

**COPY
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JUN 27 2016

Scott G. Weber, Clerk. Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

DANIEL G. SZMANIA,

Plaintiff,

Vs.

E-LOAN, INC.,

AND

**BEAR STEARNS ARM TRUST,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-3,**

AND

BENJAMIN D. PETIPRIN,

AND

WELLS FARGO BANK, N.A.,

AND

JOHN G. STUMPF,

Defendants.

NO.

**COMPLIANT FOR
DECLARATORY JUDGMENT,
PERMANENT INJUNCTION,
FORFEITURE OF DEED,
SATISFACTION OF MORTGAGE,
AND OTHER EQUITABLE
MONETARY RELIEF AND
QUIET TITLE AND ACTIONS UNDER
CRIMINAL PROFITEERING ACT AND
ACTIONS UNDER THE CONSUMER
PROTECTION ACT**

DEMAND FOR JURY TRIAL

Plaintiff, Daniel G. Szmania, for its Complaint alleges:

1) The Plaintiff brings this action under:

A) RCW 4.12.010 Actions to be commenced where subject is situated.

B) RCW 4.16.040 Actions limited to six years.

COMPLIANT

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- 1 C) RCW 4.28.320 Lis pendens in actions affecting title to real estate.
- 2 D) RCW 7.24.010 Declaratory Relief: Authority of courts to render.
- 3 E) RCW 7.24.020 Rights and status under written instruments, statutes, ordinances.
- 4 F) RCW 7.24.080 Further relief.
- 5 G) RCW 7.28.050 Limitation of actions for recovery of real property—Adverse
- 6 possession under title deducible of record.
- 7 H) RCW 7.28.070 Adverse possession under claim and color of title—Payment of
- 8 taxes.
- 9 I) RCW 7.28.230 Mortgagee cannot maintain action for possession.
- 10 J) RCW 7.28.300 Quieting title against outlawed mortgage or deed of trust.
- 11 K) RCW 7.40.010 Injunctive Relief: Who may grant restraining orders and
- 12 injunctions.
- 13 L) RCW 7.40.040 Injunction: Time of granting.
- 14 M) RCW 9A.82 CRIMINAL PROFITEERING ACT.
- 15 N) RCW 9A.82.010 Definitions.
- 16 O) RCW 9A.56.030 Theft in the first degree.
- 17 P) RCW 9A.82.050 Trafficking in stolen property in the first degree.
- 18 Q) RCW 9A.82.060 Leading organized crime.
- 19 R) RCW 9A.83.020 Money laundering.
- 20 S) RCW 9A.56.340 Theft with the intent to resell.
- 21 T) RCW 19.144.080 [JJ, KK, LL] Mortgage fraud, as defined in - Unlawful
- 22 actions—Fraud, misrepresentation, deceptive practices.
- 23 U) RCW 9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise
- 24 or realty—Conspiracy or attempt.
- 25 V) RCW 9A.82.090 Orders restraining criminal profiteering—When issued.

- 1 W) RCW 9A.82.100 Remedies and procedures. (Criminal Profiteering Act).
- 2 X) RCW 19.36.010 Contracts, etc., void unless in writing.
- 3 Y) RCW 19.86 UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION
- 4 ACT.
- 5 Z) RCW 19.86.010 Definitions.
- 6 AA) RCW 19.86.020 Unfair competition, practices, declared unlawful.
- 7 BB) RCW 19.86.030 Contracts, combinations, conspiracies in restraint of trade
- 8 declared unlawful.
- 9 CC) RCW 19.86.080 Attorney general may restrain prohibited acts—Costs—
- 10 Restoration of property.
- 11 DD) RCW 19.86.090 Civil action for damages—Treble damages authorized—Action
- 12 by governmental entities.
- 13 EE) RCW 19.86.093 Civil action—Unfair or deceptive act or practice—Claim
- 14 elements.
- 15 FF) RCW 19.86.140 Civil penalties.
- 16 GG) RCW 19.86.160 Personal service of process outside state.
- 17 HH) RCW 19.86.910 Short title. - "Consumer Protection Act."
- 18 II) RCW 19.86.920 Purpose—Interpretation—Liberal construction-
- 19 JJ) RCW 19.144.090 (Mortgage fraud [T]) Criminal penalties—Dates of limitation—
- 20 Venue—Civil penalties and damages—Correction of public record.
- 21 KK) RCW 19.144.100 (Mortgage fraud [T]) Unlawful actions—Proceeds and interest
- 22 in real property—Criminal penalties.
- 23 LL) RCW 19.144.110 (Mortgage fraud [T]) Civil and administrative penalties.
- 24 MM) Chapter 21.20 RCW SECURITIES ACT OF WASHINGTON
- 25 NN) RCW 21.20.005 Definitions.
- OO) RCW 21.20.010 Unlawful offers, sales, purchases.

1 PP) RCW 21.20.140 Unlawful to offer or sell unregistered securities—Exceptions.
2 QQ) RCW 21.20.310 Securities exempt from registration.
3 RR) RCW 21.20.320 Exempt transactions.
4 SS) RCW 21.20.350 False or misleading statements in filed documents.
5 TT) Title 23B RCW WASHINGTON BUSINESS CORPORATION ACT.
6 UU) RCW 23B.04.010 Corporate name. (*Effective until January 1, 2016.*)
7 VV) RCW 23.95.305 Name requirements for certain types of entities. (*Effective*
8 *January 1, 2016.*)
9 WW) RCW 23B.14.340 Survival of remedy after dissolution.
10 XX) RCW 9.24.020 Fraudulent issue of stock, scrip, etc.
11 YY) RCW 9.24.030 Insolvent bank receiving deposit.
12 ZZ) RCW 30A.44.110 Preferences prohibited—Penalty.
13 AAA) RCW 9A.08.030 Corporate and personal liability.
14 BBB) RCW 9A.28.040 Criminal conspiracy.
15 CCC) RCW 9.38.020 False representation concerning title.
16 DDD) RCW 30A.04.010 Definitions. (Washington commercial bank act).
17 EEE) RCW 30A.04.017 Director's subpoenas—Unauthorized banking activity.
18 FFF) RCW 30A.04.050 Duty to comply—Violations—Penalty.
19 GGG) RCW 30A.04.280 Compliance enjoined—Banking, trust business, branches—
20 Director's authority—Rules.
21 HHH) RCW 30A.04.450 Notice of charges—Reasons for issuance—Contents—
22 Hearing—Cease and desist order.
23 III) RCW 30A.04.455 Temporary cease and desist order—Reasons for issuance.
24 JJJ) RCW 30A.04.460 Temporary cease and desist order—Injunction to set aside,
25 limit, or suspend temporary order.

1 KKK) RCW 30A.08.150 Banks engaged in trust business.
2 LLL) RCW 30A.08.170 Securities may be held in name of nominee.
3 MMM) RCW 30B.38.030 Requirement of notice. (An out-of-state trust institution).
4 NNN) RCW 30B.38.040 Conditions for approval.
5 OOO) RCW 30B.72.010 Preexisting approved out-of-state trust institutions.
6 PPP) RCW 30B.38.060 Examinations of out-of-state trust institutions —Periodic
7 reports—Cooperative agreements—Assessment of fees.
8 QQQ) RCW 30B.38.070 Enforcement.
9 RRR) RCW 40.16.030 Offering false instrument for filing or record.
10 SSS) RCW 61.12.010 Encumbrances shall be by deed. *See RCW 64.04.010*.
11 TTT) RCW 61.12.040 Foreclosure—Venue.
12 UUU) RCW 61.16.010 Assignments, how made—Satisfaction by assignee.
13 VVV) RCW 61.16.020 Mortgages, how satisfied of record.
14 WWW) RCW 61.16.030 Failure to acknowledge satisfaction of mortgage—
15 Damages—Order.
16 XXX) RCW 61.24.005 Definitions.
17 YYY) RCW 61.24.008 Borrower referred to mediation—When.
18 ZZZ) RCW 61.24.010 Trustee, qualifications—Successor trustee.
19 AAAA) RCW 61.24.020 Deeds subject to all mortgage laws—Foreclosure—
20 Recording and indexing—Trustee and beneficiary, separate entities, exception.
21 BBBB) RCW 61.24.030 Requisites to trustee's sale.
22 CCCC) RCW 61.24.031 Notice of default under RCW 61.24.030(8)—Beneficiary's
23 duties—Borrower's options.
24 DDDD) RCW 61.24.040 Foreclosure and sale—Notice of sale.
25 EEEE) RCW 61.24.135 Consumer protection act—Unfair or deceptive acts or
practices.

FFFF) RCW 61.24.160 Housing counselors—Good faith duty to attempt resolution—Resolution described—Mediation—Liability for civil damages—Annual report.

GGGG) RCW 61.24.163 Foreclosure mediation program—Timelines—Procedures—Duties and responsibilities of mediator, borrower, and beneficiary—Fees—Annual report.

HHHH) RCW 61.24.174 Required payment for each property subject to notice of default—Owner-occupied residential real property—Exception—Deposit into foreclosure fairness account.

IIII) RCW 62A.1-201 General definitions.

JJJJ) RCW 62A.1-202 Notice; knowledge.

KKKK) RCW 62A.1-302 Variation by agreement.

LLLL) RCW 62A.1-304 Obligation of good faith.

MMMM) RCW 62A.1-305 Remedies to be liberally administered.

NNNN) RCW 62A.1-306 Waiver or renunciation of claim or right after breach.

OOOO) RCW 62A.1-308 Performance or acceptance under reservation of rights.

PPPP) RCW 62A.3-103 Definitions.

QQQQ) RCW 62A.3-117 Other agreements affecting instrument.

RRRR) RCW 64.04.007 Owner-occupied real property—Release of security interest—Outstanding debt—Notice to borrower—Definition.

SSSS) RCW 62A.3-311 Accord and satisfaction by use of instrument.

TTTT) RCW 62A.3-302 Holder in due course.

UUUU) RCW 62A.9A-203 Attachment and enforceability of security interest;

VVVV) RCW 62A.9A-309 Security interest perfected upon attachment.

WWWW) Title 62A RCW UNIFORM COMMERCIAL CODE

XXXX) Title 64 RCW REAL PROPERTY AND CONVEYANCES

YYYY) Title 65 RCW RECORDING, REGISTRATION, AND LEGAL
PUBLICATION

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COMPLIANT

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COMPLIANT

I JURISDICTION AND VENUE

2) This court has subject matter and territorial **Jurisdiction** pursuant to:

A) RCW 4.12.010 Actions to be commenced where subject is situated.

B) RCW 4.12.020 Actions to be tried in county where cause arose.

C) RCW 4.12.025 Action to be brought where defendant resides—Optional venue of actions upon unlawful issuance of check or draft—Residence of corporations—Optional venue of actions against corporations.

D) RCW 4.28.020 Jurisdiction acquired, when.

E) RCW 4.28.080 (9) Summons, how served.

F) RCW 61.12.040 Foreclosure—Venue.

