

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 10-cv-01749-RPM-KLM

Bruce C. McDonald, an individual,

Plaintiff,

vs.

ONEWEST BANK, F.S.B.; John and Jane Does, 1-100 inclusive; ABC
CORPORATIONS, entities of unknown form, 1-20, inclusive,

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, Bruce C. McDonald, by and through counsel, Gary D. Fielder, Attorney at Law, and institutes this action for actual damages, statutory damages, treble, and compensatory damages including his reasonable attorney's fees and costs for this action against the Defendants.

FOR HIS COMPLAINT AND JURY DEMAND MR. MCDONALD STATES AS FOLLOWS:

INTRODUCTION

1. This action for damages arises from a fraudulent, non-judicial mortgage foreclosure, initiated on or about September 10, 2009, by the Defendant, ONEWEST BANK, F.S.B. ("ONEWEST"), against the Plaintiff, Bruce C. McDonald ("Mr. McDonald"), in the District Court of the 12th Judicial District of the State of Colorado ("State District Court"), in Saguache County, Colorado.

2. In the State of Colorado, certain financial institutions are, by law, allowed to engage in a simplified, administrative process to exercise the power of sale in a deed of trust, which encumbers real property as security for a debt obligation.
3. These so-called “non-judicial foreclosures” are more efficient and less expensive than judicial foreclosures, and serve the purpose of streamlining the process when a debtor, who granted the power of sale in the deed of trust, is in obvious default and the property needs to be sold at auction to cover the outstanding amount due.
4. This process in the State of Colorado is codified at C.R.S. § 38-38-101, et. seq.
5. This foreclosure process is different than in other states because in the State of Colorado the governor appoints a "public trustee" for each county in the state.
6. The public trustee must act as an impartial party when handling a power of sale foreclosure.
7. Rule 120 of the Colorado Rules of Civil Procedure provides for judicial oversight of the administrative, non-judicial foreclosure process.
8. The foreclosure cannot proceed without a district court’s approval.
9. C.R.C.P. 120 was initially enacted to protect military personnel from foreclosure while they were serving in the military.
10. The rule provides for limited judicial oversight of the public trustee’s sale of the property.
11. Any “interested party” may file a motion and give proper notice of a Rule 120 hearing.
12. A debtor has five days prior to the hearing to file a response.

13. At the hearing, the district court's review is limited to: a) whether there is a reasonable probability that a default has occurred; and, b) whether an order authorizing sale is otherwise proper under the Service Member Civil Relief Act.
14. The district court then summarily grants or denies the motion.
15. The order authorizing sale is not an appealable order.
16. If a debtor does not file a response, the hearing is dispensed with, and the property is sold at public auction.
17. In 1989 the Colorado Supreme Court passed on the age-old legal maxim that a party seeking to exercise a particular legal remedy must be the real party in interest.
18. To be the real party in interest, a party must own the legal right to exercise a particular claim.
19. In *Goodwin v. District Court*, the Colorado Supreme Court stated the issue as follows:

The question in this case is whether a district court, when ruling on a C.R.C.P. 120 motion for a court order authorizing the sale of encumbered real property in accordance with a power of sale contained in a deed of trust, should consider whether the moving parties are real parties in interest, and also the asserted defenses of waiver and estoppel, in determining the existence of a default or other circumstance authorizing the exercise of the power of sale contained in the deed of trust. The district court ruled that the only issue to be resolved at a Rule 120 hearing is whether there has been a default under the terms of the note and that the "real party in interest" defense, as well as the defenses of waiver and estoppel, should be raised in a separate action brought by the debtor to enjoin the authorized sale.

779 P.2d 837 (Colo. 1989).

20. In ruling on behalf of the debtor, the Colorado Supreme Court further stated:

Rule 120(a) authorizes “any interested person” to file a motion for an order of sale, and Rule 120(c) permits the debtor to dispute the moving party’s entitlement to the order. Implicit in Rule 120 is the requirement that the party seeking an order of sale have a valid interest in the property allegedly subject to the power of sale. Unless the “real party in interest” defense is considered at a Rule 120 hearing, any order for sale might well result in the sale of property in favor of a party who has no legitimate claim to the property at all. Once a debtor in a Rule 120 proceeding raises the “real party in interest” defense, therefore, the burden should devolve upon the party seeking the order of sale to show that he or she is indeed the real party in interest.

21. ONEWEST initiated the non-judicial foreclosure against Mr. McDonald by submitting a “Certification of Qualified Holder” with the Saguache County Public Trustee (“Public Trustee”), which certified, under oath, that it was the holder of the evidence of debt and was the current beneficiary of the deed of trust.

22. The certification was false, and made with knowledge of the untrue character of the claim by ONEWEST and its representatives, specifically to mislead the Public Trustee and the State District Court in an effort to illegally dispose Mr. McDonald of his property.

23. C.R.C.P. 17(a) (1) states: “An action must be prosecuted in the name of the real party in interest.”

24. The primary inquiry into whether a movant is a real party in interest centers upon whether they hold the rights he or she seeks to remedy.

25. In order to prove that one is the real party in interest to a promissory note, it must show that it holds legal title to the note.

26. In order to exercise certain powers contained and granted in a deed of trust, the movant must be the beneficiary of the deed of trust.
27. A real party in interest is a party who, by the substantive law, has the right sought to be enforced.
28. ONEWEST did not hold legal title to the subject note, upon which it foreclosed.
29. ONEWEST did not have the rights it was claiming when it exercised the power of sale in the subject deed of trust.
30. Ultimately, after misleading the Public Trustee and the State District Court, ONEWEST obtained an Order Authorizing Sale.
31. ONEWEST acquired Mr. McDonald's real property with a credit bid at the Public Trustee Sale.
32. However, ONEWEST did not hold the rights to acquire Mr. McDonald's property with a credit bid at the Public Trustee Sale.
33. ONEWEST did not own the note and was never the beneficiary of the deed of trust.
34. After the sale, ONEWEST sold Mr. McDonald's property to another entity for Ten Dollars (\$10).
35. ONEWEST did not hold the rights necessary to transfer title to his property to another entity.
36. Mr. McDonald filed an independent action in State District Court, Case No. 2010CV6, to challenge the improper foreclosure action prosecuted by ONEWEST, and to quiet title to his property.

37. On or about November 19, 2010, Mr. McDonald was granted quiet title to his property after ONEWEST defaulted by failing to respond to the complaint, after proper service.
38. This case is being brought within the federal district court's diversity jurisdiction, as ONEWEST is not registered to do business in the State of Colorado, to litigate several federal questions and common law claims in order to recover actual, statutory, compensatory, and punitive damages, attorneys fees, and costs.

PARTIES

39. The Plaintiff, Bruce C. McDonald ("Mr. McDonald"), is a natural person.
40. At all times material hereto, Mr. McDonald was a domiciliary, resident and citizen of the state of Colorado, a state within the United States of America.
41. At all times material hereto, Defendant, ONEWEST BANK, F.S.B. ("ONEWEST"), is a federally chartered savings bank with its principal office located at 888 E. Walnut St., Pasadena, California.
42. Mr. McDonald is ignorant of the true names and capacities of Defendants sued herein as JOHN and JANE DOES 1-100, inclusive, and ABC CORPORATIONS 1-20, inclusive, and therefore sues said Defendants by such fictitious names.
43. Mr. McDonald will seek leave of this Court to amend this Complaint to insert their true names and capacities when the same have been ascertained.

JURISDICTION AND VENUE

44. This Court has jurisdiction over the subject matter and the parties pursuant to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692(k)(d), and 28 U.S.C. § 1331, 1337 and 1367.
45. This Court has jurisdiction over this matter and parties pursuant to the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1961, *et seq.*
46. This Court has jurisdiction over this matter and ONEWEST in diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(3).
47. This Court has supplemental jurisdiction over Plaintiff's state-based and common law claims pursuant to 28 U.S.C § 1367.
48. Venue and personal jurisdiction are proper in this District as ONEWEST's collection actions and communications with Mr. McDonald were transmitted and received by the parties, respectively, in this District.
49. Venue and personal jurisdiction are proper in this District, as ONEWEST has transacted business within the District.
50. Venue and personal jurisdiction are proper in this District as the action against Mr. McDonald and the property, which is the ultimate subject of this lawsuit, are situated in this District.
51. Venue and personal jurisdiction are proper in this District as the original Note and Deed of Trust, which are also the subject of this lawsuit, were originally executed by Mr. McDonald in this District.

FACTUAL ALLEGATIONS AND BACKGROUND

52. Plaintiff, Mr. McDonald, incorporates by reference paragraphs 1-51 of this Complaint, as though fully contained herein, insofar as they may be applicable.
53. On or about May 27, 2003, Mr. McDonald entered into a written agreement with an INDYMAC BANK, F.S.B. ("IMB"), wherein Mr. McDonald received a check from IMB in the amount of One-Hundred and Ninety-Eight Thousand Dollars (\$198,000).
54. Said written agreement required Mr. McDonald to repay IMB for the funds received, and was memorialized in a document entitled Adjustable Rate Note ("NOTE").
(*Doc. 1, Ex. A*).
55. Said NOTE was secured by a residential property purchased and owned by Mr. McDonald, located at 4434 Rarity Court, Crestone, Colorado ("Property").
56. On or about May 27, 2003, Mr. McDonald executed a Deed of Trust ("DOT") against the Property in favor of IMB. (*Doc. 1, Ex. B*).
57. Thereafter, Mr. McDonald was in compliance with the agreement for repayment to IMB under the terms of the NOTE, up to and including April 2009.
58. On or about July 11, 2008, the OFFICE OF THRIFT SUPERVISION ("OTS"), an agency of the United States Government, closed IMB.
59. After said closure, IMB went into bankruptcy and the FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") was named as the bank's conservator.
60. FDIC reopened IMB under the name of INDYMAC FEDERAL BANK ("IMFB").
61. FDIC operated said IMFB in receivership for approximately eight months.
62. In March 2009, FDIC sold IMFB to a Pasadena, California holding company, IMB HOLDCO, LLC.

63. At all material times hereto, IMB HOLDCO, LLC was owned and controlled by IMB MANAGEMENT HOLDINGS, LP.
64. After said purchase, IMFB reopened as ONEWEST.
65. As a part of the purchase of the assets of IMB, and/or IMFB, ONEWEST purchased the servicing rights to said NOTE involving Mr. McDonald.
66. Although Mr. McDonald knew the bank with which he had contracted was bankrupt, he continued to make his payments under the NOTE to IMFB, while the FDIC operated the bank in receivership.
67. On or about April 10, 2009, Mr. McDonald received a letter from ONEWEST, which stated:

You are hereby notified that, effective March 19, 2009, the servicing of your mortgage loan, that is, the right to collect payments from you, was assigned, sold or transferred from IndyMac Federal Bank, FSB to IndyMac Mortgage Services, a division of OneWest Bank, FSB.

(Doc. 1, Ex. C).
68. After receipt of said letter, on or about April 12, 2009, Mr. McDonald called ONEWEST on the telephone to inquire as to who it was, and what obligations he had to it.
69. ONEWEST refused to disclose the status of ONEWEST's position related to its ownership of said NOTE and DOT.
70. However, ONEWEST, through its representatives, informed Mr. McDonald that he now owed ONEWEST the same monthly mortgage payments he had previously paid to IMB and IMFB.
71. After the inquiry to ONEWEST, Mr. McDonald researched the law regarding negotiable instruments and contracts.

72. UCC § 3-501, PRESENTMENT, states, in pertinent part:

(2) Upon demand of the person to whom presentment is made, the person making presentment **must** (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) **Without dishonoring the instrument**, the party to whom presentment is made may (i) return the instrument **for lack of a necessary indorsement**, or (ii) **refuse payment** or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule (emphasis added).

73. On or after said letter dated April 10, 2009, ONEWEST did not provide Mr. McDonald with the instrument or reasonable evidence of authority to make such a presentment.

74. On or after April 12, 2009, Mr. McDonald refused to make payment.

75. Upon information and belief, Mr. McDonald was not required to pay ONEWEST until it validated an obligation to do so.

76. Mr. McDonald withheld payment under the NOTE, "without dishonoring the instrument."

77. Mr. McDonald was within his rights to withhold payment pursuant to UCC 3-501(2) & (3).

78. ONEWEST violated the provisions of UCC 3-501(3) by refusing to validate the debt.

79. ONEWEST waived any right to declare Mr. McDonald was in default.

80. Thereafter, ONEWEST retained the services of a law firm to represent its interest, namely: ARONOWITZ & MECKLENBURG, L.L.P. ("ARONOWITZ").

81. At all times material, ARONOWITZ was acting under the authority of ONEWEST.

82. Said agreement between ARONOWITZ and ONEWEST created an attorney/client relationship.

83. By said agreement, an agency was created between ARONOWITZ and ONEWEST, wherein ARONOWITZ agreed to become the agent and act for, or in the place of, ONEWEST, the principal.

84. At all times material hereto, ARONOWITZ acted as the agent(s) of ONEWEST.

85. On or about August 4, 2009, ONEWEST, through ARONOWITZ, mailed a letter to Mr. McDonald, which stated that they were retained to initiate foreclosure proceedings against him. (*Doc. 1, Ex. D*).

86. The letter stated that IMB was the original creditor and ONEWEST was the "current creditor."

87. The letter also stated in bold: "**Notice under Fair Debt Collection Practices Act 15 U.S.C. 1962, et seq.**"

88. Said letter of August 4, 2009, also stated in all capital letters and in bold: "**THE LAW FIRM OF ARONOWITZ & MECKLENBURG, L.L.P, IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT.**"

89. Said letter dated August 4, 2009, stated in bold:

IF YOU NOTIFY US IN WRITING WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THIS NOTICE, THAT THE DEBT OR ANY PORTION THEREOF IS DISPUTED, WE WILL OBTAIN "VERIFICATION OF THE DEBT AND A COPY OF SUCH VERIFICATION WILL BE MAILED TO YOU.

90. On or about August 4, 2009, ONEWEST through its attorneys, ARONOWITZ, filed a CERTIFICATION BY QUALIFIED HOLDER PURSUANT TO 38-38-101, C.R.S, with the Public Trustee. (*Doc. 1, Ex. E*).

91. Marcy McDermott, an attorney for ARONOWITZ, signed said certification under oath.
92. In said certification, ARONOWITZ certified that ONEWEST was a "Qualified Holder" pursuant to Colorado Revised Statute, § 38-38-101, et. seq.
93. Said Certification also states that ONEWEST was the holder of the original evidence of debt and was the current beneficiary of the DOT executed by Mr. McDonald on May 27, 2003.
94. At all material times, ONEWEST was not, and is not, the "holder of the original evidence of debt," of the NOTE, executed by Mr. McDonald on May 27, 2003.
95. At all material times hereto, ONEWEST was not, and is not, the beneficiary of said DOT, executed by Mr. McDonald on May 27, 2003.
96. On or about August 10, 2009, Mr. McDonald received a Combined Notice Saguache County Public Trustee Sale NO. 22-2009. (*Doc. 1, Ex. F*).
97. Said Notice from the Public Trustee stated that the original beneficiary of the DOT was IMB, and that the "Current Owner of the Evidence of Debt" was ONEWEST.
98. Said Notice also stated that Mr. McDonald's home had been scheduled for sale on December 3, 2009, at 10:00 a.m., at the Saguache County Courthouse.
99. On or about August 17, 2009, Mr. McDonald responded to ONEWEST and its agent ARONOWITZ, by sending identical letters, certified mail, disputing the validity of the alleged debt. (*Doc. 1, Ex. G*).
100. In said letters of August 17, 2009, Mr. McDonald specifically requested that ONEWEST and/or ARONOWITZ provide proof that ONEWEST had acquired a valid security interest in Mr. McDonald's property.

101. On or about August 22, 2010, ONEWEST, through ARONOWITZ, responded to Mr. McDonald's letter. (*Doc. 1, Ex. H*).
102. In said letter dated August 22, 2009, ARONOWITZ stated that the firm represented ONEWEST.
103. In said letter dated August 22, 2009, on behalf of ONEWEST, ARONOWITZ enclosed a copy of the above referenced NOTE and DOT.
104. The attached NOTE stated that IMB was the lender, not ONEWEST.
105. Said letter of August 22, 2009, stated that ONEWEST was the "Holder of the Loan."
106. The copy of the DOT enclosed stated the beneficiary to be IMB, not ONEWEST.
107. No notation(s), mark(s), stamp(s), indorsement(s) or assignment(s) on the NOTE or DOT indicated or, in any way, demonstrated that the NOTE and/or DOT was transferred, endorsed, sold, assigned or conveyed to ONEWEST.
108. Said letter dated August 22, 2009, from ONEWEST, through ARONOWITZ, also stated: "Our office (ARONOWITZ) represents OneWest Bank, F.S.B. who is the servicer and holder of the loan which was originated by IndyMac Bank F.S.B."
109. Said letter dated August 22, 2009, from ONEWEST, through ARONOWITZ, also stated: "The Adjustable Rate Note and Deed of Trust give our client a secured interest in the property at 4434 Rarity Court, Crestone, CO 81131."
110. No other documentation was attached, mailed, or delivered to Mr. McDonald that demonstrated that the NOTE and/or DOT had been transferred, endorsed, sold, assigned or conveyed to ONEWEST.

111. On or about September 10, 2009, Mr. McDonald filed an independent action in the State District Court, referenced under case number 2009CV41, entitled Motion for Temporary Injunction, to stop the sale of his property, compel ONEWEST to validate the debt, and to determine the real party in interest. Attached hereto as Plaintiff's Exhibit "A" is a copy of said motion, as though fully contained herein.
112. On or about September 10, 2009, ONEWEST filed a Verified Motion for an Order Authorizing Sale in State District Court, referenced under case number 2009CV42, to obtain an order authorizing the sale of the Property. Attached hereto as Plaintiff's Exhibit "B" is a copy of said motion as though fully contained herein.
113. The State District Court set 2009CV41 and 2009CV42 for hearing to occur on or about October 14, 2009.
114. At the hearing on October 14, 2009, the State District Court ordered ONEWEST to produce the original NOTE and DOT. Attached hereto as Plaintiff's Exhibit "C" is a copy of said order as though fully contained herein.
115. At said hearing of October 14, 2009, Mr. McDonald attempted to tell the State District Court that he was not in default, pursuant to UCC code, because ONEWEST refused to validate the debt. (*Doc. 13, Ex. J*).
116. The matter was then reset to proceed to hearing on October 23, 2009, by which ONEWEST was to produce the original NOTE and DOT.
117. On or about October 22, 2009, ONEWEST sent a letter to Mr. McDonald regarding the NOTE. Said letter from ONEWEST dated October 22, 2009, is attached hereto as Plaintiff's Exhibit "D" as though fully contained herein.

118. Said letter stated, in pertinent part:

In response to your request for documents, attached are:

A copy of the original executed promissory NOTE. We are not obligated to furnish a certified copy of the fully endorsed NOTE.

119. ONEWEST did not produce an original NOTE and DOT by the deadline set by the State District Court.

120. Thereafter, the State District Court denied the Order Authorizing Sale.

121. The State District Court then administratively closed cases, 2009CV41 and 2009CV42.

122. On or about November 4, 2009, ONEWEST filed a Motion to Reconsider after discovery of the original NOTE and DOT.

123. The NOTE had no indorsement or assignments.

124. On or about November 12, 2009, Mr. McDonald filed a Motion to Reopen Case No. 2009CV42.

125. To rebut ONEWEST's *prima facie* showing of ownership by being in possession of an original NOTE and DOT, Mr. McDonald tendered a California bankruptcy case from 2008 to the State District Court. See *In re Kang Jin Hwang*, 393 B.R. 701, 2008 Bankr. LEXIS 2460 (Bankr. C.D. Cal., 2008).

126. In *Hwang* ONEWEST attempted to obtain relief of stay so it could proceed with the foreclosure of Hwang's property.

127. In *Hwang* the bankruptcy court ordered ONEWEST to produce the original note and deed, which it did.

128. In *Hwang* ONEWEST ultimately admitted it did not own the note and deed of trust.

129. Based upon the revelation that ONEWEST retained, or had access to original documents without having an ownership interest, on or about January 23, 2010, the State District Court ordered ONEWEST to produce the sales contract between ONEWEST and the FDIC to establish that Mr. McDonald's NOTE was an asset acquired by ONEWEST when it purchased the assets of IMB. Attached hereto as Plaintiff's Exhibit "E" is a copy of said order, as though fully contained herein.
130. ONEWEST produced a "Master Sales Agreement" between ONEWEST and the FDIC.
131. Said Master Sales Agreement did not indicate any individual assets that ONEWEST purchased, but did indicate where those records could be found.
132. At hearing on January 27, 2010, the State District Court declined to issue an order to ONEWEST requiring it to produce the records said Master Sales Agreement identified. Attached hereto as Plaintiff's Exhibit "F" is a copy of the transcript of said hearing of January 27, 2010, as though fully contained herein.
133. ONEWEST maintained that it was the owner of the NOTE and current beneficiary of the DOT.
134. On or about February 4, 2010, the State District Court issued an Order Authorizing Sale, allowing the sale of the Property to commence pursuant to Colorado Rules of Civil Procedure 120, which set the sale at public auction for March 4, 2010. (*Doc. 8, Ex. 1*).
135. On or about February 22, 2010, Mr. McDonald submitted a Freedom of Information Act Request ("FOIA") with the FDIC inquiring as to who owned his NOTE.

136. On or about March 1, 2010, Mr. McDonald received written confirmation from the FDIC that, according to its records, the Federal Home Loan Mortgage Corporation (“FREDDIE MAC”) acquired his loan, and ONEWEST was only acting in the capacity of a servicing agent for the loan. (*Doc. 1, Ex. I*).
137. The FDIC also provided a screen shot from ONEWEST’s own computer system that displayed information about Mr. McDonald's account. (*Doc. 1, Ex. J*).
138. The information on said screen shot indicated that FREDDIE MAC acquired said NOTE and DOT from IMB in September 2004.
139. Said screen shot from ONEWEST’s computer system was information that was readily available to ONEWEST.
140. At all material times, ONEWEST knew or should have known that FREDDIE MAC had acquired the NOTE and DOT.
141. On or about February 26, 2010, INDYMAC MORTGAGE SERVICES, a division of ONEWEST, sent Mr. McDonald a letter. (*Doc. 1, Ex. K*).
142. Said letter stated, in pertinent part:
- Please accept this letter as confirmation that the investor on your loan is Federal Home Loan Mtg. Co ... [ONEWEST is] responsible for the servicing of this loan.
143. On or about March 1, 2010, Mr. McDonald, through counsel, filed a Motion to Vacate the Order Authorizing Sale. Attached hereto as Plaintiff’s Exhibit “G” is a copy of said motion, as though fully contained herein.
144. On or about April 10, 2010, the State District Court denied said motion. (*Doc. 13, Ex. C*).

145. On or about March 3, 2010, Mr. McDonald filed a law suit in the State District Court to challenge ONEWEST's claim to his property, referenced under Case No. 2010CV6.
146. On or about March 3, 2010 Mr. McDonald filed a Lies Pendens giving notice to all interested parties of the dispute over title to his property.
147. On March 4, 2010, ONEWEST, the only bidder, purchased Mr. McDonald's property with a deficiency, "credit bid" in the amount of One Hundred and Seventy-One Thousand, Two Dollars and Seventy-Four Cents (\$171,002.74). Attached hereto as Plaintiff's Exhibit "H" is a copy of the credit bid, as though fully contained herein.
148. Thereafter, ONEWEST claimed a balance owed on the NOTE of Forty-Eight Thousand, Three Hundred and Thirty-Two Dollars, and Eighty-Two Cents (\$48,332.82).
149. ONEWEST was not entitled to submit a credit bid.
150. Only a holder of the evidence of debt is entitled to submit a credit bid, pursuant to C.R.S. § 38-38-106.
151. Any other party is required to pay cash, pursuant to C.R.S. § 38-37-108.
152. Colorado law governs foreclosures and determines what elements are necessary for a party to qualify as a holder in due course.
153. A holder in due course must meet five conditions: (1) be a holder; (2) of a negotiable instrument who took it; (3) for value; (4) in good faith; (5) without notice of certain problems with the instrument.

154. To be a holder one must meet the two conditions in section UCC § 4-1-201 (b) (20): (1) he or she must have possession (2) of an instrument drawn, or indorsed to him or her.
155. According to Colorado law, ONEWEST must first be a “holder” before it can be a holder in due course.
156. ONEWEST was not a “holder” of the NOTE and DOT, as possession alone is insufficient, unless the instrument is payable to ONEWEST or indorsed to ONEWEST.
157. ONEWEST had possession of an original NOTE, but the subject NOTE was never indorsed to ONEWEST, or any other party.
158. After the Trustee Sale occurred, Mr. McDonald called the Public Trustee on the telephone to inquire about the nature of a credit bid transaction.
159. The Public Trustee told Mr. McDonald that no financial transaction actually occurs when property is purchased with a credit bid, because it’s presumed the loan is kept on the lenders books, so the purchase would amount to the lender writing itself a check.
160. On or about March 25, 2010, ONEWEST assigned its interest in title to the Property to FREDDIE MAC for the nominal consideration of ten dollars (\$10).
(Doc. 13, Ex. H).
161. FREDDIE MAC is a federally-chartered, publicly-traded, private corporation, commonly referred to as a government-sponsored enterprise.
162. FREDDIE is an agent for the United States Government.
163. FREDDIE MAC facilitates the secondary market in residential mortgages.

164. Together with (“Fannie Mae”), another government-sponsored enterprise, Fannie Mae and Freddie Mac own or guarantee approximately half the home loans in the United States.
165. FREDDIE MAC is publicly traded, has a Board of Directors, and is required to report to the Securities and Exchange Commission (“SEC”). Pursuant to 12 U.S.C. § 1723(a), FREDDIE MAC has the power to sue and be sued in both state and federal court.
166. FREDDIE MAC’s offices are located at 8100 Jones Branch Dr., McLean, Virginia, 22102-3206.
167. On or about March 26, 2010, Attorney Susan Hendrick (“Ms. Hendrick”), from ARONOWITZ, counsel for ONEWEST, filed a “Motion To Strike, Motion To Dismiss For Failure To State A Claim and Motion for Attorney Fees and Sanctions” in State District Court, Case No. 2009CV41. Attached hereto as Plaintiff’s Exhibit “I” is a copy of said motion, as though fully contained herein.
168. In said motion, Ms. Hendrick states, on behalf of ONEWEST, “OneWest need not be the ‘owner’ of the note to foreclose; OneWest need only be the holder thereof.”
169. ONEWEST spent approximately eight months assuring the State District Court that ONEWEST did in fact own the NOTE, as it was an asset ONEWEST purchased from the FDIC.
170. ONEWEST spent approximately eight months assuring the State District Court that ONEWEST was in fact the current beneficiary of the DOT.
171. Ms. Hendrick, on behalf of ONEWEST, misrepresented a material fact, when she states in said motion, “The Note is endorsed by IndyMac Bank, F.S.B. in blank.”

172. Said statement is false.

173. Said NOTE is and was not endorsed by IMB in blank.

174. Said statement contradicts a previously filed Status Report, prepared by Ms.

Hendrick on behalf of ONEWEST, filed on or about January 21, 2010. Attached hereto as Plaintiff's Exhibit "J" is a copy of said Status Report, as though fully contained herein.

175. In said Status Report, ONEWEST states:

There are no written assignments evidencing the assignment, transfer or conveyance of the subject promissory note and deed of trust from the originating lender to the FDIC for Petitioner.

176. ONEWEST continues by stating in said Motion to Strike, dated March 26, 2010:

Plaintiff asserts as fact the legal conclusion that OneWest is not the real party in interest because it is not the "owner" of the Note. However, even assuming, contrary to the overwhelming evidence already provided to this Court, that OneWest is **not** the owner of the Note, Plaintiff fails to state a claim for which relief may be granted because OneWest need only be the **holder** of the note to be the real party in interest (emphasis in original).

177. Further, ONEWEST stated in said Motion of March 26, 2010:

[W]hether OneWest establishes an unbroken chain of assignments back to Respondent, or OneWest snatched the Note out of the hands of the true owner in plain sight of the Court on the day before commencing the foreclosure, OneWest is the holder, and has standing to enforce the Note.

