

1 Attorneys for Plaintiff

2 SUPERIOR COURT OF THE STATE OF NEW YORK  
3 IN AND FOR THE COUNTY OF NEW YORK

4 JOHN DOE an individual

) Case No. \_\_\_\_\_

5 )  
6 Plaintiff,

) COMPLAINT FOR:

7 vs.

) 1. LACK OF STANDING TO  
8 FORECLOSE;

9 WASHINGTON MUTUAL BANK, FSB;  
10 DEUTSCHE BANK NATIONAL TRUST  
11 CO. AS TRUSTEE FOR SECURITIZED  
12 TRUST WAMU MORTGAGE PASS-  
13 THROUGH CERTIFIACTES SERIES  
14 2006-AR4 TRUST; WASHINGTON  
15 MUTUAL BANK, FA; WAMU ASSET  
16 ACCEPTANCE CORP.; WASHINGTON  
17 MUTUAL/JP MORGAN CHASE;  
18 MORTGAGE ELECTRONIC  
19 REGISTRATION SYSTEM, AKA  
20 "MERS" AND DOES 1 THROUGH 100,  
21 INCLUSIVE

) 2. FRAUD IN THE CONCEALMENT

) 3. FRAUD IN THE INDUCEMENT

) 4. INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS

) 5. QUIET TITLE

) 6. SLANDER OF TITLE

) 7. DECLARATORY RELIEF

22 Defendants.

) 8. VIOLATIONS OF TILA;

) 9. VIOLATIONS OF RESPA;

) 10. RECISSION.

23 COMES NOW the Plaintiff, ("**JOHN DOE**"), PLAINTIFF John Doe ("Plaintiff"),

24 complaining of the Defendants as named above, and each of them, as follows:

25 **I. THE PARTIES**

26 1. Plaintiff is now, and at all times relevant to this action, a resident of the County of  
27 New York, State of NEW YORK.  
28

1           2. Defendant, Washington Mutual Bank, FA is a National Banking Association, doing  
2 business in the County of New York, State of NEW YORK. Plaintiff is further informed  
3 and believes, and thereon alleges, that Washington Mutual is the Originator of the loan.

4           3. Defendant, Deutsche Bank National Trust Company (hereafter “Deutsche Bank”), as  
5 Trustee for securitized trust WAMU Mortgage Pass-Through Certificates Series 2006-AR4  
6 Trust (hereafter “WAMU 2006-AR4 Trust”). Plaintiff is informed and believe, and thereon  
7 allege that, Defendant Deutsche Bank, is a national banking association, doing business in the  
8 County of New York, State of NEW YORK and is the purported Master Servicer for Securitized  
9 Trust and/or a purported participant in the imperfect securitization of the Note and/or the Deed of  
10 Trust as more particularly described in this Complaint.

11           4. Defendant, Washington Mutual Bank, FA. Plaintiff is informed and believe, and  
12 thereon allege that, Defendant Washington Mutual Bank, FA, is a corporation, doing business  
13 in the County of New York, State of NEW YORK and is the purported Sponsor for  
14 Securitized Trust and/or a purported participant in the imperfect securitization of the Note and/or  
15 the Deed of Trust as more particularly described in this Complaint.

16           5. Defendant, Wamu Asset Acceptance Corp.. Plaintiff is informed and believe, and  
17 thereon allege that, Defendant Wamu Asset Acceptance Corp., is a corporation, doing business in  
18 the County of New York, State of NEW YORK and is the purported Sponsor for Securitized  
19 Trust and/or a purported participant in the imperfect securitization of the Note and/or the Deed of  
20 Trust as more particularly described in this Complaint.

21           6. Defendant, Washington Mutual/JP Morgan Chase. Plaintiff is informed and believe, and  
22 thereon allege that, Defendant Washington Mutual/JP Morgan Chase, is a corporation, doing  
23 business in the County of New York, State of NEW YORK and is the purported Master Servicer  
24

1 for Securitized Trust and/or a purported participant in the imperfect securitization of the Note  
2 and/or the Deed of Trust as more particularly described in this Complaint.

3 7. Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., aka  
4 MERS (“MERS”), Plaintiff is informed and believe, and thereon allege, that MERS is a  
5 corporation duly organized and existing under the laws of BROWARD, whose last known  
6 address is 1818 Library Street, Suite 300, Reston, Virginia 20190; website:  
7 <http://www.mersinc.org>. MERS is doing business in the County of BROWARD, State of  
8 NEW YORK. Plaintiff is further informed and believe, and thereon allege, that Defendant  
9 MERS is the purported Beneficiary under the Deed of Trust and/or is a purported participant in  
10 the imperfect securitization of the Note and/or the Deed of Trust, as more particularly described  
11 in this Complaint.  
12  
13

14 8. At all times relevant to this action, Plaintiff has owned the Property located at  
15 1010 Wall Street New York, NY 10005 (the “Property”).  
16

17 9. Plaintiff does not know the true names, capacities, or basis for liability of Defendants  
18 sued herein as Does 1 through 100, inclusive, as each fictitiously named Defendant is in some  
19 manner liable to Plaintiff, or claims some right, title, or interest in the Property. Plaintiff will  
20 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is  
21 informed and believe, and therefore allege, that at all relevant times mentioned in this  
22 Complaint, each of the fictitiously named Defendants are responsible in some manner for the  
23 injuries and damages to Plaintiff so alleged and that such injuries and damages were  
24 proximately caused by such Defendants, and each of them.  
25

26 10. Plaintiff is informed and believe, and thereon allege, that at all times herein mentioned,  
27 each of the Defendants were the agents, employees, servants and/or the joint-venturers of the  
28

1 remaining Defendants, and each of them, and in doing the things alleged herein below, were  
2 acting within the course and scope of such agency, employment and/or joint venture.

3  
4 **II. JURISDICTION**

5 11. The transactions and events which are the subject matter of this Complaint all occurred  
6 within the County of New York, State of NEW YORK.

7 12. The Property is located within the County of New York, State of NEW YORK with an  
8 address of 1010 Wall Street New York, NY 10005.

9  
10 **III. INTRODUCTION**

11 13. This is an action brought by Plaintiff for declaratory judgment, injunctive and  
12 equitable relief, and for compensatory, special, general and punitive damages.

13 14. Plaintiff, homeowner, disputes the title and ownership of the real property in question  
14 (the "Home"), which is the subject of this action, in that the originating mortgage lender, and  
15 others alleged to have ownership of Plaintiff's mortgage note and/or Deed of Trust, have  
16 unlawfully sold, assigned and/or transferred their ownership and security interest in a  
17 Promissory Note and Deed of Trust related to the Property, and, thus, do not have lawful  
18 ownership or a security interest in Plaintiff's Home which is described in detail herein. For  
19 these reasons, the Court should Quiet Title to the property in Plaintiff's name.  
20

21 15. Additionally, Plaintiff homeowner brings causes of action against all defendants for  
22 fraud, intentional infliction of emotional distress, rescission, declaratory relief based, and  
23 violations of T.I.L.A. and R.E.S.P.A., upon the facts and circumstances surrounding Plaintiff's  
24 original loan transaction and subsequent securitization. Defendants' violations of these laws are  
25 additional reasons this Court should quiet title in Plaintiff's property in Plaintiff and award  
26 damages, rescission, declaratory judgment, and injunctive relief as requested below.  
27  
28

1           16. From 1998 until the financial crash of 2008-2009, over 60 million home loans were  
2 sold by originating lender banks to investment banks to be securitized in a complex series of  
3 billions of transactions. The Plaintiff's home loan was one of the 60 million notes that were  
4 securitized.  
5

