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SC Court of Appeals

SUPPLEMENTAL AUTHORITY

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Return To:
Coastal Mortgage Services,
Inc.
11230 Carmel Commons
Boulevard, Charlotte, NC
28226

Prepared By:
KEVIN HESTER

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MORTGAGE

MIN 1000787-0000121522-7

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated December 30, 2002, together with all Riders to this document.
(B) "Borrower" is JOEL CLAY BRACKEN, UNMARRIED

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

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SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

VMP - 6A(SC) (0005)

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VMP MORTGAGE FORMS - (800)521-7291



(D) "Lender" is COASTAL MORTGAGE SERVICES, INC.

Lender is a CORPORATION
organized and existing under the laws of NORTH CAROLINA
Lender's address is P.O. Box 472432, Charlotte, NC 28247-2432

(E) "Note" means the promissory note signed by Borrower and dated December 30, 2002
The Note states that Borrower owes Lender Ninety Five Thousand Five Hundred and
no/100 Dollars

(U.S. \$95,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than January 1, 2033

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the
value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,
the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
time, or any additional or successor legislation or regulation that governs the same subject matter. As used

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in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Parcel ID Number:
313 LANEWOOD DRIVE
GREENVILLE
("Property Address"):

which currently has the address of

[Street]
[City], South Carolina 29607 [Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall by any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

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

Signed, sealed and delivered in the presence of:

[Signature]

JOEL CLAY BRACKEN (Seal)
-Borrower

[Signature]

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

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STATE OF SOUTH CAROLINA,
County of Greenville

Personally appeared before me Chris Cogdill
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with Leigh Theo, witnessed the execution thereof.

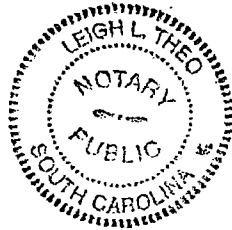
[Signature]

Sworn to before me this 31 day of DEC. 2008

My Commission Expires:

2.29.10

Leigh Theo
Notary Public for South Carolina



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Initials: _____

Form 3041 1/01

EXHIBIT A

ALL that certain piece, parcel or lot of land , with the improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being known and designated as Lot No. 36, Pine Forest, on the corner of Lanewood Drive and Dalegrove Drive, as shown on a plat of same dated August, 1959 and recorded in Plat Book QQ, Pages 106-107 in the Office of the RMC for Greenville County, SC and being further shown on a more recent survey prepared by Freeland-Clinkscates & Associates, Inc. and recorded September 10, 1990 in Plat Book 19-H at Page 17 in the aforesaid RMC Office. For a more particular description as to metes and bounds, courses and distances, reference is hereby made to most recent plat of record.

This being the same property conveyed unto Joel Clay Bracken by Deed of Conseco Finance Servicing Corp, dated _____ and recorded _____ in Deed Book _____, Page _____, in the RMC Office for Greenville County, South Carolina.

NOTE

December 30, 2002
[Date]

GREENVILLE
[City]

South Carolina
[State]

313 LANEWOOD DRIVE, GREENVILLE, SC 29607
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$95,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is COASTAL MORTGAGE SERVICES, INC., CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.2500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on February 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on January 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 472432, Charlotte, NC 28247-2432
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$588.01

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

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MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

5N (0005) MW 05/00 Form 3200 1/01
VMP MORTGAGE FORMS - (BDO)521-7281

Page 1 of 3

Initials: J.L.B.



5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

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

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

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

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

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

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

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Form 3200 1/01

Initials: JCS.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Joel Clay Bracken (Seal) _____ (Seal)
JOEL CLAY BRACKEN -Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

[Sign Original Only]

BRAC32S2517

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UMP 5N (0005)

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Form 3200 1/01

PAY TO THE ORDER OF

WITHOUT RECOURSE

COASTAL MORTGAGE SERVICES, INC.

NAME: _____
TITLE: _____

SUPPLEMENTAL AUTHORITY

B

1681-1681x; and Section 6 of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605, and its implementing regulation, Regulation X, 12 C.F.R. part 1024, to obtain permanent injunctive relief, restitution, disgorgement, civil money penalties, and other relief for violations of the CFPA, FDCPA, FCRA, and RESPA by Green Tree.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337(a), and 1345; under 15 U.S.C. §§ 45(a)(1) and 53(b) with respect to FTC Act claims; under 12 U.S.C. § 5565(a)(1) with respect to CFPA claims; under 15 U.S.C. § 1692l with respect to FDCPA claims; under 15 U.S.C. § 1681s with respect to FCRA claims; and under 12 U.S.C. § 2614 with respect to RESPA claims.

4. Venue is proper in the United States District Court for the District of Minnesota because Green Tree is located in and does business in this District, 28 U.S.C. §§ 1391(b) and (c), 15 U.S.C. § 53(b), and 12 U.S.C. § 5564(f).

PARTIES

5. Plaintiff FTC is an independent agency of the United States Government given statutory authority and responsibility by the FTC Act, *as amended*, 15 U.S.C. §§ 41-58.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to address violations of any provision of law enforced by the FTC. 15 U.S.C. § 53(b). The FTC is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce; the FDCPA, 15 U.S.C. §§ 1692-1692p, which prohibits abusive,

deceptive, and unfair debt collection practices; and the FCRA, 15 U.S.C. § 1681-1681x, which imposes duties upon consumer reporting agencies and those who furnish information to a consumer reporting agency or use information obtained from a consumer reporting agency.

7. Plaintiff CFPB is an independent agency of the United States Government charged with regulating the offering and provision of consumer financial products or services under Federal consumer financial laws. 12 U.S.C. § 5491(a).

8. The CFPB is authorized to initiate federal district court proceedings, by its own attorneys, to address violations of Federal consumer financial law, including the CFPA, the FDCPA, the FCRA, and RESPA. 12 U.S.C. § 5564(a)-(b). Sections 1031 and 1036(a) of the CFPA, 12 U.S.C. §§ 5531 and 5536(a), prohibit unfair, deceptive, or abusive acts or practices, or other violations of Federal consumer financial law, by any covered person or service provider.

9. The Defendant, Green Tree, is a Delaware limited liability company, with its principal place of business in St. Paul, Minnesota. At all times material to this Complaint, Green Tree has transacted business in this District and throughout the United States, and has engaged in the business of servicing and collecting payments on residential mortgage loans.

COMMERCE

10. At all times material to this Complaint, Green Tree has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

GREEN TREE'S BUSINESS PRACTICES

11. Green Tree is a mortgage servicing company. Green Tree contracts with the mortgage lenders who initially extend mortgages to consumers. As the servicer, Green Tree is then responsible for, among other things, creating and sending monthly statements to borrowers, collecting payments, processing payments, ensuring that the mortgaged property is insured, and processing property tax payments. The company markets itself to lenders as a high-touch servicer and collector.

12. Green Tree has used extremely aggressive collection tactics in its rapidly growing servicing business. Consumers are especially vulnerable to Green Tree's tactics because they are locked into a relationship with the company; in order to remain in their homes, consumers must deal with the company for as long as it services their loans, regardless of how they are treated by Green Tree or the company's employees.

Green Tree's Loan Servicing and Collection Practices

13. Green Tree is a prominent servicer of "credit-sensitive" residential mortgage and manufactured-housing loans. Before 2008, Green Tree's operations primarily consisted of originating and servicing loans for manufactured housing. During the past five years, while Green Tree has continued to service manufactured-housing loans, it has shifted its focus to servicing residential loans, and it has acquired servicing rights to large portfolios of such loans.

14. In recent years, Green Tree has expanded the portfolio of loans that it services at a rapid pace. At the end of 2012, Green Tree serviced roughly 900,000 residential mortgage loans, with an unpaid principal balance of approximately \$74

billion. Subsequently, in January 2013, Green Tree acquired servicing rights for 350,000 Fannie Mae loans previously serviced by Residential Capital, LLC. Also in January 2013, Green Tree acquired mortgage-servicing rights for 650,000 Fannie Mae loans from Bank of America.

15. Green Tree's servicing portfolio includes a substantial number of mortgages for which consumers have difficulty making payments. Many of the loans that Green Tree services were in default at the time that Green Tree acquired them, and the overall delinquency rate for Green Tree loans is high compared to rates for other servicers. The overall delinquency rate for Green Tree's first lien third-party servicing portfolio at the end of 2012 was 15.68%.

16. In its efforts to acquire more servicing business, Green Tree has marketed itself as a "high-touch servicer," meaning that it places collection calls to consumers frequently in an effort to get them to make timely payments on their loans. It also has used "behavioral risk scoring," which analyzes consumers' delinquency and payment history, to predict the likelihood that consumers will default on their loans and to determine when and how often to call consumers.

17. Since at least 2008, Green Tree's collections department has been charged with communicating with consumers who have missed their payment due date by at least one day, have not paid before a late fee has been assessed, or are already in default on their mortgage. Green Tree's collections department separates collectors into "front-end" and "back-end" collectors. Front-end collectors call consumers who are between one and twenty-nine days late with their mortgage payments. Back-end collectors generally call

consumers who are thirty or more days late in making their payments. Back-end collectors typically call consumers more frequently and exert more pressure on consumers than front-end collectors.

18. Although consumers do not have contact with back-end collectors unless and until they are late on their loans, Green Tree assigns every consumer a back-end collector (which Green Tree also calls a “single point of contact” or “SPOC”) as soon as Green Tree acquires the servicing rights to the consumer’s loan. Once consumers are thirty days late on their loans (and sometimes earlier if Green Tree decides that an aggressive approach is needed), a consumer interfaces with Green Tree mainly, if not exclusively, through the assigned back-end collector.

19. Consumers receive many collection calls from their assigned back-end collector. In addition, whenever consumers who are delinquent by 30 days or more call Green Tree’s 800 number with questions – including questions about their account status, fees, loss mitigation options, or escrow accounts – they are routed automatically to their assigned back-end collector, or to another available back-end collector if their assigned collector is unavailable.

20. As a result of Green Tree’s routing system for handling incoming calls, consumers have often been routed to a collector instead of a customer service representative. Indeed, many consumers’ only option is to speak with collectors when they have questions or problems with their accounts. Even consumers who have reached customer service representatives have often first been asked to schedule a payment before receiving assistance if they are behind on their mortgage payments.

Green Tree's Loss Mitigation Activities

21. Through Green Tree, consumers who are having difficulty paying their mortgages can seek loss mitigation assistance, which includes loan modifications, deferrals, extensions, and forbearances. Consumers may also arrange a short sale of their house as long as they obtain approval. As a mortgage servicer, Green Tree has the delegated authority from the investors that own the loans to approve short sale requests in some instances. In other cases, Green Tree must seek approval from the investors before a short sale can proceed.

22. Primary responsibility for guiding consumers through the loss mitigation process rests with Green Tree's back-end collectors. The back-end collector assigned to the consumer's account is responsible for sending the consumer application materials, contacting the consumer about any missing documents, and otherwise interacting with the consumer throughout the loss mitigation evaluation process.

23. Green Tree has not always informed consumers that those tasked with providing assistance are back-end collectors. Rather, Green Tree has represented in correspondence to consumers that "customer service" and "account representatives" will assist consumers with loss mitigation options, questions about pending loan modification applications, missing loan modification application documents, and questions about debt validation notices involving delinquencies.

24. But Green Tree's compensation structure has not incentivized back-end collectors to work on loan modifications. The company's performance evaluations and compensation plans have not rewarded back-end collectors for work on loan

modifications. Instead, a back-end collector's primary responsibility has been to handle collection work for the consumer's account if it is more than 30 days delinquent.

25. Green Tree participates in the Making Home Affordable ("MHA") program, which was launched by the United States Department of the Treasury in February of 2009. The MHA program was designed to help eligible homeowners refinance or modify their loans to obtain affordable payments. The Home Affordable Modification Program ("HAMP"), which is part of the MHA program, allows participating mortgage servicers to provide loan modifications under certain terms proscribed by the program in exchange for incentive payments.

26. As a participating mortgage servicer, Green Tree offers loan modifications to consumers under HAMP. Consumers may be eligible for HAMP modifications if they have a financial hardship, are behind on their payments, or default is reasonably foreseeable. Consumers may also be eligible for proprietary modifications offered by the investors who own their mortgage loans. The guidelines for proprietary modifications are set by these groups of investors.

27. HAMP focuses on affordable and sustainable modifications. HAMP also provides consumers and the investors who own the consumers' mortgages financial incentives for successful participation. Additional consumer benefits under HAMP modifications include waiver of late fees and a prohibition on modification fees. Proprietary modifications vary and may not provide similar benefits.

28. The HAMP guidelines prohibit a servicer from requiring a consumer to make any "good faith" payment or up-front cash contribution to be considered for a

HAMP modification. Consumers who are unable to make a payment may, in fact, be considered for a loan modification or otherwise be evaluated for potential loss mitigation options.

29. In numerous instances, however, Green Tree's back-end collectors have represented to consumers that they must make a loan payment before they can be considered for a loan modification.

30. Another loss mitigation option that consumers might explore is a short sale. When a consumer sells a home in a short sale, the proceeds obtained typically fall short of the mortgage balance. The investor group that owns the consumer's mortgage must agree to the short sale, since it typically means they will release their claims on the property for less than the amount they are owed. As the investors' agent, Green Tree either makes the short sale decision if it has authority to do so or facilitates the communication between the investors and consumer if it cannot approve or deny a short sale request itself.