178. The statement by ONEWEST, through counsel, contained in paragraph 171 is a gross misstatement of Colorado law.

179. The statement by ONEWEST, through counsel, contained in paragraph 171 is said with knowledge of its falsity.

180. The statement by ONEWEST, through counsel, contained in paragraph 171 was made with the specific intent of deceiving and misleading the State District Court, the Public Trustee and Mr. McDonald.
181. On or about June 29, 2010, FREDDIE MAC filed a Verified Complaint in Unlawful Detainer ("FED") in Saguache County Court to evict Mr. McDonald from the Property. Attached hereto as Plaintiff's Exhibit "K" is a copy of said complaint, as though fully contained herein.
182. Mr. McDonald disputed FREDDIE MAC's title and ownership to the Property.
183. Because Mr. McDonald disputed ownership, the Saguache County Court did not have jurisdiction to hear the ownership issue.
184. The FED action was certified back to the State District Court, and became Case No. 2010CV30.
185. On July 30, 2010, an FED hearing occurred, at which time the State District Court heard a motion filed by Mr. McDonald, through counsel, to stay the FED proceeding, pending the outcome of Case No. 2010CV6.
186. The stay was granted, after Mr. McDonald posted a court ordered \$5,000 bond to secure the stay.
187. An Amended Complaint was filed in 2010CV6, joining FREDDIE MAC as a defendant. (*Doc. 16, Ex. C*).
188. Said Amended Complaint was properly served on ONEWEST. Attached hereto as Plaintiff's Exhibit "L" is a copy of the return of service for ONEWEST, as though fully contained herein.

189. Said Amended Complaint was properly served on FREDDIE MAC. Attached hereto as Plaintiff's Exhibit "M" is a copy of the return of service for FREDDIE MAC, as though fully contained herein.
190. Neither ONEWEST nor FREDDIE MAC responded to the Amended Complaint.
191. After time expired for ONEWEST and FREDDIE MAC to respond, on or about November 1, 2010, Mr. McDonald, through counsel, filed a Motion for Default Judgment.
192. On or about November 19, 2010, the State District Court granted Mr. McDonald Quiet Title to the Property with a declaration that ONEWEST and FREDDIE MAC have no right, title or interest in the Property. (*Doc. 16, Ex. A*).
193. On or about November 26, 2010, an Entry of Default Judgment was entered into the record of 2010CV6.
194. ONEWEST initiated the nonjudicial foreclosure action against Mr. McDonald by filing a false affidavit. (*Doc. 1, Ex. E*).
195. The Public Trustee and the State District Court relied on ONEWEST and ARONOWITZ to file a certification that was accurate and truthful.
196. Since ONEWEST began the nonjudicial foreclosure action against Mr. McDonald they have filed pleading after pleading, written in such a way as to obfuscate the meaning of terms, e.g., the legal meaning of the term "holder."
197. In April 2011, the regulatory agencies over banks, including OTS, the Federal Reserve and the Office of the Comptroller of the Currency released an "Interagency Review of Foreclosure Policies and Practices." Attached hereto as Plaintiff's Exhibit "N" is a copy of said Review, as though fully contained herein.

198. ONEWEST was one of the federally regulated servicers examined in the Interagency Review.

199. Said agencies have taken formal, enforcement actions against ONEWEST.

200. In summary the agencies found:

Critical weaknesses in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party law firms and other vendors. These weaknesses involve unsafe and unsound practices and violations of applicable federal and state laws and requirements, and they have had an adverse effect on the functioning of the mortgage markets. By emphasizing speed and cost efficiency over quality and accuracy, examined servicers fostered an operational environment contrary to safe and sound banking practices

201. One of the agencies' findings most relevant to the improper foreclosure action prosecuted by ARONOWITZ for ONEWEST, against Mr. McDonald, is:

Inadequate Oversight

Where monitoring of law firms was conducted, it was often limited to things such as responsiveness and timeliness, checking for liability insurance, or determining if any power of attorney given to the firm remained valid rather than assessing the accuracy and adequacy of legal documents or compliance with state law or designated fee schedules.

202. One of the formal enforcement actions ONEWEST has been required to do is outlined in the Interagency Review, which states, in pertinent part:

Foreclosure review:

Retain an independent firm to conduct a review of residential foreclosure actions that were pending at any time from January 1, 2009, through December 31, 2010, to determine any financial injury to borrowers caused by errors, misrepresentations, or other deficiencies identified in the review, and to remediate, as appropriate those deficiencies.

203. The NOTE was sold by IMB to FREDDIC MAC before the ONEWEST purchase of the assets of IMB and/or IMFB.

204. After the NOTE was purchased by FREDDIE MAC, the NOTE was thereafter sold to certain other entities in the secondary mortgage market.

205. A letter from FREDDIE MAC, authored by its Vice-President, Robert Bostrom, and sent to the Florida Supreme Court regarding the "Court's Final Report and Recommendations on Residential Mortgage Foreclosure Cases," confesses that FREDDIE MAC is fully aware that servicers do not own the underlying loans upon which they foreclose. (*Doc. 13, Ex. F*).

206. ONEWEST did not own the subject NOTE.

207. ONEWEST was not the beneficiary of the DOT that secured said NOTE, when it exercised the power of sale in order to initiate a non-judicial foreclosure action against Mr. McDonald.

208. ONEWEST obtained an Order Authorizing Sale from the State District Court through fraud.

209. ONEWEST obtained Mr. McDonald's property for no consideration by submitting a credit bid that left Mr. McDonald owing over Forty-Eight Thousand Dollars (\$48,000) on the NOTE.

210. ONEWEST fraudulently transferred Mr. McDonald's property to FREDDIE MAC for nominal consideration.

211. ONEWEST was engaged with other entities, including but not limited to, FREDDIE MAC and ARONOWITZ, and others known and unknown, to obfuscate the procedural process required for a simple, non-judicial foreclosure in District Court.

212. When Mr. McDonald objected to the standing of ONEWEST as the real party in interest, ONEWEST choose to pursue a course of action in the State District Court to establish that it was the holder of the NOTE, and thus the current beneficiary of the DOT.

213. Through subterfuge, ONEWEST, FREDDIE MAC and ARONOWITZ engaged in pattern of deceitful behavior to cover-up the fact that the NOTE had been sold into the secondary market.

214. Once a promissory note or security is sold into the secondary market, determining the actual holder in due course is difficult.

215. Because only the true beneficiary of the DOT can engage the jurisdiction of the State District Court through the power of sale contained in the DOT, ONEWEST, FREDDIE MAC, ARONOWITZ and others, devised a scheme to perpetrate a fraud on the State District Court.

216. Upon information and belief, ONEWEST, FREDDIE MAC, ARONOWITZ and others, conspired to simply pretend that ONEWEST was the holder of the debt and beneficiary of the DOT.

217. Upon information and belief, FREDDIE MAC is not a "qualified holder" as that term in defined by Colorado law.

218. FREDDIE MAC can not and does not initiate non-judicial foreclosures in the State of Colorado.

219. Upon information and belief, FREDDIE MAC did not own the NOTE at the time of the initiation of the non-judicial foreclosure against Mr. McDonald.

220. Upon information and belief, FREDDIE MAC has acted and is acting on behalf of other entities in the process of the foreclosure of the Property and eviction of Mr. McDonald.

**FIRST CAUSE OF ACTION
FRAUD**

221. As and for the first cause of action for Common Law Fraud against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive; Plaintiff, Mr. McDonald, alleges as follows:

222. Mr. McDonald incorporates by reference paragraphs 1-221 of this Complaint as though fully contained herein, and so far as they may be applicable.

223. ONEWEST expressly and/or impliedly represented to Mr. McDonald, the Public Trustee and the State District Court that it was the holder of the NOTE, and thus the real party in interest to Mr. McDonald's NOTE and DOT; and, as such, had certain rights under said documents to foreclose on the Property and request that the State District Court authorize the sale of the Property.

224. Said representation was a false representation of a material existing fact.

225. Said representation was made with a reckless disregard of its truth or falsity.

226. Said representation concealed a material existing fact that in equity and good conscience should have been disclosed.

227. ONEWEST continually made false statements of material fact by claiming in letters, pleadings, and in open court on the record that it was the holder of Mr. McDonald's NOTE, and accordingly the beneficiary of the DOT.

228. ONEWEST had knowledge that its claims were false.

229. ONEWEST demonstrated utter indifference to the truth or falsity of its claims.

230. ONEWEST had knowledge that it was concealing a material fact that in equity and good conscience it should have disclosed.
231. ONEWEST specifically made several false statements to the State District Court, the Public Trustee and to Mr. McDonald that the NOTE and DOT were purchased, transferred, or otherwise assigned to ONEWEST, none of which were true.
232. The NOTE and DOT were never transferred to, assigned to, purchased by, or in any way acquired by ONEWEST.
233. At all material times hereto, ONEWEST only acquired the servicing rights to the NOTE.
234. FREDDIE MAC purchased the NOTE and DOT before ONEWEST acquired the assets of IMB and/or IMFB.
235. Upon information and belief, FREDDIE MAC has sold the NOTE and DOT into the secondary mortgage market.
236. ONEWEST concealed material facts that if known to the State District Court would have materially affected the judicial findings.
237. The false and fraudulent statements of ownership were made for the purposes of securing an interest in the Property, that ONEWEST had no right to claim.
238. At all material times, the State District Court was ignorant of the falsity of the representations made by ONEWEST that it was the owner of the NOTE.
239. At all material times, the State District Court was ignorant of the falsity of the representations made by ONEWEST that it was the current beneficiary of the DOT.
240. At all material times, the Public Trustee was ignorant of the falsity of the representations made by ONEWEST that it was the owner of the NOTE.

241. At all material times, the Public Trustee was ignorant of the falsity of the representations made by ONEWEST that it was the current beneficiary of the DOT.

242. At all material times, Mr. McDonald was ignorant of the falsity of the representations made by ONEWEST that it the owner of the NOTE.

243. At all material times, Mr. McDonald was ignorant of the falsity of the representations made by ONEWEST that it was the current beneficiary of the DOT.

244. ONEWEST made such statements and representations of ownership and entitlement with the intention that the statements be trusted and acted upon by the State District Court.

245. ONEWEST made such statements and representations of ownership and entitlement with the intention that the statements be trusted and acted upon by the Public Trustee.

246. ONEWEST made such statements and representations of ownership and entitlement with the intention that the statements be trusted and acted upon by Mr. McDonald.

247. ONEWEST had foreknowledge it was misrepresenting material facts evidenced by a screen shot from ONEWEST's own computer system provided by the FDIC.

(Doc. 1, Ex. J).

248. Said information was at all times material to this case readily available to ONEWEST.

249. The Public Trustee had no knowledge that ONEWEST did not own the subject NOTE, or that it did not have authority to exercise the power of sale in the DOT.

250. The Public Trustee presumed that ONEWEST would not file a fraudulent Notice of Election and Demand for Sale.
251. Said Notice makes the false claim that ONEWEST is the legal holder of the NOTE in question.
252. ONEWEST filed a fraudulent Certification of Qualified Holder that falsely states it is the holder of the original evidence of debt and that it was the current beneficiary of the DOT. (*Doc. 1, Ex. E*).
253. ONEWEST concealed the truth from the Public Trustee in order to procure a Combined Notice Saguache County Public Trustee Sale, and to have a trustee sale scheduled to sell the Property.
254. On or about August 10, 2009, presuming that the representations made by ONEWEST were true, the Public Trustee issued the Combined Notice of Sale and the Property was scheduled for sale on December 3, 2009. (*Doc. 1, Ex. F*).
255. The State District Court had no knowledge that ONEWEST did not own the subject NOTE.
256. The State District Court had no knowledge that ONEWEST was not the current beneficiary of the DOT when ONEWEST filed a Verified Motion for an Order Authorizing Sale, claiming to have authority to exercise the power of sale in the DOT.
257. ONEWEST concealed the truth and made the false representations to the State District Court to convince the Court to grant it an Order Authorizing Sale, so it could acquire title to Property at the Trustee Sale scheduled for December 3, 2009.

258. The State District Court afforded ONEWEST considerable deference by presuming that the representations made by ONEWEST were true and accurate.

259. The State District Court granted ONEWEST an Order Authorizing sale, based upon the representations that the bank had made for the record. (*Doc. 8, Ex. 1*).

260. After the State District Court granted the Order Authorizing Sale to ONEWEST, the Public Trustee accepted a credit bid from ONEWEST based on its previous certifications that ONEWEST was the lender. (*Ex. H*).

261. The Public Trustee then issued a Certificate of Purchase to ONEWEST for Mr. McDonald's property that stated ONEWEST was the Current Holder of the Evidence of Debt, further confirming the Public Trustee was still unaware ONEWEST's representations were untrue. (*Doc. 13, Ex. G*).

262. Still assuming ONEWEST was conducting itself in good faith, the Public Trustee then allowed ONEWEST to execute an Assignment of its Certificate of Purchase to FREDDIE MAC for \$10. (*Doc. 13, Ex. H*).

263. ONEWEST's false statements of ownership and/or concealment of facts caused damage to Mr. McDonald.

264. As a direct and proximate cause of ONEWEST's fraud, Mr. McDonald has suffered, and continues to suffer, considerable economic and non-economic damages in an amount provable at trial including, but not limited to, the lose of title to his home, loss of income and opportunities due to the amount of time required to fight ONEWEST and suffering considerable physical and emotional distress.

WHEREFORE, Plaintiff prays following his final cause of action.

**SECOND CAUSE OF ACTION
FRAUD ON THE COURT**

265. As and for the second cause of action for Fraud on the Court against ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive; Plaintiff, Mr. McDonald, alleges as follows:

266. Mr. McDonald incorporates by reference paragraphs 1-265 of this Complaint as though fully contained herein, and so far as they may be applicable.

267. Fraud on the court requires a showing that one has acted with an intent to deceive or defraud the court.

268. The deception must go to the heart of the judicial proceeding, creating an impression about the core, operative facts that is relied on by the court, and is false.

269. ONEWEST knew or should have known that it did not own Mr. McDonald's NOTE and was not the beneficiary of the DOT when it foreclosed. (*Doc. 1, Ex. J*).

270. The question of ownership was raised by Mr. McDonald on or about April 10, 2009.

271. Mr. McDonald continued to challenge the standing of ONEWEST as the real party in interest in the foreclosure case in the State District Court.

272. ONEWEST had every opportunity to check its records and proceed in good faith.

273. ONEWEST chose to withhold and conceal the truth from Mr. McDonald, the Public Trustee and the State District Court.

274. ONEWEST submitted pleading after pleading to the State District Courts that falsely claim that Colorado foreclosure statutes do not require ONEWEST to prove ownership.

275. On or about February 11, 2010, Mr. McDonald filed a Motion to Reconsider the Order Authorizing Sale.

276. On or about February 15, 2010, ONEWEST filed a response, through counsel, Ms. Hendrick, and emphasized that ONEWEST was the real party in interest and that Mr. McDonald had no proof to the contrary. (*Doc. 13, Ex. B*).

277. Said response was filed five months after ONEWEST initiated the foreclosure.

278. In said Response to Mr. McDonald's Motion to Reconsider the Order Authorizing Sale, ONEWEST states, in pertinent parts:

13. Subsequent to the execution of the Note and Deed of Trust, the Note and Deed of Trust was transferred, assigned, sold, or otherwise conveyed to Petitioner.
18. The only defense asserted by the Respondent in this action is that Petitioner is not the real party in interest, even though Petitioner has produced the original Note and Deed of Trust.
19. Respondent even acknowledged that Petitioner made a *prima facie* showing that it is the holder of the evidence of debt, and that it is the real party in interest and has standing to bring this action.
21. Respondent has not met the burden of going forward. Respondent has no evidence to suggest that Petitioner lacks standing or is not the real party in interest. Respondent has no basis in law or in fact for proceeding with this frivolous, groundless or vexatious defense.
23. Respondent admitted that Petitioner made a *prima facie* showing that it was the real party in interest.
24. Respondent acknowledges that he has nothing to refute Petitioner's *prima facie* showing that it is the real party in interest.
25. Even Comment 2 to C.R.S. § 4-3-203 provides that even if the promissory note was not indorsed by IndyMac Bank, F.S.B. **when it transferred the Note and Deed of Trust to OneWest**, as long as IndyMac Bank, F.S.B. was the holder, that is, in physical possession, One West is entitled to enforce the terms of the Note and Deed of Trust (emphasis added).
28. Since Respondent acknowledged Petitioner's *prima facie* showing that it was the holder of the evidence of debt, that it was the real party in interest and had standing to bring this action, aJ1d that

Respondent lacked any kind of evidence to the contrary, there is absolutely not basis for Respondent's Motion to Reconsider Order Authorizing Sale.

29. Respondent's persistence in asserting this defense without any legal or factual basis to refute Petitioner's overwhelming evidence that it is the real party in interest and that it has standing, is nothing more than a tactic to delay the foreclosure action and cause Petitioner to incur needless attorney's fees and costs. Respondent's persistence of a defense that is not supported in law or in fact is a violation of C.R.C.P. 11(a).

279. In said Response, ONEWEST accused Mr. McDonald of operating in bad faith.

280. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court".

281. Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.

282. Fraud on the court is where the court or a member is corrupted or influenced, or influence is attempted.

283. Fraud on the court where the impartial functions of the court have been directly corrupted.

284. Fraud upon the court embraces that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

285. The State District Court consistently acknowledged the issue in dispute was whether ONEWEST owned the subject NOTE, evidenced by the Court order for ONEWEST to produce the original NOTE and DOT. (*Ex. C*).

286. The State District Court also acknowledged the issue in dispute was whether ONEWEST owned the subject NOTE when the Court ordered ONEWEST to produce a sales agreement that showed Mr. McDonald's NOTE was an asset ONEWEST acquired from its purchase of IMB assets. (*Ex. E*).

287. ONEWEST knew or should have known it did not own the NOTE it was foreclosing.

288. ONEWEST knew or should have known that it was only operating in the capacity of a servicing agent with no ownership interest in the NOTE.

289. The fraud on the State District Court perpetrated by ONEWEST has caused damage to Mr. McDonald.

290. As a direct and proximate cause of ONEWEST's fraud on the court, Mr. McDonald has suffered, and continues to suffer, considerable economic and non-economic damages in an amount provable at trial including, but not limited to, the lose of title to his home, loss of income and opportunities due to the amount of time required to fight ONEWEST and suffering considerable physical and emotional distress.

WHEREFORE, Plaintiff prays following his final cause of action.

**THIRD CAUSE OF ACTION
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

291. As and for the third cause of action for violating the Fair Debt Collection Practices Act ("FDCPA"), pursuant to 15 U.S. C. § 1692, against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive, Plaintiff, Mr. McDonald, alleges as follows.

292. Mr. McDonald incorporates by reference paragraphs 1-291 of this Complaint as though fully contained herein, and so far as they may be applicable.

293. Mr. McDonald is a “consumer” within the meaning of 15 U.S.C.A. §§ 1692(d) for purposes of a cause of action pursuant to 15 U.S.C.A. § 1692(c) or 15 U.S.C.A. § 1692(e)(11).

294. The “debt” arises out of a transaction entered primarily for personal, family, or household purposes, as defined in 15 U.S.C.A. § 1692(a)(5).

295. ONEWEST is a debt collector as defined by 15 U.S.C. § 1692(a)(6):

The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

296. In 1992 the Colorado Supreme Court stated:

The section 1692(a)(6) definition of the term debt collector includes one who "directly or indirectly" engages in debt collection activities on behalf of others. **Since a foreclosure is a method of collecting a debt by acquiring and selling secured property to satisfy a debt,** those who engage in such foreclosures are included within the definition of debt collectors if they otherwise fit the statutory definition (emphasis added).

Shapiro and Meinhold v. Zartman, 823 P.2d 120 (1992).

297. According to the FDIC, 93% of the assets ONEWEST acquired from IMB consisted of only servicing rights to mortgages held by other institutions. (*Doc. 13, Ex. I*).

298. ONEWEST knew that its attempt to foreclosure on the Property was subject to the FDCPA .

299. ONEWEST complied with the FDCPA notice requirements in many of the communications that were sent to Mr. McDonald.

300. A letter from ONEWEST to Mr. McDonald dated August 1, 2009 states: “This company is a debt collector and any information obtained will be used for that

purpose.” Attached hereto as Plaintiff’s Exhibit “O” is a copy of said letter, as though fully contained herein.

301. A letter from ONEWEST to Mr. McDonald dated February 26, 2010, states at the bottom: “This company is a debt collector and any information obtained will be used for that purpose.” Attached hereto as Plaintiff’s Exhibit “P” is a copy of said letter, as though fully contained herein.

302. On or about September 10, 2009, ONEWEST filed a Verified Motion for an Order Authorizing Sale with the State District Court, in which ONEWEST states, “This is an attempt to collect a debt. Any information obtained may be used for that purpose.” (*Ex. B*).

303. In addition, said motion states: “If this case is not filed in the County where your property is located, you have the right to ask the Court to move the Case to that County. Your request may be made as a part of your response or any paper you file with the Court at least five days before the hearing.”

304. This statement is an acknowledgement by ONEWEST of its need to comply with FDCPA, 15 U.S.C. § 1692(i)(a), Venue, which states, in pertinent part:

Any debt collector who brings any legal action on a debt against any consumer shall —

(1) in the case of an action to enforce an interest in real property securing the consumer’s obligation, bring such action only in a judicial district or similar legal entity in which such real property is located.

305. ONEWEST violated the FDCPA, 15 U.S.C. § 1692(d), Harassment or Abuse:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

306. ONEWEST was not a creditor to which Mr. McDonald owed any money.
307. ONEWEST engaged in an unlawful foreclosure action that continues to the present.
308. ONEWEST wields tremendous wealth and power which it has used to harass, oppress and abuse Mr. McDonald by continually misrepresenting the facts in order prejudice the State District Court against Mr. McDonald, painting him as financially irresponsible and a “dead beat” that deserves what it is happening to him.
309. Mr. McDonald has had to endure tremendous stress and anxiety for approximately two years trying to prevent ONEWEST from taking his home.
310. Said matter has consumed Mr. McDonald’s life and resources.
311. ONEWEST violated the FDCPA, 15 U.S.C. § 1692(e), False or Misleading

Representations:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of:

(A) the character, amount, or legal status of any debt.

312. On August 4, 2009, ONEWEST, through its agent ARONOWITZ, sent Mr. McDonald a letter. (*Doc. 1, Ex. C*).
313. Said letter falsely stated that ONEWEST was the current creditor of a debt Mr. McDonald original entered into with IMB.
314. Said letter falsely characterized the legal status of the debt.
315. Said letter conveyed to Mr. McDonald that ONEWEST was his new lender and that it was collecting its own debt.

316. ONEWEST was collecting the debt of an undisclosed third party.

317. ONEWEST violated the FDCPA, 15 U.S.C. § 1692(e), False or Misleading

Representations:

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

318. In said letter dated August 4, 2009, ONEWEST, through its agent ARONOWITZ, threatened to initiate foreclosure actions against Mr. McDonald if he did not cure the default they were claiming had occurred.

319. Specifically, ONEWEST, through counsel, stated:

Your failure to cure the default on or before the date specified in this notice may result in acceleration of the sums which are secured by the DOT or security interests and the sale of your property.

320. ONEWEST failed to provide Mr. McDonald with validation of the debt it claimed was owed pursuant to UCC § 3-501(2) & (3).

321. ONEWEST waived any right to declare a default.

322. ONEWEST refused to comply with Mr. McDonald's request to see proof of proper indorsement of his original NOTE to ONEWEST.

323. Mr. McDonald was entitled to withhold payments without dishonoring the instrument.

324. ONEWEST violated FDCPA, 15 U.S.C. § 1692(e)(5), by threatening to accelerate the sums which are secured by the DOT, an action it had no right to perform under a contract, to which it had no privity of contract.

325. ONEWEST violated FDCPA, 15 U.S.C. § 1692(e)(5) because the terms contained in the DOT states that only the "Lender" has authority to exercise the power of sale contained in the DOT.

326. Nowhere in the DOT does it say that a servicer has authority to exercise the power of sale.

327. Nowhere in C.R.S. § 38-38-101, et. seq., does Colorado law authorize the servicer of mortgage or loan secured by deed of trust to exercise the power of sale contained in such documents.

328. ONEWEST knew that it had no independent authority to exercise the power of sale, therefore ONEWEST threatened to take an action it could not legally pursue.

329. ONEWEST violated the FDCPA, 15 U.S.C. § 1692(e), False or Misleading Representations:

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

330. In said letter sent to Mr. McDonald dated August 4, 2009, ONEWEST gave Mr. McDonald notice it was initiating foreclosure actions against him, falsely represented to Mr. McDonald that ONEWEST was the “current creditor” of the loan, in order to create the impression that it was collecting a debt they had purchased from IMB. (*Doc. 1, Ex. D*).

331. ONEWEST knew it had not purchased the loan as a part of the purchase of IMB.

332. ONEWEST violated the FDCPA, 15 U.S.C. § 1692(f), Unfair Practices:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if —
(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

333. ONEWEST did not have a present right to possession of Mr. McDonald's property.

334. ONEWEST had no ownership interest in the NOTE Mr. McDonald originally executed with IMB.

335. ONEWEST threaten to take a non-judicial action to effect dispossession of Mr. McDonald from his property.

336. ONEWEST in fact prosecuted the non-judicial foreclosure action that resulted in dispossessing him of title to his property.

337. ONEWEST violated the FDCPA, 15 U.S.C. § 1692(g), Validation of Debts:

(b) Disputed Debts:

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor (emphasis added).

338. Mr. McDonald disputed the debt within the 30-day period from August 4, 2009.

339. After receiving Mr. McDonald's letter disputing the debt, ONEWEST did not cease collection actions.

340. ONEWEST initiated foreclosure actions against Mr. McDonald before he received the first letter from ARONOWITZ.

341. The first letter sent to Mr. McDonald giving notice of the initiation of foreclosure proceeding was dated August 4, 2009. (*Doc. 1, Ex. D*).

342. The Certification of Qualified Holder that began the nonjudicial foreclosure action against Mr. McDonald was also dated August 4, 2009. (*Doc. 1, Ex. E*).

343. In response to Mr. McDonald's dispute of the debt, the only documents sent by ONEWEST, through ARONOWITZ, to Mr. McDonald as verification of the debt was a copy of the original NOTE showing it to be payable to IMB, not ONEWEST; and the DOT showing IMB as the beneficiary, not ONEWEST.

344. UCC § 3-501 as referenced above, states that validation of the debt would be proof of proper indorsement of the NOTE from IMB to ONEWEST.

345. ONEWEST refused to provide proof of proper indorsement.

346. On October 22 ,2009, ONEWEST sent Mr. McDonald which states in part:

In response to your request for documents, attached are:

A copy of the original executed promissory NOTE. We are not obligated to furnish a certified copy of the fully endorsed NOTE.

(Ex. A).

347. At all material times, ONEWEST refused to validate the debt.

348. ONEWEST's violations of the FDCPA have caused damage to Mr. McDonald.

349. As a direct and proximate cause of ONEWEST's violations of the FDCPA, Mr. McDonald has suffered, and continues to suffer, considerable economic and non-economic damages in an amount provable at trial including, but not limited to, the lose of title to his home, loss of income and opportunities due to the amount of time required to fight ONEWEST and suffering physical and emotional distress.

WHEREFORE, Plaintiff prays following his final cause of action.

**FOURTH CAUSE OF ACTION
VIOLATION OF COLORADO CONSUMER PROTECTION ACT**

350. As and for the fourth cause of action for violating the Colorado Consumer Protection Act, against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive. Plaintiff, Mr. McDonald, alleges as follows:
351. Mr. McDonald incorporates by reference paragraphs 1-350 of this Complaint as though fully contained herein, and so far as they may be applicable.
352. ONEWEST is a person as defined by C.R.S § 6-1-102(6).
353. ONEWEST is a federally chartered corporation.
354. A primary part of the business of ONEWEST is the servicing of mortgage loans.
355. ONEWEST established INDYMAC MORTGAGE SERVICES, INC., as its division for handling the servicing of loans it purchased as a portion of the assets of IMB and IMFB.
356. ONEWEST established INDYMAC MORTGAGE SERVICES, INC. as its division for handling the servicing of loans owned by third parties, the servicing rights to which ONEWEST acquired when it purchased the assets of IMB.
357. Mr. McDonald was an actual consumer of ONEWEST's mortgage servicing business.
358. At all material times, ONEWEST has engaged in and continues to engage in willful and wanton bad faith conduct, malice and fraud.
359. When Mr. McDonald called ONEWEST to inquire as to whom it was, ONEWEST represented itself as the lender on his loan.
360. As defined by the NOTE and DOT, ONEWEST has never been the "Lender."