6           17. Securitization is the process whereby mortgage loans are turned into securities, or  
7 bonds, and sold to investors by Wall Street and other firms. The purpose is to provide a large  
8 supply of money to lenders for originating loans, and to provide investments to bond holders  
9 which were expected to be relatively safe. The procedure for selling of the loans was to create a  
10 situation whereby certain tax laws known as the Real Estate Mortgage Investment Conduit  
11 (hereinafter "REMIC") Act were observed, and whereby the Issuing Entities and the Lenders  
12 would be protected from either entity going into bankruptcy. In order to achieve the desired  
13 "bankruptcy remoteness," numerous "True Sales" of the loans had to occur, in which loans  
14 were sold and transferred to the different parties to the securitization.  
15

16           18. A "True Sale" of the loan would be a circumstance whereby one party owned the Note  
17 and then sold it to another party. An offer would be made, accepted and compensation given to  
18 the "seller" in return for the Note. The Notes would be transferred, and the Deeds of Trust  
19 assigned to the buyers of the Note, with an Assignment made every step of the way, and,  
20 furthermore, each Note would be endorsed to the next party by the previous assignee of record.  
21

22           19. Each REMIC Trust created by the investment banks, usually under New York Law,  
23 would be funded with thousands to tens-of-thousands of mortgage notes. In order to maintain  
24 their bankruptcy-protected status, REMIC's had to have closing dates by which every  
25 mortgage note that was to be sold to the REMIC had to be "owned" by the REMIC. Once the  
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27  
28

1 REMIC closed, it could accept no more mortgage notes under the terms of REMIC law, and it  
2 would begin selling securities backed by payments from homeowners on the notes it “owned”.

3  
4 20. How a particular mortgage loan ended up being transferred to a REMIC in the  
5 securitization process is governed by a contract known as a Pooling and Servicing Agreement  
6 (“PSA”). The PSA is a Trust Agreement required to be filed under penalty of perjury with the  
7 United States Securities and Exchange Commission (“SEC”) and which, along with another  
8 document, the Mortgage Loan Purchase Agreement (“MLPA”), is the operative securitization  
9 document created by the finance and securitization industry to memorialize securitization  
10 transactions.

11  
12 21. When the Plaintiff in this case closed on her property, her original lender (or other  
13 entity claiming ownership of the note) signed a PSA that governed plaintiff’s particular  
14 mortgage note. The PSA agreement, as described in more detail below, detailed the closing  
15 date by which the homeowner’s loan must be “sold” to the REMIC, and described exactly how  
16 the homeowner’s note is to find its way from the original lender to the REMIC trust.  
17

18 22. A typical PSA calls for a homeowner’s note to be transferred at least four times to  
19 different key parties before it comes into possession of the REMIC trustee. Here is a chart  
20 detailing the typical key party assignment chain required by a typical PSA:  
21



27  
28 23. As part of the process, the banks almost universally separated the mortgage note from

1 the deed of trust. Under the common law, the owner of the note has the right to payments on the  
2 note, and the owner of the deed of trust has the right to foreclose on the homeowner if the  
3 homeowner defaults on the note. Traditionally, before investment banks began securitizing  
4 mortgage notes, the holder of the note would universally hold the deed of trust. This made  
5 sense because the party with the right to collect payments on the note would want to be able to  
6 foreclose using the deed of trust if the homeowner defaulted.  
7

8 24. However, to streamline the securitization process, the investment banks created an  
9 entity called Mortgage Electronic Registrations System (“MERS”), who is one of the  
10 defendants in this case. The investment banks, in addition to using MERS’ electronic database to  
11 track the buying, selling, and assignments of securitized mortgage notes (bypassing the  
12 county clerks’ offices), would transfer deeds of trust to MERS, thereby separating the mortgage  
13 note from the deed of trust. MERS would hold the deed of trust for whoever later claimed to be  
14 the “owner” of the homeowners’ mortgage note.  
15

16 25. Plaintiff alleges that Defendants, and each of them, cannot show proper receipt,  
17 possession, transfer, negotiations, assignment and ownership of the borrower’s original  
18 Promissory Note and Deed of Trust, resulting in imperfect security interests and claims.  
19

20 26. Plaintiff further alleges that Defendants, and each of them, cannot establish possession  
21 and proper transfer and/or indorsement of the Promissory Note and proper assignment of the  
22 Deed of Trust herein; therefore, none of the Defendants have perfected any claim of title or  
23 security interest in the Property. Defendants, and each of them, do not have the ability to  
24 establish that the mortgages that secure the indebtedness, or Note, were legally or properly  
25 acquired.  
26

27 27. Plaintiff alleges that an actual controversy has arisen and now exists between the  
28

1 Plaintiff and Defendants, and each of them. Plaintiff desires a judicial determination and  
2 declaration of its rights with regard to the Property and the corresponding Promissory Note and  
3 Deed of Trust.

4  
5 28. Plaintiff also seeks redress from Defendants identified herein for damages, for other  
6 injunctive relief, and for cancellation of written instruments based upon:

- 7 a. An invalid and unperfected security interest in Plaintiff's Home hereinafter  
8 described;
- 9 b. Void "True Sale(s)" violating NEW YORK law and express terms of the  
10 Pooling and Servicing Agreement ("PSA") governing the securitization of  
11 Plaintiff's mortgage;
- 12 c. An incomplete and ineffectual perfection of a security interest in Plaintiff's  
13 Home;

#### 13 **IV. FACTUAL ALLEGATIONS**

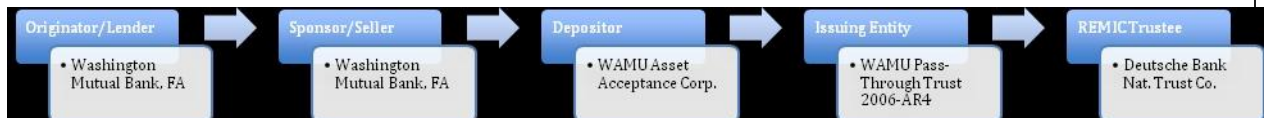
14 29. On or about March 1, 2006 (hereinafter referred to as "Closing Date") Plaintiff entered  
15 into a consumer credit transaction with Washington Mutual by obtaining a \$520,000.00  
16 mortgage loan secured by Plaintiff's principal residence, (Subject Property). This note was  
17 secured by a First Trust Deed on the Property in favor of Washington Mutual.

18  
19 30. Plaintiff's loan was securitized, with the Note not being properly transferred to  
20 Defendant, Deutsche Bank, acting as the Trustee for the WAMU 2006-AR4 Trust holding  
21 plaintiff's note. Documents filed with the SEC by the securitization participants allegedly  
22 claim that the note and deed of trust at issue in this case were sold, transferred and securitized  
23 by Defendants, with other loans and mortgages with an aggregate principal balance of  
24 approximately \$932,087,563.09 into the WAMU 2006-AR4 Trust, which is a Common Law  
25 Trust formed pursuant to New York law. A detailed description of the mortgage loans which  
26 form the WAMU 2006-AR4 Trust is included in Form 424B5 ("the Prospectus"), which has  
27  
28



1 been duly filed with the SEC and which can be accessed through the above mentioned footnote.

