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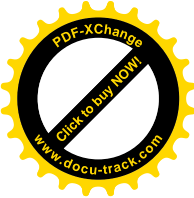
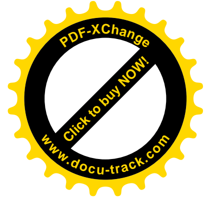
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

TAMMY JO LONG, CASTLE HOME BUILDERS, INC., AND WILLIAM KEITH DAVIDSON	§	
Plaintiffs,	§	**Civil Action No.**
vs.	§	
JPMORGAN CHASE BANK N.A., BANK OF AMERICA N.A., BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NA AS TRUSTEE FOR WAMU MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR19 TRUST, LENDER PROCESSING SERVICES, INC., NEW ORLEANS EMPLOYEES' RETIREMENT SYSTEM, MARTA/ATU LOCAL 732 EMPLOYERS RETIREMENT PLAN, WASHINGTON MUTUAL BANK, F.A., FIRST AMERICAN EAPPRAISEIT, FIRST AMERICAN, INC., WAMU ASSET ACCEPTANCE CORP., SHAPIRO & SWERTFEGER, LLP, DOE(S) ROE(S) AND WASHINGTON MUTUAL INC.	§	
Defendants.	§	

PLAINTIFF'S FIRST VERIFIED COMPLAINT FOR EMERGENCY TEMPORARY AND PERMANENT INJUNCTIVE RELIEF, DECLARATORY RELIEF & JUDGMENT, FRAUD IN THE FACTUM & INDUCEMENT, FRAUD, ASSIGNMENT & TITLE FRAUD/ SLANDER OF TITLE, VIOLATIONS OF THE GEORGIA RESIDENTIAL MORTGAGE ACT & MORTGAGE FRAUD, VIOLATION OF FAIR DEBT COLLECTION ACT, NEGLIGENT SUPERVISION, TORTIOUS INTERFERENCE WITH CONTRACT AND BUSINESS RELATIONSHIPS, VIOLATION OF FIDUCIARY DUTY, VIOLATION OF DUTY OF GOOD FAITH & FAIR DEALING, VIOLATION OF GEORGIA'S RACKETEERING STATUTES (RICO), COUNT XIII RESCISSION, UNJUST ENRICHMENT, CLAIM FOR ATTORNEY FEES & LITIGATION EXPENSES PURSUANT TO O.C.G.A. §§ 13-6-11 & 13-1-11,

BREACH OF CONTRACT, VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT, VIOLATIONS OF FEDERAL TRUTH-IN-LENDING ACT, VIOLATION OF FAIR CREDIT REPORTING ACT, FRAUDULENT MISREPRESENTATION, & USURY & FRAUD

Plaintiffs Tammy Jo Long, ("Long" or Plaintiff Long"), Castle Home Builders, Inc. ("CHB"), and William Keith Davidson ("Davidson") by this Verified Complaint, bring this action against the above named Defendants for Emergency Temporary And Permanent Injunctive Relief, Declaratory Relief & Judgment, Fraud In The Factum & Inducement, Fraud, Assignment & Title Fraud/ Slander Of Title, Violations Of The Georgia Residential Mortgage Act & Mortgage Fraud, Violation Of Fair Debt Collection Act, Negligent Supervision, Tortious Interference With Contract And Business Relationships, Violation Of Fiduciary Duty, Violation Of Duty Of Good Faith & Fair Dealing, Violation Of Georgia's Racketeering Statutes (Rico), Rescission, Unjust Enrichment, Claim For Attorney Fees & Litigation Expenses Pursuant To O.C.G.A. §§ 13-6-11 & 13-1-11, Breach Of Contract, Violations Of Real Estate Settlement Procedures Act, Violations Of Federal Truth-In-Lending Act, Violation Of Fair Credit Reporting Act, Fraudulent Misrepresentation, & Usury & Fraud and state:

PARTIES AND JURISDICTION

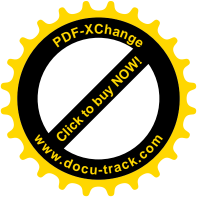
1. Plaintiff Long is of majority age and is a resident of Illinois and owner of a property in the State of Georgia located in Savannah, Georgia 31401 (the "Property")

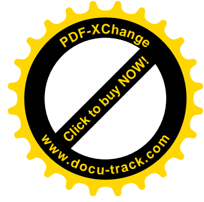
2. Plaintiff CHB is an Illinois Corporation registered to do business in the state of Georgia and has a $250,000.00 note and deed to secure debt on the subject property in the State of Georgia located in Savannah, Georgia 31401.

3. Plaintiff Davidson is of majority age and is a resident of Georgia and has a $25,000.00 note and deed to secure debt on the subject property in the State of Georgia located in Savannah, Georgia 31401.

4. Defendant JPMorgan Chase Bank, NA. ("Chase," "JPMC," or "Servicer Defendant") is a foreign corporation with alleged authority to do conduct business, service loans, and collect debts in the State of Georgia. Chase is the alleged servicer of the Long loan, but does not maintain a registered agent in the state of Georgia. Chase claims ownership of the Long note and states that the note cannot be modified.

5. Defendant Bank of America, NA. ("BOA" or "Trustee Defendant") is a foreign corporation with alleged authority to do conduct business, service loans, and collect debts in the State of Georgia. BOA is the alleged trustee for the Defendant Trust that alleges to have taken possession and transfer of the defaulted Long note, but does not maintain a registered agent in the state of Georgia. BOA claims ownership of the Long note.



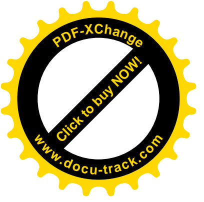
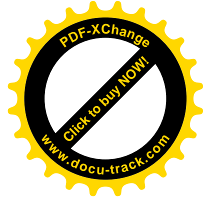


6. Defendant Bank of America, National Association as successor by merger to LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificates Series 2006-AR19 Trust ("Defendant Trust") is alleged to be a trust incorporated in the State of Delaware and not registered as a business or trust with state of Georgia. The Defendant Trust claims ownership of the Long Note.

7. Defendant New Orleans Employees' Retirement System ("NOERS") is alleged to be a Certificate Holder in WaMu Mortgage Pass-Through Certificates Series 2006-AR19 Trust who has filed a class action lawsuit against several of the Defendants for the frauds perpetuated against Plaintiff Long as well as themselves.

8. Defendant MARTA/ATU Local 732 Employers Retirement Plan ("MARTA/ATU") is alleged to be a Certificate Holder in WaMu Mortgage Pass-Through Certificates Series 2006-AR19 Trust who has filed a class action lawsuit against several of the Defendants for the frauds perpetuated against Plaintiff Long as well as themselves.

9. Washington Mutual, Inc. ("WMI") was a savings bank holding company and the former owner of Defendant Washington Mutual Bank, which was the United States' largest savings and loan association until it became the largest bank failure in U.S. history. On September 25, 2008, the United States Office of Thrift Supervision (OTS) seized Washington Mutual Bank from Washington Mutual, Inc. and placed it into the receivership of the Federal Deposit Insurance Corporation (FDIC). The OTS took the action due to the withdrawal of $16.4 billion in deposits, during a 10-day bank run (amounting to 9% of the deposits it had held on June 30, 2008). The FDIC sold the banking subsidiaries (minus unsecured debt or equity claims) to JPMorgan Chase for $1.9 billion, which reopened the bank's offices the next day as JPMorgan Chase branches. The holding company, Washington Mutual, Inc. was left with $33 billion assets, and $8 billion debt, after being stripped of its banking subsidiary by the FDIC. The next day, September 26, Washington Mutual, Inc. filed for Chapter 11 voluntary bankruptcy in Delaware, where it is incorporated. Washington Mutual Bank's closure and receivership is the largest bank failure in American financial history. Before the receivership action, it was the sixth-largest bank in the United States. According to Washington Mutual Inc.'s 2007 SEC filing, the holding company held assets valued at $327.9 billion that may have included Plaintiff Long's Note or certificates in the Defendant Trust. On 20 March 2009, Washington Mutual Inc. filed suit against the FDIC in the United States District Court for the District of Columbia, seeking damages of approximately $13 billion for what they claim to be an unjustified seizure and an extremely low sale price to Defendant JPMorgan Chase. Defendant JPMorgan Chase promptly filed a counterclaim in the Federal Bankruptcy Court in Delaware, where the Washington Mutual bankruptcy proceedings had been continuing since the Office of Thrift Supervision's seizure of the holding company's bank subsidiaries

10. Defendant Washington Mutual Bank FA ("WMB") was a chartered bank located in Seattle, Washington and incorporated in that state that was sold to Defendant JPMC.

11. Defendant WAMU was a chartered bank located in Seattle, Washington and incorporated in that state that was sold to Defendant JPMC. It previously conducted business in Georgia, but is not registered as a foreign entity to do business in the state.

12. Defendant WAMU Asset Acceptance Corp. ("WAAC") was a separate legal entity based in Seattle, Washington that on information and belief is believed to have been purchased by Defendant JPMC who has also claimed ownership of the Long Note. It conducted business in Georgia, but is not registered as a foreign entity to do business in the state.

13. Defendant Lender Processing Services, Inc. is a Delaware corporation that maintained divisions and offices in Georgia that are under criminal investigation for some of the frauds complained of herein and is not registered to do business in the state of Florida.

14. Defendant First American Corporation ("First American") is a California Corporation and has its executive offices at 1 First American Way, Santa Ana, California 92707-5913. First American, through its subsidiaries, provides business information and related products and services.

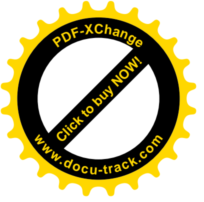
15. Defendant First American eAppraiseIT, LLC ("eAppraiseIT ") is a wholly-owned subsidiary of First American and has its executive headquarters at 12395 First American Way, Poway, California 92064. eAppraiseIT provides real estate appraisal services to savings and loans, banks, and other lending professionals as well as providing appraisals for the mortgages underlying the Certificates.

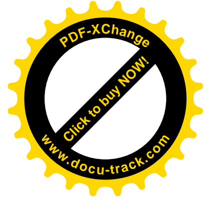
16. First American and eAppraiseIT are collectively referred to herein as the "Appraiser Defendants."

17. Defendant Shapiro & Swertfeger, LLP ("S&S" or "Shapiro") is a law firm practicing law in the state of Georgia with offices in Atlanta that holds itself out to be a Limited Liability Practice, but no registration with the Georgia Secretary of State can be found on an online search of the state's records. Defendants Chase, BOA, LPS and allegedly the Defendant Trust has retained.

18. Defendant Doe(s) Certificate Holders, unknown to Plaintiffs, are current and past "Certificate Holders" in the Defendant Trust.

19. Defendant Roe(s), unknown to Plaintiffs, are current and past "guarantors, sureties, and insurers" related to the Defendant Trust.





20. Defendants WMB, WMI, and WACC are often collectively referred to as "WAMU" and/or "WaMu" in this complaint.

Synopsis Of Instant Action

21. In is anticipated that Defendants will move the Court to remove this action to Federal Court and will then make motions for dismissal.

22. Due to the decision[1] of the U.S. Supreme Court in Ashcroft_v._Iqbal, Plaintiffs have conducted a year of diligent research and investigation of the extensive facts alleged herein and detail such lengthy facts due to the complexity of the frauds and abuses complained upon herein.

23. Plaintiff Long was defrauded upon the execution of the Long Note in that her income and the value of her property were fraudulently inflated by employees and agents of the originator causing Plaintiff Long over $600,000.00 in damages.

24. Unbeknownst to Long at the time of origination, Plaintiff Long's note was part of an elaborate securitization and securities fraud scheme wherein the Long note was reported to the SEC to be allegedly transferred to the Defendant Trust with the conditions precedent in the offering documents and pooling and servicing agreement ("PSA").

25. The purportedly applicable 266-page PSA for the Defendant Trust can be judicially notices by the Court at the SEC's Edgar database in the following link: http://content.edgar-online.com/edgar_conv_pdf/2007/01/05/0001277277-07-000007_EXH41TO8KPSAWAMU2006_AR19.PDF.

26. In order to have a lawful and equitable transfer of the Long note into the Defendant Trust and for the PSA to apply, the originators and other parties in the chain of title to the Long Note were required by law and contract to conform to:

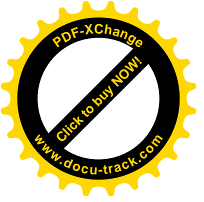
    a. Various Georgia laws related to the transfer of real estate and the writing and recordation of assignments of deed to secure debt to create a valid chain of title and perfection of any lien interest;

    b. UCC requirements regarding the ownership, indorsement, possession, and transfer of promissory notes;

    c. IRS REMIC tax requirements that restricted the transfer and conveyance of the Long note; and

    d. The terms and conditions of the PSA and offering documents which mandated the above conditions and provisions for conveyance be met and

[1] http://en.wikipedia.org/wiki/Ashcroft_v._Iqbal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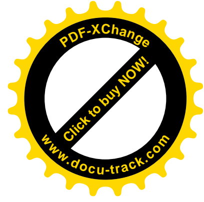
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certified prior to the closing and cut-off dates for the allegedly formed Defendant Trust.

27. The evidence provided by Defendant Trust, Chase, BOA, and Shapiro conclusively prove that the Long note was never lawfully or equitably negotiated, paid for, indorsed, possessed, owned, and/or transferred to the Defendant Trust and thus none of the parties have any authority or standing to accelerate, modify, satisfy, or foreclose the note and deed to secure debt.

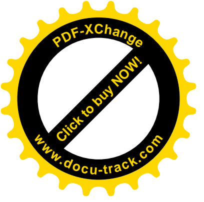
28. The evidence gathered by Plaintiffs, their officers and experts shows that the Long note at all times remained in the control and possession of WAMU, a bankrupt entity. WAMU originally indorsed the note in blank and held possession of the note. Now, years later, Defendants Chase, BOA, and Shapiro are attempting an unlawful fraudulent transfer of the Long note without permission of the bankruptcy court or trustee.

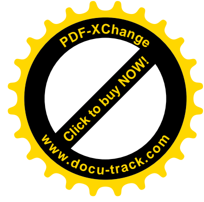
29. WAMU indorsed the note in blank to allow any entity such as Chase, BOA, or Shapiro to create the fraudulent "illusion of a transfer and possession" so as no other creditors would invoke any claims of the true sale status of the fraudulent securitization scheme and create a windfall profit to BOA and Chase via a fraudulent foreclosure.

30. The Long note was never lawfully or equitably transferred to the Defendant Trust. As such, the PSA governing the Defendant Trust is inapplicable to the Long note and neither Defendant BOA or Chase has any authority via any of the alleged agency and POA relationships to act for the Defendant Trust in any manner related to the Long note since the note, while fraudulently reported to have been assigned into the Defendant Trust, was never actually assigned to the Defendant Trust and was used by the former originator, now bankrupt, as collateral for other borrowings and financings.

31. Additionally, since the note and deed to secure debt were never transferred to the Defendant Trust and the originator of the mortgage went bankrupt, any contract if applicable on such date, was extinguished upon bankruptcy and thus all contracts, rights, and nominee agreements were eliminated. Thus, no party claiming an interest to the Long note and deed have any ability to conduct any foreclosure of the Long note.

32. This does not preclude any party who can prove it is a lawful and equitable owner of the Long note from prosecuting a legal action to collect on the note; obtaining a judgment; and even securing a lien on the subject property if successful in litigation. However, such party is subject to Plaintiff Long's defenses and claims to the Long note.





33. None of the Defendants properly perfected the lien interests to the Long note whereby any indebtedness that is owed by Long is of an unsecured nature and no one is a secured creditor as required by GA law to foreclose.

34. In addition, as part of the fraudulent securitization scheme, the Long note was guaranteed for payment and default by the third party guarantors, sureties, and insurers, herein the Defendant Roes, according to the securitization documents and as specifically provided for in paragraph 9 of the Long Note.

35. Paragraph 9 of the Long note creates a third-party obligation upon the Defendant Roes to contribute to the payment and satisfaction of the Long Note.

36. Upon evidence, information and belief and likely to have further evidentiary value after the production of all investor, trust, insurance, guarantor, and servicing records, accountings, and ledgers, substantial amounts have been paid to the Defendant Trust by the Defendant Roes to be applied to the Defendant Trust's and servicer's "sub-account(s)" and "sub-ledger(s)" related to the Long loan.

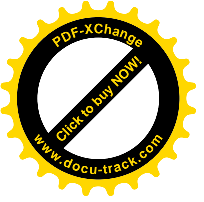
37. The amounts paid by the Defendant Roes according the securitization contracts and the Long Note must be accounted for and applied against any claimed principal balance due by Long and allocated on a proportioned basis according to the total amount of the long note as a percentage of the entire alleged pool balance.

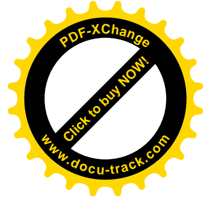
38. Many of these frauds and abuses have been recently exposed by various congressional and regaultory actions, as well as class action lawsuits filed by Defendants NOERS, MARTA/ATU, and the Investor Defendants who have sued other Defendants for the frauds committed on Plaintiff Long.

39. In order to address her claims and damages, Plaintiff Long has for over a year sought information and evidence from Defendants Chase, BOA, Defendant Trust, and Shapiro of the chain of title, possession, and ownership of the Long note to determine the true holder in due course.

40. As evidenced by Exhibit A, fabricating and forging documents, including affidavits in support of summary judgment is nothing new for Defendants Chase and Shapiro in that Exhibit A unlawfully notarized a "stamp" of a person's name as if that person personally appeared.

41. Exhibit A is prima facie evidence of the robotic-like nature of the Chase/Shaprio foreclosure mill and factory operation wherein not only are false and fraudulent assignments of deeds and mortgages manufactured, but even testimony and evidence in support of summary judgments. Nothing placed on a pleading or piece of paper by these Defendants can be accepted at face value without proper interrogation, validation, and analyses of the evidence by experts.





42. As further support for the frauds committed, the Court may take notice of the link at http://4closurefraud.org/2010/04/27/foreclosure-fraud-of-the-week-two-original-wet-ink-notes-submitted-in-the-same-case-by-the-florida-default-law-group-and-jpmorgan-chase/ wherein Chase submitted two wet ink notes as "originals" wherein different signatures were forged and placed on the notes.

43. Plaintiff Long, her officers, and investors have attempted to pay the full principal balance of the Long loan off, if only Defendants could provide the evidence reflected in the offering documents and agreements related to the Defendant Trust and allow Long and her experts to determine that the Defendant Trust was the lawful owner and holder in due course of the Long note so as to prevent Long from exposure to double liability of payment of a $1 million note if a true holder ever came forward.

44. In addition, three entities, BOA, Chase, and Defendant Trust have concurrently during the foreclosure process in the last 60 days claimed ownership of the promissory note executed by Plaintiff Long.

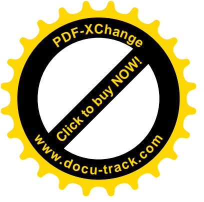
45. Complicating matters is a suit against Defendant BOA by European banks, which allege that BOA could not account to them for over $2.5 billion worth of mortgage loans, which were allowed to be admittedly pledged to multiple parties.

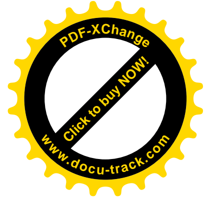
46. Furthermore, Defendants Chase and Shapiro are under numerous state and federal regulatory investigations and potential criminal investigation for forging and falsifying assignments of mortgages and deeds of trust many years after the purported and lawful dates for such assignments to claim ownership of notes in which they and other parties w

47. Defendant BOA and Chase have foreclosed on properties they did not own or have any legal or equitable title to with the assistance, support, and direction of Defendant Shapiro.

48. Defendants BOA, Chase, and Shapiro have all been severely sanctioned by state and federal courts for providing false, perjurious, forged, and fabricated assignments, affidavits, verifications, and pleadings. In essence, nothing Defendants place unto paper, publication, or testimony cannot be trusted without audit, analyses, and verification which Plaintiff Long, her officers, and experts have attempted to do to pay off a $1 million loan.

49. Instead, when cornered with Plaintiff Long and her officer's assertions and allegations contained in letters (Exhibit B) under Georgia's Tacit Procuration statutes found in O.C.G.A §§ 24-4-23 and 24-3-36, Defendants placed an unlawful and unauthorized indorsement upon the note years after the fact in an attempt to claim ownership of the note.





50. As shown in Exhibit B, Plaintiff Long also enclosed a check for $25.00 in a certified letter to Chase to pay for copies of the documents she was requesting.

51. Instead of replying to Long as required by RESPA, Defendants Chase cashed her check and then it, BOA, Defendant Trust and Shapiro initiated these unlawful foreclosure proceedings, even though Plaintiffs had investors interested in investing in and/or purchasing the Long property. All that was required was proof of ownership of the Long note and a clean and clear chain of title.

52. In fact, the indorsement is invalid in that it was attempting to transfer an asset out of an admittedly bankrupt estate and the transfer cannot be backdated or transferred years after the legal requirements to do so.

53. The indorsement on the Long note does not reflect the original trustee as of the date of the lawful ad purported closing, but the successor trustee that came years after the fact and was not even in existence when the indorsement on the note was necessary to transfer the note in accordance with the provisions of the PSA, offering documents, and the IRS' REMIC requirements.

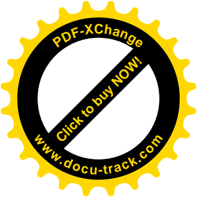
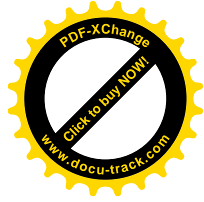
54. In essence, Defendants Chase, BOA, and Shapiro are attempting to conceal the known securitization fraud of the originator as well as their own practices by spoliation, creation, and fabrication of evidence, years after the fact to continue to conceal and cover-up perhaps the largest financial fraud ever perpetuated in the United States.

55. To date, Defendants Chase, BOA, and Shapiro have refused to allow inspection of the original collateral and custodial file nor provide documents that prove that the Long Note was lawfully and equitably transferred to the Defendant Trust and prove who the holder in due course of the Long note was or is.

56. As recently as a week ago, Defendant Shapiro informed Plaintiffs that it was in the process of having an assignment prepared, executed and recorded.

57. Any such assignment would be a fraudulent, forged, and fabricated assignment in that if in fact WAMU held and owned the note on such date, it is bankrupt. Also, the Pooling and Servicing Agreement for the Defendant Trust, dated as of December 1, 2006 was among WaMu Asset Acceptance Corp., as depositor (the "Company"), Washington Mutual Bank, as Servicer, LaSalle Bank National Association, as Trustee, and Christiana Bank & Trust Company, as Delaware Trustee."

58. The offering documents clearly stated "The Company (WaMu Asset Acceptance Corp, not WAMU Bank) at the Closing Date (December 21, 2006) is the owner of the Mortgage Loans and the other property being conveyed by it to the Trust. On the Closing Date, the Company will sell the Mortgage Loans and certain other assets to the Trust in return for the REMIC I Regular Interests and the Class R-1

Residual Interest and will be the owner of the REMIC I Regular Interests and the Class R-1 Residual Interest."

59. As proven by the fraudulent attempt to indorse the note years later and now create a fraudulent and forged assignment of deed to secure debt years after the fact, there cannot be an assignment of the note and deed from a bankrupt entity and any authority, if it ever existed, certainly does not exist at the present date.

60. WaMu Asset Acceptance Corp as the alleged owner of the Long note on December 21, 2006 was not exempt under Georgia law from preparing and recording an assignment of the Long Note and deed to secure debt.

61. In order to have a valid chain and lawful transfer of the Long note, an assignment from the original lender (A) to WaMu Asset Acceptance Corp (B) and from WaMu Asset Acceptance Corp to the Defendant Trust (C) would have had to occurred by December 21, 2006.

62. Compounding the confusion and as evidence of the Plaintiffs' securitization fraud allegations is the fact that only this week, the Federal Bankruptcy Judge overseeing WAMU's bankruptcy ordered[2] the appointment of an independent examiner who was the former chief of the fraud section, criminal section, of the U.S. Justice Department to examine allegations of bankruptcy fraud in the WAMU bankruptcy.

63. Creditors claim that there was as much as $30 billion in assets, including mortgages, concealed by Defendant Chase that belonged to WAMU.

Summary Of Complaint

64. This case arises out of Defendants' egregious, ongoing and far reaching fraudulent schemes for improper use of Plaintiff Long's identity, negligent and/or fraudulent and intentional misrepresentation of appraised fair market value upon which Plaintiff was contractually bound to rely and factually entitled to rely upon, fraud in the inducement, fraud in the execution, fraud in the factum, civil conspiracy, slander of title and breaches of contractual and fiduciary obligations as "Mortgagee," "Mortgage Brokers," "Loan Originators," "Plaintiff," "Mortgage Aggregator," "Trustee of Pooled Assets," "Trustee or officers of Structured Investment Vehicle," "Investment Banker", "Trustee of Special Purpose Vehicle/Issuer of Certificates of 'Asset-backed Certificates'", "Seller of 'Asset-backed' Certificates (shares or bonds)," "Special Servicer" and Trustee, respectively, of certain mortgage loans allegedly pooled together to form a securitized trust that claims ownership of a promissory note executed by Long that the trust is now attempting to foreclose upon.

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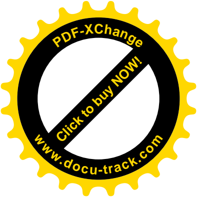
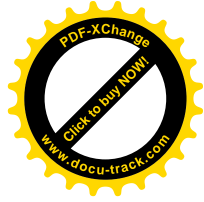
[2] http://www.nytimes.com/reuters/2010/07/26/business/business-us-washingtonmutual-examiner.html?_r=1&dbk

65. As recently as the afternoon of July 15, 2010, Defendant law firm informed Long and her executives that it was Defendant BOA, not the trust, that owned the Long Note.

66. As recently as within the last 30 days, Defendant Chase informed Long that they owned the note and that any claimed "investor was of no consequence."

67. Additionally, representatives of Defendant Chase claimed that there was no party who could modify or agree to any modification of the Long note in direct contravention of both the legal intent and spirit of O.C.G.A 44-14-162.

68. O.C.G.A. 44-14-162 relates to the advertisement and conduct necessary for validity for sales made on foreclosures under a power of sale. The legislation passed by the Georgia legislature requires that the security instrument or assignment thereof vesting the **secured creditor with title to the security instrument** be filed prior to the time of sale in the county in which the real property is located.

69. Georgia law does not require that an assignment from an exempted lender be recorded, but it does require that an assignment be prepared on the date the alleged vesting of the security interest occurred and then to have such an assignment recorded prior to the sale.

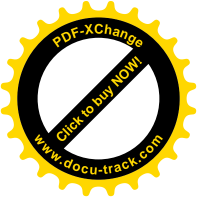
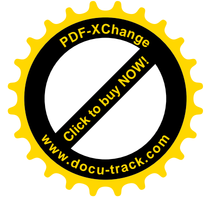
70. WaMu Asset Acceptance Corp was not exempted and was required to record its assignments.

71. The law also requires that "notice" of the initiation of proceedings must be given to the debtor no later than 30 days before the date of the proposed foreclosure and that the notice must be in writing and ***must include the contact information of an individual or entity that has full authority to negotiate, amend, and modify the terms of the mortgage.***

72. Defendants have admitted to Plaintiff Long and her officers that no such party existed. Additionally, since the note was never lawfully and equitably transferred to the Defendant Trust, no one has any authority under any agreement to assign the Long note and deed on this date.

73. Additional information and facts gathered by Plaintiff Long's experts, partners, officers, lawyers, and investigators shows that the Defendant Trust was never assigned the Long Note and that numerous parties created a fraudulent securitization scheme defrauding borrowers, investors, pension funds, shareholders, the U.S. government and others as described herein.

74. The participants in the securitization scheme described herein devised business plans and analytic business models using computers, wires, and mails to extract hundreds of billions of dollars in profits for their companies, investment bankers,

and their officers at the expense of Plaintiff Long and other investors in certain trust funds.

75. In fact, the actions of the Defendants described herein are under numerous criminal and civil investigation by numerous state and federal agencies as well as the U.S. Senate.

76. In addition, Defendant Investors in the Defendant Trust have sued over the identical fraudulent representations made to both borrowers, like Long, and themselves.

77. In addition to seeking compensatory, consequential, punitive and other damages, Plaintiffs seeks declaratory relief as to what (if any) party, entity or individual or group thereof is the owner of the promissory note executed at the time of the loan closing by Long, and whether the purported Deed to Secure Debt ("Deed") secures any obligation of the Plaintiff to any Defendant, and if not, a Final Judgment granting Defendant Quiet Title in the subject property and an unsecured note payable to its true owners.

78. This litigation is a complex matter requiring the review and analysis of thousands of pages of complex legal and securitization agreements as well as tens of thousands of pages of loan origination, marketing, sale, securitization, custody, and servicing records and data.

79. Such an examination is now necessary to determine what had been, prior to the advent of the fraudulent securitization scheme, relatively simple questions for both borrowers and lenders to answer such as:

a. Who is the debt lawfully owed to?

b. What is the amount of any legal obligation?

c. Is my debt secured or unsecured?

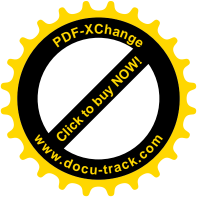
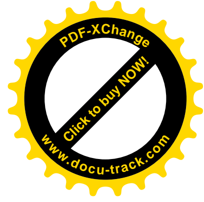
d. What is the chain of title to the note?

e. Will a borrower have clear and clean title when they pay off their note?

f. Will a borrower receive their note stamped "cancelled and paid in full" when the note is paid off?

g. Will someone with lawful authority execute a valid and lawful satisfaction of the deed or mortgage upon payoff or refinance?

h. Will the borrower be subject to double liability if they pay the wrong party off?

i. Who has legal and proper authority to satisfy and release the deed/mortgage and cancel and return the note?

j. Who has legal and proper authority to negotiate and modify any terms of the note or deed; settle any claims a borrower may have; and/or consent to transfer of the property or assumption of a borrower's obligation.

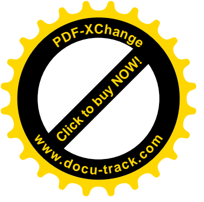
k. Who, if anyone, is the holder in Due Course as defined in O.C.G.A. 11-3-302 and as required to be determined by a borrower in order to pay off their loan under the decision of C. W. GROOVER v. Erick PETERS, No. 28379, by the Supreme Court of Georgia on Nov. 29, 1973.

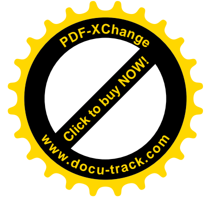
80. Seizure by the OTS and FDIC of WMB as well the bankruptcy of WMI leaves questions regarding the parties responsible for the admitted frauds against Plaintiff Long and the concealment of the chain of title to the note and deed to secure debt as well as its possession that have been fraudulently indorsed and assigned after the fact by companies who are alleged to be in bankruptcy, have ceased to exist, and no longer have any right or authority to transfer any assets be order of a Federal Bankruptcy Court.

81. In one current lawsuit, Defendant BOA has been sued by Deutsche Bank of Germany for not being able to account for over $2.5 billion in loans by another originator that BOA now claims were double and multi-pledged to multiple parties.

82. The evidence shown herein will illustrate the extent of fraud not only committed by WaMu and others against Long and the Investor Defendants, but how Defendants LPS, BOA, Shapiro and JPMC are extending and concealing the fraud with others by creating fabricated, fraudulent, and even forged assignments of deeds and mortgages as well as placing indorsments upon promissory notes years after the trusts have closed and been cut-off to asset deposits or withdrawals.

83. The current case stated when WaMu suffered a massive run (mostly via electronic banking over the internet and wire transfer); customers pulled out $16.7 billion in deposits in a ten-day span in 2007. This led the Federal Reserve and the Treasury Department to step up pressure for WaMu to find a buyer, as a takeover by the Federal Deposit Insurance Corporation (FDIC) could have been a severe drain on the FDIC insurance fund, which had already been hard hit by the failure of IndyMac that year. The FDIC ultimately held a secret auction of Washington Mutual Bank. Finally, on the morning of Thursday, September 25 Defendant JPMorgan Chase was the winner. On Thursday night (shortly after the close of business on the West Coast), the Office of Thrift Supervision seized Washington Mutual Bank and placed it into the receivership of the FDIC.





84. In a statement, the OTS said that the massive run meant that WaMu was no longer sound. The FDIC, as receiver, sold most of Washington Mutual Bank's assets, including the branch network, all of its deposit liabilities and secured debts to JPMorgan Chase for $1.9 billion. The transaction did not require any FDIC insurance funds. Normally, bank seizures take place after the close of business on Fridays. However, due to the bank's deteriorating condition and leaks that a seizure was imminent, regulators felt compelled to act a day early.

85. WAMU shareholders claim that as of the date of the takeover, the bank had enough liquidity to meet all its obligations and was in compliance with the business plan negotiated with the OTS two weeks earlier and that the holding company's board and management was kept completely in the dark about the government's negotiations with Chase, hampering the bank's ability to sell itself on its own.

86. On September 26, 2008, Washington Mutual, Inc. and its remaining subsidiary, WMI Investment Corp., filed for Chapter 11 bankruptcy. Washington Mutual, Inc. was promptly delisted from trading on the New York Stock Exchange, and commenced trading via Pink Sheets. The bankruptcy was the second largest (by asset size) in U.S. history, with the largest being Lehman Brothers, which filed bankruptcy just 11 days prior to Washington Mutual.

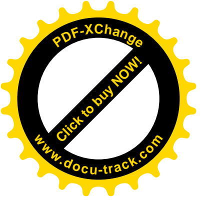
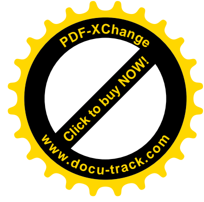
87. All assets and most liabilities (including deposits, covered bonds, and other secured debt) of Washington Mutual Bank's liabilities were assumed by Defendant JPMorgan Chase. Unsecured senior debt obligations of the bank of were not assumed by the FDIC, leaving holders of those obligations with little meaningful source of recovery.

88. Washington Mutual, Inc. sued the Federal Deposit Insurance Corporation (FDIC) for US $13 billion after the sale of its banking operations to JPMorgan Chase. WMI attorneys claim the bank did not get fair value for the bank, ***and multiple subsidiaries belonging to the parent company were taken.*** (emphasis added)

89. JPMorgan Chaise has been sued by some shareholders in Texas, for illegal activities leading to the bank's receivership. Washington Mutual, Inc's attorneys have requested an investigation through the bankruptcy court in Delaware.

90. On January 11, 2010 the United States Department of Justice, Office of the United States Trustee, District of Delaware, pursuant to Section 1102(a)(1) of the Bankruptcy Code, appointed a Committee of Equity Security Holders to represent all shareholders of both preferred and common stock.

91. JPMorgan Chase didn't acquire any of Washington Mutual Bank's equity obligations (though JPMorgan Chase planned to issue $8 billion in common stock to recapitalize the bank. In their Chapter 11 filing, WaMu listed assets of $33 Billion and Debt of $8 Billion. The filing also indicates that enough funds are

available for distribution to unsecured creditors. Currently, shareholders are fighting what they consider the illegal seizure of Washington Mutual claiming that the OTS acted in an arbitrary and capricious manner and seized the bank for political reasons or for the benefit of JPMorgan Chase.

92. There is a genuine issue of material fact whether the Long note was ever equitably and lawfully assigned to any party, let alone the Defendant Trust, and the claimed intervening owners and holders in the alleged securitization chain.

93. Evidence gathered by Plaintiffs shows that WAMU kept possession of the Long note, indorsed in blank, for its own use and benefit and not that of the Defendant Trust so as to allow the note to be multi-pledged and used as collateral for other borrowings that financed WAMU's receivables.

94. Evidence reviewed by the Plaintiffs and their agents show that someone without lawful authority, just weeks ago, has placed an indorsement on the Long Note to the Defendant Trust only after being questioned about the fraud and ownership of the Long Note by Long and her officers.

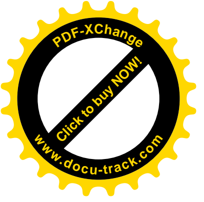
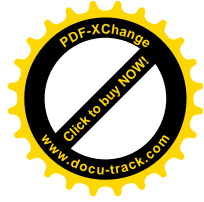
95. The indorsement placed on the note came long after the note could be lawfully transferred into the Defendant Trust pursuant to IRS REMIC elections and the stated provisions of the PSA and its incumbent closing date on December 21 of 2006.

96. As such, there never was or could be a "true sale" of the Long Note and the notes of other borrowers to the Defendant Trust and other WAMU created trusts as was fraudulently represented to the Defendant Investors. Thus, the Long note never was lawfully or equitably transferred to the Defendant Trust nor did the Defendant Trust ever take assignment and "possession" of the Long Note invalidating any claimed authority to collect, accelerate, modify and/or foreclose on the note.

97. Defendant Chase's representation that they own the note and that the investors didn't matter provides further prima facie evidence that WAMU held onto the Long note and never lawfully or equitably transferred the note and deed.

98. Defendant BOA's representation that they own the note provides further evidence that multiple parties may have been pledged the note and claim an interest therein or that the trust may have been terminated and no longer exists.

99. In addition, third party pool insurance firms such as AIG, United, Radian or other "endorsers, guarantors, insurers, and sureties" as contemplated and defined in ¶ 9 of the Long Note have either contributed to the payoff of the Long Note and must be brought in as third party defendants to payoff or contribute to the payoff of the Long note as contracted for by WAMU, the Defendant Trust, and its underwriters.

100. The actual unsecured principal balance owed by Long to any party cannot be determined without a full and complete disclosure of all payments made pursuant to provisions in ¶ 9 of the Long Note and in all of the PSAs, agreements and contracts for over-collateralization, credit default swaps, pool insurance, and other guaranties related to the alleged creation of the Defendant Trust.

101. "Any" of these third parties as the "any person" referenced in ¶ 9 of the Long Note were and/or are obligated to make payments on the Long Note.

102. Such guarantors, sureties, insurers, and endorsers were in place via the alleged securitization of the Defendant Trust anticipating Long's signature on the Long Note months before her actual execution of the Note.

103. Paragraph 9 of the Long note was specifically created by the original Lender and its securitization partners to provide the legal basis for third, yet unknown to Long, parties to guarantee her debt obligation to the Defendant Investors in the Defendant Trust.

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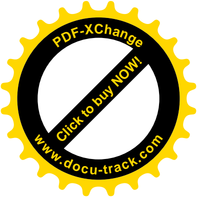
104. In addition, these third parties and the servicer were contractually obligated to make payments related to the Long Note to the rightful owner/holder or the claimed owner/holder of the Long Note such as Defendant Trust, even if Long failed to make a payment.

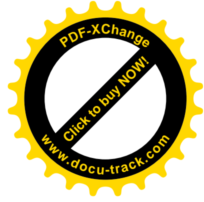
105. Pursuant to ¶ 9 of the Long Note monies received from such third parties were to be applied to the account of Plaintiff Long. Thus, such payments prohibit any claim of default exerted by the Defendant Trust who alleges to own the Long Note.

106. Furthermore, if such payments have not been applied or sought, then the Defendant Trust has breached ¶ 9 of the Long Note in that it has not instituted suit against all guarantors, sureties, and endorsers of the Long Note related to the securitized transaction who are obligated to keep the promises in the Long Note of which Plaintiff Long sues the Roe Defendants as indispensable parties to this action.

107. Due to the above referenced facts and the deteriorating realty market and losses in the appraised value of their properties, Plaintiff Long, the officers of Plaintiff Castle Home Builders, and investors were/are working to save Castle Home Builders and keep the properties maintained and leased by them via their luxury living enterprise.

108. Plaintiff Long hired experts and appointed officers including Plaintiff Davidson, to analyze her business structure, real market value of her portfolio of real estate, business plans, and loans.





109. The very first recommendation made by the experts and officers were for Long and Castle Home Builders to conduct an audit and analysis of every property and loan in her portfolio, a total of over 18 loans and a dozen properties. Until that time, Long was current in each of her mortgage loans and diligently paid each loan each month.

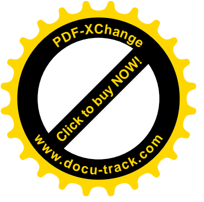
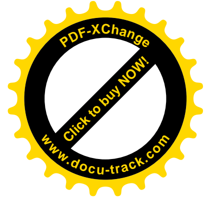
110. The forensic mortgage audits uncovered a plethora of mortgage fraud that was committed against Long by brokers and banks that included non doc loans that overstated her income by over 500% even though the financial institutions had her tax returns and financials; fraudulently inflated appraisals that over-valued her properties by as much as 75%; financing known commercial rental properties as second or even first residence homes; false and forged satisfaction of deeds as well as assignments; refusal by servicers to identify the real holder in due course and telling Long that her real lender and holder was proprietary information; millions in prior notes paid off or refinanced not returned and cancelled; and other servicing frauds.

111. As such, for over a year, Plaintiff Long and her officers have been working on ways to purchase her properties and/or refinance her loans, without banks, using private investors in LLCs to finance each property.

112. However, due to the plethora of fraud discovered, some of which is under criminal investigation, Long, her officers and potential investors have been trying to determine the holder in due course of Plaintiff Long's original "wet/blue ink" promissory note ("Long Note/Note") so as to negotiate a payoff to the lawful holder in due course under the dictates made in C. W. GROOVER v. Erick PETERS, No. 28379, by the Supreme Court of Georgia when on Nov. 29, 1973 the Court opined:

   a. "**The maker of a negotiable note and security deed must determine at the time of payment whether the payee is the holder of the instrument or the authorized agent of the holder in order to protect himself against liability for double payment. If the original grantee has assigned the instrument to another, who is a holder in due course, the burden rests with the maker to determine same** and **pay only the holder** or his **authorized agent… The long and short of the matter is that the borrower must be as careful in repaying the debt as the lender presumptively was in making the loan.**" [emphasis added]

113. As such, in analyzing the opinion that states in part: "**If the original grantee has assigned the instrument to another,** ***who is a holder in due course, the burden rests with the maker to determine same*** and pay **only** the holder or his authorized agent" it is incumbent upon Plaintiff Long, using the officers, lawyers and experts she hired or retained, to determine the true holder in due course, if any, before paying off a $1 million dollar loan.

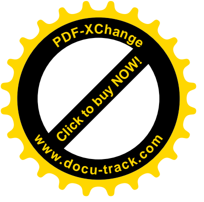
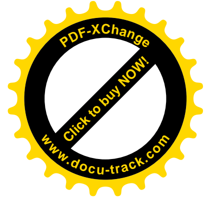
114. Making such a determination in the day and age of complex mortgage backed securities and securitization is a daunting task in that Georgia law requires the Plaintiff to determine the Holder in Due Course ("HDC"). To make this determination, Plaintiff must use a multi-prong test under OCGA 11-3-302 titled "Holder in due course."

115. Using this test, Plaintiff required/requires Plaintiff to inspect all of the original documents described in letter she sent to Defendants and their agents for her inspection as well as other underlying records as requested in order for her and her experts to determine the lawful owner of her note and the true HDC. The relevant Georgia code states:

a. "Subject to subsection (c) of this Code section and subsection (d) of Code Section 11-3-106, "holder in due course" means the holder of an instrument if:
    i. The instrument when **<u>issued</u>** **or** **<u>negotiated</u>** **to the** **<u>holder</u>** ***does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity***; **AND**
    ii. The **holder took the instrument**:
        1. **For value**;
        2. **In good faith**;
        3. **Without notice that the instrument is overdue** or has been dishonored or that **there is an** **<u>uncured default</u>** **with respect to payment of another instrument issued as part of the same series**;
        4. **Without** **<u>notice</u>** **that the** **<u>instrument contains an unauthorized signature</u>** **or has been** **<u>altered</u>**;
        5. **Without notice of any claim to the instrument** described in Code Section 11-3-306; and
        6. **Without notice that any party has a defense or claim in recoupment** described in subsection (a) of Code Section 11-3-305.

b. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a) of this Code section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

c. Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding; (ii) by purchase as part of a bulk transaction not in ordinary course of business of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the transferor; or (iii) as the successor in interest to an estate or other organization.

d. If, under paragraph (1) of subsection (a) of Code Section 11-3-303, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

e. If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

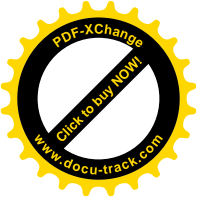
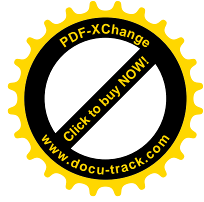
f. To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

g. This Code section is subject to any law limiting status as a holder in due course in particular classes of transactions.

116. As such, for the reasons described herein, Plaintiff Long's task at ascertaining any lawful HDC or even the holder and owner of her note, whether they are the HDC or an unsecured creditor is a daunting task. The task will cost her tens of thousands of dollars in expense to determine that upon payoff, she or her investors in an LLC will have clear and clean title to the property; pay off the lawful holder and receive cancellation and return of her note as well as a lawful release of deed to secure debt; and will not be responsible for any future claim from any purported creditor.

117. However, instead of complying with Plaintiff Long's requests, the Defendants have created a fraudulent obstacle course and maze wherein the determination of any lawful holder in due course is not only possible for the Plaintiffs, but for the Defendants themselves. In fact, **counsel for the Defendant Trust** (WAMU Mortgage Pass-Through Certificates Series 2006-AR19 Trust) **in a massive billion dollar class-action lawsuit against the other Defendants, has *informed Plaintiff's officer that he agrees that there is "no holder in due course of the Plaintiff's note"* due to the manner in which it was purported to have been securitized.** [emphasis added]

118. Coupled with the facts stated herein is the evidence that the Long note and other notes in trusts created by WAMU were never lawfully or equitably transferred to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the Defendant Trust and other trusts as part of a fraudulent securitization scheme that violates U.S. securities laws.

119. Defendants have been unable to produce and provide at the Plaintiff's cost and expense, the documents and agreements referenced in the public offering documents related to the creation of the Defendant Trust in order for Plaintiff Long to hold those responsible for her claims as well as ascertain if there is any HDC.

120. This problem and the allegations made in this complaint are not unique to Plaintiffs. The U.S. government has been stonewalled by Defendants in ascertaining if Wall Street firms and banks lawfully transferred loans to Fannie Mae and Freddie Mac.

121. The Federal Housing Finance Agency (FHFA), the body in charge of Fannie Mae and Freddie Mac issued subpoenas to Defendants BOA and Chase for loan files and transaction documents because Fannie and Freddie were having difficulty in obtaining the relevant paperwork as part of their own examination.

122. "By obtaining these documents we can assess whether contractual violations or other breaches have taken place leading to losses for the enterprises and thus taxpayers," said Edward DeMarco, acting director of the FHFA. [3]

123. In addition to not providing the requisite proof of HDC, ownership, possession, and authority to act according to terms of the Long note and deed, three entities, currently during the pendency (last two weeks) of the unlawful foreclosure action have claimed ownership of the Long note and loan.

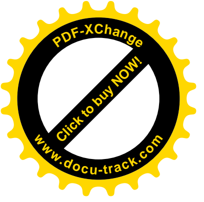
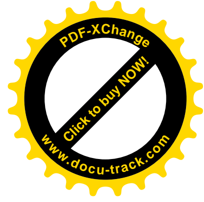
124. Research and investigation by Plaintiff's officers and experts show that the note was purportedly assigned and transferred to at least two other entities prior to the Defendant Trust that are not reflected in any public recording and have not and cannot be produced by any of the Defendants.

125. Defendant's counsel and its employees claim that "they have ordered an assignment" and that it "is being executed" and would be "filed, days prior to the foreclosure."

126. Yet, the assignment can only be a fabricated fraud and forgery as discussed herein in that someone without lawful authority or knowledge will create a new assignment that will not involve an equitable transfer of the Long Note and deed to secure debt in that:

   a. The entities that would need to effectuate each ***"intervening assignment"*** to create a valid chain of title to the Defendant Trust and perfect the lien interests are bankrupt and/or no longer in business;

[3] The FHFA said it http://www.ft.com/cms/s/0/75d669c0-8e01-11df-b06f-00144feab49a.html

b. The closing date for assets to be transferred to the Defendant Trust was over four years ago;

c. The assigning entity does not have possession or ownership of the underlying Long Note and there has been no physical transfer of the Long Note documents; and

d. There has been no equitable transfer of the note and deed prior to the execution of the assignment.

127. In a case involving Defendant Trustee, the Defendant Trustee is being sued for over $2.5 billion in missing promissory notes and mortgages by an international bank as it was responsible for being the trustee and documents custodian for where in a motion for discovery, the Defendant states and admits that the originating lender:

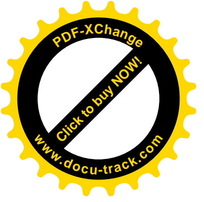
a. "On numerous occasions, the Debtor has informed the Court and other parties in interest that one of the biggest challenges in this case will be sorting out the competing claims to cash and other assets that flowed through the Debtor's accounts prior to the bankruptcy filing. **Indeed, it appears as though many loans and other mortgage-related assets *have been double- and even triple-pledged* *to various constituencies*.**" [emphasis added]

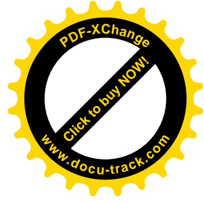
128. In good faith, Long, her officers and investors have requested the production and inspection, at their cost anywhere in the United States, of all original assignments of the deed to secure debt as well as Long's original note and that request has been denied and not acted upon in bad faith by the Defendants.

129. In addition, Defendants have not even been able to provide a photocopy of such assignments and the note as it exists today or on specific dates in time prescribed in letters to Defendants.

130. Plaintiff Long has sent letters (Exhibit B) under Georgia's Tacit Procuration statutes found in O.C.G.A §§ 24-4-23 and 24-3-36 outlining the facts contained herein and wherein she admits that she owes an "unsecured" debt of an "unknown amount" to "unknown parties or entities" and requesting their identification in order to satisfy any obligation she may have to such parties as well as settle any claims she have against such parties since they are not holders in due course of her note and have assumed the liability of the originating lender.

131. Defendants have failed to timely and/or properly respond to Plaintiff Long's letters, thus admitting the facts contained therein that none of the Defendants are a secured creditor that can non-judicially foreclose on her property and they have no capacity, standing, or authority to accelerate any debt owed by Long, satisfy





her deed; cancel and return her note; modify, extend, amend or change any terms of the note or deed; exercise any power of attorney she purported executed; and that the Defendants are not the Lender as defined in her original promissory note.

132. Instead of providing the evidence and proof of note ownership and holder in due course to Plaintiff Long, Defendants are busy fabricating and forging documents, after the fact, that lawfully should have been executed over four years ago in order to conceal their fraud, not only upon Plaintiff Long, but the investors that are suing the trust's originators and other Defendants.