361. In the letter dated August 4, 2009, ONEWEST defines itself as the “current creditor.” (*Doc. 1, Ex. C*).
362. Said letter also states in pertinent part: “Your mortgage loan with the above-referenced creditor, has been referred to the law firm of Aronowitz & Mecklenburg, L.L.P. for institution of foreclosure proceedings . . .”
363. When ONEWEST communicated that it was the lender, to which Mr. McDonald owed his mortgage payments, Mr. McDonald did not know that ONEWEST had not purchased his NOTE from the FDIC, when it acquired the assets of IMB and IMFB.
364. ONEWEST encouraged the perception that it was the “Lender” of Mr. McDonald’s loan, as defined by the NOTE and DOT.
365. ONEWEST created the perception that it was the “Lender,” as defined by the NOTE and DOT to deceive Mr. McDonald, so he would continue making payments to ONEWEST.
366. ONEWEST created the perception that it was the “Lender” as defined by the NOTE and DOT, so that Mr. McDonald would not question whether ONEWEST actually owned the NOTE, or was the beneficiary of the DOT.
367. ONEWEST encouraged the perception that it had far more authority and rights than it in fact had in order to gain an unfair advantage over Mr. McDonald.
368. This unfair advantage eventually led to ONEWEST being able to seize title to Mr. McDonald’s property, to which it had no right or interest to claim under the terms of the NOTE and DOT.
369. ONEWEST is not, and has never been, the owner of the NOTE.
370. ONEWEST was not, and has never been the beneficiary of the DOT.

371. ONEWEST actions have significant public impact.

372. ONEWEST owns 7% of the loans it acquired from their purchase of IMB assets.

(Doc. 13, Ex. I).

373. The remaining 93% of the loans it acquired from IBM had been previously sold to third parties, after which IBM retained the servicing rights.

374. ONEWEST has foreclosed on over one thousand properties in the State of Colorado.

375. All the consumers of ONEWEST's mortgage services are potential victims of ONEWEST's illegal foreclosure actions.

376. OTS, the Federal Reserve and the Office of the Comptroller of the Currency participated in an interagency review entitled "Interagency Review of Foreclosure Policies and Practices" that was released in April 2011. *(Ex. N).*

377. A brief summary of the review states:

"The reviews found **critical weaknesses** in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party law firms and other vendors. **These weaknesses involve unsafe and unsound practices and violations of applicable federal and state laws and requirements**, and they have had an adverse effect on the functioning of the mortgage markets. By emphasizing speed and cost efficiency over quality and accuracy, examined servicers fostered an operational environment contrary to safe and sound banking practices (emphasis added).

378. Said agencies found that ONEWEST had violated applicable federal and state laws and requirements, and ordered ONEWEST to change its procedures.

379. ONEWEST has submitted a Consent Order to the OTS. Attached hereto as Plaintiff's Exhibit "Q" is a copy of said Order, as though fully contained herein.

380. Despite the Consent Order, ONEWEST has taken no action to correct the improper foreclosure action it prosecuted against Mr. McDonald.

381. ONEWEST, to date, is engaged in trying to divest Mr. McDonald of the Property.

382. With regard to how ONEWEST's business practices impacted borrowers, said review states:

IMPACT ON BORROWERS

Weaknesses in foreclosure processes and controls present the risk of foreclosing with inaccurate documentation, or foreclosing when another intervening circumstance should intercede. Even if a foreclosure action can be completed properly, deficiencies can result (and have resulted) in violations of state foreclosure laws designed to protect consumers. Such weaknesses may also result in inaccurate fees and charges assessed against the borrower or property, which may make it more difficult for borrowers to bring their loans current. In addition, borrowers can find their loss-mitigation options curtailed because of dual-track processes that result in foreclosures even when a borrower has been approved for a loan modification. The risks presented by weaknesses in foreclosure processes are more acute when those processes are aimed at speed and quantity instead of quality and accuracy.

383. The Interagency Review establishes that there is a significant impact on the public, as actual or potential consumers of ONEWEST'S mortgage servicing business, due to ONEWEST's deceptive trade practices.

384. The foreclosure prosecuted by ONEWEST against Mr. McDonald is not the only time ONEWEST has posed as a lender/creditor, misrepresented material facts, and withheld and/or concealed the truth from the courts.

385. ONEWEST attempted to prosecute a foreclosure against Israel and Nenna Machado in Palm Beach County, Florida. *See Indymac Federal Bank, FSB, v Machado* (Fifteenth Circuit Court in and for Palm Beach County, Florida, Case No. 50 2008 CA 037322XXXX MB AW).

386. In the *Machado* matter, ONEWEST again asserted it was the lender, when it knew it was a not.

387. In *Machado*, a series of depositions where taken of ONEWEST Vice-President, Erica Johnson-Seck.

388. Ms. Johnson-Seck's testimony substantiated the fact that, in the *Machado* case, ONEWEST was fully aware of the fact that it was only operating in the capacity of a servicing agent, with no beneficial interest in the loan upon which it was foreclosing.

389. In a deposition that occurred July 9, 2009, Ms. Johnson-Seck stated:

Q. All right. You've kind of anticipated my next series of questions, which was, it's true that OneWest does not own the loan in this case?

A. That's true.

Q. Neither OneWest nor IndyMac Federal Bank, FSB nor IndyMac Bank, FSB, none of those entities own the loan in this case?

A. That's right.

Q. The loan has been securitized?

A. Yes.

Q. The loan is owned by a trust?

A. Yes.

(*Doc. 13, Ex. F*).

390. The *Machado* case was dismissed on or about September 3, 2009, and the Machado's were awarded attorney's fees and costs in the amount of Thirty-Eight Thousand One-Hundred Seventeen Dollars (\$38,117.00).

391. Another similar example occurred or about May 26, 2011, in the United States Bankruptcy Court, Southern District of California, referenced as *In re: ARIZMENDI*, United States Bankruptcy Court, S.D. California, May 26, 2011.
392. The case ended with the Bankruptcy Court issuing a Memorandum Decision regarding ONEWEST, in which it denied ONEWEST's Motion for Relief from Stay and issued an Order To Show Cause why ONEWEST should not be held in contempt and/or otherwise sanctioned.
393. In *Arizmendi*, the Federal Bankruptcy Court stated:

OneWest filed a proof of claim in the Case stating that it was the creditor, "the entity to whom the debtor owes money . . ." All statements in the Declaration were consistent. During trial, however, the witness candidly testified that OneWest was no the secured creditor, but, instead, was a mere servicer and had been so at all relevant time...

This is not the first time that OneWest has provided less than complete information in the Southern District of California. See "Memorandum Decision Re Motion to Vacate Clerk's Entry of Default and Motion to Dismiss Complaint; Order to Show Cause for Contempt of Court," docket no. 39, Adv. Pro. 10-90308-MM (*In re Doble*; Bk. Case No. 10-11296) (Defendants, including OneWest, were neither candid nor credible in explaining failure to respond timely to complaint and submitted multiple and different NOTES as "true and correct"); "Order to Show Cause Why One West Bank, FSB and Its Attorneys Law Offices of Randall Miller and Christopher Hoo Should Not Appear Before the Court to Explain Why They Should Not Be Held in Contempt or Sanctioned", docket no. 47, *In re Carter*, Bk. Case No. 10-10257-MM13 (among other things OneWest provides inconsistent evidence as to its servicer status); and "Order After Hearing to Show Cause Why IndyMac Mortgage Services; OneWest Bank, FSB; Randall S. Miller & Associates, P.C.; Christopher J. Hoo; Barrett Daff'm Frappier Treder & Weiss, LLP; and Darlene C. Vigil Should Not Appear Before the Court to Explain Why They Should Not Be Held in Contempt or Sanctioned", docket no. 47, *In re Telebrico*, Bk. No. IO-07643-LAI3 (Court concerned that OneWest provided evidence

that was either intentionally or recklessly false)....

OneWest perhaps assumes that it really does not matter if the Court provides relief based on erroneous information. But, One West should remember an earlier theme in this decision and that is that the law is the law, rules are rules, and both must be obeyed. And, when it becomes clear that One West did not obey the rules, the Court can and, indeed, must act...

In short the Court will not participate in a process where OneWest increases its profits by disobeying the rules of this Court and by providing the Court with erroneous information.

394. ONEWEST falsely conveyed that it was the new lender to whom Mr. McDonald now owed his mortgage payment in order to induce him to continue making his payments as he did to the original lender, IMB.

395. As a direct and proximate cause of ONEWEST's deceptive trade practices, Mr. McDonald has suffered, and continues to suffer considerable economic and noneconomic damages in an amount provable at trial including but not limited to the lose of title to his home, loss of income and opportunities due to the amount of time required to fight ONEWEST and suffering considerable physical and emotional distress.

WHEREFORE, Plaintiff prays following his final cause of action.

**FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT**

396. As and for the fifth cause of action for Unjust Enrichment against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive; Plaintiff, Mr. McDonald, alleges as follows.

397. Mr. McDonald incorporates by reference paragraphs 1-396 of this Complaint as though fully contained herein, and so far as they may be applicable.

398. To recover under an unjust enrichment theory, the plaintiff must establish that: (1) at plaintiff's expense, (2) defendant received a benefit (3) under circumstances that make it unjust for defendant to retain the benefit without paying.

399. ONEWEST prosecuted a fraudulent foreclosure action against Mr. McDonald in order to divest him of his property.

400. ONEWEST knew that it had only purchased servicing rights to the NOTE that Mr. McDonald had previously executed with IMB. (*Doc. 1, Ex. K*).

401. At Mr. McDonald's expense, ONEWEST successfully prosecuted a fraudulent foreclosure action against him, and acquired temporarily acquired title.

402. Among other things, ONEWEST acquired title to Mr. McDonald's property with a fraudulent credit bid submitted to the Public Trustee.

403. By fraudulently posing as a lender, ONEWEST was able to acquire title to the Property at public auction for no consideration.

404. The fraudulent credit bid was also a deficiency credit bid that left Mr. McDonald still owing \$48,332.82 on the NOTE.

405. Then ONEWEST assigned the Certificate of Purchase of Mr. McDonald's property to FREDDIE MAC for \$10.

406. The actions of ONEWEST are unjust.

407. The actions of ONEWEST were improper, deceitful and fraudulent.

408. Under circumstances, it is unjust for ONEWEST to have any interest in the Property.

WHEREFORE, Plaintiff prays following his final cause of action.

**SIXTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

409. As and for the seventh cause of action for Intentional Infliction of Emotional Distress against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive; Plaintiff, Mr. McDonald, alleges as follows.
410. Mr. McDonald incorporates by reference paragraphs 1-409 of this Complaint as though fully contained herein, and so far as they may be applicable.
411. If a parties' conduct is egregious or extreme, emotional distress is expected to occur.
412. The false representations made by ONEWEST in its attempt to collect a debt regarding were willful, reckless, or negligent misrepresentations of material facts.
413. ONEWEST made these representations either intentionally, without knowledge of their truth or falsity, or negligently, to induce the State District Court and Public Trustee to aid in the fraudulent foreclosure of the Property.
414. ONEWEST knew or should have known that its debt collection efforts to foreclose on the Property were deceptive and unfair and would result in risks to the financial and emotional well-being of Mr. McDonald.
415. The misrepresentations of ONEWEST were unconscionable, false, deceptive and misleading because they suggested or implied that it was the lender and creditor of a NOTE and thus the beneficiary of the DOT, when in fact it was the servicer.
416. ONEWEST were and are under a duty to disclose the true information of the ownership of the NOTE, because it has superior knowledge of the facts and immediate access to the all the documents necessary to establish the chain of ownership of the NOTE.

417. ONEWEST engaged in the foregoing actions as part of a calculated scheme or plan with the specific intent to mislead consumers such as Mr. McDonald into believing that it had purchased the NOTE and was the beneficiary of the DOT.

418. This course of conduct by ONEWEST was done willfully, maliciously, intentionally, or with reckless disregard, and has directly and proximately caused severe emotional distress to Mr. McDonald.

419. ONEWEST failed to take any steps to prevent the false, misleading and deceptive loan collection and transfer practices of ARONOWITZ, FREDDIE MAC, and others from continuing, and from being disseminated via the instrumentality of the U.S. Mails, and did so purposefully and deliberately for gain.

420. When ONEWEST initiated the nonjudicial foreclosure against Mr. McDonald all he received from ONEWEST and the Public Trustee was information that communicated that Mr. McDonald had one option, pay up or lose his home to ONEWEST.

421. The emotional distress this caused was and is extreme.

422. Mr. McDonald has had to face the disparity between the financial resources ONEWEST could bring to bear, against what Mr. McDonald could afford.

423. ONEWEST has a network of lawyers, and hired ARONOWITZ specifically because the firm specialized in mortgage foreclosure.

424. This has consumed his life for the last two years. It has adversely affected his business and social life. Mr. McDonald has not had any semblance of a normal life since ONEWEST began its actions against him and his property.

425. All of this created an oppressive amount of pressure and anxiety in Mr. McDonald's life that endures to the present.
426. ONEWEST is not an unsophisticated litigant.
427. ONEWEST withheld and concealed the information Mr. McDonald needed to defend himself.
428. Even after Mr. McDonald obtained proof from the FDIC that ONEWEST did not purchase his NOTE, ONEWEST refused to acknowledge the truth and cease its bad faith misrepresentation of material facts.
429. ONEWEST ignored the confirmation letter from the FDIC that another institution owned Mr. McDonald's loan.
430. ONEWEST ignored its own letter it sent to Mr. McDonald ONEWEST dated February 26, 2010, that admitted ONEWEST was only operating in the capacity of a servicing agent and that another institution owned his loan.
431. ONEWEST has been a constant threat to health and property interests of Mr. McDonald since August 4, 2009.
432. ONEWEST has displayed and continues to display utter disregard for Mr. McDonald's health and well being and is still attempting to dispossess Mr. McDonald of this property.
433. As a direct and proximate cause of the actions and conduct of ONEWEST, Mr. McDonald suffers daily anxiety.
434. As a direct and proximate cause of the actions and conduct of ONEWEST, Mr. McDonald is financially vulnerable and has suffered economic harm.

435. ONEWEST has been trying to divest Mr. McDonald of his home for approximately two years.

436. ONEWEST sold Mr. McDonald's property at a Trustee Sale.

437. ONEWEST purchased Mr. McDonald's property with a fraudulent credit bid.

438. ONEWEST sold the property again to FREDDIE MAC for the nominal consideration of Ten Dollars (\$10).

439. FREDDIE MAC has been attempting to evict Mr. McDonald from his home after paying only Ten Dollars (\$10) for the Property.

440. The conduct of ONEWEST, in concert, with the other entities as described above, both known and unknown, is likely to cause harm to any homeowner in the same or similar position of Mr. McDonald. ONEWEST's attitude has been and remains to be one of total contempt and disregard for the harm it has done and continues to do to Mr. McDonald and for Mr. McDonald's health and well being. It is hoped that the intentional infliction of pain and suffering couldn't be more obvious to this Court.

441. ONEWEST has intentionally infliction of emotional distress upon Mr. McDonald, as a strategy to get Mr. McDonald to give-up in State District Court and consent to the sale of the Property.

442. As a direct and proximate cause of the actions of ONEWEST, Mr. McDonald has suffered, and continues to suffer, considerable economic and non-economic damages in an amount provable at trial including, but not limited to, the lose of title to his home, loss of income and opportunities due to the amount of time required to fight ONEWEST and suffering considerable physical and emotional distress.

WHEREFORE, Plaintiff prays following his final cause of action.

**SEVENTH CAUSE OF ACTION
CIVIL RICO**

443. As and for the eighth cause of action for violating RICO, pursuant to 18 U.S.C. §1961, *et seq.*, against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive; Plaintiff, Mr. McDonald, alleges as follows.
444. Mr. McDonald incorporates by reference paragraphs 1-443 of this Complaint as though fully contained herein, and so far as they may be applicable.
445. At all times material hereto, Mr. McDonald was a member of the "persons" within the meaning and definition of RICO, pursuant to 18 U.S.C. §1961(3) and §1964(c).
446. At all material times hereto, ONEWEST, the other known parties to the enterprise and the as yet unknown conspirators, were "persons" within the meaning of RICO, 18 U.S.C. § 1961(3) and 1962(c).
447. At all material times hereto, ONEWEST, the other known parties to the enterprise and the as yet unknown conspirators, formed an enterprise that was and is an association-in-fact enterprise for the purpose of defrauding individuals, such as Mr. McDonald, by foreclosing on property such as the property owned by Mr. McDonald, in which ONEWEST did not hold ownership interest in the underlying NOTE and thus, did not have the capacity or standing to enforce the rights and/or claims incumbent to the NOTE and DOT.
448. A known purpose of the enterprise is to launder property titles that have become clouded.
449. It has become common knowledge that mortgages have been securitized and sold multiple times, with a disregard for keeping proper records of the transactions and without proper recording in local county land records.

450. This has resulted in millions of titles to real property being clouded beyond repair.

451. This association-in-fact was and is an "enterprise" within the meaning of RICO, 18 U.S.C. §1961(4).

452. Parties that are known to be part of the enterprise are ONEWEST, Lender Processing Services ("LPS"), FREDDIE MAC and ARONOWITZ.

453. ONEWEST is a federal savings bank that also manages the servicing of their own mortgages as well as servicing mortgage loans held by other institutions.

454. LPS is a Delaware corporation, with its principal place of business at 601 Riverside Ave., Jacksonville, Florida, 32204.

455. LPS contracts with lenders and mortgage servicers for the use of their automated foreclosure and bankruptcy management systems.

456. FEDDIE MAC is a federally chartered corporation that was established to convert mortgages from the secondary mortgage market, into mortgage-backed securities that are then sold to investors, and is described in more detail in paragraphs 161-166, above.

457. ARONOWITZ is a debt collection law firm in Denver, Colorado that specializes in handling nonjudicial foreclosures.

458. ARONOWITZ is also an LPS network law firm. Attached hereto as Plaintiff's Exhibit "R" is a screen shot of the LPS website, as though fully contained herein.

459. Each known party to the enterprise plays a separate and distinct roll necessary to keep the public from discerning that it is an enterprise and that one of the enterprises primary concerns, apart from its goals to seize property and launder titles, is to maintain the false public perception that mortgages are still simple,

straightforward transactions--not the complex financial products that most of them have become through the process of securitization.

460. The role ONEWEST plays in the enterprise is that of an ordinary lender.

461. This case concerns assets ONEWEST claims to have purchased from IMB.

462. According to the FDIC, 93% of the assets ONEWEST purchased from IMB consisted of the rights to service loans held by other institutions. (*Doc. 13, Ex. I*).

463. In this case, ONEWEST posed as the "lender" as defined in the NOTE and DOT, that allegedly purchased the NOTE Mr. McDonald originally executed with IMB.

464. This is not the first time ONEWEST has posed as a lender.

465. As referenced above, ONEWEST did the same thing to *Machado* case in Florida, the *Hwang* bankruptcy in California, and the *Arizmendi* bankruptcy in Arizona.

466. LPS's roll is to appear as the provider of an efficient system needed by legitimate lender banks to process ordinary foreclosures that involve straightforward mortgages.

467. In reality LPS is a system developed to automate the process of dispossessing homeowners of their property as efficiently as possible, under the guise of a legitimate foreclosure action.

468. LPS and its automated systems are central to making the racketeering activity possible.

469. On or about April 7, 2011 the Honorable Elizabeth W. Magner issued a Memorandum Opinion with regards to a Motion to Sanction against LPS for it's actions *In Re Wilson*, United States Bankruptcy Court, E.D. Louisiana.

470. In conclusion, the court in *Wilson* stated, in pertinent part:

[T]he hearing on the Motion for Sanctions provides yet another piece to in the puzzle of loan administration. In *Jones v. Wells Fargo*...this Court discovered that a highly automated software package owned by LPS and identified as MSP administered loans for servicers and note holders but was programmed to apply payments contrary to the terms of the notes and mortgages. In *In re Stewart*...additional information was acquired regarding postpetition administration under the same program, revealing errors in the methodology for fees and costs posted to a debtor's account. *In re Fitch*...delved into the administration of escrow accounts for insurance and taxes.

471. LPS and its automated system ensure a foreclosure happens with utmost efficiency, to insure a default can be declared as quickly as possible.

472. Making sure payments are not applied properly allows for the LPS system to indicate a homeowner is in arrears, which allows a default to be claimed.

473. The role ARONOWITZ assumes in the enterprise is that of counsel for legitimate lenders, in this case ONEWEST.

474. Under the disguise of ordinary counsel for legitimate lenders, ARONOWITZ conducts itself as though it is simply prosecuting foreclosures as if the cases are standard, ordinary affairs that involve simple, straightforward mortgage loans.

475. ARONOWITZ's task is to convince state courts that there is nothing out of the ordinary involved.

476. ARONOWITZ is, however, fully aware that it is often not representing the actual lender of the loan.

477. ARONOWITZ, as an LPS network attorney, gets instructions from ONEWEST, through LPS.

478. Said instructions inform ARONOWITZ prior to the initiation of a foreclosure action, who allegedly owns the notes being foreclosed upon, how to proceed with the

foreclosure and what to do with the property once the foreclosure and sale is completed.

479. LPS sends each network law firms a transmittal letter with detailed instructions.

480. An example of an LPS transmittal letter is found in the exhibits of the *Machado* case referenced above.

481. The transmittal letter instructs the network law firm in what name to prosecute the foreclosure, who the real party in interest is, and who to vest title after the property has been bought back by the foreclosing entity. Attached hereto as Plaintiff's Exhibit "S" is a copy of said transmittal letter, as though fully contained herein.

482. Said transmittal letter shows it's from FIS Foreclosure Solutions, which is now know as LPS, as disclosed by Christian S. Hymer, First Vice-President of Operations at LPS.

483. In a deposition for another case against ONEWEST/IMB, *Kristian Bain v. Metropolitan Mortgage Group; IndyMac Bank, FSB; Mortgage Electronic Registration Systems; Regional Trustee Services; Lender Processing Services; Inclusive*, Case No. 09-CV00149-JCC, United States District Court, Western District of Washington at Seattle, Mr. Hymer states in pertinent part:

Q. And what is FIS?

A. Fidelity Information Services. It is the previous iteration of what is now LPS. It was one of the spinoffs from Fidelity National Financial.

(*Ex. R*).

484. The role FREDDIE MAC plays in the enterprise is as a good-faith purchaser that appears after the property is bought back by the foreclosing party, as happened in this case.

485. FREDDIE MAC completes the final stage of the enterprise, which is to secure property with clear, unclouded title that can be put on the books as a fresh asset that can be securitized all over again.

486. FREDDIE MAC is fully aware of the entire enterprise.

487. As referenced above, a letter from the Executive Vice-President of FREDDIE MAC, Robert E. Bostrom, was sent to the Florida Supreme Court regarding the "Court's Final Report and Recommendations on Residential Mortgage Foreclosure Cases," in which the Court concluded that before a foreclosure could proceed, the foreclosing party must prove they actually own the underlying note being foreclosed upon. (*Doc. 13, Ex. E*)

488. In the above referenced letter, Mr. Bostrom tells the Florida Supreme Court that:

We [FREDDIE MAC] fulfill our mission by purchasing mortgages in the secondary market and securitizing them into Mortgage-related securities that can be sold to investors. Banks and non-bank financial companies typically service the mortgages that we own in accordance with the requirements set forth in our Single-Family Seller/Servicer Guide...which is our master servicing contract.

(*Doc. 13, Ex. E*).

489. FREDDIE MAC's mission is to take mortgages, converts them to securities, and then issues bonds to investors.

490. FREDDIE MAC is in the business of converting mortgages into mortgage-backed securities products that necessarily require a trust to be set-up, into which pools of mortgages are transferred.

491. As such, ownership of said mortgages are necessarily transferred to the trusts.

492. After FREDDIE MAC transfers its interest in said mortgages, it still claims that it owns them.

493. Additionally, the above referenced letter from Mr. Bostrom stated:

Typically, the plaintiff in a foreclosure action does not own the underlying NOTE or loan that is secured by the property subject to the foreclosure proceeding. Freddie Mac's servicers initiate foreclosure actions in their names, even though they are not the owners of the NOTES or loans in question, because they are the mortgagees as shown on the land records and they are the holders or otherwise in possession of the NOTES.

494. The above referenced letter from Mr. Bostrom indicates that FREDDIE MAC was not a good-faith purchaser of the Property.

495. FREDDIE MAC is fully aware of the enterprise that has been ongoing for so long that it has become institutionalized to the point where the entities involved believe they can steal notes in full view of a court and still foreclose.

496. The purpose of the enterprise is to illegally dispossess homeowners of their property by taking advantage of a general public's lack of understanding about how the mortgage industry works.

497. Most still believe that mortgages are simple, straightforward transactions, where a person borrows money from a bank, the bank carries the loan on their books, and the borrower must pay back the bank according to the terms of the loan.

498. In reality, majority of mortgage loans extended since 2001 have been converted into complex securities products that are sold to investors, often multiple times.

499. At all material times, the enterprise was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of 18 U.S.C. §1962 (c).

500. The enterprise is conducted on a national scale.

501. ONEWEST is engaged in foreclosure actions all over the country.

502. The enterprise employs the United States postal system in order to communicate with homeowners about the foreclosure actions being brought against them and to transfer documents needed to perpetrate fraudulent foreclosures in state courts between the members of the enterprise.

503. At all material times hereto, ONEWEST, the other known parties to the enterprise, and other, as yet, unknown conspirators associated with this enterprise conducted or participated, directly or indirectly in the conduct of the enterprises affairs through a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. §1961(5), or the collection of an unlawful debt in violation of RICO, 18 U.S.C. §1962(c).

504. The enterprise that is the subject of this suit is one conducted by ONEWEST.

505. ONEWEST initiates the illegal foreclosure, dictates what procedures LPS is to follow, what fees are to be paid, what procedures and timelines are to be followed by ARONOWTIZ, and finally how the property is to be handled after the illegal dispossession of property from homeowners is completed.

506. Said acts set forth above constitute violation(s) of one or more of the following statutes including but not limited to: 18 U.S.C. § 1341 (Mail Fraud); 18 U.S.C. § 1341 (Wire Fraud); 18 U.S.C. § 1344 (Financial Institution Fraud); 18 U.S.C. § 1951 (Interference with Commerce, Robbery or Extortion); 18 U.S.C. § 1956 (Laundering of Monetary Instruments); 18 U.S.C. § 1957 (Monetary Transactions and Property Derived from Specified Unlawful Activity); and, actions by ONEWEST, the other known parties to the enterprise and other as yet unknown conspirators which committed, and/or aided, and/or abetted the commission of two or more of these acts of racketeering activity which constitute interstate commerce.

507. The actions of the enterprise always have the same purposes, results, participants, victims and methods of commission.

508. The purpose is always to defraud homeowners out of their property and to launder the titles.

509. The enterprise always has the same result if it is successful.

510. The known participants are always the same.

511. The victims are always homeowners.

512. The methods employed by the enterprise are always the same.

513. The acts of racketeering activity referred to in the previous paragraphs, constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5), and/or the collection of an illegal debt.

514. The acts alleged were related to each other by virtue of common participants, a common victim, a common method of commission, and a common purpose and common result of defrauding Mr. McDonald and other similarly situated individuals of millions of dollars, enriching ONEWEST and other conspirators at the Plaintiff's expense while concealing the fraudulent activities of the conspirators.

515. The continuity of the enterprise is open-ended.

516. The fraudulent conduct by ONEWEST has been going on since approximately March 2009 and there is every indication that it will extend indefinitely into the future.

517. The enterprise conducted by ONEWEST is a systemic victimization that will continue if Mr. McDonald had not filed this lawsuit.

518. This fraudulent scheme conducted by ONEWEST has continued since ONEWEST acquired the assets of IMB over two years ago and threatens to continue despite the institution of this Complaint and the enforcement actions taken against ONEWEST by the OTS, Federal Reserve and the Office of the Comptroller of the Currency.
519. The enterprise is a continuation of an enterprise that was conducted by IMB, an enterprise that involved the exact same parties known to be parties to ONEWEST's enterprise, before the FDIC shut down IMB.
520. ONEWEST voluntarily chose to join the enterprise for the express purpose of financial gain.
521. ONEWEST continued the same enterprise that IMB was conducting before its bankruptcy.
522. In that light, this enterprise has been ongoing far longer than the years that ONEWEST has been conducting it, which further substantiates the threat of it continuing long into the future.
523. The only known identities of persons involved in the enterprise are ARONOWITZ, ONEWEST, LPS and FREDDIC MAC.
524. Discovery will be necessary to identify other specific false representations, time place they were made and to identify the persons responsible.
525. As a result of the conduct of ONEWEST, the other known parties to the enterprise, and other as yet unknown conspirators, Mr. McDonald has suffered the losses and other damages, including, but not limited to, economic losses, attorney's fees, past, present and future mental pain and suffering.

526. As a result of the above-referenced misconduct, ONEWEST is liable to Mr. McDonald for his loss in an amount to be determined at trial.