G) DEED OF TRUST: Page 9, #16. **Governing Law**; *"This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located"*. See Ex C.

3) **Venue** is proper in this court per RCW 4.12.025 (3) (a) (c).

II GOVERNING DOCUMENTS

4) STATUTORY WARRANTY DEED, (DEED) Recording Number 3412096, dated 1/10/2002. See Ex A.

5) ADJUSTABLE RATE NOTE, (NOTE) dated 11/3/2006. See Ex B. (Plaintiff is the ONLY Party that can properly identify the Original NOTE & DOT! Why? Plaintiff signed both the NOTE & DOT with Blue ink against Lenders wishes!) ☺

6) DEED OF TRUST, (DOT) dated 11/6/2006, Recording Number 4246543. 11/13/2006. See Ex C. Parties: P. 1 (A) "Security Instrument" means this document, which is dated NOVEMBER 3, 2006, (**Wrong Date!**) together with all Riders to this document. (B) Borrower is Daniel G. Szmania, as his separate estate. (C) Lender is E-Loan, Inc. (D) "Trustee" is Chicago Title Company. Page 2 (R) **"....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 the Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrow irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of Clark SECTION: 13 TOWNSHIP: 3 NORTH RANGE: 2 EAST. APN # 194829-000. See Ex C. (Emphases added!)"**

1 This wording is very clear that performance of the NOTE flows to the LENDER
2 not an assignee, not a trustee, not a nominee! [http://fightthefraud.com/wp/wp-](http://fightthefraud.com/wp/wp-content/uploads/MERS-is-not-a-BENEFICIARY-FED-CASE-Robinson.pdf)
3 [content/uploads/MERS-is-not-a-BENEFICIARY-FED-CASE-Robinson.pdf](http://fightthefraud.com/wp/wp-content/uploads/MERS-is-not-a-BENEFICIARY-FED-CASE-Robinson.pdf) Page 7. No
4 where in the DOT does it say that the Lender or Trustee can move said documents to
5 another Trust or to another Trustee! Thus it is only the Trustee that has the right to the
6 power of sale once the Lender, E-Loan demands it. Chicago Title Company is that
7 Trustee, and they are NOT trying to foreclose!

8 9 **III PLAINTIFF**

10 **7) Plaintiff**, Daniel G. Szmania, an adult over the age of 18 and a resident of Clark County
11 Washington. Plaintiff has continually resided in and at his primary residence, since said
12 purchase on 1/10/02, evidenced by DEED #3412096 *See* Ex A., (and he has paid all taxes
13 as for the last seven years as required under RCW 7.28.070. *See* Ex I. This makes him a
14 recorded owner of the property per RCW 7.28.300). The subject matter property know
15 as: Clark County, WA Property Identification Number: 194829000. Abbreviated Legal
16 Description: #66 SEC 13 T3N R2EWM 5.01A .
17
18 Commonly known as: 17005 NE 164th Ave, Brush Prairie, WA 98606. *See* Ex A & Ex I.
19 Plaintiff is the Maker of the NOTE dated: 11/3/06 which was secured by DOT #4246543,
20 (which makes him a Real Party in Interest), dated: 11/6/06, as defined in RCW 62A.3-
21 103. Both with E-Loan Inc. A Delaware Corporation. *See* Ex B & Ex C **Governing**
22 **Documents.**

IV DEFENDANTS

8) **Defendant:** E-LOAN, INC. (E-Loan) is the original Lender, a Delaware Corporation located at: 6230 Stoneridge Mall Road, Pleasanton, CA 94588. See Ex B Page 1, 1 & 3 and Ex C, Page 1, C. E-Loan maybe the only party with true standing, and maybe the only Defendant that is a Real Party in Interest having both the NOTE in their name and DOT in their name at the same time? However, since the NOTE is dated 11/3/2006 and the DOT dated 11/6/2006, this is in controversy to these **Governing Documents**. In the NOTE on P. 3, we read "Deed of Trust, or Security Deed (the "Security Instrument"), dated the same dates as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note." E-Loan went out of business on: 11/30/2009, See Ex D, Washington Secretary of State, Corporate Status of E-Loan, Inc. There is no successor to be found!

This falls in the scope of **RCW 23B.14.340 Survival of remedy after dissolution**. Since E-Loan Inc. **DID NOT enforce NOTE or DOT within the 3 year period of 11/30/2009 to 11/30/2012** under *Id.* They are now **TIME BARRED** or beyond the **SATUTE OF LIMATIONS** to enforce said NOTE. This also lands within the scope of **RCW 7.28.300 Quieting title against outlawed mortgage or deed of trust**. I will address this issue more under **SATUTE OF LIMATIONS** later.

Since E-Loan transacted the NOTE on 11/3/06 and DEED OF TRUST on 11/6/02 with Plaintiff, they therefore have or still does conduct business in Clark County and within Washington State. The different dates of execution of the NOTE and DEED OF TRUST are in non compliance of #11 of the NOTE that alleges they are the same date. Plaintiff is of the opinion that this Nullifies said NOTE and DEED OF TRUST.

1 **9) Defendant:** BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH
2 CERTIFICATES, SERIES 2007-3, (Bear Stearns) is a Delaware Corporation located at:
3 2210 Enterprise Dr., Florence, SC 29501. *See* Ex E ASSIGNMENT OF DEED OF
4 TRUST (ADT) dated 5/25/11, illegal ADT #4766595. Bear Stearns is a third party
5 stranger to the Note, Deed of Trust, and related subsequent assignments and
6 appointments, and notice of trustee sale and does not have standing to foreclose. This
7 illegal ADT has fatal material flaws: the date of the DOT is listed as 11/3/2006 when it is
8 11/6/2006. Also it was conveyed by MERS and states it includes the note(s). MERS was
9 NOT a party to the NOTE which is a Governing Document between E-Loan and
10 Plaintiff *See* Ex B. Therefore it has no right to indorse it or sell it. Plus the Bain's case
11 addresses this topic which I will as well latter on under section IX LEGAL STANDING.
12 Therefore Bear Stearns is not a true successor in interest, not a real party in interest to
13 said NOTE or DOT. Bear Stearns went out of business in March 2008. More
14 specifically, the BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH
15 CERTIFICATES, SERIES 2007-3 went out of business on 1/20/2009, SEC Form 15d-6.
16
17 *See* Ex F OR

18 [https://www.sec.gov/Archives/edgar/data/1392865/000105640409000024/0001056404-09-](https://www.sec.gov/Archives/edgar/data/1392865/000105640409000024/0001056404-09-000024.txt)
19 [000024.txt](https://www.sec.gov/Archives/edgar/data/1392865/000105640409000024/0001056404-09-000024.txt) *I ask the Court to Judicially Notice this linked document.

20
21 Yet in 2011 the illegal ADT was done naming Bear Stearns? *See* Ex E. Bear
22 Stearns is not a party with Legal Standing in said NOTE or DOT until they can prove
23 Legal Standing with full Privity of all parties and that all the terms of the Pooling and
24 Service Agreement (PSA) were met.

25 **COMPLIANT**

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1 ¶150 Our attorney general also notes that the assignment of the deed of trust that MERS uses
2 purports to transfer its beneficial interest on behalf of its own successors and assigns, not on
3 behalf of any principal. The assignment used in Bain's case, for example, states:
4 FOR VALUE RECEIVED, the undersigned, **Mortgage Electronic Registration Systems, Inc. AS**
5 **NOMINEE FOR ITS SUCCESSORS AND ASSIGNS**, by these presents, grants, bargains, sells,
6 assigns, transfers, and sets over unto INDYMAC FEDERAL BANK, FSB all beneficial interest
7 under that certain Deed of Trust dated 3/9/2007.
8 Doc. 1, Ex. A to Huelsman Decl. This undermines MERS's contention that it acts only as an
9 agent for a lender/principal and its successors and it "conceals the identity of whichever loan
10 holder MERS purports to be acting for when assigning the deed of trust." AG Br. at 14: The
11 attorney general identifies other places where MERS purports to be acting as the agent for its
12 own successors, not for some principal. Id. at 15 (citing Doc. 1, Ex. B). Many other courts have
13 found it deceptive to claim authority when no authority existed and to conceal the true party in a
14 transaction. *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 159 P.3d 10 (2007); *Floersheim v.*
15 *Fed. Trade Comm'n*, 411 F.2d 874, 876-77 (9th Cir. 1969). *Bain v. Metro. Mortg. Grp., Inc.*,
16 175 Wn.2d 83

10 FOOTNOTES

11 18 Also, while not at issue in these cases, MERS's officers often issue assignments without
12 verifying the underlying information, which has resulted in incorrect or fraudulent
13 transfers. See *Zacks, supra*, at 580 & n. 163 (citing *Robo-Signing, Chain of Title, Loss*
14 *Mitigation, and Other Issues in Mortgage Servicing: Hearing Before Subcomm. on H. and*
15 *Cnty. Opportunity H. Fin. Servs. Comm.*, 111th Cong. 105 (2010) (statement of R.K. Arnold,
16 President and Chief Executive Officer of MERSCORP Inc.)). *Actions like those could well be*
17 *the basis of a meritorious CPA claim. (Emphases added!)*
18 *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83

1 The above termination of business of the Bear Stearns entity by its own hand on
2 1/20/2009 that is the same name as what they reference in the NTS See Ex G, Page 4.

3 This action concludes that all activity and business of that entity and all relationships
4 they had ceased on that day! Even if we liberally apply **RCW 23B.14.340 Survival of**
5 **remedy after dissolution, (add 3 years)** since we are in Washington and they are
6 illegally trying to foreclose on me. That still puts a 3 year more end date of 1/20/2012.