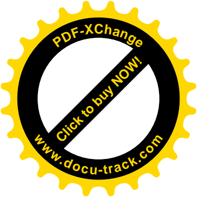
133. As detailed herein, all Defendants and prior purported owners and holders of the Long Note have failed to properly perfect the lien interests in the underlying collateral and deed to secure debt. Admittedly, they did not properly and lawfully execute assignments in writing, whether recorded or not, that were/are required under O.C.G.A. 44-14-64 (a) – (c) in transferring the note each time; and have broken the chain of title and intentionally separated and bifurcated Long's original note from its deed to secure debt thereby nullifying any security interest as herein described.

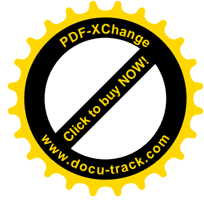
134. While O.C.G.A. 44-14-64 (d) provides an exception to "recording" each assignment, it does not provide an exception for executing "valid" assignments for each transfer and creating a valid chain of title in writing as the statute of frauds would require.

135. In addition, in order to have an exemption to "not record" a written assignment, such entity must be "a ***financial institution*** **having deposits insured by an agency of the federal government** **<u>or</u>** **a transfer** **<u>by a lender</u>** **who** **<u>regularly purchases or services</u>** **residential real estate loans aggregating a minimum of $1 million** secured by a first deed to secure debt encumbering real estate improved or to be improved by the construction thereon of one to four family dwelling units, where the transferor retains the right to service or supervise the servicing of the deed or interest therein, **<u>need not be recorded</u>** ***if***:

a. The original deed to secure debt has been recorded;
b. **An agreement in writing exists on or before the date of the transfer between the transferor and the transferee and sets forth the terms of the transfer and the interests of the parties thereto**; <u>and</u>
c. **Possession of the deed, the instrument of indebtedness, and the instrument of transfer is taken by such new transferee for himself or in his representative capacity or by a representative of such transferee which may include the transferor or any other transferee, provided that the agreement in paragraph (2) of this subsection provides for such party to take possession.** [emphasis added]

136. Simply, in order to have a "mere *exemption to <u>record</u>*," the prior conditions precedent must be ALL adhered to, or else each writing must be recorded in order





to perfect the lien interest in a deed to secured debt that secures an underlying promissory note. None of the Defendants and other unknown holders have complied with each of the strict provisions contained in O.C.G.A. § 44-14-64 (a) – (d).

137. Many of the intervening parties to the purported transfers of the Long Note do not qualify for such exemption. As further proof of the bifurcation and separation of the note and deed to secure debt, the purported assignment to be executed will bypass prior entities in the chain and attempt to reconnect the Long Note and Deed to Secure debt, years after they were intentionally separated.

138. Furthermore, O.C.G.A 48-6-66 states in no uncertain terms **"every instrument conveying, encumbering, or creating a lien upon real estate *shall* set forth in *words and figures* the *correct amount of the note secured* by the instrument and the *date upon which the note falls due*."**

139. In addition to the frauds perpetrated in forging the fraudulent and fabricated assignment in an attempt to transfer the Long Note AND deed, the fabricated and forged assignment does not even conform to the black letter law of O.C.G.A. 48-6-66 in that nowhere in current and prior assignments prepared by the vendors and law firms for the Defendants in other foreclosures in the state of Georgia, are such amounts and dates placed upon the fabricated assignments.

140. The only exceptions to such requirements is "when the note falls due within three years from the date of the note or from the date of any instrument executed to secure the note, a statement of that fact in lieu of specifying the date upon which the note falls due may be made in the security instrument and shall constitute sufficient compliance with this Code section." "The inclusion in the instrument of a provision that the instrument secures all other indebtedness then existing or thereafter incurred shall not require the setting forth in the instrument of existing indebtedness for loans not made on the security of the instrument."

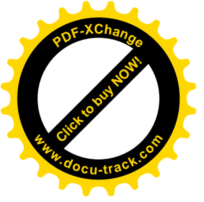
141. As proof of the legislative intent of strict adherence and compliance with of O.C.G.A. 48-6-66, the Georgia Legislature enacted O.C.G.A. 48-6-67 that states:

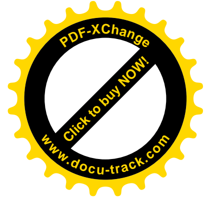
   a. "It shall be unlawful for any person willfully to violate Code Section 48-6-66." AND

   b. "Any person who violates Code Section 48-6-66 shall be guilty of a misdemeanor."

142. Thus, it is a crime in the state of Georgia, not to comply with the provisions of O.C.G.A. 48-6-66.

143. As further evidence to the facts enumerated in this Complaint, Plaintiffs and their investors, in numerous writings and phone calls to Defendants, have requested to





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inspect, at their cost, at any location in America, the originals of the Long Note and Deed as well as all valid assignments (whether recorded or not) associated with the Long Note to determine the lawful and proper holder in due course since the Long Note is purported to have been assigned on multiple occasions.

144. After long delays in those requests, Defendants produced the Long note with an indorsement directly to the trust skipping Washington Mutual Asset Acceptance Corporation in the chain of title and indorsing the note without any lawful authority since the WAMU was in bankruptcy.

145. The Defendants, in bad faith, have refused to allow Plaintiff Long and her agents to inspect such documents and evidence gathered by the Plaintiff conclusively proves that the identical Defendants in prior foreclosure actions have:

   a. Destroyed and concealed assignments and;

   b. Fabricated and even forged assignments in order to:
      i. Create standing or authority to foreclose;
      ii. Conceal the fact that the note was pledged and assigned to multiple parties;
      iii. Fix known broken chains in title;
      iv. Unlawfully transfer assets out of the estates and property of bankrupt mortgage companies;
      v. Conceal other parties to prevent suits upon investors due to assignee liability;

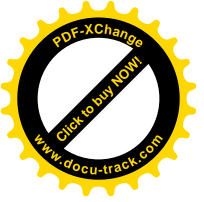
146. The fundamental points illustrated by all these facts is that there are over a dozen additional entities or parties that may have an interest in this loan and its underlying note and who have the capacity to settle any claims of Plaintiff; who can agree, via vote, to changes in terms, conditions, assumption and transfer of the note and can prove that they are or are not a creditor, albeit, not a secured creditor.

147. However, the Defendants routinely refuse to identify such parties that the Plaintiffs may have claims against and as a threshold matter, the Defendant Trust, counsel and other defendants have refused and failed to in any way show, let alone prove, how it any one of them, let alone the Defendant Trust, have capacity, standing, and or authority to:

   a. Accelerate the Long Note;

   b. Exercise any valid Power of Attorney to conduct a non-judicial foreclosure sale of the property;

   c. Advertise and notice a non-judicial foreclosure action;



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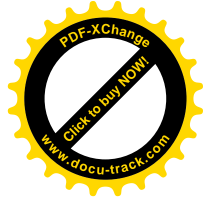

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d. Modify any terms or conditions of the Long Note;

e. Collect any fees owed to the note's defined "Note Holder;"

f. Release and satisfy the Long Deed;

g. Cancel and return the Long Note.

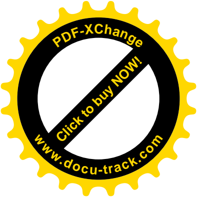
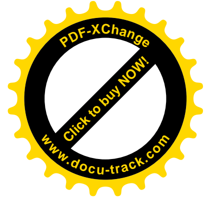
148. The Plaintiff's complaint described herein, will detail for this honorable Court a plethora of fraud committed against the Plaintiff, other Georgia borrowers, investors, taxpayers and the citizens of Georgia and the United States including the Defendant MARTA Union.

149. The complaint and its exhibits will prove that the Plaintiff was induced by fraud to take out a loan to refinance one of her commercial rental properties and that the appraisal for the property was fraudulently inflated as well as her income provided for approval of a WaMu broker filled in application that overstated Long's income by 500% and fraudulently appraised and valued the property for at least twice its true market value.

150. The complaint will then show that the loan was purported to have been securitized into the Defendant Trust that is attempting to foreclose, but that the underlying promissory note and deed to secure debt were never lawfully negotiated, transferred to, or possessed by the Defendant Trust and that the trust is an empty shell. In fact, the investors in the Defendant Trust are suing, in a multi-billion dollar class action lawsuit, the Wall Street financiers and banks that defrauded them and claim in their own suit, that Plaintiff Long and other borrowers were defrauded, as well as them, by the fraudulent appraisals and incomes used in the loan approval underwriting process.

151. As such, fraud has been committed against the borrower and the Defendant Trust at each stage of mortgage process in origination, servicing, securitization, and now foreclosure. **The Defendant Trust, Trustee, Servicer and Lawyers have fraudulently fabricated assignments of Plaintiff Long's deed to secure debt that purport to show a lawful transfer to the Defendant Trust of Long's note and deed** in order to unlawfully foreclose on the Plaintiff Long's property be illegal and potentially criminal means that this Court and officers of the Court must take judicial notice of and report to the proper state and/or federal authorities.

152. Admittedly there is no holder in due course ("HDC") of Plaintiff's original note; there was no lawful or equitable transfer; there is knowledge of fraud and default before the date of the fabricated assignment of deed to secure debt that alleges to transfer the Long Note five years after such note could be lawfully transferred; and that the debt is alleged to be in default before transfer; any entity possessing or claiming to own Plaintiff Long's original promissory note is subject to the

defenses against payment and claims of Long via the theory of assignee liability and the debt is not secured and thus there is no security

153. The deed to secure debt was intentionally separated and bifurcated from the note rendering the fabricated and unlawful assignment a nullity. Thus, there is no secured debt, but an unsecured debt of a to be determined amount to an unknown potential creditor who Plaintiff Long has claims against. Furthermore, due to these facts, there is no one with the lawful and proper authority to lawfully accelerate the Long note; cancel the Long note; foreclose on the Long note; and under O.C.G.A. 44-14-162.2 modify the Long note.

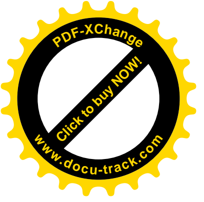
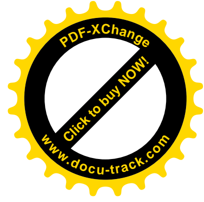
154. As proof of this fact, a JPMorganChase ("JPMC" or "Chase") representative stated to Plaintiff Long and her officers on Wednesday, June 9, that the "loan was with Chase," "Money owed to Chase," and "that the investor had nothing to do with the loan," a statement that supports Plaintiff's allegation that the Long Note was never lawfully negotiated, transferred, or in possession of the Defendant Trust. The representative also stated that the Note was taken out with Chase which is totally false as described herein.

155. The statement that *"there was no modification available"* to Long and that Chase owned the loan and note and the investor didn't matter is evidence and admissions of these facts. These very practices are now the subject of intense criminal and civil investigations in Florida, New York, and other states.[4]

156. In fact, Defendant Chase is under intense investigation for fabricating fraudulent assignments of mortgages and deeds by the U.S. Attorneys office which in one memorandum of law stated the following in a motion for sanctions against Chase:

  a. **"Chase has filed documents that appear to be either patently false or misleading in connection with the Motion For Stay Relief. In the Motion For Stay Relief, Chase took the position that it was acting only as the servicer of the Mortgage. Chase at the same time attached documents which supported a different position. Specifically, an assignment showed that Chase held the Mortgage and was assigning that Mortgage to Deutsche. Not only was the assignment dated post-petition, but it was signed only a few days before Chase filed the Motion For Stay Relief. The assignment was also prepared several years after the last actual assignment of the Mortgage. When afforded opportunities to correct this matter, Chase, through supplemental filings, continued to produce documents that were confusing and contradictory, and presented an affirmation submitted by a witness who apparently had no direct or personal knowledge of the facts or the chain of ownership of the Mortgage. However, what is clear is that, whether created through inadvertence or a deliberate act, the assignments created by Chase in connection with the Motion**

[4] http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html?mod=WSJ_newsreel_business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For Stay Relief appear to be false or misleading. This is not the first time that Chase's conduct with regard to motions for relief from the stay has been questioned in a bankruptcy case. Although Chase has recently taken remedial steps to address concerns expressed by courts in connection with other cases, based on Chase's past and current conduct, the United States Trustee supports the Debtor's request for sanctions in order to deter further conduct such as that seen in this case."[5]

157. However, since 2000, the boards and CEOs of Defendants Chase and WaMu as well as their lawyers and others in the mortgage industry were warned by of such abuses in reports in which each company conducted an internal investigation.

158. The reports presented to the board and officers of both Chase and WaMu defined many "predatory mortgage securitization"[6] actions of the Defendants that included allegations of:

a. **Failing to record in country records the true and real ownership, assignment and endorsements of promissory notes, deeds and other mortgage documents which were part of sale, assignment or transfer**;

b. Knowingly accepting loans and **not disclosing to investors problems with loan documentation; missing, altered or fraudulent documentation in loan file; chain of titles and ownership;** threatened legal actions; current regulatory actions or complaints made about loans assigned;

c. Reporting problems or **improper custody, maintenance and control of promissory notes, deeds and other loan documents**;

d. **Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer does not have a real interest in**;

e. **Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer does not have in their custody or control**;

f. **Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer has offered for sale to someone else**;

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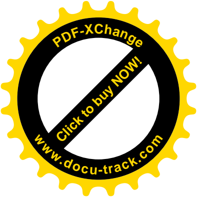
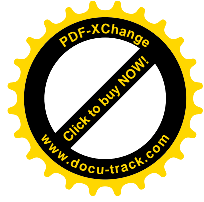
[5] U.S. Attorneys Memo of Law Found At http://online.wsj.com/public/resources/documents/NuerStatement0402.pdf
[6] http://en.wikipedia.org/wiki/Predatory_mortgage_securitization





g. **Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer is owned by someone other than party identified in the prospectus**;

159. On information and belief, Defendant LPS, who is under criminal investigation, and the foreclosure counsel retained are involved in the preparation and execution of the fabricated and fraudulent assignment to be still produced to Plaintiffs.

160. O.C.G.A. 23-2-114 states in part that "Powers of sale in deeds of trust, mortgages, and other instruments *shall be strictly construed and shall be fairly exercised*." [emphasis added]

161. As the facts contained herein evidence, the question of who is the actual lender that can exercise such power is more than a question of fact and it is not Lender as defined in the Long Note, but third parties including servicers, lawyers, and vendors, who are not the Lender as defined in the Long Note who are attempting to foreclose and profit for their own benefit by unlawfully and unfairly executing the power of sale and power of attorney that Plaintiff Long has revoked without lawful authority, capacity, or standing to do so.

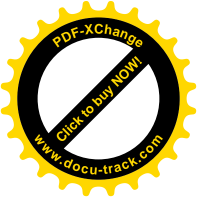
162. In simplest terms, the Defendant Trust and other defendants have no authority to notice or file a non-judicial foreclosure against Plaintiff Long nor can prove standing to file a judicial foreclosure. Simply put, the complaint will show this honorable Court that the claimed secured creditor is not only not a "secured creditor," but not even a creditor as the evidence gathered in Plaintiff's almost one-year investigation will show. The Defendants have not and cannot comply with the statutory duty to exercise fairly the power of sale contained in the deed to secure debt and Plaintiff Long may move to not only set aside the foreclosure if it takes place, but to enjoin the foreclosure action and institute this suit for damages.

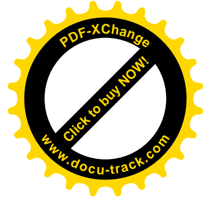
163. There exists a statutory duty upon a **mortgagee** to ***exercise fairly and in good faith*** the power of sale in a deed to secure debt. [emphasis added] The facts herein show that fabricated and fraudulent assignments of mortgage have been or are in the process of being executed to provide the false impression of the legitimacy for the unlawful non-judicial foreclosure action and attempting to transfer the note from third parties who have no right or interest in the Long Note or deed to secure debt and have acted in bad faith and have no

<u>Recent National & Mortgage Industry News Into Criminal & Civil Investigations Surrounding Fabricated, Forged, & Fraudulent Assignments</u>

164. As shown above and herein, there is increased judicial, state, and federal scrutiny of the fraudulent foreclosure and assignment actions that are receiving increasing national and local media attention as in a recent article in the St. Petersburg Times evidencing that even the notaries are involved in the abuses.[7]

[7] http://www.tampabay.com/news/business/realestate/when-bryan-j-bly-became-nb-did-he-know-what-he-was-signing/1103508





165. The following comments in a story by Kate Berry in the National Mortgage News found at http://www.nationalmortgagenews.com/lead_story/?story_id=274 stated the following:

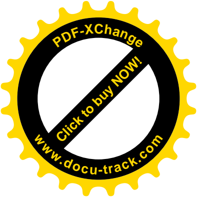
a. The backlash is intensifying against banks and mortgage servicers that try to foreclose on homes without all their ducks in a row. Because the notes were often sold and resold during the boom years, many financial companies lost track of the documents. Now, legal officials are accusing companies of forging the documents needed to reclaim the properties. Recently, the **Florida Attorney General's Office said it was investigating the use of "bogus assignment" documents by Lender Processing Services Inc. and its former parent, Fidelity National Financial Inc**. **And a federal judge in Florida has ordered a hearing to determine whether M&T Bank Corp. should be charged with fraud after it changed the assignment of a mortgage note for one borrower three separate times.**

b. **"Mortgage assignments are being created out of whole cloth just for the purposes of showing a transfer from one entity to another,"** said James Kowalski Jr., an attorney in Jacksonville, Fla., who represents the borrower in the M&T case. "Banks got away from very basic banking rules because they securitized millions of loans and moved them so quickly," Kowalski said.

c. In many cases, Kowalski said, **it has become impossible to establish when a mortgage was sold, and to whom, so the servicers are trying to recreate the paperwork, right down to the stamps that financial companies use to verify when a note has changed hands. Some mortgage processors are "simply ordering stamps from stamp makers," he said, and are "using those as proof of mortgage assignments after the fact."**

d. Such alleged practices are now generating ire from the bench. "The court has been misled by the plaintiff from the beginning," Circuit Court Judge J. Michael Traynor said in a motion dismissing M&T's foreclosure action with prejudice and ordering the hearing.

e. In a notice on its website, the Florida attorney general said it is examining whether Docx, an Alpharetta, Ga., unit of Lender Processing Services, forged documents so foreclosures could be processed more quickly. **"These documents are used in court cases as 'real' documents of assignment and presented to the court as so, when it actually appears that they are fabricated in order to meet the demands of the institution that does not, in fact, have the necessary documentation to foreclose according to law,"** the notice said.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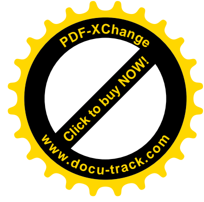
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f. Docx is the largest lien release processor in the United States working on behalf of banks and mortgage lenders. Lender Processing Services, which was spun off from Fidelity National two years ago, did not return calls seeking comment Tuesday. The company disclosed in its annual report in February that federal prosecutors were reviewing the business processes of Docx. The company said it was cooperating with the investigators.

g. **"This is systemic,"** said April Charney, a senior staff attorney at Jacksonville Area Legal Aid and a member of the Florida Supreme Court's foreclosure task force. **"Banks can't show ownership for many of these securitized loans,"** Charney continued**. "I call them empty-sack trusts, because in the rush to securitize, the originating lender failed to check the paper trial and now they can't collect."**

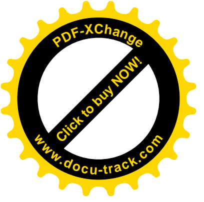
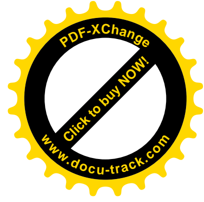
h. In Florida, Georgia, Maryland, and other states where the foreclosure process must be handled through the courts, hundreds of borrowers have challenged lenders' rights to take their homes. Some judges have invalidated mortgages, giving properties back to borrowers while lenders appeal. **In February, the Florida state Supreme Court set a new standard stipulating that before foreclosing, a lender had to verify it had all the proper documents**. Lenders that cannot produce such papers can be fined for perjury, the court said.

i. Kowalski said the bigger problem is that **mortgage servicers are working "in a vacuum," handing out foreclosure assignments to third-party firms such as LPS and Fidelity. "There's no meeting to get everybody together and make sure they have their ducks in a row to comply with these very basic rules that banks set up many years ago,"** Kowalski said. **"The disconnect occurs not just between units within the banks, but among the servicers, their bank clients and the lawyers."**

<u>Underlying Motivations For Assignment, Transfer & Title Fraud</u>

166. As described above, GA law requires Plaintiff Long to be diligent in the determination of the holder in due course ("HDC") of her note so as not to have liability for paying off the wrong lender and the GA Supreme Ct. mandates that this is her responsibility.

167. The Plaintiffs sought information to determine any HDC, and they wanted to insure that before they tendered, paid off, negotiated, or sought cancellation of the note and satisfaction of the deed, that: 1) original notes and documents existed and were not pledged, subrogated, missing, lost, or destroyed; 2) ascertain the chain of title to the original promissory note; 3) determine any fraud, forgeries, pre-dated notarizations, fabricated assignments; 4) inspect any allonges that were

attached to the note and their indorsements; 5) analyze the original note to insure it was not a copy as some servicers are doing now.

168. Today's complex and opaque world that surrounds the shadowy secondary mortgage and securitization market, makes the determination of real parties in interest to a mortgage loan a "virtual" impossibility. Having usurped centuries of settled real estate and land law, the financial alchemists of Wall Street and their international banking counterparts have created a maze and shell game where what's real today is gone tomorrow. Using sophisticated computers, loans can be transferred (sometimes more than once) to different owners at light speed as can traditional property and title records as well as accounting ledgers.

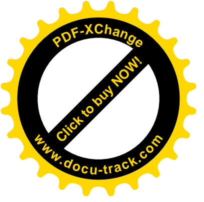
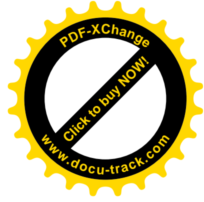
169. Traditionally, in "legacy mortgage transactions," when borrowers executed a promissory note and problems came up, they could easily deal with a local banker or someone from their community who could address their problems or issues. Their lender, was someone they could see face-to-face and deal with. Such was typically the bargain of any contract.

170. Today however, when a borrower or obligor to a note, such as Long is wronged, it is often a difficult task to isolate the real party in interest who can address her issues and settle her claims. What most borrowers such as Long did not bargain for was for their contract (note) to be subrogated to the terms and conditions of hundreds or even thousands of pages of additional securitization and/or shared-loss agreements they never reviewed or accepted as part of their bargain.

171. Such supplemental and corresponding agreements, created by the financial alchemy of Wall Street financiers and accountants, have severely limited and restricted the traditional fairness and "good faith" afforded in any contract.

172. Today, when problems or issues arise in a loan transaction, a borrower typically only gets to speak to someone on the phone clear across the country or often in far away places such as India or Mexico. The "contact person" is often a contractor or vendor (sub-servicer) for a servicer who is yet another contracted payment collector for a trust or other entity that is a contractor for the eventual owner or holder of a debt that could be a Wall St. firm, hedge fund, foreign government intelligence agency and even a terrorist organization.

173. Such "contractors" who operate on prescribed "scripts" and "metrics" cannot properly address, let alone remedy issues such as mortgage fraud, illegality, failure to adhere to the contract, assumption, property transfer, modification, or even a borrower issue of job loss, health, or the death of the head of household. Far too often, the only recourse for a borrower such as Long is to initiate litigation (as in the instant case) to protect their constitutionally protected property rights.

174. The underlying motives for these frauds is simply in one word money and in two words, profit and greed. The overall operative scheme is accounting and cooking the books.

175. In the modern secondary mortgage market, servicing rights to the loan payments and ownership rights to the notes are often traded and sold and not held by the originating lender except in certain cases.

176. When loans are sold by lenders and banks, they are typically conditioned by repurchase (“repo”) agreements. Such repo agreements allow a bank or lender to transfer a mortgage loan (note and mortgage/deed) with the stroke of a pen or click of a mouse button makes one more trip back to the original transferee or originator.

177. In reality however, the evidence proves that the underlying promissory notes were never lawfully or equitably transferred to securitized trusts such as the Defendant Trust.

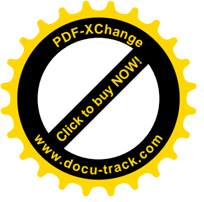
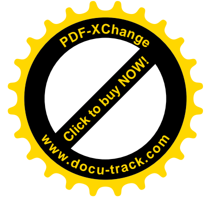
178. However, when problems arise, such as foreclosure or borrower threatened litigation, the shell game of note ownership, in which the rights to accelerate, notice a sale, and/or foreclose vest, begins. This shell game is used to conceal and hide the fraud inherent in the fraudulent securitization scheme.

179. It is not unusual to see parties to a foreclosure action play the catch me if you can shell game by purporting to assign notes via the assignments of deeds and mortgages ONLY and not the underlying note. The reality is far from the “virtual reality” that the servicers and their foreclosure mill law firms want both the borrower and courts to believe.

180. As increasingly proven via recent court decisions, civil, and even criminal investigations the assignments of deeds to secure debt and mortgages across the country, particularly by Defendants BOA, Chase, and Shapiro, are fraudulently fabricated and even forged and placed into the county records in order to give the appearance of propriety and legitimacy to lawfully foreclose on borrowers such as Long.

181. The fraudulent assignments are created without lawful authority in an attempt to cloud or conceal the true chains of title, accounting frauds, and proof of the intentional bifurcation and separation of notes from their deeds or mortgages. It is also done to avoid assignee liability for actions and claims by borrowers against servicers and originators to attempt to assume holder in due course status and to give legitimacy to the foreclosing party, typically only a loan servicer.

182. As in the instant case, fabricated, forged, and fraudulent assignments are created to transfer a note and deed that the grantor has no legal right to transfer or

ownership. In addition, such a transfer would be backdating the effective legal dates of ownership which have severe tax, legal, and accounting ramifications.

183. In order for a borrower (or lender) to determine the true chain of title; who is or isn't a holder in due course; and who is the rightful lender and/or "note holder" as defined in his or her note who has the lawful right to accelerate, notice, advertise and/or conduct a judicial or non-judicial foreclosure action he/she must conduct a:

   a. legal analysis of all securitization and/or shared/loss purchase and assumption agreements; and

   b. forensic analysis of all relevant custodial, investor, and servicing records along with the ledgers and sub-ledgers of each purported lender in the chain of title, one cannot simply rely on fabricated or "blank" paper assignments and even indorsments placed upon promissory notes and attached and detached allonges.

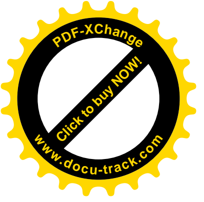
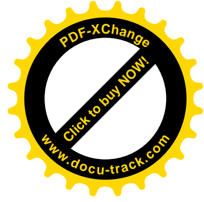
184. Simply put, in today's virtual world or mortgage financing, neither borrower, lender or judge can ever rely again, with any degree of certainty on the paper records, affidavits or even testimony of a lender and/or servicer.

185. One industry insider, Maher Soliman, aptly stated "in banking and in securitization, from a lending perspective, you learn the following golden rule – **if you err or cause mistake (borrower loan) you risk being removed from the collateral**." [emphasis added]

186. He further was quoted as saying:

   a. "while at Mortgage Guarantee, I served as a CFO and Director, and I recall the monthly grind of aggregating aged subprime receivables into larger pools for sale to investors. We transferred the assets and servicing to various capital markets participants still around today. From 1997 through 2002 I witnessed firsthand various minor and overlooked practices I deemed deceptive and non complaint procedures for conducting business in instances of a default. It was at a time when MERS was being introduced and when things were done to ensure quality control solely for delivery purposes. Risk management only seeks to avoid the repurchase requirements subsequent to selling your pools. Q/C (quality control) was for selling assets and for avoiding the REPO in those instances of delinquency and default."

   b. "In a Repo, 'parties' alleged to have control of the assets precedent to foreclosure but verifiably only regain possession subsequent to the liquidation by trustee or sheriff's sale."

c. **"I know and witnessed firsthand the 'blank assignments' 'blank endorsements' and rationale for circumventing the Purchase and Sale requirements at a borrowers expense**. According to one of the leading accounting authorities (someone I come to rely on for verifying GAAP accounting violations) on rules set forth under GAAP ad FASB …the difference in accounting treatments is as follows:

i. "Assets are removed off the balance sheet under a sale or in accounting. By comparison, under loan accounting, the asset stays on the balance sheet, so the credit offset to recognition of the proceeds is to debt. So most significantly, sale accounting is off-balance sheeting financing, and loan accounting is on-balance sheet financing."

ii. "Lenders are faced with the problem of making good on the cash flow they promised the purchaser of the loans, the investors. Investors look to the lender and not the loans themselves to be repaid. So the lenders' recourse is actually a short fall for the cash flow they pay and do not receive from a delinquent borrower."

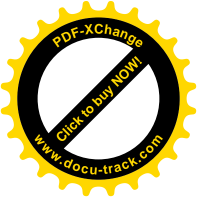
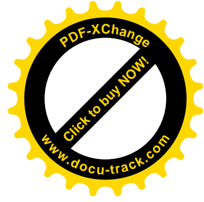
iii. "A modification or forbearance plan is seen as appropriate assistance provided under state and federal promises of mandatory relief assistance. However, parties cannot modify, adjust, offer relief, and or negotiate anything for a loan the lender has sold."

187. The complexity of these issues require a heavily burdened Court to address each of these accounting issues to untangle the loan transaction and subsequent sale of a borrower's note. One of the issues this court must rule on are the accounting rules of FAS 140 for Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities. The rules set forth therein, contain the criteria that restricts "sale accounting" on transferred financial assets.

188. Sale accounting on transferred financial assets such as the Long Note would be especially problematic to a genuine lender if there is a concurrent purchase agreement. "Repurchase agreements" are subject to "loan accounting" instead of sale accounting. A sale accounting treatment would act as a prohibition against any foreclosure brought by any Defendant.

189. When referring to a Repurchase agreements" (repos) and "loan accounting" the Court and Plaintiffs must determine where any genuine lender as defined in the Long Note may foreclose, but upon suffering the consequences of recognition.

190. Repurchasing costs are often times prohibitive upon a consumer defaulting. The REPO provides a true lender the right to repurchase and at a cost that diminishes over time. Therefore time is often in the sellers favor and to a consumers, such as Long's, disadvantage under any buy/sell repurchase requirements.

191. The ability for Long to contemplate a realistic and intelligent solution to her problem is circumvented by a scheme to reduce the Defendant's liability to any bonafide purchaser of the subject loan.

192. In attempting to circumvent the best efforts of investors and/or regulators such as the FDIC in this matter, the Defendants' accounting for the Long loan as debt is adverse compared to sale accounting which is required to survive litigation by the Plaintiffs.

193. Therefore lenders such as the defunct WMAU and others, even upon their demise, are willing to construct an "arrangement"' that attempts to slip and slide under rule SFAS 140's solely for appearing to comply with sale accounting.

194. Thus, the frauds and fabricated assignments in this instant action, may portend an even greater fraud being perpetuated upon the government of the United States and/or other investors in addition to the Plaintiff Long.

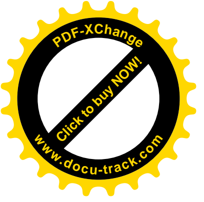
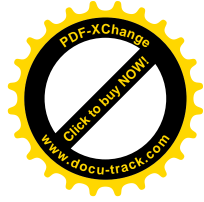
Overview Of The Mortgage Market Today

195. Today, the landscape of the mortgage industry is quite different from the old traditional mortgage banking "legacy model." Rather than holding legacy mortgage loans in their own portfolios, lenders such as WaMu now regularly sell and "securitize" these mortgage loans via complex structured finance products in the financial markets' secondary mortgage market. Sales are typically to Government Sponsored Enterprises ("GSEs"), such as the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") or directly or indirectly to investment banks in securitized loan transactions where loans, such as the Plaintiff's loan, were and are purportedly bundled and pooled together, securitized, and then sold off to the general public and sophisticated investors as mortgage backed securities.

196. Often, as in the instant action, the money is raised in advance in conduits that pre-fund the purchase of mortgage loans that are comprised of a properly executed promissory note ("note") and a mortgage or security deed/deed of trust that secures the indebtedness evidenced by the original promissory note.

197. The money that the lender receives for the sale of the mortgage loans or bonds is then used to finance the origination of new mortgages, increasing the lender's profits and aiding its stock price while purportedly transferring the promissory notes via a "true sale" into a special purpose vehicle and onto a securitized trust in order to create a bankruptcy remote entity.

198. This reconfiguration of the traditional/legacy model has transformed the incentives in the mortgage industry and increased fraudulent and abusive lending practices from the top (CEO and management) to bottom (loan brokers and

dealers). Specifically, it has the effect of making brokers and originating lenders far less vigilant in monitoring fraudulent, abusive, and predatory lending practices created by lenders, brokers, and other middlemen since any risk is quickly transferred to the purported purchasers of the loans. Moreover, as the lender does not hold many of its loans in its portfolio, the lender's interest in ensuring the accuracy of the appraisal and paperwork backing the loan is severely diminished. Even worse, because lenders' profits are determined by the quantity of loans they successfully close, and not the quality of those loans, there is an incentive for a lender to pressure appraisers to reach values that will allow the loan to close, whether or not the appraisal accurately reflects the home or property's true value.

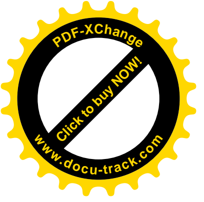
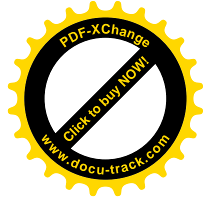
199. Further jeopardizing the process, mortgage brokers and the lenders' loan production staff (also known as "loan origination staff") are almost always paid on commission. Thus, the income of these individuals depends on whether a loan closes and on the size of the loan. Accordingly, brokers and loan production staff have strong personal incentives to pressure appraisers to value a home at the maximum possible amount, so that loans will close and generate maximum commissions as well as doctor, forge, and fabricate the plethora of loan documents necessary to close a loan and obtain their commission.

200. In furtherance of these schemes, the lenders and their brokers sought the employment of under-educated, aggressive, and adventurous risk takers as loan brokers and sellers who they knew via the various temperament and personality tests given to prospects, would push the rules, evidence, and law as far and further than could legally be justified. In fact, drugs, sex, trips, money, and others incentives were a regular incentive to many brokers, sellers, and their supervisors.

201. Lenders like WaMu failed to not only police their brokers and sales people, but turned a willful blind eye to known fraud, abuses, and even criminal acts such as forgery and mortgage fraud committed by brokers and sales agents that originated their loans. For these reasons, mortgage brokers and lenders frequently subject real estate appraisers to intense pressure to change values in appraisal reports.

202. Brokers would also fill in the blanks or coach their clients as to what information was needed to fund the loan and secure the keys via what was commonly referred to in the industry as liar loans and other such names as the fast and sleazy (fast n easy) program at Countrywide.

203. The investment banks and GSEs also have an interest in inflating (or at least in not questioning) the value of the pooled loans and their documentation. The values of these loans serve as a basis for the value of their securities. As such, the higher the value of the loans closed, the greater the value for which the securities are sold on the secondary market and the commissions paid to the Wall Street underwriters.

204. Thus, the only parties under the current system who want an accurate appraisal are the borrowers and the investors in the asset-backed securities market. However, neither of these parties, has any contact with one another, or control over, the appraisal, servicing, and foreclosure process.

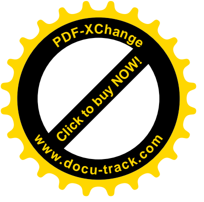
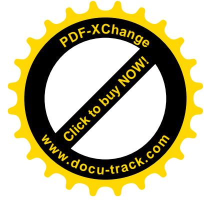
<u>The Need For Accurate & Independent Appraisals</u>

205. Because of the importance of appraisals in the home lending market, state and federal statutes and regulations require that appraisals be accurate and independent. The Uniform Standards of Professional Appraisal Practice ("USPAP") are incorporated into federal and Georgia law. USPAP requires appraisers to conduct their appraisals independently: "An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. In appraisal practice, an appraiser must not perform as an advocate for any party or issue." USPAP

206. An Authoritative Risk Management Approach and Group - - WaMu supposedly used an effective approach to Risk Management that prevented it from taking unwarranted risks (and thereby imposing such risks on both investors and borrowers) and which involved giving WaMu's Risk Management Group authority to keep in check those within WaMu who would be incentivized to take on more risk than would be in WaMu's long-term interest (including certain sales personnel).

207. Fair, Credible Appraisals - - The use of reliable home appraisals was and is critical in the home loan business. Without credible appraisals, the extent to which home loans to be securitized are adequately collateralized is unknown. Furthermore, accurate appraisals are necessary to assess the likelihood of default by a borrower. If a non-credible or inflated appraisal values a property at 20% to over a 100% more than the borrower, such as the Plaintiff, would later learn the property was truly worth, the borrower would be more likely to default or seek relief through the courts for such fraudulent and/or negligent appraisal acts as in this instant action. As WaMu's own disclosures explained, home loans with loan-to-value ("LTV") ratios of greater than 80 percent "expose the Company [and thus investors and borrowers] to greater risk" than loans with lower LTV ratios. Without credible appraisals, the LTV ratios for home loans issued by WaMu would be subject to manipulation, and borrowers such as the Plaintiff would be issued larger mortgages than they could realistically repay on properties that were overvalued by as much as 50% or more. WaMu supposedly issued loans that were the product of only fair, reliable, and independent appraisals so that investors could rely on WaMu's purportedly low LTV ratios and borrowers, such as the Plaintiff, would commit to taking out larger mortgages for purchase of properties that were of a legitimate market value.

208. WaMu and the other Defendants in the securitized chain necessitated unrealistic gains and values in home property values that they knowingly falsely and/or

negligently inflated so as to create larger profits be securitizing large loan values that would provide immediate returns with purportedly little, if any risk to WaMu. WaMu, not the borrower or Plaintiff in this action, ordered and supervised the appraisal process used for the Plaintiff's loan. The Plaintiff, to her detriment, relied on the supposedly fair, reliable, and independent appraisal for the subject property that was intentionally and/or negligently inflated by the actions of the Defendants.

209. High Underwriting Standards - - WaMu touted high underwriting and quality control standards used to determine whether to make loans to borrowers such as the Plaintiff. WaMu claimed it maintained the highest underwriting standards intended to minimize the credit risk involved in lending sums to borrowers.

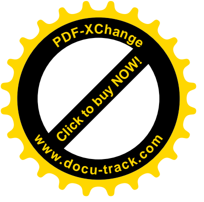
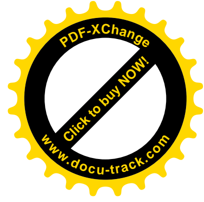
210. Only recently have lawsuits, Senate investigations, and regulatory actions exposed the actions of the Defendants and the participants in the subject securitized transaction began to come to the light of day to borrowers like Plaintiff Long and investors such as the Defendant Investors suing WaMu some of which had full and complete warning and knowledge of WaMu's mortgage frauds and abuses. In fact, losses to certificate holders of the Defendant trust have caused a number of investors of the subject Defendant Trust to sue WaMu and other defendants in a class action lawsuit, including a local MARTA workers union.

211. The subject trust's class members' lead counsel's investigation has uncovered massive volumes of information never before available to the Plaintiff which sheds light on the true nature of WaMu's predatory mortgage business. The class members' information is based on a number of detailed statements of former insiders at WaMu and related companies, who themselves observed the true conduct and condition of WaMu and had first-hand observations that are further supported by internal, non-public documents obtained by the class members' lead counsel through their investigation, as well as detailed expert analyses in several areas.

212. In short, the information uncovered by class members' lead counsel's investigation shows that WaMu engaged in predatory lending, securitization, and servicing practices that were known to many investors of the subject trust.

213. WAMU also systematically inflated appraisals on the properties of borrowers such as the Plaintiff Long by systemically corrupting and influencing the appraisal process such that it has been inflating appraisals issued both in-house and those obtained from supposedly independent third-parties. This process includes, but goes far beyond, the information disclosed by the New York Attorney General concerning WaMu's corrupt appraisal practices.

214. In this era of widespread mortgage loan defaults and home foreclosures, the independence and integrity of the real estate appraisers who determined the value

of purported home loan collateral is of enormous importance. Real estate appraisals were intended to provide both borrowers and lenders with an independent and accurate assessment of the value of a property. This is done to ensure that a mortgage or home equity loan is not under collateralized, which in turn protects borrowers from being over-extended financially and/or assume or commit to a liability greater than the asset's value and being upside down. It also protects true lenders and investors from loss of value in any foreclosure proceeding.

215. WaMu outsourced and partnered with Defendant First American to supervise and implement WaMu's real estate appraisal process. First American provides real estate appraisal services to savings and loans, banks, and other lending professionals through its wholly owned subsidiary, First American's eAppraiseIT ("eAppraiseIT"), an appraisal management company headquartered in California and Massachusetts. Defendant eAppraiseIT conducts business and appraises real estate throughout the United States.

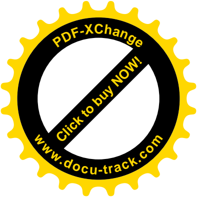
216. First American recognizes and touts the critical role an independent appraisal makes in protecting homeowners, business customers, and the entire financial market as First American explained in its 2006 Annual Report:

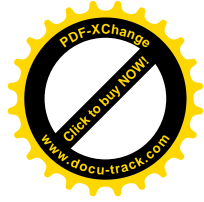
a. "Appraisals are used to establish a property's market value; therefore, inaccurate or fraudulent appraisals damage the entire market and have negative economic effects that are far reaching. First American's third-party, unbiased valuations – including insured valuations – are a resource real estate and lending professionals can turn to for accuracy that benefits not only the homeowner and lender, but our nation's economy."

b. "Homeowners, who place a large investment in their property, can be particularly victimized by appraisal fraud. First American's warranted valuations, which are supported by our third party perspective and backed by more than a century of integrity, virtually eliminate risk from this type of fraud."

The Fraudulent WAMU Securitization Scheme

217. Plaintiff Long is the nominal payor on the subject promissory Note. WaMu was a financial institution that was paid a fee to pose as a residential mortgage lender, when in fact the source of loan funds and the actual lender (Investors in Certificates) and underwriter (Mortgage Aggregator and Investment Banker) were other related parties whose identities and receipt of fees and profits were withheld from Plaintiff at Closing and despite numerous requests continue to be withheld from Plaintiff by the Defendants contrary to the requirements of applicable federal and state law.





218. Unknown to Plaintiff, WaMu, acting as principal in its relationships with the "independent appraiser" of the property and the mortgage broker and mortgage originator, induced the Plaintiff into a transaction that did not and could not meet normal underwriting standards for a residential mortgage since the property in question was known to all to be a commercial property.

219. WaMu posed as a conventional mortgage lender thus leading Plaintiff to reasonably believe that WaMu, the mortgage broker, and the loan originator had an interest in the success (repayment of the loan) of the transaction that Plaintiff was induced to believe was being executed at the time of the alleged "closing" of the subject "loan transaction."

220. In fact, WaMu, mortgage broker, appraiser, loan originator, title agent, escrow agent, and mortgagee of the purported Deed, had no financial stake or pecuniary interest in the transaction and no interest other than obtaining Plaintiff's signature on a "loan" that could never be repaid, contrary to representations and assurances from the conspiring participants in this fraudulent scheme. In fact, the "Appraisal" was intentionally and knowingly inflated along with other loan data to justify the alleged "closing" of the alleged "loan transaction."

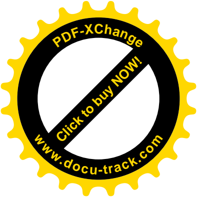
221. Plaintiff relied upon the due diligence of the apparent "Lender" in executing and accepting the closing documents. In fact, no "lender" was involved in the closing in the sense of an entity performing due diligence and evaluation pursuant to national standards for underwriting and evaluating risk of loaning money in a residential loan closing.

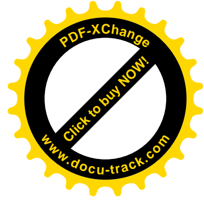
222. Thus no bank or other financial institution actually performing under the standards, rules and regulations governing such institutions was the "lender."

223. WaMu's purpose was solely to collect fees, rebates, kickbacks and profits that were never disclosed to Defendant and have only recently been discovered by Plaintiff through consultation with experts in securitization of residential mortgage loans, and diligent research including the filings of some parties with the Securities and Exchange Commission which disclose the normal manner of operating this fraudulent scheme.

224. WaMu was named as the Payee on the subject promissory note and the beneficiary under the deed terms allegedly securing the performance under the subject note. In accordance with state law, the purported deed and its terms of security were recorded in the county records.

225. However, what was not recorded were each of the intervening assignments of all entities who are/were purported to take transfer, ownership, and possessions of the Long Note creating a valid chain of title.





226. Notwithstanding the above, and without the knowledge of the Plaintiff, the Defendant Trust and WaMu had entered into Assignment and Assumption Agreements with one or more parties and Pooling and Servicing Agreements with one or more parties including but not limited to the Mortgage Aggregator prior to or contemporaneously with the alleged "Closing" of the subject "loan transaction."

227. Under the terms of these agreements, WaMu received a sum of money, usually on receiving an application for a loan equal to the gross amount of the loan sought by Defendant plus a fee of 2.5% or more which was allocated to the subject loan transaction.

228. Contrary to the documents presented before and during the "closing" of the "loan transaction" WaMu was neither the source of funding nor the actual true "Lender."

229. Thus at the time of recording, the source of funding and the "Lender" was a different entity than the nominal "Lender" under the purported deed and was neither named nor disclosed in any fashion.

230. The purported security for the "loan" thus secured an obligation that had been paid in full by a third party. Said third party(ies) was/were acting as a financial institution or "Lender" without even having been chartered or registered to do so despite state regulations to the contrary from laws and rules of state or federal authorities and/or agencies.

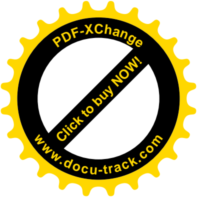
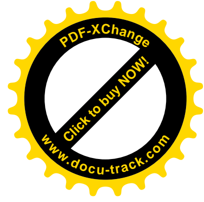
231. Defendant Trust is not registered with the state of Georgia to conduct business or act as a trust in the state of Georgia.

232. Such party(ies) were/are not exempt by O.C.G.A. 44-14-64 (d) and no party was ever exempt from executing an assignment in writing conforming to the requirements of GA law for each transfer in the securitization chain.

233. Some form of documentation represented by WaMu to the Mortgage Aggregator was presented before or contemporaneously with the "closing" of the "loan" transaction. In some cases the documentation included actual copies of the documents presented at alleged "Closing."

234. In most cases it consisted of either forged blank notes or vague descriptions of the content of the notes that were placed into the pool of assets that would be alleged to be "securitized."

235. Plaintiff has discovered numerous cases in which the "loan closing" either did not take place at all or included documentation substantially different than the original offer and acceptance and substantially different than what could have been reported to the Mortgage Aggregator prior to the "closing." Plaintiff has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discovered numerous cases in which foreclosures have proceeded despite the fact that no loan closing was ever consummated, no papers were ever signed, or the loans were properly rescinded properly under law.

236. Plaintiff does not know what version of documentation was presented to the Mortgage Aggregator and if the Mortgage Aggregator took one or more varying descriptions of the alleged "loan documents" into more than one pool of assets which were eventually sold for the purpose of securitizing the assets of the pool which included the subject loan transaction either once or more than once.

237. The purported assignment of the subject deed that has been "ordered to be executed" weeks after the notice of sale is a total fabrication, fraud, and/or forgery in violation of state and federal statutes in that it comes from a defunct bank, is without lawful authority; comes five years after the closing and cut-off dates for the Defendant Trust; does and has not resulted in an equitable transfer of the Long Note; and was solely created to give the illusion that the Defendant Trust has the legal right and authority to foreclose on the subject property.

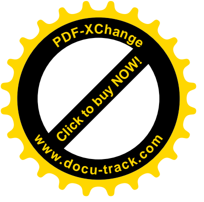
238. In essence, the Defendants would like the Plaintiff and the Court to believe that there was a closing five years ago on purchasing a million dollar property (the pool of assets), but we're just getting around to signing the papers today!

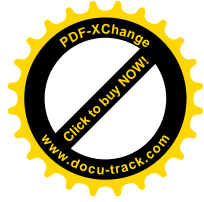
239. The Defendants have conspired with one another to knowingly and intentionally cause the fraudulent assignment to be created years after the date such transfer for legal, accounting and tax purposes could have occurred and recorded only days before the attempted unlawful foreclosure action thereby slandering title to the subject property.

240. Upon information and belief there are non-recorded Pooling and Servicing Agreements and a non-recorded Assignment and Assumption Agreement which appears to substitute the Trustee over the pooled assets for the nominal mortgagee in the purported Mortgage.

241. The powers of this Trustee were in turn transferred to either a Trustee for a Special Investment Vehicle (which performed the accounting and reporting of the pool assets) or to an investment bank Collateral Debt Obligation manager whose department performed the accounting and reporting of the pool assets.

242. The reporting of the pool assets consisted principally of descriptions of the notes "signed" by borrowers and limited descriptions of the general terms of the note such that the note appeared to be more valuable than the initial terms of payment by the "borrower."





243. The Long note from the subject “loan transaction” was eventually allocated into a new corporation, WaMu Asset Acceptance Corp., (Special Purpose Vehicle) formed for the express purpose of holding the pooled assets under certain terms.

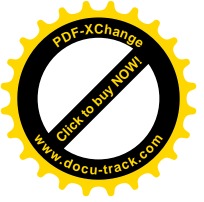
244. The terms included the allocation of payments from one note to pay any deficiency in payment of another note in unrelated “loan transactions” contrary to the terms of each such note which required payments to be allocated to the principal, interest, escrow and fees associated with only that specific “loan transaction.”

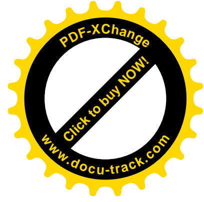
245. Whether such “deficiency” was caused by the difference between the higher general terms of description of the note or the lower actual payment requirements from the “borrower” is not known, despite numerous requests for accounting and the refusal of Defendants to provide any such information.

246. The Investment Banking firm arranged through payment for a false inflated appraisal of the certificates and/or issuer of the certificates that would be sold to investors in much the same way as it had procured the false appraisal of the property that “secured” the “loan transaction.” In addition, insurance was purchased from proceeds of this transaction, credit default swaps were purchased from proceeds of this transaction, the investors investments were “oversold” to create a reserve pool from which the SPV could pay deficiencies in payments, and the SPV created cross-collateralization agreements and over-collateralization of the pool assets to assure payments to the investors, thus creating co-obligors on the payment stream due from the Plaintiff on the subject “loan transaction.”