31. In numerous instances, the investors who own consumers' mortgages have an incentive to agree to short sales because the amount they are paid – even if less than the amount owed – is greater than what they would typically recover if the property went into foreclosure. By agreeing to a short sale, they also avoid the fees and costs associated with a foreclosure action.

32. In relation to foreclosure, short sales also can be advantageous to consumers. Although a short sale still will negatively impact a consumer's credit, the impact is generally less severe than that of a foreclosure. In addition, short sales are

usually easier to plan for, as opposed to the unpredictable and frequently lengthy foreclosure process, and typically result in a waiver of deficiency amounts.

33. Some of the loans Green Tree services are owned by participants in the Home Affordable Foreclosure Alternative ("HAFA") program, which is part of the MHA program. HAFA requires short sale requests to be reviewed within 30-45 days depending on the owner of the loan. Green Tree also services loans for investors that do not participate in HAFA. These loans often have their own short sale requirements that Green Tree must follow.

34. In response to consumer requests for approval of a short sale, Green Tree has represented to consumers in numerous instances that it would review and respond to the request within a set time period, e.g., within 30 days.

35. In numerous instances, however, consumers' requests to Green Tree for approval of a short sale have met with significant delays. Green Tree's short sale department frequently has been unreachable and nonresponsive. Despite multiple calls to the short sale negotiators, consumers and those working on their behalf have not received return calls. Negotiator voice mailboxes often have been full and would not accept messages. In numerous instances, Green Tree has taken two to six months to respond to consumers' short sale requests.

36. In numerous instances, as a result of these misrepresentations, consumers have lost potential buyers who were not expecting to wait months to complete the sale. They also may have forgone other loss mitigation alternatives while their short sale requests were pending and ultimately faced foreclosures they could have avoided.

Green Tree's Failure to Recognize Consumers' "In-Process" Modifications

37. After Green Tree acquires servicing rights to a portfolio of loans, it gathers certain information about those loans from the prior servicer. The data gathered is commonly referred to as the "standard servicing data extract." Detailed loss mitigation data is not part of the standard servicing data extract that Green Tree acquires from prior servicers. In many instances, the loss mitigation data acquired by Green Tree has been incomplete or inaccurate.

38. To obtain a permanent HAMP modification, consumers are required to first enter into a trial period plan ("TPP") with the servicer. HAMP TPPs generally entitle the consumer to a permanent modification so long as the consumer makes all trial payments. Proprietary modifications may also have trial period plans that typically result in permanent modifications upon successful completion of all payments.

39. Many mortgages Green Tree acquires from other servicers have "In-Process Loan Modifications" in place at the time of acquisition. Some of these modifications are trial modifications, including HAMP TPPs, in which the prior servicer agreed to modify the loan payment terms and, in many cases, the consumer began to make the modified monthly payments. Others involve consumers who have completed making the trial payments by the time their loans were transferred to Green Tree but whose permanent modification was not input into the prior servicer's system before the transfer.

40. In many instances, the loss mitigation data Green Tree has acquired regarding these In-Process Modifications has been incomplete or inaccurate. Green Tree employees assigned to work on the acquisition are responsible for requesting specific

data such as the trial payment history and modification documents, but in numerous instances, there has been no process in place to confirm that this data has in fact been requested or received.

41. In numerous instances, Green Tree has learned about In-Process Modifications from consumers during Green Tree's initial "Welcome Call" or subsequent collection calls. Green Tree would not honor an In-Process Modification, however, without conducting its own "validation."

42. As part of its validation process, Green Tree has asked the consumer or the prior servicer to provide a copy of the consumer's modification paperwork.

43. In numerous instances, if Green Tree has learned of an In-Process Modification from a consumer, but the information provided by the consumer does not match the account information provided by the prior servicer, it has not honored the In-Process Modification. In numerous instances, even if Green Tree subsequently has obtained evidence from the prior servicer of an In-Process Modification, it still has not honored the In-Process Modification.

44. When Green Tree has not honored a consumer's In-Process Modification, in numerous instances, the consumer has had to resubmit a loan modification application and Green Tree has conducted its own assessment of the consumer's eligibility for a loan modification. Green Tree has conducted this assessment for proprietary and HAMP modifications alike.

45. But, in numerous instances, Green Tree's validation process has delayed recognition of a consumer's In-Process Modification for months, if it is even ultimately

recognized at all. Green Tree has required many consumers to be re-evaluated for a modification and to resubmit documents several months after beginning or completing their initial trial modification. Consumers also have continued to receive collection calls while their In-Process Modification is being resolved. And Green Tree has continued to seek payments from these consumers under the original, unmodified mortgage loan, and has continued with its foreclosure timeline if consumers do not make payments.

46. In numerous instances, Green Tree has received written inquiries from consumers regarding errors in their accounts related to their In-Process Modifications, including the monthly payment amount, interest rate, and delinquency status.

47. In numerous instances, Green Tree has failed to recognize such inquiries as “qualified written requests” subject to RESPA and has failed to acknowledge receipt within 20 days and to respond to consumers about account errors within 60 days by either correcting erroneous account information or explaining why the account information is not in error.

48. In numerous instances, Green Tree has furnished adverse information regarding payments that were the subject of qualified written requests to consumer reporting agencies during the 60 day period following receipt.

Green Tree’s False or Unsubstantiated Claims

49. A large number of loans Green Tree acquired from other servicers have contained inaccurate data regarding the status of the loan, fees owed, and corporate advances.

50. As described above, a large number of loans acquired from other servicers have contained inaccurate or incomplete data regarding the consumers' in-process loan modifications.

51. In some instances, Green Tree knew or had reason to believe that specific portfolios of loans contained unreliable or missing data about the consumers' loans.

52. In many instances, consumers have disputed or attempted to dispute the amounts that Green Tree claims the consumers owe or other aspects of the loan terms. In many of these instances, Green Tree has refused to consider the disputes.

53. In many instances in which consumers have disputed the amounts that Green Tree claims they owe, Green Tree eventually has admitted that the consumers do not owe the amounts initially claimed.

54. In many instances, Green Tree has made false representations about the amounts consumers owe or the terms of their loans. For the reasons described above in paragraphs 49-53, in many instances, Green Tree knew or should have known that the amounts it claimed consumers owed or the loan terms it imposed upon consumers were inaccurate.

Green Tree's Unlawful Collection Practices

55. From its offices in St. Paul, Minnesota, Tempe, Arizona, Fort Worth, Texas, and Rapid City, South Dakota, and from several smaller regional offices, Green Tree engages in debt collection activities throughout the United States. Green Tree regularly attempts to collect debts by placing telephone calls to consumers.

56. Green Tree's collection activities are governed by Section 5 of the FTC Act and Sections 1031 and 1036(a)(1)(B) of the CFPA, both of which prohibit unfair or deceptive acts or practices. For mortgages in default at the time Green Tree acquired them, Green Tree is a debt collector as defined by the FDCPA and its collection activities are covered by the FDCPA, in addition to the FTC Act and the CFPA.

57. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has called third parties more than once to obtain location information for consumers, even though: (i) the third parties have not requested additional calls, and (ii) Green Tree had no reason to believe that the information originally obtained from the third parties was inaccurate or incomplete.

58. In numerous instances, Green Tree has revealed debts to consumers' employers and co-workers. Such disclosures can adversely affect consumers' employment situations, including, among other things, job retention, promotions, compensation, or job assignments.

59. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has revealed debts to third parties, such as family members, employers, co-workers, tenants, and neighbors of consumers. Sometimes, Green Tree has encouraged third parties to tell the consumers to get in touch with Green Tree and set up a payment, or has encouraged the third parties to help consumers make payments.

60. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has called consumers at unusual times or places, or

times or places which it knew or should have known to be inconvenient to the consumers. For example, Green Tree has called: (i) early in the morning, such as at 5:00 a.m., or late at night, such as at 11:00 p.m.; and (ii) at times or places that consumers have informed Green Tree are inconvenient.

61. In numerous instances, Green Tree has called consumers at work, even though the consumers have previously informed Green Tree that the consumers' employers prohibit them from receiving personal telephone calls at work. In some instances, consumers have been disciplined at work due to the impermissible calls.

62. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has used obscene, profane, or abusive language in its collection calls, such as calling consumers "deadbeats" or "worthless," telling them "you should leave your husband if he can't provide for you" or to "get a real job," mocking consumers' illnesses or other struggles, and yelling and cursing at consumers.

63. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has called consumers repeatedly with the intent to annoy, harass, or abuse. For example, Green Tree collectors frequently have: (i) called consumers between seven and twenty times per day, every day, week after week; (ii) called consumers again despite having already spoken to the consumers earlier that day; (iii) called consumers again as soon as a call is terminated; and (iv) left multiple voicemail messages for consumers in the same day.

64. In numerous instances, Green Tree has represented that nonpayment of consumers' mortgages will result in their arrest or imprisonment, or the seizure,

garnishment, attachment, or sale of property or wages, when in fact such action is not lawful or Green Tree does not intend to take such action. Green Tree often has represented that it will foreclose upon consumers' homes if consumers do not make their payments over the phone immediately. In fact, Green Tree often has made such representations even though (a) it was long before it was lawful to initiate foreclosure proceedings; (b) the company lacks authority to arrest or imprison consumers, or (c) it is not company policy to seek a garnishment of consumers' wages.

**Green Tree's Representations Regarding
Payments and Use of Unauthorized Withdrawals**

65. In numerous instances, Green Tree has pressured consumers to make payments using Speedpay, a payment method that charges consumers a \$12 convenience fee per transaction. Green Tree often has represented to consumers, either expressly or by implication, that Speedpay is the only available payment method, or that consumers must use Speedpay in order to avoid incurring a late fee. In fact, Green Tree accepts several other payment methods, some of which do not charge consumers a convenience fee. For example, Green Tree accepts checks and ACH payments without assessing consumers a convenience fee. In many instances, consumers could have used these other payment methods to make timely payments and avoid a late fee.

66. In numerous instances, Green Tree has taken payments from consumers' bank accounts without the consumers' authorization. For example, consumers who provide their bank account information to Green Tree to set up one payment through

Speedpay have later discovered that the company used their account information to set up additional, unauthorized payments.

67. In numerous instances, Green Tree has represented that consumers do not have a "grace period" after the due date on their loans, during which they would be able to make a payment without incurring a late fee. In fact, consumers' promissory notes do recognize a period between the due date and the date on which a late fee is assessed. In other words, the notes contain a "grace period." In part due to Green Tree's misrepresentations regarding the grace period, many consumers have used expedited payment methods that charge a convenience fee, under the belief that such methods are the only way to make timely payments without a grace period.

Green Tree's Inaccurate Reporting to Credit Bureaus

68. In numerous instances, Green Tree has furnished consumers' credit information to consumer reporting agencies when it knew, or had reasonable cause to believe, that the information was inaccurate. Similarly, in numerous instances, Green Tree has failed to correct information that it furnished to a consumer reporting agency once it determined that the information furnished was not complete or accurate. In many of these instances, consumers have informed Green Tree that it reported incorrect information to the consumer reporting agencies, yet it failed to correct the information.

Green Tree's Problems with Handling Escrow Accounts

69. As part of its work as a mortgage servicer, Green Tree administers consumers' escrow accounts. For consumers whose loans include escrow accounts, Green Tree calculates the annual amount necessary to cover required property tax and

insurance payments, as applicable, divides that sum into 12 installments, and includes the resulting amount in consumers' required monthly payment. Green Tree generally also includes an additional amount as a "cushion" to prevent a shortfall in the escrow account. Cushions, if properly calculated, are permissible under RESPA.

70. When Green Tree receives payments from consumers with escrow accounts, it disburses the principal and interest portion of the payment to the appropriate entity. The remaining amount is held in a segregated account to be disbursed to the appropriate taxing authority or insurance company when their tax and insurance payments come due.

71. In numerous instances, however, Green Tree has failed to timely pay property taxes for consumers. Green Tree's failure to make timely tax payments has jeopardized consumers' continued home ownership and, in some instances, also has caused consumers' names to be listed in local publications on the delinquent tax rolls.

VIOLATIONS OF SECTION 5 OF THE FTC ACT AND THE CFPA

72. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

73. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

74. Sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531 and 5536(a)(1)(B), prohibit covered persons from engaging “in any unfair, deceptive, or abusive act or practice.” Acts or practices are unfair under the CFPA if “the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers” and “such substantial injury is not outweighed by countervailing benefits to consumers or competition.” 12 U.S.C. § 5531(c).

75. Green Tree is a “covered person” within the meaning of the CFPA, 12 U.S.C. §§ 5481(6).

Deceptive Acts and Practices Regarding Account Terms and Status

76. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has represented to consumers, directly or indirectly, expressly or by implication, that the consumers’ mortgage loans have certain unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency statuses, and unpaid fees or other amounts due.

77. In truth and in fact, in numerous instances the material representations set forth in Paragraph 76 were false or were not substantiated at the time the representations were made, including but not limited to representations made where:

a. Green Tree had knowledge or reason to believe that a specific portfolio contained unreliable data but failed to obtain information substantiating the accuracy of the data prior to collecting;

b. Green Tree had knowledge or reason to believe that a consumer had an In-Process Loan Modification with the prior servicer of the loan but continued

to seek to collect payments from the consumer under the original, unmodified mortgage loan terms; or

c. Consumers disputed or attempted to dispute the validity or accuracy of the amount of debt and Green Tree failed to review information substantiating the amount of debt, or failed to consider the consumers' disputes, prior to continuing collection.

