

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

Case No.

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.

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:

PARTIES

1. The Plaintiff, Bruce C. McDonald ("Mr. McDonald") is a natural person.
2. 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.
3. 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.

4. 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.
5. 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

6. 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.
7. This Court has jurisdiction over this matter and the parties pursuant to the Racketeer Influenced and Corrupt Organization Act (“RICO”), 18 U.S.C. § 1961, *et seq.*
8. This Court has jurisdiction over this matter and ONEWEST in diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(3).
9. This Court has supplemental jurisdiction over Plaintiff’s state-based and common-law claims pursuant to 28 U.S.C. § 1367.
10. Venue and personal jurisdiction is 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.
11. Venue and personal jurisdiction is proper in this District, as ONEWEST has transacted business within the District.
12. Venue and personal jurisdiction is proper in this District as the action against Mr. McDonald and his property, which is the ultimate subject of this lawsuit, are

situated in this District.

13. Venue and personal jurisdiction is 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

14. Plaintiff, Mr. McDonald, incorporates by reference Paragraphs 1-13 of this Complaint, as though fully contained herein, insofar as they may be applicable.
15. On or about May 27, 2003, Mr. McDonald entered into a written agreement with an entity named INDYMAC BANK, F.S.B. ("INDYMAC BANK"), wherein Mr. McDonald was to receive a check from INDYMAC BANK in the amount of One Hundred and Ninety-Eight Thousand Dollars (\$198,000).
16. Said written agreement required Mr. McDonald to repay INDYMAC BANK for the funds received, and said agreement was memorialized on the above referenced date in a document entitled ADJUSTABLE RATE NOTE ("Note"). Said Note is attached hereto as Plaintiff's Exhibit "A," as though fully contained herein.
17. Said Note was secured by a residential property purchased and owned by Mr. McDonald, located at 4434 Rarity Court, Crestone, Colorado.
18. Said security was in the form of a Deed of Trust, ("Deed of Trust") executed on May 27, 2003, by Mr. McDonald in favor of INDYMAC BANK, which is attached hereto as Plaintiff's Exhibit "B," as though fully contained herein.
19. Thereafter, Mr. McDonald was in compliance with the agreement for repayment under the terms of the said Note, up to and including April 2009.

20. On or about July 11, 2008, INDYMAC BANK was closed by the OFFICE OF THRIFT SUPERVISION (“OTS”), an agency of the United States Government.
21. After said closure, INDYMAC BANK went into bankruptcy and the FEDERAL DEPOSIT INSURANCE CORPORATION (“FDIC”) was named as the bank’s conservator.
22. FDIC reopened INDYMAC BANK under the name of INDYMAC FEDERAL BANK.
23. FDIC operated said INDYMAC FEDERAL BANK in receivership for approximately 8 months.
24. In March 2009, FDIC sold INDYMAC FEDERAL BANK to a Pasadena, California holding company, IBM HOLDCO, LLC.
25. At all material times hereto, IBM HOLDCO, LLC was owned and controlled by IBM MANAGEMENT HOLDINGS, LP.
26. After said purchase, the bank, INDYMAC FEDERAL BANK, reopened as ONEWEST BANK, F.S.B. (“ONEWEST”), as referenced above in paragraph 3.
27. As a part of the purchase of the assets of INDYMAC, and/or INDYMAC FEDERAL BANK, ONEWEST purchased the servicing rights to said Note involving Mr. McDonald.
28. Said Note purports to be a simple and straightforward mortgage.
29. 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.

Said letter dated April 10, 2009, is attached hereto as Plaintiff’s Exhibit “C,” as though fully contained herein.

30. After receipt of said letter, on or about April 12, 2009, Mr. McDonald called ONEWEST to inquire who they were, and what obligations he had to them.
31. Upon information and belief, ONEWEST refused to disclose the status of ONEWEST's position related to its ownership of said Note and Deed of Trust.
32. ONEWEST, through its representatives, did insist, however, that Mr. McDonald now owed ONEWEST the same monthly mortgage payments as he had previously paid to INDYMAC BANK.
33. 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.
34. On or after April 12, 2009, Mr. McDonald refused payment.
35. Thereafter, ONEWEST retained the services of a law firm to represent its interest, namely: ARONOWITZ & MECKLENBURG, L.L.P. ("ARONOWITZ").
36. At all times material hereto, ARONOWITZ was acting under the authority of ONEWEST.
37. Said agreement between ARONOWITZ and ONEWEST created an attorney/client relationship.
38. 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.
39. At all times material hereto, ARONOWITZ acted as the agent(s) of ONEWEST.