247. The pool assets, including the Defendant’s subject “loan transaction” were pledged completely to the owners of the “asset-backed securities.” All the certificates were then transferred to a Seller who in turn sold the certificates in varying denominations, each of which had slightly different terms depending upon which segment of the pool (tranche) secured the investment.

248. Contrary to the Defendant Trust’s counsel representation, if there can ever be a holder in due course of the Long Note arising from the subject “loan transaction” it would be each of the investors who purchased said securities (certificates), some of said securities are held by the original purchaser thereof, others were sold at weekly auction markets, others were paid by re-sales of property that was “secured”, others were paid from prepayments, others were paid by sale at full or partial price to the investment bank that originated the entire transaction, some of which might be held by the Federal Reserve as non-recourse collateral, and others might have been paid by one or more of the insurance, credit default swaps, cross guarantees or cross collateralization of the segment of the pool that secured the relevant investor who owned certificates backed by a pool of assets that included the subject “loan transaction.”





249. Defendants have not made any effort to determine whether any prior holders in due course have been paid in whole or in part. It can only be said with certainty that the Defendants seek to enforce loan documents for which others have already been paid in full plus illegal fees for participating in an illegal scheme. These Defendants seek to add insult to injury by demanding ownership of the subject property in addition to the receipt of payment in full long before any delinquency or default even allegedly occurred.

250. In order for any Defendant to maintain legal standing, capacity, and/or authority in connection with the subject loan transaction it is required to show the entire chain of title of the note and the entire chain of title of the deed. By their actions, deeds, and inactions they have admitted that such chain and related authority does not exist.

251. They have refused, despite numerous requests, to allow the Plaintiffs to inspect at their cost, the original collateral/custodial/mortgage file that contains all originals of the promissory note, deed, and each subsequent and intervening assignment to complete the chain.

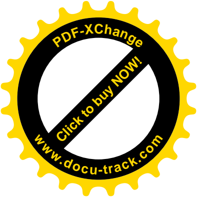
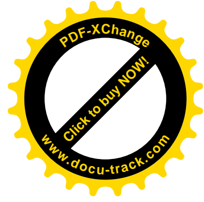
252. The only conclusion that can be reached is that the Defendants cannot produce such evidence of a complete chain of title and are intentionally withholding this information that would prove breaks in such chain and fraudulently fabricating evidence to show otherwise.

253. Plaintiff is left in the position of being in an adversary proceeding with ghosts. Any grant of a certificate of title to an entity other than Plaintiff creates an incurable defect in title. There is no recording of any document in the county records which predates the Defendant Trust's attempt to initiate foreclosure which would authorize them to proceed.

Significance Of Whether A "True Sale" of the Long Note & Other Notes Occurred Thus Rendering The Long Note Unsecured

254. It is critical that the transfer of assets from the originator to the SPV is legally viewed as a sale, or "true sale." The proceeds of the securities are remitted to the originator as the purchase price for the assets. If the asset transfer is not a "true sale," investors are vulnerable to claims against the originator of the assets and the cash flows backing the securities or the assets themselves could be ruled a part of the originator's estate and used to satisfy creditors' claims if a true sale did not occur.

255. The evidence obtained by Plaintiff and their experts is that the Long Note never was lawfully transferred to the Defendant Trust and such alleged sale and transfer was not a "true sale" and no party if a secured creditor. Only a "secured creditor" can institute a non-judicial foreclosure action under Georgia law.

256. True sale is at the very heart of legal issues in securitization. If securitization is a true sale, the investors ("certificate holders") get a legal right over the receivables. If it is not a true sale, investors may not have a secured interest in the receivables (payments by borrowers).

257. The true sale question is the foundation of off-balance-sheet accounting treatment, regulatory relief, and who owns the underlying promissory note and deed that secures the indebtedness.

258. The genesis of securitization lies in giving the investors rights over specific assets of the originator, such that the investors are not affected by the performance, or a bankruptcy of the originator. **This obviously necessitates that the investors, or the SPV which is a conduit on behalf of the investors, has legally acquired the assets.** (emphasis added)

259. A true sale forms the very line of distinction between securitization and collateralized lending and there are several requirements a securitizer must meet in order to create a true sale of the assets such as the Long note.

260. If there was no lawful transfer and if a transfer is not a true sale, then the assets (notes) that were allegedly for the benefit of investors was not a true sale and would mean that the investors are unsecured lenders and whether such security interests such as the Long Deed was perfected or not.

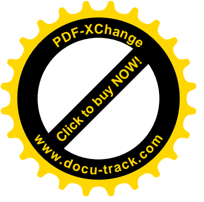
261. If the transaction cannot be shown to be backed by loan documentation, the investors may not be regarded as lenders as well - meaning, they might only have an equitable right to recover their money but cannot stand as unsecured lenders.

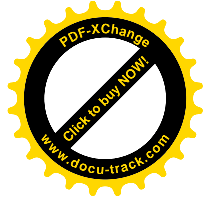
262. The subprime crisis has exploded several of the assumptions on which securitization was built.

263. Justice Boyko in an Ohio Federal Court ruling refused Deutsche Bank as trustee to go ahead with foreclosure action on mortgages as their ownership was not properly established. What the Judge expected was what the securitization industry was ignoring over the years.

264. The Long note was not true sale for other reasons including that there was no assignment, transfer, ownership, indorsement, or possession of the Long note by the SPV, WAMU Acceptance Corp.

265. Plaintiffs have demanded inspection of all assignments, whether recorded or note, and inspection of the collateral/custodial file so as to determine the holder in due course of the Long note as is their responsibility under rulings of the Georgia Supreme Court.





266. If the "original" assignments from the originating lender to the SPV and to the trust don't exist or are not created until years after the fact when foreclosure action is filed and the loans are supposedly in default, then this would violate the provisions of the PSA in that a delinquent loan cannot be transferred and any holder in due course status would be defeated.

267. Since there were no "original" assignments of the Long note, this renders the alleged sales of the Long note and deed to the Defendant Trust a nullity in violation of the true sale obligations imposed by securities law.

268. Thus, since there was never a legal or equitable transfer of the Long note, any agreements such as the PSA, POA agreements and the "authority" for the servicer and trustee to foreclose and enforce the Long note and deed are a legal nullity.

269. Kenneth Kettering, associate professor at New York Law School, argues that the securitization industry owes its very existence to the willingness of rating agencies to rate ABS securities based on "extravagantly hedged" true-sale opinions. "No competent lawyer ever gave a simple flat opinion that the asset transfers involved in a securitization transaction constitute a 'true sale.' Indeed, given the absence of controlling case law, a lawyer could not responsibly do so," he wrote in a letter to Congress. "These all-but-liability-proof legal opinions underline the fact that the parties to a securitization transaction are knowingly assuming a serious legal risk."

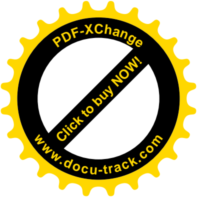
270. A Fitch Ratings analyst posited to one of Plaintiff's officers in a lengthy conversation almost a decade ago that in reality, these securitizations were not true sales, but financing of receivables that law firms have created very gray looking legal opinions on.

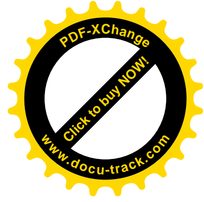
271. Securitization was scaled-up to a greater extent than ever before by Defendants BOA and Chase despite the fact that the fundamental issues of ownership were never settled. Echoing (and reinforcing) the pay-to-play ratings complex that emerged at the same time, the securitization complex chugged merrily along, while profits were high and defaults were low.

272. However, now these fundamental issues are getting their day in court again, as is indicative per the Boyco/Deutsche Bank ruling.

273. Previously, true sale challenges could be counted on to be rare and occur only in the occasional large-scale corporate bankruptcy such as the LTV bankruptcy — i.e., when a creditor or the bankrupt company itself wanted to "raid" the assets of a securitization to satisfy obligations.

274. However, the same challenge is available to borrowers such as Plaintiff Long exerting their rights. In pertinent comments by California mortgage attorney Nathan Fransen about the Boyco case and its implications, he stated: "California





is a non-judicial foreclosure state. This means the banks do not file a complaint in court to foreclose on the property. They simply execute a Trustee Sale. This requires them to provide notices in strict accordance to the applicable laws. The sale is a private action that effectively terminates ownership rights by the borrower."

275. "Typically the sale is followed up by an unlawful detainer proceeding to evict the former owners. The way in which the logic of this court could be used is by filing a complaint and Preliminary Injunction in a court in the county where the property is located. The injunction would stay any foreclosure proceedings by the trustee. A declaratory judgment could also be obtained that would declare the rights of the trustee invalid and thus prevent them from taking future actions against the homeowner."

276. Securitization, the true sale issue, loan and sale accounting, and the fraudulent assignment issues creates a question of material fact for this court to rule upon if it is even proper to use the terms "lender," "holder in due course," "holders," or "owners" anymore and if there is any secured creditor.

Significance of REMIC Election of Defendant Trust

277. Mortgage backed Securities (MBS) Certificates are "pass through Certificates," where the Trust has elected to be treated as a Real Estate Mortgage Investment Conduit ("REMIC") to enjoy the tax exempt status allowed under 15 U.S.C. §§806A-G.

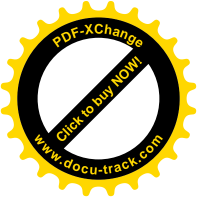
278. REMIC regulations impose very strict limitations as to the nature of the investments a REMIC trust may make (i.e. "permitted investments") and transactions which it may not undertake (i.e. "prohibited transactions").

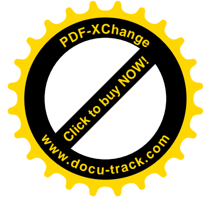
279. Any violation of REMIC regulations has significant tax implications for the Trust, as well as all Certificate holders. For example, any income realized by the Trust from a "prohibited transaction" is taxed at 100%.

280. The REMIC regulations also provide that any entity that causes the REMIC regulations to be violated is liable to the Trust and the Certificate holders for the entire amount of the tax.

281. Only income from "qualified mortgages" and "permitted investments" may enter a REMIC trust.

282. A "qualified mortgage" is an obligation (i.e. mortgage) which is principally secured by an interest in real property which (a) was transferred to the Trust on the startup date, (b) was purchased by the REMIC Trust within 3 months after the startup date or (c) any qualified replacement mortgage.





283. Permitted REMIC investments are limited to:

  a. Cash Flow Investments (i.e. temporary investment where the Trust holds money it has received from qualified mortgages pending distribution to the Certificateholders);

  b. Qualified Reserve Assets (i.e. any intangible property which is held for investment and is part of a reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments).

  c. These investments are for very defined purposes and are to be passive in nature. They must be "reasonably required."

  d. Liquidation Proceeds from "foreclosed property" which is acquired in connection with the default or imminent default of a "qualified mortgage" held by the Trust.

284. In order to maintain the REMIC status, the Trustee and the Servicers must ensure that the REMIC receives no income from any asset that is not a "Qualified Mortgage" or a "Permitted Investment." 26 U.S.C. § 806F(a)(2)(B).

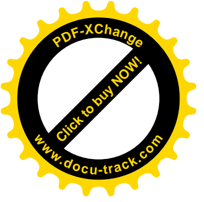
285. Prohibited Transactions include the disposition of a qualified mortgage (except where the disposition is "incident to" the foreclosure, default, or imminent default of the mortgage); or the receipt of any income from an asset that is not a Qualified Mortgage or a Permitted Investment. 26 U.S.C. § 860F(a)(2)(B).

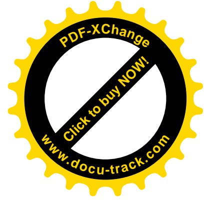
286. Prohibited Transactions are taxed in an amount 100% of the REMIC's net income from such prohibited transaction. 26 U.S.C. § 860F(a)(1).

287. Contributions of any "property" – e.g., cash, mortgages, etc. – made to the REMIC are taxed at 100% of the contribution, other than the following exceptions:

  a. Contributions to facilitate a "clean up call" (i.e. the redemption of a class of regular interest, when by reason of prior payments with respect to those interests the administrative costs associated with servicing that class outweigh the benefits of maintaining the class). Reg. § 1.860G-2(j)(1).

  b. Any cash payment in the nature of a guarantee, such as payments to the REMIC. (Any violation of REMIC regulations will defeat the privileged tax status and will subject the REMIC to 100% taxation, plus penalties and interest. These taxes and penalties are ultimately borne by the Certificate holders under a surety bond, letter of credit or insurance policy).





c. Any cash contribution during the three month period after the start-up day; and,

d. Any cash contribution to a qualified reserve fund made by a holder of a residual interest.

288. On a monthly basis, the Investment Banking firm and/or its agents, servants or employees compiled, individually and in concert, oversaw and approved all the information contained in the Distribution Reports and electronically sent same to certain parties, including the Doe Investor Defendants.

289. Based upon research performed by experts on behalf of the Defendants, the data regarding the number of bankruptcies, aggregate Special Servicing Fees, and aggregate Trust Fund Expenses was routinely incomplete, false, and/or misleading.

290. Further said reports intentionally obfuscated the illegal allocation of payments, the failure to disclose payments, and the effect on the alleged obligation of the Defendants, to wit: despite numerous insurance products, credit default swaps, cross collateralization, over collateralization and pooling at multiple levels, money received by some or all of these Plaintiffs under the pretense of it being a "Mortgage Payment" was in fact retained, reserved, applied to non-performing loans to make them appear as though they were performing loans, or paid as fees to the enterprise Defendants described herein.

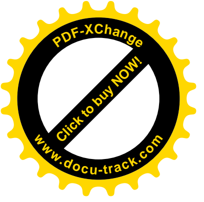
291. Based upon the failure of the Defendants to respond, Plaintiff has every reason to believe that the party receiving the payments is neither the holder in due course of the note nor the owner of any rights under the provisions of the Deed.

292. Further, Plaintiff has every reason to believe that her payments were/are not being forwarded to any true holder in due course of the note or to any other authorized party, but retained by the servicer for its own account.

293. Accordingly Plaintiff is in jeopardy, to wit: the true holder in due course and potentially dozens or even thousands of third parties could come forward claiming an unsatisfied interest in the promissory note and may or may not be subject to Plaintiff's various claims.

294. In fact, research has revealed that in various states, such security interests are being purchased by speculators who then seek to enforce said liability, preventing the Plaintiff from claiming the most basic defense, to wit: payment exactly as required by the terms of the Note which was cashed by the receiving party apparently without authority to do so.

295. Defendant has failed and refused to reveal the true source of funds for the alleged loan transaction, further preventing Plaintiff's right of three-day rescission under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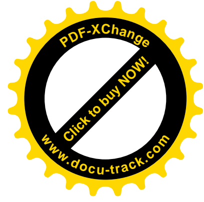
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the Truth in Lending Act because the real lender has not been revealed and therefore the Notice of Rescission by WaMu has no authorized addressee under law.

296. The fact that the "loan" was funded through a warehouse line of credit without a disclosed source of funds and without disclosing tens of thousands of dollars in fees all contrary to the requirements of state and federal law was withheld from Plaintiff by WaMu and continues to be withheld by them and their successors. But for the expenditure of time, money and effort on research, Plaintiff would not have discovered the various deceptions of WaMu and the Defendants at the alleged loan closing.

297. Plaintiff alleges the closing was an "alleged loan closing" because in fact it was part of an undisclosed hidden illegal scheme to issue unregulated securities (mortgage backed securities) based upon the negotiation of non-negotiable notes, the terms of which had been changed, altered, amended or modified AFTER the execution by the Plaintiff.

298. Plaintiffs then purported to "negotiate" a note without a "sum certain" by adding terms which allowed the proceeds of the note to be allocated to the payment of the notes of other borrowers and adding co-obligors as aforesaid through insurance, guarantees, additional collateralization and reserves all of which were undisclosed, as aforesaid, except for ¶9 of the Long note.

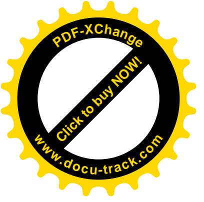
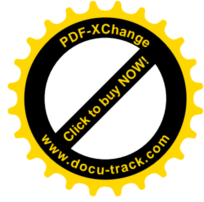
299. The Note was not negotiable because it was no longer an unconditional promise to pay by the original borrower; it contained variable terms and balloon payments without a sum certain; and the terms had changed, adding conditions to payment, assumptions, modification, and satisfaction that were inherent in the "securitization process" that WaMu, Defendant Trust, and Does fraudulently promoted.

300. Said "negotiation" of Long's Note was in actuality the theft of her identity to hide the vast number of "toxic waste mortgages, notes and obligations that the Does and WaMu were selling up through their "securitization" chain.

301. The result of this was that notes from other borrowers wherein there was virtually no possibility of performance were disguised as being of the same class as Plaintiff's Note. In fact, certificate holders in the Defendant Trust have sued the other Defendants for this very reason.

302. These disguised notes carried interest rates sometimes as high as 16.5% which under disguise were then sold to unsuspecting investors as triple AAA investments providing the investor with approximately 6-8% return.

303. By selling virtually worthless "negotiable" paper at par or in the case of toxic waste paper, 2-5 times par, WaMu and Does reaped profits in the hundreds of

thousands of dollars on each such "transaction." For example, if the toxic waste paper under cover of Plaintiff's credit rating and identity was sold at an investment return of 6% and the mortgage note carried a principal balance of $300,000, the enterprise Defendants sold the "investment" certificates on that "loan" for approximately $740,000 and thus received $440,000 in illegal, fraudulent and undisclosed "profits" or "fees" in a $300,000 mortgage transaction.

304. Thus the economics of mortgage origination changed, to wit: the worse the loan, the more money the Does and WaMu made as long as there were enough people, like Plaintiff, whose identify was used to hide the high volume (and high profit) of toxic waste loans.

305. It was thus in the financial interest of the Does and WaMu to create unrealistic and false market expectations, deceiving the public as a whole in specified geographical areas of the country that were identified by these enterprise Defendants as targets.

306. Since these illegal profits were not disclosed, Plaintiff is entitled to an accounting and a pro rata share of the profits obtained by the illegal, improper and undisclosed use of her name, credit rating and identity.

307. Based upon the opinion of Plaintiff's experts, Plaintiff's share of said profits would be in excess of $1 million.

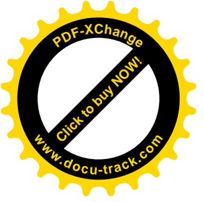
308. The Distribution Reports are supposed to accurately reflect the "financial health of the trust," and provide the Defendant Certificate holders, with important data such as the number of loans in bankruptcy, the aggregate amount of special servicing fees, and the aggregate amounts of trust fund expenses.

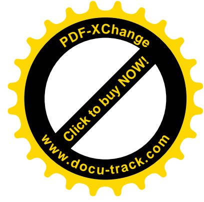
309. Each and every one of these categories is essential for to assess its profit and loss potential in the REMIC entity. Furthermore, this data is used by bond rating agencies to assess the value of the Certificates.

310. Based upon the filings and information and belief no accurate accounting has ever been presented to anyone and that therefore the identity and status of any putative holder in due course is completely shrouded in secrecy enforced by JPMC, BOA, their agents, servants and employees.

311. Unreported repurchases of certificates or classes of certificates would and did result in a profit to the REMIC that went unreported, and which was not credited to Borrowers where the repurchase was, as was usually the case, far less than the original investment.

312. While the Plaintiff would never have entered into a transaction in which the true nature of this scheme was revealed, any profits, refunds, rebates, fees, points,





costs or other income or gain should be credited on some basis to said borrowers including the Plaintiff herein.

313. The end result of the false and misleading representations and material omissions of Defendants as to the true nature of the mortgage loan actually being processed, which said Defendants had actual knowledge was in direct conflict with the original Uniform Residential Loan Application, early TILA, and Plaintiff's stated intentions and directions to said WaMu at the time of original application for the loan, intentionally, knowingly and fraudulently caused Plaintiff to execute predatory loan documents.

314. At no time whatsoever did WaMu or its brokers ever advise Plaintiff (nor, as far as Plaintiff can determine, any "investor" in certificates of mortgage-backed securities) that:

a. the mortgage loan being processed was not in her best interest;

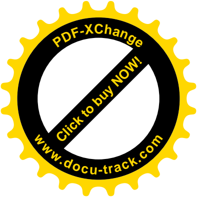
b. the terms of the mortgage loan being processed were less favorable than the fixed-rate loan which Plaintiff previously had been advised that she qualified for;

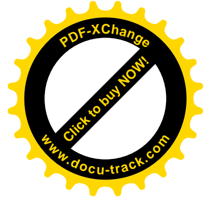
c. that the mortgage loan was an inter-temporal transaction (transaction where terms, risks, or provisions at the commencement of the transaction differ at a later time) on which Plaintiff was providing cover for WaMu, Defendants and Does for illegal activities;

d. that Plaintiff would likely be placed in a position of default, foreclosure, and deficiency judgment regardless of whether she met her loan obligations once the true lender or true holder(s) in due course appeared;

e. that the originating "lender", that being WaMu and/or undisclosed third parties had no intention of retaining ownership interest in the mortgage loan or fully servicing same and in fact may have and upon information and belief had already pre-sold the loan, prior to closing, to a third party mortgage aggregator pursuant to previously executed documentation (Assumption and Assignment Agreement, Pooling Services Agreement, etc. all executed prior to Defendant's "loan closing;"

f. that the mortgage loan was actually intended to be repeatedly sold and assigned to multiple third parties, including one or more mortgage aggregators and investment bankers (including but not limited to Does), for the ultimate purpose of bundling the Plaintiff's mortgage with hundreds or perhaps thousands of others as part of a companion, support, or other tranche in connection with the creation of a REMIC security known as a Collateralized Mortgage Obligation ("CMO"), also known as a "mortgage-backed security" to be sold by a securities firm (and which in





fact ended up as collateral for Asset-Backed Securities Certificates, created the same year as the closing);

g. that the purported mortgage/deed instrument and Promissory Note may be sold, transferred, or assigned separately to separate third parties so that the later "holder" of the Promissory Note may not be in privity with or have the legal right to foreclose in the event of default;

h. that in connection with the multiple downline resale and assignment of the mortgage and Promissory Note that assignees or purchasers of the Note may make "pay-downs" against the Note which may affect the true amount owed by the Plaintiff on the Note;

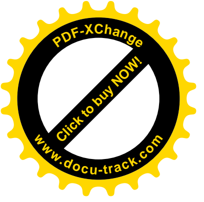
i. that a successive assignee or purchaser of the Note and purported Deed may not, upon assignment or purchase, unilaterally impose property insurance requirements different from those imposed as a condition of the original loan (also known as prohibition against increased forced-placed coverage) without the Defendant's prior notice and consent.

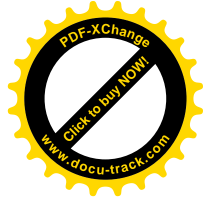
315. As a result of the closing and in connection therewith, WaMu, Defendant Trust and Does placed the Long Note into a pool of a sub-prime adjustable rate mortgage programs, with WaMu and Does intentionally misleading Plaintiff and the other borrowers and engaging in material omissions by failing to disclose to Long and other borrowers the fact that the nature of the mortgage loan applications had been materially changed without Plaintiff's knowledge or consent, and that Plaintiff was being placed into a pool where the usual loan was an adjustable rate mortgage program despite other borrowers not being fully qualified for such a program.

316. Prior to the closing, WaMu and Does failed to provide to Plaintiff the preliminary disclosures required by the Truth-In-Lending Act pursuant to 12 CFR (also known as and referred to herein as "Regulation Z) sec. 226.17 and 18, and failed to provide the preliminary disclosures required by the Real Estate Settlement Procedures Act ("RESPA") pursuant to 24 FR sec. 3500.6 and 35007, otherwise known as the GFE.

317. Defendants failed and/or refused to provide a HUD-1 Settlement Statement at the closing which reflected the true cost of the consumer credit transaction. As Plaintiffs failed to provide an accurate GFE or Itemization of Amount Financed ("IOAF"), there was no disclosure of a Yield Spread Premium ("YSP", which is required to be disclosed by the Truth-In-Lending Act) and thus no disclosure of the true cost of the loan.

318. As a direct and proximate result of these failures to disclose as required by the Truth-In–Lending Act, Defendants received a YSP in a substantial amount of without preliminary disclosure, which is a per se violation of 12 CFR sec.





226.4(a), 226.17 and 18(d) and (c)(1)(iii). The YSP raised the interest rate which was completely unknown to or approved by the Plaintiffs, as they did not received the required GFE or IOAF.

319. In addition, the completely undisclosed YSP was not disclosed by Defendant in their broker contract, which contract was blank in the area as to fees to be paid to Plaintiff. This is an illegal kickback in violation of 12 USC sec. 2607 as well as State law which gives rise to all damages claims for all combined broker fees, costs, and attorneys' fees.

320. The Amount Financed within the TIL is also understated which is a material violation of 12 CFR sec. 226.17 and 18, in addition to 15 USC sec. 1602(u), as the Amount Financed must be completely accurate with no tolerance.

321. Plaintiffs were under numerous legal obligations as fiduciaries and had the responsibility for overseeing the purported loan consummation to insure that the consummation was legal, proper, and that Plaintiff received all legally required disclosures pursuant to the Truth-In-Lending Act and RESPA both before and after the closing.

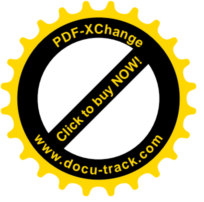
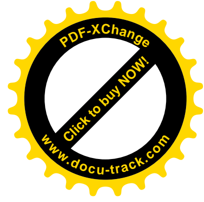
322. Plaintiff, not being in the consumer lending, mortgage broker, or residential loan business, reasonably relied upon the Defendants to insure that the consumer credit transaction was legal, proper, and complied with all applicable laws, rules, and Regulations.

323. At all times relevant hereto, Defendants regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four (4) installments and was initially payable to the person the subject of the transaction, rendering Plaintiffs "creditors" within the meaning of the Truth-In-Lending Act, 15 U.S.C. sec. 1602(f) and Regulation Z sec. 226.2 (a)(17).

324. At the closing of the subject "loan transaction", Plaintiffs executed Promissory Notes and Security Agreements in favor of Defendants as aforesaid. These transactions, designated by Defendants as a Loan, extended consumer credit which was subject to a finance charge and which was initially payable to WaMu.

325. As part of the consumer credit transaction the subject of the closing, Defendants retained a security interest in the subject property which was not Plaintiff Long's principal residential dwelling or second home, but a commercial property.

326. Defendants engaged in a pattern and practice of defrauding Plaintiffs in that, during the entire life of the mortgage loan, Defendants failed to properly credit payments made; incorrectly calculated interest on the accounts; and have failed to accurately debit fees. At all times material, Defendants had actual knowledge that

the accounts were not accurate but that Defendants would make further payments based on Defendants' inaccurate accounts.

327. Plaintiff made payments based on the improper, inaccurate, and fraudulent representations as to the accounts. As a direct and proximate result of the actions of the Defendants set forth above, Plaintiffs overpaid in interest.

328. Plaintiffs also utilized amounts known to the Plaintiffs to be inaccurate to determine the amount allegedly due and owing for purposes of foreclosure. Plaintiffs' violations were all material in nature under the Truth-In-Lending Act.

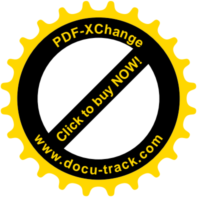
329. Said violations, in addition to the fact that Plaintiffs did not properly receive Notices of Right to Cancel, constitute violations of 15 USC sec. 1635(a) and (b) and 12 CFR sec. 226.23(b), and are thus a legal basis for and legally extend any right to exercise the remedy of rescission by Long.

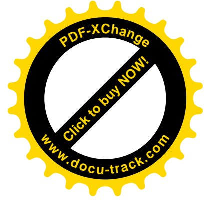
330. Defendants purportedly assigned and/or attempted to assign the Note and deed while in default and with constructive knowledge of fraud to parties who did not take these instruments in good faith or without notice that the instruments were invalid or that Plaintiffs had a claim in recoupment. Pursuant to ORC sec. 1303.32(A)(2)(b)(c) and (f), no Defendant is a holder in due course and thus each is liable to Plaintiffs, individually, jointly and severally.

331. On information and belief and given that the consumer credit transaction was an inter-temporal transaction with multiple assignments as part of an aggregation and the creation of a REMIC tranche itself a part of a predetermined and identifiable CMO, all Plaintiffs shared in the illegal proceeds of the transaction; conspired with each other to defraud the Plaintiffs out of the proceeds of the loan; acted in concert to wrongfully deprive the Plaintiffs of their residence; acted in concert and conspiracy to essentially steal the Plaintiffs' home and/or convert the Plaintiffs' home without providing Plaintiffs reasonably equivalent value in exchange; and conducted an illegal enterprise within the meaning of the RICO statute.

332. On information and belief and given the volume of residential loan transactions solicited and processed by the Plaintiffs, the Plaintiffs have engaged in two or more instances of racketeering activity involving different victims but utilizing the same method, means, mode, operation, and enterprise with the same intended result.

<u>Compliance With Law & Conditions Precedent Necessary For Lawful & Equitable Transfer of the Long Note to the Defendant Trust</u>





333. In order for the Long note to be lawfully and equitably assigned into a the Defendant Trust, it had to not only meet the tests of Georgia law and the UCC, but of IRS regulations and the conditions precedent in the Defendant trust's PSA.

334. The law imposes two different sets of requirements on mortgagees when transferring a mortgage interest – one for the assignment of the mortgage/deed and another for the indorsement of the note. The mortgagee must follow the basic common law principles of contracts when assigning the deed to secure debt/mortgage. Meanwhile, the mortgagee must follow the indorsement rules imposed by the UCC in order to transfer the note.

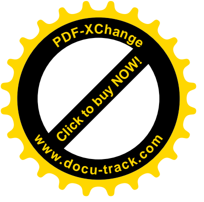
335. These requirements apply to all mortgages related to land located in most states. However, in addition to state law requirements, other requirements arise since many notes were purportedly assigned to a Real Estate Mortgage Investment Conduit ("REMIC") trust as a part of the securitization process. Since the securitized trust is a REMIC trust, then the assignment of the accompanying mortgage or deed that secures the debt and transfer of the borrower's note must also comply with the REMIC rules, promulgated by the IRS, and the rules proscribed in the Pooling and Servicing Agreement ("PSA"), which serves as the governing agreement for the securitized trust.

336. The Internal Revenue Service ("IRS") created REMICs to enable the bundling of residential mortgages into segregated asset pools, so that individuals could invest in asset-backed securities. REMICs are tax "pass-through" entities, meaning that the REMICs themselves are not taxed on income, rather only the investors are taxed on income received. Due to this favorable tax treatment, the IRS imposes strict rules upon REMICs, as codified in the Internal Revenue Code, section 860A-G.91

337. In order to qualify for REMIC status, **a REMIC must meet certain <u>tests</u> *at the <u>"start-up</u> <u>day"</u> <u>AND "each day thereafter</u>*.**" One significant test for qualification is a requirement that "substantially all" the assets must consist of qualified mortgages, certain reserve funds, and limited permitted assets. For most of the subprime pools that are in jeopardy, the largest component is qualified mortgages.

338. A mortgage ordinarily is a qualified mortgage if it is: a) transferred to a REMIC on the start-up day (usually the closing date); b) purchased within three months of the start-up day pursuant to a fixed price contract in effect on the start-up day; c) Received as a replacement for another mortgage within three months of the start-up day or received as a replacement for another defective mortgage within two years of the start-up day.

339. There are also prohibited transactions to a REMIC that triggers significant tax consequences for the REMIC's bondholders. If a new mortgage is deemed to be created as the result of a *significant modification*, then the new mortgage is unlikely to be a qualified mortgage or permitted investment. After the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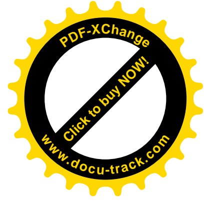
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modification, therefore, the REMIC will have to pay a tax equal to any net income attributable to interest on the mortgage and any gain on a subsequent disposition of the mortgage.

340. Thus, all dates, transfers and dispositions of mortgages must be carefully documented and executed to adhere to the strict IRS guidelines to avoid severe taxes being levied. As such, sale or exchange of a qualified mortgage is a prohibited transaction unless the depositor is replacing one mortgage with another within **three months of the start-up day** or a **<u>defective mortgage</u>** with another eligible mortgage **within two years of the start-up day**.

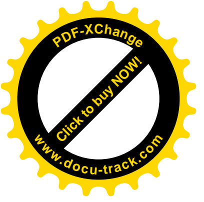
341. In simple terms, one cannot sell and transfer a mortgage into a REMIC after 3 months and can only replace a "defective mortgage" within two years. Any assignments of mortgages that exceed the 3-month or 2-year periods must be analyzed for fraud in that: a) the trust was never created; b) the notes were never lawfully and/or equitably transferred; c) the REMIC status election was a tax fraud upon the IRS; d) if a REMIC was lawfully created, the new mortgage transfer eliminates the elected REMIC status resulting in significant taxes; and/or e) the assignment is totally fraudulent and bogus after the fact.

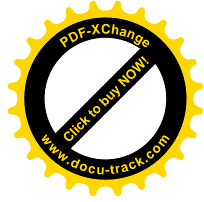
342. If in fact a REMIC holds a mortgage, it severely restricts the ability to modify that note and severely limits the servicer and/or trustees' rights to renegotiate the terms, transfer, assumption, and/or modification of the mortgage. In essence, there may be no right to modify except via court order.

343. In Georgia, we have a state law requirement that the party entitled to modify a mortgage be disclosed to the borrower in a notice of sale. As such, who are the real parties in interest that can authorize the reduction of principal balances, change interest rates, or modify ANY loan term, even assumptions and property transfers.

344. The purported (fraudulent) assignments are prima facie evidence that leads to the conclusion that the Long note was never lawfully and equitably transferred to the Defendant Trust. If in fact, there could be any lawful assignment on the date referenced in the purported assignment, it would indicate that such a securitized trust had "improper knowledge" with regards to the mortgage and it could not be properly attributed as foreclosure property to the Defendant Trust.

345. These violations were easily determined by Plaintiffs, their officers, and other experts by simply scanning the public records and SEC documents. The consequences to the Defendant Trust, trustees, and their underwriters are substantial. If a court determines that the assignments were lawful and valid, then the Defendant Trust would be subject to an IRS imposition of a 100% tax on net income derived from such a prohibited transaction under 26 U.S.C. § 860F(a)(1).





346. In addition to following the REMIC rules, each securitized trust must comply with the procedures outlined in its PSA wherein the PSA describes how the trust must operate. In order to insure that the individual mortgages are bankruptcy remote from the originating lender there must be an arms-length transaction via a "true sale" of the note to remove it from not only the balance sheet, but from the arms of creditors in a bankruptcy.

347. Each loan to a securitized trust should allege that the subject note was never lawfully assigned, equitably transferred, or possessed by the subject trust since the securitized trust must follow the conditions precedent in the PSA as to the assignment, conveyance, transfer, and endorsement of the notes.

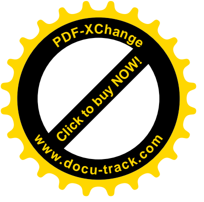
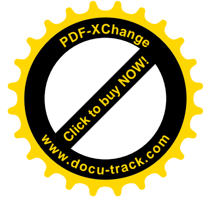
348. If this was not followed, and all evidence leads to this conclusion, they the only conclusion that can be rightfully inferred is that the NOTES REMAINED WITH THE ORIGINATOR/AGGREGATOR (WAMU) in violation of the terms of the PSA, offering documents, and filings with the SEC.

Plaintiff's Statement Of Investigation Into General & Factual Allegations

349. Plaintiffs, as detailed below, allege the following allegations upon personal knowledge as to themselves and their own acts and upon information and belief as to all other matters. Plaintiffs' information and belief is based on the investigation of their partners, officers, experts, and counsel.

350. The Plaintiff's extensive investigation included, for example: (i) review and analysis of the offering materials for the Defendant Trust and other securitizations; (ii) examination of the SEC filings, press releases and other public statements of Washington Mutual, Inc. and its subsidiaries and affiliates ("WaMu"); (iii) review and analysis of court filings cited herein; (iv) review and analysis of media reports, Congressional testimony and additional material; (v) the New York Attorney General's investigations into the role of Nationally Recognized Statistical Ratings Organizations ("NRSRO") in the ratings shopping process and into WaMu's manipulation and use of inflated appraisals in underwriting mortgages; (vi) analysis of the Securities and Exchange Commission's Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies ("SEC Report") and additional documents cited herein; and (vii) interviews with Defendants, foreclosure counsel, witnesses and experts; and (viii) evidence gathered from reports, white papers, court pleadings, depositions, affidavits, court opinions, and others documents.

351. Many of the facts related to Plaintiffs' allegations are known only by the Defendants named herein, or are exclusively within their custody or control. Plaintiffs believe that substantial additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.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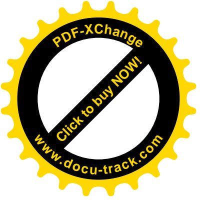
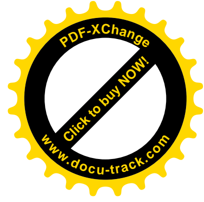
352. WMAAC, WMB and WCC, together with their affiliates and subsidiaries, are often collectively referred to herein as "WaMu." Washington Mutual Bank, the originator of Plaintiff Long's loan and the purported sponsor/seller and securitizer of the Long promissory note, as well as the original servicer for her mortgage loan collateral is not named as a Defendant herein, solely due to the fact that on September 25, 2008 the Office of Thrift Supervision seized Washington Mutual Bank and placed it into the receivership of the Federal Deposit Insurance Corporation ("FDIC"), which sold Washington Mutual Bank's assets, including the Long Note and/or rights to service the Long loan to Defendant JPMorgan Chase & Co. As such, Defendant JPMorgan Chase & Co. assumed the claims and liabilities related to the Long Note and loan since it had full disclosure of the frauds and abuses at WaMu and its securitization process when it purchased the Long Note and servicing rights.

353. Washington Mutual Mortgage Securities Corporation ("WMMSC"), a limited purpose subsidiary of Defendant WMB, served as the sponsor and seller of the mortgage loan collateral for certain WaMu Offerings. WMB and WMMSC performed identical functions for the purposes of the Offerings referenced herein and as such, for the purposes of the Complaint, shall be referred to collectively as "WMB" and/or "WaMu."

354. Most people interested in purchasing or refinancing a home or property ("borrowers") seek a financial institution (a "lender") to lend them money on the most favorable repayment terms available. Traditionally the lender, as part of agreeing to loan the funds, wanted to ensure that the borrower was able to repay the loan and that the loan was adequately collateralized in case the borrower defaulted. The borrower and the lender had a common interest in accurately valuing the underlying collateral because both wanted to be sure the borrower was not paying too much for the property and would be able to meet the repayment terms, or that – in the event of default and foreclosure – the property value could support the loan.

<u>Facts Related to Long Note & Its Securitization By WaMu</u>

355. This action is brought by Plaintiffs Tammy Jo Long ("Long"), Castle Homebuilders Inc., ("CHB") and William Davidson ("Davidson") against the WAMU Mortgage Pass-Through Certificates Series 2006-AR19 Trust referred to as the "Defendant Trust" and NORES and MARTA, and Doe(s) and Roe(s) Defendants collectively referred to as "Investor Defendants" in the WAMU Mortgage Pass-Through Certificates Series 2006-AR19 Trust who purchased ("Certificates") in the Defendant Trust that were offered pursuant to Registration Statements and accompanying the Original Basic Prospectus filed with the Securities and Exchange Commission ("SEC") by Defendant Washington Mutual Asset Acceptance Corporation ("WMAAC") pursuant to the Registration Statements and the subsequently-filed Prospectus supplements incorporated therein (collectively, the "Offering Documents"); Washington Mutual Capital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Corporation a/k/a WaMu Capital Corporation ("WCC") underwrote and sold to the Investor Defendants via Mortgage Pass-Through Certificates and Defendant Washington Mutual, Inc. ("WMI") was the parent company to WMB; Defendant Bank of America NA ("BOA") as Trustee for the Defendant Trust; and JPMorgan Chase ("JPMC") as servicer for the Defendant Trust.

356. All Plaintiffs bring claims against the Defendant Trust, the Investor Defendants, BOA, and JPMC.

357. Plaintiff Tammy Jo Long also seeks redress against Defendants WCC, WMAAC, WMI as well as First American Corporation ("First American") and First American eAppraiseIT, LLC ("eAppraiseIT").

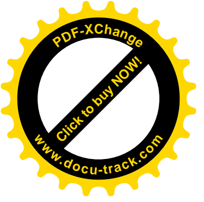
358. This action arises from the role of WaMu in originating and securitizing the loan of Long by it employees and agents inducing her to take an hybrid option ARM residential loan for the refinancing of a property used as a known commercial property and creating a known false valuation for the property in order that their affiliated entities could, without Long's knowledge or consent, enter into third party contracts obligating Long to others who acquired and then converted her loan via a sub-prime first-lien hybrid adjustable rate note that did not contain a "sum certain" and had a payoff that could vary as much as $160,000.00 over the original principal balance though a predatory lending loan feature defined as negative amortization.

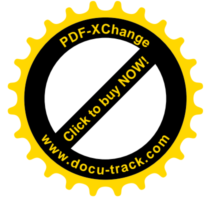
359. WAMU Acceptance Corp. as an SPV was almost like a nonsubstantive shell entity. As such, after it allegedly acquired the asset pool from the originator (WAMU), it did not have the wherewithal required to collect the receivables, and therefore could not perform the collecting and servicing function itself.

360. Generally, the originator company, who has proximity with the borrowers and typically has an infrastructure and systems in place for doing so, retains the servicing function; the originator company is now in a servicer role instead of an ownership role, which it had prior to the securitization transaction.

361. In addition, WaMu brokers, agents, and employees, with the knowledge, support, of WaMu executives, falsified and placed known fraudulent information with regards to Plaintiff Long's income onto the systems and applications of WaMu's underwriting system without input from Long and no verification of Long's income.

362. WaMu loan broker/agents placed different income amounts, varying in tens and hundreds of thousands of dollars, related to Long's income into the WaMu system, including different incomes on the same closing date for loans related to the identical property as a 1st and 2nd loan as well as different loans for different properties that the same WaMu loan officer





363. In addition, WaMu and its loan broker/agents knew that the properties being funded were commercial properties that contained prior commercial loans and such loan officers also instructed Long to have her company "quick claim" the properties to Long personally prior to the closing of each loan.

364. WaMu loan broker/agents informed Long that the home financing would be for 2nd residences and that she could have as many 2nd homes as she wanted and since they were in vacation destinations where she would reside in each home a week or two each year and rent the properties out on a daily, weekly, and/or monthly basis, that she'd qualify for the 2nd residence home loan option ARM programs WaMu was offering for investors.

365. In addition, all they requested was her social security number, the property address, and using her high FICO score that was believed to be 775, they could loan her the money under their no doc program and that they would prepare "all the paperwork to make the loan work for her."

366. Long did not even submit a loan application until closing where on the same day she closed and executed dozens of papers provided to her, she was presented the loan application for the first time in a stack of papers she was asked to execute.

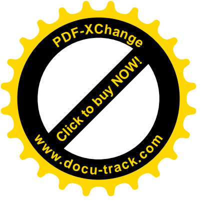
367. At the closing table, Long, without attorney, reading, or review, executed each of the documents on the line she was instructed to sign. She was unaware of the numbers, figures, amounts, terms and conditions she was signing which is par for most Americans, even investors. The whole process took about 30 minutes.

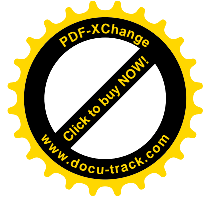
368. Long took at face value that the information and representations provided to her, including the appraised value of the subject property, were in compliance with the law and were true and correct.

369. The subject loan and other loans Long secured from WaMu for her commercial properties were during the 2005 through 2007 time period when WaMu, in a hunt for massive short-swing profits, was pressing its sales agents to pump out loans while disregarding borrowers' incomes and assets.

370. WaMu gave mortgage brokers such as the officer who sold and closed Long's loan, handsome commissions for selling the riskiest loans, which carried higher fees that bolstered WaMu profits and ultimately the compensation of the bank's executives. "It was the Wild appraisal company, Mitchell, Maxwell & Jackson, that did business with WaMu until 2007. "If you were alive, they would give you a loan." "Actually, I think if you were dead, they would still give you a loan."

371. Because WaMu was securitizing and selling these loans to investors in the secondary market, it did not worry about default or fraud on the loans by the brokers who falsified records and used a borrower's high credit score to get a loan





approved. In fact, these loans were nicknamed "Liar Loans" by the WaMu employees and brokers who knowingly placed false information about use of the property and the incomes of the borrowers, such as Plaintiff, to "hit the numbers" of the sophisticated models created by the secondary market players and ratings agencies.

372. When the frauds and abuses were identified in third-party due diligence reviews, WaMu managers and executives ignored the warnings and findings and continued to sell the loans onto the secondary market.

373. Plaintiff Long's loan was part of a pool of loans that were then securitized and turned into part of $47.25 billion of purportedly "investment grade" mortgage-backed securities, which were then sold to Investor Defendants and others in a series of thirty-six (36) public Offerings made pursuant to Offering Documents filed with the Securities and Exchange Commission ("SEC").

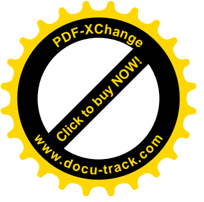
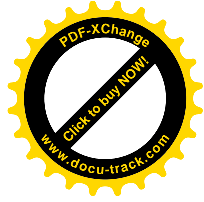
374. The value of the Certificates were directly tied to the value of the underlying mortgages such as Longs as well as the repayment of the underlying mortgages by borrowers like Long since the principal and interest payments due to Defendant Investors were secured and derived from borrower payments, including Plaintiff Long.

375. WaMu controlled almost every aspect of the creation and issuance of the Certificates from origination and pooling of the underlying mortgage loans, through the securitization of the loans and the sale of the Certificates representing interests in the loans to the Investor Defendants.

376. Long's mortgage loan underlying the Certificates in Defendant Trust was originated by WMB who then formed WMAAC, a special purpose entity, for the sole purpose of acquiring mortgage loans from WMB and then transferring the mortgage loans into the Defendant Trust, which, in turn, issued the Certificates. The Certificates were then purchased by WCC, the underwriter, from the Defendant Trust and then sold to Defendant investors pursuant to the Offering Documents. Once the Certificates were issued and sold to investors, WMB's servicing division collected the mortgage payments submitted by borrowers and purportedly deposited such funds into the Defendant Trust f/b/o the Investor Defendants pursuant to the terms of the Defendant Trust's Indenture.

377. Defendant BOA as trustee had a fiduciary duty to oversees the administration of the Defendant Trust by Defendant Servicer while periodically distributing payments to the Defendant Investors.

378. In order for an Offering of Certificates to be marketable, a large proportion of the Certificates in the Offering had to be assigned the highest investment grade rating by at least two rating agencies. The reason is simple. Without high investment grade ratings, the Certificates could not be purchased by WaMu's principal

clientele – institutional investors such as pension funds and insurance companies that make up the Investor Defendants, because such investors' purchases are often restricted to securities rated above certain minimum allowable credit ratings.

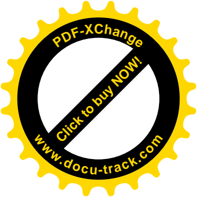
379. For this reason, WaMu did not leave the ratings assigned to the Certificates to chance. In fact, WaMu ensured such ratings were assigned by engaging firms such as Moody's and S&P to not only rate the Certificates at issuance, but also to directly participate in the securitization process. Undisclosed to Long, her promissory note was being sliced and dices into various tranches of a mortgage backed securities ("MBS") process that the Defendant Rating Agencies played a significant role in determining what type of mortgage loans were to be included in the mortgage pools underlying the Certificates and in the structuring of the Offerings – i.e., determining the number of classes, or tranches, each Offering would include, and the amount and type of investment protection or "credit enhancement" built into the Certificate structure. In essence, they created the proto-type models and informed WAMU what type of loan products (various models) could be mass produced and manufactured for sale to both borrowers such as Long and purchasers of certificates such as Investor Defendants.

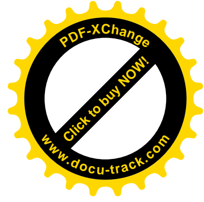
380. WaMu did not disclose to anyone that it engaged the Defendant Rating Agencies by way of "ratings shopping" - the practice of having the Rating Agencies provide proposed ratings on the Certificates as part of their bid for Certificate engagements. As former head of mortgage-backed securities at Moody's, Brian Clarkson stated in an October 17, 2008 article in Financial Times, that in structured finance, including mortgage backed securities, "[y]ou start with a rating and build a deal around a rating."

381. As a result, a substantial portion of the Certificates in the Defendant Trust were assigned the highest investment grade rating possible by the Rating Agencies at the time of their issuance – "Aaa" for Moody's and "AAA" for S&P (hereinafter collectively referred to as "AAA.") Overall, the Defendant Rating Agencies assigned AAA ratings to over 93%, or $44.18 billion, of the Certificates they rated for WAMU, including those of the Defendant Trust.

382. In fact, none of the Certificates, at the time of their Offering, were assigned ratings below investment grade – "Ba1" and below for Moody's and "BB+" and below for S&P. The Certificates' ratings were material to the Investor Defendants because of the purchase restrictions stated above, as well as the fact that the ratings were a reflection of the risk or probability of default on the mortgages underlying the Certificates, according to the Offering Documents.

383. Soon after the Certificates were issued, as a result of massive increases in borrower delinquency, foreclosures, repossessions and bankruptcies in the Certificates' underlying mortgage collateral, the value of the Certificates collapsed. Investor Defendants then pursued Class Action lawsuits having suffered realized losses of hundreds of millions of dollars as the value of their





Certificates has plummeted. Moreover, the likelihood of the value of the Certificates ever returning to par value was severely diminished by the fact that over 51% of the mortgage loans underlying the Certificates – the source of income for Certificate investors – are in some type of delinquency or default, or are subject to foreclosure or bankruptcy. The delinquency and default rates on the Certificates' underlying mortgages – arising from, among other things, WAMU's known fraudulent origination practices that the Investor Defendants not only realize, but were warned of and had prior knowledge of and for which they now sue many of the same defendants has triggered unprecedented downgrades of their Certificates by the Rating Agencies.

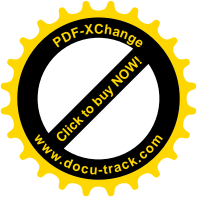
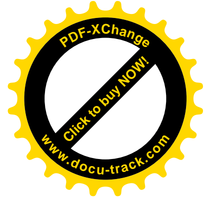
384. Moody's and S&P have downgraded over 99%, or $46.75 billion, of all of the Certificates issued including those of the Defendant Trust. In totality, 95%, or $44.56 billion, are now rated below investment grade and over 94%, or $41.62 billion, of the $44.18 billion of Certificates initially awarded AAA ratings have been downgraded to below investment grade.