Count I by Plaintiff FTC

78. Green Tree's representations as set forth in Paragraph 76 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II by Plaintiff CFPB

79. Green Tree's representations as set forth in Paragraph 76 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

**Deceptive Acts and Practices Regarding the Requirements
for Loan Modification Consideration**

80. In numerous instances, in connection with servicing mortgage loans, Green Tree employees have represented, directly or indirectly, expressly or by implication, that consumers have to make a payment on their loans before Green Tree would consider them for a loan modification.

81. In truth and in fact, in numerous instances, consumers did not need to make payments on their loans before they could be considered for a loan modification. For

example, the Home Affordable Modification Program ("HAMP"), in which Green Tree participates, does not allow participating servicers to require consumers to make payments before considering them for a loan modification.

Count III by Plaintiff FTC

82. Green Tree's representations as set forth in Paragraph 80 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count IV by Plaintiff CFPB

83. Green Tree's representations as set forth in Paragraph 80 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

**Deceptive Acts and Practices Regarding Reviewing
and Responding to Short Sale Requests**

84. In numerous instances, in connection with servicing mortgage loans, Green Tree has represented to consumers, directly or indirectly, expressly or by implication, that it will review and respond to consumers' requests to be considered for a short sale within a set time period (e.g. within 30 days).

85. In truth and in fact, in numerous instances, Green Tree failed to review and respond to consumers' requests to be considered for a short sale in a timely manner (e.g., within 30 days).

Count V by Plaintiff FTC

86. Green Tree's representations as set forth in Paragraph 84 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count VI by Plaintiff CFPB

87. Green Tree's representations as set forth in Paragraph 84 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Deceptive Acts and Practices Regarding Payment Collection Threats

88. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has represented to consumers, directly or indirectly, expressly or by implication, that nonpayment of their mortgage loan will result in the arrest or imprisonment of consumers or the seizure, garnishment, attachment, or sale of the consumers' property or wages.

89. In truth and in fact, in numerous instances, nonpayment of a mortgage loan would not have resulted in a consumer's arrest or imprisonment, or seizure, garnishment, or attachment of a consumer's property or wages.

Count VII by Plaintiff FTC

90. Green Tree's representations as set forth in Paragraph 88 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count VIII by Plaintiff CFPB

91. Green Tree's representations as set forth in Paragraph 88 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Deceptive Acts and Practices Regarding Available Payment Methods

92. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has represented, directly or indirectly, expressly or by implication, that a payment method that entails a convenience fee is the only payment method available or the only payment method that consumers can use to make timely payments.

93. In truth and in fact, in numerous instances, a payment method that entails a convenience fee was not the only payment method available or the only payment method that consumers can use to make timely payments.

Count IX by Plaintiff FTC

94. Green Tree's representations as set forth in Paragraph 92 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count X by Plaintiff CFPB

95. Green Tree's representations as set forth in Paragraph 92 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Unfair Acts and Practices Regarding Unauthorized Withdrawals

96. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has caused consumers' bank accounts to be debited without having previously obtained consumers' consent.

97. Green Tree's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

Count XI by Plaintiff FTC

98. Green Tree's practices as described in Paragraph 96 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count XII by Plaintiff CFPB

99. Green Tree's practices as described in Paragraph 96 constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 12 U.S.C. § 5536(a)(1)(B).

Unfair Acts and Practices Regarding In-Process Loan Modifications

100. In numerous instances, in connection with servicing mortgage loans, Green Tree has unilaterally breached contracts that consumers negotiated with the prior servicers of their loans by not honoring In-Process Loan Modifications that consumers had obtained from their prior servicers.

101. Green Tree's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

Count XIII by Plaintiff FTC

102. Green Tree's practices as described in Paragraph 100 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count XIV by Plaintiff CFPB

103. Green Tree's practices as described in Paragraph 100 constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 12 U.S.C. § 5536(a)(1)(B).

**Unfair Acts and Practices Regarding Contacting
Consumers' Place of Employment**

104. In numerous instances, in connection with servicing mortgage loans and collecting debts from consumers, Green Tree has: (1) called consumers at their place of employment after being advised by the consumers that such calls were not permitted by their employer; and (2) communicated with consumers' employers and co-workers without consumers' knowledge or consent, disclosing the existence and, sometimes, the amount of consumers' debts to employers and co-workers.

105. Green Tree's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

Count XV by Plaintiff FTC

106. Green Tree's practices as described in Paragraph 104 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count XVI by Plaintiff CFPB

107. Green Tree's practices as described in Paragraph 104 constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 12 U.S.C. § 5536(a)(1)(B).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

108. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692 *et seq.*, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l(a), provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act. Section 814 of the FDCPA, 15 U.S.C. § 1692l(a), also authorizes the Federal Trade Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any debt collector, irrespective of whether that debt collector is engaged in commerce or meets any other jurisdictional tests set by the FTC Act. The authority of the Federal Trade Commission in this regard includes the power to enforce the provisions of the FDCPA in the same manner as if the violations of the FDCPA were violations of an FTC trade regulation rule. In 2010, Congress amended the FDCPA to grant authority to the CFPB, in addition to the FTC, to enforce the FDCPA with respect to any person subject to the CFPA. 15 U.S.C. § 1692l(b)(6).

109. The term "consumer" as defined in Section 803(3) of the FDCPA, 15 U.S.C. § 1692a(3), means "any natural person obligated or allegedly obligated to pay any debt."

110. The term “debt” as defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5), means “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.”

111. The term “location information” as defined in Section 803(7) of the FDCPA, 15 U.S.C. § 1692a(7), means “a consumer’s place of abode and his telephone number at such place, or his place of employment.”

112. The term “debt collector” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6), includes any person who “regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” It does not include a person collecting debts that were not in default at the time that the person obtained them. 15 U.S.C. § 1692a(6)(F)(iii).

113. Green Tree acquires servicing rights to some mortgages that are in default at the time of transfer and proceeds to collect on those mortgages. With respect to these debts, Green Tree is a debt collector as defined by the FDCPA and its collection activities are covered by the FDCPA.

**Count XVII by Plaintiffs FTC and CFPB:
Unauthorized Communications with Third Parties**

114. Section 804 of the FDCPA, 15 U.S.C. § 1692b, governs the manner in which debt collectors may communicate with any person other than the consumer for purposes of acquiring location information about the consumer. Section 804(3) prohibits

debt collectors from communicating with any person for the purpose of acquiring location information more than once unless so requested by the person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete information.

115. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has communicated more than once with persons other than the consumer for the alleged purpose of obtaining location information about the consumer without a reasonable belief that the earlier response of the person was erroneous or incomplete and the person had subsequently obtained correct or complete location information.

116. The acts and practices alleged in Paragraph 115 constitute violations of Section 804(3) of the FDCPA, 15 U.S.C. §§ 1692b(3).

**Count XVIII by Plaintiffs FTC and CFPB:
Disclosing Debts to Third Parties**

117. Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b), prohibits communications with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector, unless the consumer gives prior consent to the debt collector directly. For the purpose of Section 805(b), Section 805(d) of the FDCPA defines the term “consumer” to include “the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.”

118. In numerous instances, in connection with the collection of debts, Green Tree, directly or indirectly, has communicated about a debt with persons other than the consumer; the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator; a consumer reporting agency; the creditor; or their attorneys. Green Tree has engaged in these communications without the permission of the consumer, or as otherwise allowed by Section 804.

119. The acts and practices alleged in Paragraph 118 constitute violations of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

**Count XIX by Plaintiffs FTC and CFPB:
Calling at an Unusual or Inconvenient Time or Place and
Calling a Place of Employment**

120. Section 805(a)(1) prohibits communications with a consumer in connection with the collection of any debt at a time or place known or which should be known to be inconvenient to the consumer, and Section 805(a)(3) specifically prohibits communications with a consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication. For the purpose of Sections 805(a)(1) and (a)(3), Section 805(d) of the FDCPA defines the term "consumer" to include "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

121. In numerous instances, in connection with the collection of debts, Green Tree, directly or indirectly, has communicated with a consumer or the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator in

connection with the collection of debts at a time or place known by Green Tree or which should have been known by Green Tree to be inconvenient to the consumer.

122. In numerous instances, in connection with the collection of debts, Green Tree, directly or indirectly, has communicated with a consumer or the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator at that person's place of employment even though Green Tree knew or had reason to know that the employer prohibited the person from receiving such communication.

123. The acts and practices alleged in Paragraphs 121-122 constitute violations of Section 805(a) of the FDCPA, 15 U.S.C. § 1692c(a).

**Count XX by Plaintiffs FTC and CFPB:
Use of Obscene or Profane Language and
Annoying, Abusive, or Harassing Phone Calls**

124. Section 806 of the FDCPA, 15 U.S.C. § 1692d, prohibits debt collectors from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Section 806(2) specifically prohibits debt collectors from using obscene or profane language or language the natural consequence of which is to abuse the hearer or reader. Section 806(5) prohibits debt collectors from causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

125. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has engaged in conduct the natural consequence of which is to harass, oppress, or abuse persons.

126. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has used obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

127. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has caused telephones to ring or engaged persons in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass the persons at the called numbers, and the natural consequence of such calls has been to harass, oppress or abuse persons.

128. The acts and practices alleged in Paragraphs 125-127 constitute violations of Section 806 of the FDCPA, 15 U.S.C. § 1692d.

Count XXI by Plaintiffs FTC and CFPB:
False or Misleading Representations to Collect a Debt

129. Section 807 of the FDCPA, 15 U.S.C. § 1692e, prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. Section 807(2)(a) specifically prohibits the false representation of the character, amount, or legal status of any debt. Section 807(4) prohibits the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action. Section 807(10) prohibits debt collectors from using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

130. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has made false representations about the character, amount, or legal status of a debt, including but not limited to false statements:

A. About consumers' loan terms, when it acquired loans that had In-Process Modifications; and

B. That consumers owe fees or other amounts.

131. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has represented that nonpayment of a debt would result in the arrest or imprisonment of consumers or the seizure, garnishment, attachment, or sale of the consumers' property or wages, when in fact such action was not lawful or Green Tree did not intend to take such action.

132. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has falsely represented that a payment method that entails a convenience fee was the only payment method available or the only payment method consumers could use to make timely payments.

133. The acts and practices alleged in Paragraphs 130-132 constitute violations of Section 807 of the FDCPA, 15 U.S.C. § 1692e.

Count XXII by Plaintiffs FTC and CFPB:
Unfair Acts and Practices Regarding Unauthorized Withdrawals and Collection of
Amounts Not Authorized by the Agreement or Permitted by Law

134. Section 808 of the FDCPA, 15 U.S.C. § 1692f, prohibits debt collectors from using any unfair or unconscionable means to collect or attempt to collect any debt.

Section 808(1) specifically prohibits the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

135. In numerous instances in connection with the collection of debts, Green Tree has caused payments to be taken from consumers' bank accounts without having previously obtained consumers' consent.

136. In numerous instances in connection with the collection of debts, Green Tree unilaterally breached loan modification contracts that consumers negotiated with the prior servicers of their loans when it did not honor In-Process Loan Modifications that consumers were entitled to under these contracts. Green Tree subsequently collected or attempted to collect amounts that were not authorized by the company's contracts with consumers or permitted by law.

137. The acts and practices alleged in Paragraphs 135-136 constitute violations of Section 808 of the FDCPA, 15 U.S.C. § 1692f.

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

138. The FCRA, 15 U.S.C. § 1681 *et seq.*, was enacted in 1970 and became effective on April 25, 1971. The Act has been in force since that date. In 1996, the FCRA was amended extensively by Congress. Among other things, Congress added Section 623 of the Act, which delineated the responsibilities of furnishers of information to consumer reporting agencies and became effective on October 1, 1997.

139. Section 621 of the FCRA, 15 U.S.C. § 1681s(a), authorizes the Federal Trade Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that

enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act. In 2010, Congress amended the FCRA to grant authority to the CFPB, in addition to the FTC, to enforce the FCRA with respect to any person subject to the CFPA. 15 U.S.C. § 1681s(b)(1)(H).

**Count XXIII by Plaintiffs FTC and CFPB:
Furnishing Information Known to Be Inaccurate**

140. Section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A), prohibits a person from furnishing information relating to any consumer to a consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

141. In numerous instances in connection with furnishing information relating to a consumer to a consumer reporting agency, Green Tree has furnished such information while knowing or having reasonable cause to believe that the information was inaccurate.

142. The acts and practices alleged in Paragraph 141 constitute violations of Section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A).

**Count XXIV by Plaintiffs FTC and CFPB:
Failing to Correct Inaccurate Information**

143. Section 623(a)(2) of the FCRA, 15 U.S.C. § 1681s-2(a)(2), provides that a person who (A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer, and (B) has furnished to a consumer reporting agency information that the person determines is not complete and accurate, shall promptly notify the

consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains incomplete or inaccurate.

144. Green Tree regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about Green Tree's transactions or experiences with consumers.

145. In numerous instances in which Green Tree has furnished to a consumer reporting agency information that it determines is not complete and accurate, Green Tree has failed to promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, or thereafter furnishes to the agency any of the information that remains not complete and accurate.

146. The acts and practices alleged in Paragraph 145 constitute violations of Section 623(a)(2) of the FCRA, 15 U.S.C. § 1681s-2(a)(2).

VIOLATIONS OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT

147. The Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605, covers certain acts and practices related to "federally related mortgage loans," including the servicing of those loans and the administration of their escrow accounts.

148. RESPA covers the conduct of “servicers.” A “servicer,” for purposes of RESPA, is “the person responsible for servicing of a loan.” Under RESPA, “servicing” means “receiving any scheduled periodic payments from a consumer pursuant to the terms of any loan . . . and making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the loan.”

