
3 \$1,546.84, which is the monthly payment due.

4 THE COURT: All right.

5 MR. WIRTZ: The next item is cashier's check Number
6 9427738 dated April 21st, 2008 in the amount of \$546.84. And
7 with that payment that was sent back by Option One to me there
8 is a money order Number 11854717312 dated April 21st in the
9 amount of \$1,000.

10 THE COURT: Okay.

11 MR. WIRTZ: There is money order 11854717323 also
12 dated April 21st in the amount of \$546.84. There's also money
13 order Number 11854717334 also dated April 21st in the amount of
14 \$312. And, finally, another money order Number 11854717345
15 also dated April 21st in the amount of \$78 even.

16 THE COURT: Okay.

17 MR. WIRTZ: And those amounts total \$7,513.53.

18 THE COURT: Seven thousand five thirteen point five
19 three?

20 MR. WIRTZ: Correct.

21 THE COURT: All right. The monthly payment amount is
22 \$1,546.84?

23 MR. WIRTZ: That's correct.

24 THE COURT: What's the \$312 represent? I see that on
25 two occasions.

1 MR. WIRTZ: My recollection is late fees just from
2 notes in the file. I wouldn't swear to that.

3 THE COURT: Okay, but \$312 in late fees? It seems
4 like a lot. The \$77 on the next seems right.

5 MR. MYERS: And, Your Honor, on that accounting we're
6 not applying to Western Union the first two, the October and
7 November Western Union.

8 THE COURT: Okay, and that's according to Mr. Wirtz's
9 filing on 10/22/07 received \$1,546.84 and it was applied, and
10 then on 12/3, \$1,546 which was applied to the November payment,
11 and then on 4/2/08 \$1,546.84 which was applied to the December
12 payment, correct?

13 MR. MYERS: I have a November 30th one, what was the
14 second receipt date?

15 THE COURT: I have 10/22, 12/3, and 4/2.

16 MR. WIRTZ: Your Honor, on the check that is in the
17 amount of \$312, there's handwriting that says "for late charges
18 for October, November, December, and January."

19 THE COURT: October, November, December, and January.
20 All right, and then what does it say on the \$312 that was on
21 4/21?

22 MR. WIRTZ: It does not say.

23 THE COURT: All right, now answer some questions for
24 me, Mr. Wirtz. The payments are due I assume on the 1st of the
25 month?

1 MR. WIRTZ: Correct.

2 THE COURT: When are they late?

3 MR. WIRTZ: I don't know, Your Honor. I --

4 THE COURT: What does the note say?

5 MR. WIRTZ: The 15th day.

6 THE COURT: Okay, so that would be --

7 MR. WIRTZ: And it says, "The amount of the charge
8 will be five percent."

9 THE COURT: Five percent, which is -- I just did the
10 math. That's about \$77. So, that's where that's coming from.
11 So, let's look at the payment on 10/22 was late, so there's one
12 late charge for that. The payment on 12/3 was late because
13 that was for the November payment, and then we have no payments
14 for --

15 And correct me if I'm wrong, Mr. Myers.

16 -- we have no payment for December, so there's
17 another late charge. And then in January there's the January
18 payment that's made on the 25th and 26th, so that's late. And
19 then in February the February payment is late because it's not
20 paid until the 23rd. And then there is a payment on the
21 second, which is not late for -- no, late for March, and then
22 there's another payment on the 21st that brings up April's
23 payment. Correct?

24 MR. WIRTZ: That sounds right.

25 THE COURT: All right, so now where are May and June?

1 MR. MYERS: May and June --

2 THE COURT: Oh, sorry, we have another payment -- all
3 right where --

4 MR. MYERS: What I'm showing that's not credited are
5 the two Western Union payments, the October and November
6 payments that were received on October 21st and November 30th.

7 THE COURT: Oh, so there's another payment for
8 October 21st? I have one on October 22nd.

9 MR. MYERS: That could be it.

10 THE COURT: Okay.

11 MR. WIRTZ: Your Honor, I think if you look at the
12 accounting that was filed on April 21st, I think it
13 corroborates the two money orders that Mr. Myers had submitted
14 earlier that showed it was sent for October and November. The
15 only question that I have now based upon what I've seen other
16 than obviously receipt of the May and June payments is the
17 December payment. And he has proof of either transmission or
18 something in his filing, it just simply doesn't have the
19 amount.

20 THE COURT: Okay. When was that?

21 MR. MYERS: The December payment was --

22 MR. WIRTZ: I think it was the 27th.

23 MR. MYERS: -- made December 27th, received
24 January 2nd.

25 THE COURT: Okay, December 27th?

1 MR. MYERS: Correct.

2 THE COURT: Okay, and you don't have the amount?

3 MR. MYERS: My clients aren't sure what they did on
4 that one. I was under the impression that that's what we made
5 whole with the money order when we were in court last time. My
6 original grid had that as a cashier's check, but I don't have a
7 copy of that cashier's check and today they weren't sure
8 whether it was a cashier's check or a personal check.

9 THE COURT: Okay, let me make some -- hold on just a
10 minute.

11 MR. WIRTZ: And from everything that I've seen that's
12 the only payment that now is, you know, questionable.

13 THE COURT: Okay.

14 MR. WIRTZ: And I'm certainly not denying that it was
15 made. I just -- my client doesn't have a record of receipt and
16 application of it.

17 MR. MYERS: My appreciation is the last time we were
18 in court, Your Honor, we tendered two full payments and we
19 tendered those two full payments because we didn't have
20 personal checks that had cleared.

21 THE COURT: Okay, help me through this, folks. I
22 have --

23 MR. WIRTZ: On April 22nd, Your Honor, if I may, when
24 Mr. Farrelly forwarded the money to us that Mr. Myers is
25 referring to, that's the amount of \$1,858.84 that's represented

1 by a money order of \$78, a money order of \$312, a money order
2 of \$546.84, and a money order of \$1,000, and then a cashier's
3 check for \$546.84. So, that was not, unless there was
4 something else that got lost, that was not for two full
5 payments.

6 THE COURT: Right, okay. So, what I have is -- just
7 walk through this with me -- October 22nd, \$1,546 being made.
8 That's applied to the October payment.

9 MR. WIRTZ: Correct.

10 THE COURT: Then on December 3rd, another \$1,546.84
11 that's applied to the November payment. We have a December
12 check let's just say at this point holding out and that would
13 applied to the December payment. Then what was discovered were
14 three payments of \$1,000, \$312, and \$546.84 respectively that
15 would be applied to the January payment. Those are made on
16 January 25th or 26th.

17 MR. MYERS: I'm sorry, what's that total, Your Honor?

18 THE COURT: One thousand, \$312, and \$546.84 --

19 MR. MYERS: That's correct.

20 THE COURT: Those were then tendered -- those would
21 then be applied to the January 1st payment. Then there are
22 payments on February 23rd of \$77.33 and \$1,546.84. Those would
23 be applied to the February payment. Then we have payments on
24 April 2nd for \$1,546.84, that --

25 MR. MYERS: I'm sorry, can we do the February payment

1 again, Judge?

2 THE COURT: Sure. On February 23rd, '08 there are
3 two payments, \$77.33 and \$1,546.84.

4 MR. MYERS: Seventy-seven dollars?

5 THE COURT: Right, \$77 --

6 MR. MYERS: Got it.

7 THE COURT: -- and 33 cents.

8 MR. MYERS: Okay.

9 THE COURT: Then on April 2nd a payment of \$1,546.84
10 which would apply to the March outstanding payment. And then
11 two payments on April 21st for \$546.84 and \$1,000, that would
12 be applied to the April payment.

13 MR. MYERS: I'm sorry, can you give me the first
14 April date? I've got receipt of a payment on March 31st.

15 THE COURT: Okay, according to Mr. Wirtz's
16 accounting, on 4/2/08 --

17 MR. MYERS: That could be it.

18 THE COURT: -- they received a payment of \$1,546.84.

19 MR. MYERS: Okay.

20 THE COURT: That would apply to March 1st. And then
21 on April 21st, they received payments of \$1,000 and \$546.84
22 that would be applied to April 1st.

23 MR. MYERS: Correct.

24 THE COURT: Then for May I have three payments,
25 \$546.84, \$312, and \$78. So, I seem to be \$1,000 shy on the May

1 payment.