40. On or about August 4, 2009, ONEWEST, through ARONOWITZ, mailed a letter to Mr. McDonald which stated, in bold: **“Notice under Fair Debt Collection Practices Act 15 U.S.C. 1962, et seq.”** Said letter dated August 4, 2009, is attached hereto as Plaintiff’s Exhibit “D,” as though fully contained herein.

41. 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.

42. ONEWEST and ARONOWITZ, each and individually, used: the mail; interstate telephone systems; and, online, interstate computer systems to conduct its business, including, but not limited to, collection of debt acquired from INDYMAC BANK and INDYMAC FEDERAL BANK.

43. ARONOWITZ are debt collectors as defined by FDCPA and the Colorado Fair Debt Collection Practices Act (“CFDCPA”).

44. ONEWEST are debt collectors as defined by FDCPA and the CFDCPA.

45. Mr. McDonald is a consumer as defined by FDCPA and CFDCPA.

46. 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.

47. 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 of Saguache County (“Public Trustee”). Attached hereto as Plaintiff’s Exhibit “E” is a copy of said Certification, as though fully contained herein.

48. Said Certification was signed under oath by an attorney from ARONOWITZ.
49. In said Certificate, ARONOWITZ certified that ONEWEST was a “Qualified Holder” pursuant to Colorado Revised Statute, § 38-38-101, *et.seq.*
50. Said Certificate certified that ONEWEST bank was the holder of the original evidence of debt and was the current beneficiary of the Deed of Trust executed by Mr. McDonald on May 27, 2003.
51. At all material times hereto, ONEWEST was not, and is not, the “Holder In Due Course” of the original Note, executed by Mr. McDonald on May 27, 2003.
52. At all material times hereto, ONEWEST was not, and is not, the beneficiary of said Deed of Trust, executed by Mr. McDonald on May 27, 2003.
53. On or about August 10, 2009, Mr. McDonald received a “COMBINED NOTICE SAGUACHE COUNTY PUBLIC TRUSTEE SALE” NO. 22-2009. Attached hereto as Plaintiff’s Exhibit “F” is a copy of said Notice dated August 10, 2009, as though fully contained herein.
54. Said Notice from the Public Trustee stated that Mr. McDonald’s home had been scheduled for sale to the highest bidder on December 3, 2009, at 10:00 a.m., at the Saguache County Courthouse.
55. On or about August 17, 2009, Mr. McDonald responded to ONEWEST, by certified mail addressed to its agent ARONOWITZ, disputing the validity of the alleged debt. Attached hereto as Plaintiff’s Exhibit “G” is said letter dated August 17, 2009, as though fully contained herein.
56. In said letter 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.

57. On or about August 22, 2010, ONEWEST, through ARONOWITZ, responded to Mr. McDonald's letter, and indicated therein that ARONOWITZ in fact represented ONEWEST, and enclosed a copy of the above-referenced Note and Deed of Trust. Attached hereto as Plaintiff's Exhibit "H" is said letter and attachments dated August 22, 2009, as though fully contained herein.
58. Said letter of August 22, 2009, containing the attached Note, clearly states that INDYMAC BANK, FSB is the Lender, not ONEWEST BANK.
59. Said letter of August 22, 2009, Deed of Trust clearly states the beneficiary to be INDYMAC BANK FSB, not ONEWEST BANK.
60. No notation(s), mark(s), stamp(s), endorsement(s) or assignment(s) on the Note or Deed of Trust indicated or, in any way, demonstrated that the Note and/or Deed of Trust was transferred, endorsed, sold, assigned or conveyed to ONEWEST.
61. Said letter dated August 22, 2009, from ONEWEST, through ARONOWITZ, also stated: Our office [ARONOWITZ] represents ONEWEST BANK, FSB who is the servicer and holder of the loan which was originated by INDYMAC BANK F.S.B.
62. No other documentation was attached, mailed, or delivered to Mr. McDonald that demonstrated that the Note and/or Deed of Trust had been transferred, endorsed, sold, assigned or conveyed to ONEWEST.
63. Said letter dated August 22, 2009, did not indicate that ONEWEST was the "Holder In Due Course."
64. As of August 22, 2009, ONEWEST was not the "Holder In Due Course."