7 **We are way past that!** Since Bear Stearns DID NOT enforce the NOTE that must be
8 properly indorsed in privity to them, along with full privity of the DOT within the 3 year
9 period of 1/20/2009 to 1/20/2012. They are now **TIME BARRED** or beyond the
10 **STAUTE OF LIMATIONS** to enforce said NOTE, that by law must be properly
11 endorsed to them and in their possession as a holder per RCW 61.24.005(2) secured with
12 a indorsement and proper assignment of the DEED OF TRUST as well. *"The note and*
13 *mortgage are inseparable; the former as essential, the latter as an incident. An*
14 *assignment of the note carries the mortgage with it, while an assignment of the latter*
15 *alone is a nullity."* *Carpenter v. Longan* 83 U.S. 271 (____) 16 Wall. 271. Further more,
16 if my NOTE and DEED OF TRUST did make it into a trust that fell within the scope of a
17 PSA and the Defendant's could materially prove that, within all the terms of the PSA.
18 My NOTE and DEED OF TRUST are no longer valid in their original contractual forms.
19 Please let me explain. The process of depositing those instruments into the trust that is
20 created by a PSA, those documents than become a Security Instrument (Certificates) that
21 is than sold to investors as bonds, and must be registered with the SEC.
22
23
24

1 There fore, basic contract law says once a contract is dissolved, (my NOTE and
2 DEED OF TRUST), one can not recreate it! (RCW 19.36.010 Contracts, etc., void unless
3 in writing. {Statuette of Frauds}) Thus the trustee, Defendant Benjamin D. Petiprin is
4 actually trying to sell an unregistered security! Which of course is illegal under RCW
5 21.20.010 & RCW 21.20.140. Not to mention many Federal laws as well. This also lands
6 within the scope of **RCW 7.28.300 Quieting title against outlawed mortgage or deed**
7 **of trust.** Bear Stearns claims to be the “holder of the Promissory NOTE and the current
8 Beneficiary of the DOT” in the NOTICE OF TRUSTEE SALE, (NTS), *See* Ex G. Yet on
9 3/9/16 Plaintiff demanded Presentment of the Original NOTE in person within 10 days
10 and Bear Stearns failed this demand and NEVER PRODUCED the Original NOTE! Per
11 U.C.C., **RCW 62A.3-501, Presentment. (2) (i)** is very clear, that they must exhibit
12 original instrument to me. Also under the U.C.C., **RCW 62A.9A-406 (3) (C) (c) Proof**
13 **of Assignment.** *See* Ex H. Please note: my demand for **PRESENTMENT of the NOTE**
14 **AND VALIDATION of this “supposed debt” constitutes a Required CEASE TO**
15 **ALL COLLECTION ACTIVITIES, (which includes a trustee sale), per (FDCPA)**
16 **15 USC Chapter 41, section 1692g (b), “Disputed debts”.** Thus Bear Stearns has NOT
17 proved they are a Beneficiary per RCW 61.24.005 (2).

18
19 For these reasons and more I will list latter, I am bringing actions under both the
20 **RCW19.86 UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION** and
21 **RCW 9A.82 CRIMINAL PROFITEERING ACT.** For Defendant’s PETIPRIN,
22 **WELLS and STUMPF.**
23

1 Since Bear Stearns was a party to an illegal ADT, that may have or may not have
2 included the NOTE and DOT Plaintiff entered into on 11/3/06 & 11/6/06. Along with
3 being mention in the NTS. Bear Stearns therefore has or has intended to, or still does
4 conduct business in Clark County and within Washington State. The PSA that bears the
5 full name of Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2007-
6 3, (See Ex E) is:

7
8 **V OTHER GOVERNING DOCUMENTS**

9 **10) POOLING AND SERVICING AGREEMENT, (PSA) Titled as:**

10 <https://www.sec.gov/Archives/edgar/data/1392865/000088237707001514/d664141->

11 [ex4_1.htm](#) *We ask the Court to Judicially Notice this linked document. Hereafter PSA.

12 *STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.,*
13 *DEPOSITOR*

14 *WELLS FARGO BANK, N.A.,*
15 *TRUSTEE*

16 *and*

17 *EMC MORTGAGE CORPORATION,*
18 *SELLER AND MASTER SERVICER*

19 *POOLING AND SERVICING AGREEMENT*

20 *Dated as of April 1, 2007*

21 *Structured Asset Mortgage Investments II Inc.*
22 *Bear Stearns ARM Trust, Mortgage Pass-Through Certificates*

23 *Series 2007-3*

24 This PSA, "if" the Defendant's can even prove my NOTE & DOT made it into
25 it, which they have to in order to try to prove their Standing, would than a fall into a
RCW 62A.3-117 "Other agreements affecting instrument", documents.

1 First off my NOTE & DOT would have to been transferred into the trust within
2 these time frames found in the definitions:

3 Definitions (ARTICLE I DEFINITIONS), and open dates for Notes and Deeds of Trust
4 to be accepted: Cut-off Date: April 1, 2007 to the Closing Date: April 30, 2007.

5 (Emphases added!)

6 Closing Date: April 30, 2007.

7 Cut-off Date: April 1, 2007.

8 Seller: EMC in its capacity as seller of the Mortgage Loan to the Depositor.

9 Depositor: Structured Asset Mortgage Investments II Inc., a Delaware corporation, or its
10 successors in interest.

11 Mortgage Loan: A mortgage loan transferred and assigned to the Trustee pursuant to
12 Section 2.01 or Section 2.04 and held as a part of the Trust Fund, as identified in the
13 Mortgage Loan Schedule (which shall include, without limitation, each related Mortgage
14 Note, Mortgage and Mortgage File and all rights appertaining thereto), including a
15 mortgage loan the property securing which has become an REO Property.

16 Mortgage Note: The originally executed note.

17 Security Instrument: A written instrument creating a valid first lien on a Mortgaged
18 Property securing a Mortgage Note, which may be any applicable form of mortgage,
19 deed of trust, deed to secure debt or security deed, including any riders or addenda
20 thereto.

21 Servicer: Countrywide

22 Trustee: Wells Fargo Bank, N.A.

23 (Emphases added!)

24 In other words, the Defendants would have to prove privity of the NOTE & DOT
25 went from E-Loan to Country Wide, (as they suggests, See Ex G, P. 14 which would be
in VIOLATION of the PSA since Countrywide is the loan service in the PSA, therefore it

1 can NOT be an owner of the NOTE!), than assigned to EMC than to Structured Asset
2 Mortgage Investments II Inc., (Structured) than to Bear Stearns all in the time frame of
3 April 1, 2007 to April 30, 2007. Plus the DOT never followed the supposed assignment
4 of the NOTE the Defendants allege in their NTS, *See* Ex G. Thus we have a bifurcation
5 of the NOTE and DOT, which makes the DOT NULLIFIED per *Carpenter v. Longan* 83
6 U.S. 271 (____) 16 Wall. 271. The Defendant' NTS *See* Ex G, does not indicate such on
7 the copy, **NOT THE ORIGINAL**, but on their copy of the NOTE. Plus those alleged
8 indorsments **do NOT have a date on them!** One can not tell what date the alleged
9 transfer took place! Not to mention the DOT needs to be assigned to Country Wide than
10 EMC than to Structured than unto Bear Stearns than they must be endorsed to the
11 Trustee, Wells Fargo, (Wells) who than NULLIIFEIS by this separate agreement, the
12 PSA as in RCW 62A.3-117 "**Other agreements affecting instrument**", the NOTE &
13 DOT than turn into CERTIFICATES and than gives those CERTIFICATES to the
14 DEPOSITOR, Structured. *See* PSA:

16 PRELIMINARY STATEMENT

17 *On or prior to the Closing Date, {April 30, 2007} the Depositor {Structured} acquired*
18 *the Mortgage Loans from the Seller. {EMC} On the Closing Date, the Depositor will*
19 *sell the Mortgage Loans and certain other property to the Trust Fund and receive in*
20 *consideration therefor Certificates evidencing the entire beneficial ownership interest*
21 *in the Trust Fund* (Emphases added!)

22 Section 2.01 Conveyance of Mortgage Loans to Trustee.

23 (a) . . . *it is the intent of the parties to this Agreement that the Depositor shall be*
24 *deemed to have granted to the Trustee a first priority perfected security*
25 *interest in all of the Depositor's right, title and interest in, to and under the*
Mortgage Loans and other assets in the Trust Fund,

1 (b) In connection with the above transfer and assignment, the Depositor hereby
2 delivers to the Custodian, on behalf of the Trustee, with respect to each Mortgage
3 Loan: "Mortgage File" (Emphases added!)

4 (i) the original Mortgage Note, endorsed without recourse (A) to the order of the
5 Trustee See Ex G, copy of the NOTE. There are NO endorsements from any of the
6 parties of the PSA! (Emphases added!)

7 (ii) the original Mortgage (Emphases added!)

8 (iv) all intervening assignments of the Security Instrument, if applicable and only
9 to the extent available to the Depositor with evidence of recording thereon; (Emphases
10 added!)

11 (vii) originals of all modification agreements, if applicable and available;
12 The Depositor shall cause the Seller, at its expense, to cause each assignment of the
13 Security Instrument to the Trustee to be recorded not later than 180 days after the
14 Closing Date. (Emphases added!)

15 Section 2.05 Issuance of Certificates.

16 (a) The Trustee acknowledges the assignment to it of the Mortgage Loans and the
17 other assets comprising the Trust Fund and, concurrently therewith, the Trustee has
18 signed, and countersigned and delivered to the Depositor, in exchange therefore,
19 Certificates in such authorized denominations representing such Fractional Undivided
20 Interests as the Depositor has requested. (Emphases added!)

21 Thus the Defendants are BARRED by their own STATUE OF LIMITATIONS!

22 They have produced NO such document that proves my NOTE & DEED OF TRUST

23 was entered into the PSA, which names Bear Stearns Arm Trust, Mortgage Pass-

24 Through Certificates, Series 2007-3! Therefore the Defendants lack Standing to my

25 NOTE & DEED OF TRUST! In fact, See Ex E, their own illegal ADT is BARRED by

their own STATUE OF LIMITATIONS! The date of the illegal ADT is 5-24-11.

(Recorded 5-25-11). Their own cut off per the above is April 30, 2007 (Closing date) +

1 180 days = October 30, 2007! Thus the Defendant's illegal Assignment of Deed of Trust
2 (ADT) is NULLIFIED per their own PSA and their own STATUE OF
3 LIMITATIONS!! Thus the Defendants have NO VAILID SECUITTY INTEREST
4 ON MY HOME AND NO STANDING TO FORECLOSE! Therefore, their ADT,
5 See Ex E, their Appointment of Successor Trustee (APPT) See Ex J and their Notice
6 of Trustee Sale (NTS) See Ex G must all fail per the PSA! These and the previous and
7 the foregoing reasons, all create a controversy in favor of Plaintiff's moving for
8 Declaratory Judgments under RCW 7.24.080 and Permanent Injunctions under RCW
9 7.40.010.
10

11 Section 2.02 Acceptance of Mortgage Loans by Trustee.

12 (a) In conducting such review, the Trustee or Custodian on behalf of the Trustee
13 will ascertain whether all required documents have been executed and received,the
14 Trustee shall enforce the Seller's obligation under the Mortgage Loan Purchase
15 Agreement, within 90 days from the Trustee's or the Custodian's notification, provide
16 a Substitute Mortgage Loan (if within two years of the Closing Date) or
17 purchase such Mortgage Loan at the Purchase Price; provided that, if such defect
18 would cause the Mortgage Loan to be other than a "qualified mortgage".... the
19 Custodial Agreement. In conducting such review, the Trustee or the Custodian, on its
20 behalf, will ascertain

21 (b) whether an original of each document required to be recorded has been
22 returned from the recording office with evidence of recording thereon...

23 (c) In the event that a Mortgage Loan is purchased by the Seller in accordance
24 with Subsections 2.02(a) or (b) above, EMC shall remit to the Master Servicer the
25 Purchase Price for deposit in the Master Servicer Collection Account and the Seller
shall provide to the Trustee written notification detailing the components of the
Purchase Price. Upon deposit of the Purchase Price in the Master Servicer Collection
Account, the Depositor shall notify the Trustee and the Custodian, on behalf of the
Trustee (upon receipt of a Request for Release in the form of Exhibit D attached
hereto, with respect to such Mortgage Loan), shall release to the Seller the related

1 **Mortgage File and the Trustee shall execute and deliver all instruments of transfer or**
2 **assignment, without recourse, representation or warranty, furnished to it by the Seller,**
3 **as are necessary to vest in the Seller title to and rights under the Mortgage Loan.**
(Emphases added!)