2 MR. MYERS: Right.

3 THE COURT: Okay, and then --

4 MR. MYERS: Now we're --

5 THE COURT: -- what got handed in court?

6 MR. MYERS: Now we're current.

7 THE COURT: Okay, so tell me what got handed in
8 court?

9 MR. MYERS: Money orders and I don't have that amount
10 wrote down.

11 THE COURT: Okay.

12 MR. MYERS: But my appreciation -- because I have
13 since -- since we were in court I have two more payments that
14 have been made, a May payment that was received on May 16th
15 that he's not tracking --

16 THE COURT: Okay, 5/16, and that was for the \$1,546?

17 MR. MYERS: That was for \$1,546.

18 THE COURT: Okay.

19 MR. MYERS: And I got a June 18th that was received
20 June 18th --

21 THE COURT: For?

22 MR. MYERS: -- for \$1,546.

23 THE COURT: Fifteen forty-six.

24 MR. MYERS: Now, my clients are telling me the
25 May 16th payment that they received was a personal check that

1 has not cleared their bank.

2 THE COURT: Okay, that's okay. So, I have two more
3 payments that are not on this accounting --

4 MR. MYERS: That is correct.

5 THE COURT: -- for \$1,546.84 and that would take care
6 of May and June, which means that these three payments,
7 \$546.84, \$312, and \$78 are extra payments over and above the
8 amounts that are necessary to bring these through June.

9 MR. WIRTZ: I'm not following that, Your Honor.

10 MR. MYERS: I think those payments were to have
11 applied to December when we were in court last because that
12 check -- I think that turned out to be a personal check that
13 hasn't cleared. That was what my --

14 THE COURT: Okay. And so we're still missing \$1,000
15 on that December.

16 MR. WIRTZ: Could I approach, Your Honor?

17 Kirk, you want to come look at this with us while --

18 MR. MYERS: Yeah, and I'll bring you mine, Judge.

19 This is my time line and we've got to match back up
20 with theirs.

21 THE COURT: Sean, make sure you can pick up their
22 voices when they're talking to me. Can you hear them?

23 THE CLERK: Yes.

24 THE COURT: Okay.

25 MR. WIRTZ: I get confused when they start

1 applying --

2 MR. MYERS: Correct.

3 MR. WIRTZ: -- the months before too, so what I did
4 is simply said, okay, --

5 THE COURT: These are the installments?

6 MR. WIRTZ: -- they were due from October --

7 THE COURT: Right.

8 MR. WIRTZ: -- through May.

9 THE COURT: Right.

10 MR. WIRTZ: All right, now they changed from the time
11 that the affidavit was filed through the accounting, a payment
12 was somehow applied, and that knocked out October --

13 THE COURT: All right.

14 MR. WIRTZ: -- and Kirk is showing me the
15 transmission of both --

16 MR. MYERS: And that's Western Union.

17 MR. WIRTZ: -- that 10/22 --

18 THE COURT: Okay.

19 MR. MYERS: Which Western Union shows they got that
20 10/21, so that would logically follow.

21 MR. WIRTZ: And then he also has a November one.

22 MR. MYERS: Right.

23 THE COURT: That's these two right here.

24 MR. MYERS: Correct.

25 MR. WIRTZ: All right, now, everything else, you

1 know, is pretty much straightforward. My clients somehow
2 don't show the November or the December, and he shows me that
3 the sent the November --

4 THE COURT: Got the payment.

5 MR. WIRTZ: -- so I'll just have to assume --

6 MR. MYERS: This is Western Union, so I pulled -- and
7 that was attached to our stuff, so this is cash money that
8 Western Union received and they're showing they pulled it out
9 of the Western Union account on November 30th.

10 MR. WIRTZ: Okay, and so that takes --

11 MR. MYERS: That's an easy one.

12 MR. WIRTZ: So that takes care of that as far as --
13 you know, my client just has to figure out what they did with
14 it. The only question that I have that remains --

15 THE COURT: Is December.

16 MR. WIRTZ: -- is the December amount. He shows me
17 that something was sent December 27th.

18 MR. MYERS: Correct.

19 MR. WIRTZ: I just don't know the amount.

20 MR. MYERS: I originally thought that was a cashier's
21 check, but I don't have proof of it. They're telling me today
22 that they think that was a personal check that they made whole
23 when we were in court in April.

24 THE COURT: Okay. All right, I'm following.

25 MR. WIRTZ: And that's why I'm willing to stipulate

1 that they're current as long as the Court doesn't find that
2 there's some additional money owed.

3 THE COURT: All right.

4 MR. MYERS: They're telling me they submitted \$2,000
5 in court?

6 MR. WIRTZ: Eighteen hundred is what I got.

7 MR. MYERS: Eighteen hundred?

8 MS. WILSON: I can't remember. I don't know if it
9 was \$2,100 or 20 -- I can't remember.

10 MR. WIRTZ: Well, look, I mean your clients obviously
11 have a track record, you know, as being straightforward --

12 MR. MYERS: Okay.

13 MR. WIRTZ: You know, I'm willing to go back to my
14 client and tell them to take it or leave it or --

15 THE COURT: Okay, why don't y'all go back.

16 All right, what I have is that based on what's been
17 presented to me is that the debtors were late in making
18 payments from October through June. So, that would result in
19 nine late fee charges. Since the payment amount is \$1,546.84,
20 and the late fee charge is five percent, that's \$77.34 per
21 month, times by nine months means late charges would total
22 \$696.08.

23 MR. MYERS: I'm sorry, we're --

24 THE COURT: Wait --

25 MR. MYERS: -- we're getting to nine late fees?

1 THE COURT: Well, you've got October, November and
2 December, January, February, March, April, May, and June,
3 because each payment was made after the 15th of the month.

4 MR. MYERS: I agree with the original premise, but
5 they -- but in the accounting they're also tendered late fee
6 money.

7 THE COURT: Right, I know. Now, I'm crediting -- I'm
8 getting ready to credit that.

9 MR. MYERS: Okay.

10 THE COURT: They've tendered late fee money of \$312,
11 \$77.33, \$312, and \$78, is that correct?

12 MR. MYERS: Right. And it looks like May and June
13 were timely made.

14 THE COURT: All right. So that is -- well, wait,
15 we'll go back on that, Mr. Myers, because you have to tell
16 me -- let's see --

17 MR. MYERS: I'm going to retract that. They're
18 showing that they received that on the 18th and the 16th, so --
19 well, actually there's a grace period so they probably -- are
20 you telling me --

21 THE COURT: The grace period is the 15 days.

22 MR. MYERS: Okay, so if they're due on the 1st, late
23 on the 15th.

24 THE COURT: They have to be received --

25 MR. WIRTZ: Right.

1 THE COURT: -- by the 15th.

2 MR. MYERS: Both are late, Judge.

3 THE COURT: Okay. So, what they've tendered in
4 payments for late charges is \$779.33. They owe \$696.08. So,
5 there is a difference, Mr. Wirtz, between those two amounts of
6 \$83.25.

7 Now, it appears that the rest of the payments are
8 there given that Mr. Wirtz has said that he seems to -- but
9 there's one payment that he can't quite totally account for at
10 this point. I'd like to ask one more question.

11 On the \$1,546, that's principal, interest, and
12 escrow, Mr. Wirtz?

13 MR. WIRTZ: I believe so.

14 THE COURT: So that's the whole payment? There's
15 nothing else --

16 MR. WIRTZ: That's right.

17 THE COURT: -- that's outstanding on that particular
18 amount.

19 MR. MYERS: That's my appreciation also.

20 THE COURT: All right, now let's talk about -- let me
21 just put that to the side for a minute. Now, let's talk about
22 the affidavit and your contacts with your client, Mr. Wirtz.

23 First of all, who is your principal contact at Option
24 One or is it a law firm?

25 MR. WIRTZ: Your Honor, it's not a law firm. It's

1 Fidelity National Foreclosure Solutions --

2 THE COURT: Okay.

3 MR. WIRTZ: -- out of Mendota Heights, Minnesota.

4 THE COURT: Okay. And they are -- you're on a
5 network that they participate with and offer services for
6 defaulted loans to lenders, is that correct?

7 MR. WIRTZ: That's more or less correct, Your Honor.

8 THE COURT: Okay. So, Fidelity National though is
9 not a law firm, correct?

10 MR. WIRTZ: That's correct.

11 THE COURT: And am I also correct that when a loan
12 goes into default that they offer their services to pursue
13 collection on that loan, and is that what happened in this
14 case?