65. Upon information and belief, up to and including the date of the filing of this Complaint, ONEWEST has never been the “Holder In Due Course” of said Note and Deed of Trust.
66. Said letter of August 22, 2009, stated: The Adjustable Rate Note and Deed of Trust gives our client a secured interest in the property at 4434 Rarity Court, Crestone, CO 81131.
67. As of August 22, 2009, ONEWEST knew, or should have known, that it did not have a secured interest in said property, Note or Deed of Trust.
68. As of August 22, 2009, ONEWEST knew, or should have known, that it was not the Holder in Due Course.
69. At all times material hereto, ONEWEST had purchased only the servicing rights to said Note.
70. At all material times, ONEWEST never ceased collection efforts against Mr. McDonald.
71. At sometime previous to the bankruptcy of INDYMAC BANK, as referenced above, another entity entitled FEDERAL HOME LOAN MORTGAGE CORPORATION (“FREDDIE MAC”) had purchased said Note and Deed of Trust executed by Mr. McDonald on May 27, 2003.
72. The FDIC has confirmed that FREDDIE MAC purchased and owns the Note and Deed of Trust executed by Mr. McDonald on May 27, 2003. Attached hereto as Plaintiff’s Exhibit “I” is a letter from the FDIC drafted March 1, 2010, as though fully contained herein.

73. Upon information and belief, FREDDIE MAC purchased said Note and Deed of Trust in September 2004. Attached hereto as Plaintiff's Exhibit "J" is a printout dated March 1, 2009, of the computer screen of INDY MAC MORTGAGE SERVICES, a division of ONEWEST, in reference of Mr. McDonald's account as though fully contained herein.
74. At all material times, ONEWEST knew that FREDDIE MAC had purchased the Note and Deed of Trust executed by Mr. McDonald on May 27, 2003.
75. On or about February 26, 2010, INDY MORTGAGE SERVICES, a division of ONEWEST, sent Mr. McDonald a letter which stated:
- 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.
- Attached hereto as Plaintiff's Exhibit "K" is a copy of said letter dated February 26, 2010, as though fully contained herein.
76. On or about September 10, 2009, Mr. McDonald filed a independent action in Saguache County District Court, referenced under case number 09 CV 41, 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.
77. On or about September 10, 2009, ONEWEST filed for a Rule 120 Hearing in order to obtain an Order Authorizing Sale of Mr. McDonald's property, through the Public Trustee.
78. On or about October 14, 2009, the Saguache County District Court ("Colorado District Court") ordered ONEWEST to produce the original Note and Deed of Trust.

79. ONEWEST did not produce the original Note and Deed of Trust by the deadline imposed, and the Colorado District Court denied ONEWEST an Order Authorizing Sale, and administratively closed both cases.
80. Soon thereafter, ONEWEST filed a Motion to Reconsider and produced an alleged original Note and Deed of Trust.
81. The Colorado District Court then ordered ONEWEST to produce a sales contract proving that Mr. McDonald's loan was an asset that ONEWEST acquired when they originally bought the assets of INDYMAC BANK and INDYMAC FEDERAL BANK.
82. ONEWEST produced a "Master Sales Agreement" between ONEWEST and the FDIC.
83. Said Master Sales Agreement did not indicate any individual assets that were purchased by ONEWEST.
84. On February 4, 2010, the Colorado District Court, issued an Order allowing the sale of Mr. McDonald's property to commence pursuant to Colorado Rules of Civil Procedure 120, which set the sale at public auction for March 4, 2010.
85. On or about March 2, 2010, Mr. McDonald, through counsel, filed a Motion to Vacate the Order Authorizing Sale, which contained the March 1, 2009, letter from the FDIC, referenced above as Plaintiff's Exhibit "I."
86. On March 4, 2010, ONEWEST, the only bidder, purchased Mr. McDonald's property with a deficiency bid in the amount of one hundred and seventy-one thousand, two dollars and seventy-four cents (\$171,002.74).

87. Thereafter, ONEWEST claimed a balance owed of forty-eight thousand, three hundred and thirty-two dollars and eighty-two cents (\$48,332.82).