4 In other words, from April 30, 2007 until April 30, 2009. If there was a loan with
5 a defect, such as a default as the Defendants allege in Ex G on P. 9, Notice of
6 Foreclosure. Defendants allege a default on or about 10-1-2008. Well within the above
7 noted time frame. Therefore, per the PSA again, the Seller, EMC would have had to
8 repurchase my NOTE and DOT from the Trustee, Well Fargo. **This was the recourse**
9 **the PSA had on my alleged defaulted loan.** Once again based on their own document,
10 they are not the Beneficiary of my NOTE and have no valid SECURITY INTEREST
11 either! Section 2.03 Assignment of Interest in the Mortgage Loan Purchase
12 Agreement.

13 (a) **The obligations of the Seller to substitute or repurchase, as applicable, a**
14 **Mortgage Loan shall be the Trustee's and the**
15 **Certificateholders' sole remedy for any breach thereof.**

16 (b) **The Depositor shall notify the Trustee and submit to the Custodian, on behalf of**
17 **the Trustee, a Request for Release, and the Custodian shall release, or the Trustee**
18 **shall cause the Custodian to release, to the Seller the related Mortgage File and the**
19 **Trustee shall execute and deliver all instruments of transfer or assignment furnished to**
20 **it by the Seller, without recourse, representation or warranty as are necessary to vest in**
21 **the Seller title to and rights under the Mortgage Loan or any property acquired with**
22 **respect thereto. Such purchase shall be deemed to have occurred on the date on which**
23 **the Purchase Price in available funds is received by the Trustee.** (Emphases added!)

24 Per their own PSA, the Trustee has **NO RECOURSE** to me for a defaulted
25 mortgage! Thus they are **BARRED** by their own doctrine! EMC has to buy the loan
back!

In particular, the Trustee {Wells Fargo Bank N.A.}
shall not (a) sell or permit the sale of all or any portion of
the Mortgage Loans or of any investment of deposits in
an Account (except as otherwise expressly permitted by this Agreement) unless
such sale is as a result of a repurchase of the Mortgage Loans pursuant to this
Agreement. (Emphases added!)

The Trustee, Wells Fargo is **BARRED** from selling any loans unless it is to
EMC the Seller in a repurchase, within the first 2 years after the April 30 2007
Closing date as noted above! Therefore they are NOT allowed to do Foreclosures on
the loans in the PSA! **PERIOD!**

Thus their alleged Legal Standing to foreclose should fail as a matter of law of this
contract! Per RCW 62A.3.117. The same contract that labels them as Trustee for Bear
Stearns and the same contract they must rely on to have a nexus with Bear Stearns and
allegedly with my NOTE & DOT have failed the Defendant miserably! Therefore the
ADT, See Ex E, their Appointment of Successor Trustee, (APPT) See Ex J, and their
Notice of Trustee Sale, (NTS) See Ex G should all fail as a matter of law as well. For
these reasons alone, even before all the other reasons is this Complaint, Declaratory
Judgments under RCW 7.24.080, a permanent Injunction should be allowed under RCW
7.40.010, RCW 7.24.010, RCW 7.24.020, RCW 7.24.080, and Quieting of Title against

1 outlawed mortgage or deed of trust per RCW 7.28.300 should also be allowed unto the
2 Plaintiff. Furthermore, even if the Defendant's can prove my original NOTE & DOT, See
3 Ex B & Ex C, made it into the PSA, with full privity of all the parties names of the PSA
4 on the NOTE and full assignments of the DOT to each party as well, within their own
5 **STATUE OF LIMITATIONS**, those documents have been **NULLIFIED** per RCW
6 **62A.3-117** into CERTIFICATES! Thus the NOTE and DOT are no longer a debt unto the
7 Plaintiff and not a litigate security instrument on Plaintiff house respectively. This also
8 falls into the realm of: **RCW 7.28.300 Quieting title against outlawed mortgage or**
9 **deed of trust** as well. Furthermore, "if" my NOTE & DOT went into the PSA and there
10 was a DEFAULT as the Defendants allege. Than the NOTE (debt) & DOT (security
11 interest) were already paid for and thus should be released, for consideration was made
12 whole unto the Defendants in the form of the **POOL INSURANCE** policy they had on
13 my NOTE & DOT. See PSA:

14
15
16 Section 3.02 Representations and Warranties Regarding Individual Mortgage
17 Loans.

18 *As to each Mortgage Loan, the Company hereby represents and warrants to the*
19 *Purchaser that as of the related Closing Date:*

20 (mm) *Insurance. The Company has caused or will cause to be performed any and*
21 *all acts required to preserve the rights and remedies of the Purchaser in*
22 *any insurance policies applicable to the Mortgage Loans including,*
23 *without limitation, any necessary notifications of insurers, assignments of*
24 *policies or interests therein, and establishments of coinsured, joint loss*
25 *payee and mortgagee rights in favor of the Purchaser; No action, inaction,*
or event has occurred and no state of fact exists or has existed that has
resulted or will result in the exclusion from, denial of, or defense to
coverage under any applicable pool insurance policy, special hazard
insurance policy, PMI Policy or bankruptcy bond, irrespective of the cause

1 of such failure of coverage. In connection with the placement of any such
2 insurance, no commission, fee, or other compensation has been or will be
3 received by the Company or any designee of the Company or any corporation in
4 which the Company or any officer, director, or employee had a financial interest
5 at the time of placement of such insurance;

6 Therefore, **Defendants are without recourse against the Plaintiff and lack**

7 **Legal Standing** if indeed Plaintiff's NOTE & DOT were in the PSA! Which of course
8 according to their own material facts, See Ex E, Ex G, and Ex J, which has to be so, for
9 Bear Stearns to supposedly own my NOTE & DOT and for Wells Fargo to be the
10 supposed Trustee, and there was an actual default in which the Pool Insurance has
11 already been paid. Oh, let's not forget, This Bear Stearns PSA went of business, was
12 Delisted on 1/20/2009! It is clear to me; the Defendants are committing fraud, upon
13 fraud, upon fraud and upon fraud! All for their own sick unjust enrichment at the
14 Plaintiffs expense!

15 **11) Defendant: BENJAMIN D. PETIPRIN, (Petiprin)** has unknown residency since he
16 holds BAR numbers in the states of: Washington:

17 https://www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usrc_ID=46071

18 California: <http://members.calbar.ca.gov/fal/Member/Detail/256797>

19 Nevada: <https://www.nvbar.org/find-a-lawyer/?usearch=Petiprin+>

20 *We ask the Court to Judicially Notice these linked documents. However, Petiprin list the
21 address of: 1100 Dexter Avenue North, Suite 100, Seattle, WA 98109 in the NTS, See Ex
22 G. Therefore this Court has Subject Matter Jurisdiction under RCW 4.12.010. Since he
23 must be in compliance with RCW 61.24.030(6), this Court has Territorial Jurisdiction
24

1 under RCW 61.12.040. Petiprin is acting as an illegal Trustee within the NTS (*See Ex G*)
2 that may have or may not have included the NOTE and DOT Plaintiff entered into on
3 11/3/06 & 11/6/06. Petiprin therefore has or has intended to, or still does conduct
4 business in Clark County and within Washington State. Furthermore: Petiprin is the
5 Leader of an Organized Crime party as defined in RCW 9A.82.60 and Chapter 9A.82
6 RCW by trying to enforce an illegal NTS in which the alleged Beneficiary has no Legal
7 Standing. *See Ex G*. Actions of trustees like these matters vitally affecting the public
8 interest for the purpose of applying chapter 19.86 RCW in which RCW 19.86.090, allows
9 for Trebal Damages of up to 3 times. Furthermore, since MERS was the assigner of the
10 illegal ADT *See Ex E*, and they were NOT a party to the NOTE *See Ex B*. The
11 assignment of the NOTE is Null & Void unto Bear Stearns. Thus the Appointment of
12 Successor Trustee *See Ex J* appointing Petiprin is also Null & Void for Bear Stearns can
13 NOT be a Beneficiary per RCW 61.24.005 (2). In RCW 61.24.010 (2), we see that only
14 the beneficiary can appoint a new trustee. The true beneficiary is E-Loan, evidenced by
15 material facts of Ex B & Ex C. Plus remember, Bear Stearns failed to present said NOTE
16 to Plaintiff in his demand as well in Ex H. Therefore the Appointment of Successor
17 Trustee must fail. *See Ex J*. Please further note, in the appointment of Successor Trustee,
18 *See Ex J*, the address for Petiprin is: 30 Corporate Park, Suite 450, Irvine CA 92606
19 along with the Recording Number of 5199080. This address is NOT in compliance with
20 RCW 61.24.030 (6) it reads in part "*the trustee must maintain a street address in this*
21 *state...*" Petiprin fails to properly correct this by filing Recording No. 5199079 BEFORE
22 the substitution of trustee was filed. Thus making that document **Null & Void** as well.
23 For a document takes effect upon it's being filed. So even "IF" the Appointment of
24 Successor Trustee was valid, which it was not! But if it would be, it would have

1 become effective at the moment it was filed. Being that the address change was filed first;
2 makes the filing of the address change **Null & Void** for the Appointment of Successor
3 Trustee was filed after the address change, thus a trustee can not act before its appointed
4 time.

5 **12) Defendant:** Defendant: WELLS FARGO BANK, N.A. (Wells), is a Delaware
6 Corporation with its headquarters located at: 420 Montgomery Street, San Francisco, CA
7 94104. Since Wells was an alleged party to a PSA as TRUSTEE and an ADT *See Ex E*,
8 and a NTS, (*See Ex G*) that may have may not have included the NOTE and DEED OF
9 TRUST Plaintiff entered into on 11/3/06 and 11/6//2006. Wells therefore has or has
10 intended to, or still does conduct business in Clark County and within Washington State.
11 Wells is a third party stranger to the Note, Deed of Trust, and related subsequent
12 assignments and appointments, and notice of trustee sale and does not have standing to
13 foreclose.

14 **13) Defendant:** JOHN G. STUMPF, (Stumpf) is a presumed resident of the State of
15 California since his principal place of employment is at the Wells headquarters as the
16 Chairman and CEO Wells Fargo Bank N.A., located at: 420 Montgomery Street, San
17 Francisco, CA 94104. Since Stumpf is the Leader of an Organized Crime party as defined in
18 RCW 9A.82.60 and Chapter 9A.82 RCW by trying to enforce a NTS in which the alleged
19 Beneficiary has no legal standing. (*See Ex G*) that may have or may not have included the
20 NOTE and DOT Plaintiff entered into on 11/3/06 & 11/6/06. Stumpf therefore has or has
21 intended to, or still does conduct business in Clark County and within Washington State.
22
23
24

1 **VI AFFIRMITIVE DEFENSES & ARGUMENTS FOR DECLARATORY**
2 **JUDGMENTS, INJUNCTIONS AND QUITE TITLE**

3 Since the Plaintiff can contest the alleged default on any proper ground, RCW 61.24.030
4 (8) (j). The plaintiff will employ that on many topics.