15 MR. WIRTZ: Your Honor, the way -- the best way I can
16 describe it and it's rather complicated and would be fairly
17 alien to anyone who's not doing the kind of work that we do in
18 creditor foreclosure and bankruptcy business, but Fidelity is
19 what we call an "outsourcer." And some of our clients use
20 First American, some of our clients use Fidelity, some use
21 National Default Servicing Corp. There's a multitude of
22 different outsourcers and they all play different roles.

23 In this particular case with Fidelity and Option One,
24 when we first took the very first Option One referral that we
25 got they were already contractually obligated or there was an

1 agreement between Fidelity and Option One. So, we took them
2 as we received them. And the way it's set up is for the most
3 part we don't have any contact with Option One, very unusual
4 that we ever contact them. Fidelity has websites and software
5 set up to where they have a hierarchy of people, a certain
6 process that they insist be followed for every issue that you
7 can imagine.

8 And in cases like this we receive information on a
9 referral, for instance this Motion for Relief referral from
10 Fidelity. We prepare the affidavit and send it back to
11 Fidelity for them to verify and swear to, and then they send it
12 back to us on behalf of Option One.

13 THE COURT: They execute the affidavit?

14 MR. WIRTZ: Yes, Your Honor.

15 THE COURT: Okay. So, what you do is you take the
16 information that they forward to you when you prepare the
17 affidavit?

18 MR. WIRTZ: That's correct. And obviously at some
19 point it's forwarded from Option One to Fidelity. I just don't
20 -- we're not privy to that process.

21 THE COURT: So, you make your representations in
22 court based on Fidelity's representations to you --

23 MR. WIRTZ: That's correct.

24 THE COURT: -- of what the loan status is.

25 Now, let's talk about the accounting. How do you get

1 the information on the default? Do they send it to you in
2 written form? Do you go to a website? How does this occur?

3 MR. WIRTZ: In the vast majority of cases with
4 Fidelity and certainly in this case it's pulled from a website.

5 THE COURT: All right. And is it a website that's
6 set up showing the account of the debtor, or is it a website
7 that just gives you pieces of information like, "Number of past
8 due payments six," how does it look?

9 MR. WIRTZ: Well, we do receive in writing with the
10 referral the screen prints, you know, 10, 12, 15 pages per
11 referral for instance. I mean it could be the payment history.
12 It has all kinds of information on it. You're familiar with
13 those screen prints. But basically the actual information that
14 is used in the affidavit is from the website. It's in the
15 website referral that we pull and download and then print off.

16 THE COURT: Okay. Now, when there is a problem like
17 when you get a response to your Motion for Relief that says,
18 "We've made the payments," what is the procedure?

19 MR. WIRTZ: In this particular case initially it was
20 fairly representative of the procedure in that our supervisor,
21 who's no longer with us or I would have had her here with me,
22 Terry Jones, would have contacted the client through --

23 THE COURT: Meaning Fidelity?

24 MR. WIRTZ: Fidelity. And when I say "client" I'll
25 strike that because I consider Option One my client, but she

1 would contact Fidelity via the website and posting what they
2 call "intercom messages" that are picked up by any number of
3 people. It could be someone that we've never heard of. It
4 could be someone that we've dealt with before. And she will
5 post a message. Usually she will upload the actual document
6 that's filed by the debtor's counsel at a certain different
7 location on the website and she will send an intercom message,
8 you know, referencing what occurred at the hearing, what
9 Your Honor's ruling was, the next hearing date, any other
10 substantive issues that might become a problem like in this
11 case where there's a disputed accounting or an allegation of
12 misapplied payments. And simultaneously she would ask for, you
13 know, a pencil history or some type of manually created payment
14 history on the account in anticipation that that would be
15 needed at the next hearing. And certainly in this case at the
16 April 22nd hearing.

17 MR. MYERS: And, Clay, who are those messages being
18 to, those intercom messages?

19 MR. WIRTZ: From our office it was formerly Terry
20 Jones, our supervisor. Now as far --

21 MR. MYERS: Who is the entity --

22 MR. WIRTZ: To Fidelity.

23 MR. MYERS: To Fidelity National.

24 MR. WIRTZ: Fidelity. It's strictly on the New Track
25 Website.

1 MR. MYERS: I'm with you.

2 THE COURT: All right. All right, and how long does
3 it take them to respond?

4 MR. WIRTZ: It varies greatly. Sometimes it's -- you
5 know, they certainly expect us to respond back to them in
6 minutes. That's why we have, you know, the size staff and
7 that's why the people in my industry doing what we do have to
8 have tremendous staffs. They are grading us on everything that
9 we do as far as when we pull things from the website. Now,
10 vice versa there's absolutely no structure to it terms of our
11 remedy or what we do, it's just simply if we don't get
12 something that we request we send multiple intercoms and try to
13 follow the escalation process, you know, however it may be set
14 up with that particular issue. You know there are different
15 issues that you raise for different things that come up. You
16 put them -- the only way I can --

17 THE COURT: When you're asking for a loan history how
18 long does it take?

19 MR. WIRTZ: Well, in this particular case we
20 repeatedly requested the information because Your Honor had
21 requested the information by April 15th and we didn't get it
22 until April 21st. In this particular case it took I guess at
23 least 13 days. I can't recall when that prior hearing was. I
24 think it was April 8th.

25 THE COURT: All right. But do you usually get a

1 response within two weeks, a week, or two?

2 MR. WIRTZ: Yes.

3 THE COURT: Okay. If you need to speak with someone,
4 when the information comes back if it's incomplete or you still
5 have questions with the information, is there a human being you
6 can speak with rather than dealing just with e-mail messages?

7 MR. WIRTZ: Well, yes and no. There are team leaders
8 for different states. Usually they cover more than one state.
9 And again I hate to even be testifying -- I'm just trying to
10 answer your question as best I can.

11 THE COURT: Well, I'm taking this as testimony as to
12 how your relationship works with --

13 MR. WIRTZ: It's my personal experience.

14 THE COURT: That's what I need to know.

15 MR. WIRTZ: But I'm certainly not the best qualified
16 to describe, you know, their internal processes. I'm just
17 simply describing how I deal with it.

18 THE COURT: If you need to speak with a team leader
19 can you do that? Is it possible or is it too --

20 MR. WIRTZ: Yes, but when you speak to the team
21 leader they are not going to be familiar with any individual
22 case that you're working on at the time. They simply monitor
23 your time lines and your responses within this structure. And
24 that person would not be familiar at all with this particular
25 case.

1 MR. MYERS: For the record, Judge, we're talking
2 about -- when he's talking about who he talks with we're only
3 talking about Fidelity Network. The more interesting
4 question --

5 THE COURT: That's all I'm asking about.

6 MR. MYERS: -- is Option One.

7 THE COURT: Wait. I'm talking about this file, this
8 relationship, okay, so it's Fidelity Network and it's Option
9 One's selection of Fidelity Network. So, that's where I'm
10 going from here.

11 When an issue has come up such as this one where
12 there are payments that are alleged to have been made. Your
13 client has represented to you -- the client -- well, your
14 client is Option One, but their agent I'll say, Fidelity, has
15 represented to you they've not received any payments at all.
16 Do you find that they are -- I mean is this a course of conduct
17 that Option One does not report typically that it has received
18 and is holding either in escrow or has not deposited money, or
19 has put it in suspense, or is this rare and you consider this a
20 mistake that they did not reveal that they were sitting on
21 payments?

22 MR. WIRTZ: In this particular case the way -- the
23 only way that we found out, my law firm found out that there
24 were additional payments made is when we received them in the
25 mail with a letter which was from Option One --

1 THE COURT: Okay.

2 MR. WIRTZ: -- stating that, you know, the funds
3 insufficient to bring plan current or bring --

4 THE COURT: And when was that, Mr. Wirtz, that you
5 got the payments from Option One?

6 MR. WIRTZ: Starting most recently on May 12th I
7 received the check, personal check Number 1251 --

8 THE COURT: All right.

9 MR. WIRTZ: -- dated April 25th in the amount of
10 \$1,624.84 -- I'm sorry, that was May 12th. On May 22nd I
11 received Check Number 1231 dated May 12th, '08 in the amount of
12 \$1,546.84.

13 THE COURT: All right. And when did you get the
14 payments, the certified funds, the personal checks, and the
15 money orders that we went through earlier?

16 MR. WIRTZ: I'm working backwards.

17 THE COURT: All right, I'm sorry.

18 MR. WIRTZ: The next group of payments were tendered
19 by Mr. Myers at the April 21st hearing, so those did not come
20 from Option One. The next most recent letter was from Option
21 One is dated March 7th of 2008, and that correspondence is
22 relating to cashier's check Number 9322069 dated February 23rd
23 of 2008 in the amount of \$1,546.84.