2 31. An expert, certified, forensic audit of the Plaintiff's loan documents reveals that  
3 Plaintiff's mortgage note was required to at least go through this assignment chain of key  
4 parties before it reached the REMIC trustee it was destined for:  
5



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10  
11 32. The Plaintiff's PSA requires that his/her note or deed of trust had to be endorsed and  
12 assigned, respectively, to the trust and executed by multiple intervening parties in the above  
13 chain of assignment before it reached the REMIC Trustee.  
14

15 33. Plaintiff executed a series of documents, including but not limited to a Note and Deed  
16 of Trust, securing the Property in the amount of note. The original beneficiary and nominee  
17 under the Deed of Trust was MERS.  
18

19 34. Plaintiff is informed and believes, and thereon alleges, that the purchase mortgage on  
20 the Property, the debt or obligation evidenced by the Note and the Deed of Trust executed by  
21 Plaintiff in favor of the original lender and other Defendants, regarding the Property, was not  
22 properly assigned and transferred to Defendants operating the pooled mortgage funds or trusts  
23 in accordance with the PSA and/or NEW YORK law of the entities making and receiving the  
24 purported assignments to this trust.  
25

26 35. Plaintiff alleges that the PSA requires that each Note or Deed of Trust had to be  
27 endorsed and assigned, respectively, to the trust and executed by multiple intervening parties  
28

1 before it reached the Trust. Here, neither the Note nor the Deed of Trust was assigned to the  
2 Securitized Trust by the closing date. Therefore, under the PSA, any assignments of the Deed  
3 of Trust beyond the specified closing date for the Trust are void.

4  
5 36. Plaintiff further alleges that even if the Deed of Trust had been transferred into the  
6 Trust by the closing date, the transaction is still void as the Note would not have been  
7 transferred according to the requirements of the PSA, since the PSA requires a complete and  
8 unbroken chain of transfers and assignments to and from each intervening party.

9  
10 37. Plaintiff is informed and believes, and thereon allege, that the WAMU 2006-AR4 Trust  
11 had no officers or directors and no continuing duties other than to hold assets and to issue the  
12 series of certificates of investment in mortgage backed securities as described in the Prospectus  
13 identified herein below. A detailed description of the mortgage loans which form the WAMU  
14 2006-AR4 Trust is included in Form 424B5 (“the Prospectus”), which has been duly filed with  
15 the SEC and which can be accessed through the below mentioned footnote.<sup>1</sup>

16  
17 38. Plaintiff also alleges that the Note was secured by the Deed of Trust. Plaintiff allege  
18 that as of the date of the filing of this Complaint, the Deed of Trust had not been legally  
19 assigned to any other party or entity.

20  
21 39. Plaintiff is informed and believes, that Defendant Deutsche Bank, alleges that it is the  
22 “holder and owner” of the Note and the beneficiary of the Deed of Trust. However, the Note  
23 and Deed of Trust identify the mortgagee and note holder as the original lending institution or  
24 Mortgage Originator. Documents state that the original lender allegedly sold the mortgage  
25 loan to WAMU 2006-AR4 Trust.

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<sup>1</sup> <http://www.sec.gov/Archives/edgar/data/815018/000116231807000567/m0565424b5.htm>

1           40. Plaintiff further alleges that no documents or records can be produced that demonstrate  
2 that prior to the closing date for WAMU 2006-AR4 Trust, the Note was duly endorsed,  
3 transferred and delivered to WAMU 2006-AR4 Trust, including all intervening transfers. Nor  
4 can any documents or records be produced that demonstrate that prior to the closing date, the  
5 Deed of Trust was duly assigned, transferred and delivered to WAMU 2006-AR4 Trust,  
6 including all intervening assignments.  
7

8           41. Plaintiff further alleges that any documents that purport to transfer any interest in the  
9 Note to WAMU 2006-AR4 Trust after the Trust closing date are void as a matter of law,  
10 pursuant to NEW YORK trust law and relevant portions of the PSA.  
11

12           42. Plaintiff's debt or obligation did not comply with New York law, and/or other laws and  
13 statutes, and, thus, do not constitute valid and enforceable "True Sales." Any security interest  
14 in the Property was, thus, never perfected. The alleged holder of the Note is not the  
15 beneficiary of the Deed of Trust. The alleged beneficiary of Plaintiff's Deed of Trust does not  
16 have the requisite title, perfected security interest or standing to proceed in a foreclosure;  
17 and/or is not the real party in interest with regard to any action taken or to be taken against the  
18 Property.  
19

20           43. Plaintiff is also informed and believe, and thereon alleges that at all times herein  
21 mentioned, and any assignment of a Deed of Trust without proper transfer of the obligation  
22 that it secures is a legal nullity.  
23

24           44. In order for the Trustee of the Securitized Trust to have a valid and enforceable  
25 secured claim against Plaintiff's Home, the Trustee must prove and certify to all parties that,  
26 among other things required under the PSA:  
27

- 28           a. There was a complete and unbroken chain of indorsements and transfers of the  
Note from and to each party to the securitization transaction (which should be

1 from the (A) Mortgage Originator to the (B) Sponsor to the (C) Depositor to the  
2 (D) Trust/Trustee, and that all of these indorsements and transfers were  
3 completed prior to the Trust closing dates (see discussion below); and

- 4 b. The Trustee of the Securitized Trust had actual physical possession of the Note  
5 at that point in time, when all indorsements and assignments had been  
6 completed. Absent such proof, Plaintiff alleges that the Trust cannot  
7 demonstrate that it had perfected its security interest in Plaintiff's Home that is  
8 the subject of this action. Therefore, if the Defendants, and each of them, did  
9 not hold and possess the Note on or before the closing date of the Trust herein,  
10 they are estopped and precluded from asserting any secured or unsecured claim  
11 in this case.

12 45. Plaintiff is informed and believes, and thereon alleges, that pursuant to the terms of the  
13 PSA, the Mortgage Originator (i.e., the original lender herein) agreed to transfer and endorse to  
14 the Trustee for the Securitized Trust, without recourse, including all intervening transfers and  
15 assignments, all of its right, title and interest in and to the mortgage loan (Note) of Plaintiff's  
16 herein and all other mortgage loans identified in the PSA.

17 46. Plaintiff is further informed and believes, and thereon alleges, that the PSA provides  
18 that the transfers and assignments are absolute, were made for valuable consideration, to wit, in  
19 exchange for the certificates described in the PSA, and were intended by the parties to be a  
20 bona fide or "True Sale." Since, as alleged herein below, True Sales did not actually occur,  
21 Plaintiff alleges that the Defendant Trustees are estopped and precluded from asserting any  
22 secured or unsecured claim in this case.

23 47. Plaintiff is further informed and believes, and thereon alleges, that as a result of the  
24 PSA and other documents signed under oath in relation thereto, the Mortgage Originator,  
25 sponsor and Depositor are estopped from claiming any interest in the Note that is allegedly  
26 secured by the Deed of Trust on Plaintiff's Home herein.

27 48. Plaintiff is informed and believe, and thereon allege, that the Note in this case and the  
28 other mortgage loans identified in the PSA, were never actually transferred and delivered by

1 the Mortgage Originator to the Sponsor or to the Depositor nor from the Depositor to the  
2 Trustee for the Securitized Trust. Plaintiff further alleges, on information and belief, that the  
3 PSA herein provides that the Mortgage Files of the Mortgages were to be delivered to WAMU  
4 2006-AR4 Trust, which Mortgage Files include the original Deeds of Trust, herein.