5 **VII LEGAL STANDING FOR THE DEFENDANT TO FORECLOSE**

6 The PSA noted in "#10 and V **OTHER GOVERNING DOCUMENTS**":
7

8 [https://www.sec.gov/Archives/edgar/data/1392865/000088237707001514/d664141-](https://www.sec.gov/Archives/edgar/data/1392865/000088237707001514/d664141-ex4_1.htm)
9 [ex4_1.htm](https://www.sec.gov/Archives/edgar/data/1392865/000088237707001514/d664141-ex4_1.htm)

10 This document, the PSA is paramount in this case. It falls into RCW 62A.3-117,
11 Other agreements affecting instrument. For the Defendant, it is the alleged "possible" and
12 necessary link between them and my NOTE & DOT. However, it is also the "single shot
13 fired from Hell and from the Devil himself into their greedy hearts that will kill their illegal
14 foreclosure."

15 *Section 3.02 REMIC-Related Covenants.*

16 ***In particular, the Trustee shall not (a) sell or permit the***
17 ***sale of all or any portion of the Mortgage Loans or of any***
18 ***investment of deposits in an Account*** *(except as otherwise expressly*
19 *permitted by this Agreement) unless such sale is as a result of a repurchase of the Mortgage*
Loans pursuant to this Agreement. (Emphases added!)

20 The Trustee, Wells Fargo is **BARRED** from selling any loans unless it is to EMC the
21 Seller in a repurchase as noted the below sections within the first two (2) years from the
22 April 30, 2007 Closing date, as provided in sections 2.02 and 2.03 of the PSA listed
23 above.
24

1 **Thus their alleged Legal Standing to foreclose should fail as a matter of law**
2 **of this contract!** They have no right to Foreclose or Sell, therefore they don't have a
3 legally protected right to defend. "*Standing requires that the plaintiff demonstrate an*
4 *injury to a legally protected right. The real party in interest is the person who possesses*
5 *the right sought to be enforced.*" *Sprague, 97 Wn. App. at 176 n.2.* Defendant can not
6 cure this issue! The same contract that labels them as Trustee for Bear Stearns and the
7 same contract they must rely on to have a nexus with Bear Stearns and allegedly with my
8 NOTE & DOT have failed the Defendant miserably! Therefore the ADT, *See Ex E*, their
9 Appointment of Successor Trustee, (APPT) *See Ex J*, and their Notice of Trustee Sale,
10 (NTS) *See Ex G* should all fail as a matter of law as well! For these reasons alone, even
11 before all the other reasons is this Complaint, Declaratory Judgments under RCW
12 7.24.080, a permanent Injunction should be allowed under RCW 7.40.010, RCW
13 7.24.010, RCW 7.24.020, RCW 7.24.080, and Quieting of Title against outlawed
14 mortgage or deed of trust per RCW 7.28.300 should also be allowed unto the Plaintiff.
15 Plaintiff knows the above Remedies will avoid Irreparable harm and correct this
16 justiciable controversy.

17 **Plaintiff believes his case will succeed on its merits.** The Defendant Lacks Standing, is
18 Barred by Contractual Law, is Barred by the Statue of Limitations and has been non
19 compliant in the Statutory Requirments of RCW 61.24 to proceed in a Trustee Sale. In
20 the absence of the Courts Injunction, the Plaintiff will loose his home and primary
21 residence of fourteen (14) years. This is also the Plaintiff's place of business for the last
22 fourteen (14) years, which is his primary source of income for the last 25 years. That is
23 an Amway Independent Business Ownership. This home Plaintiff has invested his life
24 savings in an estimated amount of \$2,000,000.00 into this home over the last 14 years.

1 This home has a separate entrance into the basement where a meeting room that
2 seats 30 is located, with meeting presentation abilities, computers for immediate sign up's
3 of new customers or distributors, along with a kitchenette area for snacks and coffee, and
4 a separate full bath. This area also has a large room for business motivational materials
5 and document filing areas. The remainder of the residence has the Plaintiffs office and 6
6 car garages for the personal and business vehicles as well. Much time, work, expense and
7 effort have gone into finding and constructing such a home and place of business. This
8 illegal foreclosure has already ill affected Plaintiff's health, family, business and income.
9 Plaintiff had a Hypertensive Crises on Monday June 6, 2016 and was hospitalized for 4
10 days and is now on blood pressure medicines. See *"likely to succeed on the merits."*
11 *Winter, 555 U.S. at 20. See* *"reasonable probability of success."* 11A CHARLES ALAN
12 WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FED. PRAC. & PROC. CIV. §
13 2948.3, at 184-88 n. 2(2d ed.)

14 **VIII ARGUMENT FOR INJUNCTIONS**

15 **Plaintiff asserts that if the Court does not give the Plaintiff the injunctive**
16 **relief, irreparable harm will happen to him, his family, his finances and his business**
17 **and business associates.** Thus: *"has always been irreparable injury and the absence of*
18 *legal remedies."* *Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982).* Is it a fact,
19 that if the injunctive relief is not given, the Plaintiff loses his home, place of business,
20 his life savings! This is not based on fear, this is a fact! The absence of the injunctive
21 relief restrains the equitable remedies afforded the Plaintiff in an illegal foreclosure. This
22 surpasses the level here:

23 *"Issuing a preliminary injunction based only on a possibility of*
24 *Irreparable harm is inconsistent with [the] characterization of injunctive relief as an*
25 *extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is*
entitled to such relief." *Mazurek v. Armstrong, 520 U.S. 968, 972 (1997).*

COMPLIANT

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1 **In balancing the equities**, if Plaintiff is successful in obtaining the injunction, the
2 Defendant has lost nothing that they are legally entitled to get any way. As noted above,
3 they are Barred from Selling any mortgaes in the PSA. Their Sole remedy was with
4 selling it to EMC within the first two years and they allege my mortgage was in default at
5 that time. The PSA clearly shows they had Pool Insurance; therefore they have already
6 been paid and made whole on all bad or defaulted loans. Defendant is also Barred by the
7 Statue of Limitations on the NOTE it self as Plaintiff argues below. If the injunction is
8 not allowed, the Defendant's are Unjustly Enriched by an illegal foreclosure and its
9 proceeds, value of \$899,000.00. *See Ex O*. The Plaintiff is irreparably harmed if the
10 injunction is not allowed. He loses his life savings ~ \$2,000,000.00, his primary home
11 and place of business, more time away from his family, business and personal life. Not to
12 mention, longer and more ill health effects due to all the unnecessary stress that almost
13 killed the Plaintiff already with the Hypertensive Crises with a blood pressures of
14 237/148 on 6/6/16. *See Ex N*. Plus Plaintiff's business and that of his business associates
15 (downline) and their incomes will also be more ill affected. Thus the balanced tips in the
16 Plaintiff's favor.

17 *" This involves balancing the harm to the defendant if an injunction is granted with the*
18 *harm to plaintiff if an injunction is denied." Amoco Prod. Co., 480 U.S. at 542*
19 **Public Interest**, the status quos of the residence, its residents, its neighbors in the gated
20 community, the many business associates that rely on my home as a place of business for
21 them too all remain unchanged if the injunction is granted. Along with Plaintiff's family,
22 business and health concerns. However, if the injunction is not granted, than all the above
23 are ill effected. Plus the Court is sending a message that illegal foreclosures and the
24 Unjust Enrichments takes priority over the legal owner and his legal remedies under the
25 law of equity. Many foreclosed homes sit vacant for years on end, especially high end

1 homes such as mine. Then the maintenance lacks and the home deteriorates and pulls the
2 values of the neighboring homes down in value. This possible vacant home will welcome
3 transients and many opportunities for illegal activities that furthermore are not in the
4 public's best interest and will drain public resources to monitor and police.

5 The NTS, *See Ex G*, has an alleged copy of my NOTE with two (2) alleged
6 indorsments on it. The first alleged indorsment is from E-Loan to Countrywide with no
7 date on it? (Countrywide is listed as the Servicer in the PSA; therefore it can not also be a
8 NOTE Holder per the PSA. For the PSA gives NO mention of such right to the Servicer,
9 so absent that right in the PSA, it can not be. This alone is outside the pathway for the
10 instruments in the PSA.) It says EMC the Seller will purchase them than sell them to the
11 Depositor, Structured, than on the closing day April 30, 2007 than will endorsed to the
12 Trustee, Wells Fargo. So this alone must fail as well for the Defendant. The second
13 alleged indorsment is from Countrywide to no Payee or in blank. This too has no date on
14 it? We see a further clarification of "NOTE HOLDER" in the Bain case along with the
15 requirement to have a Payee as well. In Bain, the Washington Supreme Court considered
16 what it means to be a "holder" under the DTA. Bain, 175 Wn.2d at 104. In its review, the
17 court was guided by the Uniform Commercial Code's (UCC) definition of "holder," as
18 adopted by the Washington legislature at RCW 62A.1-201(21) and RCW 62A.3-
19 301. Bain, 175 Wn.2d at 104. After reviewing these provisions, the court stated, "[A]
20 beneficiary must either actually possess the promissory note or be the payee." *Id.* Here
21 the NOTE is endorsed in blank and has no specific payee! The Defendant's NOTE must
22 fail as well as a matter of law. Furthermore, the Defendant's only other Remedy was to
23 sell a defected or defaulted loan back to the Seller, EMC within two (2) years from the
24 Closing date of April 30, 2007.

1 Cut-off Date: April 1, 2007 to the Closing Date: April 30, 2007.

2 Section 2.02 Acceptance of Mortgage Loans by Trustee.

3 (a) In conducting such review, the Trustee or Custodian on behalf of the Trustee
4 will ascertain whether all required documents have been executed and received,the
5 Trustee shall enforce the Seller's obligation under the Mortgage Loan Purchase
6 Agreement, within 90 days from the Trustee's or the Custodian's notification, provide a
7 Substitute Mortgage Loan (if within two years of the Closing Date) or purchase such
8 Mortgage Loan at the Purchase Price; provided that, if such defect would cause the
9 Mortgage Loan to be other than a "qualified mortgage".... the Custodial Agreement. In
10 conducting such review, the Trustee or the Custodian, on its behalf, will ascertain.
11 (Emphases added!)

9 Section 2.03 Assignment of Interest in the Mortgage Loan Purchase
10 Agreement.

10 (a) The obligations of the Seller to substitute or repurchase, as applicable, a
11 Mortgage Loan shall be the Trustee's and the Certificateholders' sole remedy
12 for any breach thereof. (Emphases added!)