385. The Defendant Investors who were purchasers of the Certificates in the Defendant Trust were so-called "sophisticated investors" who were warned in the prospectus of the potential risks associated with their investments. It was incumbent on each to conduct the proper due diligence in their purchases. Via their purchases, lack of diligence, and negligence in turning a blind eye to the warnings each received, they helped not only fuel the fraudulent system of mortgage origination and securitization that they now sue upon, but incentivized WAMU, it affiliates, employees, ad brokers to commit the frauds they complain of.

386. The Investor Defendants ratification of the actions they sue upon makes them equally as liable for the torts committed and the purported transfer and assignment of Long's Note and Deed after the loan was known to be in default; was a loan on a commercial property; after they sued WAMU and others in the origination and securitization chain for fraud; assignments that are fraudulent and fabricated; and the lack of diligence in combining their efforts to make the servicers change their actions and reform the trust agreements defeats any holder in due course defense the Defendant Trust could assert.

387. The Investor Defendants and Trust cannot prove that they are a secured creditor in that they took an assignment of deed to secured debt and transfer of the purported note while the loan was in default; they had knowledge of the frauds perpetrated against Long; and the Note was not a negotiable instrument subject to negotiability and transfer.

388. The Investor Defendants depended on the quality of the underlying mortgage collateral for their financial returns, the descriptions of the loan origination practices contained in the Offering Documents were highly material disclosures to them. The Offering Documents indicated that the underlying mortgage loans were originated pursuant to origination guidelines that included an examination of

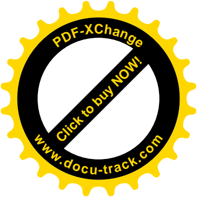
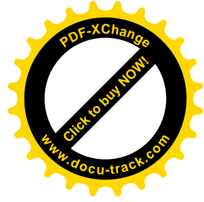
borrower creditworthiness and an accurate, independent appraisal of the property subject to each mortgage loan.

389. The Investor Defendants claims in their lawsuit that the loan origination guidelines detailed in the Offering Documents contained material misstatements and omissions since, as came to light only well after issuance of the Certificates, the principal mortgage loan originator, WMB, systematically disregarded the underwriting guidelines in a number of ways. The materiality of these misstatements and omissions is reflected in the fact that the Defendant Rating Agencies, in downgrading the Certificates from the highest investment grade to junk bond grade, specifically attributed the downgrades to "aggressive underwriting" in the origination of the underlying mortgage loans such as Long's loan and Note.

390. Compliance with the stated loan underwriting guidelines was highly material to Certificate investors, who were dependent on the creditworthiness of the borrowers for interest and principal payments throughout the lifespan of the Certificates. In contrast, WaMu had no such similar financial interest, since their compensation was earned once the Offerings were completed. For this reason, among others, WaMu, specifically WCC, conducted inadequate due diligence with respect to whether the underlying mortgage loans were originated in conformity with the underwriting guidelines stated in the Offering Documents – ignoring deficient lending documentation and inflated appraisals of the properties collateralizing the mortgages underlying the Certificates. In fact, WCC failed to conduct any of its own due diligence at the underwriting stage of the Offerings. Instead, WCC relied on wholly inadequate reviews of the underlying mortgages, conducted by third-party firms, who were engaged by WCC to examine small samples – 5-7% at most – of the mortgage loans in WMB's loan portfolio.

391. WaMu contracted out the inspection of loans for compliance with the underwriting guidelines to outside third-party appraisal firms – i.e., Clayton Holdings, Inc. ("Clayton") and The Bohan Group ("Bohan") – and then conducted limited oversight of these subcontractors' activities. As disclosed as part of an ongoing investigation of investment banking and mortgage-backed securities issuer misconduct in underwriting mortgage backed securities being conducted by the New York Attorney General (the "NYAG"), Clayton and Bohan routinely provided issuers with detailed reports of loans non compliant with underwriting guidelines, but WaMu routinely overrode and/or ignored these reports . Further, Bohan's President stated that, by the time the Offerings of the Certificates took place, issuers were requiring a review of only 5-7% of the entire loan pools.

392. As described herein, originations of non-traditional adjustable mortgages, interest only and negative amortization loans, the loan Plaintiff Long was placed into, increased dramatically between 2005 and 2007. These types of loans presented the greatest potential for "payment shock" to the borrower since they both provide

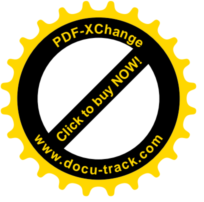
small initial fixed rates for a limited period of time which then reset thereafter to much higher monthly payment amounts.

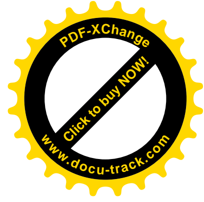
393. WCC's "due diligence" was limited, inadequate and defective. The Offering Documents fail to disclose that, Defendant Rating Agencies' models for assigning rates were woefully outdated. It was only disclosed well after the issuance of the Certificates, that S&P's models had not been materially updated since 1999 and Moody's models had not been materially updated since 2002. The Rating Agencies' models employed obsolete statistical assumptions based on the performance of mortgage loans and underwriting standards for mortgage loans issued prior to 2003. However, Certificates' underlying mortgage collateral includes a substantial proportion of certain types of loans which only began to be originated en masse from 2003 moving forward – i.e., sub-prime and Alt-A loans, adjustable rate mortgage loans ("ARMs") and non-traditional or hybrid ARMs (i.e., negative amortization loans or interest-only loans) – all issued with limited borrower documentation or employment verification.

394. WAMU and its affiliates failed to disclose the inherent conflicts between the Rating Agencies and WaMu, including WaMu's engagement of the Rating Agencies through ratings shopping. These conflicts of interest began to be disclosed to the public in a report released by the SEC in July 2008 (the "July 2008 SEC Report"), after a year-long investigation into the Rating Agencies' activities relating to the issuance of mortgage backed securities in the period spanning 2005 through 2007. The July 2008 SEC Report disclosed that the Rating Agencies were typically chosen by way of ratings shopping whereby the Ratings Agency that was ultimately engaged was the one which provided the most profitable rating to the investment bank in "bidding" for the engagement. The July 2008 SEC Report also explained that the Rating Agencies were incentivized, due to the highly profitable nature of these mortgage-backed securities engagements, to not update their models, as doing so would render the Ratings Agencies unable to provide to the investment bank the necessary credit enhancement and rating structure for the mortgage securitization.

395. The conflicts of interest which plagued the relationship between mortgage-backed securities issuers and the Rating Agencies were further discussed in a report issued by the Congressional Oversight Panel in January 2009 (the "January 2009 Congressional Oversight Panel Report") which stated, in no uncertain terms, that the conflicts of interest arising out of the fee-based relationship between mortgage-backed securities issuers and the Rating Agencies and the use of inadequate and incorrect ratings models played a key role in the catastrophic decline in the value of mortgage-backed securities, resulting in billions of dollars in both investor and borrower losses.

396. As set forth herein, the Investor Defendants have filed class action lawsuits that have been consolidated into one action wherein they allege that the Offering Documents contained material misstatements and omissions of material facts in





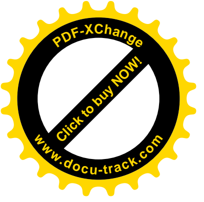
violation of Sections 11 and 12 of the Securities Act, including the failure to disclose that: (i) the mortgage loans underlying the Certificates were not originated in accordance with the loan underwriting guidelines stated in either the Registration Statements or the Prospectus Supplements, WaMu having failed to conduct either a meaningful assessment of the borrowers' creditworthiness or an accurate appraisal of the mortgaged properties; (ii) WMAAC and WCC failed to conduct adequate, and in most cases any, due diligence with respect to compliance with the loan underwriting guidelines stated in the Offering Documents; (iii) the appraisals on many of the properties collateralizing the mortgages underlying the Certificates were inflated; (iv) there were material undisclosed conflicts of interest between WaMu and the Rating Agencies, including those reflected in undisclosed ratings shopping practices, which incentivized the Rating Agencies to inflate Certificate ratings to maintain business with WaMu; and (v) the amount of credit enhancement provided to the Certificates was inadequate to support AAA and investment grade ratings because those amounts were determined primarily by the outdated models of the Rating Agencies.

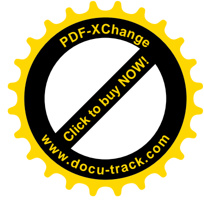
397. Defendant Shapiro & Swertfeger had full and complete knowledge of the facts stated herein and knew that the Defendant Trust could not and is not the secured creditor to Long's loan since they ordered an assignment to be executed and delivered that is over 5 years after the cut off and closing dates for the trust.

398. Thus, the purported assignment of Long's deed to secure debt and the transfer of the underlying promissory note purportedly executed by Long, all relevant parties to the transaction and their successors as well as the Investor Defendants by privity were all fully aware that the Long loan was in default; that WaMu was no longer a corporate entity with a corporate authority to effectuate such a transfer and MERS never held any interest in the Long Note it could assign.

399. In addition, as described fully below, First American and eAppraiseIT allowed appraisals performed by eAppraiseIT and others to be improperly influenced by WaMu allowing for defective, inflated valuations of the mortgage properties underlying the Certificates, thereby, among other things, artificially inflating loan-to-value ("LTV") ratios used to approve loans such as Plaintiff Long's loan. As a result, First American and eAppraiseIT have also caused Long to suffer damages for which these entities are liable as a joint tortfeasor.

400. Defendant WMAAC, at all relevant times, was a wholly-owned subsidiary of WMB and was principally located at 1301 Second Avenue, WMC 3501A, Seattle, Washington 98101. WMAAC filed the Registration Statements and Prospectus Supplements with the SEC in connection with the Offerings and served as the depositor of the Certificate collateral with the Issuing Trust in each of the Offerings. The role of WMAAC, a special purpose entity, was to purchase the mortgage loans, including the purchase of the Long promissory note from WMB and then assign the mortgage loans and all of the rights and interest under the





mortgage loan purchase agreement to the trustee for the benefit of the holders of certificates. (emphasis added)

401. The Defendants have refused to allow Plaintiff Long and her agents, including Plaintiff Davidson, to inspect, at their expense, the complete and original mortgage/collateral/custodial file containing all proper and lawful indorsements upon Long's original note or on an allonge firmly attached to the subject note. Also, based on Plaintiff's and their expert's current evidence, investigation, research, facts, and data gathered from prior and current lawsuits and like to have further evidentiary proof after discovery and examination of all original custodial and collateral files, origination, servicing, custodial, securitization, and investor records and system and upon depositions, Defendants WMB and WMAAC never lawfully negotiated, indorsed, and/or transferred Plaintiff Long's promissory note to the Defendant Trust f/b/o the Investor Defendants and instead not only made false and material misrepresentations to the SEC filings, but also to the Investor Defendants.

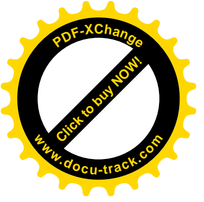
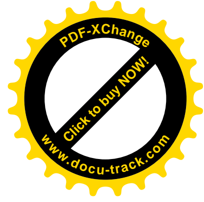
402. Based on the evidence already gathered, Defendants and their servicers with the knowledge of the Defendant Trustee knew that WMB would indorse promissory notes such as Plaintiff Long's note payable to the order of ________ to attempt to make the note a bearer instrument that could be sold, traded, pledged, hypothecated, or transferred by mere possession, if in fact the adjustable rate note contained a sum certain allowing it to be a negotiable instrument.

403. However, instead of transferring the notes and the underlying deeds to secure debt, mortgages, or deeds of trust, to the Defendant Trust, the originators maintained possession and control of the original promissory notes indorsed in blank for their own benefit. They then pledged the "cash flows" to the subject trust and in order to give the appearance that there was arms-length "true sale" transaction and that the original lenders had given up control and possession of the original notes and collateral and were not merely financing their receivables to create a bankruptcy remote entity they:

a. Indorsed the promissory notes in blank; and

b. Intentionally bifurcated the note from the deed and mortgages and in recorded filings and lawsuits give the false and fraudulent impression that there was no transfer or that the last transfer was from the original lender; and/or

c. Used Mortgage Electronic Registration Systems ("MERS") to create the false impression of who the note owner and holder in due course actually was and falsely claimed MERS or the servicer were the actual note owners and holders in due course; and/or

d. Did not execute assignments of deeds to secure debt, mortgages and deeds and did not record them; and/or

e. Did not place all intervening indorsements on the original notes; and/or

f. Destroyed many original notes and digitized only the original image of the executed note with no indorsement or only one indorsement; and/or

g. Created blank assignments that were unrecorded and placed in a file; and/or

h. Created blank allonges that were not attached to the original promissory note and placed in the file or prepare, attach, and detach allonges that were not permanently attached to the promissory notes; and/or

i. Pledged the same note to multiple securitizations and buyers; and/or

j. After default, Defendants would create, fabricate, and even forge assignments of mortgages, deeds of trust, and deeds to secure debt and then record them years after the fact from entities in bankruptcy, that were not legal entities and from persons with no knowledge or authority to execute such documents; and/or

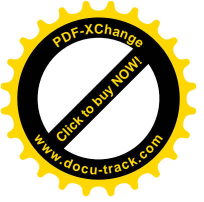
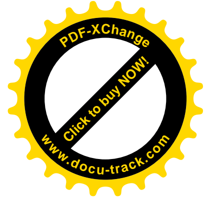
k. Create notary fraud in executing such documents as well as backdating and forward dating such assignments in order to create the appearance that they were a secured creditor allowed to foreclose or have standing in judicial foreclosure cases.

404. Many of these practices of the foreclosure mill law firms, default servicers, trustees, and the original lenders are under both criminal and civil investigations by state and Federal AGs, the U.S. Justice Department and other regulators.

405. Some of these investigations were initiated upon the findings, work, work product and recommendations of some of Plaintiff Long's experts and officers.

406. As such, without a complete forensic examination of all relevant records and documents of each party to the loan origination, securitization, custodial and investor chains, it cannot be determined who the current holder in due course of Plaintiff Long's note is and whether she would be subject to the double liability of payment or would receive clear, clean, and unclouded title without court intervention.

407. It also cannot be determined, due to the representations and intentional misrepresentations of the parties who the actual secured creditor is under O.C.G.A. § 44-14-162 that is allowed by law notice and conduct a non-judicial foreclosure on Long's property. It cannot be determined if the debt owed by

Long is secured since a non-negotiable instrument that was known to be fraudulently originated, is in default and where there are claims of recoupment prior to the purported present day assignment to the Defendant Trust.

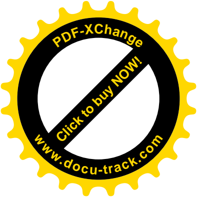
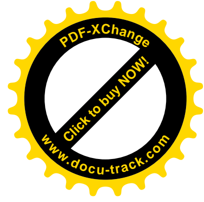
408. Complicating matters even more, the Defendant Servicer stands to profit from the frauds and abuses and there is no assurance that any money made from a foreclosure of Long's property would be passed on to its rightful owner, whoever such owner is.

409. In addition, both Chase and the Defendant Trust have claimed ownership of the Long Note and no one is willing to provide Plaintiff Long and her investors with the evidence necessary for them to ascertain the certainty of to whom the obligation is owed and well as who they could negotiate assumptions of the obligation, short pays, satisfaction of her claims, and/or lawful modification of the loan according to O.C.G.A. 44-14-162.2.

410. WMB acted as the sponsor/seller for the Certificates issued pursuant to the Registration Statements. All of the mortgage loans underlying the Certificates, including Long's loan, were originated pursuant to the stated underwriting guidelines of WMB. WMB also serviced the underlying mortgage loans. As set forth in the Registration Statements, once originated or acquired by WMB, WMB would purportedly convey mortgages to a special purpose entity, WMAAC, which then deposited the mortgage collateral into the Issuing Trusts such as the Defendant Trust. The Trusts then issued the Certificates supported by the cash flows from the mortgages and were purportedly secured by the mortgage assets.

411. Defendant WCC was, at all relevant times, an SEC-registered broker-dealer. WCC was a wholly-owned subsidiary of Washington Mutual, Inc. ("WMI"). Defendant WCC served as the underwriter for the Certificate Offering of the Defendant Trust and was intimately involved in the Offering. WCC failed to perform the requisite level of due diligence not merely once as in the subject Defendant Trust, but at all times in connection with all of the Offerings described herein. This pattern and practice related to the Prospectus Supplements disseminated in connection with each of the Offerings, including Long's loan, contained the same material misstatements and omissions of material fact relating to the guidelines employed in originating and securitizing the underlying mortgage loans and how those assets would be sold, transferred and assigned.

412. WCC abdicated its duty to conduct due diligence on the underlying mortgage loans, relying rather on the cursory review of the mortgage loans conducted by WMB and third-party contractors, including Bohan and Clayton. WCC was, during the relevant period, one of the leading underwriters of mortgage-backed securities in the United States. WCC served as the underwriter and in the sale of the Certificates and assisted in drafting and disseminating the Offering.

413. Each of the Issuing Trusts, including the Defendant Trust, for the Offerings was a common law trust formed for the sole purpose of holding and issuing the Certificates. Each of the Issuing Trusts issued hundreds of millions of dollars worth of Certificates pursuant to a Prospectus Supplement, incorporated by reference into its corresponding Registration Statement, which each listed numerous classes of offered Certificates.

MATERIAL FACTS RELATED TO ALL COUNTS

Facts Related To Plaintiff Long's Loan & Property

414. On or about November 16, 2006, Plaintiff is purported to have executed an Adjustable Rate Note ("Note") as part of Washington Mutual Bank's 12-MTA Index - Payment and Rate Caps program in the amount of $1,060,000.00.

415. At closing, Plaintiff was given a "blank copy" of the subject Note, but not a copy of her executed Note.

416. On or about November 16, 2006, Plaintiff is purported to have executed Deed to Secure Debt ("Deed") that secured the Note she is purported to have executed.

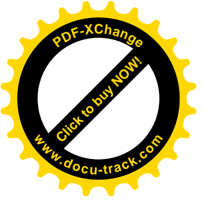
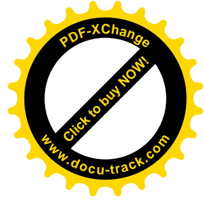
417. Plaintiff has requested in writing and phone calls to Chase and its law firm, Shapiro & Swertfeger, the opportunity for her agents to inspect and copy, anywhere in the United States at her expense, the original wet ink Note purportedly executed by her and all original mortgage documents contained in the mortgage/collateral/custodial file such as a deed to secure debt; all assignments of a deed to secure debt, whether recorded or not; any related allonges; riders and any modifications.

418. Chase and its law firm, Shapiro & Swertfeger, originally refused to comply with this request, and refused to provide her a certified true and correct copy of her Note (front and back) as it existed then, but then relented upon the request when they allowed Davidson to inspect the note.

419. Only after the demand to inspect the note, did Defendants show the original Long note and only after placing an indorsement without any legal authority on the note, years after the required legal prerequisites to do so.

420. There were no assignments to and other parties to the chain contained in the file and when Davidson inquired as to the assignments, he was told that they were ordered to be executed and would be forthcoming.

421. Such an assignment or assignments would be years after the legal fact with no one with legal authority or right to act since the Long note was never lawfully transferred prior to the WAMU bankruptcy and cannot be transferred after the fact.

422. In addition, the PSA and REMIC laws "precludes a defaulted loan" from being transferred.

423. As such, no one can act in any capacity with regards to the Long note without irrefutable proof that was not fabricated and forged, after the fact, that the Long note indeed was transferred, possessed and owned by the Defendant Trust on its closing date of December 21, 2006.

Facts Pertaining To Note Ownership, Chain of Title, Holder In Due Course Secured Creditor Status, & False, Fabricated, Forged & Fraudulent Assignments Of Deeds To Secure Debt and Mortgages Promulgated By The Defendants To Conceal Prior Fraudulent Actions & Falsely Create Authority To Notice Non-Judicial Foreclosures & Standing To Prosecute Judicial Foreclosures

424. Shapiro & Swertfeger is part of a nationwide foreclosure law firm network called LOGS which is an acronym for the Law Offices of Gerald Shapiro that has offices across America with local partners and/or managers that incorporate the Shapiro name. One such sister firm is the firm of Shapiro & Fishman in Florida.

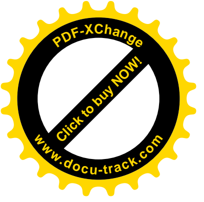
425. Chase, WAMU, and Shapiro & Fishman, routinely in thousands of foreclosure cases filed in the state of Florida, have fabricated and even forged assignments of mortgage claiming that they owned held the subject promissory notes they were foreclosing on when in fact, Chase and WAMU were only mere servicers with no ownership interest in the subject promissory notes have made claims in lawsuit pleadings that the promissory notes executed by borrowers have been lost, stolen, and/or destroyed.

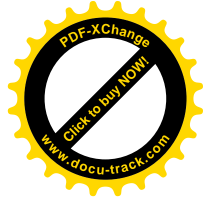
426. Chase has been sanctioned by U.S. Federal Bankruptcy judges for such fabrication of assignments and is under investigation by the U.S. Attorneys office in New York for this practice.

427. Chase has used the services of Lender Processing Services ("LPS") for preparation of mortgage assignments.

428. LPS is under criminal investigation by the U.S. Attorneys office for fabricating and forging assignments of mortgages and deeds.

429. Chase, WAMU, and Shapiro & Fishman for years in the state of Florida, filed foreclosure actions claiming that Mortgage Electronic Registration Systems ("MERS") was the owner and holder of promissory notes they were foreclosing on when in fact, MERS admittedly no ownership interest in the subject promissory notes nor ever possessed such notes.





430. Chase, WAMU, and Shapiro & Swertfeger for years in the state of Georgia, have advertised notices of sale for non-judicial foreclosure claiming that Mortgage Electronic Registration Systems ("MERS") was the lawful party foreclosing.

431. O.C.G.A. Section 44-14-162.2 (a) in part reads: "Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the **secured creditor** [emphasis added] no later than 30 days before the date of the proposed foreclosure."

432. Only a "secured creditor," not a servicer, may notice for sale and initiate a non-judicial foreclosure proceeding in the state of Georgia.

433. MERS has never been a creditor, let alone a secured creditor of a mortgage loan in the state of Georgia.

434. Chase, WAMU, Shapiro & Swertfeger, and Shapiro & Fishman for years have unlawfully foreclosed on properties in the states of Florida and Georgia.

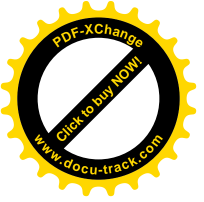
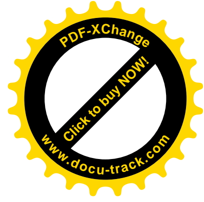
435. Chase and WAMU, via pleadings prepared by Shapiro & Fishman in Florida, for years claimed they owned promissory notes of borrowers when in fact they were merely the servicer of the loan.

436. Promissory notes are often assigned and traded, even after the initiation of foreclosure actions and during the pendency of the foreclosure.

437. In order to combat the plethora of false and sham foreclosure pleadings by Shapiro & Fishman, MERS, Chase, WAMU and others in Florida and the concerns of the judiciary, the Florida Supreme Court recently issued new rules of civil procedures for judicial foreclosures that stated in part:

    a. "Rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are (1) to provide incentive for the **Plaintiff to appropriately investigate and verify <u>it's ownership of the note or right to enforce the note</u>** and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) **to prevent the wasting of judicial resources and harm to defendants resulting from <u>suits brought by plaintiffs not entitled to enforce the note</u>**; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegation."[emphasis added]

438. As part of the rules promulgated, the Florida Supreme Court required verification when filing an action for foreclosure of a mortgage on residential real property, which would be fulfilled by including in the complaint an oath, affirmation, or the following statement: "*Under penalty of perjury, I declare that I have read the*

foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief." [emphasis added]

439. On February 26, 2010, the Shapiro & Fishman filed a Motion for Rehearing and Clarification of the Florida Supreme Court's Opinion. In its motion, the Shapiro firm stated "*the rule fails to specify who is responsible for verifying the mortgage foreclosure complaints. It is on this very limited issue that the Shapiro Firm seeks rehearing or clarification.*" [emphasis added]

440. In its motion, Shapiro & Fishman stated*:* **"The holders of the note are <u>often unfamiliar with the status of the loans</u> and <u>rely upon loan servicers</u> to manage the loans, payments on the loans <u>and the foreclosure proceedings</u>.*"*** [emphasis added].

441. On June 3, 2010, the Florida Supreme Court denied Shapiro & Fishman's motion for rehearing on new rules of civil procedures in the state of Florida regarding judicial foreclosure actions.

442. Due to the above referenced facts, for several months Plaintiff and her Executive Vice President have informed Chase and Shapiro & Swertfeger of original documents they needed to review and inspect that were being requested and required by investors they had contacted about refinancing the Note; purchasing and leasing back the property; and other business options available to Plaintiff.

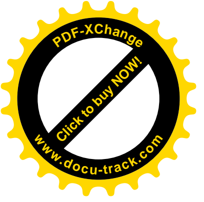
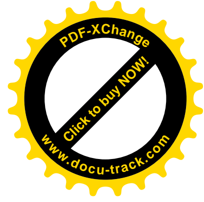
443. On May 21, 2010, Shapiro & Swertfeger sent Plaintiff a letter that in the first paragraph stated: "this law firm represents JPMorgan Chase Bank, National Association, with respect to the above referenced loan. The purpose of this correspondence is to inform you that our client has accelerated and does hereby accelerate the balance of your loan, making the total payoff amount as of May 15,2010 $1,104,252.66.

444. The above statement claims that their client, JPMorgan Chase Bank ("Chase") is accelerating the Note when only the "Note Holder," as defined in the Note, may accelerate and in the same letter, another entity claims to be the Note Holder.

445. There is no mention, reference, or documentation presented in or with the letter to show or claim any agency relationship or authority to take the actions that Shapiro & Swertfeger and Chase are executing in accelerating the Note and foreclosing on the property.

446. Lawyers for Shapiro & Swertfeger have stated to Plaintiff that Chase is only the servicer for her loan and not the Note Holder.

447. In its letter of May 21, 2010, Shapiro & Swertfeger stated: "a foreclosure sale of the above referenced property is scheduled for July 6,2010. A copy of the Notice

of Sale Under Power submitted for publication is enclosed herewith as required by O.C.G.A. Sec. 44-14-162.1 through 44-14-162.4.

448. In the same letter, the enclosed Notice of Sale stated in part: "Because of a default in the payment of the ***indebtedness*** ***secured*** ***by a*** ***Security Deed*** executed by Plaintiff to Washington Mutual Bank, FA dated November 16, 2006, and recorded-in- Deed Book 317J, Page 489, Chatham County Records, said Security Deed ***having*** ***been last sold, assigned, transferred*** ***and conveyed to Bank of America, National Association as successor by merger to LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificates Series 2006-AR19 Trust, by Assignment, securing a Note*** in the original principal amount of $1,060,000.00, the holder thereof pursuant to said Deed and Note thereby secured has declared the entire amount of said indebtedness due and payable and, pursuant to the power of sale contained in said Deed, will on the first Tuesday, July 6,2010…

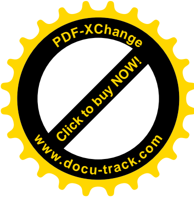
449. Plaintiff and her Executive Vice President in phone calls and letters have requested of Chase and Shapiro & Swertfeger that they be sent a copy, via fax, mail, or email of the purported assignment referenced in the above notice of sale.

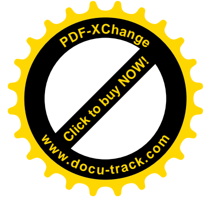
450. Lawyers and representatives for Shapiro & Swertfeger state that "they did not possess the assignment;" "the assignment had not been prepared as yet;" "the assignment need not be prepared or recorded until shortly before the foreclosure sale;" and that "they were not required to send anyone the alleged assignment."

451. Plaintiff and her Executive Vice President in phone calls and letters have informed Chase and Shapiro & Swertfeger that they have investors interested in the property and partnerships with them, but they require legal opinions of the true holder in due course and inspection of the original collateral files to insure that there will be clear title as well as insuring return of the original promissory note if they were to assume the note, purchase the note, and/or payoff the note.

452. Chase and Shapiro & Swertfeger have failed to act on Plaintiff's good faith efforts to pay them off and refinance her property and have acted in bad faith by not allowing her and her agents to inspect the documents, anywhere in the United States in 24-hours, at their expense.

453. Based on the research of Plaintiff, her officers, experts and counsel, the facts herein belie a pattern and practice of Chase and others in the mortgage industry that intentionally attempts to conceal the fact that the servicers and note holders have not properly and/or lawfully: a) perfected their lien interests; b) transferred the notes; c) indorsed the notes; d) effectuated the assignments; e) held the notes; f) traded the notes and pledged them to others; and/or g) subrogated or multi-pledged the notes to multiple parties.





454. A stated above, O.C.G.A. Section 44-14-162.2 (a) reads “Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the **secured creditor** [emphasis added] no later than 30 days before the date of the proposed foreclosure.”

455. Based on the facts provided and the refusal of Chase and Shapiro & Swertfeger to allow inspection of the collateral/custodial file, neither Chase or the subject trust are secured creditors.

Facts Pertaining To Plaintiff Long’s Unsecured Obligation & Need To Identify The True Holder In Due Course, If Any, Of Her Note

456. While Plaintiff does not dispute that there may be an obligation owed to an unknown party, the amount of that obligation would have to be determined and weighed against the damages to Plaintiff and any other compensation paid to that party from third parties for the fraud committed by WAMU and others since no party can claim holder in due course status and such party is subject to the defenses against payment and claims of Plaintiff.

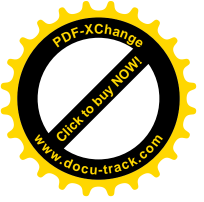
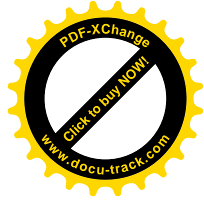
457. The fact pattern presented to Plaintiff, her investors, lawyers, and officers demonstrates that the note has been transferred after it is known to be in default and known to have claims of fraud made against it by not only the borrower, but by investors in the trust who are suing the originator and others for the fraud induced upon Plaintiff and as such, the trust cannot claim holder in due course status nor be in the shoes of a secured creditor as required to notice and maintain a non-judicial foreclosure sale.

458. Nothing herein would prevent the real owners of the note from making themselves known and suing upon the note and obtaining a judgment against Plaintiff and then placing a lien against the property. Such suit would balance the equities of all parties, known and unknown.

459. Furthermore, in its letter of May 21, 2010, Shapiro & Swertfeger stated: “If you wish to talk with someone with authority to negotiate, amend or modify the terms of your loan you are advised to contact: Loss Mitigation Department, JPMorgan Chase Bank, National Association, Attn: Homeownership Preservation, 7255 Baymeadows Way, Jacksonville, Florida 32256, 1-866-926-8937.

Facts Pertaining To Purported Pooling & Servicing Agreement Governing The Defendant’s Trust With Other Defendants & Long

460. The purported Pooling & Servicing Agreement executed on or about December 21, 2006 related to WaMu Mortgage Pass-Through Certificates Series 2006-AR19 Trust restricts any such negotiation, amendment, or modification of Plaintiff’s loan and note.

461. Since the Long note was never lawfully and equitably transferred to the Defendant Trust, the applicable PSA that would give Defendants Chase and BOA a right to act on behalf of the Defendant Trust is a moot point and nullity. Neither party has any authority to foreclose non-judicially, accelerate, or even collect mortgage payments.

462. If in fact the WaMu Mortgage Pass-Through Certificates Series 2006-AR19 Trust is deemed to be a holder or owner of Plaintiff's Note, only a predetermined majority vote of the certificate holders of the trust can negotiate, amend, or modify her Note and loan.

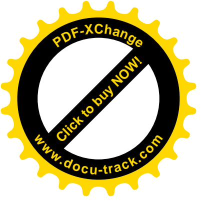
463. As such, none of the parties can comply with the provisions of O.C.G.A. 44-14-162.2 that "such notice shall be in writing, shall include the name, address, and telephone number of the *individual or entity* who shall **have full authority** to **negotiate, amend, and modify <u>all terms</u>** of the mortgage with the debtor…" [emphasis added]

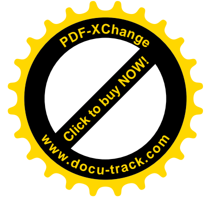
464. In contradiction of the notice provided, as recently as 6/9/10, representatives of JPMorgan Chase Bank have informed Plaintiff and her Executive Vice President that they have no authority to negotiate, amend, or modify Plaintiff's Note or loan and that the "investor has nothing to do with the loan" nor will Chase inform her who the owner and holder of the note and investor is, despite the fact that the subject trust is claimed to be the secured creditor in the notice of sale.

465. The actions of Chase, Bank of America, WAMU and their law firms in fabricating evidence, assignments, and making false representations to courts across America as well as forged and fabricated assignments of mortgages and deeds to create standing and authority for standing is what led Plaintiff and the investors she is working with to request the documents, at their expense, to be inspected since the current facts and evidence provided by Chase, its law firms and employees is contradictory and intentionally deceptive.

466. Plaintiff has for several months requested from Chase in writing and in telephone calls, the identification of any investor, owner and/or holder in due course of her Note that she could contact to discuss purchase of the Note; pay-off of the Note; transfer of the property; assumption of the Note; accord and satisfaction of the Note; and provide the "Note Holder" as defined in her Note required notices under the terms of her Note.

467. Plaintiff has informed Chase and its law firm, Shapiro & Swertfeger, in writing and phone calls that she had investors interested in a) purchasing her properties and leasing them back to her; b) partnering with her in an LLC to purchase the property and pay-off her Note; c) purchasing the note





468. Unbeknownst to Plaintiff, immediately after her loan was funded by a WAMU conduit, it was allegedly sold and transferred or the proceeds of her payments were pledged to the subject trust.

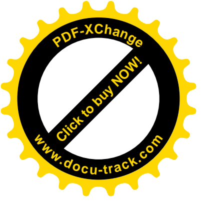
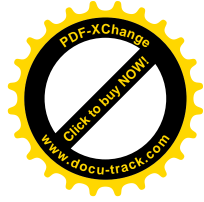
469. According to the PSA that is purported to govern the subject trust and its relationship with the servicers and trustees a "mortgage file" was to be created and maintained by the servicers, trustees, and document custodian. This file is also referred in the industry as the collateral and/or custodial file. In the PSA defined "Mortgage File," the following documents or instruments with respect to each Mortgage Loan, (X) with respect to each Mortgage Loan that is not a Cooperative Loan: (i) The original Mortgage Note endorsed (A) in blank, without recourse, (B) to the Trustee, without recourse, or (C) to the Trust, without recourse, and all intervening endorsements evidencing a complete chain of endorsements from the originator to the endorser last endorsing the Mortgage Note, or, in the event of any Destroyed Mortgage Note, a copy or a duplicate original of the Mortgage Note (or portion thereof, as applicable), together with an original lost note affidavit from the originator of the Mortgage Loan, the applicable Seller or the Company stating that the original Mortgage Note (or portion thereof, as applicable) was lost, misplaced or destroyed, together with a copy of the Mortgage Note (or portion thereof, as applicable); provided, however, that in the event that either (a) Washington Mutual Bank or Washington Mutual Bank fsb is the Seller of the Mortgage Loan or (b) Washington Mutual Mortgage Securities Corp. is the Seller of the Mortgage Loan and purchased the Mortgage Loan from Washington Mutual Bank or Washington Mutual Bank fsb, then the Mortgage Note need not be endorsed in blank or to the Trustee or the Trust as provided above, but, if not so endorsed, shall be made payable to, or properly endorsed to, Washington Mutual Bank or Washington Mutual Bank fsb, as applicable;

470. Chase and its lawyers have refused to allow Plaintiff and her agents to inspect the mortgage file as per the request of her officers and investors.

471. As per the evidence and facts obtained by Plaintiff, her officers, agents, lawyers, and experts, there was never a lawful transfer to the subject trust by WAMU and that WAMU never effectuated a true sale of the Note since the Note was non-negotiable as described herein.

472. In addition, using MERS as a conduit to conceal the true nature of the transaction, the purported deed to secure debt executed by Plaintiff was intentionally separated and bifurcated from her Note and thus renders an assignment of just the deed alone a nullity.

473. It is impossible to no attempt a transfer and sale of the promissory note and its underlying deed to secure debt years after the subject trust's closing date of 12/1/06 and after the loan has been deemed to be in default, a violation of not

only the terms of the PSA, but also a material misrepresentations to certificate holders of the subject trust.

474. Such a transfer now, after the fact and in violation of the PSA nullifies any security claimed in that the subject trust being transferred a defaulted loan that is known to all the parties to have claims of fraud made not only by the borrower, but other purchasers of the certificates to the subject trust.

Facts Pertaining To The Purported Note Executed By Plaintiff Long

475. Prior to the recitals of the terms and obligations of the Note purportedly executed by Plaintiff, was a notice that stated the following:

   a. "This Note contains *provisions* allowing for *changes* in my *interest rate* and my *monthly payment*. My monthly *payment increases* will have limits which ***could result in the principal amount I must repay being larger that the amount I originally borrowed***, **but *not more than 110% of the original amount* (or $1,166,000.00).** My interest rate can never exceed the limit stated in this note or any rider to this note. *A balloon payment **may be due** at maturity*." [emphasis added]

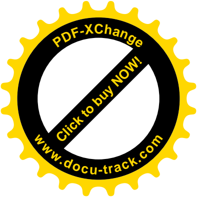
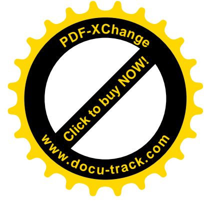
476. As stated in the Note and herein, the Note did not contain a "sum certain" as required by the Uniform Commercial Code ("UCC") and thus could not be converted into a negotiable instrument subject to transfer and securitization.

477. Section 1 of the Note, purportedly executed by the Plaintiff states in part "The Lender is Washington Mutual Bank, FA" and also states in part "The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the *Note Holder*." [emphasis added]

478. According to filings with the SEC and congressional hearings into the fraudulent mortgage and securitization activities of Washington Mutual Bank, its parent company and other affiliates, Washington Mutual Bank purportedly securitized the vast majority of the their loans, especially their bread and butter loans, the Option ARM loans marketed and sold to Plaintiff and others.

479. Section 4 of the Note, purportedly executed by the Plaintiff contains several "variable contingencies" that would not only adjust the amounts of payments and principal balance of the Note, but also contained a provision for "negative amortization" which is a widely known predatory lending practice. Such variables again render the Note non-negotiable since it does not contain any sum certain to be paid at maturity or payoff.

480. Throughout the Note, there are terms and conditions precedent that related to the defined "Note Holder" in note which is the contract purportedly executed between

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Plaintiff and Washington Mutual Bank. There are no provisions for "servicers" in the Note or provisions for the Note Holder to assign its rights under the Note.

481. Section 4 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to make payment and interest adjustments, not a servicer.

482. Section 5 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to accept and/or apply prepayments, not a servicer.

483. Section 6 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to apply loan charges, not a servicer.

484. Section 7 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder, not a servicer to: 1) apply and collect late charges; 2) provide notice of default; and 3) demand payment of costs and expenses.

485. Section 8 of the Note, purportedly executed by the Plaintiff provides that Plaintiff provides notices to the Note Holder, not the servicer.

486. Section 9 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to enforce any rights of the Note, not a servicer.

487. Section 10 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to waive any rights related to Presentment, not a servicer.

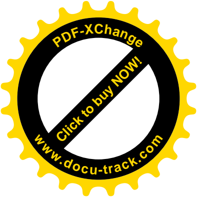
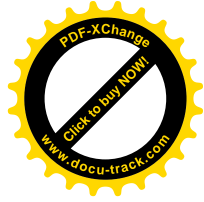
488. Section 11 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to consent to the transfer of the property to another person or entity and to consent to the assumption of the debt.

489. Section 12 of the Note, purportedly executed by the Plaintiff provides for only the Note Holder to correct errors and reestablish notes and other loan documents destroyed and provide the Plaintiff with indemnification.

DEFENDANT'S PARTICIPATION IN THE FINANCIAL CRISIS AND ITS EFFECT ON PLAINTIFF'S PROPERTY, BUSINESS, & PERSON

490. On April 13, 2010, just two months prior to the filing of this suit, the U.S. Senate's Permanent Subcommittee on Investigations held the first in a series of hearings examining some of the causes and consequences of the recent financial crisis. The hearing focused on the role that Washington Mutual Bank ("WaMu") played in the crisis that has affected the Plaintiff and all Americans via WaMu's originating, securitizing, and servicing practices related to high risk loans. Their evidence, findings, facts, and conclusions show the following:

491. In July 2007, two Bear Steams offshore hedge funds specializing in mortgage related securities collapsed; the credit rating agencies suddenly downgraded

hundreds of subprime residential mortgage backed securities; and the formerly active market for buying and selling subprime residential mortgage backed securities went cold. Banks, mortgage brokers, securities firms, hedge funds, and others were left holding suddenly unmarketable mortgage backed securities whose value began plummeting.

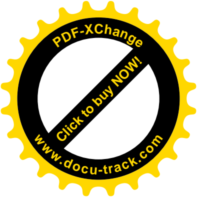
492. Banks and mortgage brokers began closing their doors. In January 2008, Countrywide Financial Corporation, a $100 billion thrift specializing in home loans, was sold to Bank of America. That same month, one of the credit rating agencies downgraded nearly 7,000 mortgage backed securities, an unprecedented mass downgrade. In March 2008, as the financial crisis worsened, the Federal Reserve facilitated the sale of Bear Steams to JPMorgan Chase. In September 2008, in rapid succession, Lehman Brothers declared bankruptcy; AlG required a $85 billion taxpayer bailout; and Goldman Sachs and Morgan Stanley converted to bank holding companies to gain access to Federal Reserve lending programs. In this context, Washington Mutual Bank, the sixth largest depository institution in the country with $307 billion in assets, $188 billion in deposits, and 43,000 employees, found itself losing billions of dollars in deposits as customers left the bank, its stock price tumbled, and its liquidity worsened.

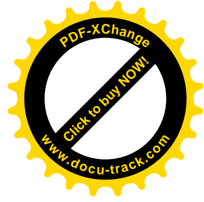
493. On September 25, 2008, after a century in the lending business, Washington Mutual Bank was closed by its primary regulator, the Office of Thrift Supervision ("OTS"). On the same day, the Federal Deposit Insurance Corporation ("FDIC"), having been appointed receiver, facilitated sale of the bank to JPMorgan Chase. It was the largest bank failure in the history of the United States.

494. The sudden financial losses and forced sales of multiple financial institutions put the U.S. economy into a tailspin. The stock market fell; business loans dried up; and unemployment exploded. Hidden liabilities associated with financial firms' proprietary positions in mortgage backed securities, credit default swaps, collateralized debt obligations ("COOs"), structured investment vehicles, and other complex financial instruments created concerns about the stability of major financial institutions. The contagion spread worldwide as financial institutions holding similar financial instruments lost value and curtailed transactions with other firms.

495. Congress then enacted the $700 billion Troubled Asset Relief Plan ("TARP") to stop the U.S. economy from falling off a cliff and taking the rest of the world economy with it. The United States and other countries are still recovering today.

496. Senate Subcommittee Investigation - - In November 2008, the Permanent Subcommittee on Investigations initiated a bipartisan investigation into some of the causes and consequences of the financial crisis. Since then, the Subcommittee has engaged in a wide-ranging inquiry, issuing subpoenas, conducting over 100 interviews and depositions, and consulting with dozens of government, academic, and private sector experts. The Subcommittee has also accumulated and initiated





review of over -50 million pages of documents, including court pleadings, filings with the Securities and Exchange Commission ("SEC"), trustee reports, prospectuses for securities and private offerings, corporate board and committee minutes, mortgage transactions and analyses, memoranda, marketing materials, correspondence, and email. The Subcommittee has also reviewed documents prepared by or sent to or from banking and securities regulators, including bank examination reports, reviews of securities firms, enforcement actions, analyses, memoranda, correspondence, and email.

497. Plaintiff, her officers to her business, counsel, and experts have reviewed many of these materials and other evidence obtained against the Defendants. To provide the public with the results of its investigation, the Subcommittee will hold a series of hearings addressing aspects of the financial crisis, including the role of high risk home loans, regulators, credit rating agencies, and Wall Street. These hearings are intended to examine issues related to mortgage backed securities, CDOs, credit default swaps, and other complex financial instruments. After the hearings, a final report summarizing the investigation is to be released.

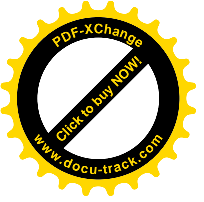
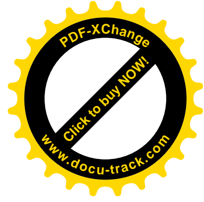
Washington Mutual History

498. Headquartered in Seattle, Washington with offices across the country and over 100 years of experience in the home loan business, WaMu had grown to become the nation's largest thrift. Each year, it originated or acquired billions of dollars of home loans through multiple channels, including loans originated by its own loan officers, loans brought to the bank by third party mortgage brokers, and loans purchased in bulk from other lenders or firms.

499. Washington Mutual had long held itself out as a conservative savings and loan company, subject to rigorous controls and standards, run by a group of officers who managed WAMU in a manner intended to make it attractive to both institutional investors and borrowers such as the Plaintiff. Although WAMU was involved in other banking activities, WaMu's home loan business had long been the primary driver of its business success. For instance, for the years 2006 and 2007, just under 70% of WaMu's net interest income was generated by residential real estate loans and related products and over 60% of WaMu's overall average assets were generated by residential real estate loans and related products.

500. As those figures make clear, WaMu's success prior to its demise had come to depend largely on its home loan business. To help ensure the legitimacy and longevity of that business, WaMu and its senior officers touted a number of safeguards and protections they were actively managing WaMu the Company for that very purpose.

501. In addition, its affiliate, Long Beach Mortgage Company ("Long Beach"), originated billions of dollars in home loans brought to it by third party mortgage brokers specializing in subprime lending.

502. Washington Mutual kept a portion of these home loans for its own investment portfolio, and sold the rest either to Wall Street investors, usually after securitizing them, or to the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac").

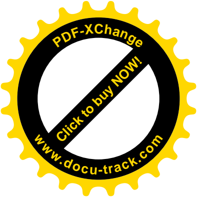
503. At first, Washington Mutual worked with Wall Street firms to securitize its home loans, but later built up its own securitization arm, Washington Mutual Capital Corporation, which gradually took over the securitization of Washington Mutual and Long Beach loans. In addition, from 2001 to 2007, Washington Mutual sold about $430 billion in loans to Fannie Mae and Freddie Mac, representing nearly a quarter of its loan production during those years.

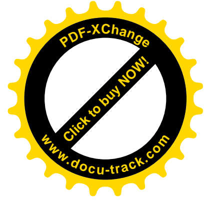
WaMu's High Risk Home Loans

504. Over a five-year period from 2003 to 2008, Washington Mutual Bank made a strategic decision to shift its focus from traditional 30-year fixed and government-backed loans to higher risk home loans. This shift included originating more home loans for higher risk borrowers, with increased loan activity at Long Beach, which was exclusively a subprime lender. Washington Mutual also financed subprime loans brought to the bank by third party mortgage brokers through its "Specialty Mortgage Finance" and "Wholesale" channels, purchased subprime loans through its "Correspondent" channel, and purchased subprime loans in bulk through its "Conduit" channel.

505. Washington Mutual decided to shift to higher risk loans, because it had calculated those loans were more profitable. Higher risk loans typically charged borrowers a higher rate of interest and higher fees. Once securitized, a large percentage of the mortgage hacked securities received AAA ratings, yet offered investors a higher rate of return than other AAA investments, due to the higher risk involved. As a result, mortgaged backed securities relying on higher risk loans typically fetched a better price on Wall Street than those relying on lower risk loans.

506. Washington Mutual's most common subprime loans were hybrid adjustable rate mortgages, known as "2128," "3/27," or "5/25" loans. These 30-year mortgages typically had a low fixed "teaser" rate, which then reset to a higher floating rate after two years for the 2/28, three years for the 3127, or five years for the 5125. The initial payment was typically calculated to pay down the principal and interest at the initial low, fixed interest rate. In some cases, the payments covered only the interest due on the loan and not any principal. After the fixed period expired, the monthly payment was typically recalculated to cover both principal and interest at the higher floating rate. The suddenly increased monthly payments sometimes caused borrowers to experience "payment shock" and to default on their loans, adding to the risk.



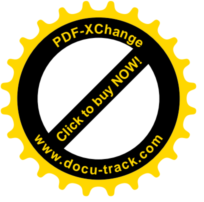


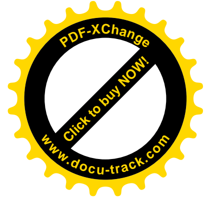
507. In addition to subprime loans, Washington Mutual made a variety of high risk loans to "prime" borrowers, including its flagship product, the Option Adjustable Rate Mortgage ("Option ARM"). Washington Mutual' s Option ARMs typically allowed borrowers to pay an initial teaser rate, sometimes as low as 1% for the first month, and then imposed a much higher floating interest rate linked to an index, but gave borrowers the choice each month of paying a higher or lower amount. These loans were called "Option" ARMs, because borrowers were typically given four options: (1) paying the fully amortizing amount needed to pay off the loan in 30 years; (2) paying an even higher amount to payoff the loan in 15 years; (3) paying only the interest owed that month and no principal; or (4) making a "minimum" payment that covered only a portion of the interest owed and none of the principal. If the minimum payment option were selected, unpaid interest would be added to the loan principal. If the borrower repeatedly selected the minimum payment, the loan principal would increase rather than decrease over time, creating a negatively amortizing loan.

508. After five years or when the loan principal reached 110% (sometimes 115% or 125%) of the original loan amount, the Option ARM would “recast.” The borrower would then be required to make the fully amortizing payment needed to pay off the loan within the remaining loan period. The new monthly payment amount was typically much greater, causing payment shock and increasing loan defaults. For example, a borrower taking out a $400,000 loan, with a teaser rate of 1.5% and subsequent interest rate of 6%, could have a minimum payment of $1,333 if the borrower then made only the minimum payments until the loan recast, the new payment using the 6% rate would be $2,786, an increase of more than 100%. What began as a 30-year loan for $400,000 became a 25-year loan for $432,000. To avoid having the loan recast, Option ARM borrowers typically refinanced their loans. A significant portion of Washington Mutual’s Option ARM business consisted of refinancing existing loans. Borrowers unable to refinance were at greater risk of default. This is the very loan product that is reflected in the Note purportedly executed by Plaintiff Long.