24 THE COURT: All right, now that was received in
25 March, is that correct?

1 MR. WIRTZ: That's correct.

2 THE COURT: And you filed this motion what day?

3 MR. WIRTZ: The original -- well, the original motion
4 which was stricken because an affidavit was not attached --

5 THE COURT: Okay, the second one.

6 MR. WIRTZ: -- was January. The second one was
7 March 10th.

8 THE COURT: Okay, 3/10. All right, now did you put
9 in the affidavit that you had received back a payment?

10 MR. WIRTZ: Well, we hadn't received it at that time.
11 It was dated March 7th.

12 THE COURT: Okay, the affidavit was dated
13 February 28th. All right, let's keep going. What other
14 payments did you get back?

15 MR. WIRTZ: Okay, there was another March 7th letter
16 pertaining to personal check Number 1207 dated February 23rd of
17 '08 in the amount of \$77.33.

18 THE COURT: Okay.

19 MR. WIRTZ: Okay, and then finally there is an
20 April 8th letter, it's dated April 8th -- I'm sorry,
21 February 8th, 2008 and that's the one that has the two personal
22 checks in the amounts of \$546.84, \$312, and the cashier's check
23 for \$1,000.

24 THE COURT: Okay.

25 MR. WIRTZ: Now, I don't -- this particular letter is

1 not time stamped as far as when we received it and nor are
2 the other ones. And I really can't say if these were all sent
3 in one package or if they were sent separately.

4 THE COURT: All right, that's important to know
5 whether or not your firm received those within a few days of
6 their dates or whether they were all sent to you in May.

7 MR. WIRTZ: I'm looking at our internal notes. There
8 is a notation on April 18th referring to the \$1,858.84 which
9 would have been the February 8th letter.

10 THE COURT: Okay, when do you show that, April what?

11 MR. WIRTZ: Did I say April? I mean February,
12 February 8th.

13 THE COURT: Okay, so you have that you received that
14 shortly after --

15 MR. WIRTZ: February 18th.

16 THE COURT: February 18th.

17 Okay, what I have, Mr. Wirtz, I'm looking at the
18 affidavit. It's signed on February the 28th of '08 by Dory
19 Goebel. It alleges that -- and your representation is that
20 Dory Goebel is a representative of Fidelity National, correct?

21 MR. WIRTZ: That's correct.

22 THE COURT: And they are the agent Option One
23 Mortgage Corporation?

24 MR. WIRTZ: Correct.

25 THE COURT: The affidavit sets forth that the debtors

1 have defaulted on the Chapter 13 plan by failing to pay the
2 monthly payments when due. Debtors are delinquent on post-
3 petition arrearages for the months of November 1, 2007 through
4 and including February 1, 2008. The motion itself was filed on
5 March the 10th, and based on your testimony you knew that on
6 February 18th before the affidavit was signed as well as before
7 the motion was filed that at least some payments had been made
8 and returned -- and were sitting in your file, were returned,
9 and that was not alleged.

10 I'll also state --

11 MR. MYERS: I'm sorry, Your Honor, I apologize for
12 interrupting. I want to just remind the Court that this motion
13 was originally filed without an affidavit. Debtors filed a
14 response to the first motion February 4th with a payment
15 history.

16 THE COURT: Right. I understand, but I want to talk
17 about this, the facts of this one, this particular motion. The
18 other issue of course is that your client in its supplemental
19 filing from this motion has admitted that it had received at
20 least two payments post-petition that were applied and then of
21 course has returned many more payments subsequent to that that
22 it was sitting on and none of this was updated or disclosed at
23 any point before the motion was filed or even when the response
24 came. So, you know, the affidavit is false in multiple ways,
25 some of which -- most of which is your client, Option One's

1 responsibility through your agent Fidelity National, some of
2 which is your firm's responsibility since you knew of at least
3 one, perhaps two payments that you had gotten by letters to
4 your office on 3/7 and -- dated 3/7 and 3/8 prior to the filing
5 of the motions.

6 MR. WIRTZ: Your Honor, if I may, there are two
7 things I would point out about that. Number one, is you know
8 transmission of the affidavit is important in terms of the
9 timing of it, you know, as opposed to the execution merely.
10 And so I -- that's one thing. The second thing is --

11 THE COURT: Well, the first -- I agree with you, but
12 the problem I have, Mr. Wirtz, is that when the facts change
13 you have to change the affidavit. I understand that when you
14 send out an affidavit and then they send you payments and you
15 realize the affidavit is wrong it's your responsibility to
16 update that affidavit and to show what the facts are. And my
17 concern about this is this particular process becomes very
18 automated between your office, Fidelity Network, and Option One
19 and even though new facts come to light, the documents aren't
20 updated to do that. And I know it's trouble to send an
21 affidavit to your client and have your client send it back, but
22 the whole point of the affidavit is that it's correct. And if
23 you have personal knowledge that something in the affidavit is
24 incorrect, you are responsible for that. And you cannot file
25 that affidavit and then allege to this Court that this is a

1 correct set of facts; it's not. You know the day you file it
2 that it's not correct.

3 Now, granted they didn't tell you a lot of other
4 facts that made it also incorrect, but I'm focusing on two
5 issues here, one your responsibility, and theirs. I mean --

6 MR. WIRTZ: Your Honor, can I respond?

7 I agree with you up to a certain point, but here's
8 where I disagree. If you look at Paragraph 6 of the affidavit,
9 and again this goes back to the information provided to us when
10 preparing the affidavit. It obviously does not mention these
11 subsequent payments which were sent back to my office. I
12 acknowledge that. However, it's based upon how they apply the
13 payments that they've received. And so again when they tell us
14 -- when they -- you know, yes, we know and we know to let
15 Mr. Myers know that, well, you know, we're sitting on \$1,800
16 here, you know, and that's typically how that works out is, you
17 know, he says he's current. We say you're not. And then we
18 say, well, we do have 1,800 more dollars or he says --

19 THE COURT: Yeah, but you don't say that here.

20 MR. WIRTZ: But that's -- again it's important as far
21 as the timing and the information that we get --

22 THE COURT: No. No, what's important is that this
23 Court know how many payments the debtors have tendered. If you
24 chose not to cash them that may be the lender's right, but that
25 should be disclosed to the Court. And your client obviously

1 knew that that plus other payments had not been -- had been
2 tendered and not cashed. My problem is, you know, if we're
3 going to divide this up, you knew at the time that you filed
4 this motion that you were sitting on \$1,800 in payments that
5 had not been cashed by your client and that's not disclosed in
6 this affidavit. And that's an important fact.

7 MR. WIRTZ: Your Honor --

8 THE COURT: It's an important fact to me.

9 MR. WIRTZ: I understand.

10 THE COURT: And I shouldn't have to figure out -- you
11 may call and disclose that to Mr. Myers. That doesn't tell me,
12 this Court. And as you know, I look at these affidavits and
13 many times grant them without the need for a hearing. But I
14 have to have the right facts. This is a false affidavit. And
15 my problem is I've got two issues, one, it's false because your
16 client did not disclose that it had received payments even in
17 November and December and January before it -- and February
18 before it signed the affidavit. It's dated February the 28th.
19 It's alleging it didn't get payments for the November,
20 December, January and February payments. That's four payments.
21 It in fact received payments in November, December, January,
22 and February before it signed this affidavit.

23 MR. WIRTZ: Your Honor --

24 THE COURT: That's number one. Number two, you knew
25 of one that they had not disclosed. So those are -- I have

1 those facts right here in front of me. It doesn't take a lot
2 to figure that out. And your client through its agent,
3 Fidelity National, has a responsibility of verifying as you say
4 when you send the affidavit that it's correct, but you also
5 have the responsibility of knowing if it's incorrect and
6 stopping the process if facts change. I don't care if it's 24
7 hours, you should know and you should correct. And if by some
8 chance an affidavit goes through and gets filed because the
9 time period is very short, like in this case you received
10 checks on 3/7 and the motion was filed on 3/10, your
11 responsibility is to go back and amend.