12 Defendant can not cure this issue.

13
14 **IX LEGAL STANDING IN NOTE & DEED OF TRUST**

15 The Defendant's have the full BURDON OF PROOF upon them to prove they are
16 not only a Holder of the NOTE, but also in Privity of both the NOTE and the DEED OF
17 TRUST, (DOT) and that they have successfully followed each step of the PSA in each of the
18 transfers of all the parities, and then prove Pool Insurance was NOT paid on my alleged
19 defaulted loan to make them whole. As we see in RCW 61.24.005 (2), "Beneficiary means
20 the holder of the instrument" (Emphases added!) Please note, since the Trustee, Defendant
21 Petiprin has violated the "Good Faith Doctrine" in RCW 61.24.010 (4) "The trustee or
22 successor trustee has a duty of good faith to the borrower, beneficiary, and grantor." & in
23 RCW 62A.1-304.

1 “Obligation of good faith. Every contract or duty within this title imposes an
2 obligation of good faith in its performance and enforcement.” (Emphases added!) He, the
3 Trustee is now bound by the Statutory requirement **NOT** to rely on the alleged Beneficiary’s
4 declaration that it is the Holder of said NOTE. Thus we all must see the NOTE!

5
6 “RCW 61.24.030 Requisites to trustee's sale. (7)(a) That, for residential real property, before
7 the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof
8 that the beneficiary is the owner of any promissory note or other obligation secured by the
9 deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that
10 the beneficiary is the actual holder of the promissory note or other obligation secured by the
11 deed of trust shall be sufficient proof as required under this subsection.
12 (b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is
13 entitled to rely on the beneficiary's declaration as evidence of proof required under this
14 subsection.” (Emphases added!)

15 We further see the breaking of the “Good Faith” doctrine has further consequences under
16 the Deed of Trust Act.

17 “RCW 61.24.031 Notice of default under RCW 61.24.030(8)—Beneficiary's duties—
18 Borrower's options. 2) A notice of default issued under RCW 61.24.030(8) must include a
19 declaration, as provided in subsection (9) of this section, from the beneficiary or authorized
20 agent that it has contacted the borrower as provided in subsection (1) of this section, it has
21 tried with due diligence to contact the borrower under subsection (5) of this section, or the
22 borrower has surrendered the property to the trustee, beneficiary, or authorized agent.
23 Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is
24 entitled to rely on the declaration as evidence that the requirements of this section have
25 been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's
failure to comply with the requirements of this section.”

 Defendants allege in Ex G that they are the NOTE Holder. Plaintiff in Ex H demanded
presentment of the Original NOTE within ten (10) days of receipt of the Demand. We see in
“RCW 61.24.030(7) (a) That, for residential real property, before the notice of trustee's sale
is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the
owner of any promissory note” Therefore presentment should of not been in issue

1 especially when I noticed both the Trustee and the CEO of Wells Fargo Bank N.A.,
2 Defendant Stumpf. See Ex H.

3 This Demand is under **PRESENTMENT of the NOTE AND VALIDATION of this**
4 **"supposed debt" and constitutes a Required CEASE TO ALL COLLECTION**
5 **ACTIVITIES,(which includes a trustee sale), per (FDCPA) 15 USC Chapter 41, section**
6 **1692g (b), "Disputed debts". The Defendants lack of response should be prima facie**
7 **evidence that they are NOT the NOTE Holder.**

8 **X STATUE OF LIMITAIONS & FIALURE OF DOCUMENTS**

9 The Governing Documents the NOTE dated 11/3/2006. See Ex B and the
10 DEED OF TRUST (DOT) dated 11/6/2006, Recording Number 4246543, See Ex C, give us
11 our execution dates. Thus we already have a stale claim in the Defendant's Illegal
12 Foreclosure process. If the NOTE & DOT are even valid being dated on different days in
13 opposition to those governing documents own words? We would ask the Court to rule on this
14 matter since the documents do not align with their own wording; however it is past the Statue
15 of Limitations. See Ex B P. 3 #11 reads in part: **"Deed of Trust, or Security Deed (the**
16 **"Security Instrument"), dated the same dates as this Note, protects the Note Holder from**
17 **possible losses that might result if I do not keep the promises that I make in this Note."**
18 **Even this says the only the NOTE Holder is protected from possible losses. Furthermore**
19 **regarding the wrong dates on the Governing Documents, Ex C, DOT, P. 1, DEFINITIONS**
20 **(A) "Security Instrument" means this document, which is dated NOVEMBER 3, 206." This is**
21 **also in error! Page 11 has my Notarized signature on November 6, 2006. So how can this**
22 **document be valid?**

23
24 **COMPLIANT**

25 **Page 34 of 64**

1 See *Id.* P. 2 (F). It reads: "Note" means the promissory note signed by Borrower and dated
2 **NOVEMBER 3, 2006.**" {So once again the **Governing Documents** are not constant in their
3 dates and in their own writings). "The Note states that Borrower owes Lender (E-Loan)
4 ***SEVEN HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED AND**
5 **NO/100***** Dollars U.S. \$787,500.00.**" Once again, we only see possible Remedy to
6 the **LENDER** per the **Governing Documents themselves**. All throughout the DOT, we see
7 LENDER as the actionable and remedied party! Not MERS, not an Assignee. See *Id.* P. 6,
8 #9. "**Protection of Lenders Interest In the Property and Rights Under this Security**
9 **Instrument.**" Throughout this chapter we see Lender used 11 times only with the Borrower.
10 No other parties are given **Rights or Remedies** within this chapter. See *Id.* P. 10. #22.
11 "**Acceleration; Remedies.**" Once again, we only see available **Remedies** given unto the
12 Lender, not MERS, not an assignee. It reads in part referring to the Notice of Default: "**The**
13 **notice shall specify (a) the default; (b) the action required to cure the default; (c) a date,**
14 **not less than 30 days from the date the notice is given to Borrower, by which the default**
15 **must be cured; and (d) that failure to cure the default on or before the date the date**
16 **specified in the notice may result in acceleration of the sums secured by this Security**
17 **Instrument and sale of the property at public auction at a date not less than 120 days in the**
18 **future....If the default is not cured on or before the date specified in the notice, Lender at**
19 **its option** {Does NOT say any other party!} **may require immediate payment in full of all**
20 **sums secured by this Security Instrument without further demand and may invoke the**
21 **power of sale and/or other remedies permitted by Applicable Law.**" (Emphases added!)
22 Once again in this section called "**Acceleration; Remedies.**" The **Rights and Remedies**
23 **bestowed unto the Lender have NOT been assigned or given to any other party! They**
24 **are exclusively of the Lender, E-Loan.** Further: "**If Lender Invokes the power of sale,**
25 **Lender shall give notice to Trustee.**" (Emphases added!) Once again, these **Rights and**
Remedies of the Lender have NOT been given or assigned to another party or a substitution
Trustee. *Id.* P. 11. #24. "**Substitute Trustee. In accordance with Applicable Law, Lender may**
from time to time appoint a successor trustee to any Trustee appointed hereunder who has
ceased to act." (Emphases added!) Once again, this **Right and Remedies of the Lender**
have NOT been given or assigned to another party to appoint a Trustee. When and where is
the proof that Chicago Title ceased to act or that the Lender, E-Loan appointed another
Trustee? In Ex B, (NOTE) P. 1, #1 "**BORROWER'S PROMISE TO PAY** In return for a
loan that I have received, I promise to pay U.S. \$787,500.00 (this amount called
"Principal"), plus interest, **to the order of the Lender. Lender is E-LOAN INC., A**
DELAWARE CORPORATION." (Emphases added!)

The only two (2) parties to the NOTE are Lender, E-Loan and Borrower, Daniel G. Szmania. Thus only E-Loan Inc. can sell and endorse said NOTE and is the beneficiary. Therefore, the ADT, Ex E should fail as a matter of the contract, the NOTE on its own merits. For in that ADT, it was so signed by Mortgage Electronic Registration Systems Inc. (MERS) and reads in part: "For Value Received, the undersigned holder of the Deed of Trust...all beneficial interest under that certain Deed of Trust described below **together with the note(s..)**" See Ex E. (Emphases added!) MERS was not a party to the NOTE, therefore the assignment should fail. This alleged transfer of the NOTE(s) and the DOT also nullifies the "Holder in due course" argument for the Defendants as well.

1 We see in "RCW 62A.3-302 Holder in due course. (a) (2) The holder took the
2 instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue
3 or has been dishonored or that there is an uncured default..." (Emphases added!)

4 We know from the PSA the following sections:

5 Section 3.02 REMIC-Related Covenants.

6 **In particular, the Trustee shall not (a) sell or permit the sale**
7 **of all or any portion of the Mortgage Loans**

8 PRELIMINARY STATEMENT

9 **On or prior to the Closing Date, {April 30, 2007} the Depositor {Structured} acquired**
10 **the Mortgage Loans from the Seller. {EMC} On the Closing Date, the Depositor will**
11 **sell the Mortgage Loans and certain other property to the Trust Fund and receive in**
12 **consideration therefor Certificates evidencing the entire beneficial ownership interest**
13 **in the Trust Fund** (Emphases added!)

14 Section 2.01 Conveyance of Mortgage Loans to Trustee.

15 (b) . . . it is the intent of the parties to this Agreement that the Depositor shall be
16 deemed to have granted to the Trustee a first priority perfected security
17 interest in all of the Depositor's right, title and interest in, to and under the
18 Mortgage Loans and other assets in the Trust Fund,

19 (b) In connection with the above transfer and assignment, the Depositor hereby
20 delivers to the Custodian, on behalf of the Trustee, with respect to each Mortgage
21 Loan: "Mortgage File" (Emphases added!)

22 (i) the original Mortgage Note, endorsed without recourse (A) to the order of the
23 Trustee (Emphases added!) See Ex G, copy of the NOTE. There are NO endorsements
24 from any of the parties of the PSA! Plus this wording specific that the NOTE MUST
25 made payable to the TRUSTEE! NOT IN BLANK! Therefore their alleged "NOTE" with
a Blank indorsement in Ex G must fail per the PSA!

(iii) the original Mortgage (Emphases added!)

(iv) all intervening assignments of the Security Instrument, if applicable and only
to the extent available to the Depositor with evidence of recording thereon; (Emphases
added!)

(viii) originals of all modification agreements, if applicable and available;
The Depositor shall cause the Seller, at its expense, to cause each assignment of the Security Instrument to the Trustee to be recorded not later than 180 days after the Closing Date. {4/30/2007} (Emphases added!)

That the original NOTE and DOT needed to be recorded & transferred into the PSA trust no latter than 180 days from the closing date of April 30, 2007, or October 30, 2007. So why would an Assignment of DEED of Trust need to be done years latter on 5/25/2011? See Ex E. That is more than three and a half (3.5) years after the 180 day cut off date of the PSA and two and a half (2.5) years after Bear Stearns was voluntarily delisted and went out of business on 1/20/2009! See Ex F. Furthermore, per Defendant's own Notice of Trustee Sale, dated 2/29/16 & 3/1/16? See Ex G, P. 9. They claim Plaintiff had an alleged default as of 10/1.2008. For these reasons Defendant per the Statutory requirements in RCW 62A.3-302 *Holder in due course*, fails once again! The NOTE & DOT can NOT be sold at all per the PSA! The transfer of the ADT was NOT in GOOD FAITH and defendants allegedly knew about the alleged default 3 years prior to the ADT occurring. Therefore they can NOT be a Holder in Due Course either!