509. Washington Mutual and Long Beach reportedly sold or securitized most of the subprime home loans they acquired. Initially, Washington Mutual kept most of its Option ARMs in its proprietary investment portfolio, but eventually began selling or securitizing those loans as well. From 2000 to 2007, Washington Mutual and Long Beach securitized at least $77 billion in subprime home loans of which the subject loan is claimed to have been transferred to the subject Defendant Trust.

510. Washington Mutual sold or securitized at least $115 billion of Option ARM loans, as well as billions more of other types of high risk loans, including hybrid adjustable rate mortgages, Alt A, and home equity loans. According to its internal documents, by 2006, Washington Mutual was the second largest Option ARM originator and the eleventh largest subprime loan originator in the country.





WAMU's Lending and Securitization Deficiencies

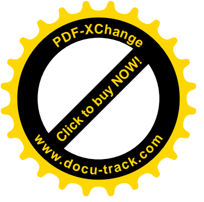
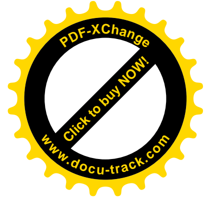
511. As shown herein, over the years, both Long Beach and Washington Mutual were the subject of repeated criticisms by the bank's internal auditors and reviewers, as well as its regulators, OTS and the FDIC, for deficient lending and securitization practices. Long Beach loans repeatedly suffered from early payment defaults, poor underwriting, fraud, and high delinquency rates. Its mortgage-backed securities were among the worst performing in the marketplace. In 2003, for example, Washington Mutual stopped Long Beach' securitizations and sent a legal team for three months to address problems and ensure its securitizations and whole loan sales were meeting the representations and warranties in Long Beach's sales agreements.

512. In 2005, Long Beach had to repurchase over $875 million of nonperforming loans from investors, suffered a $107 million loss, and had to increase its repurchase reserve by nearly $75 million. As a result, Long Beach' s senior management was removed, and Long Beach's subprime lending operations were made subject to oversight by Washington Mutual's Home Loans Division. Despite those changes, early payment defaults and delinquencies surged again in 2006, and several 2007 reviews identified multiple lending, credit, and appraisal problems.

513. By mid-2007, Washington Mutual shut down Long Beach as a separate entity and took over its subprime lending operations. At the end of the year, a Long Beach employee was indicted for having taken kickbacks to process fraudulent or substandard loans. In addition to problems with its subprime lending, Washington Mutual suffered from lending and securitization deficiencies related to its own mortgage activities. It received, for example, repeated criticisms for unsatisfactory underwriting procedures, loans that did not meet credit requirements, and loans subject to fraud, appraisal problems, and errors.

514. For example, a 2005 internal investigation found that loans originated from two top loan producing offices in southern California contained an extensive level of fraud caused primarily by employees circumventing bank policies. Despite fraud rates in excess of 58% and 83% at those two offices, no steps were taken to address the problems, and no investors who purchased loans or borrower's who secured loans originated by those offices were notified in 2005 of the fraud problem.

515. In 2006, securitizations with elevated delinquency rates were found to contain lower quality loans that did not meet the bank's credit standards. In 2007, fraud problems resurfaced at the southern California offices, and another internal review of one of the offices found a fraud rate of 62%. In 2008, the bank uncovered evidence that employees at still another top producing loan office were "manufacturing" false documentation to support loan applications. A September 2008 internal review found that loans marked as containing fraudulent

information had nevertheless been securitized and sold to investors, identifying ineffective controls that had "existed for some time."

Compensation Incentivized Fraudulent Broker & Executive Behavior

516. The Long Beach and Washington Mutual compensation systems contributed to these problems by creating misplaced incentives that encouraged high volumes of risky loans but little or no incentives to ensure high quality loans that complied with the bank's credit requirements. Long Beach and Washington Mutual loan officers, for example, received more money per loan for originating higher risk loans and for exceeding established loan targets.

517. Loan processing personnel were compensated according to the speed and number of the loans they processed. Loan officers and their sales associates received still more compensation if they charged borrowers higher interest rates or points than required in bank rate sheets specifying loan prices, or included prepayment penalties in the loan agreements. That added compensation created incentives to increase loan profitability, but not loan quality.

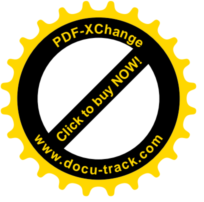
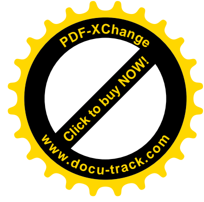
518. A second problem related to compensation was the millions of dollars paid to Washington Mutual senior executives even as their higher risk lending strategy began to lose money and increase the risk in the bank' s own investment portfolio. Washington Mutual's chief executive officer, Kerry Killinger, for example, received each year a base salary of $1 million, cash bonuses, stock options, and multiple stock awards. He also received benefits from four pension plans, a deferred bonus plan, and a separate deferred compensation plan. In 2008 a lone, the year he was asked to leave the bank, he received $21 million, including a $15 million severance payment.

519. Altogether, from 2003 to 2008, Washington Mutual paid Mr. Killinger nearly $100 million, on top of multi-million-dollar corporate retirement benefits.

Failure of Washington Mutual

520. In July 2007, after the Bear Stearns hedge funds collapsed and the rating agencies downgraded hundreds of mortgaged backed securities, including over 40 Long Beach securities, the secondary market for subprime loans dried up. By September 2007, Washington Mutual had discontinued its subprime lending. It also became increasingly difficult for Washington Mutual to sell its high risk loans and related mortgage backed securities, including its Option ARMs. By the end of the year, Washington Mutual began to incur significant losses, reporting a $1 billion loss in the fourth quarter of 2007, and another $1 billion loss in the first quarter of 2008.

521. In February 2008, based upon increasing deterioration in the bank' s asset quality, earnings, and liquidity, OTS lowered the bank' s safety and soundness rating to a

3 on a scale of 1 to 5, signaling that it was a troubled institution. In April, the bank closed multiple offices, firing thousands of employees. That same month, Washington Mutual's parent holding company raised $7 billion in new capital, providing $3 billion of those funds to the bank.

522. In July 2008, a $30 billion mortgage lender, IndyMac, failed and was placed into receivership by the government. In response, depositors became concerned about Washington Mutual and withdrew over $9 billion in deposits, putting pressure on the bank's liquidity. After the bank disclosed a $3.2 billion loss for the second quarter, its stock price continued to drop, and more deposits left.

523. On September 15,2008, Lehman Brothers declared bankruptcy. Three days later, on September 18, OTS and the FDIC lowered Washington Mutual's rating to a " 4," indicating that a bank failure was a distinct possibility. The credit rating agencies also downgraded the bank's credit ratings. Over the span of eight days starting on September 15th, nearly $17 billion in deposits left the bank. At that time, the federal Deposit Insurance Fund contained about $45 billion, an amount which could have been exhausted by the failure of a $300 billion institution like Washington Mutual. As the financial crisis worsened each day, regulatory concerns about the bank's liquidity and viability intensified.

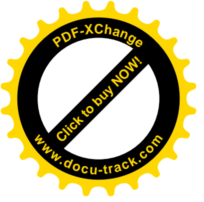
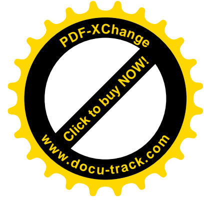
524. On September 25, 2008, OTS placed Washington Mutual Bank into receivership, and the FDIC facilitated its immediate sale to JPMorgan Chase for $1.9 billion. The sale eliminated the need to draw upon the Federal Deposit Insurance Fund.

U.S. Senate's Findings & Conclusions On WaMu Fraud

525. Washington Mutual was not the only mortgage lender to fail during the financial crisis. Nor was its high risk lending practices unusual. To the contrary, the Senate Subcommittee's investigation indicates that Washington Mutual was emblematic of practices at a number of financial institutions that originated, sold, and securitized high risk home loans from 2004 to 2008. Based upon the Subcommittee's investigation to date, they made the following findings of fact related to Washington Mutual Bank and its parent holding company, Washington Mutual Inc.

a. High Risk Lending Strategy - - Washington Mutual ("WaMu") executives embarked upon a high risk lending strategy and increased sales of high risk home loans to Wall Street, because they projected that high risk home loans, which generally charged higher rates of interest, would be more profitable for the bank than low risk home loans.

b. Shoddy Lending Practices - - WaMu and its affiliate, Long Beach Mortgage Company ("Long Beach"), used shoddy lending practices riddled with credit, compliance, and operational deficiencies to make tens

of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.

c. Steering Borrowers to High Risk Loans - - WaMu and Long Beach too often steered borrowers into borne loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans or sell their homes before the payments shot up.

d. Polluting the Financial System - - WaMu and Long Beach securitized over $77 billion in subprime home loans and billions more in other high risk home loans, used Wall Street firms to sell the securities to investors worldwide, and polluted the financial system with mortgage backed securities which later incurred high rates of delinquency and loss.

e. Securitizing Delinquency-Prone and Fraudulent Loans - - At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information without notifying purchasers of the fraud that was discovered. (emphasis added)

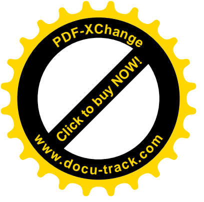
f. Destructive Compensation - - WaMu's compensation system rewarded loan officers and loan processors for originating large volumes of high risk loans, paid extra to loan officers who overcharged borrowers or added stiff prepayment penalties, and gave executives millions of dollars even when its high risk lending strategy placed the bank in financial jeopardy.

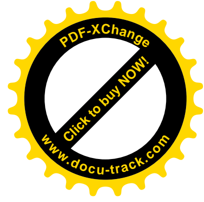
526. Chase has refused to identify the Plaintiff's note holder and true holder in due course so that she could negotiate payoff, modifications, assumption agreements, and settlements related to her loan and property.

527. Chase employees informed other borrowers and Plaintiff that they could have their loans modified and then turned down those modifications since the PSA with securitized trusts disallowed such efforts.

528. In many cases, borrowers and Plaintiff were informed to stop paying their mortgages for three months in order to qualify for such modifications and claim a hardship.

529. Plaintiff has suffered extensive damages to her person and business in that the property was valued in far excess of its true value by the fraudulent appraisal process WAMU and others used to place a false value on not only the property, but on the value of the loans sold into the MBS market.





530. As described herein, WAMU executives, managers, and brokers aggressively sought and marketed their products that they knew were aggressive and contained higher degrees of risk for default and foreclosure and were designed with the input of certain key investors who would benefit from certain options purchased when the market and loans blew up. Much of this information was concealed from borrowers such as Plaintiff and unsuspecting investors such as pension funds

531. Through the use of a highly incentivized compensations programs, Plaintiff's loan broker and others induced her to loans they knew were being securitized; sold off to others; that contained inflated valuations of her property; diminished her rights in the event of catastrophe or market dislocation;

532. As descried herein, WAMU and its executives as well as the investors in securitizations were aware of the fraudulent actions of WAMU's brokers.

533. The property in question was known to be a commercial rental property and the product that Plaintiff was induced to take was a residential 2nd home loan wherein brokers informed Tammy Jo that since she resided in the property from time-to-time on her business visits, they could be considered 2nd home properties.

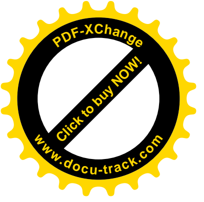
534. WAMU and its broker were fully aware that she owned several other properties in the identical area and that several homes as 2nd homes was not conceivably possible.

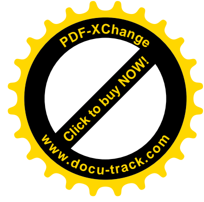
535. In order to get the valuation it desired since they were allegedly selling the loan to investors, WAMU assisted in inflating the value of the property appraisal to fraudulently induce Plaintiff to borrow far more than the property was worth since WAMU employed Gain On Sale accounting wherein the higher the loan amount they were selling, the more basis points and yield spread premiums they would earn immediately and the more servicing fees they would generate.

536. Since WAMU did not hold the note and sold their loans off, they were not concerned with loan quality or lawful appraisals, but simply the highest volume at the highest price points they could achieve.

537. In fact, in a complaint dated November 1, 2007 the People of the State of New York via the Attorney General commenced this action asserting claims under Executive Law § 63(12) and General Business Law § 349, and for unjust enrichment. The complaint alleges that in Spring 2006, WaMu hired two appraisal management companies, defendant eAppraiseIT and nonparty Lender's Service, Inc., to oversee the appraisal process and provide a structural buffer against potential conflicts of interest between WaMu and the individual appraisers.

538. The gravamen of the Attorney General's complaint asserts that WaMu misled their customers and the public by stating that eAppraiseIT's appraisals were





independent evaluations of a property's market value and that these appraisals were conducted in compliance with the Uniform Standards and Professional Appraisal Practice (USPAP), when in fact defendants had implemented a system allowing WaMu's loan origination staff to select appraisers who would improperly inflate a property's market value to WaMu's desired target loan amount.

539. The Senate Permanent Subcommittee on Investigations is began hearings in April on the financial and mortgage collapse with their initial focus on WAMU's mortgage and securitization practices.

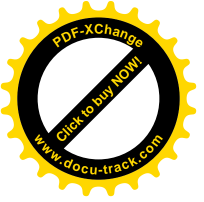
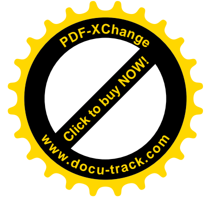
540. Senator Carl Levin, the Chairman of the committee was quoted as saying: "Washington Mutual built a conveyor belt that dumped toxic mortgage assets into the financial system like a polluter dumping poison into a river." "Using a toxic mix of high risk lending, lax controls, and destructive compensation policies Washington Mutual flooded the market with shoddy loans and securities that went bad." "Examining how Washington Mutual operated, and what its insiders were saying to each other, begins to open a window into the troubling mortgage lending and securitization practices that took our economy over a cliff."

541. Some of the revelations at the hearing concluded that:

a. WaMu intentionally lured borrowers qualified for prime mortgages into subprime mortgages, then bundled those with the riskier loans to "spread the risk;"
b. Over half of the loans made were obtained with fraudulent information.
c. The WaMu culture emphasized revenue and production over all else, including prudent lending practices, rewarding employees with trips to Hawaii and the Caribbean for high production.
d. Loans were marketed and sold by mortgage brokers who were not employed by WaMu. After funding the loans, WaMu chose the ones most likely to default for packaging as securities to be sold on Wall Street.
e. When Washington Mutual executives were made aware of the danger in 2006, their only concern was for how it would make them look, rather than the damage it could do to the financial structure of the country as a whole.

542. The Senate Committee concluded that Washington Mutual Practices Created A Mortgage Time Bomb:

a. Targeting Higher Risk Borrowers
b. Steering Borrowers to Higher Risk Home Loans
c. Increasing Sales of High Risk Home Loans to Wall Street
d. Offering Teaser Rates
e. Offering Interest Only and "Pick a Payment" Loans
f. Offering Negative Amortizing Loans

g. Not Verifying Income (Accepting Stated Income or "Liar" Loans)
h. Requiring Low or No Documentation
i. Qualifying Borrowers By Ability to Make Initial Low Payments
j. Ignoring Signs of Fraudulent Borrower Information
k. Presuming Rising Home Prices When Approving Loans
l. Making Loans That Are Dependent on Refinancing to Work
m. Using Lax Controls over Loan Approvals
n. Offering Higher Pay for Making Higher Risk Home Loans
o. Offering Higher Pay for Charging Excess Interest Rates or Points
p. Rewarding Employees for Loan Volume over Loan Quality
q. Securitizing Home Loans Identified as Likely to Fail
r. Securitizing Home Loans Identified as Fraudulent

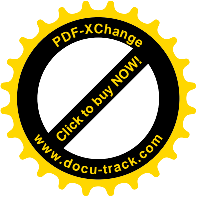
543. As illustrated below, Washington Mutual and its related affiliates, partners, underwriters, entities, vendors, and investors operated a multibillion dollar fraud machine as evidenced by their own internal memos and other evidence gathered and prepared by U.S. Senate Permanent Subcommittee on Investigations in April 2010.

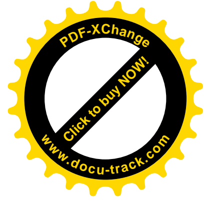
a. "An internal residential quality assurance (RQA) report for LBMC's first quarter 2003… concluded that 40% (109 of271) of loans reviewed were considered unacceptable due to one or more critical errors. This raised concerns over LBMC's ability to meet the representations and warranty's made to facilitate sales of loan securitizations, and management halted securitization activity_ A separate credit review report… disclosed that LBMC's credit management and portfolio oversight practices were unsatisfactory… Approximately 4,000 of the 13,000 loans in the warehouse had been reviewed… of these, approximately 950 were deemed saleable, 800 were deemed unsaleable, and the remainder contained deficiencies requiring remediation prior to sale .... [Of] 4,500 securitized loans eligible for foreclosure, 10% could not be foreclosed due to *documentation issues*." [emphasis added]

b. "[Securitizations] prior to 2003 have horrible performance. LBMC finished in the top 12 worst annualized [net credit losses] in 1997 and 1999 thru 2003 .... At 2105, LMBC was #1 with a 12% delinquency rate. Industry was around 8.25%."

c. "In 24 of27 (88%) of the refinance transactions reviewed, policies established to preclude origination of loans providing no net tangible benefit to the borrower were not followed."

d. "LBMC experienced a dramatic increase in [Early Payment Defaults] during the third quarter of 2005… [Relaxed credit guidelines, breakdowns in manual underwriting processes, and inexperienced subprime personnel… coupled with a push to increase loan volume and the lack of





an automated fraud monitoring tool, exacerbated the deterioration in loan quality."

e. "[D]elinquencies are up 140% and foreclosures close to 70%... It is ugly."

f. "LBMC is terrible .... Repurchases, [Early Payment Defaults], manual underwriting, very weak servicing/collections practices and a weak staff"

g. "LBMC paper is among the worst performing paper in the mkt [sic] in 2006."

h. "Short story is this is not good .... [L]arge potential risk from what appears to be a recent increase in repurchase requests .... We are all rapidly losing credibility as a management team."

i. "Long Beach represents a real problem for WaMu… *Appraisal deficiencies… Materialmisrepresentations… Legal documents were missing or contained errors or discrepancies…* Credit evaluation or loan decision errors... [D]eterioration was accelerating in recent vintages with each vintage since 2002 having performed worse than the prior vintage."

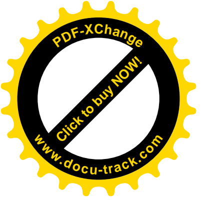
j. "Washington Mutual lnc.'s subprime bonds are suffering from some of the worst rates of delinquency among securities in benchmark indexes, according to JPMorgan Chase & Co. research… Delinquencies of 60 days or more on loans supporting WaMu's Long Beach LBMLT 2006- 1 issue jumped ... to 19.44 percent ... the highest among the 20 bonds in the widely watched ABX-HE 06-2 index of bonds backed by residential loans to risky borrowers."

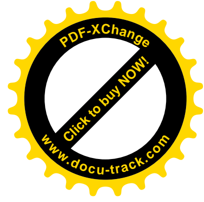
k. "[T]he overall system of risk management and internal controls has deficiencies related to multiple critical origination and underwriting processes .... These deficiencies require immediate effective corrective action to limit continued exposure to losses."

l. "This [2007 audit report of Long Beach] seems to me to be the ultimate in bayoneting the wounded, if not the dead."

m. "132 of the 187 (71 %) files were reviewed ... *confirmed fraud on 115* [and 17 were] … 'highly suspect'… 80 of the 112 (71 %) stated income loans were identified for lack of reasonableness of income [.] 133 (71 %) had *credit evaluation or loan decision* errors… 58 (31 %) had *appraisal discrepancies or issues that raised concerns.*"

n. "Craig [Chapman, WaMu executive,] has been going around the country visiting home lending and fulfillment offices. His view is that band-aids





have been used to address past issues and that there is a fundamental absence of process."

o. "[A]mong the referred cases there is an extremely high incidence of confirmed fraud (58% for [Downey office], 83% for [Montebello office])."

p. "Fraud Loan Samples[:] Loan #0694256827 Misrepresentation [of] the borrower's identification and qualifying information were confirmed in every aspect of this file, including: - Income - SSN – Assets - Alternative credit reference letters – Possible Strawbuyer or Fictitious borrower[.] *The credit package was found to be completely fabricated.* Throughout the process, red flags were over-looked, process requirements were waived, and exceptions to policy were granted."

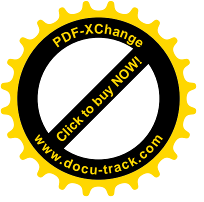
q. "[A]n *extensive level of loan fraud exists in the Emerging Markets* [loan processing centers in southern California], virtually all of it stemming from employees in these areas circumventing bank policy surrounding loan verification and review. Of the 129 detailed loan review[s] ... conducted to date, *42% of the loans reviewed contained suspect activity or fraud, virtually all of it attributable to some sort of employee malfeasance or failure to execute company policy… Based on the consistent and pervasive pattern of activity amount these employees, we are recommending firm action be taken to address these particular willful behaviors on the part of the employees named.*"

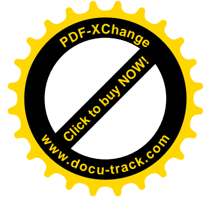
r. "[D]elinquency behavior was flagged in October [2006] for further review and analysis… The primary factors contributing to increased delinquency appear to be caused by process issues *including the sale and securitization of delinquent loans*, loans not underwritten to standards, lower credit quality loans and *seller servicers reporting false delinquent payment status*."

s. "Our appetite for credit risk was invigorated with the expansion of credit guidelines for various product segments including the 620 to 680 FICO, low doc loans, and also for home equity… In 2007, we must find new ways to grow our revenue. Home Loans Risk Management has an important role to play in that effort."

t. "I said the other day that HLs [Home Loans] (the original prime only) was the worst managed business I had seen in my career. (That is, until we got below the hood of Long [B]each.)"

u. "One Sales Associate admitted that during that crunch time *some of the Associates would 'manufacture' asset statements* ... and submit them to the [loan processing center]. She said *the pressure was tremendous…*





since the Joan had already [been] funded and pressure from the Loan Consultants to get the loans funded."

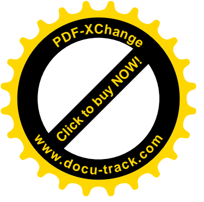
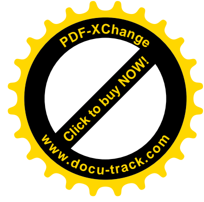
v. "Risk Mitigation reviewed 25 HELOC [Home Equity Lines of Credit] loans originated between 2/6/08 and 4/19/08… with a total exposure 0[$8,538,600.00. The review *found that the borrowers indicated they owned the property free and clear when in fact existing liens were noted on the properties*. The properties are located in California, Arizona and Washington. ... WaMu used ... Abbreviated Title reports [that] ... do not provide existing lien information on the subject property."

w. "[A] third party mortgage insurer, notified WaMu of fraud concerns in June 2007. Resolution of this complaint was not completed… WaMu Legal and [Home Loan] senior management had no method of knowing the existence of this complaint or its resolution status… [F]or the September and October 2007 *sampled time period, the volume of misrepresentation and suspected loan fraud continued to be high* [or [Montebello, a Southern California loan processing center](62% of the sampled loans)… *Loan Producers were compensated for volume of loans closed and Loan Processors were compensated for speed of loan closing rather than a more balanced scorecard of timeliness and loan quality… Risk Mitigation conducted loan reviews on loans produced from September 9, 2003 to August 8, 2005 and found excessive levels of fraud related to loan qualifying data particularly in the retail broker loans (78%)*… Outside of training sessions ... in late 2005, there was little evidence that any of the recommended strategies were followed or that recommendations were operationalized. There were no targeted reviews conducted ... on the Downey or Montebello loan portfolios between 2005 and the actions taken in December 2007."

x. "*The controls that are intended to prevent the sale of loans that have been confirmed… to contain misrepresentations or fraud are not currently effective. There is not a systematic process to prevent a loan… confirmed to contain suspicious activity from being sold to an investor*… Of the 25 loans tested, 11 reflected a sale date after the completion of the investigation which confirmed fraud. There is evidence that this control weakness has existed for some time."

544. Washington Mutual institutionalized the pervasive fraud committed against Plaintiff and other WAMU borrower by a system of high incentives for WAMU loan brokers, sales agents, management and executives as indicated in the following comments found in the Senate's evidence.

a. "To those of you who have not yet reached President's Club, I want each and every one of you to believe you have the potential to achieve this great reward. Now is the time to really kick it into high gear and drive for

attending this awesome event! Rankings are updated and posted monthly… I'm especially pleased with your ability to change with the market and responsibly see more higher-margin product - Option ARM, Home Equity, Non-prime, and All A

b. “Incentive Tiers reward high margin products ... such as the Option ARM, Non-Prime referrals and Home Equity Loans .... Wamu also provides a 15 bps ‘kicker’ for selling 3 year prepayment penalties.”

c. “Overages ... [give a] Loan Consultant [the] [a]bility to increase compensation [and] [e]nhance compensation/incentive for Sales Management, , .. Major national competitors have a similar plan in place in the market. WaMu proposal, adopted in 2007, to pay overages - added compensation to loan officers who sell loans with a higher interest rate or points than required on WaMu's daily rate sheet, undated.”

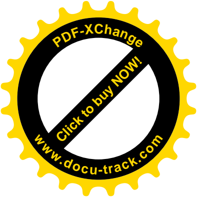
d. “We have to convince our folks that they will all make a lot of money by being with WaMu.”

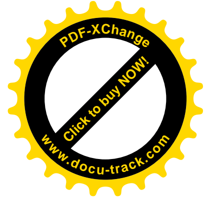
e. “The board of Washington Mutual Inc. has set compensation targets for top executives that will exclude some costs tied to mortgage losses and foreclosures when cash bonuses are calculated this year.”

f. “Loan Producers were compensated for volume of loans closed and Loan Processors were compensated for speed of loan closing rather than a more balanced scorecard of timeliness and loan quality… A design weakness here is that the loan consultants are allowed to communicate minimal loan requirements and obtain various verification documents from the borrower that [are] need[ed] to prove income, employment and asset’s. Since the loan consultant is also more intimately familiar with our documentation requirements and approval criteria, the temptation to advise the borrower on means and methods to game the system may occur. Our compensation and reward structure is heavily tilted for these employees toward production of closed loans.”

g. “[The review defines an origination culture focused more heavily on production volume rather than quality_ An example of this was a finding that production personnel were allowed to participate in aspects of the income, employment, or asset verification process, a clear conflict of interest… Prior OTS examinations have raised similar issues including the need to implement incentive compensation programs to place greater emphasis on loan quality.”

h. “Chief Risk Officer -Home Loans ... Employee Goals ... GROWTH 35% ... Achieve Net Income - $340 MM for 2007 ... Subprime -$32B .. . Option ARM - $33B ... RISK MANAGEMENT 25%”





i. "We would disclose the exclusion of [Executive Committee] members from the bonus plan. There would be no disclosure of the retention cash payments. Option grants would be held off until whenever other compo actions were done."

j. "Creditors in Washington Mutual lnc.'s bankruptcy could go after a $16.5 million cash severance payment promised to ousted CEO Kerry Killinger ... [and] a $7.5 million signing bonus for his successor, Alan Fishman, who ran the bank for 18 days before it failed."

545. Washington Mutual Option ARM products were designed to be foreclosed upon as indicated by the following table showing over 25% foreclosure rates on various Option ARM securitizations that are of similar construct as Plaintiff's loan.

546. Washington Mutual's strategy was formalized in a board presentation titled "Higher Risk Lending Strategy" and subtitled "Asset Allocation Initiative" before the board's finance committee in January 2005 and other presentations in 2004, the immediate years prior to Washington Mutual's solicitation of Plaintiff's business.

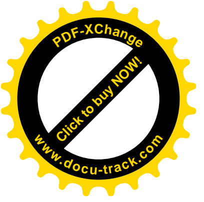
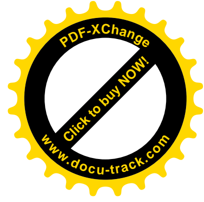
547. Other internal WAMU executive and management presentations contained the following comments:

a. "All roles in the process need to sharpen watch for red flags that indicate potential misrepresentation and fraud 66% of reviewed FPD cases had significant variances in the file"

b. "Variations can occur in many areas and can directly impair loan salability and performance; 46% Address ambiguity or Inconsistencies; 39% Employment verification shortfalls; 3% SSN issues; Stated Income should be reviewed more closely (Incidence rate of 35%.); Income restated on loan application; Other Issues found Multiple 1003's; 14% Borrowers Signature vary; Altered documents are usually detectable 5% White-out on documentation (e.g. White-out was used and then documents copied)"

c. "Underwriting guidelines are not followed and conditions are not always met"

d. "Multiple defects Identified In 53% of flies; Guidelines are not followed and/or executed consistently/correctly; 26% VOR (either didn't meet guideline requirement or wasn't validated; 14% Income (either not calculated correctly or supported sufficiently); 6% Risk Grading (rating or pay history did not support credit grade); 4% Debt Ratio (mostly exclusion of debts in ratio or miscalculated); Conditions not cleared consistently or effectively (Incidence rate of 11%); Verbal Verification of Employment

and Self Employment Is Inconsistent In regard to the following required control tasks (Incidence rate of 39%)."

e. "Underwriters are not consistently recognizing non-arm's length transactions and/or underwriting associated risk effectively; More rigor needed in validation of VOR (incidence rate of 26%); Quality of documentation; Verification from a Management Company; Verification of the VOR documentation; Verifications have no address for Landlord; VOR mailed to Borrowers address; Inconsistent treatment and documentation of Verification of Rental History (VOR); Private Party or Management Co.; Too many non-arms length relationships not being addressed (>5%)."

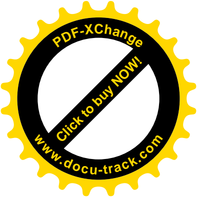
548. In a May 24, 2005 email, a WAMU executive warned his CEO about many of the "industry practices" such as negative amortization and interest only that were obtaining scrutiny of regulators and the media. The email in part stated: "Create a game plan for backing away from some of the current industry practices that have now become the focal point of the regulatory agencies and mainstream press. The avalanche of publicity on interest only, home equity, neg am and sub-prime expansion that has occurred in just the last three or four weeks is amazing. The current issue of Fortune with its cover story is a perfect example, not to mention the daily drumbeat in the WSJ and weekly references in Business Week. For example Business Week had a prominent statistic about interest only loans as a percentage of volume having increased from 1.5% to 31% of all mortgage loan volume -if true this is a staggering number, especially combined with the huge increase in non-owner occupied. We must expect a through grilling by the Board with all of these red alerts in the press. Mary Pugh has already registered her concerns as Chair of the Finance Committee."

549. On November 16, 2005, exactly one-year to the date prior to Plaintiff's purported execution of the subject Note, Washington Mutual Bank prepared a presentation "Retail Fraud Risk Overview" contained the following facts:

a. "On average, 78% of the funded retail broker loans reviewed were found to contain fraud."

b. "Retail Broker fraud findings are principally centered on misrepresentations of loan qualifying data (77%) and appraisal issues (17%)."

550. While originating and purportedly securitizing Plaintiff's loan, Washington Mutual Bank, its executives, affiliates, and some of the investors in the subject trust that were WAMU affiliated and entities were fully aware of the fraudulent behavior of its brokers as indicated in emails contained in the Senate evidence as follows: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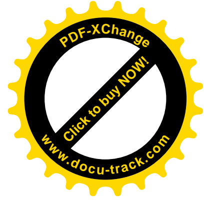
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a. "54% (15) of retail1oans reviewed contain confirmed fraud findings; 8% (5) or retail loans reviewed contain more than one fraud finding; 61 % (33) of retail broker loans reviewed contained confirmed fraud findings; 20% (11) of retail broker loans reviewed contained more than one fraud finding; 43% of loans reviewed during 2005 contained confirmed fraud findings (17/40); 88% of loans reviewed during 2004 contained confirmed fraud findings (30/35); During time period of 2001 to 2003, 72 loans reviewed contained confirmed fraud findings."

551. An internal WAMU legal memo dated April 4, 2008 indicates results of AIG/UG and OTS allegation of loan frauds originated by WAMU brokers. WAMU's Corporate Fraud Investigations (CFI) conducted an investigation at the request of WaMu Legal into allegations made by AIG/UG to WaMu in June 2007, and to the California Department of Insurance in September 2007, which alleged WaMu employees originated numerous loans containing misrepresentations or fraudulent documents.

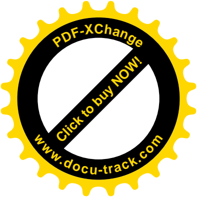
552. Washington Mutual was aware of its broker's fraudulent behavior by various internal investigations conducted by their internal investigations unit that issued "SIN" reports which is an acronym for "significant incident notification" that determined frauds by brokers in amount of over $1 million to $5 million at different intervals.

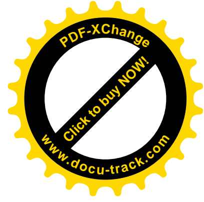
553. Washington Mutual conducted focus groups on the Option ARM program marketed to the Plaintiff and generated the following "selling points" to sell the Plaintiff the subject loan:

a. "If someone is buying investment property and knows they will resell it within a few years, being able to make minimum or interest-only payments can be a real advantage. Using the Option ARM for this purpose means they will not have to pay down the principal which would be required using a fixed rate loan. To the buyer this gives two benefits: (1) they can keep more money in their pocket each month while the property appreciates, and (2) since the loan is only for a few years, they will have a lower interest rate compared to a fixed-rate loan which will save them money."

b. "If someone is buying rental property, having the option to make minimum or interest only payments can be beneficial as vacancy rates fluctuate. In months where vacancies may be higher, they can choose to make minimum or interest-only payments. Then when vacancy rates decline, they have the option to additionally make principal payments."

554. WAMU's former head of cash management warned WAMU's CEO in a private email of the problems Option ARMS would be to WAMU.



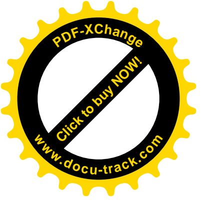


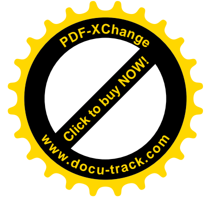
a. "Kerry, I'd like to call your attention to the risks in Option ARM's in this nasty credit cycle, just in you're not hearing a contrary viewpoint internally. For reasons described below, I believe it remains timely to have a thorough review of potential credit/recasting risks within WAMU's Option ARM portfolio - particularly (a) loans generated in 2004/2005 and (b) loans made in areas of speculative/problem markets over the past few years. The collapse of the sub-prime market is, of course, all over the news. The next phase of this market sector will likely be played out in the banks and S&L's reporting increasing problem loans and reserves for loan losses. BUT, in this dicey environment, investors will likely soon focus their attention on Option ARM's (including WAMU's portfolio) for the following reasons: (1) the product is untested in a residential real estate downturn."

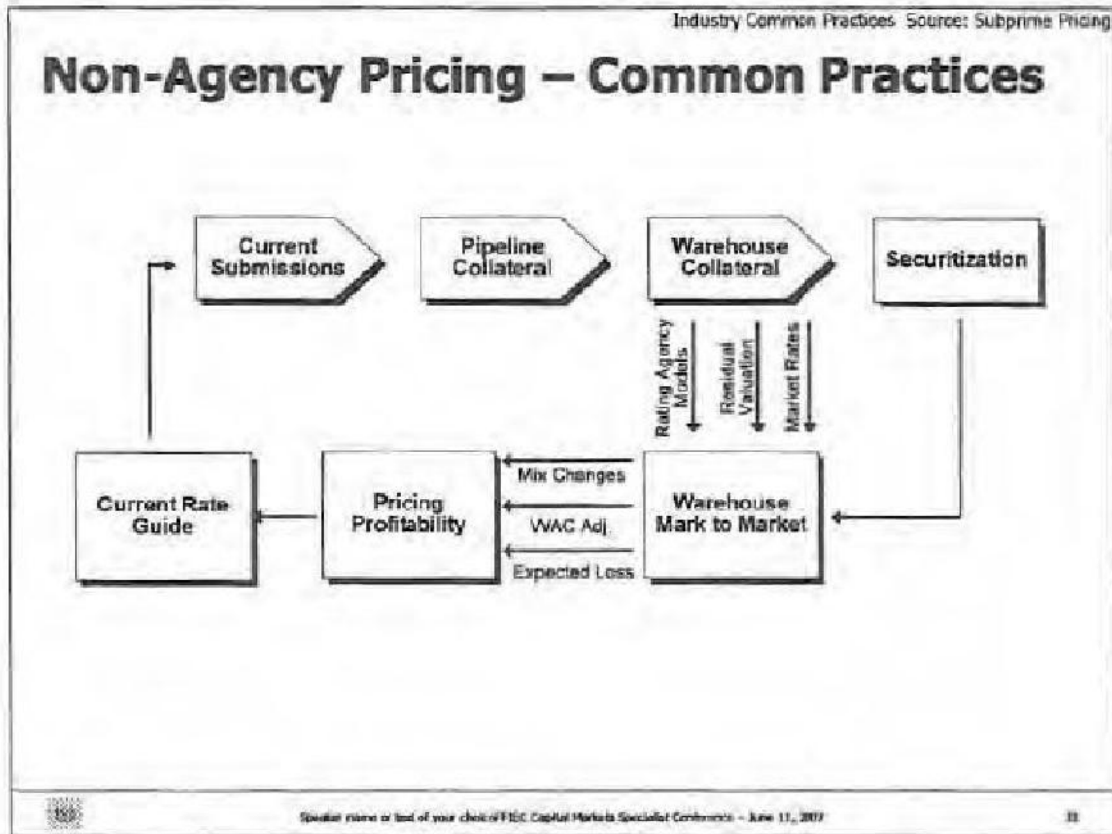
555. Yet, despite the fraud, WAMU aggressively made its foray into making and marketing their own securitization vehicles.

556. In 2001, WAMU began acquiring the building blocks to become a self-described "world class capital markets organization." First, they acquired Washington Mutual Mortgage Securities Corp. (formerly known as PNC Mortgage Securities Corp.) from PNC Bank, adding: 1) bulk purchase loan processing capabilities, 2) resources offering mortgage backed securities and 3) a seasoned master servicing group. In 2002, they began operating WaMu Capital Corp., allowing WaMu to distribute MBS backed by its own loan originations directly to investors and retain distribution fees formerly paid to Wall Street firms. In 2004, WaMu capital Corp. first acted as a lead manager on a securitization. In the same year they also initiated their Conduit Program. The Conduit Program led to WAMU's first Alt-A deal in 2005 and their first subprime deal in 2006. Also in 2006, they reorganized WaMu's capital markets structure, bringing all capital markets activity into a single, unified division under the banner of the Home Loans Group.

557. In just 3 years, WAMU became the #2 ranked Non-Agency MBS issuer in 2006 and their rapid rise in the rankings was fueled by their Conduit Program (2004), which focused on high-margin mortgage products. WaMu's capability as a Sole/Lead Underwriter developed significantly with 56 deals totaling $58B n 2006, the year the subject Note is alleged to have been securitized. WAMU's pricing was developed using the following model chart:





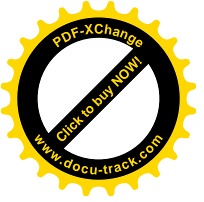


558. WAMU used its self-contained securitization process to inflate the value on its books through the use of Gain On Sale ("GOS") accounting treatment. Non-agency pricing was a dynamic process wherein WAMU set rates to Gain on Sale targets, balanced with competitive positions and production targets.

559. WAMU's pricing strategy was that the Weighted Average Coupon (WAC) must move parallel to this rate to earn steady GOS. One month Libor was also monitored daily because it impacted the valuation of the Securitization Residual, some of which WAMU might keep which would make those certificate holders of the subject trust knowledgeable about the frauds and abuses.

560. Warehouse GOS forecasts were based on the composition of the warehouse, underlying interest rates, and execution into a securitization transaction. WAMU solicited feedback from investors in Sub Prime ABS products to that re regularly tailor products to their needs and what WAMU termed was their "market appetite." In essence, WAMU and their investors, including WAMU related affiliates and entities, structured securitization deals and the related parameters and risks of the mortgage loans they wished to originate and then securitized.

561. This modern-day securitization of pools of mortgage loans created a plethora of problems for our national economy, investors, homeowners, and borrowers such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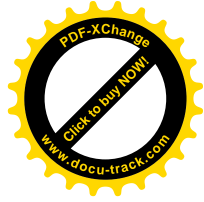
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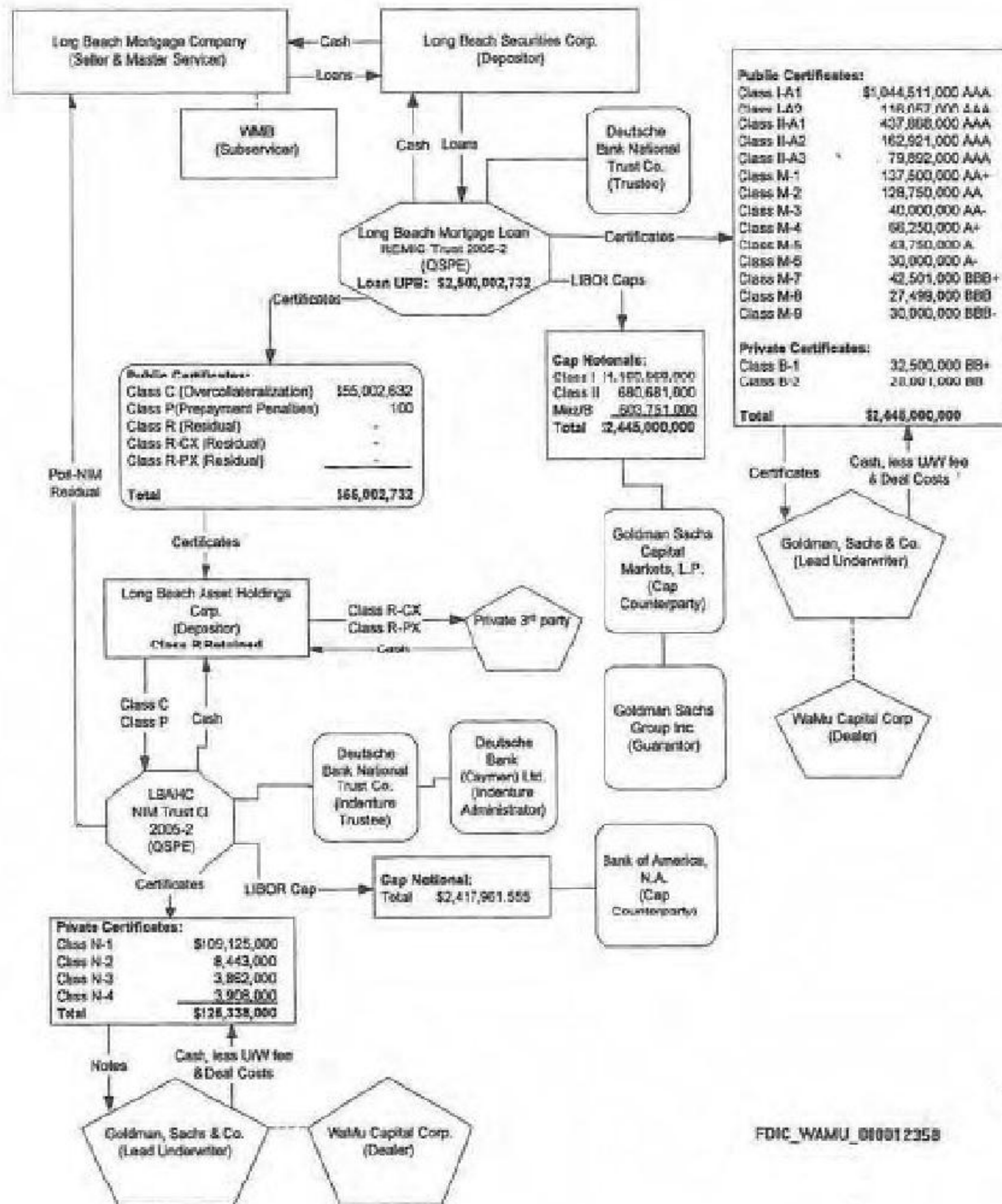
as the Plaintiff. However, it has caused problems for our nation's judiciary as well. Questions as to mortgage rights, payments, holder in due course, foreclosure, standing, lien priority and other centuries old settled law has been tossed on its head by the advent of securitization that can trade notes and MBS certificates at the speed of light.

562. The following flow charts of a typical WAMU securitization illustrates the quandary that this Court faces in making the necessary judicial determinations requested by the Plaintiff as to her rights and obligations. Who is the holder in due course of her loan? Is the debt she owes secured or unsecured as claimed by the Plaintiff. Was the note ever transferred to the trust as claimed in SEC filings or did WAMU maintain possession and control of the note? Was there a genuine and real "true sale" of the Note and other assets, or was WAMU financing receivables? What was the chain of title to the Note, or were or are there breaks in the chain? Can an assignment of security deed to the trust come five years after the trust's creation and closing date and did the deed ever actually follow the note or was intentionally separated and bifurcated?

LBMC 2005-2 Structure



563. As for any claimed unsecured debt owed by the Plaintiff, to whom is such debt owed; who can properly and lawfully satisfy the deed to secure debt and cancel and return the promissory note to insure Plaintiff clear and clean title and no liability for payment to some unknown holder in due course that may exist. The following chart shows further complication as to what is considered "all available

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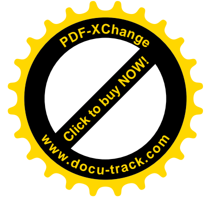

funds” to be paid to the certificate holders and what position and priority each party has to all funds such as payments made by the borrower; payments made by other third parties from credit default swaps, pool insurance, guarantees, lawsuit settlements; and repurchases of loans.

LBMC 2005-2 Cash Flow Waterfall

All Available Funds

Prepayment Charges to Class P

Servicing Fees
(0.5% + modification fees, extension fees, late payment charges, NSF fees, other ancillary fees)

Trustee Fee
0.0036%

Group I Interest

Group II Interest

Group I Principal
(Sequential Distribution)

Group II Principal
(Sequential Distribution)

Class I-A1 | Class I-A2

Class II-A1 | Class II-A2 | Class II-A3

Class I-A1 | Class I-A2

Class II-A1 | Class II-A2 | Class II-A3

Class I-A1 | Class I-A2

Class II-A1

Class II-A2

Class II-A3

Class II-A1

Class II-A2

Class II-A3

Class I-A1 | Class I-A2

Class M-1

Class M-2

Class M-3

Class M-4

Class M-5

Class M-6

Class M-7

Class M-8

Class M-9

Class B-1

Class B-2

Class M-1

Class M-2

Class M-3

Class M-4

Class M-5

Class M-6

Class M-7

Class M-8

Class M-9

Class B-1

Class B-2

Group I & II Principal Due as Outlined Above

Class A Unpaid Interest Shortfall Pro Rata

Classes M & B Unpaid Interest Shortfall as Outlined Above

Reserve Fund

Class P Principal Balance (After Prepayment Penalty Period)

Class C Interest Plus Any Over-Collateralization Release

Class R

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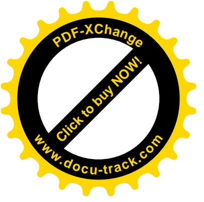
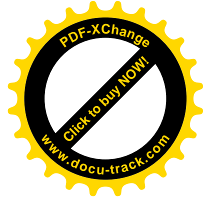
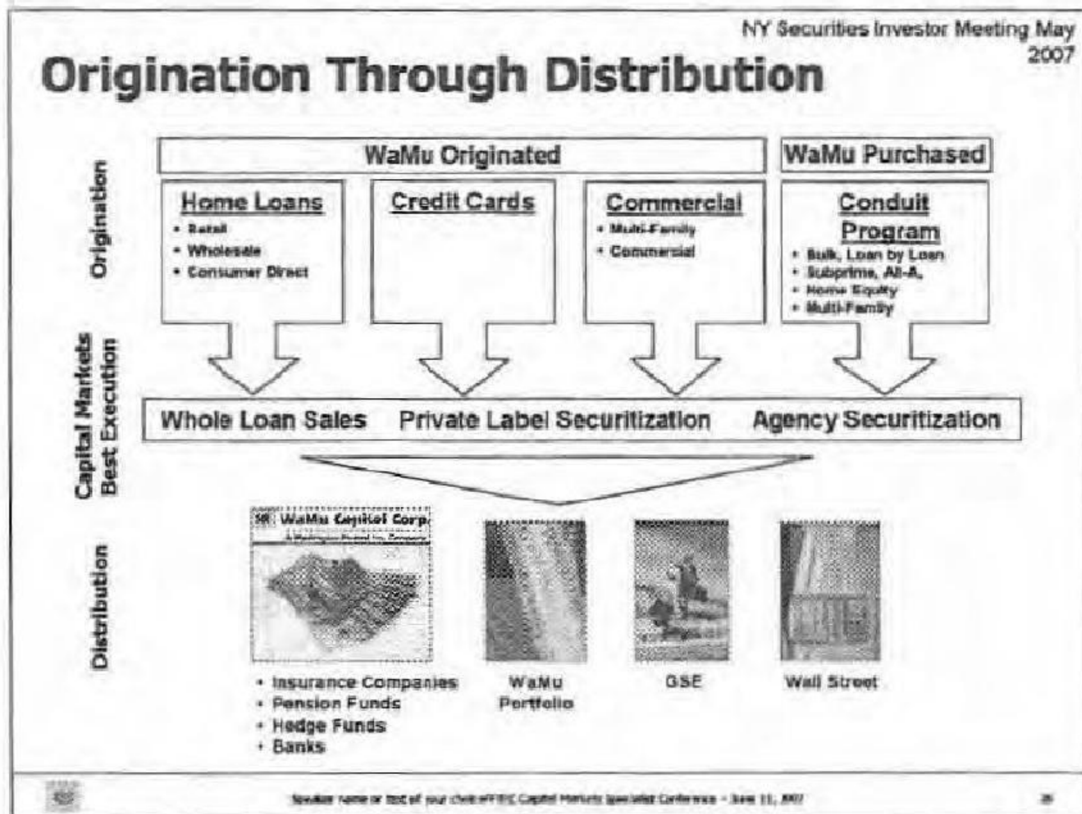


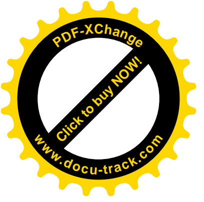


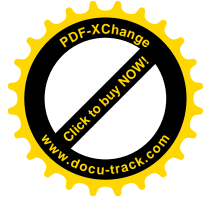
564. As illustrated in the following chart, WAMU sold participations in their securitizations to pension funds, insurance companies, other Wall Street firms and banks, government GSEs, and even to itself.