527. Pursuant to RICO, 18 U.S.C. § 1964(c), Mr. McDonald is entitled to recover threefold his damages, plus costs and attorney's fees from ONEWEST.

WHEREFORE, AS TO ALL CAUSES OF ACTION, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

- a) Assume jurisdiction over this action.
- b) Award Plaintiff the maximum allowable damages under the FDCPA;
- c) Award actual, statutory and economic damages or compensatory damages in the amount of Ten Million Dollars (\$10,000,000).
- d) Award Plaintiff, and against Defendant, punitive or exemplary damages for One Hundred Million Dollars (\$100,000,000).
- e) Award Plaintiff his reasonable costs and expenses.
- f) Award Plaintiff reasonable attorneys' fees.
- h) Award Plaintiff treble damages and reasonable attorney's fees and costs pursuant to 18USC § 1964(c);
- i) For such further and necessary relief the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully submitted on 8/09/2011 by:

s/ Gary D. Fielder, Esq.
Attorney for Plaintiff
Gary D. Fielder, Attorney at Law #19757
LAW OFFICE OF GARY D. FIELDER
5777 Olde Wadsworth Boulevard, #R700
Arvada, CO 80002
(303) 650-1505
Fax: (303) 650-1705

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9th day of August 2011, I electronically filed the foregoing **AMENDED COMPLAINT AND JURY DEMAND** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Victoria E. Edwards
AKERMAN SENTERFITT, LLP
victoria.edwards@akerman.com
Attorneys for Defendant One West Bank FSB

s/ Shelley Ricker, Legal Assistant

*Filed in the Combined Court
Saguache County Colorado*

IN THE 12TH DISTRICT COURT OF SAGUACHE COUNTY, COLORADO SEP 10 2009

BRUCE C. MCDONALD

PLAINTIFF,

v.

ONEWEST BANK, F.S.B.

DEFENDANT.

MOTION FOR PRELIMINARY INJUNCTION

COMES NOW Plaintiff Bruce C. McDonald, (hereinafter "Plaintiff") and moves the Court for Preliminary Injunction and in support thereof states as follows:

1. On August 11, 2009, Plaintiff received a combined notice of foreclosure and sale from the Saguache County Public Trustee on behalf OneWest Bank, (hereinafter "Defendant") and that a sale of Plaintiff's property at 4434 Rarity Ct., Crestone, Colorado, 81131 is scheduled for December 3, 2009, at 10:00 a.m. at public auction by the Saguache county public trustee, sale No. 22-2009.

2. Plaintiff disputes the Defendant's claim to Plaintiff's property in its entirety. Plaintiff has no agreement with Defendant and Plaintiff demands all foreclosure proceedings and sale scheduled for December 3rd, 2009 be halted and a hearing be scheduled in order for Defendant to be compelled to produce all the evidence necessary to validate they are a true party of interest with a legal right to foreclose on Plaintiff's property.

3. Until Defendant produces proper and irrefutable proof that they are in fact a true party of interest with legal authority to initiate a foreclosure on Plaintiff's property, the non-judicial foreclosure proceeding initiated by Defendant or any other foreclosure proceeding initiated by

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CO Saguache County District Court 12th JD
Filing Date: Sep 10 2009 4:00 PM
Filing ID: 27015746
Review Clerk: Hollie Wheelwright

NO. 09CV 41

Division 3

the Defendant against the Plaintiff is fraudulent.

4. According to Colorado statute 38-38-101, (1) (a) the documents the Defendant is required to produce in order to establish that the Defendant is a real and true party of interest with the right to foreclose on Plaintiff's property are:

- (a) The "original" evidence of debt, not a copy.
- (b) Together with the "original endorsement or assignment thereof," if any to the holder of the evidence of debt.

5. In addition, UCC 3-501 requires anyone claiming to be a lender to "exhibit the note" when alleged lender makes demand for payment and the borrower demands to see the note, which Plaintiff has done by disputing Defendants claims in a letter sent to Defendant last month. Defendant declined to provide the required documents.

6. UCC 3-501 also requires a servicer to show authority to make a demand for payment, if it does not own the note, but is merely servicing it.

7. According to a report by MSNBC the tab for the so-called "banker bailout" is more like 24 TRILLION, not the 700 billion everyone was told. Public funds have not been used to help anyone but the banks. The banks are foreclosing on homes and buying up each other's assets at pennies on the dollar with "our money." On top of this outrage they are more-often-then-not selling people's homes without any original evidence of debt or proper assignments.

8. Plaintiff demands the court provide the following relief:

- (a) That said preliminary injunction be ordered, recorded and a hearing date be scheduled.
- (b) That Defendant be ordered to bring the following proof of claim to the hearing:
 - (1) The "original" evidence of debt, not a copy.


(2) Together with the "original endorsement or assignment thereof."

- (c) If Defendant fails to provide all the evidence required at the hearing Plaintiff demands that the sale of Plaintiff's property at public auction to be permanently canceled and that Defendant be barred from any further actions against Plaintiff's property, judicially or non-judicially unless and until Defendant produces the proof demanded at the hearing to validate they have any legal claim to Plaintiff's property.
- (d) If Defendant fails to produce the evidence at the hearing that is to be scheduled to prove their claims, Plaintiff demands the court order Defendant to reimburse Plaintiff for all costs associated with bringing this action.
- (e) Plaintiff also asks the Court to include any further relief, as the Court may deem reasonable and just under the circumstances.

DATED, this the 10th day of September, 2009

RESPECTFULLY SUBMITTED

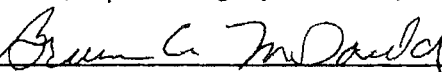
All Rights Reserved.



Bruce C. McDonald - sui juri

CERTIFICATE OF SERVICE

UNDER PENALTY OF PERJURY, I CERTIFY that a copy of the foregoing was provided by certified mail to the attorney of OneWest Bank, FSB, Aronowitz & Mecklenburg, LLP, 1199 Bannock Street, Denver CO 80204 this 10th day of September 2009.



Bruce C. McDonald - sui juris

All Rights Reserved

P.O. Box 1086

Crestone, CO 81131-1086

719-256-5422

Acknowledgment

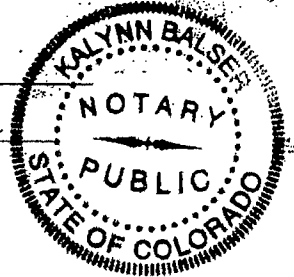
The use of a Notary Public is for verification of autograph only and does not grant jurisdiction to anyone.

BEFORE ME personally appeared Bruce McDonald who, being by me first duly sworn and identified in accordance with Colorado law, did execute the forgoing in my presence this 10th day in the month of September in the year of our Lord 2009 in the state of Colorado, county of Saguache.

SEAL


NOTARY PUBLIC

My commission expires on: January 4, 2012



DISTRICT COURT, SAGUACHE COUNTY, COLORADO Court Address: 501 Christy Avenue PO Box 197 Saguache, CO 81149	FILED Document CO Saguache County District Court 12th JD Filing Date: Jan 21 2010 4:04PM MST Filing ID: 29149570 Review Clerk: Brandie Taylor
IN THE MATTER OF THE APPLICATION OF ONEWEST BANK, F.S.B., FOR AN ORDER AUTHORIZING THE PUBLIC TRUSTEE FOR SAGUACHE COUNTY, STATE OF COLORADO, TO SELL CERTAIN REAL ESTATE CONTAINED IN A DEED OF TRUST.	
<hr/> <i>Attorneys for OneWest Bank, F.S.B.</i> Stacey L. Aronowitz, Atty Reg. No. 36290 Susan J. Hendrick, Atty Reg. No. 33196 Marcy L. McDermott, Atty Reg. No. 38030 Aronowitz & Mecklenburg, LLP 1199 Bannock Street Denver, Colorado 80204 Phone Number: 303-813-1177 FAX Number: 303-813-1107 E-mail: Stacey@amlawco.com Susan@amlawco.com	<hr/> COURT USE ONLY <hr/> Case Number: 09CV42 Div.: Courtroom:
STATUS REPORT	

COMES NOW, Petitioner, OneWest Bank, F.S.B., (“OneWest”), by and through its attorneys, Aronowitz & Mecklenburg, LLP, for its Status Report as follows:

1. Petitioner has filed electronically with the Court and disclosed to Respondent’s counsel, a copy of the Master Purchase Agreement by which OneWest purchased the assets of IndyMac Bank, F.S.B also known as IndyMac Federal Bank, F.S.B. (“IndyMac”) from the FDIC. Respondent is now demanding to see all agreements referenced in the Master Purchase Agreement, all exhibits and other attachments, notwithstanding the Master Purchase Agreement shows that Petitioner purchased the assets of IndyMac from the FDIC and has produced to the Court the original note and deed of trust.

2. The Court also requested that Petitioner disclose any assignments of the subject promissory note and deed of trust, and if there are no assignments, to inform the Court.

3. There are no written assignments evidencing the assignment, transfer or conveyance of the subject promissory note and deed of trust from the originating lender to the FDIC for Petitioner.

4. Again, Petitioner is the holder of the evidence of debt, and Respondent even acknowledges Petitioner has made a prima facie showing that it is the holder of the note and deed of trust.

5. Unless the Respondent can establish that Petitioner is not the holder of the evidence of debt, the presentation of the original note is sufficient. Smith v. Weindrop, 833 P.2d 856, 857 (Colo. App. 1992); Burenheide v. Wall, 131 Colo. 371, 281 P.3d 1000 (1955); and Colo. Rev. Stat. § 4-3-307(2).

DATED this 21st day of January, 2010.

Respectfully submitted,

ARONOWITZ & MECKLENBURG, LLP

/s/ Susan J. Hendrick

Stacey L. Aronowitz, #36290
Susan J. Hendrick, #33196

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2010, a true and correct copy of the foregoing was served via *LexisNexis* on the following:

Erich Schwiesow, Esq.
311 San Juan Avenue
PO Box 1270
Alamosa, Colorado 81101

/s/ Debbie Catlett


THIS DOCUMENT WAS FILED TO THE COURT THROUGH THE LEXISNEXIS COURTLINK ELECTRONIC FILING PROCEDURES PURSUANT TO C.R.C.P. 121 § 1-26. AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED COPY OF THIS DOCUMENT IS ON FILE AT ARONOWITZ & MECKLENBURG, LLP.

<p>COUNTY COURT, SAGUACHE COUNTY, COLORADO Court Address: Saguache County Courthouse 4th & Christy Saguache, CO 81149</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff(s): FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>Defendant(s): BRUCE C. MCDONALD, and any and all other occupants claiming an interest under the defendants</p>	
<p>Attorney or Party Without Attorney:</p> <p>CASTLE MEINHOLD & STAWIARSKI, LLC</p> <p>Address: 999 18th Street, Suite 2201 Denver, CO 80202 Phone Number: (303) 865-1400 FAX Number: (303) 865-1410 E-mail jrogers@cmsatty.com kfisher@cmsatty.com pdecamillis@cmsatty.com kgantenbein@cmsatty.com jstudeny@cmsatty.com aberry@cmsatty.com</p> <p>Atty. Reg. # 34682 (Jennifer C. Rogers) 39230 (Katharine E. Fisher) 38929 (Peter C. DeCamillis) 39213 (Keith A. Gantenbein, Jr.) 41740 (Joanna D. Studeny) 34531 (Alison L. Berry)</p>	<p>Case Number:</p>
<p style="text-align: center;">SUMMONS IN FORCIBLE ENTRY AND UNLAWFUL DETAINER</p>	

To the above named Defendant(s): Take notice that

PLAINTIFF'S EXHIBIT K

1. On July 8, 2010 at 9:00 am in the Saguache County Court, Saguache County Courthouse 4th & Christy, Saguache, CO 81149, the Court may be asked to enter judgment against you as set forth in the Complaint.
2. A copy of the Complaint against you and an answer form, which you must use if you file an answer, are attached.
3. If you do not agree with the Complaint, then you must either:
 - a. Go to the Court, located at Saguache County Courthouse 4th & Christy, Saguache, at the above date and time and file an answer stating any legal reason you have why judgment should not be entered against you, or
 - b. File an answer with the Court before that date and time.
4. When you file your answer, you must pay a filing fee to the Clerk of the Court.
5. If you file an answer, you must give or mail a copy to the undersigned counsel for Plaintiff.
6. If you do not file an answer setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the Complaint on or before the date and time for appearance specified in this Summons, judgment by default may be entered against you for possession of the property described in the Complaint, for rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff is entitled.
7. If you want a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee.
8. If you want to file an answer or request a jury trial and you are indigent, you must appear at the date and time specified above, fill out a financial affidavit, and ask the Court to waive the fee.

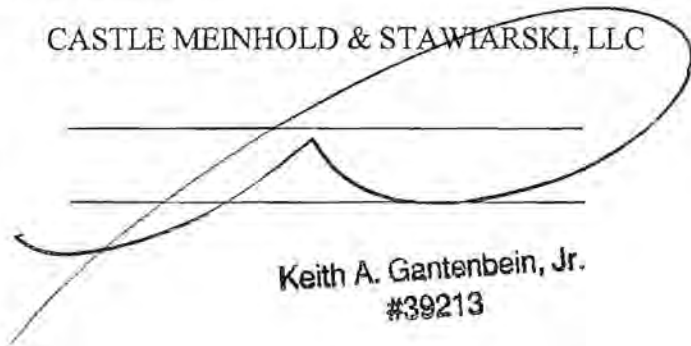
Respectfully submitted this 29th day of JUNE, 2010.

Clerk of the Court

CASTLE MEINHOLD & STAWIARSKI, LLC

By: _____
Deputy Clerk

McDonald / 10-07248



Keith A. Gantenbein, Jr.
#39213

PLAINTIFF'S EXHIBIT K

CASTLE MEINHOLD & STAWIARSKI, LLC IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION PROVIDED BY YOU WILL BE USED FOR THAT PURPOSE.

This Summons is issued pursuant to Rule 303, Rules of County Court Civil Procedure, as amended, and §13-40-111, C.R.S. A copy of the Complaint must be served with this Summons. This form should be used only for actions filed under Colorado's Forcible Entry and Detainer Act.

To the Clerk: if this Summons is issued by the Clerk of the Court, the signature block for the Clerk, Deputy and the seal of the Court should be provided by stamp or typewriter in the space to the left of the attorney's name.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

<p>COUNTY COURT, SAGUACHE COUNTY, COLORADO Court Address: Saguache County Courthouse 4th & Christy Saguache, CO 81149</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff(s): FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>Defendant(s): BRUCE C. MCDONALD, and any and all other occupants claiming an interest under the defendants</p>	
<p>Attorney or Party Without Attorney:</p> <p>CASTLE MEINHOLD & STAWIARSKI, LLC</p> <p>Address: 999 18th Street, Suite 2201 Denver, CO 80202 Phone Number: (303) 865-1400 FAX Number: (303) 865-1410 E-mail jrogers@cmsatty.com kfisher@cmsatty.com pdecamillis@cmsatty.com kgantenbein@cmsatty.com jstudeny@cmsatty.com aberry@cmsatty.com Atty. Reg. # 34682 (Jennifer C. Rogers) 39230 (Katharine E. Fisher) 38929 (Peter C. DeCamillis) 39213 (Keith A. Gantenbein, Jr.) 41740 (Joanna D. Studeny) 34531 (Alison L. Berry)</p>	
<p style="text-align: center;">VERIFIED COMPLAINT IN UNLAWFUL DETAINER</p>	

THE PLAINTIFF COMPLAINS of the Defendants and alleges that:

1. The Plaintiff is the owner of the property commonly known and numbered as 4434 Chalets II also known as 4434 Rarity Court, Crestone, CO 81131, including any and all outbuildings, and more particularly described as:

LOT 4434, THE BACA GRANDE, CHALETS UNIT TWO, A
SUBDIVISION OF SAGUACHE COUNTY, COLORADO (the
"Property")

2. Said Property was secured by a Deed of Trust dated May 27, 2003, and recorded June 3, 2003, at Reception No. 341400, in the records of the Clerk and Recorder, County of Saguache, State of Colorado.

3. Said Deed of Trust granted a power of sale to the Public Trustee of the County of Saguache, State of Colorado, pursuant to which said Property was sold to OneWest Bank FSB at a Public Trustee's Sale on March 4, 2010. A Certificate of Purchase was issued to OneWest Bank FSB. OneWest Bank FSB assigned the Certificate of Purchase to the Plaintiff.

4. On March 16, 2010, all applicable redemption periods expired.

5. On April 13, 2010 the Public Trustee's Confirmation Deed was issued to the Plaintiff.

6. Plaintiff demanded possession of the Property by a formal written demand, a copy of which is attached and incorporated herein as Exhibit A.

7. A notice, in compliance with Public Law 111-22, otherwise known as "Protecting Tenants at Foreclosure Act of 2009," was posted on the property asking any tenant to contact Castle Meinhold & Stawiarski, LLC in a timely manner. The Notice is attached and incorporated herein as Exhibit B.

8. No contact was made with Castle Meinhold & Stawiarski, LLC or, in the alternative, Castle Meinhold & Stawiarski was contacted by a party who did not meet the standards of a bona fide tenant as outlined by Public Law 111-22.

9. The Defendant or individuals claiming under them are presently in possession of the premises.

10. The Defendants or those claiming under them are unlawfully and wrongfully holding the possession of the premises contrary to the demand for possession.

11. Plaintiff reserves the right to seek monetary damages at a later date.

12. Pursuant to the provisions of C.R.S. § 13-40-123, the Plaintiff is entitled to reasonable attorneys' fees in this action.

WHEREFORE, Plaintiff demands judgment for possession of the premises, and such other and further relief as this Court may deem appropriate.

Respectfully submitted this 29th day of JUNE, 2010.

CASTLE MEINHOLD & STAWIARSKI, LLC

Keith A. Gantenbein, Jr.
#39213

Plaintiff's Address:

FEDERAL HOME LOAN MORTGAGE CORPORATION
5000 Plano Parkway
Carrollton, TX 75010

McDonald / 10-07248

Keith A. Gantenbein, Jr.
#39213

VERIFICATION

_____, being first duly sworn on oath, deposes and says that he/she is an attorney for the firm of CASTLE MEINHOLD & STAWIARSKI, LLC as agent for the Plaintiff herein and as such has read the foregoing Summons and Complaint and states that the facts as set forth therein are true and correct to the best of his/her knowledge and belief.

Keith A. Gantenbein, Jr.
#39213

Attorney for agent of FEDERAL HOME LOAN
MORTGAGE CORPORATION

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Sworn to before me and subscribed in my presence by _____ Keith A. Gantenbein, Jr. #39213 as attorney for agent of Plaintiff on this 29th day of JUNE, 2010.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: 10/02/2012.



Notary Public

Exhibit A

DEMAND FOR POSSESSION

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

ATTENTION: BRUCE C. MCDONALD, and all other persons occupying the premises known as 4434 Chalets II also known as 4434 Rarity Court, Crestone, CO 81131, including any and all outbuildings.

You and each of you are hereby notified that FEDERAL HOME LOAN MORTGAGE CORPORATION is the owner of the premises described below, including the house and appurtenance thereon. The premises, which are the subject of this action, are more particularly described as:

LOT 4434, THE BACA GRANDE, CHALETS UNIT TWO, A SUBDIVISION OF SAGUACHE COUNTY, COLORADO

FEDERAL HOME LOAN MORTGAGE CORPORATION demands that you immediately quit possession of (vacate) the above-described premises now unlawfully occupied by you.

CASTLE MEINHOLD & STAWIARSKI, LLC
Keith A. Gantenbein, Jr.
#39213

By: _____
Jennifer C. Rogers, Registration No. 34682
Katharine E. Fisher, Registration No. 39230
Peter C. DeCamillis, Registration No 38929
Joanna D. Studeny, Registration No 41740
Keith A. Gantenbein, Jr. Registration No 39213
Alison L. Berry, Registration No. 34531
Attorneys for Plaintiff
999 18th Street, Suite 2201
Denver, CO 80202
(303) 865-1400
(303) 865-1410 (FACSIMILE)

CASTLE MEINHOLD & STAWIARSKI, LLC IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION PROVIDED BY YOU WILL BE USED FOR THAT PURPOSE.

McDonald/ 10-07248

6/3/2010

Exhibit B



CASTLE MEINHOLD
&
STAWIARSKI, LLC

LAW OFFICES
999 18TH STREET
SUITE 2201
DENVER, COLORADO 80202
TELEPHONE 303.865.1400
FAX 303.865.1410

NOTICE

To: Occupant/Tenant
Property Address: 4434 Chalets II also known as 4434 Rarity Court
Date: Crestone, CO 81131
 June 3, 2010

On March 4, 2010, the property located at 4434 Chalets II also known as 4434 Rarity Court, Crestone, CO 81131 ("Property") was sold at a public trustee's foreclosure sale. Under Colorado law, **FEDERAL HOME LOAN MORTGAGE CORPORATION** is now the owner of the Property. Our law firm has been retained by **FEDERAL HOME LOAN MORTGAGE CORPORATION** to assist with eviction proceedings on the Property.

If you are the former owner of the Property, or the child, spouse or parent of the former owner and you do not immediately vacate the Property, eviction proceedings will be initiated in the Saguache County Court.

IF YOU ARE A TENANT AND ARE **NOT** THE FORMER OWNER OF THE PROPERTY OR THE CHILD, SPOUSE OR PARENT OF THE FORMER OWNER, YOU **MAY** BE ENTITLED TO ADDITIONAL TIME IN THE PROPERTY AS PROVIDED IN THE PROTECTING TENANTS AT FORECLOSURE ACT OF 2009.

IF YOU ARE A TENANT, IN ORDER TO DETERMINE IF YOU ARE ELIGIBLE FOR ADDITIONAL TIME IN THE PROPERTY, PLEASE IMMEDIATELY CONTACT OUR OFFICE AT **303-865-1870**. YOU WILL NEED TO PROVIDE US WITH:

1. A copy of your written lease
2. Proof of your monthly rental amount
3. Proof that all monthly rental payments to date have been paid
4. The names of all occupants of the property over the age of 18

5. Information if you are a Section 8 tenant

** If you are eligible for additional time in the Property, rental payments will need to be made via cashier's check to our client. More information on payment will be provided upon your phone call to our office.

IF YOU DO NOT CONTACT US BY June 13, 2010, WE WILL INITIATE EVICTION PROCEEDINGS.

This law firm represents **FEDERAL HOME LOAN MORTGAGE CORPORATION** and is not in a position to provide you with any legal advice, including advice regarding your rights as a post-foreclosure tenant. If you have questions regarding your rights, please contact an attorney.

The Fair Debt Collection Practices Act requires that we advise you that the law firm of **CASTLE MEINHOLD & STAWIARSKI, L.L.C.**, IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

/ 10-07248

<p>COUNTY COURT, SAGUACHE COUNTY, COLORADO Court Address: Saguache County Courthouse 4th & Christy Saguache, CO 81149</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff(s): FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>Defendant(s): BRUCE C. MCDONALD, and any and all other occupants claiming an interest under the defendants</p>	
<p>Attorney or Party Without Attorney: CASTLE MEINHOLD & STAWIARSKI, LLC</p> <p>Address: 999 18th Street, Suite 2201 Denver, CO 80202 Phone Number: (303) 865-1400 FAX Number: (303) 865-1410 E-mail jrogers@cmsatty.com kfisher@cmsatty.com pdecamillis@cmsatty.com kgantenbein@cmsatty.com jstudeney@cmsatty.com aberry@cmsatty.com</p> <p>Atty. Reg. # 34682 (Jennifer C. Rogers) 39230 (Katharine E. Fisher) 38929 (Peter C. DeCamillis) 39213 (Keith A. Gantenbein, Jr.) 41740 (Joanna D. Studeny) 34531 (Alison L. Berry)</p>	<p>Case Number:</p>
<p>ANSWER UNDER SIMPLIFIED CIVIL PROCEDURE</p>	

The Defendant(s), answer(s) the Complaint as follows:

1. The amount of damages claimed to be due to Plaintiff(s) by the Complaint are not due and owing, and/or possession of the property should not be granted for the following reasons:

2. The Defendant(s), assert(s) the following counterclaim(s) or setoff(s) against the Plaintiff(s) (if applicable),

3. The Defendant(s), assert(s) the following cross claim(s) against named Defendant(s) (you are limited to the jurisdiction of the Court):

4. If a counterclaim is asserted above, you must check one of the following statements:

_____ The amount of the counterclaim does not exceed the jurisdiction of the Court (County Court filing fee required).

_____ The amount of the counterclaim exceeds the jurisdiction of the Court, but I wish to limit my recovery to the jurisdiction of the Court (County Court filing fee required).

_____ The amount of the counterclaim exceeds the jurisdiction of the Court, and I wish the case transferred to the District Court (District Court filing fee required).

5. The Defendant(s) does (do) _____ /does (do) not _____ demand trial by jury (if demand is made, a jury fee must be paid).

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Defendants filing this answer must sign unless an attorney signs the answer.

Signature of Attorney for Defendant(s) (if applicable)
(print registration number, Signature(s) of Defendant(s),
Attorneys for Defendant(s), address and telephone number)

Address(es) of Defendant(s)

Telephone Number(s) of Defendant(s)

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the above and foregoing ANSWER UNDER SIMPLIFIED CIVIL PROCEDURE was mailed, postage prepaid, to Deanne R. Stodden, Esq., CASTLE MEINHOLD & STAWIARSKI, LLC, 999 18th Street, Suite 2201, Denver, CO 80202 on _____, 2010.

Attorney or Party without Attorney: Eric Schwiesow Esq., Bar #23385 Lester, Sigmond, Rooney & Schwiesow P.C. 311 San Juan Ave. Alamosa, CO 81101 Telephone No: 719.589.6626 FAX No: 719.589.5555				For Court Use Only	
Attorney for: Plaintiff		Ref. No. or File No.:	EFILED Document CO Saguache County District Court 12th JD Filing Date: Oct 14 2010 9:34AM MDT Filing ID: 33802860 Review Clerk: Bandy Albert		
Insert name of Court, and Judicial District and Branch Court: District Court, Saguache County, State of Colorado					
Plaintiff: Bruce C. McDonald Defendant: One West Bank and Federal Home Loan Mortgage Corporation					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: 2010CV6

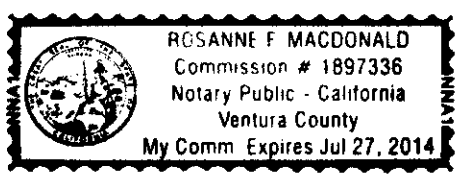
1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons; Amended Complaint; Exhibits
3.
 - a. Party served: One West Bank
 - b. Person served: Maria Curiel - Legal Department -, Hispanic, Female, 35 Years Old, Black Hair, 5 Feet 11 Inches, 240 Pounds
4. Address where the party was served: One West Bank
888 E. Walnut St.
Pasadena, CA 91101
5. I served the party:
 - b. by substituted service. On: Mon., Sep. 27, 2010 at: 3:40PM by leaving the copies with or in the presence of:
 Maria Curiel - Legal Department -
 (1) (Business) a person Authorized to Accept Service of Process. I informed him or her of the general nature of the papers.

7. Person Who Served Papers:

a. Gabriel Garibaldi b. AMSTAR EXPRESS 501 MARIN STREET SUITE 113 Thousand Oaks, CA 91360 c. 888-778-2711, FAX 805-777-1115	Fee for Service: \$49.00 I Declare under penalty of perjury under the laws of the State of COLORADO that the foregoing is true and correct.
---	--

10.1.10
(Date)

(Signature)



8. STATE OF ~~COLORADO~~ ^{CALIFORNIA}, COUNTY OF VENTURA
 Subscribed and sworn to (or affirmed) before me on this 8th day of October 2010 by Gabriel Garibaldi
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE Rosanne F. Macdonald
(Notary Signature)

2497.14309

AFFIDAVIT OF PROCESS SERVER

District Court

County of Saguache

State of Colorado

BRUCE C. McDONALD

Plaintiff

vs.

**ONE WEST BANK and FEDERAL HOME LOAN
MORTGAGE CORPORATION**

Defendant

FILED Document

Attorney: **CO Saguache County District Court 12th JD**
Filing Date: Oct 7 2010 11:51AM MDT

Filing ID: 33688321
Erich Schwiesow, Esq.
Review Clerk: Darlene Mellott
Lester, Sigmond, Rooney & Schwiesow
P.O. Box 1270
Alamosa, CO. 81101

Case Number: 2010CV6

Legal documents received by State Court Services Inc on September 16th, 2010 at 1:33 PM to be served upon **Federal Home Loan Mortgage Corporation (Freddie Mac) at 8200 Jones Branch Drive, McLean, VA. 22102**

I, Stacey L. Carter, swear and affirm that on **September 17th, 2010 at 2:33 PM**, I did the following:

Served the corporation listed as the intended recipient of the legal documents by delivering a conformed copy of the **Summons, Amended Complaint (with Exhibits), and Civil Cover Sheet** to **Jennifer Douglas** as **Legal Administrative Coordinator** of the within named corporation.