If we look at Ex J, Appointment of Successor Trustee, which tries to appoint Defendant Petiprin, we see that "*Chicago Title Company is the Trustee*". So even the Defendants acknowledge that the original Trustee has NOT been substituted? Further more, it says "*Mortgage Electronic Registration System, Inc. (MERS) is the Beneficiary under that certain trust deed dated 11/3/2006 {which is wrong, it is 11/6/2006}, recorded 11/13/2006, under instrument No. 4246543 Records of Clark County, Washington*". This does NOT hold true per RCW 61.24.005 (2) "*Beneficiary*" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the

1 *same as security for a different obligation. (Emphases added!)* If MERS was the “holder” at
2 the same time as the Lender, E-Loan signed the DOT, and claimed to be the Holder, than E-
3 Loan and MERS committed FRUAD! And all the **Remedies and Rights** given unto the
4 Lender, E-Loan are **NULLIFIED**. Thus the Plaintiff would have an invalidated debt, the
5 NOTE, and a cloud on his title of an unenforceable DOT. E-Loan was the Lender of the
6 NOTE and DOT so they were the initial Holder of the NOTE and the actual Beneficiary
7 under the DOT. Back to Ex J, Appointment of Successor Trustee, which tries to appoint
8 Defendant Petiprin as Trustee.
9

10 **RCW 61.24.010 (2) Trustee, qualifications—Successor trustee** “The trustee may
11 resign at its own election or be replaced by the beneficiary. {Since the only legitimate
12 Beneficiary has been E-Loan, all other substitutions of trustee should fail!} “*The trustee*
13 *shall give prompt written notice of its resignation to the beneficiary. The resignation of the*
14 *trustee shall become effective upon the recording of the notice of resignation in each*
15 *county in which the deed of trust is recorded.* {No where in my Chain of Title is there a
16 resignation of a trustee! Yet there are 5 Substitutions of Trustee in my chain of title? Thus all
17 other substitutions of trustee should fail.] “*If a trustee is not appointed in the deed of trust,*
18 *or upon the resignation, incapacity, disability, absence, or death of the trustee, or the*
19 *election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a*
20 *successor trustee. Only upon recording the appointment of a successor trustee in each*
21 *county in which the deed of trust is recorded, the successor trustee shall be vested with all*
22 *powers of an original trustee.*” (Emphases added!)

23
24 This statute shows use clearly that only the Beneficiary as noted in RCW 61.24.005 (2) as
25

1 **"Beneficiary" means the holder of the instrument.**" Can appoint a Trustee. Looking at Ex J,
2 we see the signor of the Appointment of Trustee as Ami McKeman, as Second Assistant Vice
3 President of Specialized Loan Servicing LLC. Nowhere in my Chain of Title is there a DOT
4 with Specialized Loan Servicing LLC! (Specialized). In fact, we know that Specialized is a
5 loan servicer per the Defendant's own NTS, *See* Ex G. On P. 10, it list Specialized as the
6 party to pay the alleged default to before the Trustee sale. At the bottom of the page it gives
7 the phone number for the loan servicer: 800-315-4757. This is Specialized Loan Servicing
8 LLC. Thus by their own admission in their own ADT and NTS alleging "MERS as the
9 Beneficiary" on 5/25/2011 in the ADT, *See* Ex E. It reads in part "the undersigned, holder of
10 the **Deed of Trust**". **This is fraud!** There can NOT be a HOLDER of a Deed of Trust. Thus
11 this document should fail for a Deed of Trust is a Security instrument, NOT a Negotiable
12 instrument like a NOTE. Therefore they, MERS can NOT assign anything! The *Bain* Court
13 and the Attorney General of Washington agree with the Plaintiff:

15 ¶23 The homeowners, joined by the Washington attorney general, do dispute MERS'
16 characterization of itself as the holder of the deeds of trust. Starting from the language of RCW
17 61.24.005(2) itself, the attorney general contends that "[t]he 'instrument' obviously means the
18 promissory note because the only other document in the transaction is the deed of trust and it
19 would be absurd to read this definition as saying that "beneficiary means the holder of the deed
20 of trust secured by the deed of trust."'" Br. of Amicus Att'y General (AG Br.) at 2-3
21 (quoting RCW 61.24.005(2)). We agree that an interpretation "beneficiary" that has the deed
22 of trust securing itself is untenable. (Emphases added!) *Bain v. Metro. Mortg. Grp., Inc.*, 175
23 Wn.2d 83

24 Thus the ADT Ex E must fail! Than due to that, the subsequent Appointment of
25 Successor Trustee (APPT, Ex J) must fail for it is fruit of the bad seed of the Illegal ADT. Along
26 with the fact that Specialized signed the APPT, who we just established as a servicer! They
27 (Specialized) aren't even one of the "alleged NOTE Holders"; this is how brazen these crooks
28 are! Than since the ADT and the Appt must fail, so than the Notice of Trustee (NTS Ex G) must

1 fail for it is further bad fruit from the Illegal ADT and APPT! These are criminal acts!

2 In their own words, Secondly, Defendant's allege in their NTS Ex G, P. 4, that:

3 "Wells Fargo Bank, N.A., {Wells} as Trustee for Bear Stearns ARM Trust 2007-3 is the
4 holder of the Promissory Note and the current Beneficiary of the Deed of Trust." Based on
5 their own allegations in the NTS, their own Appointment of Successor Trustee should fail
6 for Specialized is not the Beneficiary per their own NTS. The "alleged" beneficiary is Wells.
7 Yet we now know given my demand for Presentment of the NOTE, See Ex H, that Wells too
8 is not the Holder or Beneficiary for they failed to produce the Original NOTE with my
9 signature in Blue Ink. Oh, if Specialized were the beneficiary at that point in time, the
10 Defendants has another step in Privity to prove. To strengthen this matter is the *Bain v.*
11 *Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83 reads in part: "CONCLUSION

12 ¶56 under the deed of trust act, the beneficiary **must hold the promissory note.** (Emphases
13 added!) Thus if a party never held the NOTE, they are ineligible to be a Beneficiary! MERS
14 v. Robinson et al. We see more of how the wording in the NOTE & DOT restricts other
15 parties from collecting on the NOTE and DOT at Page 7. [http://fightthefraud.com/wp/wp-](http://fightthefraud.com/wp/wp-content/uploads/MERS-is-not-a-BENEFICIARY-FED-CASE-Robinson.pdf)
16 [content/uploads/MERS-is-not-a-BENEFICIARY-FED-CASE-Robinson.pdf](http://fightthefraud.com/wp/wp-content/uploads/MERS-is-not-a-BENEFICIARY-FED-CASE-Robinson.pdf)
17

18 In "*Bavand* " [p]ossession of a 'true and correct copy of the original' **does not, of course,**
19 **establish possession of the original note itself.** " *Id.* (emphasis in original). Thus, "[w]ithout
20 **possession of the note,** on which OneWest relies in this case, **it is not the holder of that**
21 **instrument either under the [UCC] or the [DTA].**" *Id.* at 498-99. (Emphases added!)

22 Therefore the ADT Ex E should fail than subsequently the Appointment of Successor
23 Trustee; Ex J should fail since it is fruit of the first, than obviously the Notice or Trustee Sale
24

25 COMPLIANT

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EX G should fail as well. "Because the DTA generally allows the trustee to foreclose the deed of trust and sell the property without judicial oversight, it grants a significant power. For that reason, Washington courts have construed the DTA in the favor of borrowers. Bain, 175 Wn.2d at 94." (Emphases added!)

We see on pages 33-35 of this compliant how Plaintiff addressed what the Governing Documents declare on whom may enforce the NOTE See Ex B and the Deed of Trust See Ex C. It is clear just as is RCW 61.24.005 (2) as "**Beneficiary**" means the holder of the instrument." Yet in the Defendant's NTS, Ex G, they admit that CHICAGO TITLE COMPANY is the Trustee, and they allege that MERS is entitled to the obligation. See Ex G, P. 4 reads in part: "to CHICAGO TITLE COMPANY, as Trustee, to secure an obligation in favor of Mortgage Electronic Registration System, Inc. {MERS) as nominee for E-Loan, INC. its successors and assigns, Wells Fargo Bank, N.A. as Trustee for Bear Stearns ARM Trust 2007-3 is the holder of the Promissory Note and the current Beneficiary of the Deed of Trust." (Emphases added!) Than why isn't Chicago Title foreclosing?

¶25 Finding that the beneficiary must hold the promissory note (or other "instrument or document evidencing the obligation secured") is also consistent with recent legislative findings to the foreclosure fairness act of 2011, LAWS OF 2011, ch. 58, § 3(2). The legislature found: [MERS] "Counsel informed the court at oral argument that MERS does not negotiate on behalf of the holders of the note. (Emphases added!) Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83

If MERS "does not negotiate on behalf of the holders of the note", than MERS just admitted it is NOT a holder of the NOTE in a foreclosure. Thus the "to secure an obligation in favor of Mortgage Electronic Registration System, Inc." is another act of fraud and is totally untrue! For this reasons, the NTS must fail and be declared void. ¶26 MERS is not a "holder" under the plain language of the statute. Id.

1 The *Bain* Court goes on to explain that the wording in the Deeds of Trust does not create
2 an agency relationship for the assignors or for the lawful principal and assignments by MERS
3 are not lawful.

4 “¶31 But Moss also observed that “[w]e have repeatedly held that a prerequisite of an
5 agency is control of the agent by the principal.” *Id.* at 402 (emphasis added)
6 (citing *McCarty v. King County Med. Serv. Corp.*, 26 Wn.2d 660, 175 P.2d 653 (1946)).
7 While we have no reason to doubt that the lenders and their assigns control MERS, agency
8 requires a specific principal that is accountable for the acts of its agent. If MERS is an agent,
9 its principals in the two cases before us remain unidentified.¹² MERS attempts to sidestep
10 this portion of traditional agency law by pointing to the language in the deeds of trust that
11 describe MERS as “acting solely as a nominee for Lender and Lender's successors and
12 assigns.” Doc. 131-2, at 2 (*Bain* deed of trust); Doc. 9-1, at 3 (*Selkowitz* deed of trust.); see,
13 e.g., Resp. Br. of MERS at 30 (*Bain*). But MERS offers no authority for the implicit
14 proposition that the lender's nomination of MERS as a nominee rises to an agency
15 relationship with successor noteholders.¹³ MERS fails to identify the entities that control and
16 are accountable for its actions. It has not established that it is an agent for a lawful
17 principal. (Emphases added!) *Id.*

18 FOOTNOTES 12 At oral argument, counsel for MERS was asked to identify its principals
19 in the cases before us and was unable to do so. Wash. Supreme Court oral argument, *supra*,
20 at approx. 23 min., 23 sec. *Id.*

21 ¶32 The legislature has set forth in great detail how nonjudicial foreclosures may
22 proceed. We find no indication the legislature intended to allow the parties to vary these
23 procedures by contract. We will not allow waiver of statutory protections lightly. MERS did
24 not become a beneficiary by contract or under agency principles.” *Id.* (Emphases added!)