12 MR. WIRTZ: Your Honor, can I ask the Court
13 something?

14 THE COURT: Yes.

15 MR. WIRTZ: Would it be acceptable practice in this
16 particular case and in future cases if I simply file an
17 affidavit signed by me stating receipt of funds because --

18 THE COURT: Since -- yeah. The client has to sign
19 the default. If you sign an affidavit saying that subsequent
20 to the filing of the motion or the signing of the affidavit I
21 received funds from my client in this amount, but I'm going to
22 be honest with you, Mr. Wirtz, all that's going to do is open
23 up a real issue in terms of well now the affidavit isn't
24 correct. Because the affidavit didn't disclose that those
25 funds existed and now all the sudden they've popped into your

1 office. So, you're going to be right here, but you won't be
2 in Dutch maybe; it will be your client's issue.

3 You know what I'm trying -- and I said this to the
4 secured lenders' bar on many occasions, I understand that you
5 can only file based on what your clients tell you the situation
6 is. I accept that. The problem I'm having is that you have to
7 exercise the responsibility that when facts arise or surface
8 that don't mesh with what your client is telling you, you're
9 the one that's responsible for putting the brakes on the motion
10 or saying, you know, "We're going to take it down, because this
11 can't be right. I'm sitting here holding this money in my
12 files and you've just asserted in this affidavit you never got
13 any money. So, you need to go back and check this and assure
14 me that we've now got this correct."

15 If you get it before you file, it has to be done
16 before you file. If you get it after you file, then you've got
17 to stop and amend. That is your responsibility to this Court.

18 MR. WIRTZ: And I don't mean to be semantical at all,
19 but there really is a real difference in saying that they did
20 not receive the money and saying affirmatively what they're due
21 for because it depends on their own internal processes --

22 THE COURT: No. It is not the same. If a client
23 tenders a payment, then the lender cannot say that they're due
24 for that month. The lender can say, "We've refused to apply
25 it," but it is not correct for the lender to say, "The client

1 did not make this payment." And that's what this affidavit
2 says. They do not get to play the game of they're in default
3 because we chose not to apply unless they disclose it. That's
4 not correct. You are completely incorrect in that assertion.
5 And it makes a tremendous difference in the decisions I make
6 whether a debtor is trying to make payments or not. It's a
7 completely different factual situation in my mind if the debtor
8 makes no attempt to make payments to a lender for six months.
9 The lender comes in and says "We haven't gotten payments in six
10 months."

11 MR. WIRTZ: Oh, I agree.

12 THE COURT: And the other situation is the debtor
13 actually makes payments. Yes, they're late, but in this case
14 they actually made even the late charges. That's almost
15 amazing, made the payment, made the late charge and then the
16 lender writes an affidavit that they haven't gotten -- they're
17 in default for all these months.

18 MR. WIRTZ: I understand your point.

19 THE COURT: That's why I need to know the factual
20 situation and that's why it's important to me that you as
21 counsel police your client's affidavits and the facts and as
22 they change you revise the motions or the affidavits
23 accordingly with either supplemental affidavits or amended
24 motions.

25 This is too important. These are people's homes.

1 And I know to your client who has millions of loans out there
2 this is just data and widgets and how much money it's going to
3 cost them. But that's not what it is in this courtroom.

4 MR. WIRTZ: Again, Your Honor, would it be acceptable
5 from the standpoint of a practicing attorney in the future to
6 file a supplemental affidavit under my signature updating the
7 Court as to payments received that have been circulated back
8 from my client to me?

9 THE COURT: But I think you're probably going to have
10 to take down the motion at that point because I don't know how
11 in good faith at that point you can say that the client is past
12 due if you're starting to receive payments without getting some
13 additional assertion from your client that they have verified
14 their records and that in fact these additional -- the other
15 outstanding payments are actually outstanding.

16 MR. WIRTZ: I understand that you expect more than
17 that, but my concern is I've just seen it too many times when I
18 tell --

19 THE COURT: I have too.

20 MR. WIRTZ: -- the client that, "What happened to
21 this payment," or "What happened to this payment," we get back
22 a new accounting history. I just want -- I don't want to
23 withhold information from the Court and be in this position
24 again. I want to be able to file an affidavit that if
25 Your Honor wants to know immediately when funds are received

1 that we receive, I'd rather disclose that to the Court
2 immediately and --

3 THE COURT: Well, you can -- you filing an affidavit
4 that you've received funds so that you want to update the
5 amount is fine. That at least gets your law firm in a position
6 where it's disclosing the facts it knows. But then your second
7 problem as a professional before the Court is do you need to
8 take the whole motion down, because now can you as a
9 professional rely on what your client has told you to date?
10 Because we just all the sudden see a letter that comes in from
11 nowhere and says, "Here are these checks," it really begs the
12 question that you need to go back, retrace your steps, and say
13 to either Fidelity, or Option One, or whoever the lender may be
14 in the circumstance, "Okay, I've gotten these funds. What the
15 heck is going on? I need a new affidavit because I need to
16 make sure there's nothing else out there."

17 Because we all know, we've seen it, and Mr. Myers has
18 seen it, you've seen it, I've seen it that the funds keep
19 dribbling back. In this case you've got them in three or four
20 different deliveries to your office and low and behold there is
21 the money. And this is a fairly common practice of a lot of
22 these sub-prime lenders that they sit on payments once they've
23 decided to send out the motion for a lift stay. And you know
24 that and I know that. The problem is that when you have an
25 error to begin with on the motion, then they're now sitting on

1 all the payments and saying, "No, we haven't gotten
2 anything." That's when all the antennas go up.

3 MR. WIRTZ: I understand. Do you have any kind of
4 procedure for depositing the funds in the registry of the
5 court?

6 THE COURT: No, but they certainly could be deposited
7 in the registry of the court. There's nothing that would
8 prohibit that from happening.

9 MR. WIRTZ: Because I don't want to hold checks in my
10 file period to be honest with you.

11 THE COURT: Well, I understand that's a problem. The
12 trouble is that these are typically money orders, so they're
13 made out to your client and I don't want them going back to the
14 debtors. I mean your client is owed the money. They're
15 entitled to take their payments. If you want an order to put
16 them in the registry of the court, you can do that. File a
17 motion to put them in the registry of the court. My guess is
18 it makes more sense for you to file an updated affidavit and
19 say you've received these payments and ask basically what the
20 Court directs you to do with the payments. I'm more likely,
21 frankly, to send them to your client, say "Return to the
22 client," and direct that they be applied to the loan and give
23 me an updated history.

24 MR. WIRTZ: They won't do it.

25 THE COURT: Well, they're going to find themselves in

1 a Rule to Show Cause then.

2 MR. WIRTZ: Okay.

3 THE COURT: I mean I'm already at the -- there will
4 be a sanction for them not appearing today and there will be a
5 follow up hearing on that. But you never want to tell a Judge,
6 "They won't do it," because they will follow a court order.

7 MR. WIRTZ: Let me rephrase that

8 THE COURT: At least in this Court.

9 MR. WIRTZ: It's been difficult. I've never had them
10 do that in the past.

11 THE COURT: I understand. But there are -- you
12 represent multiple lenders, Mr. Wirtz. I know you have some
13 idea based on your experience with them what some of their
14 policies are. I would suggest that you use that experience to
15 know which ones are likely to sit on payments and not apply
16 them, hold them in suspense, hold them in escrow, you know,
17 whatever their terminology is, and that unfortunately your
18 staff is going to have to exercise a little more diligence in
19 getting the verification that they've really looked for
20 escrowed payments, suspense payments, payments not applied. I
21 don't know what -- they all call them something different, so
22 that when they send you something or you get these responses
23 you're not representing to the Court something that you have
24 the suspicion there may really be an issue on.

25 I'm trying my best, frankly, because I know the bind

1 that local counsel is in to distinguish between what you know
2 and what they know. There are judges that won't do that.
3 There are judges that will hold you just as responsible for
4 everything that your client knows. And I'm warning you that I
5 expect you to police this internally. And if you police it
6 internally, then I will deal with the client or the agent. If
7 I find that your office isn't policing and starts to learn
8 facts and doesn't take the steps to correct, then you and I are
9 going to have issues.

10 MR. WIRTZ: We're willing to do that, Your Honor.

11 THE COURT: Okay. All right, so let's start with the
12 issue I'm going to declare this loan current as of June 30,
13 2008. I want in the order to provide that all principal,
14 interest, and late charges have been satisfied through that
15 date -- and escrow, I guess and escrow payments.