Supplemental Data Appropriate to this Service:

Server Declaration:

I declare that I am eighteen years of age or older and am neither a party to, nor have an interest in the above entitled legal matter. I attest that I am legally authorized to serve court documents within the state where service took place.




Stacey L. Carter
Process Server

State Court Services Inc
217 Oak Lee Drive - Suite 10-420
Ranson, WV 25438

(888) 907-3783

Internal Job ID: 2010000095

The foregoing instrument was acknowledged before me on this 17th day of September, 2010, by Stacey L. Carter, who is personally known to me or who has produced _____ as identification.



Notary Printed Name Notary Signature

8-3-19
Commission Expiration Date



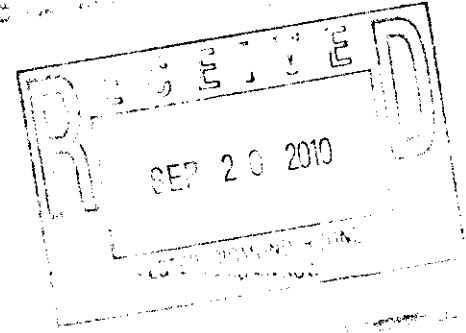
ES

**SERVICE UPON FREDDIE MAC
(FEDERAL HOME LOAN MORTGAGE CORPORATION)
BY SHERIFF OR PROCESS SERVER**

I hereby designate the following individuals to sign for and accept service of any and all legal documents being served upon Freddie Mac by any court or individual(s).

Designees:

- Mary Carroll (703) 903-2532
- Jennifer Douglas (703) 903-2796 ✓
- Barbara Sloan (703) 903-2871
- Theressa Nelson (703) 903-2791
- Amy Taylor (703) 903-3152
- Debra A. Rushton (703) 903-2939
- Maria Smith (703) 903-3286
- Dominic Ducanes (703) 903-2486
- Erika Peters (703) 903-3457
- Jennifer Mattox (703) 903-3612



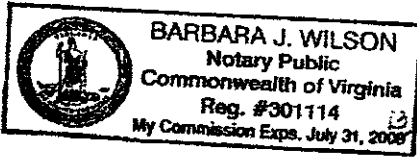
Hyacinth G. Kucik
Hyacinth G. Kucik
Vice President and
Deputy General Counsel

COMMONWEALTH OF VIRGINIA)
)
COUNTY OF FAIRFAX)
)

Sworn and subscribed before me this
24th day of November, 2009.

Barbara J. Wilson
Notary Public

My commission expires: July 31, 2013



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Revised 11/20/2009

Interagency Review of Foreclosure Policies and Practices

Federal Reserve System
Office of the Comptroller of the Currency
Office of Thrift Supervision



WASHINGTON, D.C. • APRIL 2011

PLAINTIFF'S EXHIBIT N

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WASHINGTON, D.C. • APRIL 2011

PLAINTIFF'S EXHIBIT N

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Executive Summary

The Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS), referred to as the agencies, conducted on-site reviews of foreclosure processing at 14 federally regulated mortgage servicers during the fourth quarter of 2010.¹

This report provides a summary of the review findings and an overview of the potential impacts associated with instances of foreclosure-processing weaknesses that occurred industrywide. In addition, this report discusses the supervisory response made public simultaneous with the issuance of this report, as well as expectations going forward to address the cited deficiencies. The supervisory measures employed by the agencies are intended to ensure safe and sound mortgage-servicing and foreclosure-processing business practices are implemented. The report also provides an overview of how national standards for mortgage servicing can help address specific industrywide weaknesses identified during these reviews.

Review Scope and Objectives

The primary objective of each review was to evaluate the adequacy of controls and governance over ser-

¹ Agencies conducted foreclosure-processing reviews at Ally Bank/GMAC, Aurora Bank, Bank of America, Citibank, EverBank, HSBC, JPMorgan Chase, MetLife, **OneWest**, PNC, Sovereign Bank, SunTrust, U.S. Bank, and Wells Fargo. The reviews included mortgage-servicing activities conducted by insured banks and thrifts, as well as by several nonbank affiliates of these organizations. The 14 servicers were selected based on the concentration of their mortgage-servicing and foreclosure-processing activities. The agencies typically do not disclose examinations or examination findings regarding particular institutions. In light of the formal enforcement actions entered into by these 14 servicers, which are being made public, the agencies have determined that it is appropriate to identify the servicers (whether a bank or a bank affiliate) that were reviewed. The bank and thrift holding company parents of Ally Bank/GMAC, Bank of America, Citibank, Everbank, HSBC, JPMorgan Chase, MetLife, **OneWest**, PNC, SunTrust, U.S. Bank, and Wells Fargo also entered into formal enforcement actions.

vicers' foreclosure processes and assess servicers' authority to foreclose. The reviews focused on issues related to foreclosure-processing functions. While the reviews uncovered significant problems in foreclosure processing at the servicers included in the report, examiners reviewed a relatively small number of files from among the volumes of foreclosures processed by the servicers. Therefore, the reviews could not provide a reliable estimate of the number of foreclosures that should not have proceeded. The agencies, therefore, are requiring each servicer to retain an independent firm to conduct a thorough review of foreclosure actions that were pending at any time from January 1, 2009, through December 31, 2010, to, among other things, 1) identify borrowers that have been financially harmed by deficiencies identified in the independent review and 2) provide remediation to those borrowers where appropriate. These independent reviews will be subject to supervisory oversight to ensure that the reviews are comprehensive and the results are reliable.

For the reviews discussed in this report, examiners evaluated each servicer's self-assessments of their foreclosure policies and processes; assessed each servicer's foreclosure operating procedures and controls; interviewed servicer staff involved in the preparation of foreclosure documents; and reviewed, collectively for all servicers, approximately 2,800 borrower foreclosure files that were in various stages of the foreclosure process between January 1, 2009, and December 31, 2010.²

Examiners focused on foreclosure policies and procedures; quality control and audits; organizational structure and staffing; and vendor management,

² Foreclosure files at each servicer were selected from the population of in-process and completed foreclosures during 2010. The foreclosure file sample at each servicer included foreclosures from both judicial states and nonjudicial states. Review teams independently selected foreclosure file samples based on pre-established criteria (such as files for which consumer complaints had been raised, or those in geographic areas with high volumes of foreclosures) with the balance of the files selected based on examiner judgment.

including use of third-party vendors such as foreclosure attorneys, Lender Processing Services (LPS) and other default-service providers, and MERSCORP and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc. (MERS). Based on their reviews of the limited number of foreclosure-file samples, examiners also assessed the accuracy of foreclosure-related documentation, including note endorsements and the assignments of mortgages and deeds of trust, and loan document control.³ With respect to those files, examiners also assessed whether fees charged in connection with the foreclosures exceeded the amounts reflected in the servicers' internal records. In addition, the Federal Reserve and the OCC solicited views from consumer groups to help detect problems at specific servicers, and the Federal Reserve expanded the file sample to include borrowers who were delinquent, but not yet in foreclosure.

The file reviews did not include a complete analysis of the payment history of each loan prior to foreclosure or potential mortgage-servicing issues outside of the foreclosure process. Accordingly, examiners may not have uncovered cases of misapplied payments or unreasonable fees, particularly when these actions occurred prior to the default that led to the foreclosure action. The foreclosure-file reviews also may not have uncovered certain facts related to the processing of a foreclosure that would lead an examiner to conclude that a foreclosure otherwise should not have proceeded, such as undocumented communications between a servicer employee and the borrower in which the employee told the borrower he or she had to be delinquent on the loan to qualify for a modification. In addition, the reviews did not focus on loan-modification processes, but when reviewing individual foreclosure files, examiners checked for evidence that servicers were in contact with borrowers and had considered alternative loss-mitigation efforts, including loan modifications.

To ensure consistency in the reviews, the agencies used standardized work programs to guide the assessment and to document findings pertaining to each servicer's corporate governance process and the individual foreclosure-file reviews. The work programs were organized into the following categories:

- **Policies and procedures.** Examiners reviewed the servicers' policies and procedures to see if they

³ For purposes of this report, default management services generally include administrative support and services provided to the servicers by third-party vendors to manage and perform the tasks associated with foreclosures.

provided adequate controls over the foreclosure process and whether those policies and procedures were sufficient for compliance with applicable laws and regulations.

- **Organizational structure and staffing.** Examiners reviewed the functional unit(s) responsible for foreclosure processes, including their staffing levels, their staff's qualifications, and their training programs.
- **Management of third-party service providers.** Examiners reviewed the servicers' oversight of key third parties used throughout the foreclosure process, with a focus on foreclosure attorneys, MERS, and default-service providers such as LPS.
- **Quality control and internal audits.** Examiners assessed quality-control processes in foreclosures. Examiners also reviewed internal and external audit reports, including government-sponsored enterprise (GSE) and investor audits and reviews of foreclosure activities as well as servicers' self-assessments.
- **Compliance with applicable laws.** Examiners checked the adequacy of the governance, audits, and controls that servicers had in place to ensure compliance with applicable laws.
- **Loss mitigation.** Examiners determined if servicers were in direct communication with borrowers and whether loss-mitigation actions, including loan modifications, were considered as alternatives to foreclosure.
- **Critical documents.** Examiners evaluated servicers' control over critical documents in the foreclosure process, including the safeguarding of original loan documentation. Examiners also determined whether critical foreclosure documents were in the foreclosure files that they reviewed, and whether notes were endorsed and mortgages assigned.
- **Risk management.** Examiners assessed whether servicers appropriately identified financial, reputational, and legal risks and whether these risks were communicated to the board of directors and senior management of the servicer.

Summary of Review Findings

The reviews found critical weaknesses in servicers' foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys. While it is important to note that findings

varied across institutions, the weaknesses at each servicer, individually or collectively, resulted in unsafe and unsound practices and violations of applicable federal and state law and requirements.⁴ The results elevated the agencies' concern that widespread risks may be presented—to consumers, communities, various market participants, and the overall mortgage market. The servicers included in this review represent more than two-thirds of the servicing market. Thus, the agencies consider problems cited within this report to have widespread consequences for the national housing market and borrowers.

Based on the deficiencies identified in these reviews and the risks of additional issues as a result of weak controls and processes, the agencies at this time are taking formal enforcement actions against each of the 14 servicers subject to this review to address those weaknesses and risks. The enforcement actions require each servicer, among other things, to conduct a more complete review of certain aspects of foreclosure actions that occurred between January 1, 2009, and December 31, 2010. The specific supervisory responses are summarized in Part 3 of this report.

The loan-file reviews showed that borrowers subject to foreclosure in the reviewed files were seriously delinquent on their loans. As previously stated, the reviews conducted by the agencies should not be viewed as an analysis of the entire lifecycle of the borrowers' loans or potential mortgage-servicing issues outside of the foreclosure process. The reviews also showed that servicers possessed original notes and mortgages and, therefore, had sufficient documentation available to demonstrate authority to foreclose. Further, examiners found evidence that servicers generally attempted to contact distressed borrowers prior to initiating the foreclosure process to pursue loss-mitigation alternatives, including loan modifications. However, examiners did note cases in which foreclosures should not have proceeded due to an intervening event or condition, such as the borrower (a) was covered by the Servicemembers Civil Relief Act, (b) filed for bankruptcy shortly before the foreclosure action, or (c) qualified for or was paying in accordance with a trial modification.⁵

The interagency reviews identified significant weaknesses in several areas.

⁴ This report captures only the significant issues found across the servicers reviewed, not necessarily findings at each servicer.

⁵ Servicemembers Civil Relief Act, 50 USC App. sections. 501–596, Public Law 108-189.

- **Foreclosure process governance.** Foreclosure governance processes of the servicers were underdeveloped and insufficient to manage and control operational, compliance, legal, and reputational risk associated with an increasing volume of foreclosures. Weaknesses included:
 - inadequate policies, procedures, and independent control infrastructure covering all aspects of the foreclosure process;
 - inadequate monitoring and controls to oversee foreclosure activities conducted on behalf of servicers by external law firms or other third-party vendors;
 - lack of sufficient audit trails to show how information set out in the affidavits (amount of indebtedness, fees, penalties, etc.) was linked to the servicers' internal records at the time the affidavits were executed;
 - inadequate quality control and audit reviews to ensure compliance with legal requirements, policies and procedures, as well as the maintenance of sound operating environments; and
 - inadequate identification of financial, reputational, and legal risks, and absence of internal communication about those risks among boards of directors and senior management.
- **Organizational structure and availability of staffing.** Examiners found inadequate organization and staffing of foreclosure units to address the increased volumes of foreclosures.
- **Affidavit and notarization practices.** Individuals who signed foreclosure affidavits often did not personally check the documents for accuracy or possess the level of knowledge of the information that they attested to in those affidavits. In addition, some foreclosure documents indicated they were executed under oath, when no oath was administered. Examiners also found that the majority of the servicers had improper notary practices which failed to conform to state legal requirements. These determinations were based primarily on servicers' self-assessments of their foreclosure processes and examiners' interviews of servicer staff involved in the preparation of foreclosure documents.
- **Documentation practices.** Examiners found some—but not widespread—errors between actual fees charged and what the servicers' internal records indicated, with servicers undercharging fees as frequently as overcharging them. The dollar amount

of overcharged fees as compared with the servicers' internal records was generally small.

- **Third-party vendor management.** Examiners generally found adequate evidence of physical control and possession of original notes and mortgages. Examiners also found, with limited exceptions, that notes appeared to be properly endorsed and mortgages and deeds of trust appeared properly assigned.⁶ The review did find that, in some cases, the third-party law firms hired by the servicers were nonetheless filing mortgage foreclosure complaints or lost-note affidavits even though proper documentation existed.
- **Quality control (QC) and audit.** Examiners found weaknesses in quality control and internal auditing procedures at all servicers included in the review.

Summary of Supervisory Response

The agencies recognize that a number of supervisory actions and industry reforms are required to address these weaknesses in a way that will hold servicers accountable for establishing necessary governance and controls. Measures that the servicers are being required to implement are designed to ensure compliance with applicable laws, promote foreclosure processing in a safe and sound manner, and establish responsible business practices that provide accountability and appropriate treatment to borrowers.

⁶ The agencies expect federally regulated servicers to have the necessary policies and procedures in place to ensure that notes are properly endorsed and mortgages are properly assigned, so that ownership can be determined at the time of foreclosure. Where federally regulated servicers serve as document custodians for themselves or other investors, the agencies require controls and tracking systems to properly safeguard the physical security and maintenance of critical loan documents.

At this time, the agencies are taking formal enforcement action against each of the 14 servicers and parent bank holding companies because the deficiencies and weaknesses identified during the reviews represent unsafe or unsound practices and violations of applicable law. The foreclosure-file reviews showed that borrowers in the sampled pool were seriously delinquent. The reviews also showed that the appropriate party brought the foreclosure action. However, a limited number of mortgages should not have proceeded to foreclosure because of an intervening event or condition. Nevertheless, the weaknesses in servicers' foreclosure processes, as confirmed by the reviews, present significant risk to the safety and soundness of mortgage activities. The failures and deficiencies identified as part of the reviews must be remedied swiftly and comprehensively.

The agencies will continue to assess and monitor corrective actions and will address servicers' failures to correct identified deficiencies where necessary.

Going forward, servicers must develop and demonstrate effective risk management of servicing operations to prevent a recurrence of deficiencies cited in this report. The agencies are currently engaged in an effort to establish national mortgage-servicing standards to promote the safe and sound operation of mortgage-servicing and foreclosure processing, including standards for accountability and responsiveness to borrower concerns. Such an effort will include engaging the Government Sponsored Enterprises, private investors, consumer groups, the servicing industry, and other regulators. Part 4 of this report provides a general overview of the core principles that should be included in future national mortgage-servicing standards.

Part 1: Background and Risks Associated with Weak Foreclosure Process and Controls

Mortgage servicing plays a central role in the management of mortgage loans from origination to final disposition. The mortgage servicer is the intermediary between borrowers and their lenders. When the borrower is paying as agreed, the servicer's duties are ministerial: collecting payments, distributing payments to investors, managing cash and administering funds in escrow, and reporting to investors. When a loan is in default, the demands on the servicer necessarily expand, requiring additional resources and much more sophisticated risk management. A necessary consequence of the growth in foreclosures since 2007 is increased demands on servicers' foreclosure processes.

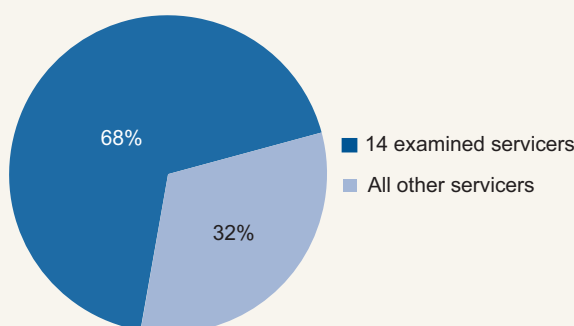
The residential mortgage-servicing market is highly concentrated among a few servicers. The five largest mortgage servicers by activity volume—included among the 14 servicers subject to the reviews addressed in this report—account for 60 percent of the industry's total servicing volume.⁷ The 14 servicers included in the interagency review collectively represent more than two-thirds of the servicing industry (see **figure 1**), or nearly 36.7 million mortgages.⁸

At the end of the fourth quarter of 2010, nearly 54 million first-lien mortgage loans were outstanding, 2.4 million of which were at some point in the foreclosure process. Additionally, two million mortgages were 90 or more days past due and at an elevated risk of foreclosure. New foreclosures are on pace to approach 2.5 million by the end of 2011. In light of the number of foreclosures and continued weakness in overall mortgage performance, the agencies are concerned that the deficiencies in foreclosure

⁷ The five largest mortgage servicers in order are Bank of America, Wells Fargo, JPMorgan Chase, Citibank, and Ally Bank/GMAC.

⁸ Federal Reserve staff estimates 54 million first-lien mortgages outstanding as of December 31, 2010.

Figure 1. Concentration of the mortgage-servicing Industry



Source: Federal Reserve staff estimates of the concentration of servicing volume, based on data from Inside Mortgage Finance.

processing observed among these major servicers may have widespread consequences for the housing market and borrowers.

Impact on Borrowers

Weaknesses in foreclosure processes and controls present the risk of foreclosing with inaccurate documentation, or foreclosing when another intervening circumstance should intercede. Even if a foreclosure action can be completed properly, deficiencies can result (and have resulted) in violations of state foreclosure laws designed to protect consumers. Such weaknesses may also result in inaccurate fees and charges assessed against the borrower or property, which may make it more difficult for borrowers to bring their loans current. In addition, borrowers can find their loss-mitigation options curtailed because of dual-track processes that result in foreclosures even when a borrower has been approved for a loan modification. The risks presented by weaknesses in foreclosure processes are more acute when those processes are aimed at speed and quantity instead of quality and accuracy.

Impact on the Industry and Investors

Weaknesses in foreclosure processes pose a variety of risks to the financial services industry and investors. These risks extend beyond the financial cost of remedying procedural errors and re-filing affidavits and other foreclosure documents. Servicers may also bear legal costs related to disputes over note ownership or authority to foreclose, and to allegations of procedural violations through the use of inaccurate affidavits and improper notarizations. Servicers may be subject to claims by investors as a result of delays or other damages caused by the weaknesses. Furthermore, concerns about the prevalence of irregularities in the documentation of ownership may cause uncertainty for investors of securitized mortgages. Servicers and their affiliates also face significant reputational risk with their borrowers, with the court system, and with regulators.

Impact on the Judicial Process

Weaknesses in foreclosure processes have resulted in increased demands on judicial resources to resolve a variety of foreclosure-related matters, including note ownership. In addition, courts rely extensively on affidavits (usually affidavits of indebtedness) submitted by servicers to decide foreclosure actions on a summary basis without requiring in-person testimony.⁹ If such affidavits were not properly prepared or executed, courts may lose confidence in the reliability of the affidavits as persuasive evidence filed on behalf of servicers.¹⁰

⁹ The basic affidavit of indebtedness typically sets forth the name of the party that owns the loan, the default status, and the amounts due for principal, interest, penalties (such as late charges), and fees. This affidavit is frequently the principal basis upon which a court is permitted to order a foreclosure without requiring in-person testimony. Similar documentation may be required in bankruptcy proceedings.

¹⁰ Mortgage foreclosures occur under either a judicial or a nonjudicial process. Judicial foreclosures are court-supervised and require the lender to bring a court action to foreclose. Nonjudicial foreclosures (also known as “power of sale”) involve little or

Impact on the Mortgage Market and Communities

Weaknesses in foreclosure processes led several servicers to slow, halt, or suspend foreclosure proceedings in late 2010, and, in many cases, re-file foreclosure documents. Delays in foreclosure processing, which averaged 450 days in the fourth quarter of 2010, slow the clearing of excess inventory of foreclosed properties and lead to extended periods of depressed home prices.¹¹ Such delays also impede the efficient disposition of foreclosed homes and the clearing of seriously delinquent mortgages, particularly in geographic regions with greater concentrations of vacant and abandoned properties. This outcome acts as an impediment for communities working to stabilize local neighborhoods and housing markets.¹²

Moreover, local property values may be adversely affected if foreclosed homes remain vacant for extended periods, particularly if such homes are not properly maintained.¹³ Widely publicized weaknesses in foreclosure processes also adversely affect home buyer and investor confidence. Assuring robust and credible remedial programs for mortgage servicers so that foreclosure processes can operate and markets can clear without impediments or interventions contributes to attaining a stable national housing market.

no court oversight and generally are governed by state statutes. Even foreclosures that are instituted outside the judicial process can be challenged in court, however, and then become subject to court actions.

¹¹ See *Lender Processing Services Applied Analytics* (December 2010, www.lpsvcs.com/RiskMgmt). Current time frames to move a property to foreclosure sale have increased from an average of 250 days in first quarter 2008 to 450 days by fourth quarter 2010.

¹² Industry data show approximately four million properties currently listed that have been foreclosed in the past few years. See Mortgage Bankers Association, *National Delinquency Survey*, (November 18, 2010, www.mbaa.org/NewsandMedia/PressCenter/74733.htm).

¹³ Campbell, John Y., Stefano Giglio and Parag Pathak (July 2010) *Forced Sales and House Prices Manuscript*, Harvard University Department of Economics (kuznets.fas.harvard.edu/~campbell/papers/forcedsales072410.pdf).

Part 2: Review Findings

The reviews found critical weaknesses in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party law firms and other vendors. These weaknesses involve unsafe and unsound practices and violations of applicable federal and state laws and requirements, and they have had an adverse effect on the functioning of the mortgage markets. By emphasizing speed and cost efficiency over quality and accuracy, examined servicers fostered an operational environment contrary to safe and sound banking practices.

In connection with the reviews of sampled files and assessments of servicers' custodial activities, examiners found that borrowers whose files were reviewed were seriously delinquent on their mortgage payments at the time of foreclosure and that servicers generally had sufficient documentation available to demonstrate authority to foreclose on those borrowers' mortgages.¹⁴ Nevertheless, examiners noted instances where documentation in the foreclosure file alone may not have been sufficient to prove ownership of the note at the time the foreclosure action commenced without reference to additional information. When additional information was requested and provided to examiners, it generally was sufficient to determine ownership.

In addition, review of the foreclosure files showed that servicers were in contact with the delinquent borrowers and had considered loss-mitigation alternatives, including loan modifications. Examiners also noted a small number of foreclosure sales, however, that should not have proceeded because of an inter-

¹⁴ As previously noted, examiners were limited to the documents in the foreclosure files. Those documents may not have disclosed certain facts that might have led examiners to conclude that a foreclosure should not have proceeded, such as misapplication of payments that could have precipitated a foreclosure action or oral communications between the borrower and servicer staff that were not documented in the foreclosure file.

vening event or condition, such as the borrower: (a) was covered by the Servicemembers Civil Relief Act, (b) filed bankruptcy shortly before the foreclosure action, or (c) was approved for a trial modification.

A summary of the major findings identified during the reviews is set forth below.

Foreclosure Process Governance

Examiners found governance at each examined servicer in need of substantial improvement, and often cited the absence of sound controls and ineffective management of foreclosure processes. Foreclosure policies and procedures at many of the servicers were either weak or needed substantial expansion to provide effective guidance, control, and ongoing monitoring. As noted above, examiners concluded that the majority of servicers reviewed had inadequate affidavit and notary-signing processes that did not ensure proper attestation (or verification) of the underlying documents.

Examiners found that most servicers had inadequate staffing levels and training programs throughout the foreclosure-processing function and that a large percentage of the staff lacked sufficient training in their positions. The reviews also revealed that all of the servicers relied heavily on outsourcing arrangements with outside counsel and other third-party vendors to carry out foreclosure processes without adequate oversight of those arrangements. Some servicers failed to enter into contracts with the foreclosure law firms performing critical steps in the foreclosure process, including affidavit- and notary-preparation and signing processes. Audit and quality-assurance controls and self-assessment reviews at all of the examined servicers lacked comprehensiveness and failed to identify specific weaknesses and process gaps. Details on these areas of weakness are included below.

Organizational Structure and Availability of Staffing

At the time of the review, a majority of the servicers had inadequate staffing levels or had recently added staff with limited servicing experience. In most instances, servicers maintained insufficient staff to appropriately review documents for accuracy, and provided inadequate training for affidavit signers, notaries, and quality-control staff. Examiners also noted weak controls, undue emphasis on quantitative production and timelines, and inadequate workload monitoring.

Affidavit and Notarization Practices

Deficiencies in servicers' processes, procedures, controls, and staffing resulted in numerous inaccurate affidavits and other foreclosure-related documents. Examiners found that most servicers had affidavit signing protocols that expedited the processes for signing foreclosure affidavits without ensuring that the individuals who signed the affidavits personally conducted the review or possessed the level of knowledge of the information that they attested to in those affidavits. Examiners confirmed these deficiencies through interviews with individuals who signed documents, as well as through a review of servicers' self-assessments. Examiners also found the majority of the servicers had improper notary practices that failed to conform to state legal requirements. Examiners noted some servicers failed to maintain an accurate list of approved and acceptable notaries that individuals signing documents did not do so in the presence of a notary when required, and that documents often were executed in a manner contrary to the notary's acknowledgement and verification of those documents. In addition, some foreclosure documents indicated they were executed under oath when no oath was administered. Again, examiners confirmed these deficiencies by interviewing notaries and reviewing servicers' self-assessments.

At the examined servicers, anywhere from 100 to more than 25,000 foreclosure actions occurred per month between January 1, 2009, and December 31, 2010, with the quantity depending upon the size of the servicer's operations. It was common to find an insufficient number of staff assigned to review, sign, and notarize affidavits. At some of the servicers, examiners found that insufficient staff—or the lack of specified guidance to staff or external law firms on

affidavit completion—contributed to the preparation and filing of inaccurate affidavits. In the sample of foreclosure files reviewed, examiners compared the accuracy of the amounts listed on affidavits of indebtedness to the documentation in the paper foreclosure file or computerized loan servicing systems. Although borrowers whose foreclosure files were reviewed were seriously in default at the time of the foreclosure action, some servicers failed to accurately complete or validate itemized amounts owed by those borrowers. At those servicers, this failure resulted in differences between the figures in the affidavit and the information in the servicing system or paper file. In nearly half of those instances, the differences—which were typically less than \$500—were adverse to the borrower. While the error rates varied among the servicers, the percentage of errors at some servicers raises significant concerns regarding those servicers' internal controls governing foreclosure-related documentation.

Documentation Practices

During the foreclosure-file reviews, examiners compared the accuracy of amounts listed on the servicers' affidavits of indebtedness with documentation on file or maintained within the electronic servicing system of record. For most of the servicers, examiners cited the lack of a clear auditable trail in reconciling foreclosure filings to source systems of record. In some cases, examiners directed servicers to further audit foreclosure filings to verify the accuracy of information and compliance with legal requirements. Likewise, in connection with the file review, examiners also determined whether critical foreclosure documents were in the foreclosure files, and whether notes appeared properly endorsed and mortgages appeared properly assigned. Examiners noted instances where documentation in the foreclosure file alone may not have been sufficient to prove authority to foreclose without reference to additional information.¹⁵ When more information was requested and provided, it generally was sufficient to determine authority. With some exceptions, examiners found that notes appeared properly endorsed, and mortgages appeared properly assigned.¹⁶ Examiners also trav-

¹⁵ Servicers frequently maintained custody of original mortgage documents, although in some cases third-party trustees or custodians held original documents. Custodians are entrusted to manage the original documents that establish note ownership, and, when necessary, produce the original documents for a foreclosure action.