88. On or about March 17, 2010, ONEWEST filed a response, through ARONOWITZ, to said Motion to Vacate, stating in pertinent part:

The original note and deed of trust were transferred to ONEWEST.

89. ONEWEST's statement to the District Court that the original Note and Deed of Trust were transferred to ONEWEST was and is false, misleading and untrue

90. On or about March 25, 2010, ONEWEST assigned its interest in said property to FREDDIE MAC in consideration of ten dollars (\$10).

91. On or about April 10, 2010, said Colorado District Court denied Mr. McDonald's Motion to Vacate Order Authorizing Sale.

92. On or about June 29, 2010, FREDDIE MAC initiated a Forcible Entry and Unlawful Detainer action ("FED"), in Saguache County Court, against Mr. McDonald.

93. A trial date for the FED action has been set for July 30, 2010.

**FIRST CAUSE OF ACTION
CIVIL RICO**

94. As and for the first 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.

95. Mr. McDonald incorporates by reference paragraphs 1-94 of this Complaint as though fully contained herein, and so far as they may be applicable.

96. 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).

97. At all material times hereto, ONEWEST and other unnamed conspirators were “persons” within the meaning of RICO, 18 U.S.C. §§1961(3) and 1962(c).
98. At all material times hereto, ONEWEST and other conspirators formed an association-in-fact 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 has servicing rights, **but was not the holder in due course**, and thus, did not have the capacity or standing to enforce the rights and/or claims incumbent to such notes and deeds of trust.
99. This association-in-fact was an “enterprise” within the meaning of RICO, 18 U.S.C. §1961(4).
100. At all material times hereto, this enterprise was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. §1962 (c).
101. At all material times hereto, ONEWEST 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).
102. At all material times hereto, ONEWEST and other as yet unknown conspirators engaged in “racketeering activity” within the meaning of 18 U.S.C. §1961(1) by engaging in the acts set forth above.

103. Said acts set forth above constitutes a violation 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 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.
104. The acts of racketeering activity referred to in the previous paragraph, constituted a “pattern of racketeering activity” within the meaning of 18 U.S.C. § 1961(5), and/or the collection of an illegal debt.
105. 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 the Plaintiff 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 ONEWEST and other conspirators.
106. This fraudulent scheme has continued for over a year and threatens to continue despite the institution of this Complaint.
107. As a result of ONEWEST and other conspirators violations of 18 U.S.C. § 1962(c), Mr. McDonald has suffered the loss of his home, property, and other damages, including, but not limited to, economic losses, attorney’s fees, past, present and

future mental pain and suffering.

108. 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.

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

WHEREFORE, Plaintiff prays following his final cause of action.

**SECOND CAUSE OF ACTION
PATTERN OF RACKETEERING ACTIVITY**

110. As and for a second cause of action for RICO conspiracy, pursuant to 18 USC §1962(a) *et seq.*, against Defendant, ONEWEST, and John and Jane Does 1-100 and ABC Corporation, 1-20, inclusive; Plaintiff, Mr. McDonald, alleges as follows.

111. Plaintiff incorporates by reference paragraphs 1-110 of this Complaint as though fully contained herein.

112. As set forth in Mr. McDonald's First Cause of Action, ONEWEST and other 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), in violation of RICO, 18 U.S.C. § 1962(c).

113. At all material times hereto, ONEWEST and other as yet known conspirators each were associated with this enterprise and agreed and conspired to violate 18 U.S.C. § 1962(c), that is, agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

114. At all material times hereto, ONEWEST and other as yet known conspirators each were associated with this enterprise and derived income from a pattern of racketeering activity or the collection of illegal debts directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, and the collection of illegal debts in violation of 18 U.S.C. § 1962(a).
115. At all material times hereto, ONEWEST and other as yet known conspirators each were associated with this enterprise and derived income from a pattern of racketeering activity or the collection of illegal debts directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity or the collection of illegal debts, in violation of 18 U.S.C. § 1962(a) and that some part of that income was used in acquiring an interest in, or operating, the enterprise.
116. Said acts as set forth above constitutes a violation of one or more of the following statutes: 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 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.
117. ONEWEST and other conspirators committed and caused to be committed a series of over acts in furtherance of the conspiracy and to affect the objects thereof, including but not limited to the acts set forth above.