5  
6 49. Based upon the foregoing, Plaintiff is further informed and believe, and thereon allege,  
7 that the following deficiencies exist, in the “True Sale” and securitization process as to this  
8 Deed of Trust which renders invalid any security interest in the Plaintiff’s mortgage, including,  
9 but not limited to:

- 10 a. The splitting or separation of title, ownership and interest in Plaintiff’s Note and  
11 Deed of Trust of which the original lender is the holder, owner and beneficiary  
12 of Plaintiff’s Deed of Trust;
- 13 b. When the loan was sold to each intervening entity, there were no Assignments  
14 of the Deed of Trust to or from any intervening entity at the time of the sale.  
15 Therefore, “True Sales” could not and did not occur;
- 16 c. The failure to assign and transfer the beneficial interest in Plaintiff’s Deed of  
17 Trust to Deutsche Bank , in accordance with the PSA of the Defendants, as  
18 Securitization Participants;
- 19 d. The failure to endorse, assign and transfer Plaintiff’s Note and/or mortgage to  
20 Defendant Deutsche Bank, as Trustee for WAMU 2006-AR4 Trust, in  
21 accordance with the PSA;
- 22 e. No Assignments of Beneficiary or Indorsements of the Note to each of the  
23 intervening entities in the transaction ever occurred under NEW YORK law,  
24 which is conclusive proof that no true sales occurred as required under the PSA  
25 filed with the SEC; and
- 26 f. Defendants, and each of them, violated the pertinent terms of the PSA.

27 50. Plaintiff, therefore, alleges, upon information and belief, that none of the parties to  
28 neither the securitization transaction, nor any of the Defendants in this case, hold a perfected  
and secured claim in the Property; and that all Defendants are estopped and precluded from  
asserting an unsecured claim against Plaintiff’s estate

1           51. The terms of the finance transaction with Washington Mutual are not clear or  
2 conspicuous, nor consistent, and are illegal which violates several statutes and is in essence  
3 creates a fraudulent and unenforceable loan. Further, this loan was underwritten without proper  
4 due diligence by Washington Mutual as evidenced by their failure to verify borrower's income  
5 utilizing signed IRS Income Tax Disclosure Form 4506T which would have provided past  
6 borrower tax returns. Washington Mutual also used a "GDW Cost of Savings" as the Index for  
7 the basis of this loan. Because the Lender controls this Index and it is directly based upon the  
8 average rate of interest Washington Mutual parent company, it was not a valid index for the  
9 basis of the loan.  
10

11  
12           52. In addition, and unbeknownst to Plaintiff, Washington Mutual illegally, deceptively  
13 and/or otherwise unjustly, qualified Plaintiff for a loan which Washington Mutual knew or  
14 should have known that Plaintiff could not qualify for or afford by, for example, the  
15 underwriter has approved this loan based upon credit scores and the borrower's Stated Income  
16 only. Had Washington Mutual used a more accurate and appropriate factor, such as Tax Forms  
17 and a more determinative level of scrutiny of determining comply with the requirement to  
18 provide Plaintiff with a Mortgage Loan Origination Agreement the debt to income ratio,  
19 Plaintiff would not have qualified for the loan in the first place. Consequently, Washington  
20 Mutual sold Plaintiff a loan product that it knew or should have known would never be able to be  
21 fully paid back by Plaintiff. Washington Mutual ignored long-standing economic principals of  
22 underwriting and instead, knowingly, liberally, greedily and without any regard for  
23 Plaintiff's rights sold Plaintiff a deceptive loan product.  
24  
25  
26  
27  
28

1 53. There was no determination of the ability of the borrower to repay the loan, with  
2 complete disregard for the Guidance Letters issued by Federal Agencies and even Federal and  
3 State Law.

4 54. Additionally, Defendants, and each of them, neither explained the workings of the  
5 entire mortgage loan transaction, how the rates, finance charges, costs and fees were computed,  
6 nor the inherent volatility of the loan product(s) provided by Defendants.  
7

8 55. The purpose of entering into the above-described mortgage loan transactions was for  
9 Plaintiff to eventually own the Property. That purpose was knowingly and intentionally  
10 thwarted and indeed made impossible by Defendants' combined actions as alleged herein.  
11

12 **V. FIRST CAUSE OF ACTION.**  
13 **LACK OF STANDING**

14 **A. No Defendant has Standing to Foreclose**

15 56. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
16 fully set forth herein.

17 57. An actual controversy has arisen and now exists between Plaintiff and Defendants  
18 specified hereinabove, regarding their respective rights and duties, in that Plaintiff contends  
19 that Defendants, and each of them, do not have the right to foreclose on the Property because  
20 Defendants, and each of them, have failed to perfect any security interest in the Property, or  
21 cannot prove to the court they have a valid interest. Thus, the purported power of sale by the  
22 above specified Defendants, and each of them, no longer applies.  
23

24 58. Plaintiff is informed and believes and there upon allege that the only individual who  
25 has standing to foreclose is the holder of the note because they have a beneficial interest. The  
26 only individuals who are the holder of the note are the certificate holders of the securitized  
27  
28

1 trust because they are the end users and pay taxes on their interest gains; furthermore, all of the  
2 banks or other entities holding the note in the middle of the chain of transfers were paid in full.

3  
4 59. Plaintiff further contends that the above specified Defendants, and each of them, do not  
5 have the right to foreclose on the Property because said Defendants, and each of them, did not  
6 properly comply with the terms of Defendants' own securitization requirements and falsely or  
7 fraudulently prepared documents required for Defendants, and each of them, to foreclose as a  
8 calculated and fraudulent business practice.

9  
10 60. Plaintiff requests that this Court find that the purported power of sale contained in the  
11 Note and Deed of Trust has no force and effect at this time, because Defendants' actions in the  
12 processing, handling and attempted foreclosure of this loan involved numerous fraudulent,  
13 false, deceptive and misleading practices, including, but not limited to, violations of State laws  
14 designed to protect borrowers, which has directly caused Plaintiff to be at an equitable  
15 disadvantage to Defendants, and each of them. Plaintiff further requests that title to the  
16 Property remain in its name, with said Deed of Trust remaining in beneficiaries' name, during  
17 the pendency of this litigation, and deem that any attempted sale of the Property is "unlawful  
18 and void".

19  
20 **B. Defendant MERS Cannot be a Real Party in Interest in a Securitized Mortgage**

21  
22 61. Since the creation of Plaintiff's Note herein and Deed of Trust, Defendant MERS was  
23 named the "beneficiary" of the Deed of Trust.

24  
25 62. Plaintiff is informed and believes, and thereon alleges, that Defendant MERS lacks the  
26 authority under its corporate charter to foreclose a mortgage, or to own or transfer an interest in a  
27 securitized mortgage because MERS charter limits MERS' powers and duties to functioning as  
28 an electronic registration system of certain types of securities.



1           63. Plaintiff is informed and believes, and thereon alleges, that in order to conduct a  
2 foreclosure action, a person or entity must have standing.