565. Thus, if any one certificate holder can ever make a claim to be a "holder in due course" of a particular mortgage note or in the instant case, the Plaintiff's note, such claim would be dubious at best if WAMU held or owned any of the certificates since they were fully aware of the fraudulent activities in their own loans and securitized products.

566. In addition, breaches of the reps and warranties made in a securitized transaction can invoke repurchase provisions wherein purchasers of fraudulent loans that did not meet the representations made in the prospectus can demand that the seller "repurchase" a fraudulent loan. Thus, chains of titles to loans and assignments back and forth may be problematic in that if a loan is repurchased due to a known fraud that existed committed by a lender's sales agent or broker, the repurchase of a known fraudulent loan would eliminate any claims of a holder in due course for the holder.





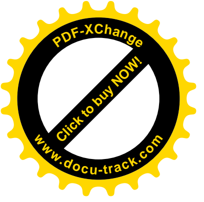
567. Such repurchase demands are common as evidenced by the email sent by a Goldman Sachs executive to the executives at WAMU charged with evaluating repurchase requests. The email states in part: "Dawn, we appreciate your groups' involvement in the repurchase process on behalf of WaMu and Long Beach. We look forward to working closely with you and your group to satisfactorily resolve all repurchase claims. As discussed with Doug Potowsky, we wish to lay the foundation for collaboration between Goldman and WaMu to facilitate the repurchase process. With that goal, let me respond to your email with the scope of activity we are addressing: We have received and reviewed the documents forwarded by WaMu in response to our October 30, 2006 repurchase demand (consisting of 77 loans). We have found 28 of the original population to contain material misrepresentations and remain subject to repurchase. We will be sending the rebuttal letter with additional documentation on 24 of those loans shortly. You should have our rebuttal letter on 4 of those loans by letter dated April 19, 2007."

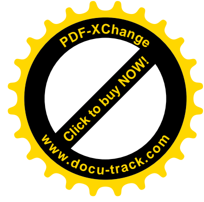
568. In 2007 WAMU repurchased $344MM in loans (37% repurchase rate) and as of May 29, 2008 WAMU repurchased $193MM (42% repurchase rate) in loans from investors. A Wall Street Journal article on May 28, 2009 "Investors Press Lenders on Bad Loans Buyers Seek to Force Repurchase by Banks; Potential Liability Could Reach Billions" by Ruth Simon stated in part: "already burned by bad mortgages on their books, lenders now are feeling rising heat from loans they sold to investors. Unhappy buyers of subprime mortgages, home-equity loans and other real-estate loans are trying to force banks and mortgage companies to repurchase a growing pile of troubled loans. The pressure is the result of provisions in many loan sales that require lenders to take back loans that default unusually fast or contained mistakes or fraud."

569. There are competing claims of ownership and lack of evidence proving who owns and holds the subject Note and the dates of such ownership.

570. Claims of fraud have not only been exerted by the Plaintiff against the originator, but the WAMU entities involved in the alleged securitization of the Plaintiff's loan.

571. have been sued in a number of consolidated class action lawsuits by the investors in the subject Trust that claims ownership and the ability to notice for sale and conduct a non-judicial foreclosure sale of Plaintiff's property. These same investors make many of the same claims that Plaintiff makes in that they were defrauded by WAMU and others in creating false representations about the loans securitized, particularly with fraudulently high appraisals that did not value the properties correctly. Conversely, the Plaintiff was equally if not further damaged by the same fraud alleged by the Doe(s) certificate holders in the subject Trust.





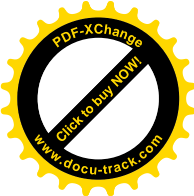
572. To illustrate the massive fraud that was supported by the securitization process, one need only examine the table below of the rate of foreclosure in the ten worst markets in the U.S.

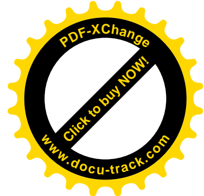
Worst Ten in the Worst Ten

- The table below sets forth the ten metropolitan areas experiencing the highest rates of foreclosure as reported by RealtyTrac (the "Worst Ten" MSAs). Foreclosure rates for sub-prime and Alt-A mortgages originated from 2005 through 2007 in these MSAs were computed using data from Loan Performance.

Rank	MSA	Non-prime Mortgage Foreclosure Rate
1	Detroit	22.9%
2	Cleveland	21.6%
3	Stockton	21.5%
4	Sacramento	18.0%
5	Riverside/San Bernardino	16.1%
6	Memphis	15.6%
7	Miami/Fort Lauderdale	14.3%
8	Bakersfield	14.3%
9	Denver	14.0%
10	Las Vegas	13.9%

573. This chart was followed by the chart below in an internal WAMU memo that excluded WAMU and its Long Beach subsidiary in describing an index to the worst subprime mortgage originators.





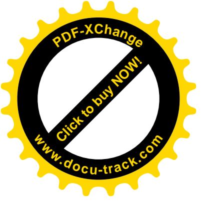
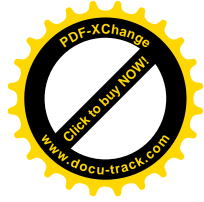
Index to the Worst Subprime Originators

Originator	Supervisor	Foreclosures in Worst 10 Metro Areas, based on 2005-07 Originations
New Century Mortgage Corp.	State supervised. Subsidiary of publicly-traded REIT, filed for bankruptcy in early 2007.	14,120
Long Beach Mortgage Co.	State and OTS supervised. Affiliate of WAMU, became a subsidiary of thrift in early 2006; closed in late 2007 / early 2008.	11,736
Argent Mortgage Co.	State supervised until Citigroup acquired certain assets of Argent in 08/07. Merged into CitiMortgage (NB opsub) shortly thereafter.	10,728
WMC Mortgage Corp.	State supervised. Subidiary of General Electric, closed in late 2007.	10,283
Fremont Investment & Loan	FDIC supervised. California state chartered industrial bank. Liquidated, terminated deposit insurance, and surrendered charter in 2008.	8,835
Option One Mortgage Corp.	State supervised. Subsidiary of H&R Block, closed in late 2007.	8,344
First Franklin Corp.	OCC supervised. Subsidiary of National City Bank until 12/06. Sold to Merrill Lynch, closed in 2008.	8,037
Countrywide	Data includes loans originated by (1) Countrywide Home Loans, an FRB supervised entity until 03/07, and an OTS supervised entity after 03/07; and (2) Countrywide Bank, an OCC supervised entity until 03/07, and an OTS supervised entity after 03/07.	4,736
Ameriquest Mortgage Co.	State supervised. Citigroup acquired certain assets of Ameriquest in 08/07. Merged into CitiMortgage (NB opsub) shortly thereafter.	4,126
ResMae Mortgage Corp.	State supervised. Filed for bankruptcy in late 2007.	3,558
American Home Mortgage Corp.	State supervised. Filed for bankruptcy in 2007.	2,954
IndyMac Bank, FSB	OTS supervised thrift. Closed in July 2008.	2,882
Greenpoint Mortgage Funding	FDIC supervised. Acquired by Capital One, NA, in mid 2007 as part of conversion and merger with North Fork, a state bank. Closed immediately thereafter in 08/07.	2,815
Wells Fargo	Data includes loans originated by (1) Wells Fargo Financial, Inc., an FRB supervised entity, and (2) Wells Fargo Bank, an OCC supervised entity.	2,697
Ownit Mortgage Solutions, Inc.	State supervised. Closed in late 2006.	2,533
Aegis Funding Corp.	State supervised. Filed for bankruptcy in late 2007.	2,058
People's Choice Financial Corp.	State supervised. Filed for bankruptcy in early 2008.	1,783
BNC Mortgage	State and OTS supervised. Subsidiary of Lehman Brothers (S&L holding company), closed in August 2007.	1,769
Fieldstone Mortgage Co.	State supervised. Filed for bankruptcy in late 2007.	1,561
Decision One Mortgage	State and FRB supervised. Subsidiary of HSBC Finance Corp. Closed in late 2007.	1,287
Delta Funding Corp.	State supervised. Filed for bankruptcy in late 2007.	598

Thursday, November 13, 2008

574. The chart above reads like a who's who of predatory lending, securitization and loans that were created to fail, so that certain Wall Street firms such as Goldman Sachs and hedge funds that are Defendants Doe(s) could benefit from betting against certain deals with credit default swaps and other derivative instruments.

575. WAMU built a vertically integrated Capital Markets business model so they could participate in the entire mortgage process-from origination, pooling, structuring to distribution. In the same process, WAMU stated "We can opportunistically

acquire products and strategically distribute them through the most profitable channels. By managing the distribution process we have access to information that allows us to refine our origination efforts and improve execution" a WAMU executive is quoted as saying.

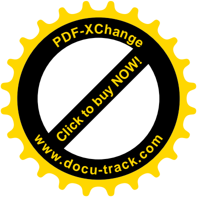
576. But as the financial and mortgage markets began to implode in 2007, executives at WAMU began to not only mock the demise of their competitors, but worry about their uncertain future as the following demonstrates:

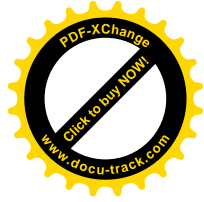
577. In an arrogant display of excess and greed, similar to the infamous Toga Party by Dennis Kozlowski of TYCO fame, WAMU's CEO, executives, managers, and loan brokers, who were part of the bank's "President's Club" feted on fine food and wine while boasting of their success and ridiculing the demise of one of their competitors - - Countrywide Mortgage.

578. At this all-expense paid meeting of the top loan producers of WAMU in Hawaii for the WAMU Home Loans Group on Kauai in 2006, the following skits and presentations were produced with excerpts from their scripts as follows:

   a. "Please, not now. That's the wrong feel for this moment…. MUSIC MUCH MORE SOMBER, DIRGE-LIKE FUNERAL MARCH That's better, thank you. Brothers and sisters of the Home Loans fraternity ... it is my sad responsibility today on this otherwise joyous occasion to be the bearer of tragic news. For this day, we have lost one of the true legends in our industry. ON-STAGE A COFFIN IMPRINTED WITH LARGE COUNTRYWIDE LOGOS IS SLOWLY CARRIED OUT ONTO THE STAGE BY FOUR PALLBEARERS – PALLBEARERS ARE DRESSED IN BLACK AND WEARING BLACK SUNGLASSES PALLBEARERS SET THE COFFIN DOWN ON SAWHORSES OR A PEDESTAL ON STAGE DAVID STARTS TO SMILE AND SOUND HAPPIER ON STAGE DAVID'S HAPPINESS BUILDS AS HE SPEAKS PALLBEARERS START REACTING AFFIRMATIVELY.

   b. "So many of us warned the dearly departed about the risky - some may say reckless - behavior they engaged in. Throwing money around like Paris Hilton and selling products they don't really know or understand. But still the shock of their demise takes us by surprise. I guess we should have suspected something when we heard they had their Option ARM [emphasis added] amputated. They just couldn't stop the bleeding. And while it IS true that when you dance with the devil you have to expect to get burned, we are indeed sorry that it will be flames for eternity for them. A nice tan is one thing, but too much heat isn't good for anyone's complexion. Even while they danced the funky chicken on the very edge of the cliff, we always cared about them because well, we hired so many of their best people to work for us, we felt a certain connection. And yet, if

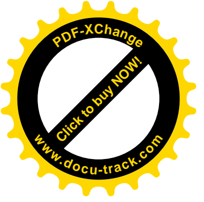


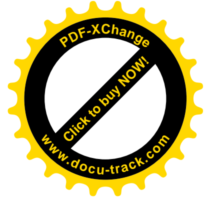


we look hard enough, we can see the good that also comes from their departure.”

c. MUSIC BED PLAYING UNDERNEATH DAVID: NA,NA,NA, NA,NA,NA,NA,NA,HEY HEY HEY GOODBYE “First off, their pain has finally ended and that's a good thing. And now borrowers across the nation will all be better served with Simpler Banking and More Smiles! And some really scary and dangerous people won't be on the street anymore. To tell you the truth, I never really liked them anyway. All of a sudden the dark cloud over the mortgage world has been replaced by blue skies and sunshine! And all of us will make more money and have more fun. So I guess the news really wasn't as bad as I thought it was, because it makes us want to say … ON STAGE THE FOUR PALLBEARERS JOIN DAVID IN SINGING AND PERFORMING A SIMPLE "VICTORY DANCE" BEFORE EXITING THE STAGE WITH THE COFFIN… DAVID AND THE PALLBEARERS (SINGING) -Na, na, na, na, na, na, na, na, hey hey hey goodbyel" (DAVID AND THE PALLBEARERS KEEP SINGING UNTIL THEY ARE OFF STAGE)”

d. The next skit was titled “I Like Big Bucks” and was performed to Sir Mix A Lot's, “Baby Got Back” Welcome back, ladies and gentlemen. And now for something completely different... It's a bold and very special tribute to all of YOU, performed by the one and only P. Club Posse! Please give it up for Kathy-.and the Kauai Kick It Krewe with “I Like Big Bucks!” KATHY AND HER "BIG BUCKS· RAPPERS MOVE INTO PLACE ON STAGE DURING THE INSTRUMENTAL INTRO. ONCE IN PLACE, THEY TURN THEIR BACKS TO THE AUDIENCE. AS THE LYRICS BEGIN, KATHY AND HER "BIG BUCKS· RAPPERS TURN AROUND TO FACE THE AUDIENCE WHILE THEIR LYRICS ACCOMPANY THEM ON THE PROJECTION SCREENS. KATHY AND HER RAPPERS PERFORM SIMPLE CHOREOGRAPHY WITH THEIR LYRICS AS THE CHEERLEADERS MOVE IN TIME TO THE MUSIC. KATHY _ AND "BIG BUCKS" RAPPERS (Rap starts at 0:30 mark in original recording) “I like big bucks and I cannot lie You mortgage brothers can't deny That when the dough roles in like you're pontin' your own cash And you gotta make a splash. You just spends Like it never ends Cuz you gotta have that big new Benz. All of that bUng you're wearin'. Shining so bright peoples starin'. It's crazy, I gotta ski Aspen That's all I'm askin.' KATHY AND HER RAPPERS MOVE INTO THE AUDIENCE TOSSING PAPER PLAY MONEY INTO THE CROWD AS THEY CONTINUE RAPPING. “My homegirls tried to warn me That rappin' big bucks Make me look corny Doh, root of evil without big bucks I'm feeling feeble Scuza me, scuze me, cuz my big bucks do amuse me. On my vacations I tour all nations In style, while, luxuriating every mile I'm loving my estate Sorry can't unlock the gate Now a little botox and nips and tuck. All it takes is big bucks So Players





(yeah!) Players (Yeah!) Do you love to make big bucks (Hell yeah !) Well Be Bold (Be Bold!) Be Bold! (Be Bold!) Be bold and make big bucks. Make me big bucks, INSTRUMENTAL SCRATCH BREAK

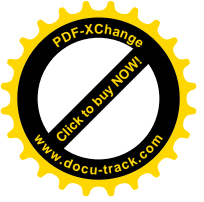
e. (Starts al1 :23 and runs to 1:38 in original recording) DURING SCRATCH BREAK: KATHY _ AND "BIG BUCKS" RAPPERS “Pay me now AND pay me later” (replaces "L.A. face with an Oakland booty" from original recording) Make me big bucks! KATHY AND 'BIG BUCKS- RAPPERS STRIKE A 'RAPPERS POSE' UPON DELIVERING THEIR FINAL LINE.

579. After poking fun at their former rival Countrywide, WAMU and its CEO soon realized that they were not in any better shape as the financial markets and their rivals began to collapse around them. WAMU’s CEO, Kerry Killinger wrote an email on 10/12/07 to another WAMU executive that stated in part: “Can you take a look at this before Monday and give your blessing? I don't trust Goldy (Goldman Sachs) on this. They are smart, but this is swimming with the sharks. They were shorting mortgages big time while they were giving CFC (Countrywide) advice. I trust Lehman more for something this sensitive. But we would need to assess if they have the smarts we need.”

580. In response, the executive responded to Killinger with the following email response: “Our strong first choice for this effort would be Goldman Sachs, as John Mahoney is the smartest banker overall, the best at thinking about financial structures, has been through this before, and his firm is the deepest. He also has the advantage of understanding the CFC situation… If Bill Longbrake is right we could be in for a rough road ahead and hiring the best brains is always wise when the stakes are high. Goldman also has the strong balance sheet, market heft and risk appetite to do many things themselves for us that others couldn't as part of the solution . On the other hand, they are very expensive and we may have trouble getting John's full attention . John himself is very discreet but we always need to worry a little about Goldman because we need them more than they need us and the firm is run by traders. Nevertheless, we recommend going with John on this.”

581. At the top, WAMU’s CEO, Kerry Killinger could not resist poking further fun at rival Countrywide’s CEO when he stated in an August 23, 2007 email “By the way, that great orange skinned prophet from Calabasas was in fine form today on CNBC. He went after the analyst at Merrill, predicted housing would lead us into a recession, said the chance of CFC bankruptcy was no greater than when the stock was at 40 and said ‘what doesn't kill us will make us stronger.’ He continues to give the class action lawyers good fodder for their stock drop lawsuits.”

582. On 8/23/07, WAMU Home Loans’ president in an email to Killinger stated “the big lesson here, which we are all painfully aware of now, is that without a strong credit organization and superb analytics in a bad credit cycle, decisions are too heavily based on what has happened versus what may… In moving this to home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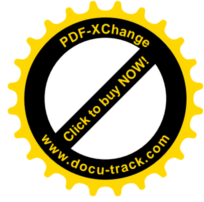
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loans, we found a credit regimen that was fico/score driven with little to no accounting for collateral which is amazing, and because of the limited defaults in a boom market, a default servicing shop that was, sorry to say, laughable."

583. In an August 27, 2007 email to Killinger, the head of WAMU's Home Loan division, Steve Rotella, made the following comments about "lessons learned" when he stated "The lesson learned here is that when it smells bad, its likely rotten, so go even faster and deeper to cut it out."

584. The greed and aggressive business actions were implemented in 2006, immediately before the bust which began in February of 2007 while the Plaintiff's loan was funded just two months before the implosion of the mortgage and financial markets as illustrated in the following WAMU charts pointing out its aggressive plans to increase profits.

Three fundamental business shifts occurred in Home Loans this millennium which shaped its performance and position in a volatile, competitive landscape

2001 to 2005

- "Mono-line" business model focused on generating high volumes of low-margin, prime products
- Business goals were largely driven by non-organic market share growth achieved via multiple mortgage acquisitions
- Positioned attempt to take advantage of large refinance cycles
- Specialized (Subprime and Home Equity) SFR lending activities operated independently from Home Loans organization
- Model generated significant levels of earnings volatility with a high cost structure
- Disproportionate earnings driving from MSR versus core business

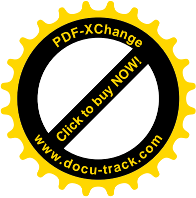
2006

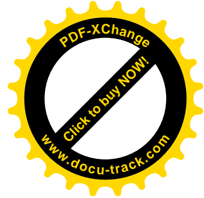
- Targeted production franchise toward higher margin products to become a market leader in specific product segments
- Lowered earnings volatility by reducing exposure to MSR in both absolute and relative levels
- Significant rationalization of the cost structure and integration of previous acquisitions

2007 & Beyond

- Subprime mortgage implosion fuels credit and liquidity crisis and the non-agency secondary market disappears
- Home lenders with access to diversified funding sources and a balance sheet will survive – over 200 fail
- Leadership role taken in industry reaction/reform – credit tightening, broker reform, sub-prime assistance
- Focus shifts away from "exotic" products to agency-centric production which places a premium on efficiency
- Opportunity exists for WaMu to fill a credibility gap (Trusted & Admired)

WaMu 1



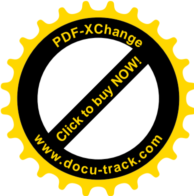


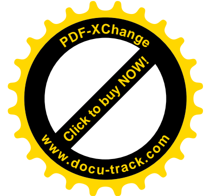
Home Loans strategies varied based on leadership and environment - Growth through acquisition, One-consumer group, Business model rationalization, and Prep for Change were hallmarks of the different eras

	2002-2003	2004	2005	2006	2007	2008E*
Era	Acquisition/Refi Boom	Gridlock	Integration Begins	Repositioning	Subprime Meltdown	Redefining HL
President	Craig Davis	Deanna Oppenheimer/ Craig Chapman	Craig Chapman/ Steve Rotella	David Schneider	David Schneider	David Schneider
Acquisitions	DIME/NAMC, HomeSide					
Fulfillment Systems	12	11	11	3	3	1
Sites (HLC, LFC, Serv)	395, 57, 14	425, 58, 9	352, 31, 5	323, 26, 4	333, 23, 2	0, 3, 5
Vocal Scores (% Loyal)	Na	na	788	803	52%	54.5%
Themes & Significant Events	- Acquisitions - Refi Book - Optis Write-off ($150M) - Pipeline Issue ($300M)	Gridlock	- Integration Kick-off - Internally Focused	- System Consolidation - Business model shift - Servicing Sale to WFC - Losses on Residuals	- Subprime Meltdown - Secondary market dislocation - Prepare for change	- Continued secondary market dislocation - Decrease in home values and other economic factors driving up delinquencies
Strategy	- Become America's Lending Leader - Chase market share - Power of Yes - MSR risk mgmt	- Consumer Group - Operational Consolidation - Technology optimization	- Shifting strategy due to multiple leadership changes (Chapman – Meola/Bindra) - Request to focus on internal problems	- Shift from low margin to high margin products - Reallocate risk from market to credit - Continue to attack the cost structure	- Innovative, non-commoditized products - Stable earnings growth - Maintain highly efficient low-cost organization	- Shift to conforming product set - Re-size the business to reflect lower industry origination volumes
Strategy Proof Points	- Be everywhere; geographically diverse - Growth at all costs; high fixed cost structure - Balanced channel mix	- Growth stalled due to internal issues arising - High fixed cost structure - Cross-sell focus	- Internally focused; operational execution - Begin to address cost structure - Scaleable, repeatable processes; market exit	- RB alignment; LB, HE and MBF integration - Attacked cost structure; variable - Focus on high margin products; Exit Corr; Stop Gov't lending/servicing	- RB alignment - Continue to attack cost structure; Right-sizing - Focus on BLC and Conforming product; Exit subprime lending, MBF; priority to customer retention	- Reduced product set and tighter credit parameters - Exit Wholesale and Traditional Retail stores - Focus on BLC and Consumer-Direct channels

*2008 figures based on year end estimates

WaMu 3



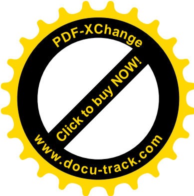


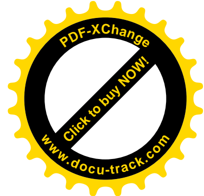
In an environment of internal and external large-scale change, Home Loans took bold actions to redefine its business into a sustainable model...

Late 2005 to 2006

	2005	Q1 '06	Q2 '06	Q3 '06	Q4 '06
Organization	• New Hires: Home Loans President - David Schneider Retail Manager - S. Stein Credit Risk Officer – C. Feltgen • Created accountable sales and operations model • Corporate support centralization model	• New Hires: Wholesale Manager – A. Hyde • Departures: CFO/Capital Markets head – T. Bindra • Organization flattened Servicing and Capital Markets direct reports CFO dotted line report • Long Beach transfer to Home Loans	• Departures: Head of Production – T. Meola Head of Long Beach – K. Johnson • Organization further flattened: Channel heads report directly to Home Loans President	• Home Equity realigned to Home Loans • Enabler structure formed, end of double reporting	• Replacement: CIO – T. Morgan • Prime and Subprime Wholesale combined under one leader • QC /Risk to Home Loans • New Hire: Credit Analytics – T. Haines
Strategy	• Prime-based product set • High-performing retail model • Four distribution channels • Consolidation of Consumer Direct and Correspondent	• Planning underway	• New business model High margin products Low volatility Lower cost structure	• Implement new business model	• Decision to sell Option ARM (validating)
Environment	• OTS scrutiny on loan file quality	• Reduced mortgage market resulted in excess capacity	• Challenging rate environment and excess capacity	• Continued challenging rate environment	• Subprime market meltdown begins
Actions	• Initiated Conduit	• Evaluated SLM for Home Loans • Home Loans Leadership Meetings to develop new business model • Loan modifications implemented	• Exited Correspondent • Ceased Gov't lending • Sold $140B MSR • Launched BLC Program • Initiated SLM Implementation • Home Equity in Retail	• Appraisal outsourced • FPD and EPD spike uncovered at Long Beach Taskforce established • Begin credit tightening in subprime (See appendix)	• Subprime in Retail and CD initiative
Non Interest Expense	$678	$621	$617	$528	$534
Net Income	$45M (Q4 '05)	$52M	$50M	($23M)* *Initial residual writedown from Long Beach	($124M)** **Additional provision for Long Beach reserves and residual writedowns
# of FTE	17,726	17,653	15,560	13,936	13,025

WaMu 4





....internal changes addressing a rapidly changing environment continued - risk management, core operations, and efficiency.

Late 2007 to Present

	Q1 '07	Q2 '07	Q3 '07	Q4 '07	2008
Organization	• Replacement: Chief Financial Officer – J. Woods	• One Wholesale model (Prime and Subprime) • New subprime strategy lead announced – J. Domer	• New Hire: Communications Lead – A. Gulick	• Right-sized organization to match industry volume ($1.5T)	• Controller: Rolly Jurgens replaces Fergal Stack • Production: Arlene Hyde is named single head of all Production. Steve Stein and Jake Domer leave WaMu as orgs are absorbed • Chief Risk Officer: Don White replaces Cheryl Feltgen • Head HL Legal: Carey Brennan replaces Michaela Albon • Communications: Alan Ellas replaces Alan Gulick • Servicing: Steve Champney leaves WaMu
Strategy	• Broker segmentation	• Subprime Council implemented (Phoenix)	• Aggressive response to subprime market crisis	• Expense challenge	• Agency-centric product focus • Ultra lean operating model • Call/Click/Come In model: Retail focused production aligned exclusively with Retail Bank footprint
Environment	• Number of companies declaring bankruptcy • Subprime delinquencies rise credit conditions worsen	• Subprime Implosion	• Fed begins series of rate cuts • Market liquidity gone	• Default and foreclosure rates at record high • Continued lack of liquidity	• Stimulus Package • Aggressive Fed actions • Market turmoil, large bank failures and fed bailouts • Lack of liquidity • Housing price declines continue
Actions	• Launched: Mortgage Plus Enterprise Decision Engine (EDE)	• Portfolio transferred to HL • $2B assistance program • SLM in Consumer Direct • Option Adjusted Spread model implemented • New Multi-pay product launched • Began credit tightening in Home Equity and Alt A (See Appendix)	• Rate reset campaign (Loan Mod program) • Exited: MBF Conduit Subprime Home Equity in Wholesale • Implement Bold Broker	• Closed broker/dealer • Reduced sales locations • Grew BLCs • Aggressive Home Equity Mgmt program (Credit line decrease)	• Single fulfillment platform (SLM) • Move to 1 Production channel from 3 • Wholesale Channel is exited • Standalone Retail channel is exited, leaving only in Retail Bank, telephone sales and online production
NIE	$521	$547	$553	$2,319	$1,259
Net Income	($114M)* *Spike in foreclosures, continued residual writedowns and provisioning. Prime business improving	($40M)** **Continued residual writedowns and provisioning. Prime business continuing to improve	($342M)** **$323m provision for loan losses, Move to portfolio model, take MTM	($1,964M)*** ***Goodwill write-off and provisioning	($3,429M)* *Increased provisioning
# of FTE	12,947	12,661	12,162	11,323	8,697

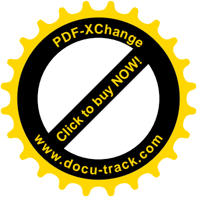
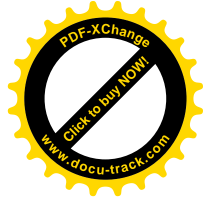
WaMu 5

The Structuring Of Mortgage Pass-Through Certificates

585. Mortgage pass-through certificates are securities in which the holder's interest represents an equity interest in the "issuing trust." The pass-through certificates entitle the holder to payments from pools of mortgage loans. Although the structure and underlying collateral of the mortgages vary, the basic principle is the same.

586. First, a "depositor" acquires an inventory of loans from a "sponsor/seller," who either originated the loans or acquired the loans from other loan originators, in exchange for cash. The type of loans in the inventory may vary, including conventional, fixed or adjustable rate mortgage loans (or mortgage participations), purportedly secured by first liens, junior liens, or a combination of first and junior liens, with various lifetimes to maturity. The depositor then transfers, or deposits, the acquired pool of loans to the issuing trust entity.

587. The depositor then securitizes the pool of loans so that the rights to the cash-flows from the inventory can be sold to investors. The securitization transactions are structured such that the risk of loss is divided among different levels of investment, or "tranches." Tranches are related MBS offered as part of the same pass-through certificate offering, each with a different level of risk and reward.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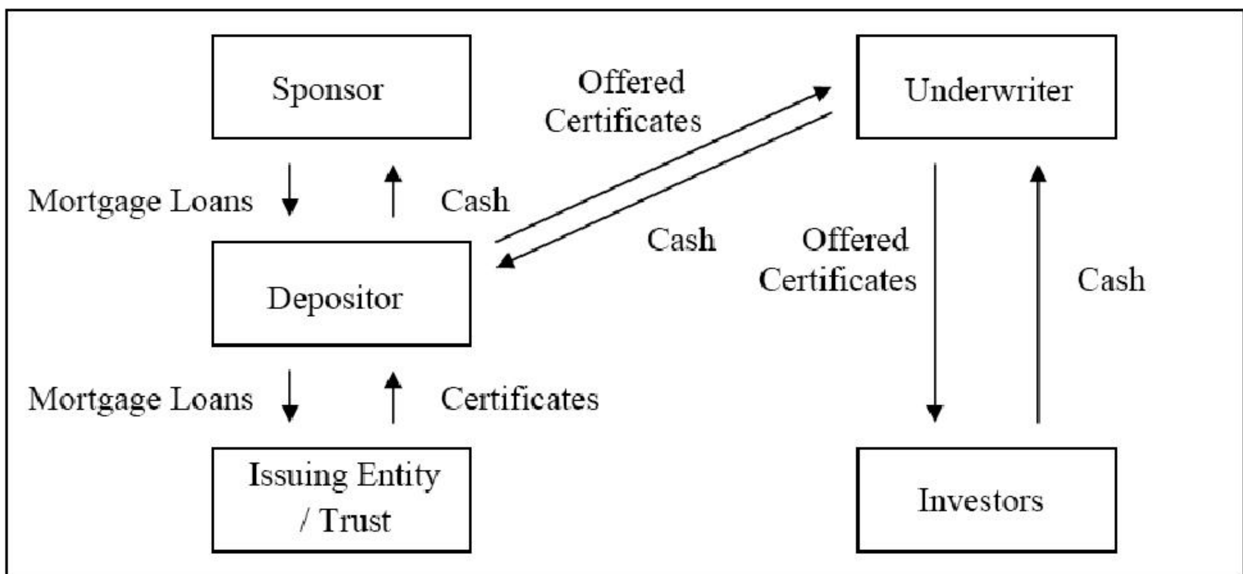
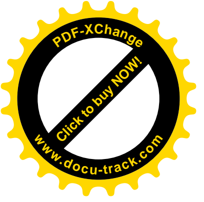
Any losses to the underlying loans, due to default, delinquency or otherwise, are applied in reverse order of seniority as set forth in the offering materials. As such, the most senior tranches of pass-through certificates are often rated as the best quality, or "AAA." Junior tranches, which usually obtain lower ratings, ranging from "AA" to "BBB-," are less insulated from risk, but offer greater potential returns.

588. However, as the performance of the mortgage loans declines, even the most senior tranches are exposed to a greater likelihood of loss as the "credit enhancement" provided by the subordinate tranches is eroded. Once the losses on the lower-ranking tranches reach a certain point the senior certificates will begin experiencing cash flow shortfalls too. Even if the senior certificates do not immediately experience cash flow shortfalls, the deterioration in the collateral backing the certificates makes the senior certificates more risky.

589. By working together, the underwriters, the depositor, and the rating agencies are able to ensure that each particular mortgage pass-through certificate tranche will receive a predetermined rating by pre-determined rating agencies at the time of offering. Once the tranches are established, the issuing trust passes the certificates back to the depositor, who then passes the certificates to one or more underwriters. The underwriters offer the various certificates to investors, in exchange for cash that will be passed back to the depositor, minus any fees owed to the underwriters.



590. Each purchased or acquired certificate represents an equity interest in the issuing trust and the right to future payments of principal and interest on the underlying loans. Those payments are collected by the loan servicer and distributed, through the issuing trust, to investors at regular distribution intervals throughout the life of the loans. Mortgage pass-through certificates are offered to the public pursuant to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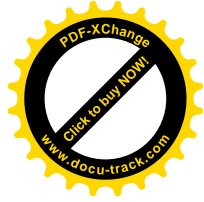
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a registration statement and prospectus in accordance with the provisions of the Securities Act.

591. The Depositor created and structured the Issuing Trusts to issue billions of dollars of Certificates pursuant to the Offering Documents. For each offering, the Depositor served as the "depositor" and WaMu served as the "sponsor." The following chart identifies: (1) the Issuing Trust; (2) the date of its Registration Statement; (3) the date of its Prospectus; (4) the date of its Prospectus Supplement; (5) the aggregate principal balance of its Certificates; (6) the Originator(s) of the Mortgage Loans; and (7) the Rating Agency that provided ratings for its Certificates.

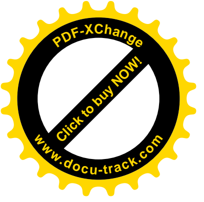
Assessing The Quality Of Mortgage Pass-Through Certificates

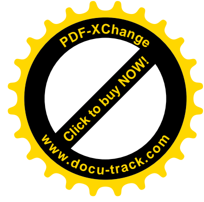
592. Proper loan underwriting is critical to assessing the borrowers' ability to repay the loans, and a necessary consideration when purchasing and pooling loans. If the loans pooled in the MBS were to suffer defaults and delinquencies in excess of the assumptions built into the certificate payment structure, the certificate's value diminishes because the risk of non-receipt of the cash flow from the certificates increases.

593. Likewise, independent and accurate appraisals of the collateralized real estate are essential to ensure that the mortgage or home equity loan can be satisfied in the event of a default and foreclosure on a particular property. An accurate appraisal is necessary to determine the likely price at which the foreclosed property can be sold and, thus, the amount of money available to pass through to certificate holders.

594. An accurate and independent appraisal is also critical to calculating the loan-to-value ("LTV") ratio, which is a financial metric commonly used to evaluate the price and risk of MBS and mortgage pass-through certificates. The LTV ratio expresses the amount of the mortgage loan as a percentage of the value of the collateral property. For example, if a borrower seeks to borrow $90,000 for a property that is appraised at $100,000, the LTV ratio is 90% ($90,000 divided by $100,000). However, if the reasonable value of the property is $90,000—instead of an artificially inflated appraisal of $100,000—then the accurate LTV ratio would be 100% ($90,000 divided by $90,000).

595. In general, as a loan's LTV ratio increases a borrower's likelihood of default also increases: The difference between the value of an asset and the principal balance of the loan is called the borrower's equity. When the LTV is less than [100%] [i.e., the value of the mortgaged property exceeds the amount borrowed], the borrower has positive equity in the asset and there is an incentive for the borrower not to default. Instead of defaulting, it would be an economic advantage for the borrower [or, in the case of foreclosure, the bank] to sell the asset and pay off the loan, pocketing the residual proceeds. A ratio greater than [100%] means that the





amount borrowed exceeds the value of the asset and there is an incentive for the borrower to default.

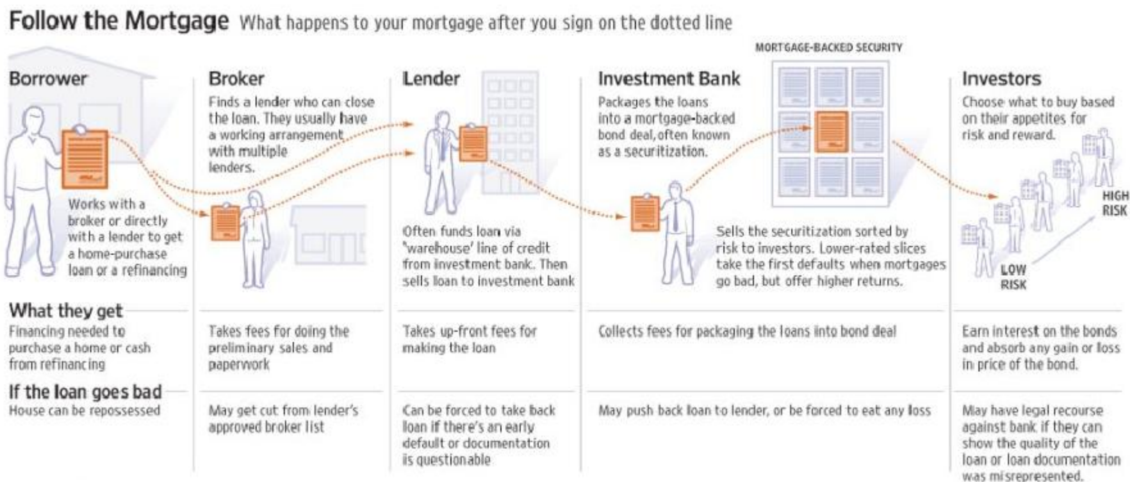
596. Frank J. Fabozzi, et al., Introduction to Structured Finance 84 (2006). From the mortgage holder's perspective, a lower LTV ratio provides protection if the collateral property declines in value. For example, a loan with 80% LTV ratio will not risk a loss to the lender until the property underlying the loan drops more than 20%.

597. A ratio greater than 100% could be caused by a variety of factors. An inflated appraisal can cause an excessive LTV ratio from the first day of the loan. If, as in the example in paragraph 37, a borrower seeks to borrow $90,000 for a property that has an accurately appraised value of only $80,000, then the LTV ratio would be 112.5%. The borrower, such as Plaintiff Long, would then would start with negative equity in their property thereby fraudulently inducing the Long to enter into real estate transactions that WAMU, its brokers and investors knew would eventually fail. Similarly, even a slight drop in housing prices might cause a loan with a high LTV ratio to exceed the value of the underlying collateral. Consequently, the LTV ratios of the loans underlying mortgage pass-through certificates are important to investors' assessment of the value of such certificates.

The Proliferation of Subprime Mortgage-Backed Securities

598. As illustrated in the charts below, in a mortgage securitization, mortgage loans are acquired, pooled together, and then sold to investors, who acquire rights in the income flowing from the mortgage pools.

Securitization Chart A



Securitization Chart B

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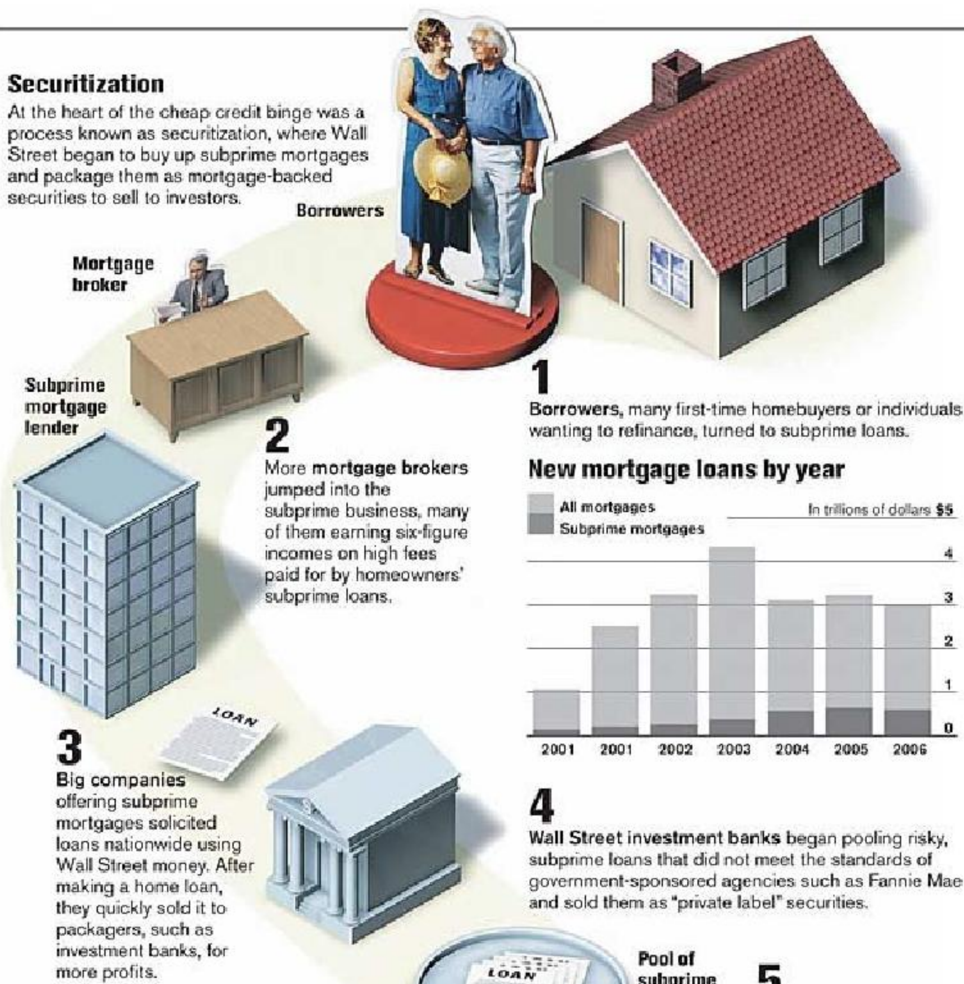
Securitization

At the heart of the cheap credit binge was a process known as securitization, where Wall Street began to buy up subprime mortgages and package them as mortgage-backed securities to sell to investors.



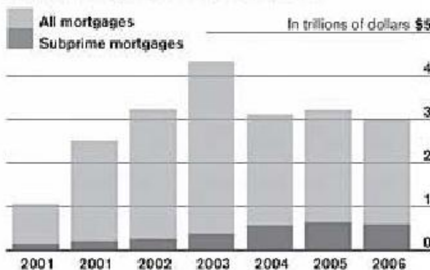
1

Borrowers, many first-time homebuyers or individuals wanting to refinance, turned to subprime loans.

2

More **mortgage brokers** jumped into the subprime business, many of them earning six-figure incomes on high fees paid for by homeowners' subprime loans.

New mortgage loans by year



3

Big companies offering subprime mortgages solicited loans nationwide using Wall Street money. After making a home loan, they quickly sold it to packagers, such as investment banks, for more profits.

4

Wall Street investment banks began pooling risky, subprime loans that did not meet the standards of government-sponsored agencies such as Fannie Mae and sold them as "private label" securities.

Pool of subprime loans

5

Rating agencies such as Standard & Poor's helped investment banks structure the mortgage-backed securities to get the best possible bond ratings, earning healthy fees in the process, and making them attractive to investors, including mutual and pension funds.

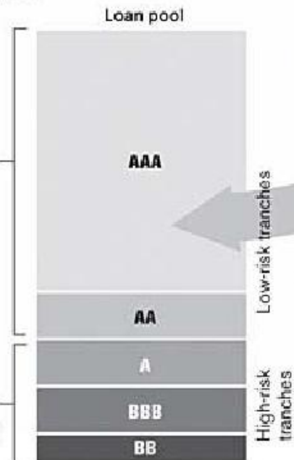
Rating agency

Structured finance

A financial innovation called structured finance provided Wall Street a way to divide subprime mortgage-backed securities into tranches (French for slices.) The tranches allowed the risk of a loan pool to be parceled out to various investors. Investors who purchased bonds in the securities received a portion of the mortgage payments in the pool.

Top-level tranches contain the highest-quality, but lowest-paying, bonds. Even though a mortgage-backed security may be funded from a pool containing subprime loans, the top tranches can have investment-grade status of triple-A rated bonds because they are paid first from the pool.

The lowest-level tranches contain the riskiest, highest-paying bonds. They get a low rating and are paid off after the double- and triple-A rated bonds are paid.



Mortgage-backed security

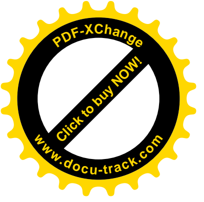
Investor

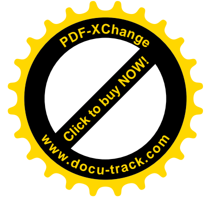
6

Investors worldwide gobbled up the securities.

Sources: Mortgage Bankers Association; HSH Associates; Federal Housing Finance Board; LoanPerformance, a First American Co.

The Denver Post





599. When mortgage borrowers make interest and principal payments as required by the underlying mortgages, the resulting cash flow is distributed to the holders of the mortgage-based securities in order of priority based on the specific tranche held by the MBS investor. The highest tranche (also referred to as the senior tranche) is first to receive its share of the mortgage proceeds and is also the last to absorb any losses should mortgage-borrowers become delinquent or default on their mortgages.

600. Traditionally, an originator of a mortgage loan was economically vested in establishing the creditworthiness of the borrower and the true value of the underlying property through appraisal before issuing the mortgage loans. The securitization of mortgage loans fundamentally shifted the risk of loss from the mortgage loan originator to the investor who purchased an interest in the securitized pool of loans. Thus, in securitizations, the originator does not have the same economic interest in establishing borrower creditworthiness or a fair appraisal value of the property in the loan origination process.

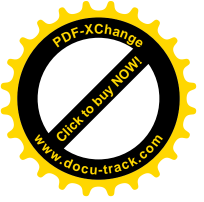
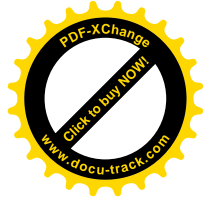
601. In the 1980s and 1990s, securitizations were generally only carried out by Government Sponsored Enterprises, e.g., the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which would purchase loans from originators. Investors in Government Sponsored Enterprise securities were provided protections because the underlying loans were originated pursuant to strict underwriting guidelines.

602. Between 2001 and 2006, however, there was dramatic growth in mortgage loan securitizations by entities not sponsored by the government, for which there were no minimum underwriting standards. This led to a commensurate increase in securitizations of subprime mortgage loans.

603. A subprime mortgage loan is a mortgage loan to a borrower with substandard credit or a loan with non-conforming characteristics. In simple terms, its not A rated paper. In the decade since the inception of the subprime mortgage loan such loans have flourished as the vehicle by which lenders funded loans to borrowers who, for various reasons ranging from poor credit histories to unstable income levels, would not generally qualify for traditional or prime rate loans.

604. To compensate for the increased risk of making subprime loans, the upfront and continuing costs of a subprime loan are higher than that of a traditional loan. For example, the majority of subprime loans tend to be ARMS or hybrid-ARMS. Both shift the risk of rate fluctuation from the lender to the borrower.

605. Many borrowers such as Plaintiff Long obtain ARMs under WAMU's sales and marketing representations that they would refinance the ARMS at favorable terms before they reset at a higher interest rate. In the subprime mortgage context,

ARMs created significant and widespread mortgage default risks because of the likelihood that subprime borrowers will be unable to make their mortgage payments after a rate adjustment. According to a study by First American CoreLogic, in 2007 and 2008, "trillions of dollars of adjustable-rate mortgages [had] their payments reset." It is estimated that well over $2 trillion in ARMs were originated from 2004 to 2006.

WaMu's Origination and Securitization Operations

606. Beginning in 2001 and extending into 2007, WMB experienced exponential growth in its subprime mortgage loan origination business. During this timeframe, WaMu purchased and securitized a significant portion of the subprime mortgage loans originated or acquired by WMB into Certificates.

607. WaMu derived an immediate profit from the sale of the Certificates for a price in excess of the amount paid for the underlying mortgage loans. The goal for WaMu was to sell the Certificates for a price above the par value of $1.00 per unit.

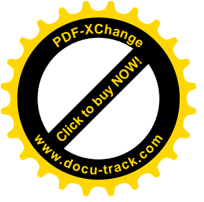
608. Certificates were issued through the Issuing Trusts designated with a "shelf" name – specifically, "WaMu Mortgage Pass-Through Certificates Trust" and as the case of Plaintiff Long's loan, Defendant "WAMU Mortgage Pass-Through Certificates Series 2006-AR19 Trust."

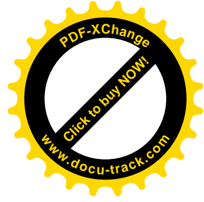
609. WaMu completed thirty-six (36) Certificate Offerings pursuant to the Offering Documents, between January 26, 2006 and June 26, 2007, which included the subject loan and Defendant Trust related to this action. For Certificates to be marketable to their target investors, e.g., pension funds, approximately 80% of the Certificates had to have an AAA rating.

610. In order to ensure that a substantial portion of the Certificates were awarded the AAA ratings, WaMu had the Rating Agencies compete for the engagement by including their proposed ratings on the Certificates as part of their bid for the Certificate rating engagement. This ratings shopping process resulted in over 94% of the Certificates being assigned the AAA rating. In addition to engaging in ratings shopping, WaMu made sure the Rating Agencies participated in all aspects of the formation and structuring of the Certificates in order to guarantee a sufficient proportion of the Certificates would be assigned an AAA rating.

Origination of Mortgage Loans By WMB

611. The underlying mortgages of the Certificates in the thirty-six (36) Offerings including that of the subject Defendant Trust complained of herein were purportedly originated pursuant to the stated guidelines of WMB, either by WMB itself of various correspondent lenders. First, WaMu originated loans through WMB. In 2000, WMB was originating $600 million of mortgage loans per month, or just over $7.0 billion for the year. In stark contrast, by 2005, WMB





originated over $19.0 billion in mortgage loans each month, translating into over $229.0 billion per year. All of the loans originated by WMB were acquired by WMB pursuant to Purchase and Sale Agreements.

612. A computerized model priced each loan on a loan-by-loan basis, including Plaintiff Long's loan. Once the loans were acquired by WMB, they were entered into WMB's computerized subprime loan "warehouse" database, which recorded the characteristics of each loan WMB acquired, including, among other things, the loan amount, the loan type, borrower credit information and the appraisal.

613. WaMu's second method of acquiring mortgage loans for securitization was through agreements entered into with small local and regional lenders, known as "correspondent" lenders, dispersed throughout the U.S.

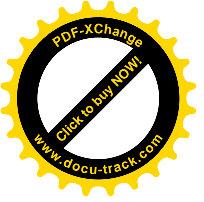
<u>WCC's "Due Diligence" Review</u>

614. Once WaMu had acquired possession of the mortgage loan collateral from WMB and prior to securitization, a process of cursory "due diligence" on the mortgage loans was conducted by WCC prior to the acquisition. The review's ostensible purpose was to determine whether the loans contained the requisite legal documentation, were based on an independent appraisal and were originated in accordance with WMB's loan underwriting guidelines, which were detailed in the Offering Documents.