149. During the relevant time period for our investigation, RESPA required servicers to provide a written response acknowledging receipt of borrower correspondence about errors in their accounts within 20 days. 12 U.S.C. § 2605(e). Effective January 10, 2014, the 20 day requirement was amended to 5 days.

150. During the relevant time period for our investigation, RESPA required servicers to respond to borrower correspondence about errors in their accounts within 60 days by either correcting erroneous account information or explaining to the borrower why the account information was not in error. 12 U.S.C. § 2605(e). Effective January 10, 2014, the 60 day requirement was amended, in most instances, to 30 days with a permissible 15 day extension.

151. Green Tree receives payments from consumers and is responsible for distributing those payments to the investors who own the consumers’ loans and, when the consumers’ loans include escrow accounts, to the consumers’ taxing authorities or insurance companies. Thus, it is a servicer within the meaning of RESPA. 12 C.F.R. § 1024.2(b).

152. The loans that Green Tree services are “secured by a first or subordinate lien on residential real property . . .” and are made in whole or in part by lenders that are regulated by agencies of the Federal Government. Therefore, those loans are “federally related mortgage loans” for the purposes of RESPA. 12 U.S.C. § 2602.

Count XXV by Plaintiff CFPB:
Failure to Timely Respond to Qualified Written Requests

153. Section 6(e)(1) of RESPA, 12 U.S.C. § 2605(e)(1), required servicers to provide a written response acknowledging receipt of a qualified written request from a consumer for information relating to the servicing of the loan within 20 days.

154. Within 60 days of receipt of a qualified written request, Section 6(e)(2) of RESPA, 12 U.S.C. § 2605(e)(2), required servicers to make corrections to a consumer’s account (and notify the consumer of the correction), conduct an investigation and tell the consumer the reason the account is not in error, or conduct an investigation and explain to the consumer why information requested is unavailable or cannot be obtained.

155. A qualified written request is “written correspondence . . . that (i) includes, or otherwise enables the servicer to identify, the name and account of the consumer; and (ii) includes a statement of the reasons for the belief of the consumer, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the consumer.” 12 U.S.C. § 2605(e)(1)(B).

156. Consumers have sent correspondence to Green Tree with sufficient information for Green Tree to identify their names and account numbers regarding issues with their unpaid loan balances, payment due dates, interest rates, monthly payment

U.S.C. § 1681s(b)(1)(H), Section 6 of RESPA, 12 U.S.C. § 2605, and the Court's own equitable powers, request that the Court:

A. Permanently enjoin Green Tree from committing future violations of the FTC Act, the CFPA, the FDCPA, the FCRA, and RESPA;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Green Tree's violations of the FTC Act, the CFPA, the FDCPA, the FCRA, and RESPA, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

C. Award Plaintiff CFPB civil money penalties for Green Tree's violations of the CFPA, the FDCPA, the FCRA, and RESPA;

D. Award Plaintiffs the costs of bringing this action; and

E. Award additional relief as the Court may determine to be just and proper.

Dated: April 21, 2015

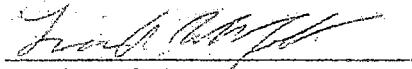
Respectfully submitted,

FEDERAL TRADE COMMISSION:

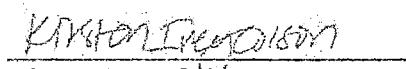
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SUPPLEMENTAL AUTHORITY

C

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION and
CONSUMER FINANCIAL PROTECTION
BUREAU,

Plaintiffs,

v.

GREEN TREE SERVICING LLC, a Delaware
limited liability company,

Defendant.

15-cv-02064 (SRN-JSM)

**STIPULATED ORDER FOR PERMANENT
INJUNCTION AND MONETARY JUDGMENT**

Plaintiffs, the Federal Trade Commission (“Commission”) and the Consumer Financial Protection Bureau (“Bureau”), have filed their Complaint for a permanent injunction and other relief in this matter. The Commission brought this action pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b). The Bureau brought this action pursuant to Sections 1031(a), 1036(a)(1), and 1054 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a)(1), and 5564, and sought civil penalties pursuant to Section 1055 of the CFPA, 12 U.S.C. § 5565(c). Defendant Green Tree Servicing LLC

(“Defendant” or “Green Tree”) waived service of the summons and the Complaint. The Commission, Bureau, and the Defendant stipulate to entry of this Order for Permanent Injunction and Monetary Judgment (“Order”).

THEREFORE, it is **ORDERED** as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint alleges a claim upon which relief may be granted under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1); the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p; the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681-1681x; and Section 6 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605, and its implementing regulation, Regulation X, 12 C.F.R. part 1024 (formerly codified at 24 C.F.R. part 3500) (collectively “RESPA”).
3. For purposes of this settlement, Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.
4. All parties waive all rights to appeal or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim it may have against the Commission or the Bureau, and their employees, representatives, or agents.
5. Defendant waives any claim that it may have under the Equal Access to

Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.

6. The Plaintiffs and Defendant, by and through their counsel, have agreed that entry of this Order resolves all matters in dispute between them arising from the facts and circumstances alleged in the Complaint in this action that have taken place as of the Effective Date, except that the Bureau specifically reserves and does not release any liability arising under any provision of the Bureau's rules relating to mortgage servicing (12 C.F.R. § 1024.30, *et seq.*) as of January 10, 2014.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Collecting on past-due debt(s)" means recovering or attempting to recover, directly or indirectly, debts owed or due or asserted to be owed or due, for which consumers are currently in default, as default is defined in the loan agreement or applicable document creating the debt obligation.

2. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

3. "Defendant" means Defendant Green Tree Servicing LLC, and its successors and assigns. For purposes of this definition, an "assign" means a person who

purchases all or substantially all of the assets of Green Tree Servicing LLC or of Green Tree Servicing LLC's division(s) or major business unit(s) that are engaged as a primary business in customer-facing servicing of residential mortgage loans.

4. "Effective Date" means the date on which the Order is entered.

5. "Grace period" means the period between the date when a loan payment is due and the date when Green Tree is permitted to assess a late fee under the related loan documents.

6. "In-process loan modification" means a trial or permanent loan modification offered by a servicer that was either accepted by the borrower or for which the time for the borrower to accept the offer has not expired and the offer has not been rejected, but is not finalized as a permanent modification before servicing rights on the loan are transferred to another entity. It includes trial modifications in which the prior servicer agreed to modify the loan payment terms unless Defendant has clear written evidence that the borrower has failed to perform under the trial loan modification terms. It also includes modifications in which the consumer completed making the trial payments before the loan was transferred to Defendant, but the permanent modification was not input into the prior servicer's system before the transfer.

7. "Investigation" means objectively evaluating the circumstances and considering information, including an assessment of the relevance, reliability, accuracy, integrity, and completeness of such information, to determine whether a consumer owes a

debt in the amount asserted or to assess a borrower's notice of error or qualified written request. The information Defendant shall assess in an investigation, where applicable to the dispute, shall include but not be limited to:

- (a) the information that Defendant received from the credit originator or any prior servicer or owner of the debt, such as: (i) the consumer's credit application, (ii) the credit contract between the consumer and the credit originator, (iii) documents with the current or former name, address, and telephone number of the consumer, (iv) documents with the consumer's account number, in whole or in part, and periodic billing statements, (v) payment/transaction history, (vi) documents with the date and outstanding balance, and (vii) servicing notes;
- (b) the information that Defendant received from data aggregators, data brokers, consumer reporting agencies, skip tracers, and other third parties, such as: (i) documents with the current or former name, address, and telephone number of the consumer, (ii) documents with consumer report information, including credit scores and updates to the information in consumer reports, and (iii) the scoring of the debt through the use of a predictive model;
- (c) the information that Defendant created or maintained in collecting

on the debt, such as servicing notes and payment history from the immediately preceding two years; and

- (d) the information the Defendant received from the consumer denying, disputing, or challenging the claim that the consumer owes the debt or the amount of the debt, such as: (i) documents with the consumer's current or former name, address, and telephone number, (ii) receipts or other evidence of payment from the credit originator or any prior servicer or owner of the debt, or a debt collector, (iii) canceled checks, bank account statements, credit card statements, and other documents evidencing payment, and (iv) a consumer dispute relating to the disputed amount.

8. "Involuntary transfer" means a transfer when the transferor servicer is in breach of, or default under, its servicing agreement for loss mitigation related-servicing performance deficiencies, or is in receivership, and is required to transfer servicing to another servicer in thirty (30) days or less by an unaffiliated investor, or a court or regulator with jurisdiction.

9. "Loss mitigation" means modified payment arrangements, trial, permanent and in-process loan modifications, forbearance plans, short sales, deed-in-lieu agreements and any other non-foreclosure home retention or non-retention option offered by the owner or assignee of a mortgage loan that is made available to the consumer through a

prior servicer or Defendant.

10. “Portfolio” means a group of loans for which the mortgage servicing rights are transferred to or from Defendant pursuant to a single contract for the sale or transfer of mortgage servicing rights.

11. “Related consumer action” means a private action by or on behalf of one or more consumers, or enforcement action by another governmental agency, entity, or representative, brought against Defendant based on substantially the same conduct or issues as alleged in the Complaint.

12. “Servicing” means collecting, receiving and applying payments made on a consumer’s account pursuant to the terms of the loan agreement, such as payments of principal, interest, taxes, and fees; administering loan accounts; receiving and processing data and documentation for loan accounts transferred from prior servicers; making loan-related communications; responding to borrower notices asserting an error and qualified written requests; providing periodic billing statements to consumers; maintaining records of the status of consumers’ loan accounts; providing information to and resolving disputes with consumers regarding loan accounts; disbursing payments from consumers’ escrow accounts; providing loss mitigation, including but not limited to loan modifications and short sales; pursuing foreclosure; repossessing property; filing bankruptcy claims; calculating deficiency judgments; using consumer reports and furnishing information to consumer reporting agencies; and collecting or assessing fees in

relation to any of the foregoing.

13. "Transfer," as it appears in Sections IV, V, and VII of this Order, means the transfer of mortgage servicing rights, or of servicing responsibilities, including through subservicing or whole loan servicing arrangements.

I. ORDER FOR EQUITABLE MONETARY RELIEF

IT IS ORDERED that:

A. Judgment is entered in favor of the Commission and the Bureau against Defendant in the amount of Forty Eight Million Dollars (\$48,000,000) total as follows:

1. Eighteen Million Dollars (\$18,000,000) for alleged violations of the FTC Act, CFPA, and FDCPA with respect to Defendant's alleged misrepresentations relating to payment methods that entail a convenience fee.
2. Thirty Million Dollars (\$30,000,000) for alleged violations of the FTC Act, CFPA, FDCPA, and RESPA with respect to Defendant's conduct relating to short sales and in-process loan modifications, including Defendant's alleged failure to timely respond to qualified written requests relating to in-process loan modifications and with respect to Defendant's alleged misrepresentations about the time it will take to review short sale requests.

B. Within ten (10) days of entry of this order, Defendant is ordered to pay to

the Bureau \$48,000,000 dollars in full satisfaction of the judgment in favor of the Commission and the Bureau as set forth in Paragraphs A.1 and A.2 of this Section. Such payment shall be made by wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau.

C. All money paid to the Bureau pursuant to this Section shall be deposited into a fund or funds administered by the Bureau or its agent in accordance with applicable statutes and regulations to be used for consumer redress, including but not limited to refund of moneys, restitution, or other monetary relief, and for any attendant expenses for the administration of such redress.

D. If the Bureau, in consultation with the Commission, decides that redress to consumers is wholly or partially impracticable or otherwise inappropriate or funds remain after redress is completed, the Bureau may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such relief are to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to challenge any actions the Bureau, the Commission, or their representatives may take pursuant to this Paragraph.

E. Redress provided by Defendant shall not limit consumers' rights in any way or prevent Defendant from asserting in a related consumer action that a consumer

should not recover for any amounts paid under this Order.

F. In light of the monetary relief to be paid to the Bureau, and to avoid double payment, the FTC is subrogating its claim for equitable monetary relief to the Bureau's claim.

II. ORDER TO PAY CIVIL MONEY PENALTIES

A. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the alleged violations of law in the Complaint, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), Defendant shall pay a civil money penalty of Fifteen Million Dollars (\$15,000,000) to the Bureau, as directed by the Bureau and as set forth herein.

B. Within ten days of the Effective Date, Defendant shall pay the civil money penalty in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau.

C. The civil money penalty paid under this Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

D. Defendant shall treat the civil money penalty as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Defendant shall not:

1. Claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any civil money penalty that Defendant pays under this Order; or
2. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil money penalty that Defendant pays under this Order.

E. To preserve the deterrent effect of the civil money penalty, in any related consumer action, Defendant shall not argue that Defendant is entitled to, nor shall Defendant benefit by, any offset or reduction of any monetary remedies imposed in the related consumer action, because of the civil money penalty paid in this action (“Penalty Offset”). If the court in any related consumer action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment shall not be deemed an additional civil money penalty and shall not be deemed to change the amount of the civil money penalty imposed in this action.

F. In light of the monetary relief to be paid to the Bureau, and to avoid double payment, the FTC is subrogating its claim for civil penalties to the Bureau’s claim.

III. ADDITIONAL MONETARY PROVISIONS

- A. In the event of any default on Defendant’s obligations to make payment

under this Order, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue on any outstanding amounts not paid from the date of default to the date of payment, and shall immediately become due and payable.