3           64. Plaintiff is informed and believes, and thereon alleges, that pursuant to New York law,  
4 to perfect the transfer of mortgage paper as collateral, the owner should physically deliver the  
5 note to the transferee. Without physical transfer, the sale of the note is invalid as a fraudulent  
6 conveyance or as unperfected.  
7

8           65. The Note in this action identifies the entity to whom it was payable, the original lender.  
9 Therefore, the Note herein cannot be transferred unless it is endorsed; the attachments to the  
10 notice of default do not establish that indorsements were made, nor are there any other notices  
11 which establish that the original lender endorsed and sold the note to another party.  
12

13           66. Furthermore, insofar as the parties to the securitization of Plaintiff's Note and Deed of  
14 Trust base their claim that the Note was transferred or assigned to Defendant Deutsche Bank,  
15 the Trustee of the Securitized Mortgage herein, by the original lender, it is well established  
16 state law that the assignment of a Deed of Trust does not automatically assign the underlying  
17 promissory note and right to be paid and the security interest is incident of the debt.  
18

19           67. Pursuant to state law, to perfect the transfer of mortgage papers as collateral for a debt,  
20 the owner should physically deliver the note to the transferee. Without physical transfer, the  
21 sale of the note is invalid as a fraudulent conveyance, or as unperfected. The Note herein  
22 specifically identifies the party to whom it was payable to and the Note, therefore, cannot be  
23 transferred unless it is endorsed.  
24

25           68. Defendants, and each of them, cannot produce any evidence that the Promissory Note  
26 has been transferred; therefore, Defendant MERS could only transfer whatever interest it had  
27 in the Deed of Trust herein. The Promissory Note and Deed of Trust are inseparable: an  
28

1 assignment of the Note carries the mortgage (ie, Deed of Trust) with it, while an assignment of  
2 the Deed of Trust alone is a nullity.<sup>2</sup> Therefore, if one party receives the Note and another  
3 party receives the Deed of Trust (as in this case), the holder of the Note prevails regardless of  
4 the order in which the interests were transferred.

5  
6 69. Defendants MERS has failed to submit documents authorizing MERS, as nominee for  
7 the original lender, to assign the subject mortgage to the foreclosing trustee. Hence, MERS  
8 lacked authority as mere nominee to assign Plaintiff's mortgage, making any assignment from  
9 MERS defective.

10  
11 70. In the instant action, MERS, as the nominee not only lacks authority to assign the  
12 mortgage, but cannot demonstrate the Trustee's knowledge or assent to the assignment by  
13 MERS to the foreclosing trustee.

14  
15 71. Any attempt to transfer the beneficial interest of a trust deed without actual ownership of  
16 the underlying note, is void under law. Therefore, Defendant, MERS, cannot establish that it is  
17 entitled to assert a claim in this case. For this reason, as well as the other reasons set forth herein  
18 below, MERS cannot transfer an interest in real property, and cannot recover anything from  
19 Plaintiff.

20  
21 72. Defendants, and each of them, through the actions alleged above, have or claim the  
22 right to illegally commence foreclosure under the Note on the Property via a foreclosure action  
23 supported by false or fraudulent documents. Said unlawful foreclosure action has caused and  
24 continues to cause Plaintiff's great and irreparable injury in that real property is unique.

25  
26  
27  
28 

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<sup>2</sup> *Kelley v. Upshaw*, 39 Cal. 2d 179, 192, 246 P.2d 23 (1952); *Hyde v. Mangan*, 88 Cal. 319, 327, 26 P.  
180 (1891); *Polhemus v. Trainer*, 30 Cal. 685, 688, 1866 WL 831 (1866). See *Johnson v. Razey*, 181 Cal.  
342, 344, 184 P. 657 (1919).

1 73. The wrongful conduct of the above specified Defendants, and each of them, unless  
2 restrained and enjoined by an Order of the Court, will continue to cause great and irreparable  
3 harm to Plaintiff. Plaintiff will not have the beneficial use and enjoyment of its Home and will  
4 lose the Property.  
5

6 74. Plaintiff has no other plain, speedy or adequate remedy and the injunctive relief prayed  
7 for below is necessary and appropriate at this time to prevent irreparable loss to Plaintiff.  
8 Plaintiff has suffered and will continue to suffer in the future unless Defendants' wrongful  
9 conduct is restrained and enjoined because real property is inherently unique and it will be  
10 impossible for Plaintiff to determine the precise amount of damage it will suffer.  
11

12 **VI. SECOND CAUSE OF ACTION.**  
13 **FRAUD IN THE CONCEALMENT**

14 75. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
15 fully set forth herein.

16 76. Defendants concealed the fact that the Loans were securitized as well as the terms of  
17 the Securitization Agreements, including, inter alia: (1) Financial Incentives paid; (2) existence  
18 of Credit Enhancement Agreements, and (3) existence of Acquisition Provisions. By  
19 concealing the securitization, Defendant concealed the fact that Borrower's loan changed in  
20 character inasmuch as no single party would hold the Note but rather the Notes would be  
21 included in a pool with other notes, split into tranches, and multiple investors would effectively  
22 buy shares of the income stream from the loans. Changing the character of the loan in this way  
23 had a materially negative effect on Plaintiff that was known by Defendant but not disclosed.  
24  
25

26 77. Defendant knew or should have known that had the truth been disclosed, Plaintiff  
27 would not have entered into the Loans.  
28

1 78. Defendant intended to induce Plaintiff based on these misrepresentations and improper  
2 disclosures.

3 79. Plaintiff's reasonable reliance upon the misrepresentations was detrimental. But for  
4 failure to disclose the true and material terms of the transaction, Plaintiff could have been  
5 alerted to issues of concern. Plaintiff would have known of Defendants true intentions and  
6 profits from the proposed risky loan. Plaintiff would have known that the actions of Defendant  
7 would have an adverse effect on the value of Plaintiff's home.  
8

9 80. Defendants' failure to disclose the material terms of the transaction induced Plaintiff to  
10 enter into the loans and accept the Services as alleged herein.  
11

12 81. Defendants were aware of the misrepresentations and profited from them.

13 82. As a direct and proximate result of the misrepresentations and concealment Plaintiff  
14 was damaged in an amount to be proven at trial, including but not limited to costs of Loan,  
15 damage to Plaintiff's financial security, emotional distress, and Plaintiff has incurred costs and  
16 attorney's fees.  
17

18 83. Defendants are guilty of malice, fraud and/or oppression. Defendants' actions were  
19 malicious and done willfully in conscious disregard of the rights and safety of Plaintiff in that  
20 the actions were calculated to injure Plaintiff. As such Plaintiff is entitled to recover, in  
21 addition to actual damages, punitive damages to punish Defendants and to deter them from  
22 engaging in future misconduct.  
23

24 **VII. THIRD CAUSE OF ACTION.**  
25 **FRAUD IN THE INDUCEMENT**

26 84. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
27 fully set forth herein.  
28

1 85. Defendants, intentionally misrepresented to Plaintiff those Defendants were entitled to  
2 exercise the power of sale provision contained in the Deed of Trust. In fact, Defendants were  
3 not entitled to do so and have no legal, equitable, or actual beneficial interest whatsoever in the  
4 Property.  
5

6 86. Defendants misrepresented that they are the “holder and owner” of the Note and the  
7 beneficiary of the Deed of Trust. However, this was not true and was a misrepresentation of  
8 material fact. Documents state that the original lender allegedly sold the mortgage loan to  
9 WAMU 2006-AR4 Trust. Defendants were attempting to collect on a debt to which they have  
10 no legal, equitable, or pecuniary interest in. This type of conduct is outrageous. Defendants are  
11 fraudulently foreclosing on the Property which they have no monetary or pecuniary interest.  
12 This type of conduct is outrageous.  
13

14 87. Defendant's failure to disclose the material terms of the transaction induced Plaintiff to  
15 enter into the loans and accept the Services as alleged herein.  
16

17 88. The material misrepresentations were made by Defendants with the intent to cause  
18 Plaintiff to reasonably rely on the misrepresentation in order to induce the Plaintiff to rely on  
19 the misrepresentations and foreclosure on the Property. This material misrepresentation was  
20 made with the purpose of initiating the securitization process as illustrated above, in order to  
21 profit from the sale of the Property by selling the note to sponsors who then pool the note and  
22 sell it to investors on Wall Street and other New York investment banks.  
23

24 89. Defendants were aware of the misrepresentations and profited from them.