¹⁶ Only in rare instances were custodians unable to produce origi-

eled to servicers' document repository locations to assess custodial activities. Examiners found that servicers generally had possession and control over critical loan documents such as the promissory notes and mortgages. The review did find that, in some cases prior to 2010, the third-party law firms hired by the servicers were nonetheless filing lost-note affidavits or mortgage foreclosure complaints in which they claimed that the mortgage note had either been lost or destroyed, even though proper documentation existed.

Third-party Vendor Management

The agencies found that the servicers reviewed generally did not properly structure, carefully conduct, or prudently manage their third-party vendor relationships with outside law firms and other third-party foreclosure services providers. Failure to effectively manage third-party vendors resulted in increased reputational, legal, and financial risks to the servicers.

Arrangements with Outside Law Firms

Servicers typically used third-party law firms to prepare affidavits and other legal documents, to file complaints and other pleadings with courts, and to litigate on their behalf in connection with foreclosure and foreclosure-related bankruptcy proceedings. The servicers reviewed generally showed insufficient guidance, policies, or procedures governing the initial selection, management, or termination of the law firms that handled their foreclosures. Many servicers, rather than conducting their own due diligence, relied on the fact that certain firms had been designated as approved or accepted by investors. Servicers often did not govern their relationships with these law firms by formal contracts. Instead, servicers frequently relied on informal engagements with law firms, at times relying on investors' business relationships with the law firms or the law firms' contractual relationships with default management service providers.

Inadequate Oversight

Servicers also did not provide adequate oversight of third-party vendor law firms, including monitoring for compliance with the servicers' standards. Several

nal loan documentation, and in those instances the servicers generally were able to provide adequate explanations, including that copies in the possession of the custodian were acceptable under applicable law.

servicers exempted third-party law firms from the servicers' vendor management programs or did not identify them as third-party vendors subject to those programs. In some cases, servicers assumed that investors performed such oversight, in which case oversight was limited to ensuring that the law firms were on the investors' lists of approved or accepted providers. Where monitoring of law firms was conducted, it was often limited to things such as responsiveness and timeliness, checking for liability insurance, or determining if any power of attorney given to the firm remained valid rather than assessing the accuracy and adequacy of legal documents or compliance with state law or designated fee schedules.

Document Retention Weaknesses

Examiners also found that the servicers did not always retain originals or copies of the documents maintained by the third-party law firms that conducted their foreclosures. Instead, the servicers relied on the firms to maintain those documents. The absence of central and well-organized foreclosure files by the servicers and the consequent need for the examiners to collect foreclosure documentation derived from numerous sources made it difficult at times for examiners to conduct full foreclosure-file reviews while on-site.

Inadequate guidance, policies, procedures, and contracts

In addition, examiners generally found an absence of formal guidance, policies, or procedures governing the selection, ongoing management, and termination of law firms used to handle foreclosures. This deficiency resulted in a lack of clarity regarding roles, responsibilities, and performance parameters. Examiners also observed an absence of written contracts between certain servicers and law firms, which left those servicers with no contractual recourse for liability against the firms for performance issues. These deficiencies, coupled with the overall lack of adequate oversight, contributed to instances in which servicers and law firms failed to identify problems with the firms' foreclosure practices, thereby exposing the servicers to a variety of significant risks.

Those problems include instances in which law firms signed documents on behalf of servicers without having the authority to do so, or they changed the format and content of affidavits without the knowledge of the servicers. These defects could, depending upon the circumstances, raise concerns regarding the legality and propriety of the foreclosure even if the ser-

vicar had sufficient documentation available to demonstrate authority to foreclose.

Arrangements with Default Management Service Providers (DMSPs)

In connection with the on-site reviews of servicers, the agencies also conducted an on-site review of Lender Processing Services, Inc. (LPS), which provides significant services to support mortgage-servicing and foreclosure processing across the industry. The review of LPS involved a number of issues that are similar to those raised in the reviews of the servicers, and the LPS review covered issues that are unique to the operations, structure and corporate governance of LPS. During the review of LPS, the agencies found deficient practices related primarily to the document execution services that LPS, through its DocX, LLC, and LPS Default Solutions, Inc. subsidiaries had provided to servicers in connection with foreclosures. To address these issues, the agencies are taking formal enforcement action against LPS under section 7(d) of the Bank Service Company Act, 12 USC § 1867(d), and section 8(b) of the Federal Deposit Insurance Act, 12 USC § 1818(b).

Inadequate Contracts

During the review of servicers, examiners assessed servicers' relationships with third-party vendor DMSPs, focusing primarily on DMSPs that supported the execution of foreclosure-related documents, such as affidavits of indebtedness, lost-note affidavits, and assignments of mortgages.¹⁷ Examiners found that contracts between the servicers and DMSPs generally were inadequate, often omitting significant matters such as service-level agreements. Contracts did not provide for an appropriate level of oversight of third-party vendor law firms in situations where the servicers relied on the DMSPs to conduct such oversight.

Inadequate Oversight

Examiners also observed that servicers generally demonstrated an overall lack of adequate oversight of DMSPs. At times, the servicers failed to identify DMSPs as vendors subject to the servicers' vendor management programs and demonstrated an inability to provide the examiners with sufficient evidence of due diligence. Examiners found no evidence that servicers conducted audits of the document execution operations of their DMSPs.

¹⁷ Not all of the servicers engaged the services of third-party vendor DMSPs to perform document execution services.

The lack of sufficient oversight of DMSPs, coupled with the contractual deficiencies, led to instances in which employees of those DMSPs signed foreclosure affidavits without personally conducting the review or possessing the level of knowledge of information that they attested to in those affidavits. Employees of DMSPs, like the employees of the servicers themselves, executed documents in a manner contrary to the notary's acknowledgement and verification of those documents. In addition, in limited instances, employees of DMSPs signed foreclosure-related documents on behalf of servicers without proper authority. Because some of the servicers relied on DMSPs to oversee their third-party vendor law firms, the contractual deficiencies and lack of oversight of DMSPs contributed to the weaknesses identified above regarding the oversight of third-party vendor law firms.

Arrangements with Mortgage Electronic Registration Systems, Inc.

In connection with the on-site reviews of servicers, the agencies, together with the Federal Housing Finance Agency (FHFA), also conducted an on-site review of MERSCORP and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc. (collectively, MERS), which, as detailed below, provides significant services to support mortgage-servicing and foreclosure processing across the industry. The review of MERS involved a number of issues that are similar to those raised in the reviews of the servicers, and the MERS review covered issues that are unique to the operations, structure and corporate governance of MERS. During the review of MERS, the agencies and FHFA found significant weaknesses in, among other things, oversight, management supervision and corporate governance. To address these issues, the agencies, together with FHFA, are taking formal enforcement action against MERS under section 7(d) of the Bank Service Company Act, 12 USC § 1867(d), and section 8(b) of the Federal Deposit Insurance Act, 12 USC § 1818(b).

MERS streamlines the mortgage recording and assignment process in two ways. First, it operates a centralized computer database or registry of mortgages that tracks the servicing rights and the beneficial ownership of the mortgage note. Each mortgage registered in the database is assigned a Mortgage Identification Number (MIN). Second, MERS can be designated by a member (and its subsequent assignees) to serve in a nominee capacity as the mortgagee of record in public land records. Designating

MERS as the mortgagee is intended to eliminate the need to prepare and record successive assignments of mortgages each time ownership of a mortgage is transferred. Rather, changes in beneficial ownership of the mortgage note (and servicing rights) are tracked in the MERS registry using the MIN.¹⁸ All of the examined servicers had relationships with MERS.

Inadequate Oversight

Servicers exercised varying levels of oversight of the MERS relationship, but none to a sufficient degree. Several of the servicers did not include MERS in their vendor management programs. In these instances, the servicers failed to conduct appropriate due diligence assessments and failed to monitor, evaluate, and appropriately manage the MERS contractual relationship. Deficiencies included failure to assess the internal control processes at MERS, failure to ensure the accuracy of servicing transfers, and failure to ensure that servicers' records matched MERS' records.

Inadequate Quality Control

Examiners also determined that servicers' quality-control processes pertaining to MERS were insufficient. In some cases, servicers lacked any quality-assurance processes and relied instead on the infrequent and limited audits that MERS periodically conducted. Other deficiencies included the failure to conduct audit reviews to independently verify the adequacy of and adherence to quality-assurance processes by MERS, and the need for more frequent and complete reconciliation between the servicers' systems and the MERS registry. Several servicers did not include MERS activities in the scope of their audit coverage.

Ineffective Quality Control (QC) and Audit

Examiners found weaknesses in quality-control procedures at all servicers, which resulted in servicers not

performing one or more of the following functions at a satisfactory level:

- ensuring accurate foreclosure documentation, including documentation pertaining to the fees assessed;
- incorporating mortgage-servicing activities into the servicers' loan-level monitoring, testing, and validation programs;
- evaluating and testing compliance with applicable laws and regulations, court orders, pooling and servicing agreements, and similar contractual arrangements; and
- ensuring proper controls to prevent foreclosures when intervening events or conditions occur that warrant stopping the foreclosure process (e.g., bankruptcy proceedings, applicability of the Servicemembers Civil Relief Act, or adherence to a trial or permanent loan modification program).

Examiners also found weaknesses in internal auditing procedures at all the servicers included in the review. When performed, the few internal audits conducted by servicers failed to identify fundamental control issues that led to the foreclosure process breakdowns. Failures to perform internal audits effectively resulted in servicers' inability to identify, address, and internally communicate foreclosure-processing risks. The failures to identify and communicate these risks resulted in servicers not strengthening the quality of risk-management processes to a level consistent with the nature, increasing size, and complexity of the servicer's foreclosure activities. Moreover, failure to conduct comprehensive audits to identify weaknesses in foreclosure processes resulted in servicers not taking sufficient corrective action to strengthen policy and procedural gaps, increase staffing levels, and improve training in response to sharply rising foreclosure volumes prior to the agencies' foreclosure reviews. The failure to identify the risks associated with foreclosure processing also resulted in servicers not taking action to improve foreclosure documentation-related processes ranging from custody and control of documents to proper notarization processes, or to enhance oversight of third parties managing foreclosure activities on their behalf.

¹⁸ While MERS maintains a registry of the beneficial ownership of the mortgage note, this registry is not a system of legal record. The ownership of the note is determined by the Uniform Commercial Code, and, if a change in ownership of a note is not recorded in MERS or is recorded incorrectly, the transfer is still valid.

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Part 3: Supervisory Response

At this time, the agencies are taking formal enforcement actions against each of the 14 servicers under the authority of section 8(b) of the Federal Deposit Insurance Act, 12 USC § 1818(b). The deficiencies and weaknesses identified by examiners during their reviews involved unsafe or unsound practices and violations of law, which have had an adverse impact on the functioning of the mortgage markets. Furthermore, the mortgage servicers' deficient foreclosure processes confirmed during the reviews have compromised the public trust and confidence in mortgage servicing and have consequences for the housing market and borrowers. The formal enforcement actions will require servicers, among other things, to:

- **Compliance program:** Establish a compliance program to ensure mortgage-servicing and foreclosure operations, including loss mitigation and loan modification, comply with all applicable legal requirements and supervisory guidance, and assure appropriate policies and procedures, staffing, training, oversight, and quality control of those processes.
- **Foreclosure review:** Retain an independent firm to conduct a review of residential foreclosure actions that were pending at any time from January 1, 2009, through December 31, 2010, to determine any financial injury to borrowers caused by errors, misrepresentations, or other deficiencies identified in the review, and to remediate, as appropriate, those deficiencies.
- **Dedicated resources for communicating with borrowers/single point of contact:** Ensure the following: effective coordination of communication with borrowers related to foreclosure, loss mitigation, and loan modification activities; assurance that communications are timely and appropriate and designed to avoid borrower confusion; continuity in the handling of borrower cases during the loan modification and foreclosure processes; reasonable and good faith efforts, consistent with applicable law and contracts, to engage in loss mitigation and foreclosure prevention for delin-

quent loans where appropriate; and assurances that decisions concerning loss mitigation or loan modifications will be made and communicated in a timely manner.

- **Third-party management:** Establish policies and procedures for outsourcing foreclosure or related functions to ensure appropriate oversight and that activities comply with all applicable legal requirements, supervisory guidance, and the servicer's policies and procedures, including the appropriate selection and oversight of all third-party service providers, including external legal counsel, DMSPs, and MERS.
- **Management information systems:** Improve management information systems for foreclosure, loss mitigation, and loan modification activities that ensure timely delivery of complete and accurate information to facilitate effective decision making.
- **Risk assessment:** Retain an independent firm to conduct a written, comprehensive assessment of risks in servicing operations, particularly in the areas of foreclosure, loss mitigation, and the administration and disposition of other real estate owned, including but not limited to operational, compliance, transaction, legal, and reputational risks.

In addition to the actions against the servicers, the Federal Reserve and the OTS have issued formal enforcement actions against the parent holding companies to require that they enhance on a consolidated basis their oversight of mortgage-servicing activities, including compliance, risk management, and audit.

The agencies will monitor and assess, on an ongoing basis, the corrective actions taken by the servicers and holding companies that are required by the enforcement actions and take further action, when necessary, to address failures. Enforcement actions and more frequent monitoring will remain in place at each servicer until that servicer has demonstrated that its weaknesses and deficiencies have been cor-

14 April 2011

rected, including that adequate policies, procedures, and controls are in place. The agencies will continue to explore ways to improve their supervisory frame-

works to identify more promptly and effectively the potential risks in mortgage-servicing and other banking operations.

Part 4: Industry Reforms

Financial regulatory agencies are developing standards within their authority to improve the transparency, oversight, and regulation of mortgage-servicing and foreclosure processing and to set additional thresholds for responsible management and operation of mortgage-servicing activities. Moreover, a uniform set of national mortgage-servicing and foreclosure-processing standards would help promote accountability and appropriateness in dealing with consumers and strengthen the housing finance market.

Industry reforms that could improve the oversight and regulation of mortgage-servicing and foreclosure processing should generally include standards that require servicers to address major areas of weaknesses highlighted in the review, including in the following general areas:

Governance and Oversight

- implement and routinely audit sound enterprise-wide policies and procedures to govern and control mortgage-servicing and foreclosure processes
- develop quality controls for effective management of third-party vendors who support mortgage-servicing and foreclosure processing
- strengthen the governance standards intended to ensure compliance with applicable federal and state laws and company policies and procedures
- develop company standards that emphasize accuracy and quality in the processing and validation

of foreclosure and other servicing-related documents throughout the entire foreclosure process

Organizational Structure, Staffing, and Technology

- increase staffing to adequate levels and provide them with requisite training to effectively manage the volume of default loans and foreclosures
- upgrade information systems and practices to better store, track, and retrieve mortgage-related documents

Accountability and Responsiveness Dealing with Consumers

- ensure borrowers are offered appropriate loss-mitigation options
- ensure proper custody and control of borrower documents related to the servicing of the mortgage
- increase coordination between loss mitigation and foreclosure-processing units to prevent inappropriate foreclosures
- improve communication with borrowers and establish measurable goals and incentives for delivering accurate information and responsive assistance
- develop complaint-resolution processes that are routinely monitored and measured for quality assurance

IndyMac Mortgage Services,
a division of OneWest Bank, FSB
6900 Beatrice Drive • Kalamazoo, MI 49009

August 01, 2009

#BWNDXCT
#6682215364001087#

000031/XC099/668

Bruce C McDonald
PO Box 1086
Crestone CO 81131

RE: Loan No 1004635122

In reviewing our records, we have determined that you have fallen behind on your mortgage payments. Financial distress can happen to anyone and Indymac Mortgage Services, a division of OneWest Bank, FSB wants to find a way to help you through this financial challenge. Our goal is to help you maintain ownership of your property.

Depending upon your financial circumstances, there are several alternatives that we can pursue in order to assist you in keeping you in your home.

Based on information that you provide to us, we may be able to qualify you for one of the following loss mitigation options:

* Repayment Plan

If you now have sufficient income, this plan allows you to pay an increased amount on a monthly basis toward the delinquency and eventually catch up. You must be willing to sign a Repayment Plan agreement and will be subject to foreclosure if the plan is broken.

* Loan Modification

Your loan may be modified to re-amortize the unpaid principal balance over the remaining loan term, capitalize past due payments, or in some instances, reduce the interest rate.

* Pre-Foreclosure Sale or Short Payoff

If you would consider selling your property but do not feel there would be enough to pay off the loan in full, we still may be able to work with you by accepting less than what you owe. This is not a choice for people who want to stay in their home, and can afford to do so. If we agree to take a loss by accepting a short payoff, you may be required to pay some or all of the loss with a low or no interest loan.



* Deed in Lieu of Foreclosure

If you cannot afford to continue payments and are unable to sell the property, we may be able to accept the deed to your property instead of foreclosure, and reduce the negative impact to your credit. This may not be feasible if there are junior liens or other encumbrances that would prevent us from obtaining clear title.

Help us in helping you by calling an Indymac representative today at 1-866-706-8647.

Additionally, you may also contact a HUD-approved housing counseling agency toll-free at 1-800-569-4287 or TDD 1-800-877-8339 for the housing counseling agency nearest you. These services are usually free of charge.

It is important to meet this financial challenge head on. You have more alternatives and are less likely to lose your home if we work together now. Please contact us immediately and work with us to see if we can set up a program to bring your payments up to date.

Para ciertos prestamos que atendemos somos requeridos por la ley federal a informar a los prestatarios que este es una tentativa de coleccionar una deuda y cualquier informacion obtenida sera utilizada para ese proposito. Si usted tiene cualquier pregunta con respecto a esta carta, por favor nos contacta en 877-908-4357.

Sincerely,

Indymac Mortgage Services, a division of OneWest Bank, FSB

Loan Resolution

(For certain loans that we service, we are required by Federal law to inform borrowers that we are attempting to collect a debt and any information obtained will be used for that purpose)

IndyMac Mortgage Services,
a division of OneWest Bank, FSB
6900 Beatrice Drive • Kalamazoo, MI 49009



February 26, 2010

#BWNDXCT
#6682215364001020#

Bruce C McDonald 001390/RS093/668

PO Box 1086
Crestone CO 81131

RE: Mortgage Loan Number: 1004635122

Please accept this letter as confirmation that the investor on your loan is Federal Home Loan Mtg Co. Any questions regarding your loan should be addressed directly to IndyMac Mortgage Services, a division of OneWest Bank, FSB as we are responsible for the servicing of this loan. The investor should not be contacted directly.

If you have questions or would like more information about your loan, please visit our website at www.owb.com. By clicking on "Log In To My Mortgage," you will be directed to "My Mortgage Login" where you can register your account, view loan information, and contact us via Secure Messaging.

Respectfully,

IndyMac Mortgage Services, a division of OneWest Bank, FSB

This company is a debt collector and any information obtained will be used for that purpose. However, if you have filed a bankruptcy petition and there is either an "automatic stay" in effect in your bankruptcy case, or your debt has been discharged pursuant to the bankruptcy laws of the United States, this communication is intended solely for informational purposes.

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OTS, and to enhance the Association's residential mortgage servicing and foreclosure processes. The Association has begun implementing procedures to remediate the practices addressed in this Order.

OTS's Findings.

The OTS finds, and the Association neither admits nor denies, the following:

1. The Association is a servicer of residential mortgages in the United States, and services a portfolio of approximately \$141 billion dollars in residential mortgage loans. During the recent housing crisis, a large number of residential mortgage loans serviced by the Association became delinquent and resulted in foreclosure actions.

2. In connection with certain foreclosures of loans in its residential mortgage servicing portfolio, the Association engaged in the following unsafe or unsound practices:

(a) filed or caused to be filed in state and federal courts numerous affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, specifically that were not signed or affirmed in the presence of a notary;

- (c) litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosure proceedings without always ensuring that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time;
- (d) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes;
- (e) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and
- (f) failed sufficiently to oversee outside counsel and other third-party providers handling foreclosure-related services.

Board Oversight of Compliance with Order.

3. Within five (5) days, the Board shall designate a committee to monitor and coordinate the Association's compliance with the provisions of this Order (Oversight Committee). The Oversight Committee shall be comprised of three (3) or more directors, which at least two (2) may not be employees or officers of the Association or any of its subsidiaries or affiliates.
4. Within ninety (90) days, and within thirty (30) days after the end of each quarter thereafter, the Oversight Committee shall submit a written compliance progress report to the Board (Compliance Tracking Report). The Compliance Tracking Report shall, at a minimum:
 - (a) separately list each corrective action required by this Order;
 - (b) identify the required or anticipated completion date for each corrective action; and
 - (c) discuss the current status of each corrective action, including the action(s) taken or to be taken to comply with each corrective action.

5. Within ten (10) days of receipt of the Compliance Tracking Report, the Board shall review the Compliance Tracking Report and all reports required to be prepared by this Order. Following its review, the Board shall adopt a resolution: (a) certifying that each director has reviewed the Compliance Tracking Report and all required reports; and (b) documenting any corrective actions taken. A copy of the Compliance Tracking Report and the Board resolution shall be provided to the Regional Director within five (5) days after the Board meeting at which such resolution was adopted.

6. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Association's compliance with the provisions of this Order. The Board shall review and adopt all policies and procedures required by this Order prior to submission to the OTS.

Comprehensive Action Plan.

7. Within sixty (60) days of this Order, the Association shall submit to the Regional Director an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve full compliance with this Order (Action Plan). In the event the Regional Director asks the Association to revise the Action Plan, the Association shall make the requested revisions and resubmit the Action Plan to the Regional Director within ten (10) days of receiving any comments from the Regional Director. Following acceptance of the Action Plan by the Regional Director, the Association shall not take any action that would constitute a significant deviation from, or material change to the requirements of the Action Plan or of this Order, unless and until the Association has received a prior written determination of no supervisory objection from the Regional Director.

8. The Board shall ensure that the Association achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan.

The Board shall further ensure that, upon implementation of the Action Plan, the Association achieves and maintains effective mortgage servicing, foreclosure and loss mitigation activities (as used herein, the phrase “loss mitigation” shall include, but not be limited to, activities related to special forbearances, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure and be referred to as either Loss Mitigation or Loss Mitigation Activities), as well as associated risk management, compliance, quality control, audit, training, staffing, and related functions. In order to comply with these requirements, the Board shall:

- (a) require the timely reporting by Association management of such actions directed by the Board to be taken under this Order;
- (b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) require corrective action be taken in a timely manner for any non-compliance with such actions.

9. The Action Plan shall address, at a minimum:

- (a) financial resources to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;
- (b) organizational structure, managerial resources and staffing to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;
- (c) metrics to measure and ensure the adequacy of staffing levels relative to existing and/or future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, including the single point of contact as

hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers; and

(d) governance and controls to ensure full compliance with all applicable federal and state laws (including, but not limited to, the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act (SCRA)), rules, regulations, court orders and requirements, as well as the Membership Rules of MERSCORP, servicing guides of the Government Sponsored Enterprises (GSEs) or investors, including those with the Federal Housing Administration and those required by the Home Affordable Modification Program (HAMP), and loss share agreements with the Federal Deposit Insurance Corporation (collectively Legal Requirements), and the requirements of this Order.

10. The Action Plan shall specify timelines for completion of each of the requirements of this Order. The timeliness in the Action Plan shall be consistent with any deadlines set forth in this Order.

Compliance Program.

11. Within sixty (60) days of this Order, the Association shall submit to the Regional Director an acceptable compliance program to ensure that the mortgage servicing and foreclosure operations, including Loss Mitigation and loan modification, comply with all applicable Legal Requirements, supervisory guidance, and the requirements of this Order and are conducted in a safe and sound manner (Compliance Program). The Compliance Program shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe in the Compliance Plan that is in excess of one hundred twenty (120) days must be approved by the Regional Director. The Compliance Program shall include, at a minimum:

- (a) appropriate written policies and procedures to conduct, oversee, and monitor mortgage servicing, Loss Mitigation, and foreclosure operations;
- (b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Association are accurate, complete, and reliable, and that affidavits, declarations, or other sworn statements are based on personal knowledge or a review of the Association's books and records when the affidavit, declaration, or sworn statement so states;
- (c) processes to ensure that affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements;
- (d) processes to review and approve standardized affidavits and declarations for each jurisdiction in which the Association files foreclosure actions to ensure compliance with applicable laws, rules, and court procedures;
- (e) processes to ensure that the Association has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;
- (f) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed,

including whether the amount is chargeable to the borrower and/or claimable to the investor;

(g) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmations are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;

(h) processes to ensure that all fees, expenses, and other charges imposed on the borrower are assessed in accordance with the terms of the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges, and expenses, and in compliance with all applicable Legal Requirements and supervisory guidance;

(i) processes to ensure that the Association has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and Loss Mitigation, or loan modification functions;

(j) ongoing testing for compliance with applicable Legal Requirements and supervisory guidance that is completed by qualified persons with requisite knowledge and ability (which may include internal audit) who are independent of the Association's business lines;

(k) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate any changes in applicable Legal Requirements and supervisory guidance;

(l) processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations,

including collections, Loss Mitigation and loan modification are appropriate, and a determination of whether any staffing changes or additions are needed;

(m) processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation and loan modification, are adequate to meet current and expected workload demands;

(n) processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation and loan modification personnel, including single point of contact personnel as hereinafter defined, are reviewed and managed. Such processes, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of this Order, and necessary adjustments to workloads shall promptly follow the completion of the reviews. An initial review shall be completed within ninety (90) days of this Order, and subsequent reviews shall be conducted semi-annually;

(o) processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Association's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;

(p) appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory guidance; and

(q) appropriate procedures for customers in bankruptcy, including a prohibition on the collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order.

Third Party Management.

12. Within sixty (60) days of this Order, the Association shall submit to the Regional Director acceptable policies and procedures for outsourcing foreclosure or related functions, including Loss Mitigation and loan modification, and property management functions for residential real estate acquired through or in lieu of foreclosure, to any agent, independent contractor, consulting firm, law firm (including local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of the owners of mortgages), property management firm, or other third-party (including any subsidiary or affiliate of the Association not specifically named in this Order) (Third-Party Providers). Third-party management policies and procedures shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Regional Director. The policies and procedures shall include, at a minimum:

- (a) appropriate oversight to ensure that Third-Party Providers comply with all applicable Legal Requirements, supervisory guidance (including applicable portions of OTS Thrift Bulletin 82a), and the Association's policies and procedures;
- (b) measures to ensure that all original records transferred from the Association to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the appropriate court or the loan is otherwise transferred to another party), and are returned to the Association or designated custodians at the conclusion of the

performed service, along with all other documents necessary for the Association's files, and that the Association retains imaged copies of significant documents sent to Third-Party Providers;

(c) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of the Association or the owners of mortgages in any judicial or non-judicial foreclosure proceeding, related bankruptcy proceeding, or in other foreclosure-related litigation, including, but not limited to, documentation sufficient to establish ownership of the promissory note and/or the right to foreclose at the time the foreclosure action is commenced;

(d) processes to perform appropriate due diligence on potential and current Third-Party Provider qualifications, expertise, capacity, reputation, complaints, information security, business continuity and financial viability, and to ensure adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

(e) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to Association foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party Provider performance failures;

(f) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements and supervisory guidance, and to ensure that foreclosures are conducted in a safe and sound manner;

(g) processes to review customer complaints about Third-Party Provider services;

- (h) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical third-party services and business continuity of the Association, consistent with federal banking agency guidance, both to address short-term and long-term service disruptions and to ensure an orderly transition to new service providers should that become necessary;
- (i) a review of fee structures for Third-Party Providers to ensure that the method of compensation considers the accuracy, completeness, and legal compliance of foreclosure filings and is not based solely on increased foreclosure volume and/or meeting processing timelines; and
- (j) a certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for the Association, on a periodic basis, as qualified to serve as Third-Party Providers to the Association including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

Mortgage Electronic Registration System.