B. Defendant relinquishes all dominion, control, and all legal and equitable right, title, and interest to the funds paid to the fullest extent permitted by law and no part of the funds shall be returned to Defendant.

C. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission or Bureau in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

D. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission or Bureau pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

E. Defendant acknowledges that its Taxpayer Identification Number, which Defendant previously submitted to the Commission or Bureau, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

F. For a period of three (3) years from the Effective Date, within thirty (30) days of the entry of a final judgment, consent order, or settlement in a related consumer

action, Defendant shall notify the Bureau Enforcement Director of the final judgment, consent order, or settlement in writing. That notification shall indicate the amount of redress, if any, that Defendant paid or is required to pay to consumers and should describe the consumers or classes of consumers to whom that redress has been or will be paid.

IV. INJUNCTION AGAINST UNSUBSTANTIATED CLAIMS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. Making any representation, expressly or by implication, that a consumer's account has unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency statuses, unpaid fees, or other amounts due, unless, at the time of making the representation, Defendant can substantiate such a representation, including but not limited to situations in which:

1. Defendant knows or reasonably should know that a consumer, at the time the consumer's loan was transferred to Defendant, was performing or previously completed performance under a trial or permanent loan modification with the prior servicer of the loan but Defendant continues to attempt collection from the consumer under

the original, unmodified mortgage loan terms. Defendant reasonably should know that a consumer was performing or previously completed performance under a trial or permanent loan modification with a prior servicer once Defendant receives any information from the prior servicer, the consumer, or any other source substantiating that the consumer was performing or previously completed performance under a trial or permanent loan modification; or

2. Defendant knows or reasonably should know that the information for the account is facially unreliable, materially inaccurate, or missing material information, but Defendant continues to attempt collection on the account without commencing and completing an investigation regarding the account.
3. Nothing in this provision shall be interpreted to preclude Defendant from accurately representing for informational purposes contractual amounts that remain due and owing until a permanent loan modification has been finalized, provided that such representation does not mislead a consumer regarding the amounts due under the modification.

B. Failing, after a consumer orally denies, disputes, or challenges Defendant's claim that the consumer owes a debt or owes a debt in the amount asserted to: (i) provide

the consumer orally and contemporaneously with instructions for submitting the dispute in writing; and (ii) within 14 days of the consumer disputing Defendant's claim, provide the consumer clear and conspicuous written instructions on how to submit the dispute in writing; and

C. Failing, after a consumer denies, disputes, or challenges, in writing, the Defendant's claim that the consumer owes the debt or owes the debt in the amount asserted, to:

1. Within fourteen (14) days after the denial, dispute, or challenge, or when the debt is next reported to a consumer reporting agency, if earlier, report the debt as disputed; and
2. Promptly after the denial, dispute, or challenge:
 - a. Cease collection of any disputed amount, inform the consumer that it has ceased collection of the disputed amount, and, where the decision is within Defendant's control, not transfer servicing to any person or entity other than the creditor to whom the debt is owed, until the Defendant satisfies its obligations to conduct an investigation and respond as set forth in Paragraphs (b) and (c) below or obtains an agreement from the transferee servicer to conduct such an

investigation and respond as set forth in Paragraphs (b) and (c) below;

- b. Commence and complete, within thirty (30) days after a consumer denies, disputes, or challenges Defendant's claim that a consumer owes the debt or that he or she owes the debt in the amount asserted, an investigation of the denial, dispute, or challenge, unless the consumer provides information that is relevant to the investigation during the 30-day time period, in which case the investigation may be extended for no more than fifteen (15) additional days. ***Provided that*** Defendant shall not be required to investigate any denial, dispute, or challenge if it reasonably determines that the denial, dispute, or challenge is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if the Defendant does not have sufficient information to investigate and the consumer does not provide the necessary information when asked, or if Defendant has previously complied with its obligation to investigate and respond and the consumer does not provide to Defendant or Defendant does not otherwise acquire or obtain information, data, or documentation that was not considered

in any prior investigation. Defendant shall notify the consumer within five (5) business days of Defendant's determination if the denial, dispute, or challenge is not investigated under this proviso; and

c. If Defendant reasonably concludes after its investigation:

- i. That the consumer owes the debt in the amount asserted, Defendant, within ten (10) days of reaching its conclusion, shall provide verification of the debt to the consumer, inform the consumer of its conclusion, and provide the basis for it, after which it may resume collection of the previously-disputed amount. If the consumer continues to dispute the debt, nothing in this order supersedes the requirement of § 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)3, that Defendant convey the dispute when furnishing information on the debt to any consumer reporting agency.
- ii. That the consumer does not owe the debt or the debt cannot be verified, Defendant shall, within five (5) days of reaching its conclusion: (a) inform the consumer of its conclusion and the basis for it; (b)

request that each consumer reporting agency to which Defendant had reported the debt or caused the debt to be reported, delete the item from the consumer's credit reporting file; (c) cease collection; and (d) where the decision is within Defendant's control, not transfer servicing to any person or entity other than the creditor to whom the debt is allegedly owed.

- iii. That the consumer does owe the debt but not in the amount that Defendant asserted, Defendant shall, within five (5) days of reaching its conclusion: (a) inform the consumer of its conclusion and the basis for it; and (b) provide to each consumer reporting agency to which the debt has been reported any correction to the reported information that is necessary to make the information provided by Defendant accurate, after which it may continue collection.

Provided that, if the consumer initiates contact with Defendant by any means, Defendant may respond to the consumer prior to the completion of the investigation.

Provided further that the limitations on transfer in Subsections IV.C.2.a and IV.C.2.c.ii shall not apply when the transfer is between owners of the right to perform

servicing who do not perform the servicing and there is no change in the servicer.

Provided further that, nothing in this Section IV prohibits Defendant from requiring consumers who deny, dispute, or challenge a debt on the grounds of fraud or identity theft to do so in writing, so long as Defendant clearly and conspicuously discloses these requirements. Once Defendant receives an identity theft report, the requirements of § 623(a)(6)(B) of the FCRA, 15 U.S.C. § 1681s-2(a)(6)(B), apply.

V. DATA INTEGRITY REQUIREMENT

IT IS FURTHER ORDERED that Defendant, in connection with loan servicing and collection activities, shall, no later than one hundred and twenty (120) days after the date of entry of this Order, establish and maintain a comprehensive data integrity program ("Program") reasonably designed to ensure the accuracy, integrity, and completeness of the data and other information about accounts that Defendant services, collects, or sells, including any accounts acquired by or transferred to Defendant. The Program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to the nature, size, complexity, and scope of Defendant's loan servicing activities, and shall include:

- A. The designation of an employee or employees to oversee the Program;
- B. The maintenance of sufficient personnel that are adequately trained to perform the Program requirements in a timely and legal manner;

C. The identification of material internal and external risks to the accuracy, integrity, and completeness of loan servicing data that could result in material errors to consumers' accounts and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment shall consider risks in each relevant area of operation, including, but not limited to (1) employee training and management, (2) information systems, including network and software design, servicing transfer protocols, information processing, storage, transmission, and disposal, and (3) prevention, detection, and response to any systems failure;

D. The completion of due diligence prior to receiving transferred mortgage servicing rights. Specifically, prior to receiving the transfer of mortgage servicing rights, Defendant shall conduct due diligence to understand and implement steps necessary to resolve issues with the type of loan level information and documentation in the transferor's possession and control, the transferor's ability to transfer the information electronically, in images, or only in paper records, material gaps in the transferor's records, and Defendant's ability to promptly process the information to be provided by the transferor, and otherwise ensure that Defendant will be able to comply with its servicing obligations with respect to every loan transferred. Defendant shall seek assurance that the transferor will transfer all material loan level information in its possession or control at or before the time of transfer.

E. The testing, identification, and correction of material errors in the following data fields in Defendant's servicing systems of record: monthly payment amount, principal balance, interest rate, loan term, escrow account balance, suspense account balance, delinquency status, loss mitigation status, and foreclosure status (collectively, the "Tested Data Fields").

1. Portfolios Tested and Timing for Testing Portfolios.

- a. *Testing of Portfolios Transferred After the Effective Date of this Order.* In addition to the requirements in Section VII.A.3 relating to loans in loss mitigation, within twenty (20) days after the transfer of any portfolio transferred after the Effective Date of this Order, or within twenty (20) days after the establishment of the Program, whichever is later, Defendant shall conduct a "Data File Review." A Data File Review shall mean testing to examine the completeness and accuracy of loan information and to identify material errors. This shall include comparing the Tested Data Fields in Defendant's servicing systems of record as of the loan transfer cutoff date for material errors against the electronic data and the loan-level documents provided by the transferor

servicer from which Defendant acquired the servicing rights to the portfolio.

- b. *Previously Acquired Portfolios.* To the extent that Defendant is, as of the Effective Date, servicing mortgage loans in portfolios at risk for widespread or systemic errors in the Tested Data Fields, for which portfolios Defendant acquired the servicing rights after January 1, 2010, Defendant shall perform a Data File Review within 15 days after the establishment of the Program. A portfolio is at risk for widespread or systemic errors if it exhibits any of the following factors: (1) the portfolio was an involuntary transfer, (2) the portfolio transferred under an agreement containing a disclaimer as to the availability of loan account level information and documents, (3) the portfolio transferred from a servicer or owner that Defendant has learned previously provided materially inaccurate information for more than 5% of the portfolio or had missing material information for more than 5% of the portfolio, (4) Defendant has other information about the portfolio's prior owner or servicer and its methods of doing business that suggests that

more than 5% of the portfolio contains material errors or materially incomplete information, or (5) after onboarding, consumers have disputed in writing the accuracy of the information in accounts amounting to more than 2% of a portfolio serviced by Defendant.

2. Percentage of Each Portfolio to be Tested.

- a. All Data File Reviews, as prescribed in Subsection V.E.1, and On-Going Testing, as prescribed in Subsection V.E.4, shall be statistically valid and based on an appropriate sampling methodology, such that the results from the sample can be reliably extrapolated to the loan portfolio as a whole, and shall include both random and risk-based selection criteria.
- b. If a Data File Review performed pursuant to Section V.E.1. of this Order reveals a material error rate of more than 5% with respect to any Tested Data Field(s) in a portfolio, Defendant shall, within thirty (30) days, complete a Data File Review of such field(s) for all loans in the portfolio. In the event that the full-portfolio Data File Review described in this section reveals a material error rate exceeding 5% of all loans in the portfolio with respect to any of the field(s) tested under this

subsection, Defendant shall perform a Data File Review of such field(s) for the entire portfolio every six months until the material error rate falls below 5%.

3. **Correction of Errors.** Upon completion of any Data File Review, Defendant shall correct and remediate any individual account errors identified by the Defendant, including promptly refunding or reversing any overcharges and stopping foreclosure where appropriate.
4. **Ongoing Testing.** Within 180 days of the Effective Date, and every six months thereafter, Defendant shall identify any portfolios serviced by Defendant for which, in the immediately preceding six months, consumers representing more than 2% of the relevant portfolio have disputed in writing the accuracy of the information in the Tested Data Fields. In the event any such portfolios exist, Defendant shall determine whether there exist any systemic issues giving rise to the disputes about errors in the accuracy of the Tested Data Fields in the portfolio and, if any errors are found, Defendant shall develop and implement a plan to correct the errors. *Provided that*, when a consumer orally denies, disputes, or challenges the accuracy of the information contained in a Tested Data Field,

Defendant shall (i) provide the consumer orally and contemporaneously with instructions for submitting the dispute in writing; and (ii) within 14 days of the consumer disputing Defendant's claim, provide the consumer clear and conspicuous written instructions on how to submit the dispute in writing.

Provided that the requirements of this Subsection V.E shall not apply to transfers when the transfer is between owners of the right to perform servicing who do not perform the servicing and there is no change in the subservicer.

F. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular auditing or testing or monitoring of the effectiveness of the safeguards' key controls, system, and procedures;

G. The regular auditing, testing, or monitoring of the effectiveness of the Program using statistically valid samples, such that the samples include both random and risk-based selection criteria and the results from the samples can be reliably extrapolated to the Program as a whole; and

H. The evaluation and adjustment of the Program in light of the results of the required auditing, testing, or monitoring, and any material changes to Defendant's operations or business arrangements that may significantly impact the Program, or any other circumstances that Defendant knows or has reason to know may have a material impact on the integrity, accuracy, and completeness of Defendant's loan servicing

process, or data and other information about accounts that Defendant services, collects, or sells.

Provided that, in the event of a conflict between this Section V and the requirements of federal, state, or local laws or the standard provisions imposed on servicers by the Department of Treasury, Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Administration, and any other similar organization that may come into existence after the entry of this Order such that Defendant cannot comply with this Section V without violating these requirements, Defendant shall document such conflicts and notify the Commission and the Bureau that it intends to comply with the requirements to the extent necessary to eliminate the conflict.

Provided further that, in the event of an involuntary transfer to Defendant which results in a delay in the transferor's transfer of relevant information or a volume of errors in the transferor's data that prevents Defendant from being able to comply with the time limits in this Section, Defendant shall submit a written plan to the Bureau and the Commission within ten (10) days after the date of the transfer identifying the cause of the delay and setting forth the specific steps it is taking, the resources it is devoting, and Defendant's expected timeline for complying with the requirements of this Section. If such plan is not objected to by the Bureau or the Commission within ten (10) days of submission of the plan, Defendant must proceed to implement the plan. If the Bureau or

the Commission objects to the plan within ten (10) days of submission, Defendant will make reasonable efforts to amend the plan to address any objection. Defendant shall not take more than 120 days from the date of the transfer to satisfy the requirements of this Section.