25 90. As a direct and proximate result of the misrepresentations and concealment, Plaintiff  
26 was damaged in an amount to be proven at trial, including but not limited to costs of Loan,  
27  
28

1 damage to Plaintiff's financial security, emotional distress, and Plaintiff has incurred costs and  
2 attorney's fees.

3 91. Defendants are guilty of malice, fraud and/or oppression. Defendants' actions were  
4 malicious and done willfully in conscious disregard of the rights and safety of Plaintiff in that  
5 the actions were calculated to injure Plaintiff. As such Plaintiff is entitled to recover, in  
6 addition to actual damages, punitive damages to punish Defendants and to deter them from  
7 engaging in future misconduct.  
8

9  
10 **VIII. FOURTH CAUSE OF ACTION.**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

11 92. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though  
12 fully set forth herein.

13 93. The actions of Defendants, as set forth herein, have resulted in the Plaintiff being  
14 threatened with the loss of the Property.  
15

16 94. This outcome has been created without any right or privilege on the part of the  
17 Defendants, and, as such, their actions constitute outrageous or reckless conduct on the part of  
18 Defendants.  
19

20 95. Defendants intentionally, knowingly and recklessly misrepresented to the Plaintiff  
21 those Defendants were entitled to exercise the power of sale provision contained in the Deed of  
22 Trust. In fact, Defendants were not entitled to do so and have no legal, equitable, or actual  
23 beneficial interest whatsoever in the Property.  
24

25 96. Defendants' conduct - fraudulently attempting to foreclose or claiming the right to  
26 foreclose on a property in which they have no right, title, or interest - is so outrageous and  
27 extreme that it exceeds all bounds which is usually tolerated in a civilized community.  
28

1           97. Such conduct was undertaken with the specific intent of inflicting emotional distress on  
2 the Plaintiff, such that Plaintiff would be so emotionally distressed and debilitated that  
3 he/she would be unable to exercise legal rights in the Property; the right to title of the Property,  
4 the right to cure the alleged default, right to verify the alleged debt that Defendants are  
5 attempting to collect, and right to clear title to the Property such that said title will regain its  
6 marketability and value.  
7

8           98. At the time Defendants began their fraudulent foreclosure proceedings, Defendants  
9 were not acting in good faith while attempting to collect on the subject debt. Defendants, and  
10 each of them, committed the acts set forth above with complete; utter and reckless disregard of  
11 the probability of causing Homeowners to suffer severe emotional distress.  
12

13           99. As an actual and proximate cause of Defendants' attempt to fraudulently foreclose on  
14 Plaintiff's home or claim of the right to foreclose on Plaintiff's home, the Plaintiff has suffered  
15 severe emotional distress, including but not limited to lack of sleep, anxiety, and depression.  
16

17           100. Plaintiff did not default in the manner stated in the Notice of Default, yet  
18 because Defendants' outrageous conduct, Plaintiff have been living under the constant  
19 emotional nightmare of losing the Property.  
20

21           101. As a proximate cause of Defendants' conduct, Plaintiff has experienced many  
22 sleepless nights, severe depression, lack of appetite, and loss of productivity at its place of  
23 employment.  
24

25           102. The conduct of Defendants, and each of them, as herein described, was so vile,  
26 base, contemptible, miserable, wretched, and loathsome that it would be looked down upon and  
27 despised by ordinary people. Plaintiff is therefore entitled to punitive damages in an amount  
28 appropriate to punish Defendants and to deter other from engaging in similar conduct.

**IX. FIFTH CAUSE OF ACTION.**  
**SLANDER OF TITLE**

1  
2  
3       103.       Plaintiff re-alleges and incorporates by reference all preceding paragraphs as  
4 though fully set forth herein.

5       104.       Plaintiff incorporates here each and every allegation set forth above.  
6 Defendants, and each of them, disparaged Plaintiff's exclusive valid title by and through the  
7 preparing, posting, publishing, and recording of the documents previously described herein,  
8 including, but not limited to, the Notice of Default, Notice of Trustee's Sale, and Trustee's  
9 Deed.  
10

11       105.       Said Defendants knew or should have known that such documents were  
12 improper in that at the time of the execution and delivery of said documents, Defendants had no  
13 right, title, or interest in the Property. These documents were naturally and commonly to be  
14 interpreted as denying, disparaging, and casting doubt upon Plaintiff's legal title to the  
15 Property. By posting, publishing, and recording said documents, Defendants' disparagement of  
16 Plaintiff's legal title was made to the world at large.  
17

18       106.       As a direct and proximate result of Defendants' conduct in publishing these  
19 documents, Plaintiff's title to the Property has been disparaged and slandered, and there is a  
20 cloud on Plaintiff's title, and Plaintiff has suffered, and continues to suffer, damages in an  
21 amount to be proved at trial.  
22

23       107.       As a further proximate result of Defendants' conduct, Plaintiff has incurred  
24 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and  
25 Plaintiff will incur additional charges for such purpose until the cloud on Plaintiff's title to the  
26 property has been removed. The amounts of future expenses and damages are not ascertainable  
27 at this time.  
28



1        108.        As a further direct and proximate result of Defendants' conduct, Plaintiff has  
2 suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress,  
3 resulting in the loss of sleep and other injuries to his and her health and well-being, and  
4 continues to suffer such injuries on an ongoing basis. The amount of such damages shall be  
5 proven at trial.

7        109.        At the time that the false and disparaging documents were created and published  
8 by the Defendants, Defendants knew the documents were false and created and published them  
9 with the malicious intent to injure Plaintiff and deprive them of their exclusive right, title, and  
10 interest in the Property, and to obtain the Property for their own use by unlawful means.

12       110.        The conduct of the Defendants in publishing the documents described above  
13 was fraudulent, oppressive, and malicious. Therefore, Plaintiff is entitled to an award of  
14 punitive damages in an amount sufficient to punish Defendants for their malicious conduct and  
15 deter such misconduct in the future.

17        **X. SIXTH CAUSE OF ACTION.**  
18        **QUIET TITLE**

19       111.        Plaintiff's title to the above-described property is derived as follows: On or about  
20 March 1, 2006 (hereinafter referred to as "Closing Date") Plaintiff entered into a consumer  
21 credit transaction with Washington Mutual by obtaining a \$520,000 mortgage loan secured by  
22 Plaintiff's principal residence, (Subject Property). This note was secured by a First Trust Deed  
23 on the Property in favor of Washington Mutual.

24       112.        All Defendants named herein claim an interest and estate in the property adverse to  
25 plaintiff in that defendant asserts he is the owner of the note secured by the deed of trust to the  
26 property the subject of this suit.

27       113.        All Defendants named herein claims an interest and estate in the property  
28 adverse to plaintiff in that defendant asserts he is the owner of deed of trust securing the note to  
the property the subject of this suit.

1           114.       The claim of all defendant are without any right whatsoever, and defendants  
2 have no right, estate, title, lien or interest in or to the property, or any part of the property.  
3

4           115.       The claim of all defendant herein named, and each of them, claim some estate,  
5 right, title, lien or interest in or to the property adverse to plaintiff's title, and these claims  
6 constitute a cloud on plaintiff's title to the property.  
7

8           116.       Plaintiffs, therefore, allege, upon information and belief, that none of the parties to  
9 neither the securitization transaction, nor any of the Defendants in this case, hold a perfected and  
10 secured claim in the Property; and that all Defendants are estopped and precluded from  
11 asserting an unsecured claim against Plaintiff's estate.  
12

13           117.       Plaintiff requests the decree permanently enjoin defendants, and each of them,  
14 and all persons claiming under them, from asserting any adverse claim to plaintiff's title to the  
15 property; and

16           118.       Plaintiff request the court award plaintiff costs of this action, and such other  
17 relief as the court may deem proper.  
18

19   **XI. SEVENTH CAUSE OF ACTION.**  
20   **DECLARATORY RELIEF**

21           119.       Plaintiff re-alleges and incorporates by reference all preceding paragraphs as  
22 though fully set forth herein.