615. The due diligence review that was conducted on the mortgage collateral was not specific to a securitized pool of mortgage loans. Rather, the due diligence that was performed, as set forth below, was periodically performed on a small sample (5-7% at most) of WMB's entire "warehouse" of mortgage loans.

616. WCC contracted its due diligence work to outside firms – namely, Bohan and Clayton. WaMu's Due Diligence Team was responsible for overseeing the work. The outside firms were supposed to be examining the loans for their conformity with WMB's guidelines, as detailed in the Offering Documents. Each loan reviewed was rated as category "1," "2" or "3." Category "3"loans were found to be defective and recommended for exclusion from securitization. However, WaMu's Due Diligence Team exercised its discretion and rarely excluded category "3" rated loans.

617. WaMu was incentivized to hang on to category "3" loans because if WaMu rejected any significant portion of the loans, the size of the securitization, and thus the size of the fees derived from the securitization by WaMu, would be decreased significantly. In addition, the loans would remain as an asset on WaMu's mortgage ledger, subjecting WaMu to the risk of default or foreclosure. Rather than conduct their own due diligence, WCC abdicated their duty to conduct any examination of the underlying collateral, and instead relied on the cursory due diligence conducted by third-party firms.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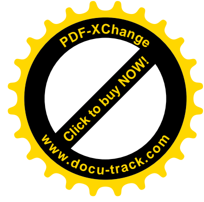
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The Appraisal Defendants Inflation of Property Valuations

618. As referenced before, independent and accurate real estate appraisals are essential to the mortgage lending and securitization process, ***providing borrowers, lenders, and investors in mortgage-backed securities with supposedly independent and accurate assessments of the value of the mortgaged properties*** such as the Long's property. [emphasis added]

619. **Accurate appraisals ensure that a residential mortgage or home equity loan is not under-collateralized, thereby protecting borrowers from financially over-extending themselves** and protecting lenders and investors in mortgage-backed securities in the event a borrower defaults on a loan. Importantly, accurate appraisals also provide investors with a basis for assessing the price and risk of mortgage-backed securities. [emphasis added]

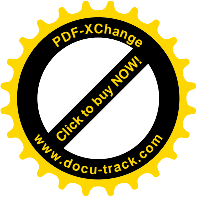
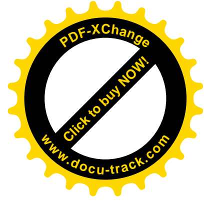
620. An accurate appraisal is critical in determining the loan-to-value ("LTV") ratio for a mortgaged property such as Long's property. The LTV ratio is a financial metric that Wall Street analysts and investors commonly use when evaluating the price and risk of mortgage-backed securities. The LTV ratio is directly dependent on the appraised value of a property because the LTV ratio is simply the mortgage amount divided by the appraised value of the property, expressed as a percentage.

621. For example, if a borrower seeks to borrow $350,000 to purchase a house worth $400,000, the LTV ratio is $350,000/$400,000, or 88 percent. If, however, the appraised value of the house is artificially increased to $450,000, the LTV ratio drops to just 78 percent ($350,000/$450,000).

622. From the perspective of a purchaser of mortgage-backed securities, a high LTV ratio is riskier because borrowers with small equity positions in their property have less to lose if the borrowers default on the loan. From a borrower's and Plaintiff Long's standpoint, no one would seek a mortgage for far more money than the property was truly worth i.e. paying more for the property than the real appraised value.

623. The Prospectus Supplement for the Defendant Trust further stated that:

    a. "The adequacy of the mortgaged property as collateral generally is determined by an appraisal made in accordance with pre-established appraisal guidelines. At origination, all appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation, and are made on forms acceptable to Fannie Mae and/or Freddie Mac. Appraisers may be staff appraisers employed by the sponsor or independent appraisers selected in accordance with the pre-established appraisal guidelines. Such guidelines generally require that the appraiser, or an agent on its behalf,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personally inspect the property and verify whether the property is in adequate condition and, if the property is new construction, whether it is substantially completed. However, in the case of mortgage loans underwritten through the sponsor's automated underwriting system, an automated valuation method may be used, under which the appraiser does not personally inspect the property but instead relies on public records regarding the mortgaged property and/or neighboring properties. In either case, the appraisal normally is based upon a market data analysis of recent sales of comparable properties and, when deemed applicable, a replacement cost analysis based on the current cost of constructing or purchasing a similar property…"

624. In addition, particularly when home values are declining, a high LTV ratio creates the heightened risk that, should the borrower default, the amount of the outstanding loan may exceed the value of the property.

625. Contrary to these representations, WaMu's appraisals did not conform to the USPAP standards and did not portray accurate market data and valuation. Because WaMu's profits were determined largely by the quantity of the loans successfully closed and not on the quality of those loans or the information fraudulently placed into WaMu's underwriting system by WaMu employees and brokers.

626. In the same manner that WaMu pressured and influenced its employees and brokers to commit fraud in the loan origination process to "hit the numbers," WaMu also pressured and influenced appraisers to "hit" the LTV ratios necessary to allow more loans to close and be eligible for pooling and sale to the securitization market.

627. WaMu balked at federal guidelines stating that: (1) loan production staff should not select appraisers; (2) loan production staff should not be involved in developing or maintaining lists of appraisers; and (3) information provided by the regulated institution should not unduly influence an appraiser or in any way suggest the property's value.[8]

628. One of WaMu's primary appraisal firms, First American eAppraiseIT ("eAppraiseIT"), appraised a certain percentage the mortgages underlying the Certificates. In doing so, eAppraiseIT and its corporate parent, First American Corporation ("First American") colluded with and unlawfully inflated the real property appraisals they performed for WaMu.[9]

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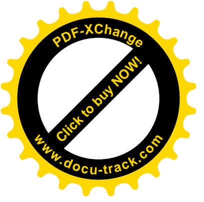
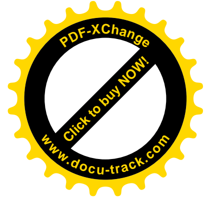
[8] FDIC FIL-20-2005 - Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions, March 22, 2005, The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration.

[9] *See People of the State of New York v. First American Corporation and First American eAppraiseIT,* No. 07-406796 (N.Y.Sup.Ct. Nov. 1, 2007).

629. First American and eAppraiseIT abandoned their role of providing unbiased appraisals for WaMu, instead allowing WaMu's loan production executives to "hand-pick appraisers who bring in appraisal values high enough to permit WaMu's loans to close," and "improperly [permitting] WaMu to pressure eAppraiseIT appraisers to change appraisal values that are too low to permit loans to close."

630. The terms of the contract between WaMu and eAppraiseIT allowed WaMu, in circumstances where its loan staff disagreed with an eAppraiseIT appraisal, to challenge an eAppraiseIT appraiser's valuation of a property by requesting a "Reconsideration of Value" ("ROV"). Washington Mutual routinely requested ROVs from eAppraiseIT appraisers in order to hit the LTV ratios for properties necessary for loans to close and be pooled with other loans for securitization.

631. For example, on August 9, 2006, eAppraiseIT's President told WaMu executives that "We need to address the ROV issue . . . . Many lenders in today's environment . . . have no ROV issue. The value is the value. I don't know if WAMU production will go for that . . . .The Wamu internal staff we are speaking with admonish us to be certain we solve the ROV issue quickly or we will all be in for some pretty rough seas."

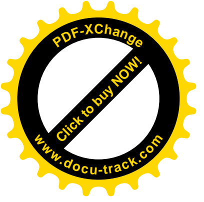
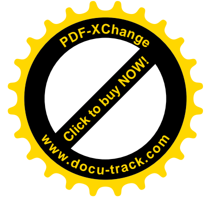
632. By e-mail dated September 29, 2006, a WaMu executive wrote to eAppraiseIT's senior executives to define the responsibilities of eAppraiseIT's Appraisal Business Managers ("ABMs") as to ROVs and value disputes:

   a. "... the four appraisers/reviewers would be directly involved in escalations dealing with: ROVs, Valuation issues where the purchase price and appraised value differ with no reconciliations/justifications by the appraiser, Value cuts which we continue to receive from your third party reviewers (Wholesale), proactively making a decision to override and correct the third party appraiser's value or reviewer's value cut, when considered appropriate and supported...."

633. On October 5, 2006, in response to "complaints from the WaMu production team particularly in Northern California," eAppraiseIT prepared a "WaMu Improvement Implementation Plan." The plan was unsuccessful, however. By December 2006, WaMu had reassigned all of its Northern California appraisal work to LSI.

634. During this period, First American was seeking additional business from WaMu in other areas. But WaMu expressly conditioned giving any future business to First American on success with eAppraiseIT.

635. By e-mail dated September 27, 2006, a First American senior executive advised other senior executives at First American and eAppraiseIT about a conversation

he had with the President of WaMu Mortgage about long-term business prospects. The First American executive explained that:

a. "[WaMu] and I discussed our long-term relationship including the money we have on deposit there and our other current business relationships. I told him we would like to expand those relationships. And in exact terms, we would like one half of their flood business, which they currently give 100% to [Corporation A] and their tax business is divided 3 ways among [3 corporations] and that we would like to take [Corporation A's] tax business."

636. According to the First American executive, WaMu responded as follows:

a. "He said that if the appraisal issues are resolved and things are working well he would welcome conversations about expanding our relationship including tax and flood."

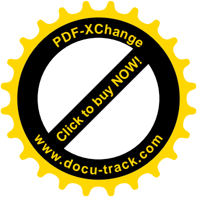
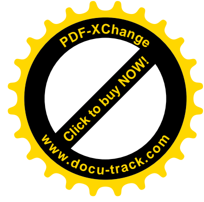
637. By e-mail dated December 2, 2006, eAppraiseIT noted internally that " ... we know [WaMu is] going to complain about the excessive number of low values because the majority of orders are not going to [WaMu's] preferred appraisers.

638. On December 18, 2006, an eAppraiseIT executive relayed to others that WaMu had advised him that its criticism was based on the fact that "values are coming in lower with EA [eAppraiseIT]" than with LSI, the competing appraisal management company that WaMu had also retained to provide appraisa According to this executive, WaMu maintained that "[t]hey also see more WaMu preferred appraisers doing work for LSI and they think that is why they aren't having as many value issues with them. . . . The [WaMu] managers indicated that if the loan consultants had a choice they would prefer to use LSI over eAppraiseIT because they feel they will have less problem [SIC] with the values."

639. In February 2007, WaMu's loan origination staff demanded that eAppraiseIT use a Proven Panel of appraisers selected by the loan origination staff, who were chosen because they provided high values. Indeed, eAppraiseIT's President suggested to WaMu and LSI and they will fix that in the near future. But for now they need to stop the noise or none of us will be around. I believe her.

640. By e-mail dated February 22, 2007, eAppraiseIT's President explained to senior executives at First American that eAppraiseIT would be staffing WaMu appraisals with "Proven Appraisers" hand-selected by WaMu's loan origination staff:

a. We had a joint call with Wamu and LSI today. The attached document outlines the new appraiser assigning process. In short, we will now assign all Wamu's work to Wamu's "Proven Appraisers" . . . . We will pay their appraisers whatever they demand. Performance ratings to retain position

as a Wamu Proven Appraiser will be based on how many come in on value, negating a need for an ROV.

641. In an e-mail dated March 1, 2007, eAppraiseIT's President told WaMu executives:

a. Recently, we have been notified that Lending would like us to use more of their "Proven Appraisers" versus appraisers off our preselected appraiser panel. It seems the amount of Reconsideration of Value (ROV) requests associated with our appraisers far exceeds those initiated when a WaMu proven appraiser completes a file. Said differently, WaMu proven appraisers bring the value in a greater majority of the time with minimal involvement of the vendor, sales and Appraisal Oversight. I am fine with that, of course, and will happily assign WaMu orders to WaMu proven appraisers instead of eAppraiseIT's approved panel appraiser whenever possible.

642. On April 17, 2007, eAppraiseIT's President wrote to senior executives at First American, explaining issues with WaMu as follows:

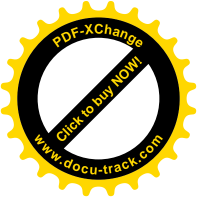
a. "In short, the issues are using their designated appraisers as mandated by the WaMu production force at 20% gross margin and bypassing our panel. We view this as a violation of the OCC, OTS, FDIC and USPAP influencing regulation."

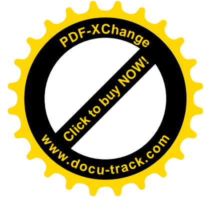
643. On April 17, 2007, eAppraiseIT e-mailed its staff appraisers to explain why the staff appraisers had been removed from the WaMu Proven List. In these messages, eAppraiseIT's ABMs acknowledged that WaMu loan origination staff were now choosing the appraisers for their loans:

a. "I thought I [sic] pass on my thoughts regards the recent message that we all received for [sic] Peter last weekend. I will be glad to tell you what I know. I have been told that the lending folks at Wamu and [sic] were unhappy with the AMC's and felt they were not receiving a good level of appraisal work. They therefore decided to construct their own appraisal panel, now known as the wamu proven panel, and instructed the AMC's to utilize appraisers from this panel whenever possible. The end result is that if you are not on this proven panel it is very unlikely you will receive wamu work.

644. Appraisers at First American and eAppraiseIT who did not comply with the predetermined values were subjected to threats of blacklisting by WaMu. Specifically, on April 17, 2007, an appraiser wrote to eAppraiseIT and stated:

a. "This is the second Wamu Appraisal quality assurance issue I have received from Wamu in the past 2 months. Both as a result of an appraisal





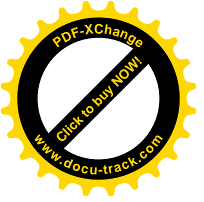
I completed that did not come in to their predetermined value for a "valued" Wamu client**. I was pressured for 2 weeks to change both my value and the conditions of my appraisal report ••• both of which were violations of USPAP, FANNIE MAE and the Supplemental Standards I am required to observe and am bound by my license to complete**. Since that time, I have been singled out by WaMu and have been pressured on every appraisal I have completed that did not reach a pre-determined value. I feel that WaMu is in process of "blacklisting" me as an approved WaMu appraiser by going after each appraisal I complete and looking for violations."

645. Realizing that the Company could suffer significant fallout if the facts concerning WaMu's manipulation of eAppraiseIT through the use of Proven Appraisers became public, on April 26, 2007, eAppraiseIT's President wrote an e-mail to senior management at First American regarding the issues they were encountering with WaMu and the use of Proven Appraisers. In the e-mail, eAppraiseIT's President discussed the Proven Panel and eAppraiseIT's reputational risk:

   a. "Sales is the driving force behind the Proven Appraiser List (PAL) which is questionable from regulatory perspective. We are required to use these appraisers at 80/20% fee splits. This is dilutive to our P&L. Even with the implementation of such, we are still finding that we are being questioned surrounding what appraiser was assigned the order. **We feel our reputation in the industry is being tarnished by the implementation of the Proven List since Production selects the appraiser." [**Emphasis added]

646. On May 11, 2007, eAppraiseIT's Executive Vice President wrote in an e-mail to eAppraiseIT's President that "currently WAMU is controlling the appraiser panel. They are selecting the appraisers and calling them 'proven' appraisers. These appraisers are being chosen by their sales force. First American eAppraiseIT [] is obligated to use these appraisers." According to eAppraiseIT's Executive Vice President, WaMu was using the "Proven Appraisers" because of the "low values" from other eAppraiseIT's appraisers.

647. Indeed, according to the NYAG Complaint, eAppraiseIT's internal appraisal log entries indicate that its appraisers increased property values on appraisal reports after being told by WaMu loan origination staff that such increases would help loans to close. For the period from November 2006 to May 2007, there were eight reviews performed relating to properties in New York, all of which were for WaMu. The appraised values were increased in each of the eight reviews completed, as follows: from $825,000 to $850,000, $230,000 to $240,000, $415,000 to $420,000, $1,550,000 to $2,270,000, $720,000 to $730,000, $535,000 to $556,000, $580,000 to $587,000, $500,000 to $525,000.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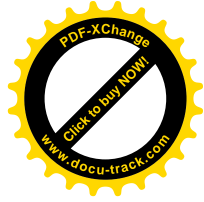
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648. In this manner, the appraisals eAppraiseIT performed for WaMu did not portray accurate market data and valuation. In order to earn business from WaMu, eAppraiseIT artificially inflated appraisal values to "hit" the LTV ratios necessary to allow more loans to close and be eligible for pooling and sale to the securitization market in complete disregard to appraiser independence requirements.

The Roles of WCC and the Rating Agencies in the Securitization of Subprime Loans and the Structuring of the Certificates

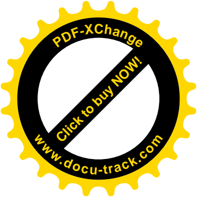
649. WCC was established in 2002 by WMB for the purpose of providing WaMu with direct access to investors such as the Investor Defendants. Since 2002, WaMu had been going directly to Wall Street with its products securitized through WCC. In 2005, WCC was officially made a wholly-owned subsidiary of WMB. WCC enabled WaMu to issue billions in mortgage-backed securities directly, without obtaining the assistance of outside investment bankers.

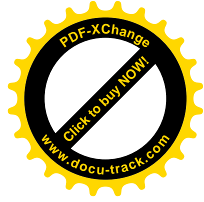
650. The purpose of WCC, which was made up of a group of WMB employees working on the mortgage-backed securities sales desk, was to assess the demand for certain securities fro the clients of the investment bank and to assist WaMu in structuring the Offerings of Certificates. This "pre-sell" of Certificates was critical for the quick sale of an Offering of Certificates. Therefore, WCC's role in assessing market demand and assuring WaMu that sale of the Certificates to investors would be completed immediately after securitization was key to the Offerings' success.

651. The Registration Statements filed disclosed the engagement of the Rating Agencies but omitted disclosure of the manner in which the Rating Agencies were engaged. In order to obtain the highest ratings for each Certificate, WaMu leveraged the "Big Three" credit rating agencies (Moody's, S&P and Fitch) off one another and shopped around until it found the best ratings.

652. Initially, a WaMu collateral analyst would send the preliminarily structured deal to the rating agencies for feedback. WaMu's in-house ratings analysts would oversee the communications with the rating agencies.

653. Thereafter, S&P, for example, would run the loan collateral through both its "LEVELS" and "SPIRE" Models and provide WaMu with the deal structuring results in an effort to obtain the ratings engagement. Through the LEVELS Model, S&P would advise WaMu that, for example, 94.25% of the Certificates would be rated AAA as long as 5.75% of the total collateral balance supporting those Certificates was subordinate. This 5.75% was the amount of loss coverage required. WaMu would then again "negotiate" with S&P before the engagement was finalized, in order to decrease the amount of loss coverage and credit enhancement S&P's model required for the specific deal, while still maintaining the highest percentage of AAA-rated Certificates.





654. Without the use of the S&P and Moody's models, the Certificates could not have been awarded the necessary triple-A ratings which were a predicate to the formation of the trusts and issuance of the Certificates. These models allowed the Rating Agencies to control the structure and form of the WaMu Trusts and Certificates.

655. Likewise, Moody's would run the information provided by WaMu through its model – the "M-3" or "Moody's Mortgage Metrics" Model – which was intended to provide ratings based on a complete assessment of the quality of the collateral underlying the Certificates.

656. All of this work by S&P and Moody's, referred to by S&P as "bid package" work, was performed without any compensation from WaMu and was an effort to engender goodwill so that WaMu would ultimately engage either of the Rating Agencies to rate the loans at the underwriting stage.

657. WaMu relied on the ratings shopping process to obtain the most profitable structure - to WaMu - on the Offerings. The practice was effectively curtailed in many respects by way of an agreement entered into between the Rating Agencies and the New York Attorney General in 2008

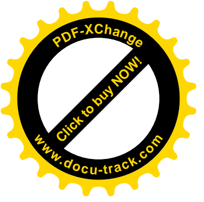
Rating Agencies Structured the Trusts for Maximum Profitability for WaMu & Themselves

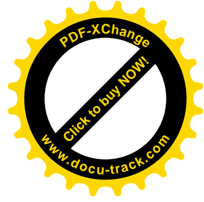
658. The Rating Agencies reverse-engineered the structure of the Issuing Trust to "hit" the desired ratings for the Certificates.

659. An article appearing in The Financial Times on October 17, 2008, entitled "When Junk Was Gold," explained that the structure of structured finance securities such as mortgaged backed securities, was determined by the rating and thus the rating agencies:

a. The first mortgage-backed bonds were created in the late 1980's, well before Clarkson's time, by a trader called "Lewie" Ranieri. Ranieri, the head of the mortgage trading desk at the former investment bank Salomon Brothers, was famous for the huge sums of money he netted for his employer and for the quantity of cheeseburgers he ate. What he struck upon in structured finance was a process of pure alchemy: a way of turning myriad messy mortgage loans into standardized, regimented and easy-to-assess bonds.

b. Ranieri knew that the magic of structuring was in the packaging. Packaged in the right way, mortgages could come to create a huge, new tradable bond market. And this is where the rating agencies came in. Structured bonds, like any other bond, needed ratings in order to be sold. ***But with a***





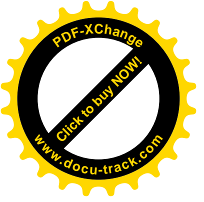
> ***structured bond, the pools of debt could be built or modified in order to attain a particular rating. This wasn't a matter of disguising the risk, rather a way of reapportioning it and allowing investors with different risk appetites to buy the right product for them. "The rating is what gives birth to the structure in the first place," explains Sylvain Raynes, a financial modeling expert who was with Moody's in the 1990s, when Clarkson joined. In some cases, the ratings are known before the bonds have even been inked. "You start with a rating and build a deal around a rating," Clarkson told an investment magazine last year.*** [emphasis added]

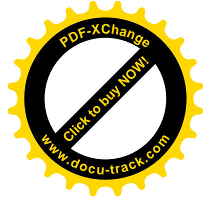
660. The Rating Agencies' hand in ultimately determining the structure of the securitization was more fully discussed in the July 2008 SEC Report. The July 2008 SEC Report confirmed that S&P and Moody's provided "feedback" to the Sponsor of the Offerings as to the structure, which would result in the highest rating:

    a. The examined rating agencies generally followed similar procedures to develop ratings for subprime mortgage-backed securities and CDOs. The arranger of the mortgage-backed securities initiates the ratings process by sending the credit rating agency a range of data on each of the subprime loans to be held by the trust (e.g., principal amount, geographic location of the property, credit history and FICO score of the borrower, ratio of the loan amount to the value of the property and type of loan: first lien, second lien, primary residence, secondary residence), the proposed capital structure of the trust and the proposed levels of credit enhancement to be provided to each mortgage-backed securities trance issued by the trust. Typically, if the analyst concludes that the capital structure of the mortgage-backed securities does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche – as the highest rated tranche – pays the lowest coupon rate of the mortgage-backed securities' tranches and, therefore, costs the arranger the least to fund.

661. The Process by which MBS, including the Certificates, were rated by S&P, as confirmed by CW1, demonstrates the control that the Rating Agencies had over the ultimate structure of the Issuing Trust, such as the Defendant Trust.

662. First, upon receiving a set of statistical data on a pool of mortgage loans from WaMu, S&P assigned a lead analyst to the transaction. Information provided to the lead analyst about the transaction included principal amount, geographic location of the property, credit history and the FICO score of the borrower, LTV





ratio, type of loan, as well as the proposed capital structure of the trust and the proposed levels of credit enhancement to be provided to each tranche.

663. The S&P analyst was responsible for analyzing the loan pool, proposed capital structure and proposed credit enhancement levels provided by the Issuing Trust.

664. Junior analysts working under the lead analysts would then typically run the data through LEVELs in order to determine the level of credit enhancement required for each credit rating category.

665. LEVELs generated subordination levels for the different tranches of loans and suggested subordination percentages and credit ratings for the tranches. The junior analyst then took the proposed financing structure to an internal S&P committee. CW1 stated that the committee process rarely changed suggested ratings and subordination levels.

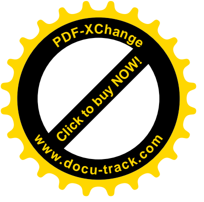
666. After the committee review, an S&P analyst called the counterpart at WaMu and reported the credit enhancement levels necessary to obtain the ratings desired by WaMu.

Delinquency and Defaults on the Loans Underlying the Certificates & The Long Note

667. As delinquency and default rates began to skyrocket as early as four months after the initial Offering dates, WCC was forced to write-down a significant portion of the value of its mortgage-related securities holdings; has been and continues to be subject to Federal and State investigations, and in some cases has been forced into bankruptcy from the resultant mortgage related losses. In December 2007, WaMu announced in an article in The New York Times that it was closing WCC. WCC's remaining operations were then sold to JPMC in 2008.

668. Based upon information and evidence provided to date, WaMu never lawfully indorsed and transferred the Plaintiff Long's note to the Defendant Trust and misrepresented the nature of the assignments and conveyance of the Long Note to JPMC has continued to conceal these known facts from state and federal regulators and courts and these actions have been the subjection of severe sanctions by U.S. Federal Bankruptcy judges while the U.S. Trustees office and U.S. Attorney's Office is investigating their actions.

669. As such, JPMC took possession and control of the Long Note with full and complete knowledge of the frauds and abuses of WaMu and is attempting to transfer the Long Note while it is in default thus rendering the Defendant Trust, JPMC and all subsequent holders in the Long Note to claims by Long for WaMu's fraud upon her since neither is a holder in due course of the Long Note.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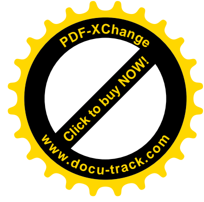
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670. The known defective nature of the mortgage collateral and the Long Note and Deed underlying the Certificates is reflected by the recurring pattern of exponential increases in borrower delinquencies in the months after each of the thirty-six (36) Offerings, including the Defendant Trust.

671. Four months after each of the Offerings were consummated, borrower delinquency and default rates on the underlying mortgage collateral increased by a staggering amount – from an average of 0.00% to over 3.37% of the mortgage loan balance. Six months following issuance in each of the Offerings, that average increased to over 4.53% of the mortgage loan balance. Borrower default and delinquency rates in the underlying mortgage collateral have continued to increase.

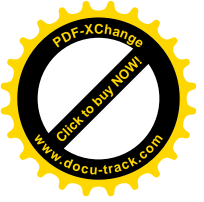
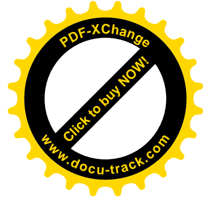
672. These early payment defaults ("EPD") and delinquency rates are reflective of a disregard for underwriting guidelines. As reported by the Federal Bureau of Investigation ("FBI") in its 2006 and 2007 Mortgage Fraud Reports, a study of three million residential mortgage loans found that between 30% and 70% of early payment defaults were linked to significant misrepresentations in the original loan applications.

673. The study cited by the FBI and conducted by Base Point Analytics, found that loans that contained egregious misrepresentations were five times more likely to default in the first six months than loans that did not. **The misrepresentations included income inflated by as much as 500%, appraisals that overvalued the property by 50% or more, and fictitious employers and falsified tax returns**. [emphasis added]

674. Plaintiff Long's income was overstated by WaMu employees by almost 500% and the property valued by more than 50% without her knowledge. She did not provide any documentation for the loan since it was a no doc loan. Had Plaintiff Long known of the true value of her property and that her loan was being securitized and sold to unknown parties, she would have sough alternate methods, as she is now, of financing the purchase of her properties since the rental cash flows are sufficient to increase her profits while providing investors in an LLC higher and safe returns on investment since the debt service would be lower by at least 50% and her income would remain the same.

675. The 2006 FBI report also cited studies by a leading provider of mortgage insurance, Radian Guaranty Inc., concluding that the same top states for mortgage fraud – including the states where the MBS collateral was principally originated – were also the same top states with the highest percentage of early payment defaults.

Historic Nature Of Property & Plaintiff Long & CHB's Investment, Equity, Mortgage In Property

676. The subject property is a historical house located in the historic district of Savannah, GA at 539 East Congress Street ("property")

677. The home was built in circa 1790 – 1810 and had not been inhabited for over 20 years when it was condemned and scheduled for demolition. Literally, the wrecking ball was at front door ready to take it down. The prior owner found a loop hole in savannah's historic zoning ordinance that allowed houses that fallen on such dilapidation to be knocked down and a new "historically cohesive" house built on the lot. The Historic Savannah Foundation ("HSF") was desperate to save one of the oldest remaining houses in Savannah on prestigious Washington Square.

678. In order to save it HSF had to buy the house from the prior owner at his price and also give him a vacant lot to build his new townhouse PLUS they had to show that if it was spared from demolition that it would be restored "historically correct."

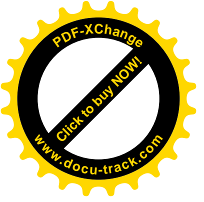
679. In the spring of 2005, Plaintiffs Long and CHB were approached by the HSF to purchase the property and undertake the arduous historic restoration following guidelines established by the National Dept. of Natural Resources for "historic certification." HSF knew if Plaintiffs Long and CHB purchased the property for renovation the house would be spared because of their reputation in Savannah for other certified historic restorations made by Plaintiff Long and CHB.

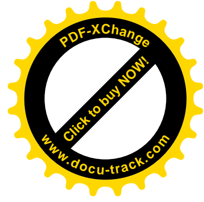
680. HSF offered to hold the mortgage for the property at a very low interest rate for the period of the restoration and Darby Bank offered to finance the restoration. Their sign on the front of this house was very attractive to them on a restoration project that made national news.

681. This followed Plaintiff Long and CHB's business model of buying a property with seller/owner financing and getting a commercial business loan for the renovation costs. HSF financed the purchase of $298,000 and Darby Bank financed $450,000 of renovation costs. However, the project went far over budget and past the completion deadline since the property's house was in far worse condition than originally inspected. The termite damage had literally taken the house down to the ground and there was no foundation.

682. CHB had to jack up the house and rack it to rebuild a foundation and correct the major problem that it was sitting on the ground and leaning 3 feet to the east! Plaintiffs Long and CHB put approximately $400,000 of their own money in the renovation and upon completion of the restoration, neither Long or CHB took their $255,000 contractors fee (30% of the $850,000 project cost), but placed this into a promissory note and mortgage to be recorded. The home won awards for historic preservation.

683. At a business function in Savannah, Plaintiffs Long and CHB were approached by a mortgage broker for WaMu who was familiar with Plaintiff Long and CHB's





business model and that the property was used as part of Plaintiff's Luxury Living rentals of historical homes in Savannah. The broker knew that the property was a commercial rental property and that Darby Bank had a commercial loan on the property.

684. The entire business community knew of this home being saved and Plaintiffs Long and CHB's excellent community reputation in saving historic homes the community valued. The broker marketed to Long and CHB a "quick, painless end loan" with WAMU because WaMu was doing credit score driven, low entry interest rate loans that did not require any documentation or income verification. The WaMu broker stated that she and WaMu could loan enough money on the property to take out Darby and make CHB whole (pay off Darby, HSF and pay Long back for the $400,000 out of pocket expenses).

685. This would be an approximately a $1,200,000.00 loan. This meant that to get an 80% LTV loan the house would have to appraise for $1,500,000. Both the broker and WaMu knew what Long did for a living and CHB's Luxury Living Savannah ("LLS") rentals since this was the 3rd award winning restoration that Long and CHB had completed in Savannah.

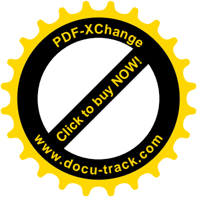
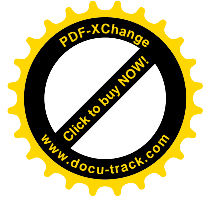
686. CHB then put this historic property into their vacation rental business. The cash flow from LLS is what gave Long and CHB the borrowing clout for the business loans with Darby and the house was titled in CHB.

687. WaMu and its broker got Long a $1.2M loan ($1,060,000 1st and $131,175 2nd) without Long ever filling out a loan application. In fact, unbeknownst to Long, she purportedly executed a broker filled in loan application prepared by WaMu and the broker on the date of closing along with the dozens of other documents "prepared for Long's signature." Long nor a lawyer reviewed or read the entirety of the massive stack of closing docs that she executed.

688. However, prior to the closing, WaMu and the broker said that CHB needed to quit claim the loan from CHB to Long personally so that it would make the loan simple to push through with no questions being asked and since she slept in the vacation rental house a few times a year that it was a 2nd residence. The only information Long or CHB gave the broker and WaMu was her social security number.

689. The WaMu broker provided several monthly payment options and the lowest one offered was workable with LLS' cash flow as long as there wasn't a bump in the vacation rental income. Long went to closing and signed all of the loan docs without close inspection because she trusted the WaMu broker.

690. Long was not informed that her loan was being funded by another bank and was being securitized and she did not know that the broker and WaMu had reported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her income to be $39,000 per month for a total of $468,000 per year, far more than her annual $100,000 in income.

691. Long would frequently pay the lowest payment option on the loan to keep the business solvent and then noticed that she owed $30,000 more on the 1st mortgage than originally borrowed. The value of the property today is approximately $500,000.00.

692. Realizing the problems of a loan that was more than twice the amount of the value of the property, Long began to explore viable business options to overcome the economic crash and loss in property values that the Defendants directly contributed to via their fraudulent actions with no fault of the Plaintiffs.

693. As described herein, a number of alternatives were explored and agreed upon by Long, her officers, experts, and investors, yet all necessitated the identification of the lawful holder in due course and who Long could lawfully negotiate a payoff to as well as settlement of her claims and/or lawful modification, assumption, or transfer of the property and loan.

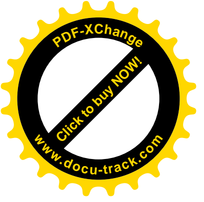
694. Due to the market crash in 2007, the luxury rental business was impacted and long secured another refinancing of the 2nd position mortgage so that she could get $60,000 cash back to keep the doors open on this vacation rental on or about 3/07/07, approx 3 months after the first closing and only recently discovered that on that loan application, dated 3/07/07, it stated her monthly income to be $42,000.

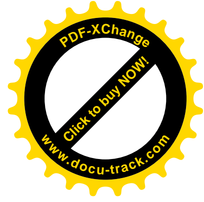
695. In addition, WaMu did not return to Long the refinanced note stamped cancelled and paid in full and the satisfaction and release of deed recorded for that note in the Chatham County records is believed to be a fabricated and forged satisfaction and release thus potentially obligating Long to payment of that note to an unknown investor or holder, if any.

696. Long was informed by the WaMu agent and broker that it was easy for them to do these loans for her due to WaMu's relaxed guidelines since she had a good credit score of approximately 775.

697. In fact, the WaMu broker saw Long's business model and credit score as a golden opportunity to finance additional purchases and the same WaMu broker got two more loans for condos, totally $1,038,000, on Tybee Island Long a few days later on 4/16/07.

698. Once again Long did not fill out a loan application nor give them anything but her social security number which they had on file at this point! The application that was once again typed out for her to sign at closing stated her monthly income as $44,000.





699. To date, Long has paid approximately $300,000 toward the loan on the subject property and has her staff maintain the property's upkeep on a daily and/or weekly basis.

700. Plaintiff Long took a $250,000.00 balloon note and deed to secure debt from Plaintiff Castle Home Builders, Inc. to reimburse Plaintiff CHB for its contractor's fee in supervision of the historic renovation of the property.

701. Plaintiff Castle Home Builders, Inc.'s lien is superior to any Plaintiff or Defendant.

702. Plaintiff Long took a $5,000.00 balloon note and deed to secure debt from Plaintiff William Keith Davidson to reimburse Plaintiff Davidson for his services as Vice President for Castle Home Builders.

703. Plaintiff Castle Home Builders, Inc.'s lien is superior to any Plaintiff or Defendant.

704. Plaintiff Davidson's lien is superior to any Defendant.

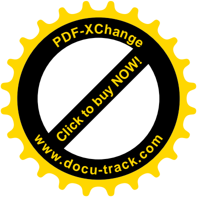
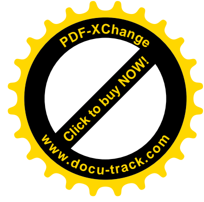
Plaintiff Long's Actions & Resolve To Save Historic Property & Pay Off The Rightful & True Holder In Due Course Of Her Loan, If Any

705. In the summer of 2009, Plaintiff Long realized that she could not continue her current business model and would never be able to refinance the properties, as promised and promoted by WaMu, due to the market's collapse and the devaluation of her property due to WaMu's and other Defendants' actions.

706. The subject property was not the only property and loan Plaintiff had. Nothing in Plaintiff's control or responsibility was attributable to the massive fraud perpetrated against her, the American public, the taxpayers of the United States, and the Investor Defendants.

707. As such, she began to recruit investors, partners, real estate experts, and mortgage fraud experts to explore "all options" available to her which included: purchases of the underlying notes to her properties; short sales; purchase and lease backs; accord and satisfaction settlements; transfer and assumptions; modification and other terms that any borrower should be able to negotiate with the true holder in due course, if any.

708. Plaintiff Long and her team of officers and experts knew that her loan must have been securitized, but Defendant Chase refused as a matter of company policy to identify the Defendant Trust and its certificate holders that, if the loan was lawfully and properly transferred, she could contact and seek a vote of the certificate holders to accept terms that were mutually agreeable to all parties.

709. Plaintiff Long and her officers in discussions with investors developed over a dozen workable scenarios with various investors, colleagues, partners, officers, friends, and family members who all offered their support and participation.

710. Plaintiff Long began setting up LLCs so that properties could be transferred and investments from non-bank partners could refinance, pay-off, or assume her personal debt.

711. Originally, fraudulent offers of modification were offered, but since JPMC stood to profit from the sale of the property, no such modification was actually extended or approved.

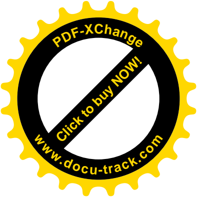
712. The purported Pooling and Servicing Agreement governed assumptions and modifications and allows for certificate holders to approve and change the terms of the PSA. Yet, JPMC not only held information about the Defendant Trust away from Plaintiff Long, but now has created a false chain of title via fabricated and fraudulent assignments as described herein.

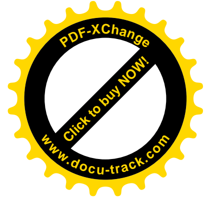
713. Examples of the fraud elements include: income employment issues (includes income documents as confirmed falsified, income suspect, confirmed overstated and income unreasonable for the profession); Occupancy issues (appears the borrower is not or has never resided here); Judgment call Issues-(poor judgment in decision making process); Appraisal (inflated value is suspected); Loan did not meet guidelines, exceptions made;; Assets, lack of confirmed bank statements misrepresented; and Credit (to qualify was not appropriate or falsified)."

714. During the course of the payment of the note by Plaintiff, Defendants and their alleged predecessor have repeatedly and willfully acted fraudulently in they knowingly inflated the appraisals of the Plaintiff's property far further that the value of the Plaintiff's property to fraudulently induce the Plaintiff to enter into a Note whose value exceeds $1 million in order to immediately profit from such sale while securitizing and passing on the known risks to other investors, including affiliates and investors of the Defendants, some of which are suing the Defendants for the very same frauds, abuses, and misrepresentations made to them.

715. In addition, Defendant Chase, without authority, has improperly added fees to the balance of the loan, improperly credited and/or misapplied payments to the principal balance of the note and refused to provide documentation or legal justification for the debt, the fees or the irregular amortization of the principal. Chase and/or Does have repeatedly refused to properly credit payments in an effort to manufacture a default in order to fraudulently foreclose on Plaintiff's home.

<u>Facts As To Chain Of Title, Separation, Bifurcation, & Lack Of Possession Of Note</u>





716. The Note and security deed were intentionally bifurcated where the deed alone was separated from the note and the deed was assigned to parties who were not owners and holders of the note.

717. As described herein and as evidenced by the refusal and inability for Defendants to produce the originals contained in the collateral/custodial file, it is unknown who presently owns and holds the actual original "wet blue ink" promissory Note. Based on present knowledge, facts, investigation, witness information and likely to have further proof during discovery, the promissory note was never transferred and assigned to the Defendant Trust in that agents and representatives for the trust have pledged, hypothecated, and/or assigned as collateral security to other entities the security and note as described herein.

718. The Note and Security Deed were purportedly part of a securitized mortgage transaction where the Security Deed and Note were immediately after original execution by Long, severed and sold, assigned, pledged, hypothecated or transferred to separate entities with certain rights being sold separately.

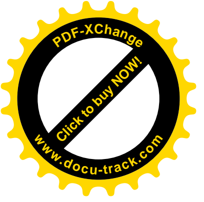
719. The security deed (mortgage) that secures any alleged indebtedness of the Borrower (Long) must follow the indorsement and assignment path of the promissory note executed by Long in order to perfect its lien on the subject property.

720. Defendants, by their actions in this matter and other matters have shown that they routinely as a pattern and course of conduct negotiate, assign and/or sell mortgages, deeds of trust, and security deeds separate of the promissory note thereby rendering the security deed a nullity and eliminating any lien on a borrower's property and any statutory right to foreclose.

721. Furthermore, Defendants knowingly, intentionally, and tortuously interfered with the Plaintiff's ability to identify the holder and owner of her promissory note, who is the originally defined lender and contracted party under the Note purportedly executed that defines "Note Holder." Yet, the foreclosing party as of the date of suit is not a creditor nor can it ever be a secured creditor in that the purported Note executed by the Plaintiff contains balloon and contingent payments.

722. The (note/security deed) executed by the Plaintiff states that Plaintiff must make tenders to the designated Lender and also states that prior to the initiation of any litigation, that Plaintiff notify the defined "Lender" of any litigation in advance. Prior to foreclosure, Defendants had refused to identify to the Plaintiff the lender as defined in her promissory note so that Plaintiff can negotiate the satisfaction of any debt she may be obligated to.

723. Defendants Does, who are the real and indispensable parties in interest to the Plaintiff's debt instrument, the promissory note, have not all been identified to the Plaintiff and Defendants refuse to identify such "investors." Such investors may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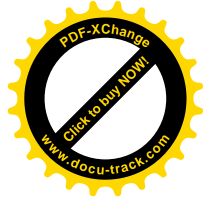
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be undisclosed hedge funds whose clients may include other investors such as drug dealers, international terrorists, Russian mobsters and others who are laundering illegal profits through the opaque veil of secrecy and lack of transparency of the transactions related to the Plaintiff's original loan.

724. Based on present knowledge, facts, investigation, witness information and likely to have further proof during discovery, the promissory note has been negotiated, sold, pledged, and/or hypothecated numerous times without proper indorsement of note thereby breaking the chain of title to the promissory note.

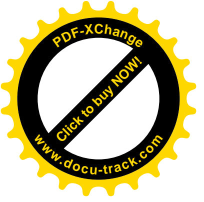
725. In fact, as of the date of this complaint, assignments transferring legal title to the subject Defendant trust have not been executed and any such assignment would render the note unsecured in that a defaulted loan will have been allegedly assigned after default.

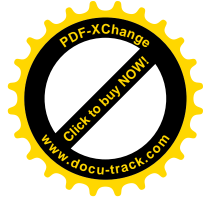
726. There has been accord and satisfaction of the obligation of the Plaintiff to the orginal lender WAMU in that the original lender has been paid and satisfied in full via an entirely new debt obligation created by the securitization and certificates issued by the subject Defendant Trust. Unbeknownst to the Plaintiff and without her authorization, her FICO score and collateral were used to create new debt instruments and derivatives. These structured financial products were created between WAMU and various parties including the Does and Roes that are not presently before the Court and these new obligations are separate and apart from the Plaintiff's obligation. Yet, in essence, WAMU and these undisclosed parties created a third party guaranty and obligation upon the Plaintiff without Plaintiff's knowledge until just days ago.

727. The party on record as the mortgagee or beneficiary under the security deed and who is advertised as the holder and owner of the borrower's promissory note does not have any equitable interest in the promissory note. Other undisclosed parties (i.e. investors), not presently known to the Plaintiff, own any beneficial interests that may exist in the "original" promissory note executed by the Plaintiff, if such debt instrument is deemed by this Court to be valid and not a nullity due to the failure to properly endorse such note or in fraudulently conveying such interests in the note.

728. When proceeds of payment from one note are used as collateral (cross collateralization) for another, this breaches the terms of the Plaintiff's note which states that "any" payments received by the "Lender" are to be applied to Plaintiff's account.

729. The Plaintiff's note and security instruments clearly state that payments and "proceeds" received by the defined "lender" from any source, including insurance and "miscellaneous proceeds shall be applied to the Plaintiff's account.





730. Furthermore, the only party on record as mortgagee or beneficiary under a deed of trust has been paid in full as to principal, paid in full as to disclosed fees, and has received undisclosed fees as well because they were standing in for the real lender whose identity and existence had been withheld from the Plaintiff — all TILA violations.

731. The purpose of the disclosure requirements is to create enough transparency that both the funding source and a borrower can readily perceive the risks of the transaction which Long was totally unaware of.

732. In this case the pattern of conduct of Defendants was to make sure the investor and Plaintiff would never get together to compare notes and this prevented the Plaintiff from assessing whether better terms were available (instead of huge fees going to intermediaries) and it prevented the investor from assessing the risk and rate of return on investment (because only a portion of the invested dollars was going to fund the actual purchase of the promissory note with the rest going to fees spread around like a whiskey bottle at a frat party.

COUNT I
EMERGENCY TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

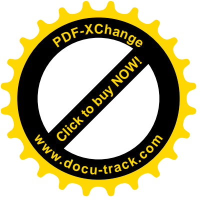
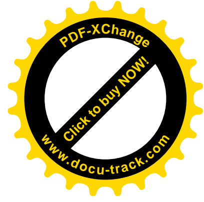
733. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

734. This is an action for emergency temporary and permanent injunctive relief which is brought pursuant to O.G.C.A. sec. 9-5-1 and sec. 9-5-3, and on an emergency basis without notice pursuant to O.G.C.A. sec. 9-11-65 (b).

735. O.C.G.A. sec. 9-5-1 provides that equity, by writ of injunction, may restrain any act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.

736. O.C.G.A. sec. 9-5-3 (b) provides that writs of injunction may be issued by the superior courts to enjoin sales by sheriffs, at any time before a sale takes place, in any proper case made by application for injunction.

737. Plaintiff has a clear legal right to seek temporary and permanent injunctive relief as Plaintiff owns and has equitable title to the Property and as Defendants are seeking, through illegal and unlawful means without satisfying the necessary statutory, legal standing and authority requirements to institute a non-judicial foreclosure as a "secured creditor," take possession, custody, and control of the Property, ultimately remove the Plaintiff from the property and seek a deficiency judgment against Plaintiff in spite of her good faith attempts to negotiate and tender the payoff of her note obligation to its rightful holder, if any.

738. Plaintiff has no adequate remedy at law to redress the harm complained of, and the sale of the Plaintiff's property, under the circumstances of record, is contrary to equity and good conscience in that such sale is being instituted by parties who have no legal standing or authority to institute or maintain a non-judicial foreclosure *ab initio*.

739. O.G.C.A. sec. 9-11-65(b)(1) and (2) provide that a temporary restraining order may be granted without oral or written notice to the adverse party if it clearly appears from the specific facts shown by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and that the applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

740. The specific facts set forth in this Verified Complaint demonstrate that unless a temporary injunction against the foreclosure sale set for Tuesday, July X, 2010 is not granted that Plaintiff will suffer the irreparable injury, loss, and damage of the loss of his home and eviction there from along with his children which also live on the Property.

COUNT II:
DECLARATORY RELIEF & JUDGMENT

741. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

742. This is an action for declaratory relief which is being brought pursuant to O.C.G.A. sec. 9-4-2 and sec. 9-11-118 to declare:

a. That Defendant Trust is not a secured creditor;

b. That no party is a secured creditor;

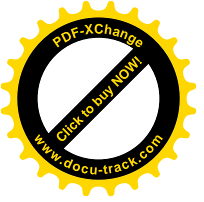
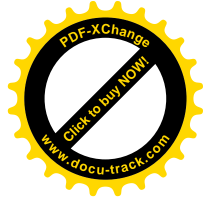
c. That Defendant Trust is not a creditor;

d. That Plaintiffs Castle Home Builders and Davidson’s lien is superior to that of any other party except taxing authorities;

e. That no Defendant or party is a secured creditor with authority to non-judicially foreclose on Plaintiff Long’s property;

f. That any debt Plaintiff Long may owe is unsecured;

g. The amount of any unsecured debt owed by Plaintiff Long;

h. To whom, if anyone, Plaintiff Long owes any unsecured debt to;

i. All indispensable parties related to Plaintiff's loan and the securitization of the loan that is the subject of this lawsuit;

j. The amounts contributed by third parties to the Defendant Trust related to the default of the Long note and other notes alleged to have been transferred to the Defendant Trust.

k. Determine the amount of Long's principal balance after allocation of all contributions per ¶9 of the Long note.

l. Identify all parties that may have a claim to Plaintiff's property;

m. That a break in the chain of title to Plaintiff's note has occurred;

n. That the note and deed to secure debt were intentionally separated and bifurcated;

o. To discharge and render the deed to secure debt a nullity;

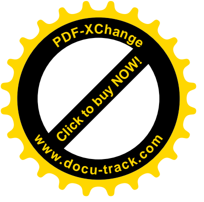
p. Determine who the "Note Holder" defined in Plaintiff's Note is and has been since the origination of Long's note;

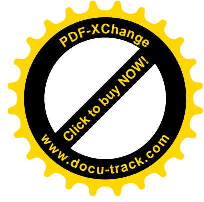
q. That Defendant Trust has no legal or equitable rights in the Note and Security Deed for purposes of foreclosure and that said Defendants have no legal standing to authorize, institute, or maintain foreclosure on the Property.

743. O.C.G.A. 9-4-2(a) provides that the superior courts shall have the power, upon appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and that the declaration shall have the force and effect of a final judgment.

744. O.C.G.A. sec. 9-4-2(c) provides that relief by declaratory judgment shall be available notwithstanding the fact that the complaining party has any other adequate legal or equitable remedies.

745. As set forth above, the evidence of record demonstrates that the Defendant Trust, JPMC, BOA and the Shapiro & Swertfeger do not possess the requisite legal rights or authority to accelerate, exercise the POA executed by Long, notice for sale a non-judicial foreclosure of the property; and/or foreclose the Deed to Secure Debt due to missing and unexecuted assignments of the Deed to Secure Debt from the original lender to each intervening holder and lawful owner of the underlying Note and have destroyed, hidden, concealed, and/or never created written assignments of the transfer and sale of both the Long Note and Deed.





746. Plaintiff requested said proof of ownership of the accuracy and validity of the debt, as is her legal right under Fair Debt Collection Act, Real Estate Settlement and Procedures Act, and the Truth in Lending Act and none of the Defendants have been able or willing to provide the same.