VI. ASSESSMENT

IT IS FURTHER ORDERED that:

A. Defendant shall, within one hundred and twenty (120) days after the implementation of the Data Integrity Program required by Section V of this Order, and biennially thereafter for eight (8) years after entry of this Order, obtain an assessment and report ("Assessment") from a qualified, objective, independent, third-party professional, the identity of which is agreed to by a representative of the Commission and a representative of the Bureau, that, using procedures and standards generally accepted in the profession:

1. Sets forth the specific data integrity program that Defendant has implemented and maintained during the reporting period;
2. Explains how the data integrity program is appropriate to Defendant's size and complexity, and the nature and scope of Defendant's activities;
3. Explains how the data integrity program meets or exceeds the protections required by Section V of this Order; and

4. Certifies that to the best of the certifier's knowledge and belief the data integrity program is operating with sufficient effectiveness to provide reasonable assurance of the material accuracy, integrity, and completeness of Defendant's records.

B. Defendant shall provide a copy of the first Assessment to the Commission within ten (10) days after the Assessment is delivered to Defendant. Defendant shall, within thirty (30) days of a request, provide the Commission with a copy of all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of Defendant, relied upon to prepare such Assessment. All subsequent biennial Assessments shall be retained by Defendant and a copy provided to the Commission within thirty (30) days of request. The Commission will provide to the Bureau a copy of all Assessments and any other materials produced pursuant to this Section VI of this Order.

VII. INJUNCTION RELATING TO MORTGAGE SERVICING

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

Limitations on the Transfer of Servicing for Loans in Loss Mitigation

- A. Transferring or acquiring servicing for loans in loss mitigation or with a

loss mitigation application pending, regardless of whether Defendant is the transferor or transferee, unless:

1. The transferor or transferee identifies by loan number the following categories of loans at least thirty (30) days prior to transfer, and updates such information at least five (5) days prior to transfer:
 - a. Loans in any stage of pending loss mitigation, including but not limited to in-process loan modifications;
 - b. Loans approved or converted to a permanent loss mitigation outcome within sixty (60) days of transfer; and
 - c. Loans denied loss mitigation within sixty (60) days of transfer;
2. The transferor agrees to make all reasonable efforts to provide the transferee all the following information in its possession or control, prior to transfer or at a minimum, agrees to provide this information by the date of the transfer: all account-level documents and data relating to loss mitigation, including a copy of the mortgage note, periodic billing statements for the two years prior to the service transfer, payment history for the two years prior to the service transfer, escrow and suspense account information, loss mitigation applications, loss mitigation notices, documentation and information

received from the borrower for purposes of evaluating the borrower for loss mitigation, any net present value or other analysis by a servicer in connection with a borrower's application for loss mitigation, loss mitigation agreements, any written communications or notes of oral communications with the borrower about the loss mitigation, and any other information needed to administer any pending loss mitigation applications or in-process loan modifications; and

3. The contract for the transfer includes the following requirements:
 - a. The transferee will engage in quality control work to validate that the loss mitigation data matches the images and paper documents received, make reasonable efforts to identify missing loss mitigation data, documentation, or information and request missing information from the transferor within fifteen (15) days of transfer; and
 - b. Within ten (10) days of a request from the transferee, the transferor will provide missing or incomplete loss mitigation data, documentation, or information in its possession or control;
4. The contract for the transfer also includes the following

requirements:

- a. The transferee will honor loss mitigation agreements entered into by the prior servicer, including but not limited to in-process loan modifications;
- b. The transferee will continue processing pending loss mitigation requests received in the transfer; and
- c. Within thirty (30) days of transfer, the transferee will finish reviewing and resolve any loss mitigation request that was pending within sixty (60) days of transfer for which the transferee or buyer lacks clear written evidence that such request was denied, and provide the consumer an opportunity to provide any necessary missing information.

Provided, however, that the requirements of Subsections VII.A.1, 2, and 3 shall not apply to transfers when the transfer is between owners of the right to perform servicing who do not perform the servicing and there is no change in the subservicer.

Short Sales

B. Failing to send consumers written confirmation within five business days of receipt of a short sale application. If the short sale application is incomplete, Defendant must include in this written confirmation a list of any missing documents required to complete the short sale application; and

C. Failing to complete an evaluation of the short sale application and communicate a decision to the consumer prior to the date of a foreclosure sale (provided that Defendant receives the completed short sale application more than 14 days before the foreclosure sale) or within thirty (30) days after receipt of a complete short sale application, whichever is earlier, except that Defendant may have an additional fifteen (15) days to communicate its decision to the borrower when waiting to receive required information from third parties, provided Defendant promptly updates the borrower with the reason for this delay in writing.

Other Loss Mitigation Requirements

D. Failing, within ninety (90) days after entry of this Order, to make Defendant's loss mitigation application available to consumers at no cost by, at a minimum, making it publicly available and readily accessible on Defendant's website and providing it upon request to consumers. The application shall identify all required documentation and information necessary to complete a loss mitigation application;

E. Failing, within ninety (90) days after the date of entry of this Order, to maintain sufficient personnel that are adequately trained to handle loss mitigation requests in a timely and legal manner;

F. Failing, within ninety (90) days after the date of entry of this Order, to implement and maintain a centralized document management system for tracking and storing incoming loss mitigation documents, including those submitted by consumers,

staffed with sufficient personnel that are adequately trained to prevent significant backlogs and lost documents;

G. Failing, within ninety (90) days after the date of entry of this Order, to implement and maintain an online portal linked to Defendant's primary servicing system where consumers can check, at no cost, the status of their loss mitigation requests. The portal must, among other things:

1. Enable consumers to submit documents electronically;
2. Provide an electronic receipt for any documents submitted; and
3. Update the status of pending loss mitigation requests at least every 10 business days;

H. Failing, within ninety (90) days after the date of entry of this Order, to take reasonable steps to ensure that personnel assigned to consumers pursuant to the Bureau's rules relating to continuity of contact (12 C.F.R. § 1024.40):

1. Refer and transfer consumers to a loss mitigation or other appropriate supervisor upon request;
2. Have access to individuals able to stop foreclosure proceedings when necessary to comply with this Order and other applicable requirements; and
3. Are not subject to compensation arrangements that encourage collection over loss mitigation activity.

Provided that, in the event of a conflict between this Section VII and the requirements of federal, state, or local laws or the standard provisions imposed on servicers by the Department of Treasury, Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Administration, and any other similar organization that may come into existence after the entry of this Order such that Defendant cannot comply with this Section VII without violating these requirements, Defendant shall document such conflicts and notify the Commission and the Bureau that it intends to comply with the requirements to the extent necessary to eliminate the conflict.

Provided further that, in the event of an involuntary transfer to Defendant which results in a delay of the transferor's transfer of relevant information and prevents Defendant from being able to comply with the time limits in Section VII.A, Defendant shall submit a written plan to the Bureau and the Commission, within ten (10) days after the date of the transfer, identifying the cause of the delay and setting forth the specific steps it is taking, the resources it is devoting, and Defendant's expected timeline for complying with the requirements of Section VII.A. If such plan is not objected to by the Bureau or the Commission within ten (10) days of submission of the plan, Defendant must proceed to implement the plan. If the Bureau or the Commission objects to the plan within ten (10) days of submission, Defendant will make reasonable efforts to amend the plan to address any objection. In no event shall Defendants fail to honor loss mitigation

agreements entered into by the prior servicer, fail to continue processing pending loss mitigation requests received in the transfer, or take more than 60 days from the date of the transfer to satisfy the requirements of Section VII.A.

VIII. HOME PRESERVATION REQUIREMENT

IT IS FURTHER ORDERED that Defendant shall, no later than sixty (60) days after the date of entry of this Order, establish and implement a home preservation plan ("Plan") to identify and review Affected Consumers for loss mitigation options, provide for the solicitation and fast-track evaluation of loss mitigation applications, and stop pending foreclosure sales for such consumers to the extent necessary to permit the consumers to be solicited and considered for loss mitigation. The Plan shall remain in effect for a period of five (5) years from the Effective Date. Affected Consumers are consumers with first- or second-lien residential loans that were transferred to Defendant between January 1, 2010 and November 2014 and as of the Effective Date (1) are 45 or more days delinquent or have been referred to foreclosure, but are more than 37 days before a foreclosure sale, or (2) are serviced by Defendant and become eligible for referral to foreclosure at any point from the Effective Date until five years from the Effective Date, provided that Defendant still services the loan at that time.

A. *Convert In-Process Loan Modifications to Permanent Modifications.*

Defendant shall promptly send a permanent modification agreement to Affected Consumers with In-Process Loan Modifications that were fully underwritten prior to the

trial period and received all necessary investor approvals but for which the consumer did not previously enter a permanent modification agreement. Such consumers shall be converted to a permanent modification upon execution of the permanent modification documents, consistent with applicable program and investor guidelines.

B. *Solicitation and Fast-Track Evaluation of Loss Mitigation Applications.*

For all Affected Consumers not accounted for in Paragraph A above, Defendant must:

1. Engage in consumer outreach to obtain complete loss mitigation applications by: (i) Telephone and mail outreach to contact consumers and collect documents; (ii) For incomplete loss mitigation applications, a telephone and mail campaign to notify consumers of the additional documents and information needed to make the loss mitigation application complete; and (iii) Translation services when requested by a consumer or if Defendant has reason to believe that the consumer is not proficient in English.
2. Promptly evaluate consumers for all loss mitigation options available under applicable investor guidelines, including by: (i) Providing a dedicated team of underwriters; (ii) Reviewing complete loss mitigation applications within 20 days of receipt; and (iii) Clearly identifying the terms of any loss mitigation offer (such as interest rate, amortization term, and balloon payments) and

identifying the modified principal balance.

C. Stop Pending Foreclosures. If necessary to permit Defendant to complete the actions described in Paragraphs A and B above before a foreclosure sale, Defendant shall take all available measures to postpone any foreclosure sale scheduled to occur and to prevent the entry of a foreclosure judgment or the entry of an order for foreclosure sale in connection with a foreclosure initiated with respect to the loan under consideration for loss mitigation during the pendency of the actions required in Paragraphs A and B above.

D. Defendant may resume foreclosure sales for Affected Consumers under any of the following conditions:

1. Despite Defendant's reasonable efforts, including taking all steps described in Paragraph B, the consumer (i) has not responded to Defendant's outreach effort within 30 days of Defendant's most recent attempt to contact the consumer under Section VIII.B, or (ii) the consumer has responded to Defendant's outreach efforts but has not provided Defendant with all materials necessary to permit Defendant to evaluate the consumer for loss mitigation options, notwithstanding Defendant's attempts to obtain such material pursuant to Section VIII.B.1.ii, or (iii) does not execute a loss

mitigation offer prior to or at the expiration of the offer;

2. The consumer states in writing that he or she does not want to be considered for a loss mitigation option; or
3. Defendant has evaluated the consumer's complete loss mitigation application for all available loss mitigation options, and (i) Defendant has determined the consumer does not qualify for any loss mitigation option and the time for appeal has expired or the appeal has been denied, or (ii) the consumer has rejected an offer of loss mitigation.

E. The requirements of this subsection VIII shall not apply to any loan (1) for which Defendant does not own the right to service or sub-service as of the Effective Date; or (2) that is not subject to foreclosure or collection activity because it has been charged off.

Provided that, in the event of a conflict between this Section VIII and the requirements of federal, state, or local laws, the standard provisions imposed on servicers by the Department of Treasury, Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Administration, and any other similar organization that may come into existence after the entry of this Order, the National Mortgage Settlement, or applicable investor guidelines such that Defendant cannot comply with this Section VIII without violating these

requirements, Defendant shall document such conflicts and notify the Commission and the Bureau that it intends to comply with these requirements to the extent possible.

Provided further that, nothing in this Section VIII shall be interpreted to (1) limit or restrict in any way the protections provided to borrowers under the Bureau's rules relating to loss mitigation (12 C.F.R. §§ 1024.41, *et seq.*), or to (2) require Defendant to communicate with a borrower in a manner otherwise prohibited by applicable law, including bankruptcy law or the federal Fair Debt Collection Practices Act or any similar debt-collection-related state law. To the extent any provision of this Section VIII is in conflict with any provision of 12 C.F.R. § 1024.41, 12 C.F.R. § 1024.41 shall apply.

IX. INJUNCTION AGAINST FALSE OR MISLEADING REPRESENTATIONS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. Making any material misrepresentation or assisting others in making any material misrepresentation, expressly or by implication, including but not limited to misrepresentations:

1. That consumers' loans have certain unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency

statuses, and unpaid fees or other amounts due;

2. That consumers must make payments under the original, unmodified loan terms when a consumer has an in-process loan modification or other loss mitigation agreement from the prior servicer;
3. That consumers have to make a payment on their loans before Defendant will consider them for a loan modification;
4. That Defendant will review and respond to consumers' requests to be considered for a short sale in a set time period;
5. The existence and length of any "grace period" in consumers' promissory notes; and
6. That a payment method that entails a convenience fee is the only payment method available or only payment method that consumers can use to make timely payments.
7. Nothing in this provision shall be interpreted to preclude Defendant from accurately representing for informational purposes contractual amounts that remain due and owing until a permanent loan modification has been finalized, provided that such representation does not mislead a consumer regarding the amounts due under the modification.