118. As a result of ONEWEST's and other conspirators' violations of 18 U.S.C. § 1962(d), Mr. McDonald has lost his home, property, and suffered economic and general damages in the fraudulent scheme that ONEWEST created, organized, serviced and continued to operate and run.

119. As a result of said conspiracy, ONEWEST is liable to Mr. McDonald for his losses in an amount to be determined at trial.

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

WHEREFORE, Plaintiff prays following his final cause of action.

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

121. 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.

122. Mr. McDonald incorporates by reference paragraphs 1-121 of this Complaint as though fully contained herein, and so far as they may be applicable.

123. ONEWEST violated the FDCPA, 15 U.S.C. § 1692 *et. seq.*, by:

- a. Using false, deceptive, and/or misleading representations with regard to the character, amount and/or legal status of an alleged debt owed by Mr. McDonald to ONEWEST;
- b. Using unfair and unconscionable means to collect and attempt to collect a debt by fraudulently claiming to be the holder in due course, and thus the real party in interest in Mr. McDonald's Note and Deed

of Trust;

- c. Using unfair and unconscionable means to collect and attempt to collect a debt by fraudulently advising a District Court in the State of Colorado that ONEWEST owned Mr. McDonald's Note and Deed of Trust, when in fact they did not; and,
- d. Failing to provide notice with regard to the true name of the creditor to whom the debt is owed in violation of 15 USC § 1692(g).

WHEREFORE, Plaintiff prays following his final cause of action.

FOURTH CAUSE OF ACTION FRAUD

124. As and for the fourth 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:

125. Mr. McDonald incorporates by reference paragraphs 1-124 of this Complaint as though fully contained herein, and so far as they may be applicable.

126. ONEWEST expressly and/or impliedly represented to Mr. McDonald, and the Saguache County District Court, that it **was the holder in due course**, and thus the real party in interest to Mr. McDonald's Note and Deed of Trust; and, as such, had certain rights under said documents to foreclose on Mr. McDonald's property and request that said Court authorize the sale of said property.

127. 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 in due course of Mr. McDonald's Note and Deed of Trust.

128. Defendant ONEWEST specifically made several false statements that Mr. McDonald's Note and Deed of Trust were purchased, transferred, or otherwise assigned to ONEWEST, none of which were true.

129. Mr. McDonald's Note and Deed of Trust were never transferred to, assigned to, purchased by, or in any way acquired by ONEWEST.

130. At all material times hereto, ONEWEST only acquired the servicing rights to the note.

131. The facts indicate that FREDDIE MAC purchased Mr. McDonald's Note and Deed of Trust many years ago.

132. Upon information and belief, FREDDIE MAC has sold Mr. McDonald's Note and Deed of Trust.

133. ONEWEST concealed material facts that if known to the Colorado District Court would have materially affected the judicial findings.

134. The false and fraudulent statements of ownership were made for the purposes of securing an interest in Plaintiff's property that ONEWEST had no right to claim.

135. ONEWEST's false statements of ownership and/or concealment of facts caused an injury to Plaintiff.

136. 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 loss of his home.

WHEREFORE, Plaintiff prays following his final cause of action .

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

137. As and for the fifth 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:

138. Mr. McDonald incorporates by reference paragraphs 1- 137 of this Complaint as though fully contained herein, and so far as they may be applicable.

139. ONEWEST engaged in deceptive trade practices, which occurred in the course of ONEWEST'S business.

140. The deceptive trade practice significantly impacted the public as actual or potential consumers of ONEWEST'S services.

141. As a direct and proximate cause of ONEWEST's deceptive trade practices, 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 loss of his home.

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

- a) Damages to be proven at time of trial including but not limited to economic damages for the loss of Plaintiff's home;
- b) General damages for Plaintiff's mental anguish and pain and suffering;
- c) Treble damages and reasonable attorney's fees and costs pursuant to 18 USC § 1964(c);
- d) For such further and necessary relief the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully submitted on 7/22/2010 by:

S/GARY FIELDER

Attorney for Plaintiff

Gary Fielder, Attorney at Law

5777 Olde Wadsworth Boulevard, Suite R700

Arvada, Colorado 80003

(303) 650-1505

(303) 650-1705 FAX

Criminaldefense@fielderlaw.net