747. As set forth above, Defendants Chase, BOA, or Defendant Trust never possessed, held, or owned the note, and only has, at best, servicing or sub-servicing or other servicing rights to the Note which rights have been called into question by the inconsistent statements of employees and counsel for Defendants as to who the “client” is for purposes of declaring a default on the Note and instituting a foreclosure in that counsel claims Chase is the client, not the Defendant Trust.

748. The declaration by this Court that Defendants Chase, Defendant Trust and BOA never had the legal right and cannot satisfy the legal standing requirements to institute and maintain a foreclosure is proper subject matter for declaratory relief.

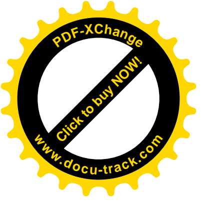
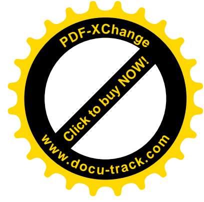
749. Georgia case law provides that one who is not a party to a contract whereby title to property is retained in the seller as security for the balance of the purchase money, who is not named as payee in the notes for the payments, and who has no written assignment of the notes or the contract, cannot foreclose the contract in his own name as holder and owner thereof.

750. Plaintiff's efforts to determine his lawful obligation and indebtedness and the identity of her lawful lender and creditor and to tender the undisputed payments or balance to the lawful lender have been thwarted by the Defendants jointly and severally.

751. As set forth above, Defendant Trust named in the Notice of Sale Under Power, is not a party to the original mortgage contract documents; were not named as a payee in the Note; and have failed to demonstrate any valid assignment of the Security Deed, contract, or promissory note and is thus legally precluded from instituting or maintaining a foreclosure.

752. As set forth above, Defendants Chase and LPS may only be the servicer, or merely a sub-servicer for a master servicer, of the Note, and as such cannot institute or maintain a foreclosure proceeding, as it appears to have done, since they are not a secured creditor.

753. In order for Plaintiff to properly ascertain the true holder in due course of her note in order to properly pay off his lawful obligation and not be liable for double recovery, the proper chain of title must be identified and the court’s determination made so as the Plaintiff can secure clean and clear title as determined by the Court.

754. Plaintiff also seeks an accounting and all accountings of payments, contributions, and advances related to Plaintiff's loan and the Court's determination of his lawful debt on the date of first offer of tender and to whom such debt is owed to.

755. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT III
FRAUD IN THE FACTUM & INDUCEMENT

756. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

757. Plaintiff's foreclosure is barred in whole or in part because the Note is void by virtue of fraud in the factum and inducement. Plaintiff avers that there can be no holder in due course; however, even if there were a party could be found by this Court to have holder in due course status, the Note is void as a matter of law. Long's signature on the instrument is ineffective because the Plaintiff did not intend to sign such an instrument at all.

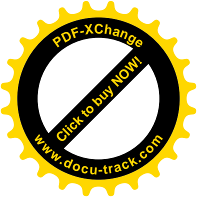
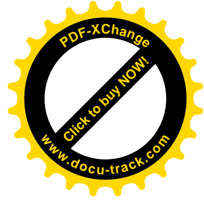
758. Plaintiff's assertion extends to the instrument signed as the Note as she did not have knowledge of its essential terms – namely that the nominal "Lender" was in fact not the lender and that the essential terms of the Note did not control rather, the terms of the Note were already subordinated to the terms of various securitization contracts already in place (i.e., Pooling and Service Agreements, Master Servicing agreements, Collateral Debt Obligation Agreements, etc.) to which she was not a party at the time she executed the Note.

759. Although represented by counsel at the alleged closing, Plaintiff was never told of the securitization scheme being perpetrated by Defendants and could not have known about said scheme at that time since the documents given to him intentionally omitted and hid the true facts of the underlying transaction Plaintiff entered into.

760. Plaintiff had good reason to rely on the representations of WaMu and her counsel did not explain to her the fact that she was entering into a scheme to use her credit score and identity to issue securities and agreements that would control terms of her Note, including any future modification.

761. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT IV
FRAUD

762. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

763. Defendant Trust's foreclosure is barred in whole or in part because a) Defendants made false representations to Plaintiff; b) with full knowledge and awareness; c) with an intention to induce the Plaintiff to execute the Long Note and acting upon reliance of the fraudulent property appraisal by the Plaintiff; d) that the Plaintiff was not a sophisticated investor able to evaluate terms of a securitization deal that would affect her execution of the Note and she justifiably relied upon representations e) Plaintiff suffered over $600,000.00 in damages.

764. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages in excess of $600,000.00 are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below and that the Note is void as a matter of law.

COUNT V
ASSIGNMENT & TITLE FRAUD/ SLANDER OF TITLE

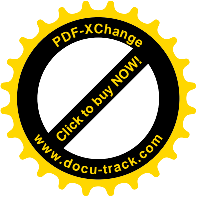
765. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

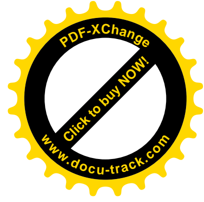
766. Plaintiff Long requested inspection, at her cost, at any location in the United States of all original documents contained in the collateral/custodial file for her loan.

767. Such file should and must contain, in order to effectuate a valid chain of title equitably transferring the Long note to the Defendant Trust, all original writings of the intervening assignments and indorsements on the face of the promissory note or an allonge firmly attached to the promissory note is no space is left. In effect, a chain from Lender A to B, from B to C, From C to D, and so forth.

768. Plaintiff's officers and experts have reviewed the "executed" Pooling and Servicing Agreement ("PSA") located at http://content.edgar-online.com/edgar_conv_pdf/2007/01/05/0001277277-07-000007_EXH41TO8KPSAWAMU2006_AR19.PDF contained the following provisions:

a. "This Pooling and Servicing Agreement, dated as of December 1, 2006 (this "Agreement"), is by and among WaMu Asset Acceptance Corp., as depositor (the "Company"), Washington Mutual Bank, as Servicer, LaSalle Bank National Association, as Trustee, and Christiana Bank & Trust Company, as Delaware Trustee."





b. “The Company at the Closing Date is the owner of the Mortgage Loans and the other property being conveyed by it to the Trust. On the Closing Date, the Company will sell the Mortgage Loans and certain other assets to the Trust in return for the REMIC I Regular Interests and the Class R-1 Residual Interest and will be the owner of the REMIC I Regular Interests and the Class R-1 Residual Interest.”

c. “Closing Date: December 21, 2006.”

d. “Cut-Off Date: December 1, 2006.”

769. As reflected in the agreement, the purported holder and owner of the Long note on December 1 and/or 21, 2006 was WaMu Asset Acceptance Corp a different and separate legal entity than Washington Mutual FA the loan’s originator and nominal lender.

770. On Wednesday, June 23, 2010, Plaintiff Davidson inspected the original note and made the following certified copy at law offices of Shapiro & Swertfeger. There was an indorsment to the note to the Defendant Trust only placed recently years after the closing date without the necessary legally required intervening indorsments and WITHOUT ANY ASSIGNMENT OF THE DEED TO SECURE DEBT TRANSFERRING THE UNDERLYING NOTE EXECUTED OR RECORDED.

771. Counsel for Defendant Trust stated that the assignment was yet to be prepared and it need only be filed in the county records days before the foreclosure sale.

772. However, the assignor, WaMu Asset Acceptance Corp as shown in the following Senate testimony by David Schneider, former president of Washington Mutual Home Loan Group.

a. “*Securitizations of non-agency loans that came through Home Loans were conducted by Home Loans’ capital markets group and involved three other, separate entities: WaMu Capital Corp., WaMu Asset Acceptance Corp., and Washington Mutual Mortgage Securities Corp.*”[10]

773. WaMu Asset Acceptance Corp. was not lender entitled to exemption from recording any assignment to the Defendant Trust.

774. In addition, various Washington Mutual entities kept residual positions in the Defendant Trust thereby waiving any claim to Holder in Due Course status.

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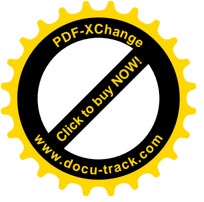
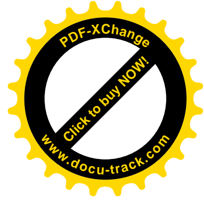
[10] http://docs.google.com/viewer?a=v&q=cache:R7HR5hAPLhgJ:hsgac.senate.gov/public/index.cfm%3FFuseAction%3DFiles.View%26FileStore_id%3D8f5483ba-e965-484d-bef6-581efcfaaab4+lender+%22WaMu+Asset+Acceptance+Corp%22&hl=en&gl=us&pid=bl&srcid=ADGEESjfD3QBT3vpBbsYrQPGiTFnRPELWjcQszYJxj1JpvmOYxzfGJSYeeKe7fJN1qP4VKQLjvlQvfkSo8ID20kdVffNn1Vkru2j8XZo-QQaFdTCtpjJRya1yRNi_GTU0xHiYDcFLgCT&sig=AHIEtbR26Wy06c5AgjyAKaAXtgPRkmf_iQ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775. Defendant Trust's foreclosure is barred in whole or in part by virtue of the fact Defendant Trust does not have holder in due course status and is not a secured creditor. Defendant Trust's purported to be created assignment fraudulently indicates that it became the owner of the Note after it had been declared in default and a non-judicial foreclosure action had been commenced. The close connectedness doctrine prevents Defendant Trust and those in privity from claiming it took the purported Assignment of the note and mortgage in good faith as assignee without knowledge of the alleged default.

776. However, evidence secured by Plaintiffs and their experts reflect a fact that WaMu and other originators like Countrywide never lawfully or equitably transferred the notes or could transfer them since they were non-negotiable instruments in the fact that there was no "sum certain" contained in the note.

777. Even if an equitable transfer to the Defendant Trust could be made, they could not transfer assets into a trust that elected REMIC tax status years after the cut-off and closing dates. As such an indorsment on the face of the note only placed on the note in recent days and an assignment in writing that is still yet to be executed from a defunct and non-existent entity that should have been executed five years ago as well as recorded illustrates the extent of fraud still being committed against the Plaintiff, other borrowers, and even the Investor Defendants and Does.

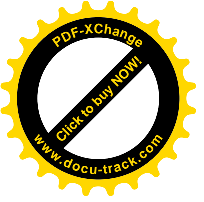
778. As illustrated herein, in the prospectus, and offering documents, there were additional Note Holders in the chain of title and chain of securitization who would have needed to execute intervening assignments of the deed to secure debt as well as placed indorsements upon the note thereby creating a valid and complete chain of title to Defendant Trust.

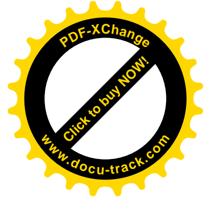
779. Only recently, have the allegations, suspicions, and knowledge of Plaintiffs, their officers, and experts as detailed herein, been fully exposed and are not only the subject of severe sanctions, but even criminal investigations in Florida and Georgia where Defendant LPS ran an operation whose sole focus was to forge, falsify, and fabricate mortgage and deed assignments so that parties who were not secured creditors or even creditors at all could foreclose on properties.

780. A Google search[11] for fraudulent mortgage assignments produces over 800,000 hits and a plethora of evidence demonstrating the back dating, forward dating, and even forged notarization of assignments that Defendants have been warned about for over a decade and ignored. The seach also reflects the civil and criminal investigations that are on-going of the practices complained of herein.

781. The evidence reflects that the Long Note and other notes never made it to the Defendant Trust and other securitized trusts and the Defendants were holding certain notes for their own benefit as well as pledging, hypothecating, and selling

[11] http://www.google.com/search?num=100&hl=en&lr=&newwindow=1&safe=off&as_qdr=all&q=fraudulent+mortgage+assignments&aq=0c&aqi=g-c2g1&aql=&oq=%22mortgage+assignments%22&gs_rfai=





the same note to multiple parties and securitizations in order to cook their books and defraud shareholders, investors, and borrowers.

782. Defendants LPS, WaMu, Chase, BOA, Defendant Trust, Defendant Shapiro & Swertfeger's use and reliance of a known fraudulently fabricated "to be created" assignment of security deed and note is an attempt to conduct an unlawful foreclosure of Plaintiff's property and intentionally create an unneeded controversy and cloud on Long's title constitutes fraud and an attempt of fraud by deception and conversion.

783. Each of the aforementioned Defendants knew that there must be intervening assignments and an equitable transfer by negotiation, consideration, possession, and indorsement of both the Long promissory note and Long deed to secure debt to the Defendant Trust which has never occurred.

784. Each of the aforementioned Defendants have complete knowledge that breaks in the chain of title have occurred and the Trust has never possessed or maintained control of the Long note nor was the Note ever lawfully and equitably transferred to the Trust as referenced in the underlying offering documents and prospectus.

785. In order to give the appearance in land records of a complete chain, the aforementioned Defendants conspired with one another to fraudulently fabricate a land record in the form of an assignment of deed to secure debt to transfer a property valued at over $500,000.00.

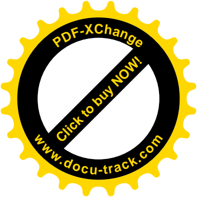
786. Defendant LPS is under criminal investigation for such practices and Defendant BOA is fully aware of the investigation. Defendant Chase is also being investigated by the U.S. Attorney's office in New York for identical frauds.

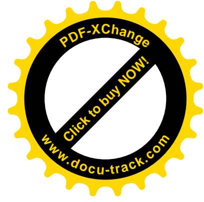
787. Neither Defendant Trust, Chase, or BOA has legal authority as a secured creditor to foreclose on the Plaintiff's note and security deed and each knew that the note and deed had been intentionally separated and bifurcated by their clients thus rendering the fraudulent assignment of security deed a nullity and void, thus rendering a foreclosure on Plaintiff's property un-lawful.

788. Neither Defendant qualifies for an exception to Georgia's recording statute codified in O.C.G.A 44-14-64 and the production to Plaintiff of all assignments required under O.C.G.A 44-14-64 to satisfy the recording and assignment of deed requirements under Georgia law.

789. The actions of the Defendants alleged aforesaid, constitute common law fraud in which each and every Defendant is a joint tortfeasor.

790. The aforementioned fraud is on going and pervasive and as such said fraud constitutes grounds for damages for the fraud itself; rescission of the loan,





cancellation of the security deed, and for punitive damages against all defendants jointly and severally.

791. The legal effect of intentionally separating the promissory note from the security deed is to nullify the enforcement provisions of the security deed and to render the same a slander to the title of the property.

792. In addition, the creation and recording of a fraudulent and fabricated assignment of security deed and then publication of a fraudulent chain of title and ownership of the Plaintiff's promissory note constitutes a slander to the title of the property.

793. Plaintiff is entitled to damages for the on-going slander up and until the Court grants the Plaintiff's request for Declaratory Relief.

794. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT VI
VIOLATIONS OF THE GEORGIA RESIDENTIAL MORTGAGE ACT & MORTGAGE FRAUD

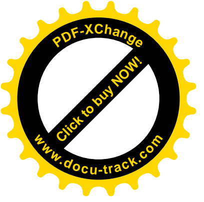
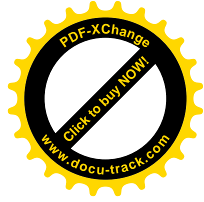
795. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

796. Georgia Residential Mortgage Act O.C.G.A. § 7-1-1020 states in part that:

    a. "Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage business or the right of the state to punish any person for any violation of any law. Without limiting the generality of the foregoing, nothing in this article shall be construed as limiting in any manner the application of Part 2 of Article 15 of Chapter 1 of Title 10, the Fair Business Practices Act of 1975."

797. Defendant WaMu violated a plethora of provisions of the O.C.G.A. 7-1-1013 of the Georgia Residential Mortgage Act that they were and are not exempt from.

798. Defendant WaMu violated O.C.G.A. 7-1-1013 (1) by misrepresenting material facts about the loan, Long's income, and property appraisal; making false statements and promises to Long about the type of loan product sold, who the actual and real lender was, and the fraudulently inflated property appraisal; submit known ing false statements or documents related to Long's income and property appraisal to help influence, persuade, and induce Long for to take a mortgage loan as well as the Investor Defendants to take a mortgage loan, or, and through their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through agents pursued a course of misrepresentation by use of fraudulent and unauthorized documents.

799. Defendant WaMu violated O.C.G.A. 7-1-1013 (2) by misrepresenting and concealing material factors, terms, and conditions of the loa transaction such as that the loan was purportedly pre-funded by the WaMu securitizers and Investor Defendants that attempted to obligate Long to other third parties and create conditions and terms to her Note such as the inability for a Note Holder/Lender to modify or amend any terms of her note or approve the assumption of her note and transfer of her property.

800. Defendant WaMu violated O.C.G.A. 7-1-1013 (4) by providing a fabricated satisfaction of her 2nd lien mortgage loan.

801. Defendant WaMu violated O.C.G.A. 7-1-1013 (6) by engaging in transactions, practices, and a course of business which was and is not in good faith or fair dealing and which operated an admitted fraud upon both Long and the Investor Defendants in connection with the attempted or actual making of, purchase of, transfer of, or sale of Long's mortgage loan;

802. Defendant WaMu violated O.C.G.A. 7-1-1013 (7) by engaging in fraudulent home mortgage underwriting practices related to the Long loan.

803. Defendant WaMu violated O.C.G.A. 7-1-1013 (9) making, directly and/or indirectly, the Long loan with the intent to foreclose on her property.

804. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

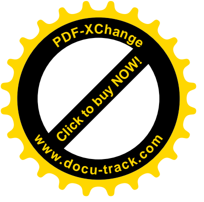
COUNT VII
VIOLATION OF FAIR DEBT COLLECTION ACT

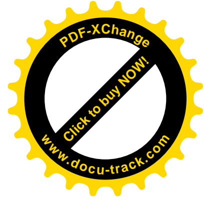
805. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

806. Defendants have held themselves out to Plaintiffs to be debt collectors collecting on a debt purportedly owed to them by Plaintiff Long.

807. Defendants claim Plaintiff Long to be in default of her purported debt and the original debt has been paid to the nominal or original Lender.

808. Plaintiff has properly and lawfully disputed the indebtedness alleged by the Defendants to them in writing and via emails and phone calls and requested proof and evidence of a secured debt.





809. Shapiro and are debt collectors as defined by the Federal Fair Debt Collection Practices Act and are attempting to collect an alleged defaulted debt by unconscionable means.

810. Notwithstanding the dispute of the indebtedness by the Plaintiff and the fraud of the Defendants, Defendants LPS, Chase, BOA, and Shapiro & Swertfeger have willfully violated the provisions of the Fair Debt Collection Practices Act and are subject to the statutory damage provisions contained therein.

811. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT VIII
NEGLIGENT SUPERVISION

812. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

813. Defendant WaMu had full and complete knowledge that its employees and agents were engaged in widespread mortgage fraud by placing fraudulent information as it relates to borrowers' income onto its computer underwriting system and upon the applications of borrowers in order to facilitate the securitization scheme as stated herein and WaMu had a duty to supervise its employees and agents' conduct.

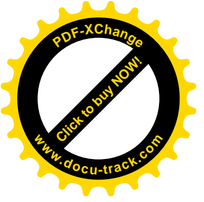
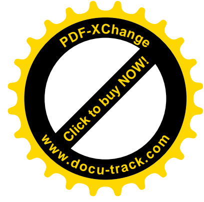
814. Defendant BOA as trustee had full and complete knowledge of WaMu's frauds and abuses and a fiduciary duty to report its knowledge of the frauds and abuses to the Defendant Investors and regulatory agencies. Defendant BOA also has knowledge of the tortious interference, frauds and abuses of Defendants LPS, Chase, and Shapiro & Swertfeger in allowing foreclosures on fraudulent and fabricated assignments of deed to secure debt and mortgages across the nation.

815. After full and complete knowledge of the fraud and federal and state criminal and civil investigations into these practices, none of the Defendants have taken any remedial steps to stop such practices as complained about herein.

816. Such tortious conduct is reckless and negligent.

817. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT IX
TORTIOUS INTERFERENCE WITH CONTRACT AND BUSINESS RELATIONSHIPS

818. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

819. Plaintiff Long executed a contract and relationship with the note holder and lender defined in her note. For years, Defendants have intentionally concealed and hidden the identity of the purported note holder.

820. Defendants, to their mutual benefit, intentionally interfered with that relationship by not identifying the Defendant Trust as the purported owner and holder of Long's note or its relationship and authority given to any other Defendant to act on the Defendant Trust's behalf until the notice of sale and foreclosure despite repeated requests from Plaintiff.

821. Chase has represented itself to the Plaintiff that it is the owner and holder of the note and that Plaintiff may only communicate with them and not the Defendant Trust about their loan.

822. Additionally, Defendants have refused to allow inspection of the collateral/custodial file and related records to determine if there were any breaks in the chain of title and so that a true holder in due course could be identified as required by Georgia law.

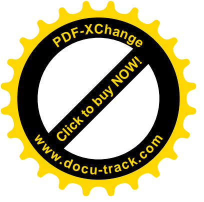
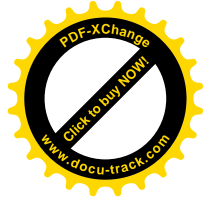
823. Plaintiffs Long and Castle Home Builders Inc. and investors need inspection of such records to determine the most appropriate method to lawfully payoff and/or refinance note.

824. Plaintiffs Long and Castle Home Builders Inc. have created limited liability corporations in order to seek investors to payoff the true and lawful note holder.

825. Only the holder in due course can lawfully be paid off, satisfy the deed, and cancel and return the Long note so that there would be no double liability to Long and for the property to have clear and clean title.

826. WaMu and Chase were mere interlopers in the form of mortgage servicers and their law firm partners intentionally interfered with Plaintiff's ability to pay off in full or short pay her promissory note to her rightful note holder by providing misleading and deceptive representations; fraudulent fabricating and using forged assignments of security deeds to claim ownerships, interests, and debts they had no title to; and not providing information to and from the Defendant Trust to Plaintiff in order to satisfy the lawful requirements for payoff and the protection of Plaintiff's rights and property.

827. Defendants a) acted improperly and without privilege; b) acted purposely and with malice with the intent to injure Plaintiff; c) induced others not to provide Plaintiff with the evidence and information requested nor the short pay figure then

promised; and d) caused over $500,000 in damages to the Plaintiffs Long and Castle Home Builders.

828. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT X
VIOLATION OF FIDUCIARY DUTY

829. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

830. Defendant Trust claims to be acting as attorney-in-fact for Plaintiff Long via powers of attorneys executed by Long upon closing. Such powers have been revoked by Long.

831. If in fact the Defendants Trust was operating under any lawful provision and appointment as attorney-in-fact, they owe a duty of care and fiduciary duty to the Plaintiff to protect act in the best interests of the property and Plaintiff, ahead of their own.

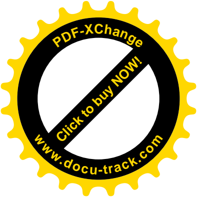
832. However, Defendants have created a fabricated assignment of deed to secure debt of the note it purportedly secured and Defendant Trust in accepting the power of attorney via fraudulent means has looked out for their best interests and not that of the Plaintiff or the certificate holders in the Trust (Does) note holder in order to unlawfully profit from their frauds and deceit, thus violating the fiduciary duty owed to Plaintiff.

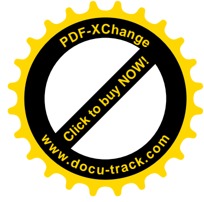
833. Defendants, by their actions in contracting to provide mortgage loan services and a loan program to Long which was not only to be best suited to Long given her income and expenses but by which Long would also be able to satisfy her obligations without risk of losing her property, were "fiduciaries" in which Long reposed trust and confidence, especially given that Long was not and is not an investment banker, securities dealer, mortgage lender, or mortgage broker.

834. Defendants breached their fiduciary duties to the Long by fraudulently inducing her to enter into a mortgage transaction which was contrary to the her stated intentions; contrary to the her interests; and contrary to the preservation of her property.

835. As a direct and proximate result of the Defendants' breaches of their fiduciary duties, Plaintiff Long has suffered damages.

836. Under the totality of the circumstances, the Defendants actions were willful, wanton, intentional, and with a callous and reckless disregard for the rights of





Long justifying an award of not only actual compensatory but also exemplary punitive damages to serve as a deterrent not only as to future conduct of the named Defendants herein, but also to other persons or entities with similar inclinations.

837. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT XI
VIOLATION OF DUTY OF GOOD FAITH & FAIR DEALING

838. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

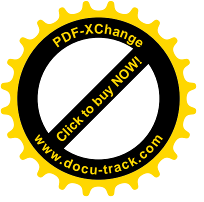
839. Each Defendant was obligated by either contract or common law to act in good faith and to deal fairly with every borrower, including Plaintiff.

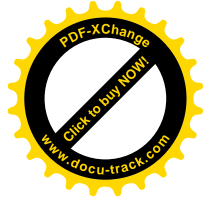
840. The purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance.

841. The Note executed by Long, contained several provisions that deal with the defined "Note Holder" and the Defendant Chase routinely hid and concealed the Note Holder from Long so as to prevent her from exercising rights afforded to her by the Note and the ability to deal with and negotiate any payoff, changes to terms or settlement of complaints and claims with the Note Holder.

842. Unbeknownst to Long, her signature was used to create additional debt instruments that purported to obligate her to make payments on loans other than her own toward a securitized pool of mortgages and her FICO score and falsely appraised property value were used to induce multiple investors (Does), some of which may have been betting on the failure of the loan pool in order to reap multiple returns on their investment.

843. Defendants have routinely and regularly breached this duty to the Plaintiff by: (a. failing to perform loan servicing functions consistent with its responsibilities to Plaintiff and any lawful holder of Plaintiff's note; (b. failing to properly supervise its agents and employees including, without limitation, its loss mitigation and collection personnel and its foreclosure attorneys and default servicers; (c. routinely making promises for modification figures when in fact they knew no modification would be granted; (d. making inaccurate calculations and determinations of Plaintiff's obligation and debt; e) refusing to provide Plaintiff with adequate information and documentation relating to her secured debt to determine the lawful holder in due course of his promissory note; f) failing to follow through on written, verbal, and implied promises; (g. failing to follow through on contractual obligations; and h) failing to give the Plaintiff the





promised modification while publicizing via new releases that they were giving discounts on principal balances.

844. As a result of these failures to act in good faith and the absence of fair dealing, Defendants have caused Plaintiff substantial harm and damages

845. Defendants were obligated by contract and common law to act in good faith and to deal fairly with each borrower. The purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance.

846. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT XII:
VIOLATION OF GEORGIA'S RACKETEERING STATUTES (RICO)

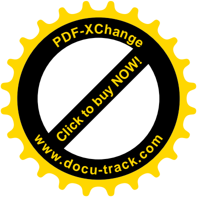
847. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

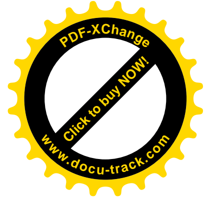
848. O.C.G.A. 16-14-2 states in part: "It is the intent of the General Assembly, however, that this chapter apply to an **interrelated pattern** **of** **criminal activity motivated by** ***or*** **the effect** **of which** **is pecuniary gain** ***or*** **economic** ***or*** **physical threat** ***or*** **injury**. **This chapter shall** **be liberally construed** **to** **effectuate the remedial purposes** **embodied in its operative provisions. [emphasis added]**

849. Georgia's RICO statue defines key terms to prove violation of the RICO act. These definitions include:

a. "Enterprise" means any person, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity; or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental as well as other entities.

b. "Pattern of racketeering activity" means engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity.





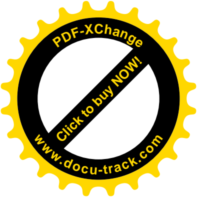
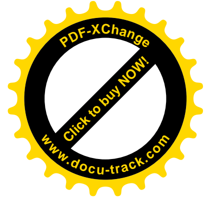
c. “Racketeering activity” to mean to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which are chargeable by indictment under a set laws of the state that include violations of one or more of the following:

i. Title 16, Chapter 9, Section 1 (16-9-1) (a) whereby “a person commits the offense of forgery in the first degree when with intent to defraud he knowingly makes, alters, or possesses any writing in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such writing.”

ii. Title 40, Chapter 3, Section 90 (40-3-90) whereby “a person who, with fraudulent intent: (1) Alters, forges, or counterfeits a certificate of title; (2) Alters or forges an assignment of a certificate of title or an assignment or release of a security interest on a certificate of title or a form the commissioner prescribed; (3) Has possession of or uses a certificate of title knowing it to have been altered, forged, or counterfeited; (4) Uses a false or fictitious name or address or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact in an application for a certificate of title; (5) Alters or forges a notice of a transaction concerning a security interest or lien reflected on the certificate of title as provided by Code Section 40-3-27; or (6) Willfully violates any other provision of this chapter after having previously violated the same or any other provision of this chapter and having been convicted of that act in a court of competent jurisdiction.

iii. Title 16, Chapter 10, Section 20 (16-10-20) whereby “a person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both.”

850. The enterprise is defined as the foreclosure/default servicing enterprise which consists of special servicers, default servicers, servicers, sub-servicers, computer system suppliers, foreclosure mill law firms, title companies and others who have conspired together to create and fabricate false, forged, and false assignments of

security deeds transferring tens, if not hundreds of millions in property in the state of Georgia on hundreds if not of thousands of occasions by the same Defendants named in this complaint which records are placed into county recording offices and provide a false chain of title and ownership interests in title to real estate that are unlawfully foreclosed upon to obtain pecuniary gain for each member of the enterprise from the proceeds from foreclosure's extortion of fees not owed by borrowers in order for them to save their property; the theft and taking of property by companies not authorized to do so by law or by fraudulent means in increasing the debt and manufacturing defaults in order to foreclose on homes with equity or where insurance proceeds from private and government sources are available in order to not only extinguish their liability, but to profit from the net liquidation proceeds of the unlawful foreclosure.

851. In additions to the violations of GA laws governed under Georgia, RICO act as stated herein, the actions described herein also constitute acts of extortion and mail fraud as defined by the Federal RICO statute and thus are additional violations of the Georgia RICO Act.

852. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below;

COUNT XIII RESCISSION

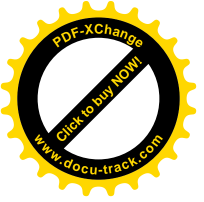
853. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

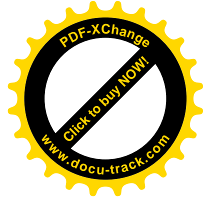
854. Pursuant to O.C.G.A. § 13-5-5, Plaintiff Long elects to rescind the Promissory Note and Deed to Secure Debt due to Defendant WaMu and Defendant Trust's fraud in the inducement and subsequent fraud.

855. Plaintiff Long accepted the terms of the Promissory Note and Deed to Secure Debt in reliance on WaMu's representation of the appraised fair market value based on the equity of her property; her qualifications for the loan; and that WaMu would refinance her Note in the future.

856. Plaintiff was unaware that WaMu had purportedly forward sold her note to other third parties, including the Defendant Trust, and had obligated her to pay upon the debt of others in the pool and used her FICO score, equity, and property to secure via securitization additional debt instruments and financial derivatives.

857. Defendants have acted in bad faith and have caused Plaintiffs unnecessary trouble and expense as to allow Long to recover her reasonable attorney fees and expenses incurred in bringing this action pursuant to O.C.G.A. § 13-6-11.





858. WHEREFORE, Plaintiff Long demands judgment against WaMu and the Defendant Trust ordering rescission of the Note and Deed to Secure Debt, return of the over $600,000 initial investment in the property by Plaintiffs, payment of Defendant's reasonable expenses and attorney's fees incurred in this action, together with all costs, and such other and further relief as this Court deems just and proper.

COUNT XIV
UNJUST ENRICHMENT

859. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

860. Defendant WaMu had an implied contract with the Plaintiff Long to ensure that she understood all fees which would be paid to the Defendants to obtain credit on her behalf and to not charge any fees which were not related to the settlement of the loan, without full disclosure to Plaintiff Long.

861. Defendants cannot, in good conscience and equity, retain the benefits from their actions of charging a higher interest rate, fees. rebates, kickbacks, profits (including but not limited to from resale of mortgages and notes using Long's identity, credit score and reputation without consent, right, justification or excuse as part of an illegal enterprise scheme) and gains and YSP fee unrelated to the settlement services provided at closing.

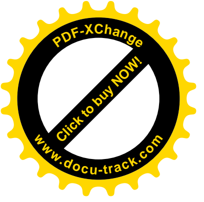
862. Plaintiffs have been unjustly enriched at the expense of the Plaintiffs, and maintenance of the enrichment would be contrary to the rules and principles of equity.

863. Furthermore, the Investor Defendants are attempting to sue other Defendants for recoupment of their losses, a portion of which would be allegedly proportioned to Long's loan.

864. Defendants have also been additionally enriched through the receipt of PAYMENT from third parties including but not limited to investors, insurers, other borrowers, the United States Department of the Treasury, the United States Federal Reserve, and others.

865. Wherefore, Plaintiff Long thus demands restitution from the Defendants in the form of actual damages, exemplary damages, and attorneys' fees.

COUNT XV
CLAIM FOR ATTORNEY FEES & LITIGATION EXPENSES PURSUANT TO O.C.G.A. §§ 13-6-11 & 13-1-11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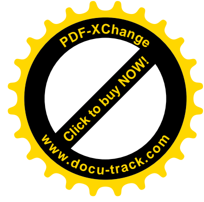
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866. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

867. Plaintiff Long seeks attorney's fees per O.C.G.A. §§ 13-6-11 and 13-1-11 for an award of attorney's fees as recovery of expenses of litigation.

868. Defendants have acted in bad faith and caused Plaintiff Long unnecessary trouble and expense in attempting to identify a true holder in due course or who may lawfully negotiate with Plaintiff a payoff, modification, and/or settlement of Plaintiff Long's claims.

869. In furtherance of that bad faith, Defendants have caused to be executed fraudulent and fabricated documents conveying title to her property and instituted an unlawful foreclosure.

870. Wherefore, Plaintiff Long thus demands restitution from the Defendants in the form of attorneys' fees and litigation expenses.

COUNT XVI
BREACH OF CONTRACT

871. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

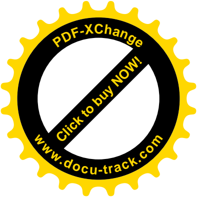
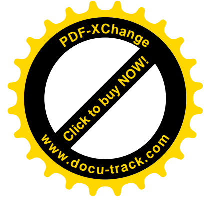
872. Paragraph 1 of the Long Note defines "Note Holder" and throughout the remainder of the Long Note specifies rights and duties that only the Note Holder may exercise within the four corners of the Long Note.

873. Due to the actions of the Defendants, at various times, there was no Note Holder or the purported Note Holder did not take equitable title of the Long Note and/or the Note and Deed were intentionally separated and bifurcated so as to invalidate and nullify the deed to secure debt and lien upon the Long property. As such, none of the terms of the Deed to Secure Debt are valid and binding upon Long.

874. Long admits that there is an obligation upon the Note to unknown parties, but that such debt is unsecured by the actions of the Defendants in bifurcating the note and deed; attempting to negotiate a non-negotiable instrument; committing fraud in the inducement; and/or

875. The defined Note Holder of the Long Note has breached ¶ 4. (B) in that the Note Holder has not provided the required notices.

876. The defined Note Holder of the Long Note has breached ¶ 4. (C) in that the Note Holder has conducted the required calculations.

877. The defined Note Holder of the Long Note has breached ¶ 4. (J) in that the Note Holder has not provided the required notices.

878. The defined Note Holder of the Long Note has breached ¶ 4. (K) in that the Note Holder has not made the required adjustments.

879. The defined Note Holder of the Long Note has breached ¶ 6. in that the charges and fees have been added by other parties that only the Note Holder can apply.

880. The defined Note Holder of the Long Note has breached ¶ 7. (A) in that the late fees have been added by other parties that only the Note Holder can apply.

881. The defined Note Holder of the Long Note has breached ¶ 7. (C) in that required notice of default was not provided by the defined Note Holder.

882. The defined Note Holder of the Long Note has breached ¶ 7. (E) in that payments for expenses and legal fees of other third parties that are not the defined Note Holder have been added to the Long Loan.

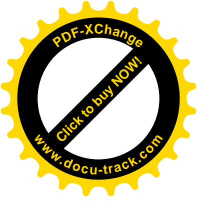
883. The defined Note Holder of the Long Note has breached ¶ 8. in that none of the required notices have been sent by the defined Note Holder.

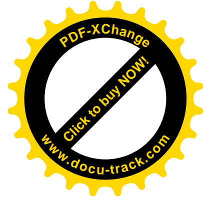
884. The defined Note Holder of the Long Note has breached ¶ 9. in that payments have been made by other guarantors, sureties, and endorsers of the Long Note related to the securitized transaction are obligated to keep the promises contained in the Long Note and make the required payments and such payments must be credited proportionately toward the Long Loan balance.

885. The defined Note Holder of the Long Note has breached ¶ 9. in that it has not instituted suit against all guarantors, sureties, and endorsers of the Long Note related to the securitized transaction who are obligated to keep the promises in the Long Note of which Plaintiff Long sues the Roe Defendants as indispensable parties to this transaction.

886. The defined Note Holder of the Long Note has breached ¶ 11. in concealing the defined Note Holder so that Plaintiffs could transfer the property to an LLC and secure financing for such transfer and permission from the Note Holder to assume the Long Note.

887. Notwithstanding the facts related to the validity and negotiability of a secured debt and the intentional bifurcation of the Long note and Deed, Plaintiff Long states that the unknown lenders and Note Holders have breached the following provisions of the Long Deed.





888. The defined Lender of the Long Deed has breached ¶ 2 of the Long Deed in that it has not properly applied “all payments accepted” from third party guarantors, sureties, insurers, and others.

889. The defined Lender of the Long Deed has breached ¶ 6 of the Long Deed in that the defined Lender induced Long by fraud to enter into a residential loan for a primary residence that she as to occupy for a year when the Lender and its agents had full and complete knowledge that the subject property was a commercial enterprise designed for Plaintiff Castle Home Builders’ Luxury Living rentals.

890. The defined Lender of the Long Deed has breached ¶ 8 of the Long Deed in that the defined Lender induced Long by fraud to enter into the loan agreement and WaMu committed mortgage fraud by knowing placing false information about Long’s income and intent to occupy the property unto the loan application.

891. The defined Lender of the Long Deed has breached ¶ 13 of the Long Deed in that the Defendants for over five years intentionally concealed the true or alleged lender who she could seek assumption of the loan from as allowable under ¶ 13.

892. The defined Lender of the Long Deed has breached ¶ 14 of the Long Deed as described above and herein.

893. The defined Lender of the Long Deed has breached ¶ 15 of the Long Deed as described above and herein.

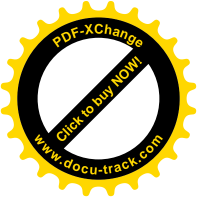
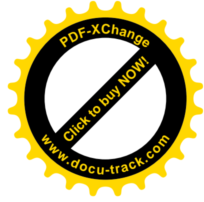
894. The defined Lender of the Long Deed has breached ¶ 17 of the Long Deed as Long was not provided a copy of the executed Note and Deed.

895. The defined Lender of the Long Deed has breached ¶ 18 of the Long Deed as described herein and above.

896. The defined Lender of the Long Deed has breached ¶ 19 of the Long Deed as fees and charges placed by parties other than the Lender or Note Holder as well as impermissible fees have been placed upon the balance and reinstatement amount for the Long Note.

897. The defined Lender of the Long Deed has breached ¶ 20 of the Long Deed as described herein and above by concealing the identity and refusing to provide Long information and records needed by her to ascertain the true note owner and if the debt was secured or unsecured and if there was a holder in due course according to GA law so that she could provide such proper notice.

898. The defined Lender of the Long Deed has breached ¶ 22 of the Long Deed as described herein and above by having parties without lawful authority accelerate the Long Note and executing powers that have been revoked and a non-secured

creditor attempting to advertise and notice an unlawful non-judicial foreclosure action.

899. The defined Lender of the Long Deed has breached ¶ 23 of the Long Deed as described herein and above by not releasing the deed to secure debt after being fully paid by members in the securitization and its guarantors, sureties, and insurers.

900. WHEREFORE, by reason of the forgoing, Plaintiff has suffered damages that are within this Court's jurisdictional limits and she prays for the relief and damages set forth herein and below.

COUNT XVII
VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT

901. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

902. As mortgage lenders, Defendants are subject to the provisions of the Real Estate Settlement Procedures Act ("RESPA"), 12 USC sec. 2601 et seq.

903. In violation of 12 USC sec. 2607 and in connection with the mortgage loan to Long, Defendants accepted charges for the rendering of real estate services which were in fact charges for other than services actually performed.

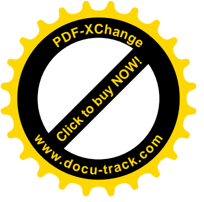
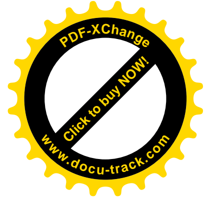
904. In addition, Defendants have refused to provide all relevant accounting documents to Plaintiff Long, especially those related to third-party pyments.

905. As a result of the Defendants' violations of RESPA, Plaintiffs are liable to Plaintiffs in an amount equal to three (3) times the amount of charges paid by Plaintiffs for "settlement services" pursuant to 12 USC sec. 2607 (d)(2).

COUNT XVIII
VIOLATIONS OF FEDERAL TRUTH-IN-LENDING ACT

906. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

907. Defendant WaMu failed to include and disclose certain charges in the finance charge shown on the TIL statement, which charges were imposed on Plaintiffs incident to the extension of credit to the Plaintiffs and were required to be disclosed pursuant to 15 USC sec. 1605 and Regulation Z sec. 226.4, thus resulting in an improper disclosure of finance charges in violation of 15 USC sec. 1601 et seq., Regulation Z sec. 226.18(d). Such undisclosed charges include a sum identified on the Settlement Statement listing the amount financed which is different from the sum listed on the original Note.

908. By calculating the annual percentage rate ("APR") based upon improperly calculated and disclosed amounts, Plaintiffs are in violation of 15 USC sec. 1601 et seq., Regulation Z sec. 226.18(c), 18(d), and 22.

909. WaMu's failure to provide the required disclosures may provides Plaintiffs with the right to rescind the transaction under state and/or federal law, and Plaintiff Long, through this public Complaint which is intended to be construed, for purposes of this claim, as a formal Notice of Rescission, hereby elect to rescind the transaction.

COUNT IXX
VIOLATION OF FAIR CREDIT REPORTING ACT

910. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

911. At all times material, Defendants qualified as a provider of information to the Credit Reporting Agencies, including but not limited to Experian, Equifax, and TransUnion, under the Federal Fair Credit Reporting Act.

912. Defendants wrongfully, improperly, and illegally reported negative information as to Plaintiff Long to one or more Credit Reporting Agencies, resulting in Plaintiffs having negative information on their credit reports and the lowering of their FICO scores and did not suspend reporting when disputes were provided.

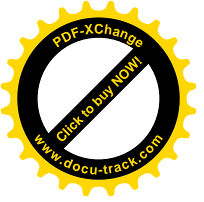
913. The negative information included but was not limited to an excessive amount of debt into which Plaintiffs was tricked and deceived into signing.

914. Notwithstanding the above, Plaintiff Long has paid each and every payment on time from the time of the loan closing through the time she desired to identify her true and lawful holder in due course to payoff or negotiate a settlement.

915. Pursuant to 15 USC sec. 1681(s)(2)(b), Plaintiff Long is entitled to maintain a private cause of action against Plaintiffs for an award of damages in an amount to be proven at the time of trial for all violations of the Fair Credit Reporting Act which caused actual damages to Plaintiffs, including emotional distress and humiliation.

916. Plaintiff Long is entitled to recover damages from Plaintiffs for negligent non-compliance with the Fair Credit Reporting Act pursuant to 15 USC sec. 1681(o).

917. Plaintiff Long is also entitled to an award of punitive damages against Plaintiffs for their willful noncompliance with the Fair Credit Reporting Act pursuant to 15 USC sec. 1681(n)(a)(2) in an amount to be proven at time of trial.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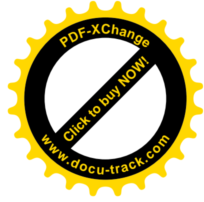
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COUNT XX
FRAUDULENT MISREPRESENTATION

918. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

919. Defendants also materially misrepresented material information to the Plaintiffs with full knowledge by Defendants that their affirmative representations were false, fraudulent, and misrepresented the truth at the time said representations were made.

920. Under the circumstances, the material omissions and material misrepresentations of the Plaintiffs were malicious.

921. Plaintiff Long, not being an investment banker, securities dealer, mortgage lender, or mortgage broker, reasonably relied upon the representations of the Defendant WaMu in agreeing to execute the mortgage loan documents.

922. Had Plaintiff Long known of the falsity of Plaintiffs' representations, Plaintiff Long would not have entered into the transactions that are the subject of this action.

923. As a direct and proximate cause of the Plaintiffs' material omissions and material misrepresentations, Plaintiffs have suffered damages.

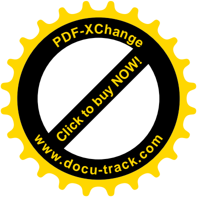
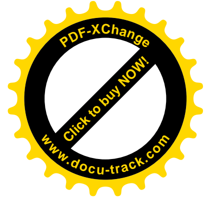
COUNTERCLAIM XXI
USURY & FRAUD

924. Plaintiffs reaffirm and re-allege paragraphs 1. through the paragraph directly above and those below and herein as if set forth more fully herein below.

925. The subject loan, note, and mortgage was structured so as to create the appearance of a higher value of the real property than the actual fair market value.

926. Plaintiffs are informed and believes and thereon alleges that, at all times herein mentioned, the Servicer, Securitization, and Trustee Defendants sued herein were the agent and employees of each of the remaining Defendants and were at all times acting within the purpose and scope of such agency and employment.

927. Defendants have disguised the transaction to create the appearance of the lender being a properly chartered and registered financial institution authorized to do business and to enter into the subject transaction when in fact the real party in interest was not disclosed to Plaintiff Long, as aforesaid, and neither were the various fees, rebates, refunds, kickbacks, profits and gains of the various parties who participated in this unlawful securitization scheme.

928. Said real party in interest, i.e., the source of funding for the loan and the person to whom the note was transmitted or eventually "assigned" was neither a financial institution nor an entity or person authorized, chartered or registered to do business in this State nor to act as banking, lending or other financial institution anywhere else.

929. As such, this fraudulent scheme, (which was in actuality a plan to trick Plaintiff Long into signing what would become a negotiable security used to sell unregulated securities under fraudulent and changed terms from the original note) was in fact a sham to use Plaintiff Long's interest in the real property to collect interest in excess of the legal rate.

930. The transaction involved a loan of money pursuant to a written agreement, and as such, subject to the rate limitation set forth under state and federal law. The "formula rate" referenced in those laws was exceeded by a factor in excess of 10 contrary to the applicable law and contrary to the requirements for disclosure under TILA and HOEPA.

931. Under Applicable law, the interest charged on this usurious mortgage prevents any collection or enforcement of principal or interest of the note, voids any security interest thereon, and entitles Plaintiff Long to recovery of all money or value paid to Plaintiffs, plus treble damages, interest, and attorney fees.

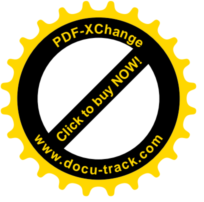
932. Under Applicable Law Plaintiff Long is also entitled to and demands a permanent injunction be entered against the Defendants (a) preventing them from taking any action or making any report in furtherance of collection on this alleged debt which was usurious, as aforesaid (b) requiring the records custodian of the county in which the alleged mortgage and other instruments are recorded to remove same from the record, (c) allowing the filing of said order in the office of the clerk of the property records where the subject property, "Loan transaction" and any other documents relating to this transaction are located and (d) dissolving any lis pendens or notice of pendency relating to the Plaintiff's purported claim.

PRAYER FOR JURY DEMAND

933. Plaintiff elect to request a jury trial for all issues so triable.

WHEREFORE, Plaintiff prays that the Court grant the following relief:

a. that the Court order an immediate issuance of a Temporary and Permanent Injunction precluding the foreclosure sale of the property or any other disposition of the subject property;
b. that the Court grant Declaratory Judgment which states that Defendants JPMC, BOA, Shapiro, and Defendant Trust had and have no legal standing or the proper legal or equitable interest in either the Note AND Security Deed to institute or maintain a foreclosure;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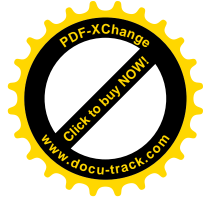
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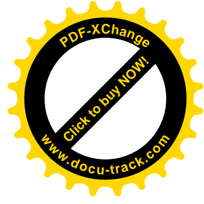
c. that the Court rule that the Notice of Sale Under Power is legally defective and precluded from enforcement;
d. that no Defendant is a secured creditor allowed to foreclose non-judicially;
e. that the Court determine that the Defendants intentionally separated the note and security deed thus rendering the security deed a nullity since it did not follow the note according to the Defendants wishes, thus making the security deed unenforceable and Plaintiff's debt unsecured;
f. that the Court determine and rule on the lawful chain of title to Plaintiff's note so as to determine each lawful transfer and who the current holder in due course of Plaintiff's promissory note is, if any;
g. that the Court determine that Plaintiff has no privity of contract with any servicer hired by the alleged note holder;
h. that the Court determine the amount of Plaintiff's indebtedness and liability to his lawful note holder as defined in his note;
i. that the Plaintiff recover his costs and attorney fees;
j. that the Plaintiff is not indebted to a non-party for legal fees attributable to other parties who have no privity of contract with the Plaintiff;
k. that a servicer has no privity of contract with Plaintiff;
l. that the Court issue a declaratory judgment in accordance with the relief requested hereinabove;
m. that the Court determine the amount of any obligation owed by Plaintiff long after credits and applications of all payments from all sources of funds from Defendant Roe(s);
n. that the Court determine that Plaintiff CHB's lien is superior to all liens,
o. that the Court determine that Plaintiff Davidson's lien is superior to all of Defendant's liens;
p. that the Court grant the Plaintiff a jury trial to access the various damages sought against the Defendants, jointly and severally;
q. that the Defendants be required to pay damages to the Plaintiff for the tortuous interference with Plaintiff's contract with his note holder;
r. that the Defendants be required to pay damages to the Plaintiff for the slander of Plaintiff's title to land;
s. that the Defendants be required to pay damages to the Plaintiff for the violation of the Fair Debt Collection Act;
t. that the Defendants be required to pay damages, including punitive damages, to the Plaintiff for the racketeering and fraud acts against the Plaintiff;
u. that the Defendants be required to prove up the chain of title to Plaintiff's note and that they properly perfected their lien interests;
v. that the Court void and further declare the Plaintiff's property free and clear from all claims and encumbrances; and
w. for any other and further relief which is just and proper.



Respectfully submitted this 30th day of July, 2010.

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