B. Failing, in communications between Defendant and consumers about

Speedpay or other payment methods that involve a convenience fee, to disclose to consumers truthfully, clearly and prominently, and before the consumers agree to pay through Speedpay or any other payment method that entails a convenience fee:

1. That consumers will be charged a convenience fee; and
2. The existence of other payment methods that do not entail a convenience fee.

X. INJUNCTION AGAINST UNAUTHORIZED WITHDRAWALS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from causing payments to be taken from consumers' bank accounts without having previously obtained consumers' consent for any and all such payments.

XI. INJUNCTION AGAINST UNLAWFUL COLLECTION PRACTICES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with collecting on past-due debt, are permanently restrained and enjoined from:

- A. When communicating with any person other than the consumer for the

purpose of acquiring location information about the consumer:

1. Stating that a consumer owes a debt;
2. Communicating more than once with any such person unless the person requests that the Defendant communicate with him or her again or Defendant has a reasonable belief that the person's denial of knowledge of the consumer or the consumer's location in response to Defendant's first location communication was erroneous or incomplete and the person now has correct or complete location information;
3. Failing to create records documenting that any such person informs Defendant, either orally or in writing, that the consumer that Defendant is trying to contact cannot be reached at that telephone number or the person does not have location information about the consumer that Defendant is trying to reach, and failing to maintain these records for at least five years from the date of last contact with the consumer; and
4. Failing to create records documenting that Defendant had a reasonable belief that a person's statement that the consumer Defendant is trying to contact cannot be reached at that telephone number, or that the person does not have location information about

the consumer, was erroneous, incomplete, or out of date, before calling that telephone number again, and failing to maintain these records for at least five years from the date of last contact with the consumer. ***Provided that***, for purposes of this Section XI.A, to have a “reasonable belief” that a person’s earlier statements were erroneous or incomplete and that such person now has correct or complete location information, Defendant must have: (1) conducted a thorough review of all applicable records, documents, and database entries for the consumer Defendant is trying to reach to search for any notations that indicate that the consumer cannot be reached at that telephone number or that the person does not have location information about the consumer Defendant is trying to reach; and (2) obtained and considered additional information or evidence beyond the information or evidence previously relied upon by Defendant in attempting to contact the consumer Defendant is trying to reach, and such additional information or evidence substantiates Defendant’s belief that the person’s earlier statements were erroneous or incomplete and that such person now has correct or complete location information;

B. Communicating, except when seeking to acquire location information in

compliance with Section 804 of the FDCPA, 15 U.S.C. § 1692b, with any person other than the consumer, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, the attorney of the debt collector, the consumer's spouse, the consumer's parent (if the consumer is a minor), the consumer's guardian, the consumer's executor, the consumer's administrator, or the consumer's attorney, in connection with collecting on past-due debt, unless Defendant has the prior consent of the consumer given directly to Defendant or the express permission of a court of competent jurisdiction, or Defendant can show that such communication is reasonably necessary to effectuate a post-judgment judicial remedy;

C. With regard to the time and place of communications:

1. Communicating with a consumer in connection with collecting on past-due debt at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. This includes communicating with a consumer before 8 a.m. or after 9 p.m. at the consumer's location, as evidenced by the consumer's zip code and the area code of the consumer's telephone number, unless the Defendant has knowledge that such hours are convenient for the consumer. This also includes communicating with a consumer at a particular time or place after anyone at the telephone number has informed Defendant, either orally or in writing, that it is

inconvenient for the consumer to receive calls at that particular time or place;

2. Communicating with the consumer at the consumer's place of employment if the Defendant knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication; and
3. Failing to create and maintain (for at least five years from the date of last contact with the consumer) records documenting that a consumer has informed Defendant, either orally or in writing, that it is inconvenient for the consumer to receive calls at a particular time or place, or that the consumer is prohibited from receiving calls from Defendant at the consumer's place of employment;

D. Engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to: (1) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader; or (2) causing a telephone to ring, or engaging a person in telephone conversation, repeatedly or continuously with the intent to annoy, abuse, or harass the person at the called number. ***Provided that***, for purposes of this Section XI.D, there shall exist a rebuttable presumption of an intent to annoy, harass, or abuse if Defendant places more than one call to any person about a debt after that person has notified Defendant in

writing that the person refuses to pay such debt or that the person wishes Defendant to cease further communication with the person; except that Defendant may communicate to advise the person that further debt collection efforts are being terminated, that Defendant may invoke specified remedies which are ordinarily invoked by debt collectors and creditors, or, where applicable, that Defendant intends to invoke a specified remedy.

Provided further that, after a borrower has sent Defendant a notification pursuant to FDCPA section 805(c) nothing in this Section XI.D shall prevent Defendant from providing the written notice required by 12 C.F.R. § 1024.39(b) if loss mitigation options are available. *Provided further that*, when a consumer orally requests that Defendant cease further communication regarding a debt, Defendant shall (i) provide the consumer orally and contemporaneously with instructions for submitting the request in writing; and (ii) within 14 days of the consumer orally requesting that Defendant cease further communication, provide the consumer clear and conspicuous written instructions on how to submit the request in writing;

E. Using any false, deceptive, or misleading representation or means, including but not limited to falsely representing, directly or indirectly, expressly or by implication: (1) the character, amount, or legal status of any debt; or (2) that nonpayment of a debt will result in the arrest or imprisonment of consumers or the seizure, garnishment, attachment, or sale of the consumers' property or wages, when in fact such action is not lawful or Defendant does not intend to take such action;

F. Using any unfair or unconscionable means to collect or attempt to collect any debt, including but not limited to collecting any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law; and

G. Violating any provision of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (a copy of which is attached hereto as Attachment A), including, but not limited to: (1) Sections 804(2)-(3), 15 U.S.C. §§ 1692b(2)-(3); (2) Section 805(a), 15 U.S.C. § 1692c(a); (3) Section 805(b), 15 U.S.C. § 1692c(b); (4) Section 806, 15 U.S.C. § 1692d; (5) Section 807, 15 U.S.C. § 1692e; and (6) Section 808, 15 U.S.C. § 1692f.

XII. INJUNCTION AGAINST UNLAWFUL CONSUMER REPORTING PRACTICES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. Furnishing information relating to any consumer to a consumer reporting agency, notwithstanding any alternative compliance methods that may be generally available under Section 623(a)(1)(C) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(C), if:

1. Defendant knows or has reasonable cause to believe that the information is inaccurate; or

2. Defendant has been notified by the consumer, at the address specified by Defendant for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate;

B. Upon determining that the information Defendant furnished to a consumer reporting agency about a consumer is not complete and accurate:

1. Failing to promptly notify the consumer reporting agency that Defendant has determined the information is not complete and accurate;
2. Failing to provide to the consumer reporting agency any corrections to that information, or any additional information, that is necessary to make the information provided by the Defendant to the agency complete and accurate; and
3. Furnishing to the agency thereafter any of the information that remains incomplete or inaccurate;

C. If the completeness or accuracy of any information about a consumer furnished by Defendant to any consumer reporting agency is disputed to Defendant by a consumer or Defendant is notified by a consumer reporting agency under 15 U.S.C. § 1681i(a)(2) that a consumer has disputed information furnished by Defendant, furnishing the information to any consumer reporting agency without notice that such information is disputed by the consumer; and

D. Violating any provision of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x (a copy of which is attached hereto as Attachment B), including, but not limited to: (1) Section 623(a)(1), 15 U.S.C. § 1681s-2(a)(1); (2) Section 623(a)(2), 15 U.S.C. § 1681s-2(a)(2); and (3) Section 623(a)(3), 15 U.S.C. § 1681s-2(a)(3), in connection with furnishing information about a consumer to a consumer reporting agency.

XIII. INJUNCTION AGAINST UNLAWFUL REAL ESTATE SETTLEMENT PROCEDURES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the servicing of any loan, are permanently restrained and enjoined from:

A. Failing to timely acknowledge receipt of, and respond to, consumers' qualified written requests;

B. Failing to protect any consumer's credit rating by providing adverse information to a consumer reporting agency regarding any payment that is the subject of a notice of error or qualified written request for sixty (60) days after receipt of the qualified written request;

C. Failing to make timely payments from consumers' escrow accounts for casualty insurance, property taxes, and other charges with respect to the property, when

the loan is escrowed for such amounts; and

D. Violating the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 (a copy of which is attached hereto as Attachment C), or its implementing Regulation X, 12 C.F.R. §§ 1024.35 and 1024.17(k) (a copy of which is attached hereto as Attachment D).

XIV. COMPLIANCE WITH EXISTING LAW

IT IS FURTHER ORDERED that nothing in this Order affects Defendant's obligation to comply with applicable law, implementing regulations, including but not limited to all applicable provisions of the FDCPA, FCRA, provisions of the accuracy and integrity requirements of the Furnisher Rule, 12 C.F.R. § 1022.42 and Appendix A, RESPA, and the Bureau's rules relating to mortgage servicing (12 C.F.R. § 1024.30, *et seq.*).

XV. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from failing to provide sufficient consumer information to enable the Bureau to efficiently administer consumer redress. If a representative of the Bureau requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the Bureau, within 21 days.

XVI. NOTICE REQUIREMENTS

IT IS FURTHER ORDERED that:

A. For a period of 5 years from the date of entry of this Order, Defendant, whether acting directly or indirectly, shall on a quarterly basis make the following disclosure in writing indicating clearly and conspicuously to consumers with past-due debts serviced by Defendant:

Federal and state law prohibit certain methods of debt collection, and require that we treat you fairly.

If you have a complaint about the way we are collecting this debt, please write to our CONTACT CENTER, [current physical address], email us at [current email address], or call us toll-free at [current phone number] between 9:00 A.M. and 5:00 P.M. Central Time Monday - Friday.

The Federal Trade Commission and the Consumer Financial Protection Bureau enforce the Fair Debt Collection Practices Act. If you have a complaint about the way we are collecting your debt, please contact the FTC or the CFPB. You can reach the FTC online at www.ftc.gov/complaint; by phone at 1-877- FTC-HELP; or by mail at 600 Pennsylvania Ave., NW, Washington, DC 20580. You can reach the CFPB online at www.consumerfinance.gov/complaint; by phone at 1-855-411-2372; or by mail at Consumer Financial Protection Bureau P.O. Box 4503, Iowa City, Iowa 52244.

The above disclosure shall be given in the language(s) that appear in such communications sent to consumers. Defendant shall be responsible for sending the initial, quarterly written notice in accordance with the requirement in this Section XVI.A

thirty (30) days after entry of this Order, or, for loans acquired after entry of this Order, within thirty (30) days of acquisition.

B. Defendant shall be deemed to have complied with the notice requirement of Section XVI.A of this Order if Defendant provides a notice in a specific federal, state, county, or city jurisdiction that (1) is required by the laws or regulations of that jurisdiction, (2) complies with those laws or regulations, and (3) is substantially similar to the notice required in Section XVI.A, above.

C. Defendant, whether acting directly or indirectly, shall provide a written (electronic or paper) copy of the following notice to all officers, agents, and employees having responsibility with respect to collecting on past-due debts, within thirty (30) days of the date of entry of this Order, and to each employee hired for a period of five (5) years after that date, no later than the time the employee assumes responsibility with respect to the collecting on past-due debts, and shall secure from each such person, within forty-five (45) days of delivery, a signed and dated statement acknowledging that he or she has read the notice.

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from consumers.

Section 804 of the Act says that, when contacting someone to acquire location information about the consumer, you may not state that the consumer owes a debt. You also may not contact this person more than once unless the person asks you to or unless you reasonably believe the person's earlier

response was wrong or incomplete and that the person now has correct or complete location information to provide to you.

Section 805 of the Act says that, in connection with collecting on past-due debts, you may not communicate with any person other than the consumer for a purpose other than to obtain location information about the consumer. This means that you may not reveal the existence of a debt to anyone other than: (1) the person who allegedly owes the debt; (2) the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator; or (3) the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or Green Tree's attorneys.

Section 805 of the Act also says that you may not communicate with a consumer in connection with collecting on past-due debts: (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer; or (2) at the consumer's place of employment if you know or have reason to know that the employer prohibits the consumer from receiving such communication.

If a consumer notifies you either orally or in writing that the consumer refuses to pay a debt or that the consumer wishes us to cease further communication with the consumer, you shall not communicate further with the consumer with respect to such debt, except: (1) to advise the consumer that our further efforts are being terminated; (2) to notify the consumer that we or the owner of the loan may invoke specified remedies which are ordinarily invoked by debt collectors or creditors; (3) where applicable, to notify the consumer that we or the owner of the loan intends to invoke a specified remedy; or (4) to place one additional call to confirm that the consumer is not interested in loss mitigation.

Section 806 of the Act states that you may not harass, oppress, or abuse any person in connection with collecting on

past-due debts. Among other things, this includes calling someone repeatedly or continuously to annoy, abuse, or harass the person, and using obscene or profane language, or language that is likely to abuse the person.

Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information about a consumer.

Individual debt collectors are liable for their violations of the Act, and may be required to pay penalties if they violate it.

Provided that, for purposes of compliance with Section XVI.C of this Order, the signature required for the employee's statement that he or she has read the notice may be in the form of an electronic signature.

XVII. ACKNOWLEDGMENTS OF ORDER AND RELEVANT STATUTES

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order and of the FDCPA, the FCRA, and RESPA, in their current codification or as they may hereafter be amended:

A. Defendant, within seven (7) days of entry of this Order, must submit to the Commission and the Bureau an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, Defendant must deliver a copy of this Order and the FDCPA (attached hereto as Attachment A) to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and

representatives who participate in collecting on past-due debts; and (3) any business entity resulting from any change in structure as set forth in the Section XVIII of this Order. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities. In addition, if the FDCPA is amended within five (5) years after entry of this Order, Defendant must deliver an amended copy of the FDCPA to current personnel who participate in collecting on past-due debts within thirty (30) days after it is amended.