23           120.       An actual controversy has arisen and now exists between Plaintiff and  
24 Defendants concerning their respective rights and duties regarding the Note and Trust Deed.

25           121.       Plaintiff contends that pursuant to the Loans, Defendants do not have authority to  
26 foreclose upon and sell the Property.  
27  
28

1           122.       Plaintiff is informed and believes and upon that basis alleges that Defendants  
2 dispute Plaintiff's contention and instead contend they may properly foreclose upon the  
3 Property.

4           123.       Plaintiff therefore request a judicial determination of the rights, obligations and  
5 interest of the parties with regard to the Property, and such determination is necessary and  
6 appropriate at this time under the circumstances so that all parties may ascertain and know their  
7 rights, obligations and interests with regard to the Property.  
8

9           124.       Plaintiff requests a determination of the validity of the Trust Deeds as of the  
10 date the Notes were assigned without a concurrent assignation of the underlying Trust Deeds.  
11

12           125.       Plaintiff requests a determination of the validity of the NOD (Notice Of  
13 Default).

14           126.       Plaintiff requests a determination of whether any Defendant has authority to  
15 foreclose on the Property.  
16

17           127.       Plaintiff requests all adverse claims to the real property be must determined by a  
18 decree of this court.

19           128.       Plaintiff requests the decree declare and adjudge that plaintiff is entitled to the  
20 exclusive possession of the property.  
21

22           129.       Plaintiff requests the decree declare and adjudge that plaintiff owns in fee  
23 simple, and is entitled to the quiet and peaceful possession of, the above-described real  
24 property.

25           130.       Plaintiff requests the decree declare and adjudge that defendants, and each of  
26 them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to  
27 the real property or any part of the property.  
28

**XII. EIGHTH CAUSE OF ACTION.**  
**VIOLATION OF TILA, 15 U.S.C. § 1601, ET. SEQ.**

1  
2  
3 131. Plaintiff re-allege and incorporate by reference all preceding paragraphs as  
4 though fully set forth herein.

5 132. Defendants violated TILA by failing to provide Plaintiff with accurate material  
6 disclosures required under TILA and not taking into account the intent of the State Legislature in  
7 approving this statute which was to fully inform home buyers of the pros and cons of  
8 adjustable rate mortgages in a language (both written and spoken) that they can understand and  
9 comprehend; and advise them to compare similar loan products with other lenders. It also  
10 requires the lender to offer other loan products that might be more advantageous for the  
11 borrower under the same qualifying matrix.  
12

13 133. Any and all statute[s] of limitations relating to disclosures and notices required  
14 pursuant to 15 U.S.C. § 1601, et.seq. were tolled due to Defendants' failure to effectively  
15 provide the required disclosures and notices.  
16

17 134. An actual controversy now exists between Plaintiff, who contend she has the  
18 right to rescind the loan on the Subject Property alleged in this Complaint, and based on  
19 information and belief, Defendants deny that right.  
20

21 135. As a direct and proximate result of Defendants' violations Plaintiff have  
22 incurred and continue to incur damages in an amount according to proof but not yet ascertained  
23 including without limitation, statutory damages and all amounts paid or to be paid in  
24 connection with the transaction.  
25

26 136. Defendants were unjustly enriched at the expense of Plaintiff who is therefore  
27 entitled to equitable restitution and disgorgement of profits obtained by Defendants.  
28

1 137. Defendants' actions in this matter have been willful, knowing, malicious,  
2 fraudulent and oppressive, entitling Plaintiff to punitive damages in an amount appropriate to  
3 punish Defendants and to deter others from engaging in the same behavior.

4  
5 **XIII. NINTH CAUSE OF ACTION.**  
6 **VIOLATION OF RESPA, 1 U.S.C. § 2601 ET. SEQ.**

7 138. Plaintiff re-alleges and incorporate by reference all preceding paragraphs as  
8 though fully set forth herein.

9 139. The loan to Plaintiff was a federally regulated mortgage loan as defined in  
10 RESPA.

11 140. Housing and Urban Development's (HUD's) 1999 Statement of Policy  
12 established a two-part test for determining the legality of lender payments to mortgage brokers  
13 for table funded transactions and intermediary transactions under RESPA:  
14

15 a) Whether goods or facilities were actually furnished or services were actually performed  
16 for the compensation paid and;

17 b) Whether the payments are reasonably related to the value of the goods or facilities that  
18 were actually furnished or services that were actually performed.

19 141. In applying this test, HUD believes that total compensation should be scrutinized to  
20 assure that it is reasonably related to the goods, facilities, or services furnished or performed to  
21 determine whether it is legal under RESPA. The interest and income that Defendants have  
22 gained is disproportionate to the situation Plaintiff find themselves in due directly to  
23 Defendant's failure to disclose that they will gain a financial benefit while Plaintiff suffer  
24 financially as a result of the loan product sold to Plaintiff.

25  
26 142. No separate fee agreements, regarding the use of Washington Mutual Cost of  
27 Savings" as the Index for the basis of this loan, Disclosures of additional income due to interest  
28 rate increases or the proper form and procedure in relation to the Borrower's Rights to Cancel

1 were provided.

2 143. Defendants violated RESPA because the payments between the Defendants were  
3 misleading and designed to create a windfall. These actions were deceptive, fraudulent and self  
4 serving.

5  
6 144. As a proximate result of Defendants' actions, Plaintiff has been damages in an  
7 amount not yet ascertained, to be proven at trial.

8 **XIV. TENTH CAUSE OF ACTION.**  
9 **RECISSION**

10 145. Plaintiff re-alleges and incorporate by reference all preceding paragraphs as though  
11 fully set forth herein.

12 146. Plaintiff is entitled to rescind the loan and all accompanying loan documents for all  
13 of the foregoing reasons: 1) TILA Violations; 2) Failure to provide a Mortgage Loan  
14 Origination Agreement; 3) Fraudulent Concealment; 4) Fraudulent Inducement; ; 5) failure to  
15 abide by the PSA; 6) making illegal or fraudulent transfers of the note and deed of trust; and 5)  
16 Public Policy Grounds, each of which provides independent grounds for relief.

17  
18 147. The Truth In Lending Act, 15 U.S.C §1601, et.seq. extends Plaintiff's right to  
19 rescind a loan to three years from the date of closing if the borrower received false or  
20 incomplete disclosures of either the loans terms or Borrower's right to rescind. Here,  
21 Defendants have failed to properly disclose the details of the loan. Specifically, the initial  
22 disclosures do not initial TILA disclosures, and lack of diligence and collusion on the part of the  
23 broker, lender and underwriter to place Plaintiff in a loan she could not afford and would  
24 ultimately benefit Defendants following the negative amortization that accrued.

25  
26  
27 148. The public interest would be prejudiced by permitting the alleged contract to stand;  
28 such action would regard an unscrupulous lender.

1 149. As a proximate result of Defendants' actions, Plaintiff have been damaged in an  
2 amount not yet ascertained, to be proven at trial.