16 I am going to sanction Option One \$5,000 for failure
17 to appear on the rule Order to Show Cause. I'll note for the
18 record that the Order to Show Cause is issued on May 9th, 2008
19 and that they failed to file a motion to request the excuse of
20 their appearance until 48 hours before this hearing. The
21 excuse set forth in the Motion to Continue or Excuse their
22 Appearance was that they had a conflict and that there was
23 another hearing in another court. I have to presume that the
24 other hearing in the other court was noticed more than 48 hours
25 before the appearance was required and so they were well aware

1 of the conflict long before we all came to the hearing.

2 I, however, do note for the record that Mr. Wirtz is
3 here, so he has satisfied his -- the Court's order that he
4 appear and report.

5 I will note that based on the supplemental filings of
6 Option One through Mr. Wirtz they have admitted that they
7 received payments in at least December and April for the loan
8 amounts and that they have returned checks to their counsel
9 which show that the other monthly payments were paid and
10 satisfied along with all late charges. So, the affidavit set
11 forth with the Motion to Lift Stay was incorrect in that it
12 represented that no payments had been received for the
13 installments due November 1, 2007 through February 1, 2008.

14 I will sanction Option One \$5,000 for filing a false
15 affidavit and failing to correct that affidavit after the facts
16 became clear that it was incorrect.

17 MR. MYERS: So, Your Honor, is that a second \$5,000?

18 THE COURT: Yes.

19 MR. MYERS: Thank you.

20 THE COURT: I will also sanction Mr. Wirtz \$1,000 for
21 failing to correct the affidavit when facts come to light in
22 his office that indicated that payments had been received and
23 had not been applied by his client.

24 I will take up the issue of what further sanctions I
25 will impose against Option One at the continued Order to Show

1 Cause. If a representative of Option One does not appear, I
2 will be forced to enter a bench warrant for their appearances.

3 MR. MYERS: Do you want to do fees now or do you want
4 to hold that open?

5 THE COURT: I will award \$900 in attorney's fees
6 payable by Option One within ten days to Mr. Myers' firm and I
7 will reserve the right to impose additional fees should the
8 subsequent hearings on sanctions for Option One require his
9 appearances, which I'm sure they will.

10 MR. MYERS: Your Honor, can I split orders on this
11 having gone through my Wells Fargo education? Can I do an
12 order for my fees and judicially current, and then do another
13 order for your sanctions and --

14 THE COURT: Yes. You can do your fees and the order
15 on the debtor being current in relation to the Motion to Lift
16 Stay and deny the Motion to Lift Stay. And the second order
17 can be in response to my Order to Show Cause.

18 MR. MYERS: Thank you, Your Honor. Thank you for
19 your patience.

20 THE COURT: Okay, thank you all. Court is adjourned.

21 MR. WIRTZ: Are you going to set the hearing,
22 Your Honor?

23 THE COURT: Yes. Actually, what I'll do, Mr. Wirtz,
24 I'm going to ask you to go back and talk to Fidelity and Option
25 One and call me back by Friday with a date that they will

1 appear, but no later than 30 days.

2 MR. WIRTZ: Okay. I have a few dates that were
3 stricken, but I'll just take care of it when I call back.

4 MR. MYERS: And for the record I don't -- just for
5 when you're coming up on sanctions, it looks like they sold
6 servicing rights to I think Wells Fargo, America Home Mortgage
7 Servicing, I think that's Wells Fargo. So, just for whatever
8 it's worth they've moved again.

9 THE COURT: Well, let's start with Option One and
10 Fidelity.

11 MR. WIRTZ: Thank you, Your Honor.

12 MR. MYERS: Thank you, Your Honor.

13 * * * * *

14 (Hearing Concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

\S\Dorothy M. Bourgeois
DOROTHY M. BOURGEOIS

8/6/08
Date

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 07-16212
)
DINO ANTONOPOULOS,) Chapter 13
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER DECLINING TO ENTER**
) **ORDER FOR RELIEF FROM STAY**
) **ON AFFIDAVIT**

The debtor Dino Antonopoulos filed his chapter 13 case on August 17, 2007. On November 9, 2007, Wells Fargo Bank, N.A. as Trustee for Option One Mortgage Loan Trust 2002-3 Asset-Backed Certificates, Series 2002-3, c/o Option One Mortgage Corporation filed a motion for relief from stay alleging that the debtor was in default under a note secured by a mortgage on the debtor's residence and asking that the automatic stay be lifted to permit the creditor to pursue its state court remedies; i.e. foreclosure.¹ The parties resolved the motion by entering into an agreed order that required the debtor to make certain payments and permitted the creditor to obtain relief from stay on filing an affidavit establishing a default under the agreement.²

On April 28, 2008, Dory Goebel, an "assistant vice president of Fidelity National Foreclosure Solutions, which is Asst. Secretary for Option One Mortgage Corporation for Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2002-3 Asset-Backed Certificates, Series 2002-3" filed an affidavit in which she alleged that the debtor is in default

¹ Docket 17.

² Docket 25.

under the agreed order and submitted a proposed order granting relief from stay.³

The affidavit is deficient in these respects:

- (1) The connection between the affiant and the agreed order is too vague to establish that this affiant has standing to request relief under the agreed order;
- (2) The affidavit states that it is offered under an agreed order dated December 28, 2008, a date that has not yet arrived in the calendar; and
- (3) The affidavit states that the debtor is in default “on the Stipulated/ Agreed Order payments from 1/1/08 through 3/1/08 is [sic] \$649.89, on the post-petition payments from 1/1/08 through 4/1/08 is [sic] \$3,619.76, plus late charges from 1/1/08 through 3/1/08 is [sic] \$162.90.” This is too vague to give the debtor reasonable notice of the alleged deficiency. Any statement of default, whether of monthly payments or late charges, must have the date and the amount of each payment due.

The court, therefore, declines to enter judgment ordering relief from stay based on this document.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

³ Docket 27.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the attached Affidavit was served upon the following parties in interest on April 11, 2007, by United States First Class Mail, postage prepaid:

Debtors' Attorney

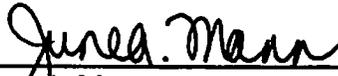
THEODORE O. BARTHOLOW, JR.
5 KELVINGATE
DALLAS, TEXAS 75225

Debtors

EULA W. BOWENS
P.O. BOX 170267
DALLAS, TX 75217

Trustee

THOMAS POWERS
125 E. JOHN CARPENTER FREEWAY
SUITE 1100, 11th FLOOR
IRVING, TX 75062



June A. Mann
Branch M. Sheppard

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
EULA W. BOWENS, Debtor	§	
	§	CASE NO. 06-34868-SGJ-13
MEETINGS FINANCIAL, LLC, as	§	CHAPTER 13
servicer for THE BANK OF NEW YORK	§	
TRUST COMPANY N.A. AS	§	
SUCCESSOR TO JPMORGAN CHASE	§	
BANK AS TRUSTEE F/K/A BANK ONE,	§	
NATIONAL ASSOCIATION, AS	§	HEARING DATE AND TIME:
TRUSTEE, their successors and/or assigns,	§	MAY 3, 2007 AT 1:30 P.M.
Movant	§	
	§	
vs.	§	
	§	
EULA W. BOWENS, Debtor and	§	
THOMAS POWERS, Trustee,	§	
Respondents	§	

**AFFIDAVIT IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY
REQUESTING ONE (1) YEAR IN REM RELIEF AND 270 DAY BAR LANGUAGE**

**THE STATE OF MINNESOTA §
COUNTY OF DAKOTA §**

BEFORE ME, the undersigned authority, on this day personally appeared Dory Goebel
who is over the age of eighteen years, is fully qualified and authorized to give this Affidavit and has
personal knowledge of the matters addressed herein. After being by me duly sworn on her/his oath
deposed and stated:

1. "My name is Dory Goebel. I am an Default Services Junior Officer for
**MEETINGS FINANCIAL, LLC, as servicer for THE BANK OF NEW YORK TRUST
COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A
BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE, their successors and/or assigns
("JPMORGAN CHASE"). I have access to the bankruptcy books and records for JPMORGAN**

CHASE with regard to EULA W. BOWENS's loan with JPMORGAN CHASE. In the course of my employment, I have become familiar with the manner and method in which JPMORGAN CHASE maintains its books and records in its regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted.

2. I have reviewed the books and records which reveal that JPMORGAN CHASE is the owner and holder of a Note ("Note") secured by a Deed of Trust of even date and executed by EULA MAE BOWENS, A SINGLE WOMAN on or about OCTOBER 22, 1998. The Note was assigned by AAMES FUNDING CORPORATION A CALIFORNIA CORPORATION, A CORPORATION to THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE. The original mortgagors also executed a Deed of Trust in connection with the Note and it was duly recorded. True and correct copies of the loan documents are attached hereto as Exhibit "A" and incorporated herein for all purposes.