13. Within sixty (60) days of this Order, the Association shall submit to the Regional Director an acceptable plan to ensure appropriate controls and oversight of foreclosure activities within respect to the Mortgage Electronic Registration System (MERS) and compliance with MERSCORP's membership rules, terms, and conditions (MERS Requirements) (MERS Plan). The MERS Plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Regional Director. The MERS Plan shall include, at a minimum:

- (a) processes to ensure that all mortgage assignments and endorsements with respect to mortgage loans serviced or owned by the Association out of MERS' name are executed only by a certifying officer authorized by MERS and approved by the Association;
- (b) processes to ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by the Association) are executed by a certifying officer authorized by MERS and approved by the Association;
- (c) processes to ensure that the Association maintains up-to-date corporate resolutions from MERS for all Association employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers;
- (d) processes to ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System (CRMS);
- (e) processes to ensure the accuracy and reliability of data reported to MERSCORP, including monthly system-to-system reconciliations for all MERS mandatory reporting fields, and daily capture of all rejects/warnings reports associated with registrations, transfers, and status updates on open-item aging reports. Unresolved items must be maintained on open-item aging reports and tracked until resolution. The Association shall determine and report whether the foreclosures serviced by the Association that are currently pending in MERS' name are accurate and how many are listed in error, and describe how and by when the data on the MERSCORP system will be corrected;
- (f) an appropriate MERS quality assurance workplan, which clearly describes all tests, test frequency, sampling methods, responsible parties, and the expected process for open-item follow-up, and includes an annual independent test of the control structure of

the system-to-system reconciliation process, the reject/warning error correction process, and adherence to the Association's MERS Plan; and

(g) inclusion of MERS into the Association's third-party vendor management process, which shall include a detailed analysis of potential vulnerabilities, including information security, business continuity, and vendor viability assessments.

Foreclosure Review.

14. Within forty-five (45) days of this Order, the Association shall retain an independent consultant acceptable to the Regional Director to conduct an independent review of certain residential foreclosure actions regarding individual borrowers with respect to the Association's mortgage servicing portfolio. The review shall include residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by the Association, whether brought in the name of the Association, the investor, the mortgage note holder, or any agent for the mortgage note holder (including MERS), that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period (Foreclosure Review).

15. Within fifteen (15) days of the engagement of the independent consultant described in Paragraph 14, but prior to the commencement of the Foreclosure Review, the Association shall submit to the Regional Director for approval an engagement letter that sets forth:

(a) the methodology for conducting the Foreclosure Review, including: (i) a description of the information systems and documents to be reviewed, including the selection of criteria for files or aspects of files to be reviewed; (ii) the criteria for

evaluating the reasonableness of fees and penalties; (iii) other procedures necessary to make the required determinations (such as through interviews of employees and third parties and a process for the submission and review of borrower claims and complaints); and (iv) any proposed sampling techniques. In setting the scope and review methodology under clause (i) of this sub-paragraph, the independent consultant may consider any work already done by the Association or other third-parties on behalf of the Association. The engagement letter shall contain a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on results of the initial sampling;

- (b) expertise and resources to be dedicated to the Foreclosure Review;
- (c) completion of the Foreclosure Review and the Foreclosure Report within one hundred twenty (120) days from approval of the engagement letter; and
- (d) a written commitment that any workpapers associated with the Foreclosure Review shall be made available to the OTS immediately upon request.

16. The purpose of the Foreclosure Review shall be to determine, at a minimum:

- (a) whether at the time the foreclosure action was initiated or the pleading or affidavit or declaration filed (including in bankruptcy proceedings and in defending suits brought by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or similar status;
- (b) whether the foreclosure was in accordance with applicable federal and state laws, including, but not limited to, the U.S. Bankruptcy Code and the SCRA;

(c) whether a foreclosure sale occurred when an application for a loan modification or other Loss Mitigation was under consideration when the loan was performing in accordance with a trial or permanent loan modification, or when the loan had not been in default for a sufficient period of time to authorize foreclosure pursuant to the terms of the mortgage loan documents and related agreements;

(d) whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmations were in accordance with the terms of the mortgage loan and state law requirements;

(e) whether a delinquent borrower's account was only charged fees and/or penalties that were permissible under the terms of the borrower's loan documents, applicable Legal Requirements, and were otherwise reasonable and customary;

(f) whether the frequency that fees were assessed to any delinquent borrower's account (including broker price opinions) was excessive under the terms of the borrower's loan documents, applicable Legal Requirement, or were otherwise unreasonable;

(g) whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of the HAMP, and consistent with the policies and procedures applicable to the Association's proprietary loan modifications or other Loss Mitigation programs, such that each borrower had an adequate opportunity to apply for a Loss Mitigation option or program, any such application was handled properly, a final decision was made on a reasonable basis, and was communicated to the borrower before the foreclosure sale; and

(h) whether any errors, misrepresentations, or other deficiencies identified in the Foreclosure Review resulted in financial injury to the borrower or the mortgagee.

17. The independent consultant shall prepare a written report detailing the findings of the Foreclosure Review (Foreclosure Report), which shall be completed within thirty (30) days of completion of the Foreclosure Review. Immediately upon completion, the Foreclosure Report shall be submitted to the Regional Director and the Board.

18. Within forty-five (45) days of submission of the Foreclosure Report to the Board, the Association shall submit to the Regional Director an acceptable plan to remediate all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies identified in the Foreclosure Report by:

(a) reimbursing or otherwise appropriately remediating borrowers for impermissible or excessive penalties, fees or expenses, or for other financial injury identified in accordance with this Order; and

(b) taking appropriate steps to remediate any foreclosure sale identified in the Foreclosure Report where the foreclosure was not authorized as described in this Order.

19. Within sixty (60) days after the Regional Director provides supervisory non-objection to the plan set forth in paragraph (18) above, the Association shall make all reimbursement and remediation payments and provide all credits required by such plan, and provide the Regional Director with a report detailing such payments and credits.

Management Information Systems.

20. Within sixty (60) days of this Order, the Association shall submit to the Regional Director an acceptable plan for operation of its management information systems (MIS) for foreclosure and Loss Mitigation or loan modification activities to ensure the timely delivery of

complete and accurate information to permit effective decision-making. The MIS plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of one hundred twenty (120) days must be approved by the Regional Director. The plan shall include, at a minimum:

- (a) a description of the various components of MIS used by the Association for foreclosure and Loss Mitigation or loan modification activities;
- (b) a description of and timetable for any needed changes or upgrades to:
 - (i) monitor compliance with all applicable Legal Requirements, supervisory guidance, and the requirements of this Order;
 - (ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and/or the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower; and
 - (iii) measures to ensure that Loss Mitigation, loan foreclosure, and modification staffs have sufficient and timely access to information provided by the borrower regarding loan foreclosure and modification activities; and
- (c) the testing of the integrity and accuracy of the new or enhanced MIS to ensure that reports generated by the system provide necessary information for adequate monitoring and quality controls.

Mortgage Servicing.

21. Within sixty (60) days of the Order, the Association shall submit to the Regional Director an acceptable plan, along with a timeline, for ensuring effective coordination of communications with borrowers, both oral and written, related to Loss Mitigation or loan modification and

foreclosure activities: (i) to ensure that communications are timely and effective and are designed to avoid confusion to borrowers; (ii) to ensure continuity in the handling of borrowers' loan files during the Loss Mitigation, loan modification and foreclosure process by personnel knowledgeable about a specific borrower's situation; (iii) to ensure that reasonable and good faith efforts, consistent with applicable Legal Requirements, are engaged in Loss Mitigation and foreclosure prevention for delinquent loans, where appropriate; and (iv) to ensure that decisions concerning Loss Mitigation or loan modifications continue to be made and communicated in a timely fashion. Prior to submitting the plan, the Association shall conduct a review to determine whether processes involving past due mortgage loans or foreclosures overlap in such a way that they may impair or impede a borrower's efforts to effectively pursue a loan modification and whether Association employee compensation practices discourage Loss Mitigation or loan modifications. The plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of one hundred twenty (120) days must be approved by the Regional Director. The plan shall include, at a minimum:

- (a) measures to ensure that staff handling Loss Mitigation and loan modification requests routinely communicates and coordinates with staff processing the foreclosure on the borrower's property;
- (b) appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decision-making on Loss Mitigation activities, with the metrics established not being less responsive than the timelines in the HAMP;
- (c) establishment of an easily accessible and reliable single point of contact for each borrower so that the borrower has access to an employee of the bank to obtain

information throughout the Loss Mitigation, loan modification, and foreclosure processes;

(d) a requirement that written communications with the borrower identify such single point of contact along with one or more direct means of communication with the contact;

(e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation, loan modification, and foreclosure activities;

(f) measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation and loan modifications;

(g) procedures and controls to ensure that a final decision regarding a borrower's loan modification request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the trial or permanent modification (including the net present value calculations utilized by the Association, if applicable), by the single point of contact within a reasonable time before any foreclosure sale occurs;

(h) procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis that: (i) no foreclosure or legal action predicate to foreclosure occurs, unless the borrower is deemed in default on the terms of the trial or permanent modification; and (ii) the single point of contact remains available to the borrower and continues to be referenced on all written communications with the borrower;

- (i) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation or loan modification process, denial of modification requests, the foreclosure process, or foreclosure activities which prevent a borrower from pursuing Loss Mitigation or loan modification options, and a process for making borrowers aware of the complaint procedures;
- (j) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;
- (k) policies and procedures to ensure that payments are credited in a prompt and timely manner, that payments, including partial payments, to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and/or escrow before fees, and that any misapplication of borrower funds is corrected in a prompt and timely manner;
- (l) policies and procedures to ensure that timely information about Loss Mitigation options is sent to the borrower in the event of a delinquency or default, including plain language notices about Loss Mitigation, loan modification, and the pendency of foreclosure proceedings; and
- (m) policies and procedures to ensure that foreclosure, Loss Mitigation, and loan modification documents provided to borrowers and third-parties are appropriately maintained and tracked, that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information; and

(n) policies and procedures to consider loan modifications or other Loss Mitigation Activities with respect to junior lien loans owned by the Association, and to factor the risks associated with such junior lien loans into loan loss reserving practices, where the Association services the associated first lien mortgage and becomes aware that such first lien mortgage is delinquent or has been modified. Such policies and procedures shall require the ongoing maintenance of appropriate loss reserves for junior lien mortgages owned by the Association and the charge-off of such junior lien loans in accordance with Federal Financial Institutions Examination Council (FFIEC) retail credit classification guidelines.

Effective Date, Incorporation of Stipulation.

22. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

Duration.

23. This Order shall remain in effect until terminated, modified, or suspended by written notice of such action by the OTS, acting by and through its authorized representatives.

Time Calculations.

24. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

25. The Regional Director, or an OTS authorized representative, may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

26. All submissions, including any reports, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

27. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(a) To the OTS¹:

Regional Director Philip A. Gerbick
OTS Western Regional Office
225 East John Carpenter Freeway, Suite 500
Irving, Texas 75062-2326

(b) To the Association:

Mr. Joseph M. Otting
President and Chief Executive Officer
OneWest Bank, FSB
888 E. Walnut Street
Pasadena, California 91101-7211

¹ Following the Transfer Date, *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203, § 311, 124 Stat. 1520-21 (2010), all submissions, requests, communications, consents or other documents relating to this Order shall be directed to the Comptroller of the Currency, or to the individual, division, or office designated by the Comptroller of the Currency.

Scope of Board Responsibility.

28. In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Association, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Association as may be necessary for the Association to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Association management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

No Violations Authorized.

29. Nothing in this Order or the Stipulation shall be construed as allowing the Association, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Philip A. Gerbick
Regional Director, Western Region

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION**

)	
In the Matter of)	Order No.: WN-11-011
)	
ONEWEST BANK, FSB)	Effective Date: April 13, 2011
)	
Pasadena, California)	
OTS Docket No. 18129)	
)	

STIPULATION AND CONSENT TO ISSUANCE OF A CONSENT ORDER

The Office of Thrift Supervision (OTS) intends to impose a consent order on OneWest Bank, FSB (Association), pursuant to 12 U.S.C. § 1818(b), for unsafe or unsound banking practices relating to mortgage servicing and the initiation and handling of foreclosure proceedings;

The Association, in the interest of compliance and cooperation, enters into this Stipulation and Consent to Issuance of a Consent Order (Stipulation) and consents to the issuance of a Consent Order (Order);

In consideration of the above premises, the OTS, through its authorized representative, and the Association, through its duly elected and acting Board of Directors, stipulate and agree to the following:

Jurisdiction.

1. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is “an insured depository institution” as

that term is defined in 12 U.S.C. § 1813(c).

2. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

Consent.

3. The Association, without admitting or denying any wrongdoing, consents to the issuance by the OTS of the accompanying Order. The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

Finality.

4. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

Waivers.

5. The Association waives the following:
- (a) the right to be served with a written notice of the OTS’s charges against it as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
 - (b) the right to an administrative hearing of the OTS’s charges as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes, or otherwise.

OTS Authority Not Affected.

6. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

Other Governmental Actions Not Affected.

7. The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 6 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

Miscellaneous.

8. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order.

9. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

10. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

11. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

12. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters. Nothing in this Stipulation or the Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Order.

13. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director or other authorized representative.

14. For purposes of, and within the meaning of 12 C.F.R. §§ 563.555, 563.560, and 565.4, this Consent Order shall not be construed to be a "cease-and-desist order", "consent order", or "order", unless the OTS informs the Association otherwise.

Signature of Directors/Board Resolution.

15. Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation.

WHEREFORE, the Association, by its directors, executes this Stipulation.

**ONEWEST BANK, FSB
Pasadena, California**

OFFICE OF THRIFT SUPERVISION

By: /s/
Steven T. Mnuchin, Chairman

By: /s/
Philip A. Gerbick
Regional Director, Western Region

Date: See Effective Date on page 1

 /s/
S. Kenneth Leech, Director

 /s/
Jay J. Miller, Director

 /s/
John J. Oros, Director

 /s/
Allen C. Puwalski, Director

 /s/
Eric J. Rosen, Director

 /s/
David J. Wermuth, Director

 /s/
Ravi P. Yadav, Director

 /s/
Joseph Otting, Director



ONE SOURCE.
POWERFUL SOLUTIONS.

Overview

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Client Lists

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ICWeb User Interface

- [IC Web CICS \(3270 Access\)](#)

Demo

- [IC Web CICS \(3270 Access\)](#)

Service Providers List

ACH/EFT Processing Services

- Bank of America, N.A.
- BB&T Bank

Broker Price Opinions

- eValuations Solutions, LLC

Call Center/Collections/Business Process Outsourcing

- Sykes Acquisition, LLC
- Televoice
- Varolli Corporation
- West Corporation

Collections Outsourcing

- Leading Edge Recovery Solutions, LLC

Credit Bureaus

- CBC Companies
- Equifax Mortgage Information Services
- Experian
- Innovis
- TransUnion Corp.

Data Analytics/Risk Management

- Level One Loans a subsidiary of Sextant Group, Inc.
- LPS Applied Analytics (Valuation)
- LPS Applied Analytics (Fraud Group)

Default Management

- Access Loss Mitigation
- Aldridge & Conners, LLP
- American Processing Company
- Aronowitz and Mecklenburg, LLP
- Baer & Timberlake, P.C.
- Barrett, Burke, Wilson, Castle & Frappier
- Bayview Financial Trading Group, L.P.
- Bendett & McHugh, P.C.
- Bierman, Geesing & Ward, LLC
- Boles Law Firm, The
- Brock and Scott, PLLC
- Buonassissi, Henning & Lash, P.C.
- Cal-Western Reconveyance Corp.
- Claims Recovery Financial Services, LLC,
- Codilis & Associates, P.C.
- Covahey, Boozer, Devan & Dore
- CSC (Computer Sciences Corporation)
- Davis, Brown, Koehn, Shors & Roberts, PC
- Dean Morris, LLP

#13



11/14/2008

Foreclosure Transmittal Package IndyMac Mortgage

To:
The Florida Default Law Group

Phone:
Fax:

From:
FIS Foreclosure Solutions, Inc.
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120
Phone: (651) 234-3500

MORTGAGE CURRENTLY HELD BY AND FORECLOSURE SHOULD BE IN THE NAME OF:

IndyMac Federal Bank FSB

VEST TITLE IN THE NAME OF:

Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Trust 2006-AR4, Mortgage Pass-Through Certificates, Series 2006-AR4 under the Pooling and Servicing Agreement dated March 1, 2006

Investor: DEUTSCHE BANK

Please consult your Network Agreement to identify and follow any investor specific billing guidelines.

ACCOUNT INFORMATION:

ACCOUNT NUMBER:	1007199670	INTEREST RATE:	649.000%
PRINCIPLE BALANCE:	\$399,095.97	LIEN POSITION:	1
PAYMENT DUE:	08/01/2008	INVESTOR LOAN NUMBER	0122604609

BORROWER INFORMATION:

MACHADO ISRAEL A, MACHADO NEENA M 589073064, 591147400

PROPERTY ADDRESS (S):

13887 CITRUS GROVE BLVD, WEST PALM BEACH, FL 33412

OCCUPANCY STATUS: Original owner occupied

SPECIAL INSTRUCTIONS AND ACCOUNT INFORMATION:

Forward to our attention a copy of your title report obtained for the foreclosure for our review. If any title defects exist that would affect our lien position or ability to obtain clear title by foreclosure, please explain in a cover letter.

Please open an Issue (for files that are able to proceed, or for status) or a Hold (for files which cannot proceed) through FIS|Process Management instead of sending an email on these matters. If your firm has an attachment such as a title worksheet, please upload to FIS|Document Management and then advise you have done so in the Issue or Hold.

FIS Foreclosure Solutions, Inc. / IndyMac Bank

PLAINTIFF'S EXHIBIT S

DISTRICT COURT, SAGUACHE COUNTY, COLORADO Court Address: P.O. Box 164 Saguache, CO 81149	
IN THE MATTER OF THE APPLICATION OF ONEWEST BANK FSB, FOR AN ORDER AUTHORIZING THE PUBLIC TRUSTEE FOR SAGUACHE COUNTY, STATE OF COLORADO, TO SELL CERTAIN REAL ESTATE CONTAINED IN A DEED OF TRUST.	
Attorney or Party Without Attorney: Name: Robert J. Aronowitz, Esq. Reg. No. 5673 Joel T. Mecklenburg, Esq. Reg. No. 36291 Stacey L. Aronowitz, Esq. Reg. No. 36290 Joan Olson, Esq. Reg. No. 28078 Marcy L. McDermott, Esq. Reg. No. 38030 Monica Kadrmas, Esq. Reg. No. 34904	▲ COURT USE ONLY ▲ Case Number: 2009 CV
Address: 1199 Bannock Street Denver, Colorado 80204 Phone Number: (303) 813-1177 Fax Number: (303) 813-1107 E-mail: rja@amlawco.com, stacey@amlawco.com, monica@amlawco.com, joel@amlawco.com, joan@amlawco.com, marcy@amlawco.com	Div.: Ctrm:
NOTICE OF HEARING October 05, 2009	

TO: THE PEOPLE OF THE STATE OF COLORADO, TO THE GRANTOR(S) IN THE DEED OF TRUST DESCRIBED HEREIN, AND TO THOSE PERSONS WHO APPEAR TO HAVE ACQUIRED A RECORD INTEREST IN THE REAL ESTATE THEREIN DESCRIBED, SUBSEQUENT TO THE RECORDING OF SUCH DEED OF TRUST, GREETINGS:

WHEREAS, Bruce C. McDonald, Grantor(s) by Deed of Trust dated May 27, 2003, and recorded June 03, 2003 as Reception No. 341400, in the records of the County of Saguache, Colorado, to secure to INDYMAC BANK F.S.B., the payment of a Negotiable Instrument of even date therewith for the principal sum of \$198,000.00, as provided in said Deed of Trust, conveyed to the Saguache County Public Trustee, on the terms set forth in said Negotiable Instrument and Deed of Trust, the following described real property ("Property") situate in said County to-wit:

LOT 4434, THE BACA GRANDE, CHALETS UNIT TWO, A SUBDIVISION OF SAGUACHE COUNTY, COLORADO

WHICH HAS THE ADDRESS OF : 4434 Rarity Court, Crestone, CO 81131

Bruce C. McDonald 3500.00661

NOTICE is hereby given that OneWest Bank FSB, Petitioner herein, has filed its Motion with this Court seeking an Order of this Court authorizing a Public Trustee's sale under the power of sale contained in said Deed of Trust on the grounds that the indebtedness secured by said Deed of Trust is in default in that among other events of default the current Mortgagor has failed to pay monthly installments of principal and/or interest, and/or if applicable, taxes and insurance together with applicable late charges as provided in the subject Deed of Trust and Negotiable Instrument.

NOTICE is also given that any interested party who disputes the existence of such default under the terms of said Deed of Trust and Negotiable Instrument secured thereby, or who otherwise disputes the existence of circumstances authorizing the exercise of the power of sale contained in said Deed of Trust, or who desires to raise such other grounds for the objection to the issuance of an Order Authorizing Sale which may exist pursuant to the Servicemembers Civil Relief Act, as amended, must file a response to Petitioner's Motion for Order Authorizing Sale, verified by the oath of such person, setting forth the facts upon which he relies and attaching copies of all documents which support his position. Said response must be in writing and filed with the Clerk of the District Court in and for the County of Saguache, State of Colorado, at the address set forth below, and shall be served upon the Petitioner pursuant to Rule 5(b) of the Colorado Rules of Civil Procedure at the office of Aronowitz & Mecklenburg, LLP, 1199 Bannock Street, Denver, Colorado 80204, telephone (303)813-1177, not less than five (5) days prior to the date set for hearing on Petitioner's Motion for Order Authorizing Sale.

If this case is not filed in the County where your property is located, you have the right to ask the Court to move the Case to that County. Your request may be made as a part of your response or any paper you file with the Court at least five days before the hearing.

Be advised that the Clerk of this Court has set the hearing at the time and place set forth below when and where any interested person may appear if they so desire, with or without an attorney.

Time of Hearing and Date: 03:00 p.m. on October 05, 2009
Place of Hearing: District Court of Saguache County
P.O. Box 164, Saguache, CO 81149

IF NO RESPONSE IS FILED BY SEPTEMBER 30, 2009, THE COURT MAY WITHOUT ANY HEARING AUTHORIZE THE FORECLOSURE AND PUBLIC TRUSTEE'S SALE WITHOUT FURTHER NOTICE.

DATED: 9/10, 2009.

ARONOWITZ & MECKLENBURG, LLP

Attorney for Applicant
By: [Signature]
Robert J. Aronowitz, Esq. Reg. No. 5673
Joel T. Mecklenburg, Esq. Reg. No. 36291
Stacey L. Aronowitz, Esq. Reg. No. 36290
Joan Olson, Esq. Reg. No. 28078
Marcy L. McDermott Esq. Reg. No. 38030
Monica Kadmas, Esq. Reg. No. 34904

Applicants Address:
c/o Aronowitz & Mecklenburg, LLP
1199 Bannock Street
Denver, CO 80204

IMPORTANT NOTICE
THE NOTICE AND NOTION IN THIS MATTER ARE BEING FILED SIMULTANEOUSLY WITH THE MAILING OF THIS NOTICE. YOU MAY OBTAIN THE COURT'S CASE/CIVIL ACTION NUMBER BY CONTACTING THE COURT OR OUR OFFICE.

This is an attempt to collect a debt. Any information obtained may be used for that purpose.

Status: District Court, Saguache County
Case #: 2009 CV 000042 Div/Room: 3 Type: Rule 120 Deeds of Trst Pu

ONEWEST BANK FSB VS MCDONALD, BRUCE C.
FILED Document
CO Saguache County District Court 12th JD
Filing Date: Oct 14 2009 4:00PM MDT
Filing ID: 27558530
Review Clerk: Allison Schaak

FILE DATE EVENT/FILING/PROCEEDING
10/14/2009 Minute Order (print)

JUDGE: MAG CLERK: AS REPORTER: TG

MATTER CALLED UP FOR RULE 120 HEARING. PLAINTIFF REPRESENTED BY ATTY SUSAN HENDRICK. DEFENDANT PRESENT IN PERSON, PRO SE. COURT HEARD TESTIMONY. DEFENDANT ADMITS THAT HE IS IN DEFAULT ON SAID NOTE. COURT ORDERS ATTY HENDRICK TO PRODUCE ORIGINAL NOTE TO COURT BY 11/4/09 AT 10:00 A.M. IF FILED, COURT WILL ENTER ORDER AUTHORIZING SALE ON 11/4/09. WHEN ORIGINAL NOTE FILED WITH THE COURT THE COURT CLERK, SHE TO CALL MR. MCDONALD SO THAT HE CAN REVIEW ORIGINAL NOTE.
/AMS



OneWest Bank

One West Bank, FSB
6900 Beatrice Drive
P.O. Box 4045
Kalamazoo, MI 49003-4045

800.781.7399 Tel
269.353.2460 International Callers

www.onewestbank.com

October 22, 2009

Bruce McDonald
4434 Rarity Court
Crestone, CO 81131

Subject: Mortgage Loan Number 1004635122

Dear Bruce McDonald:

On 08/18/2009, IndyMac Mortgage Services received a package requesting the debts owed to IndyMac Mortgage Services be discharged. Thank you for your patience while we reviewed your documents and your loans.

Despite your language to the contrary, you are obligated to repay the amounts stated in the promissory note and to perform the obligations set forth in the deed of trust. Your reliance on the information set forth in your letter is misplaced as courts (a) have not upheld your arguments, (b) have not relieved borrowers from their obligations under the promissory notes and security instruments, and (c) you risk the foreclosure and loss of your property if you fail to pay the amounts owing.

Your letter appears to be an adaptation of assertions that are used by a fraudulent "debt elimination scheme" marketed by various parties, typically on the internet.

For your information, you can review the Order of the United States District Court for the Northern District of California in connection with the case entitled Frances Kenny Family Trust v. World Savings Bank. The Order explains in great detail a particular fraudulent scheme. Although we hope you will read the entire Order, please take a few minutes to read the following excerpts:

"This 'vapor money' case arises out of an elaborate Internet scam orchestrated by plaintiffs Scott Heineman and Kurt Johnson upon distressed homeowners on the verge of losing their homes... Each is frivolous and was filed in bad faith on the theory that no enforceable debt accrues from a lender that funds a loan through wire transfers rather than through hard cash."
[2005 U.S. Dist. Lexis 2403, Page 2]

"Moreover, plaintiffs' 'vapor money' theory has no basis in law. It has been squarely addressed and rejected by various courts throughout the country for over twenty years."
[2005 U.S. Dist. Lexis 2403, Page 6]

In response to your request for documents, attached are:

- A copy of the original executed promissory note. **We are not obligated to furnish a certified copy of the fully endorsed note.**

No "trust" has been created and any assertion to the contrary or to surplus funds is erroneous. **The secondary market sale of the loan** does not have any effect on the amounts you owe under the note.



PLAINTIFF'S EXHIBIT D



GRANTED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

M. A. Gonzales

Martin A. Gonzales

DISTRICT COURT, SAGUACHE COUNTY COURT ADDRESS: 501 4 th Street P.O. Box 197 Saguache, Colorado 81149 <hr/> Plaintiff: ONEWEST BANK, F.S.B. <hr/> Defendant: BRUCE C. McDONALD	E-Filed Document CO Saguache County District Court Clerk JD Filing Date: Jan 23 2010 1:17PM MST Filing ID: 29179712 *COURT USE ONLY* <hr/> Case Number 2009 CV 42
ORDER	

THIS MATTER came before the Court for status conference on January 11, 2010. Before the Court is OneWest Bank's Motion for Reconsideration of the denial of Order Authorizing Sale and Bruce McDonald's Motion for Limited Discovery. The Court orders as follows:

1. The Order denying the Motion for Sale is set aside.
2. OneWest Bank is ordered to produce the Purchase Agreement relating to the Note and any assignments of the Note or, if there are no assignments, to affirmatively assert that fact. Such production and assertion to be made on or before January 22, 2010.
3. Bruce McDonald may respond to any issues shown in the Purchase Agreement or assignments on or before January 25, 2010.
4. This matter is set for further conference concerning the Motion for Order Authorizing Sale on January 27, 2010, at 2:30 p.m. The parties may participate by calling the Court's virtual conference room at (719) 589-7669 and entering conference room 8 when prompted.

SO ORDERED BY THE COURT.

This document constitutes a ruling of the court and should be treated as such.

Court: CO Saguache County District Court 12th JD

Judge: Martin A Gonzales

Alternate Judge: Unassigned

File & Serve

Transaction ID: 28942445

Current Date: Jan 23, 2010

Case Number: 2009CV42

Case Name: ONEWEST BANK FSB vs. MCDONALD, BRUCE C.

Court Authorizer: Martin A Gonzales

/s/ Judge Martin A Gonzales

1 DISTRICT COURT
 2 SAGUACHE COUNTY
 3 STATE OF COLORADO
 4 P.O. BOX 197
 5 SAGUACHE, CO 81149

6 _____
 7 BRUCE C. MCDONALD,
 8 Plaintiff,

9 vs.