3 WHEREFORE, Plaintiff prays for rescission of the stated loan in its entirety.

4 **PRAYER FOR RELIEF**

5  
6 WHEREFORE Plaintiff, will ask for the following for each Cause of Action to be  
7 awarded:

8 **FIRST CAUSE OF ACTION - STANDING**

- 9 1. For Compensatory Damages in an amount to be determined by proof at trial; 2.  
10 For Special Damages in an amount to be determined by proof at trial;  
11 3. For General Damages in an amount to be determined by proof at trial; 4.  
12 For Punitive Damages as allowed by law;  
13 5. For Restitution as allowed by law;  
14 6. For Attorney's Fees and Costs of this action;  
15 7. For Declaratory Relief, including but not limited to the following Decrees of this Court  
16 that:  
17 a. Plaintiff, Plaintiff is the prevailing party;  
18 b. The Trustees of the Trusts have no enforceable secured or unsecured claim  
19 against the Property;  
20 c. The Sponsor has no enforceable secured or unsecured claim against the  
21 Property;  
22 d. The Depositor has no enforceable secured or unsecured claim against the  
23 Property;  
24 e. The Mortgage Originator has no enforceable secured or unsecured claim against  
25 the Property;  
26 f. Determines all adverse claims to the real property in this proceeding;  
27 g. Plaintiff is entitled to the exclusive possession of the property;  
28 h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession  
of, the above-described real property.  
i. Defendants, and each of them, and all persons claiming under them, have no  
estate, right, title, lien, or interest in or to the real property or any part of the  
property.

**SECOND CAUSE OF ACTION - FRAUD IN THE CONCEALMENT**

1. For Compensatory Damages in an amount to be determined by proof at trial; 2.  
For Special Damages in an amount to be determined by proof at trial;  
3. For General Damages in an amount to be determined by proof at trial; 4.  
For Punitive Damages as allowed by law;  
5. For Restitution as allowed by law;

**THIRD CAUSE OF ACTION - FRAUD IN THE INDUCEMENT**

1. For Compensatory Damages in an amount to be determined by proof at trial; 2.  
For Special Damages in an amount to be determined by proof at trial;

3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;

**FOURTH CAUSE OF ACTION - I.I.E.D.**

1. For Compensatory Damages in an amount to be determined by proof at trial;
2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;

**FIFTH CAUSE OF ACTION - SLANDER OF TITLE**

1. For Compensatory Damages in an amount to be determined by proof at trial;
2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;
6. For Attorney's Fees and Costs of this action;
7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;
  - c. The Sponsor has no enforceable secured or unsecured claim against the Property;
  - d. The Depositor has no enforceable secured or unsecured claim against the Property;
  - e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;
  - f. Determines all adverse claims to the real property in this proceeding;
  - g. Plaintiff is entitled to the exclusive possession of the property;
  - h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
  - i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

**SIXTH CAUSE OF ACTION - QUIET TITLE**

1. For Compensatory Damages in an amount to be determined by proof at trial;
2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial;
4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;
6. For Attorney's Fees and Costs of this action;
7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;



- c. The Sponsor has no enforceable secured or unsecured claim against the Property;
- d. The Depositor has no enforceable secured or unsecured claim against the Property;
- e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;
- f. Determines all adverse claims to the real property in this proceeding;
- g. Plaintiff is entitled to the exclusive possession of the property;
- h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
- i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

**SEVENTH CAUSE OF ACTION - DECLARATORY RELIEF**

1. For Compensatory Damages in an amount to be determined by proof at trial; 2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial; 4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;
6. For Attorney's Fees and Costs of this action;
7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;
  - c. The Sponsor has no enforceable secured or unsecured claim against the Property;
  - d. The Depositor has no enforceable secured or unsecured claim against the Property;
  - e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;
  - f. Determines all adverse claims to the real property in this proceeding;
  - g. Plaintiff is entitled to the exclusive possession of the property;
  - h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
  - i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

**EIGHTH CAUSE OF ACTION - VIOLATION OF T.I.L.A.**

1. For Compensatory Damages in an amount to be determined by proof at trial; 2. For Special Damages in an amount to be determined by proof at trial;
3. For General Damages in an amount to be determined by proof at trial; 4. For Punitive Damages as allowed by law;
5. For Restitution as allowed by law;
6. For Attorney's Fees and Costs of this action;

- 1 7. For Declaratory Relief, including but not limited to the following Decrees of this Court  
2 that:
- 3 a. Plaintiff, Plaintiff is the prevailing party;
  - 4 b. The Trustees of the Trusts have no enforceable secured or unsecured claim  
5 against the Property;
  - 6 c. The Sponsor has no enforceable secured or unsecured claim against the  
7 Property;
  - 8 d. The Depositor has no enforceable secured or unsecured claim against the  
9 Property;
  - 10 e. The Mortgage Originator has no enforceable secured or unsecured claim against  
11 the Property;
  - 12 f. Determines all adverse claims to the real property in this proceeding;
  - 13 g. Plaintiff is entitled to the exclusive possession of the property;
  - 14 h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession  
15 of, the above-described real property.
  - 16 i. Defendants, and each of them, and all persons claiming under them, have no  
17 estate, right, title, lien, or interest in or to the real property or any part of the  
18 property.

19 **NINTH CAUSE OF ACTION - VIOLATION OF R.E.S.P.A.**

- 20 1. For Compensatory Damages in an amount to be determined by proof at trial;
  - 21 2. For Special Damages in an amount to be determined by proof at trial;
  - 22 3. For General Damages in an amount to be determined by proof at trial;
  - 23 4. For Punitive Damages as allowed by law;
  - 24 5. For Restitution as allowed by law;
  - 25 6. For Attorney's Fees and Costs of this action;
  - 26 7. For Declaratory Relief, including but not limited to the following Decrees of this Court  
27 that:
- 28 a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim  
against the Property;
  - c. The Sponsor has no enforceable secured or unsecured claim against the  
Property;
  - d. The Depositor has no enforceable secured or unsecured claim against the  
Property;
  - e. The Mortgage Originator has no enforceable secured or unsecured claim against  
the Property;
  - f. Determines all adverse claims to the real property in this proceeding;
  - g. Plaintiff is entitled to the exclusive possession of the property;
  - h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession  
of, the above-described real property.
  - i. Defendants, and each of them, and all persons claiming under them, have no  
estate, right, title, lien, or interest in or to the real property or any part of the  
property.

**TENTH CAUSE OF ACTION - RECISSION**

- 1. For Compensatory Damages in an amount to be determined by proof at trial;
- 2. For Special Damages in an amount to be determined by proof at trial;

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- 3. For General Damages in an amount to be determined by proof at trial;
- 4. For Punitive Damages as allowed by law;
- 5. For Restitution as allowed by law;
- 6. For Attorney’s Fees and Costs of this action;
- 7. For Declaratory Relief, including but not limited to the following Decrees of this Court that:
  - a. Plaintiff, Plaintiff is the prevailing party;
  - b. The Trustees of the Trusts have no enforceable secured or unsecured claim against the Property;
  - c. The Sponsor has no enforceable secured or unsecured claim against the Property;
  - d. The Depositor has no enforceable secured or unsecured claim against the Property;
  - e. The Mortgage Originator has no enforceable secured or unsecured claim against the Property;
  - f. Determines all adverse claims to the real property in this proceeding;
  - g. Plaintiff is entitled to the exclusive possession of the property;
  - h. Plaintiff owns in fee simple, and is entitled to the quiet and peaceful possession of, the above-described real property.
  - i. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.

Dated: \_\_\_\_\_ LAW OFFICES OF,  
  
\_\_\_\_\_  
Attorneys for Plaintiff