C. For five (5) years after entry of this Order, Defendant, must deliver a copy of this Order and the FCRA (attached hereto as Attachment B) to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in furnishing or reporting information relating to any consumer to any consumer reporting agency; and (3) any business entity resulting from any change in structure as set forth in the Section XVIII of this Order. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities. In addition, if the FCRA is amended within five (5) years after entry of this Order, Defendant must deliver an amended copy of the FCRA to current personnel who participate in furnishing or reporting information relating to consumers to any consumer reporting agency within thirty (30) days after it is amended.

D. For five (5) years after entry of this Order, Defendant, must deliver a copy

of this Order and RESPA (attached hereto as Attachment C) to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in paying property taxes, receiving or responding to notices of error or qualified written requests, or furnishing or reporting information relating to any consumer to any consumer reporting agency; and (3) any business entity resulting from any change in structure as set forth in the Section XVIII of this Order. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities. In addition, if RESPA is amended within five (5) years after entry of this Order, Defendant must deliver an amended copy of RESPA to current personnel who participate in paying property taxes, receiving or responding to notices of error or qualified written requests, or furnishing or reporting information relating to any consumer reporting agency within thirty (30) days after it is amended.

E. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order and of any additional materials received pursuant to this Section of the Order, including copies of the FDCPA, FCRA, or RESPA.

XVIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One (1) year after entry of this Order, Defendant must submit a compliance report to the Commission, sworn under penalty of perjury:

1. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Bureau may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For fifteen (15) years following entry of this Order, Defendant must submit a compliance notice to the Commission, sworn under penalty of perjury, within 14 days of any change in the following: (1) any designated point of contact; or (2) the structure of Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or

affiliate that engages in any acts or practices subject to this Order. The Commission will provide a copy of such notice to the Bureau.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing. The Commission will provide a copy of such notice to the Bureau.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *Federal Trade Commission and Consumer Financial Protection Bureau v. Green Tree Servicing LLC, No. XXXX.*

F. Unless otherwise directed by a Bureau representative in writing, all submissions to the Bureau pursuant to this Order must be emailed to

Compliance@cfpb.gov or sent by the U.S. Postal Service to: Assistant Director for Enforcement, Consumer Financial Protection Bureau, ATTENTION: Office of Enforcement 1700 G Street, NW, Washington D.C. 20552. For overnight courier send to: Assistant Director for Enforcement, Consumer Financial Protection Bureau, ATTENTION: Office of Enforcement 1625 I Street, 4th Floor, NW, Washington, D.C. 20006. The subject line must begin: *In re* Green Tree Servicing, LLC, File No. XXXX 2014-CFPB-Docket # XXXX.

XIX. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for fifteen (15) years after entry of the Order, and retain each such record for 5 years, unless otherwise indicated. Specifically, Defendant must create and retain the following records:

A. Accounting records maintained in accordance with generally accepted accounting principles in effect from time to time in the United States of America, including records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Consumer files containing the names, last known addresses and phone

numbers as of the date Defendant ceased servicing activity, dollar amounts of debt owed, when Defendant serviced the loan, records of Defendant's collection activity, and amounts collected by Defendant;

D. For every consumer complaint to Defendant, whether received directly, indirectly, or through a third party, records that include:

1. Any complaint and the date received, and the nature of the complaint as reflected in any notes, logs, or memoranda, including a description of the conduct alleged; and
2. The basis of the complaint, including the names of any collectors, customer service representatives, or supervisors complained about; the nature of any research conducted concerning the validity of any complaint; all documents relating to the disposition of the complaint, including records of all contacts with the consumer; Defendant's response to the complaint and the response date; whether the complaint was resolved; the date of resolution; and any action taken to correct the conduct complained about.

E. Copies of all scripts and other training materials related to the collection of debts;

F. To the extent permitted by state law, tape recordings of the complete telephone conversation for at least ninety (90) percent of all telephone calls between

Defendant and anyone it contacts in collecting on past-due debts, provided that Defendant must commence making such recordings no later than three (3) months after the date of this Order and must maintain these recordings for two (2) years after they are made;

G. To the extent permitted by state law, tape recordings of the complete telephone conversation for at least ninety (90) percent of all calls in which consumers consent to payment using Speedpay or any other payment method initiated by Defendant in which a convenience fee is charged, provided that Defendant must commence making such recordings no later than three (3) months after the date of this Order and must maintain these recordings for two (2) years after they are made; and

H. All records and documents necessary to demonstrate full compliance with each provision of this Order, including procedures for responding to consumer complaints, documents related to investigations of consumer complaints, all required acknowledgments, notices, and all submissions to the Commission or Bureau.

XX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission or Bureau, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of

perjury; appear for depositions; and produce documents, for inspection and copying. The Commission and Bureau are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, *provided that*, Defendant, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order for one or more of the protections set forth in Federal Rule of Civil Procedure Rule 26(c).

B. For matters concerning this Order, the Commission and Bureau are authorized to communicate directly with Defendant. Defendant must permit representatives of the Commission or Bureau to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Bureau may use all other lawful means, including posing, through their respective representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's or Bureau's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, or Section 1052 of the CFPA, 12 U.S.C. § 5562.

Provided that, consistent with the Memorandum of Understanding between the Commission and the Bureau, Plaintiffs shall endeavor to coordinate enforcement of their rights under this Order to minimize duplication of efforts and burden on Defendant.

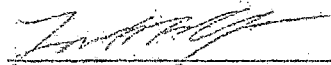
XXI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that although this action will be dismissed, this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 23rd day of April, 2015.

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge

FOR PLAINTIFFS:



LISA ROTHFARB

Maryland Bar

DANIEL DWYER

California Bar No. 286701

Federal Trade Commission

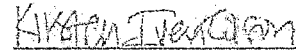
600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

Tel: (202) 326-2602

Fax: (202) 326-3768

Date: 4/21/2015



JAMES SUGARMAN

Washington Bar No. 39107

KIRSTEN IVEY-COLSON

Washington, DC Bar No. 470102

Consumer Financial Protection Bureau

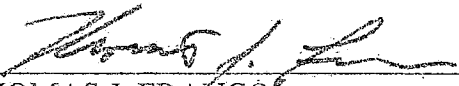
1700 G Street NW

Washington, DC 20552

Tel: (202) 435-7493

Fax: (202) 435-7722

FOR DEFENDANT GREEN TREE SERVICING LLC



THOMAS J. FRANCO

President

Green Tree Servicing LLC

345 St. Peter Street

St. Paul, MN 55102

Date: 2/20/15

STEVEN M. KAPLAN
Washington, DC Bar No. 447308
K&L Gates LLP
1601 K Street NW
Washington, DC 20006-1600
Tel: (202) 778-9204

Date: _____

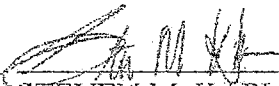
ELIZABETH L. MCKEEN
California Bar No. 216690
O'Melveny & Myers LLP
610 Newport Center Dr., Ste 1700
Newport Beach, CA 92660
Tel: (949) 823-7150

Date: _____

FOR DEFENDANT GREEN TREE SERVICING LLC

THOMAS J. FRANCO
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St. Paul, MN 55102

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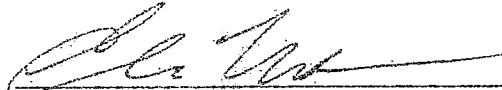
FOR DEFENDANT GREEN TREE SERVICING LLC

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Date: _____

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Date: _____



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Newport Beach, CA 92660
Tel: (949) 823-7150

Date: 2/20/15

**SUPPLEMENTAL
AUTHORITY**

D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON.

Deutsche Bank National Trust Company, as
Trustee of the IndyMac INDX Mortgage Trust
2007-FLX3, Mortgage Pass-Through
Certificates, Series 2007-FLX3 under the
Pooling and Servicing Agreement dated April 1,
2007

Plaintiff,

vs.

Scott J. Heinrich; Dinah K. Heinrich; OneWest
Bank, FSB; County of Charleston,

Defendants.

(514773-00572 JJH)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-10-1060

ORDER ~~DEEMING~~ DEFENDANTS SCOTT
J. HEINRICH AND DINAH K.
HEINRICH'S MOTION TO DISMISS

FILED
2013 JUL 31 AM 9:17
JULIE J. ARMSTRONG
CLERK OF COURT

 This case came before me on May 13, 2013 on Defendants' pre-Answer Motion to Dismiss this case pursuant to Rules 12(b)(6) and 12(b)(7), SCRCP. Defendants, Scott J. Heinrich and Dinah K. Heinrich ("Defendants"), were represented by William H. Sloan of the Sloan Law Firm, PA in Summerville, and Plaintiff was represented by John J. Hearn of Rogers Townsend & Thomas, PC in Columbia.

I. Rule 12(b)(6), SCRCP

Defendants claim that the Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP, because Plaintiff "lacks the necessary standing to file this action prior to acquiring and recording an Assignment of Mortgage" and fails to mention how they are the owner of the Note and Mortgage in this case under our fact-based pleading scheme. Plaintiff admits that the assignment of mortgage into Plaintiff was recorded February 23, 2011, about two weeks after this action was filed. Plaintiff claims to have no obligation to record the assignment into itself prior to filing this action.

Plaintiff has possession of the original Note, which is indorsed in blank at the time of the hearing before me on May 13, 2013. Plaintiff claims that the note is a negotiable instrument under the South Carolina Uniform Commercial Code, S.C. Code §36-3 et seq. which would entitle them certainly to sue on the note in this action. However, Plaintiff is seeking to foreclose on the mortgage that is attached to the real property as opposed to simply suing on the promissory note.

The idea that the Mortgage follows the Note is one which has been repeatedly confirmed by our courts: "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of mortgage. However, *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), quoted by Plaintiff's counsel in this oral argument and brief, clearly supports the notion that the Plaintiff must clearly **own the Note and the Mortgage** to foreclose on the property. Plaintiff failed to show that it owned ^{gcm} the Mortgage at the time the Complaint was filed. ^{IN gcm} ~~in its Complaint,~~ Plaintiff merely contends in §3 of its Complaint that it is a holder and has the right to enforce. Further, the mortgage of this case shows Mortgage Electronic Registration Systems, Inc. (MERS) to be the mortgagee. This was confirmed by Plaintiff's counsel in oral argument. MERS is never mentioned on the Note, ^{gcm} ~~and therefore, the Note and Mortgage of this case have been separated permanently.~~ ^{gcm}

Our state court of appeals made a recent decision in *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (Ct. App. 2012.) "[T]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." *Id.* at 623. However, I distinguish the facts of *Kinder* from this case as the Assignment of Mortgage in

Kinder was after the foreclosure was already complete and the issue at dispute in that case was the surplus funds going to the Assignee. *Filing is not the issue but ownership of the note. JCR*

JCR
It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder of the original Note, but also the Mortgage as well. Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff lacks the standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b) (6) SCRPC is appropriate.

II. Failure to Join Necessary Parties under Rule 12(b)(7), SCRPC

Rule 12(b)(7) provides that one defense to an action is the failure to join a party under Rule 19 of the South Carolina Rules of Civil Procedure. Rule 19 provides that:

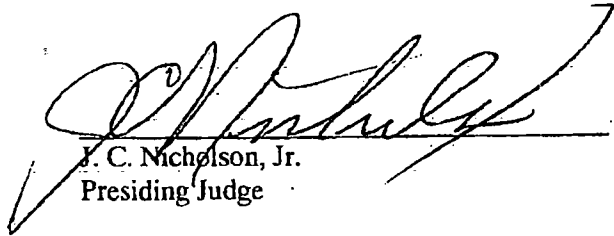
JCR
A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be afforded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Defendants claim that Mortgage Electronic Registration Systems, Inc. ("MERS") and IndyMac Bank, FSB ("IndyMac") are necessary parties to this action, and that the court must join them as parties to protect the Defendants from "double or triple liability" on the Note and Mortgage at issue. Again, Defendants misapprehend the applicable law by advancing this argument. Under South Carolina law, Defendants would not be subject to duplicative payment obligations because Plaintiff's foreclosure judgment will discharge Defendants' liability to other claimants. See S.C. Code Ann §36-3-603(1) (2003) (explaining the circumstances under which cancellation or satisfaction filed by the holder of a negotiable instrument will discharge liability for other claims on same instrument.)

There is no reason that the absence of MERS or IndyMac would prevent this court from issuing a foreclosure judgment establishing Plaintiff's sole authority to enforce the Note and Mortgage at issue here. Further, even if it is determined that these were necessary parties. Rule 12(b)(7) does not call for dismissal of the action, and instead only requires that the parties be joined. On a Rule 12(b)(7) motion, "the proper course for the trial court is to determine the necessity of adding a new party under Rule 19 to insure a full adjudication of the controversy." *Bancohio National Bank v. Neville*, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993). As such, Defendants' motion to dismiss pursuant to Rule 12(b)(7) is denied. However, In find this issue moot as I have dismissed this case pursuant to Defendants' Heinrich's Motion to Dismiss under Rule 12(b)(6), SCRCp.

And it is so ordered that this case be dismissed without prejudice.

IT IS SO ORDERED!


J. C. Nicholson, Jr.
Presiding Judge

July 30, 2013