10 ONEWEST BANK, FSB,
 11 Defendant.

12 ^ (COURT USE ONLY) ^

13 For the Plaintiff:
 14 Erich Schwiesow
 15 ATTORNEY AT LAW
 16 Registration No. 23385

17 Case No. 09 CV 42

18 For the Defendant:
 19 Susan J. Hendirck
 20 Aronowitz & Mecklenburg, LLP
 21 Registration No. 33196

22 _____
 23 REPORTER'S TRANSCRIPT
 24 _____

25 This matter came on for hearing on
 WEDNESDAY, JANUARY 27, 2010, before the HONORABLE
 MARTIN A. GONZALES, District Judge within and for
 the 12th Judicial District, State of Colorado, and
 the following proceedings were had:

1 AFTERNOON SESSION, WEDNESDAY, JANUARY 27, 2010

2 (The court convened at 2:32 p.m., with
3 all parties present, and the following proceedings
4 were had:)

5 THE COURT: Good afternoon.

6 MR. SCHWIESOW: Good afternoon, Judge.

7 MS. ARONOWITZ: Good afternoon, Your
8 Honor.

9 THE COURT: Mr. Schwiesow, Ms. Aronowitz
10 and some third person, I didn't know who that was.

11 MR. SCHWIESOW: It sounded like Bruce
12 McDonald. Yeah.

13 THE COURT: All right. Well, Counsel,
14 what do you think? Still have no agreement?

15 MS. ARONOWITZ: Your Honor, you know,
16 despite the fact that I have produced the original
17 note, the original deed of trust and a master
18 purchase agreement which evidences that OneWest
19 purchased the assets of IndyMac Bank and the fact
20 that both -- or the respondents acknowledge we've
21 already made (inaudible), I'm absolutely
22 perplexed.

23 Under Colorado law, we've shown our real
24 party in interest. We've shown standing. And,
25 really, according to Colorado law, at this point,

1 if we've met our *prime facie* burden, then the
2 burden shifts to the respondents to show that my
3 client is not the real party in interest. And
4 while I appreciate they've got some California law
5 from a trial court -- of a bankruptcy court in
6 California interpreting California law, I have met
7 above -- we've gone above and beyond what Colorado
8 law requires to show standing. And quite frankly,
9 production of the note and the deed of trust is
10 sufficient under Colorado law to prove standing,
11 and that's the only issue.

12 The borrower has admitted to default.
13 The borrower admits he is not in the military
14 service. And at this point, you know, the
15 respondent is insistent that my client is not the
16 real party in interest and has no standing,
17 despite production of the original note and deed
18 of trust. It's a Rule 11 violation. I mean,
19 quite frankly, they have no good-faith basis for
20 continuing to assert this defense or to argue over
21 standing.

22 MR. SCHWIESOW: Your Honor, we're in the
23 same position that we were in when this Court
24 ordered the limited discovery that it did order.
25 And that issue is whether or not the bank is the

1 real party in interest. And in order to get at
2 that fact and at the issue of whether or not all
3 necessary parties have been joined, we need to
4 know who the owner is. And I concede the bank has
5 shown *prime facie* evidence that it is the owner of
6 that debt, but that's precisely the point.

7 Prime facie evidence is rebuttable, and
8 we are looking for the information that gets that
9 done. And what the bank produced was the master
10 agreement which clearly, when you read the master
11 agreement, incorporates a number of other
12 agreements. And relevant to that consideration of
13 the note and deed of trust at issue in this case,
14 certainly incorporates, at least when it called
15 the loan agreement and the scheduled exceptions.

16 Without those, the master agreement is
17 essentially meaningless, because it says
18 specifically, as I pointed out in my response,
19 unless the assets are explicitly named in one of
20 these subsidiary documents, they are not being
21 purchased by OneWest. So we don't know what
22 OneWest bought by just looking at this master
23 agreement.

24 That's why I've asked counsel for
25 plaintiff for a copy of that. She said she's

1 looking for it and doesn't have it. But without
2 that, we are no -- we are still as in the dark as
3 we ever were. And as I pointed out at the last
4 hearing, McDonald does not have these documents,
5 can't get them except through the bank. And
6 that's what we need to have.

7 THE COURT: Well, how else do you explain
8 them having the original note and deed of trust?
9 It's really the original note that's at issue,
10 isn't it? I mean, isn't that a negotiable item?

11 MR. SCHWIESOW: It is a negotiable item.
12 I have not seen it. But there's been no
13 representation that it has been negotiated. And
14 the UCC requires that endorsement for it to be
15 negotiated. Without that, it is not negotiated.

16 As set forth in the factual findings in
17 that case out of the California bankruptcy
18 district, that apparently was a common practice of
19 IndyMac, to hold on to notes that they had
20 negotiated. So, you know, who has the possession
21 of it in the context of what went on with IndyMac
22 bank, doesn't seem to mean much of anything.

23 Again, I agree, under Colorado law, it's
24 *prima facie* evidence of ownership, but that's all
25 it is.

1 THE COURT: Well, *prime facie* evidence is
2 enough under Colorado law, I believe. I don't
3 think that California bankruptcy court has any
4 true precedential value for little old me in
5 Colorado. So I'm going to issue the order for
6 Rule 120. You're going to have to take it
7 somewhere else if you want to take it further,
8 Mr. Schwiesow.

9 MR. SCHWIESOW: Your Honor, let's talk
10 about that a little bit, if we could, because I
11 think it already exists somewhere else. There is
12 the 41 case that was filed by Mr. McDonald, which
13 I believe had only a -- the pleading that
14 initiated it was a request for a preliminary
15 injunction. There was no complaint. But it needs
16 to have, I believe, a complaint filed in it and
17 proceed forward. Otherwise we just refile
18 essentially the same thing with a complaint.

19 THE COURT: I've already ruled on that,
20 Mr. Schwiesow. Your client raised, frankly, some
21 unintelligible arguments in front of me and I was
22 pleased to see that he got you involved and I
23 appreciate your argumentation. But, frankly, I
24 don't know what you can raise by way of an
25 injunction that's any different than what you've

1 already raised.

2 MR. SCHWIESOW: What I can raise by way
3 of injunction is, you know, we actually get to the
4 bottom of who the owner is. And so what a Rule --
5 all that a Rule 120 order does is authorize the
6 sale.

7 It makes no determination of actual
8 ownership or whether indeed the bank is entitled
9 to proceed with that, and that's what another case
10 would do. And in another case, we actually will
11 have discovery procedures that will -- that cannot
12 be abated by the bank, and we'll be able to figure
13 out whether there is a claim there.

14 That's the whole problem is that we're
15 shooting in the dark at this point. As you know,
16 there's no appeal from a Rule 120 determination,
17 so it's not like we can appeal that issue. What
18 we have to do is file a separate case.

19 THE COURT: Well, that's certainly your
20 prerogative.

21 MS. ARONOWITZ: Here is my concern, too,
22 Your Honor. We have produced the original note
23 and deed of trust. It's a negotiable instrument.
24 The holder of the evidence is proud to enforce it
25 and in time to do a foreclosure. And, basically,

1 what you're saying is that you acknowledge that
2 OneWest is the holder of the evidence of debt, but
3 you're still going to continue to object to it
4 without any good-faith basis in law or in fact. I
5 mean, you have nothing.

6 MR. SCHWIESOW: Rule 19 says you have to
7 have all relevant facts before the Court, and we
8 have no definitive determination of whether or not
9 that's the case.

10 THE COURT: All right. Hang on. I'm
11 going to issue the Rule 120. Mr. Schwiesow,
12 you're within your rights to file whatever
13 independent action that you wish to that order and
14 we'll take it up as it presents itself.

15 MR. SCHWIESOW: All right. Very good.

16 THE COURT: Ms. Aronowitz, I'm not sure
17 that I've got a valid proposed order authorizing
18 sale yet. Remind me, from your recollection of
19 what you filed back in September, can I sign that
20 order and comply with what we've just done?

21 MS. ARONOWITZ: It's my understanding
22 that that's the case, Your Honor, but I can always
23 file -- e-file another one, if you'd like.

24 THE COURT: I'm just asking: Will that
25 suffice for your purpose, the original one?

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MS. ARONOWITZ: Yes, Your Honor, it will.

THE COURT: All right. That's what I'll
sign then. Thank you.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

I, Tina DuBose Gibson, Official Court Reporter in and for the 12th Judicial District, State of Colorado, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Transcript, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

Dated this 10th day of August, 2010.

Tina DuBose Gibson
Tina DuBose Gibson, CSR, RPR
Official Court Reporter
12th Judicial District
925 - 6th Street
Del Norte, Colorado 81132
(719) 657-3394

DISTRICT COURT, SAGUACHE COUNTY COURT ADDRESS: 501 4 th Street P.O. Box 197 Saguache, Colorado 81149 <hr/> Plaintiff: ONEWEST BANK, F.S.B. Defendant: BRUCE C. McDONALD	FILED Document CO Saguache County District Court 12th JD Filing Date: Mar 2 2010 4:08PM MST Filing ID: 29841828 Review Clerk: Brandie Taylor ▲ COURT USE ONLY ▲
Attorney for Defendant Name: Erich Schwiesow, Esq. Address: 311 San Juan Avenue P.O. Box 1270 Alamosa, Colorado 81101 Phone Number: (719) 589-6626 E-Mail: lsrlaw@amigo.net FAX Number: (719) 589-5555 Atty. Reg.#: 23385	Case Number 2009 CV 42
MOTION TO VACATE ORDER AUTHORIZING SALE	

Defendant, Bruce McDonald, by and through his undersigned attorneys files the Motion to Stay Effect of Order Authorizing Sale:

1. Pursuant to C.R.C.P. 121, counsel for Defendant has not discussed this matter with counsel for OneWest, as such consultation would be futile. See comment to Rule 121 Section 1-15.

2. Defendant files this Motion for Relief from Order Authorizing Sale pursuant to C.R.C.P. 60(b). As set forth in the Motion, OneWest Bank has misrepresented and concealed the fact that it does not own the Note being foreclosed upon in this case. Such misrepresentation, concealment, and the active efforts of OneWest to thwart McDonald's attempts to obtain evidence of the ownership of the Note resulted in an improper entry of the Order Authorizing Sale. It further constituted fraud upon the Court and upon McDonald himself.

3. On February 4, 2010, this Court issued its Order Authorizing Sale in this matter after having ordered limited discovery in this case. On February 11, 2010, McDonald filed his Motion to Reconsider the Order Authorizing Sale, and on February 26, 2010, this Court entered its Order denying Defendant's Motion to Reconsider.

4. Subsequent to filing of the Motion to Reconsider, Defendant has learned that indeed OneWest Bank is not the owner of the Note that is the subject matter of the pending foreclosure sale.

5. Foreclosure sale is currently scheduled for March 4, 2010.

6. As set forth in the attached Affidavit, Defendant filed a Freedom of Information Act request concerning his Note with the FDIC, from whom OneWest purportedly derives its title. (See Master Purchase Agreement filed with the Certificate of Compliance filed by OneWest Bank on

January 13, 2010).

7. As set forth in the Affidavit, the FDIC has confirmed that OneWest Bank does not own Defendant's Note.

8. Accordingly, OneWest Bank is not a holder pursuant to the UCC. C.R.S. § 4-3-201; C.R.S. § 4-1-201(b)(20)(a).

9. OneWest Bank has maintained throughout these proceedings that it was the owner of the Note, while resisting any efforts at discovery, and providing only ineffectual responses to the discovery that was ordered by this Court.

10. In light of the statement from the FDIC, it becomes apparent that OneWest's resistance to any discovery in this matter was done in bad faith. The result of OneWest's bad faith in this matter was to both increase the litigation costs and potentially to result in the unlawful deprivation of Mr. McDonald's home.

11. At every step of the way in trying to contest this unlawful deprivation of his home, Mr. McDonald and undersigned counsel have been met with a request for an award of attorneys fees against them. See *Response to Motion to Provide for Limited Discovery* filed on January 8, 2010, at paragraph 5 and the Request for Relief; *Supplemental Status Report* filed January 27, 2010, at paragraph 21; and *Response to Motion to Reconsider* at paragraph 29 and the Request for Relief. Truly this is a situation in which OneWest "doth protest too much".

12. The documents provided by the FDIC are taken from a screenshot of OneWest's own records indicating that OneWest and its attorneys had to have known that OneWest was not the owner of the Note, all while making representations to the contrary.

WHEREFORE Defendant requests that this Court set aside its Order Authorizing Sale and at least stay the sale until this matter is resolved, and issue an Order Denying Sale.

Respectfully submitted this 2nd day of March, 2010.

LESTER, SIGMOND, ROONEY & SCHWIESOW

By /S/
*Duly signed Original at the law offices of Lester,
Sigmond, Rooney & Schwiesow*

CERTIFICATE OF SERVICE

I do hereby certify that on the 2nd day of March, 2010, a true and correct copy of the above Motion to Vacate Order Authorizing Sale was e-filed and served via justicelink:

Aronowitz & Mecklenburg, LLP
1199 Bannock Street
Denver, Colorado 80204

 /S/ Linda S. Ramirez
*Duly signed Original at the law offices of Lester,
Sigmond, Rooney & Schwiesow*

BID

TO: PUBLIC TRUSTEE OF THE COUNTY OF SAGUACHE COUNTY (hereinafter the "officer).

RE: Public Trustee Sale No. 22-2009/Our File No. 3500.00661/Grantor: Bruce C. McDonald

OneWest Bank FSB (HOLDER), whose mailing address is 7700 W. PALMER LANE BLDG D, Austin, TX 78729, bids the sum of **\$171,002.74** to be held on March 04, 2010. The following is an itemization of all amounts due to holder of the evidence of debt secured by the Deed of Trust or other lien being foreclosed:

Street Address: 4434 Rarity Court, Crestone, CO 81131

Interest Rate: Regular: X Default: Rate of Interest as of the date of Sale: 6.500

Principal	\$200,912.31
Interest	\$12,078.42
Late Charges	\$674.70

Category Subtotal \$213,665.43

Plus fees and costs for the following:

Corporate Advances	\$88.00
--------------------	---------

Category Subtotal \$88.00

Plus fees and costs for the following:

Attorneys' Fees	\$3,875.00
Foreclosure Search	\$250.00
Tax Certificate:	\$30.00
Court Docketing	\$234.00
HB 1276	\$150.00
CCDOT	\$44.20
Postage, Xeroxing & Telephone	\$15.30
Delivery Charge	\$29.48
Title Update fee/Fed Ex*	\$248.00

Category Subtotal \$4,875.98

Plus fees and costs for the following:

Public Trustee's Fees and costs	\$150.00
Publication Cost	\$475.15
Other	\$81.00

Category Subtotal \$706.15

Total Due	\$219,335.56
Bid Amount	\$171,002.74
Deficiency	\$48,332.82

Please send us the following:

1. Certificate of Purchase
2. Confirmation Deed
3. Promissory Note, with the deficiency noted thereon (if applicable)
4. Refund for overpayment of officers fees and cost, if any
5. Other

DATED 3/2, 2010.

By: **ARONOWITZ & MECKLENBURG, LLP**

Attorney for Holder

Robert J. Aronowitz, Esq.
 Stacey L. Aronowitz, Esq.
 Joan Olson, Esq.
 Andrea Rickles-Jordan
 Monica Kadras, Esq.
 1199 Bannock Street/
 (303) 813-1177

Reg. No. 5673
 Reg. No. 36290
 Reg. No. 28078
 Reg. No. 39005
 Reg. No. 34904
 Denver, Colorado 80204

<p>District Court, Saguache County, Colorado 501 4th Street P.O. Box 197 Saguache, Colorado 81149</p> <p>Plaintiff: BRUCE C. McDONALD</p> <p>Defendant: ONEWEST BANK, F.S.B.</p> <p><i>Attorneys for OneWest Bank, F.S.B.</i> Stacey L. Aronowitz, Atty Reg. No. 36290 Susan J. Hendrick, Atty Reg. No. 33196 Randall M. Chin, Atty Reg. No. 31149 Aronowitz & Mecklenburg, LLP 1199 Bannock Street Denver, Colorado 80204 Phone Number: 303-813-1177 FAX Number: 303-813-1107 E-mail: Stacey@amlawco.com Susan@amlawco.com Randy@amlawco.com</p>	<p>FILED Document CO Saguache County District Court 12th JD Filing Date: Mar 26 2010 1:42PM MDT Filing ID: 30271132 Review Clerk: Pearl A Gutierrez</p> <p>COURT USE ONLY</p> <p>Case No. 09CV41</p> <p>Division:</p> <p>Courtroom:</p>
<p>MOTION TO STRIKE, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION FOR ATTORNEY FEES AND SANCTIONS</p>	

Defendant, OneWest Bank, F.S.B. (“OneWest”), by its attorneys, Aronowitz and Mecklenburg, LLP, for its *Motion to Strike, Motion to Dismiss for Failure to State a Claim and Motion for Attorney Fees and Sanctions*, and in support thereof, states:

STATEMENT OF NON-CONFERRAL

Counsel for OneWest states opposing counsel has NOT been consulted regarding this motion because “Conferring would obviously not be appropriate . . . prior to a motion to dismiss”. C.R.C.P. 121 § 1-15, Committee Comment.

RESERVATION OF RIGHTS

OneWest, by the filing hereof, does not accept service or waive any defect therein. The Complaint was filed via Lexis-Nexis, but no summons was filed therewith. This Motion is being filed solely as a precaution because Attorneys for OneWest are unable to determine whether proper service has been made, but are aware of the Complaint via Lexis-Nexis. Nevertheless, service of the summons and complaint cannot be made via Lexis-Nexis. C.R.C.P. 4(c) and (e).

SUMMARY OF MOTIONS

Pursuant to Order of the Court dated September 29, 2009, this matter was consolidated with Case No. 2009CV42; consequently the filing of the Complaint herein was improper, and the Complaint should be stricken. Nevertheless, Plaintiff Bruce C. McDonald (“Plaintiff”) fails to state a claim with regard to unlawful foreclosure. **OneWest need not be the “owner” of the note to foreclose; OneWest need only be the holder thereof.** Plaintiff’s allegations amply establish, and OneWest has proven in prior proceedings, that it is the holder of the note, ***INCLUDING BY PRODUCING THE ORIGINAL NOTE TO THE COURT.***

Notwithstanding the overwhelming and conclusive evidence, including production of the original note, Plaintiff persists on pursuing meritless litigation, the only purpose of which, at this point, can be to harass OneWest. Consequently, attorney fees and sanctions are merited.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of a claimant’s complaint. *Bedard v. Martin*, 100 P.3d 584, 588 (Colo. App. 2004). A motion to dismiss for failure to state a claim is looked upon with disfavor, and a complaint should not be dismissed unless it appears beyond a doubt that a claimant can prove no set of facts

in support of the claim which would entitle the claimant to relief. *Id.* In ruling on a motion to dismiss, a court may consider only the matters stated within the four corners of the complaint and must not go beyond the confines of the pleading. *Jenner v. Ortiz*, 155 P.3d 563, 564 (Colo. App. 2006). The court must accept all well-pleaded facts as true, but is not required to accept as true legal conclusions couched as factual allegations. *Western Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo.App. 2009).

If on a motion to dismiss, matters outside the pleadings are presented to and not excluded by the court, the motion is treated as one for summary judgment. C.R.C.P. 12(b). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *See* C.R.C.P. 56(c); *see also Kaiser Foundation Health Plan of Colorado v. Sharp*, 741 P.2d 714, 718 (Colo. 1987).

FACTS

The following facts are alleged by Plaintiff or otherwise are not subject to dispute:

On May 27, 2003, Plaintiff executed a promissory note (“Note”) payable to IndyMac Bank, F.S.B. Note at ¶ 1. **The Note is endorsed by IndyMac Bank, F.S.B. in blank.** *Id.* The Note is secured by a deed of trust (“Deed of Trust”) encumbering real property situated in Saguache County, Colorado in the amount of \$198,000.00 for the benefit of IndyMac Bank, F.S.B. Complaint at ¶ 4.

Beginning with the payment due May 1, 2009, Plaintiff failed to make the monthly payments thereon. In August 2009, **OneWest commenced non-judicial foreclosure proceedings** through the Saguache County Public Trustee (“Public Trustee”). In attempt to stop the Public

Trustee proceedings, Plaintiff filed this matter on September 10, 2009 seeking injunction. Complaint at ¶ 6. On September 11, 2009, in connection with the Public Trustee proceedings, OneWest commenced a Rule 120 action, Case No. 2009CV42. Complaint at ¶ 7. These matters were consolidated by Order of the Court on September 29, 2009. In the course of these proceedings, OneWest produced evidence it was the holder of the Note, including evidence it purchased the assets of IndyMac Bank, F.S.B. and production of the original note.

ARGUMENT

Motion to Strike

As an initial matter, Plaintiff's Complaint should be stricken because this matter was consolidated with 2009CV42, and has been closed. Order of Consolidation dated September 29, 2009. In the absence of leave to reopen this matter, Plaintiff's Complaint is procedurally improper.

Motion to Dismiss

Plaintiff asserts as fact the legal conclusion that OneWest is not the real party in interest because it is not the "owner" of the Note. However, even assuming, contrary to the overwhelming evidence already provided to this Court, that OneWest is *not* the owner of the Note, Plaintiff fails to state a claim for which relief may be granted because OneWest need only be the *holder* of the Note to be the real party in interest.

The *real party in interest* is that party who, by virtue of substantive law, has the right to invoke the aid of the court in order to vindicate the legal interest in question. Goodwin v. District Court, 779 P.2d 837, 843 (Colo. 1989). Under Colorado's foreclosure laws, the "holder of an evidence of debt" is entitled to commence foreclosure proceedings through the Public

Trustee. C.R.S. § 38-38-101. For purposes of the foreclosure statutes, evidence of debt means “a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction” [emphasis supplied]. C.R.S. § 38-38-100.3 (8). The holder of an evidence of debt is “*the person in actual possession of* or otherwise entitled to enforce an evidence of debt” [emphasis supplied]. C.R.S. § 38-38-100.3 (10). Here, *OneWest has produced the original note and deed of trust to the Court.* It follows that OneWest is the holder of the Note, and the real party in interest.

“Assignment” of a Note is done by *indorsement*. C.R.S. § 4-3-204. *Indorsement is relevant only as to the rights and liabilities between persons claiming ownership to the note and former holders.* See C.R.S. § 4-3-205 and 206; § 4-3-415. As the *maker* of the Note, *Respondent is liable for the Note to the holder thereof, whether or not the holder came into possession thereof lawfully.* C.R.S. § 4-3-301. Consequently, whether the OneWest establishes an unbroken chain of assignments back to Respondent, or OneWest snatched the Note out of the hands of the true owner in plain sight of the Court on the day before commencing the foreclosure, OneWest is the holder, and has standing to enforce the Note.

The Deed of Trust follows the Note. Bray v. Trower, 87 Colo. 240, 244, 286 P. 275, 277 (1930)¹. In fact, it is well settled law in Colorado that the security for the debt follows the assignment of the debt itself. Wiswall v. Giroux, 197 P. 759 (Colo. 1921). See also, Columbus

¹ This principle is partially codified by statutory provisions allowing qualified holders to foreclose through the public trustees without producing the original note and deed of trust or endorsement or assignment thereof. See C.R.S. §§ 38-38-100.3 (20) and 101(1)(b)(II), (1)(c) and (2). As federal savings banks, both IndyMac Bank and OneWest are qualified holders. C.R.S. § 38-38-100.3 (20).

Investments v. Lewis, 48 P.3d 1222, 1225-1226 (Colo. 2002) (“the transfer or assignment of a negotiable promissory note carries with it, as an incident, the deed of trust or mortgage upon real estate or chattels that secures its payment”). Colorado law does not require even a written document to evidence the transfer of the evidence of debt, let alone the recording of such document. Bank of Bromfield v. McKinlay, 53 Colo. 279, 281-82, 125 P. 493, 494 (1912) (Negotiable instrument may be transferred by delivery). Furthermore, according to Willis Carpenter, an established expert on the subject of real estate in Colorado:

When a lender transfers a promissory note, the deed of trust securing that note is transferred to the new lender, by operation of law, even if the prior lender does not execute or record an assignment of the deed of trust. COLORADO REAL ESTATE PRACTICE, Volume 1, §503.

Consequently, notwithstanding the lack of a recorded assignment, OneWest’s has the right, as **holder of the Note**, to enforce the deed of trust. Id.; C.R.S. § 38-38-100.3 (10); C.R.S. § 4-3-301.

Plaintiff’s argument basically boils down to, notwithstanding **transfer of possession of the Note and Deed of Trust to OneWest** and actual production thereof in court, **it cannot be determined from the purchase contract whether the Note and Deed of Trust were included among the billions of dollars of loans that were the a portion of the purchase contract**. This argument is frivolous because first, as repeatedly noted in these proceedings, **OneWest need only be the holder, not the owner**, of the note to be the real part in interest. More directly Plaintiff does not have a legal standing. Kreft v. Adolph Coors Co., 170 P.3d 854, 857 (Colo.App. 2007). To have standing, Plaintiff must have an injury in fact and the injury must be to a legally protected interest. Id. There is no injury in fact because, **regardless of whether the note was validly assigned to OneWest, Plaintiff is liable thereon**. C.R.S. § 4-3-301. Furthermore, Plaintiff has no legally protected interest in the transfer because **Plaintiff is not a party to the Purchase**

Contract, or a beneficiary of any kind therein. No dispute exists between ***the parties to the Purchase Contract***, and in the absence of any such dispute, there is no controversy regarding the meaning thereof, including whether the note was transferred to OneWest.

Motion for Sanctions

The above law is ground that the parties repeatedly have gone over in the Rule 120 proceedings, including *Plaintiff's Motion to Reconsider*. Nevertheless, **Plaintiff stubbornly persists in his irrelevant "OneWest is not the owner" defense (now claim)**. Despite the authorities cited by OneWest, Plaintiff **continues to make the unsupported legal assertion that OneWest has to prove ownership** via an unbroken chain of assignments.

"The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needlessly increase the cost of litigation." C.R.C.P. 11(a). Notwithstanding that the controlling authority has been repeatedly cited, Plaintiff's attorney refuses to follow it or to cite **any** authority to support Plaintiff's legal position. Either Plaintiff's attorney has failed to make a reasonable inquiry into existing law, or he is willfully assisting his client in groundless, frivolous and vexatious litigation or in unnecessarily delaying the foreclosure proceedings. In either case, this is one of the rare cases in which attorney fees are justified under C.R.C.P. 13-17-102(4), and sanctions are justified under C.R.C.P. 11.

CONCLUSION

Plaintiff's complaint is procedurally improper because it is filed in a closed case, and therefore should be stricken. Nevertheless, Plaintiff's complaint fails to state a claim for which relief may be granted because OneWest need only, and did, show that it is the holder of the Note and Deed of Trust. Plaintiff's filing of the complaint herein, without citation of any authorities for the legal proposition that a party must prove by chain of assignment that it is the owner of the note in order to be the real party in interest after repeated citation of the controlling authorities by OneWest, demonstrate Plaintiff's bad faith and justify an award of attorney fees and imposition of sanctions.

WHEREFORE, OneWest requests the Court (1) (a) strike Plaintiff's complaint; or (b) dismiss Plaintiff's complaint, with prejudice; (2) award attorney fees and costs against Plaintiff and/or Plaintiff's counsel and in favor of OneWest; (3) impose sanctions against Plaintiff's counsel pursuant to C.R.C.P. 11 as the Court may deem appropriate to the circumstances; and (4) provide such other and further relief as the Court may deem proper.

DATED this 26th day of March 2010.

Respectfully submitted,

ARONOWITZ & MECKLENBURG, LLP

/s/ Susan J. Hendrick



Stacey L. Aronowitz, #36290

Susan J. Hendrick, #33196

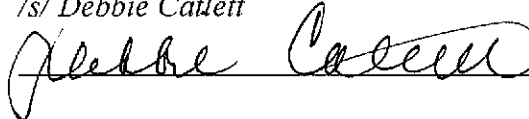
Randall M. Chin, #31149

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2010, a true and correct copy of the foregoing was served via *LexisNexis* on the following:

Erich Schwiesow, Esq.
311 San Juan Avenue
PO Box 1270
Alamosa, CO 81101

/s/ Debbie Catlett

A handwritten signature in cursive script, appearing to read "Debbie Catlett", written over a horizontal line.

THIS DOCUMENT WAS FILED TO THE COURT THROUGH THE LEXISNEXIS COURTLINK ELECTRONIC FILING PROCEDURES PURSUANT TO C.R.C.P. 121 § 1-26. AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED COPY OF THIS DOCUMENT IS ON FILE AT ARONOWITZ & MECKLENBURG, LLP.