3. As of APRIL 4, 2007, Debtor was in default on **THREE (3) contractual payments of TWO (2) at \$958.31 each and ONE (1) at \$915.04, plus TWO (2) contractual late charges in the amount of \$25.62 each and \$329.37 in suspense.** As of November 6, 2006, the approximate payoff amount owed by Debtor to Movant was **\$34,565.46.** This sum includes principal balance, accrued interest, accrued late charges and escrow advances, but does not include attorneys' fees or related costs.

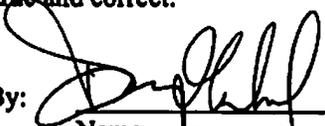
This is the third filing for bankruptcy relief involving the Property.

- (a) The first bankruptcy case was filed by Eula M. Bowens, the Debtor in this current case, on April 12, 1999, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, under Case No. 99-32823-HCA-13. The Debtor failed to timely remit the post-petition mortgage payments and Movant was forced to file a motion for relief. An agreed order was entered on May 16, 2000. An Order Granting Motion to Dismiss Case with Prejudice to Refiling for 180 Days was entered on February 12, 2001. This bankruptcy case was closed on March 15 2001.

- (b) On August 6, 2001, the Debtor in this current case, filed the second bankruptcy case in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, under Case No.01-36502-BJH-13. This bankruptcy was filed to stop a foreclosure sale scheduled for August 7, 2001. An Order Discharging Debtor was entered on September 20, 2006, and the case was closed on January 31, 2007.
- (c) On November 6, 2006, Debtor filed this current case, which is the third bankruptcy case involving the Property.

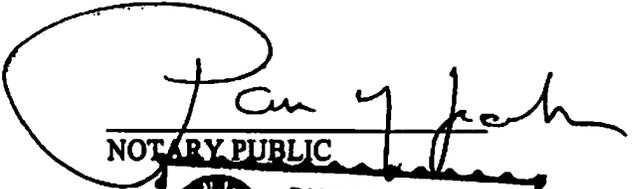
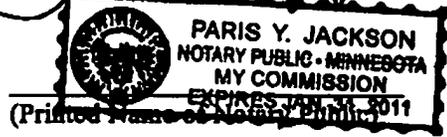
4. JPMORGAN CHASE has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees of at least \$800.00 for handling the Motion for Relief from Stay for which it is entitled to reimbursement under the terms of the Note.

5. The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct."

By: 
Name **Dory Goebel**
Default Services Junior Officer

SUBSCRIBED AND SWORN TO BEFORE ME, on April 10th, 2007.

My commission expires: 03-1-11


NOTARY PUBLIC

(Printed Name of Notary Public)

BARTHOLOW & BARTHOLOW

11300 N. Central Expressway Suite 301 Dallas, Texas 75243
Tel/Fax 972-739-5255 Email info@BBBankruptcy.com

July 22, 2008

Homecomings Financial (GMAC)
Attention: BK Department
P.O. Box 890036
Dallas, TX 75389-0036

RE: Eula W. Bowens
6110 Capestone Drive
Dallas, TX 75217
SSN: XXX-XX-0375
BK# 06-34868-SGJ13
BK File Date: 11/06/2006
ACCOUNT # XXX4810TX

To Whom It May Concern:

Please treat this letter as a **"qualified written request"** under the Real Estate Settlement Procedures Act, 12 U.S.C. §2605(e). This request is made on behalf of my client, Eula W. Bowens, based on her dispute of the amount alleged to be due and owing contained in the statements they have received from Homecomings Financial (GMAC), and the proof of claim on file in her Chapter 13 bankruptcy. Specifically, I am requesting a breakdown of the following pre-bankruptcy and post-bankruptcy information:

1. The monthly principal and interest payment, and monthly escrow payment prior to November 6, 2006.
2. The monthly principal and interest payment, and monthly escrow payment subsequent to November 6, 2006.
3. The total unpaid principal, interest and escrow balances due and owing as of November 6, 2006.
4. For each payment received during the 18 months prior to November 6, 2006, indicate the amount of the payment, the date received, the date posted to the account, how the payment was applied or credited (indicating the portion, if any, applied or credited to principal, interest, escrow or suspense), and the month to which the payment was applied. If interest is calculated using a daily accrual accounting method, indicate for each payment the number of days that lapsed from the prior payment application date.
5. The amount, payment date, purpose, and recipient of all foreclosure expenses, late charges, NSF check charges, appraisal fees, property inspection /

preservation fees, force placed insurance charges, legal fees, recoverable corporate advances, and other expenses or costs that have been charged and/or assessed to Ms. Bowens' mortgage account in the 18 months prior to November 6, 2006.

6. The amount, payment date, purpose, and recipient of all foreclosure expenses, late charges, NSF check charges, appraisal fees, property inspection / preservation fees, force placed insurance charges, legal fees, recoverable corporate advances, and other expenses or costs that have been charged and/or assessed to Ms. Bowens' mortgage account subsequent to November 6, 2006.

7. The amount, payment date, purpose and recipient of all escrow account items, including but not limited to taxes, water and sewer charges, and insurance premiums, charged and/or assessed to Ms. Bowens' mortgage account in the 18 months prior to November 6, 2006.

8. The amount, payment date, purpose and recipient of all escrow account items, including but not limited to taxes, water and sewer charges, and insurance premiums, charged and/or assessed to Ms. Bowens' mortgage account subsequent to November 6, 2006.

9. A breakdown of the current escrow account payment showing how it was calculated and the reasons for any increase or decrease in the 18 months prior to November 6, 2006.

10. A breakdown of the current escrow account payment showing how it was calculated and the reasons for any increase or decrease subsequent to November 6, 2006.

11. The current interest rate on Ms. Bowens' mortgage account.

12. Please provide a copy of the Note and all endorsements.

13. Please provide a copy of the Deed of Trust and all assignments.

To the extent that Homecomings Financial (GMAC) has charged to Ms. Bowens' mortgage account, subsequent to November 6, 2006, any appraisal fees, broker price opinion fees, property inspection / preservation fees, legal fees, bankruptcy/proof of claim fees, recoverable corporate advances, and other fees or costs that were not disclosed to Ms. Bowens and approved by the bankruptcy court, Ms. Bowens disputes such fees and costs and specifically request that the account be corrected to delete such fees and costs.

Finally, if you are not the current holder of the note and mortgage relating to Ms. Bowens' mortgage account, please provide the name and address of said holder and indicate your relationship to this entity. Also, please indicate the date or dates during which Homecomings Financial (GMAC) has serviced Ms. Bowens' mortgage account,

and if Homecomings Financial (GMAC) acquired the servicing rights in this mortgage account following transfer of servicing from another servicer or servicers, state the name of the prior servicer or servicers and the effective date of such transfer(s) of servicing to Homecomings Financial (GMAC).

Thank you for taking the time to acknowledge and answer this request as required by the Real Estate Settlement Procedures Act (sec.2605(e)).

Very truly yours,



Thad Bartholow
Attorney for Eula W. Bowens

cc: Eula W. Bowens
Pite Duncan LLP, Attorney Melissa L. Carter

GMAC Mortgage

September 3, 2008

Bartholow & Bartholow
Attention: Thad Bartholow
11300 N Central Expressway Suite 301
Dallas TX 75243

RE: Account Number 0305259855
 Mortgagor Eula M Bowens
 Property Address 800 Havenbrooke Dr
 Arlington TX 76017

Dear Thad Bartholow:

This letter is in response to your Qualified Written Request ("QWR") sent to our Bankruptcy Department on July 22, 2008. The responses are in the same order as the inquiries in your QWR.

1. See enclosed payment chart.
2. See enclosed payment chart.
3. See enclosed payoff statement.
4. See enclosed payment history. This is not a daily simple interest loan.
5. The following are the fees assessed/charged in the 18 months prior to November 6, 2006:
 Property Inspection Fees payable to First American Field Services:
 03/01/06: \$15.00
 05/02/06: \$15.00
 06/16/06: \$15.00
 08/08/06: \$15.00
 09/08/06: \$15.00
 10/10/06: \$15.00
 Other Fees:
 09/13/06: \$5.00 Fax Fee for Payoff Statement to GMAC Mortgage, L.L.C
 10/25/06: \$131.00 Payable to Safeguard Properties for property maintenance
6. The following are the fees assessed/charged subsequent to November 6, 2006:
 Fees/Costs:
 Payable to Brice, Vander, Linden:
 11/19/07: \$38.00 Advertisement Fee
 11/19/07: \$500.00 Foreclosure Fee
 11/19/07: \$74.24 Process Service
 11/19/07: \$280.13 Title Search
 05/04/07: \$500.00 Foreclosure Fee
 05/04/07: \$184.50 Title Search
 10/04/07: \$350.00 Bankruptcy Fee
 10/04/07: \$20.92 Process Service
 Payable to Executive Trustee Services:
 05/09/08: \$60.00 Recording Fees
 05/09/08: \$30.60 Certified Mail
 05/09/08: \$600.00 Foreclosure Fee
 05/09/08: \$50.00 Service
 05/09/08: \$185.00 Title Costs
 05/09/08: \$55.00 TSG

Payable to Pite, Duncan & Melmet:

01/23/08: \$800.00 Bankruptcy Motion for Relief

01/23/08 \$19.94 Court Costs

01/23/08: \$150.00 Filing Fee

Property Inspection Fees Payable to First American Field Services

11/15/06: \$90.00

11/17/06: \$15.00

12/07/06: \$15.00

02/13/07: \$11.25

03/16/07: \$11.25

02/12/08: \$75.00

04/15/08: \$11.25

05/09/08: \$11.25

06/18/08: \$11.25

Other Fees:

11/15/06: \$5.00 Fax Fee for Payoff Statement to GMAC Mortgage, LLC

11/28/06: \$78.00 to Safeguard Properties for property maintenance

12/5/06: \$35.00 to Safeguard Properties for property maintenance

12/11/06: \$83.00 to Safeguard Properties for property maintenance

12/28/06: \$1,190.00 to Safeguard Properties for property maintenance

03/26/07: \$35.00 to Safeguard Properties for property maintenance

04/12/07: \$43.00 to Safeguard Properties for property maintenance

04/18/07: \$35.00 to Safeguard Properties for property maintenance

12/26/07: \$35.00 to Safeguard Properties for property maintenance

04/21/08: \$35.00 to Safeguard Properties for property maintenance

04/21/08: \$35.00 to Safeguard Properties for property maintenance

04/21/08: \$35.00 to Safeguard Properties for property maintenance

04/29/08: \$35.00 to Safeguard Properties for property maintenance

05/20/08: \$634.00 to Safeguard Properties for property maintenance

05/22/08: \$35.00 to Safeguard Properties for property maintenance

06/04/08: \$100.00 to Safeguard Properties for property maintenance

06/06/08: \$35.00 to Safeguard Properties for property maintenance

07/07/08: \$35.00 to Safeguard Properties for property maintenance

7. See enclosed escrow history.
8. See enclosed escrow history.
9. See enclosed Escrow Analysis Statements
10. See enclosed Escrow Analysis Statements
11. 8.0%
12. See enclosed Note and Modification to Note.
13. See enclosed Deed of Trust to Secure Assumption.

GMAC Mortgage, LLC ("GMACM") acquired the servicing of this account from Harbourton Mortgage Company July 10, 1997. GMACM serviced the account from July 10, 2007 to present.

If you should have any further questions regarding this matter, please contact Customer Care at 1-800-766-4622.

Customer Care
Loan Servicing

Enclosures

BARTHOLOW & BARTHOLOW

11300 N. Central Expressway Suite 301 Dallas, Texas 75243
Tel/Fax 972-739-5255 Email info@BBBankruptcy.com

September 9, 2008

Homecomings Financial (GMAC)
Attention: BK Department
P.O. Box 890036
Dallas, TX 75389-0036

RE: Eula W. Bowens
6110 Capestone Drive
Dallas, TX 75217
SSN: XXX-XX-0375
BK# 06-34868-SGJ13
BK File Date: 11/06/2006
ACCOUNT # XXX4810TX

To Whom It May Concern:

Please be advised that this is our second request with regard to the above-referenced property. We received a response to our first Qualified Written Request letter (see response attached hereto) that erroneously discusses a different property (in a different city) that was formerly owned by Ms. Bowens. Please advise us immediately of how long you anticipate it will take you to respond to this second request.

Please treat this letter as a “**qualified written request**” under the Real Estate Settlement Procedures Act, 12 U.S.C. §2605(e). This request is made on behalf of my client, Eula W. Bowens, based on her dispute of the amount alleged to be due and owing contained in the statements they have received from Homecomings Financial (GMAC), and the proof of claim on file in her Chapter 13 bankruptcy. Specifically, I am requesting a breakdown of the following pre-bankruptcy and post-bankruptcy information:

1. The monthly principal and interest payment, and monthly escrow payment prior to November 6, 2006.
2. The monthly principal and interest payment, and monthly escrow payment subsequent to November 6, 2006.
3. The total unpaid principal, interest and escrow balances due and owing as of November 6, 2006.
4. For each payment received during the 18 months prior to November 6, 2006, indicate the amount of the payment, the date received, the date posted to the account, how the payment was applied or credited (indicating the portion, if any, applied or credited to principal, interest, escrow or suspense), and the month to which the

payment was applied. If interest is calculated using a daily accrual accounting method, indicate for each payment the number of days that lapsed from the prior payment application date.

5. The amount, payment date, purpose, and recipient of all foreclosure expenses, late charges, NSF check charges, appraisal fees, property inspection / preservation fees, force placed insurance charges, legal fees, recoverable corporate advances, and other expenses or costs that have been charged and/or assessed to Ms. Bowens' mortgage account in the 18 months prior to November 6, 2006.

6. The amount, payment date, purpose, and recipient of all foreclosure expenses, late charges, NSF check charges, appraisal fees, property inspection / preservation fees, force placed insurance charges, legal fees, recoverable corporate advances, and other expenses or costs that have been charged and/or assessed to Ms. Bowens' mortgage account subsequent to November 6, 2006.

7. The amount, payment date, purpose and recipient of all escrow account items, including but not limited to taxes, water and sewer charges, and insurance premiums, charged and/or assessed to Ms. Bowens' mortgage account in the 18 months prior to November 6, 2006.

8. The amount, payment date, purpose and recipient of all escrow account items, including but not limited to taxes, water and sewer charges, and insurance premiums, charged and/or assessed to Ms. Bowens' mortgage account subsequent to November 6, 2006.

9. A breakdown of the current escrow account payment showing how it was calculated and the reasons for any increase or decrease in the 18 months prior to September 2, 2003.

10. A breakdown of the current escrow account payment showing how it was calculated and the reasons for any increase or decrease subsequent to September 2, 2003.

11. The current interest rate on Mrs. Bowen's mortgage account.

12. A copy of the Note and all endorsements.

13. A copy of the Deed of Trust and all assignments.

14. A Key Loan Transaction Report ("KLT Report").

15. A complete life-of-loan transaction history (including transaction codes and explanations of same in plain English).

16. A current payoff statement.

17. If this is an escrow loan, a current escrow analysis
18. If your client is the loan servicer, a copy of the pooling and servicing agreement or other evidence of your client's authority to service the loan on behalf of the loan holder, and
19. Identify with specificity the name of the securitized loan pool or trust, if any that claims to be the owner of the Note and holder of the Deed of Trust.

To the extent that Homecomings Financial (GMAC) has charged to Ms. Bowens' mortgage account, subsequent to November 6, 2006, any appraisal fees, broker price opinion fees, property inspection / preservation fees, legal fees, bankruptcy/proof of claim fees, recoverable corporate advances, and other fees or costs that were not disclosed to Ms. Bowens and approved by the bankruptcy court, Ms. Bowens disputes such fees and costs and specifically request that the account be corrected to delete such fees and costs.

Finally, if you are not the current holder of the note and mortgage relating to Ms. Bowens' mortgage account, please provide the name and address of said holder and indicate your relationship to this entity. Also, please indicate the date or dates during which Homecomings Financial (GMAC) has serviced Ms. Bowens' mortgage account, and if Homecomings Financial (GMAC) acquired the servicing rights in this mortgage account following transfer of servicing from another servicer or servicers, state the name of the prior servicer or servicers and the effective date of such transfer(s) of servicing to Homecomings Financial (GMAC).

Thank you for taking the time to acknowledge and answer this request as required by the Real Estate Settlement Procedures Act (sec.2605(e)).

Very truly yours,



Thad Bartholow
Attorney for Eula W. Bowens

cc: Eula W. Bowens
Pite Duncan LLP, Attorney Melissa L. Carter