25 ¶33 One difficulty is that it is not the plaintiffs that manipulated the terms of the act: it
was whoever drafted the forms used in these cases. There are certainly significant benefits
to the MERS approach but there may also be significant drawbacks. The legislature, not this
court, is in the best position to assess policy considerations. Further, although not
considered in this opinion, nothing herein should be interpreted as preventing the parties
to proceed with judicial foreclosures. That must await a proper case. *Id.* (Emphases added!)

¶36 MERS is an ineligible “beneficiary” within the terms of the Washington Deed of
Trust Act,” if it never held the promissory note or other debt instrument secured by the
deed of trust. *Id.* (Emphases added!)

¶39 If the original lender had sold the loan, that purchaser would need to establish
ownership of that loan, either by demonstrating that it actually held the promissory note or
by documenting the chain of transactions. Having MERS convey its “interests” would not
accomplish this. *Id.* (Emphases added!)

1 FOOTNOTES 15 See 18 STOEBUCK & WEAVER, *supra*, § 17.3, at 260 (noting that a deed of trust
2 "is a three-party transaction in which land is conveyed by a borrower, the 'grantor,' to a
3 'trustee,' who holds title in trust for a lender, the 'beneficiary,' as security for credit or a loan
4 the lender has given the borrower"); see also *U.S. Bank NA v. Ibanez*, 458 Mass. 637, 941
5 *N.E.2d* 40 (2011) (holding bank had to establish it was the mortgage holder at the time of
6 foreclosure in order to clear title through evidence of the chain of transactions). *Id.*

7 ¶40 But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what
8 rights, if any, it has to convey. Other courts have rejected similar suggestions. *Bellistri*, 284
9 *S.W.3d* at 624 (citing *George v. Surkamp*, 336 Mo. 1, 9, 76 S.W.2d 368 (1934)). Again, the
10 identity of the beneficiary would need to be determined. Because it is the repository of the
11 information relating to the chain of transactions, MERS would be in the best position to prove
12 the identity of the holder of the note and beneficiary. *Id.*

13 Once again, MERS acting as a Beneficiary or an agent for an alleged Beneficiary must
14 fail in any and all documents!

15 Since the Plaintiff received NO NOTICE OF DEFAULT, how can a sale be scheduled
16 at all? How can a new Trustee be appointed if it is NOT done by the Lender, (E-Loan)? How
17 can acceleration be done if it is NOT started by the Lender! Even on P. 9 #20. See Ex C.

18 "Sale of Note;" This chapter says the Note may be sold, or a servicer may change. However,
19 NO WHERE in the chapter does it assign the **Rights and Remedies of the Lender!** There
20 fore the Appointment of Successor Trustee by Wells Fargo should be found to be NULL &
21 VOID, See Ex J, along with the NOTICE OF TRUSTEE SALE and the pending auction set
22 for July 8, 2016. See Ex G.

23 In RCW 4.16.040 "Actions limited to six years. "The following actions shall be
24 commenced within six years: (1) An action upon a contract in writing, or liability express or
25 implied arising out of a written agreement, except as provided for in RCW 64.04.007(2). >
In RCW 64.04.007 (2) "If the beneficiary or mortgagee, or its assignees, of debt secured by
owner-occupied real property intends to pursue collection of the outstanding debt, it must
initiate a court action to collect the remaining debt within three years from the date on
which it released its deed of trust or mortgage in the owner-occupied real property or else it
forfeits any right to collect the remaining debt." (Emphases added!)

1 We see from the PSA, that the Closing date was April 30, 2007. That would have been
2 the date the Defendant's released its deed of trust. Three (3) years from April 30, 2007 is
3 April 30, 2010! Once again even in this scenario the Defendant's are now **Barred** by the
4 **STATUE OF LIMITATAIONS** of both RCW 4.16.040 & RCW 64.04.007 (2). Therefore
5 their NTS should fail.

6
7 We can clearly see in WALCKER v. BENSON AND McLAUGHLIN, P.S. No. 14467-4-
8 III. 904 P.2d 1176 (1995) 79 Wash.App. 739.

9 http://www.leagle.com/decision/19952080904P2d1176_12050.xml/WALCKER%20v.%20BENSON%20AND%20McLAUGHLIN,%20P.S# *"A six-year limitation period applies*
10 *to actions based on written agreements, including demand notes."* And *"In an action to*
11 *foreclose on a mortgage or deed of trust, RCW 7.28.300 makes the statute of limitations a*
12 *defense."* In reference to: RCW 4.16.040. *Chatos v. Levas, 14 Wn.2d 317, 321, 128 P.2d*
13 *284 (1942). "The period begins to run at the time the note was executed". Chatos, 14*
14 *Wash.2d at 321, 128 P.2d 284.*

15 The six (6) year of Statue of Limitations from the date of execution applies in the instant
16 matter, that would be on the NOTE 11/3/2006 + 6 years = 11/3/2012 and on the DOT
17 11/6/2006 + 6 years = 11/6/2012. **We are far past that!** Therefore the Trustee sale should be
18 permanently enjoined and quite title awarded the Plaintiff.

19 We further see in: Westar Funding, Inc. v. Sorrels, No. 39070-1-II, COURT OF
20 APPEALS OF WASHINGTON, DIVISION TWO, 2010 Wash. App. LEXIS 2532, March
21 29, 2010. [https://cases.justia.com/washington/court-of-appeals-division-ii/39070-](https://cases.justia.com/washington/court-of-appeals-division-ii/39070-1.10.doc.pdf)
22 [1.10.doc.pdf](https://cases.justia.com/washington/court-of-appeals-division-ii/39070-1.10.doc.pdf) We also see at P. 7 that a six (6) year Statue of Limitations from the date of
23 execution of the NOTE applies. Both these cases were the foreclosure is **Barred** by the
24 **Statue of Limitations**, than employ RCW 7.28.300 authorizes an action to quiet title. See
25 Walcker, 79 Wn. App. at 742-46; and Jordan v. Bergsma, 63 Wn. App. 825, 828-31, 822
P.2d 319 (1992). Also employs a six (6) year Statue of Limitations.

1 Plaintiff must point out, that no parties until now have ever tried to foreclose on the
2 Plaintiff or the Governing Documents known as Ex B & Ex C. Further cases that uphold the
3 six (6) year Statue of Limitations on a NOTE:
4

- 5 • *"The statute of limitations on the enforcement of a promissory note is six years."*
6 BINGHAM v. LECHNER, 45 P.3d 562, Court of Appeals of Washington, Division
1., April 8, 2002.
- 7 • *"The six-year statute of limitations applies to any actions based on written agreements,
8 including promissory notes and deeds of trust."* SPARK NETWORKS, PLC v.
KNEDLIK, Court of Appeals of Washington, Division One., Filed: April 12, 2010.

9 Also, even if a six (6) year Statue of Limitations is tolled from the date of Default, or last
10 payment. Defendant list that in their NTS, See Ex G, P. 9 (NOTICE OF FORECLOUSRE)
11 they list the alleged "Delinquent Monthly payments from 10/1/2008". Plus Six (6) years =
12 10/1/2014. We are far beyond that **BARR DATE** as well. Therefore the Trustee sale Ex G
13 should be permanently enjoined and quite title awarded Plaintiff. When financial disaster
14 strikes, or circumstances out of our control happen. We need help which is why we have
15 laws such as the statute of limitations, bankruptcy and much other debt a credit protections
16 laws.
17

18 **XI SATISFACTION OF MORTGAGE & DEED OF RECONVEYANCE**

19 (a) On 11/21/2007 Recording Document # 4397625 **SUBSTITUION OF TRUSTEE**
20 **AND DEED OF RECONVEYANCE** was filed. See Ex H. It reads in part: "WHEREAS,
21 the indebtedness secured by said **Deed of Trust having been fully paid and**
22 **satisfied...** Recording Date: 11/13/2006 Document# 4246543" This is the DOT. See Ex C.
23
24

1 (b) If the NOTE & DOT made it into the PSA and there was a default, than the Debt was
2 already paid by the **POOL INSURANCE** as stated under the PSA section and the
3 Defendants have been made whole. See Ex C, P. 8, #12. *"Lenders acceptance of payments*
4 *from third persons, entities."* Also we see: *"All the authorities agree that the debt is the*
5 *principal thing and the mortgage an accessory. The mortgage can have no separate*
6 *existence. **When the note is paid** the mortgage expires. It cannot survive for a moment the*
7 *debt which the note represents."* (Emphases added!) *Carpenter v. Longan* 83 U.S.
8 271 (____) 16 Wall. 271.

9 Under the statute of frauds, an oral contract assuming and agreeing to pay the debt of
10 another is unenforceable. RCW 19.36.010(2), the statute of frauds, requires a writing, signed
11 by the party to be charged, for "every special promise to answer for the debt, default, or
12 misdoings of another person."

13 **XII NON COMPLIANCE WITH STATUTORY REQUIREMENTS TO FORECLOSE**

14 The Deed of Trust Act; RCW 61.24 has specific requirements a Trustee must follow!

15 RCW 61.24.135 Consumer protection act—Unfair or deceptive acts or practices. (2) It
16 is an unfair or deceptive act in trade or commerce and an unfair method of competition in
17 violation of the consumer protection act, chapter 19.86 RCW, for any person or entity to: (a)
18 ***Violate the duty of good faith under RCW 61.24.163; (b) fail to comply with the***
requirements of RCW 61.24.174; or (c) fail to initiate contact with a borrower and
exercise due diligence as required under RCW 61.24.031.

19 [*"Because the DTA eliminates many protections enjoyed by borrowers under judicial*
20 *foreclosures, "lenders must strictly comply with the statutes and courts must strictly*
21 *construe the statutes in the borrower's favor."* *Albice v. Premier Mortg. Servs. of Wash.,*
Inc., 174 Wash.2d 560, 567, 276 P.3d 1277 (2012).

22 RCW 61.24.030(8) Under the FFA it ***"shall be requisite to a trustee's sale"*** that a written
23 notice of default containing specific information set forth in the statute first be transmitted
24 by the beneficiary or the trustee to the borrower.

1 *RCW 61.24.031(1)(a), (5). A trustee, beneficiary, or authorized agent may not issue this*
2 *notice of default until 30 days after satisfying certain due diligence requirements.*

3 *RCW 61.24.031(1)(c)(iii), (iv), (f), (2)-(4). The beneficiary or agent first must send a letter*
4 *that includes information such as the borrower's right to meet with a HUD-approved*
5 *housing counselor or attorney who can help with mediation, assist in arranging a meeting*
6 *with the lender, or work toward a resolution such as a loan modification.*

7 *RCW 61.24.031(1)(c)(ii). This "Pre-Foreclosure Options Letter" or a "Notice of Pre-*
8 *Foreclosure Options" must provide toll-free numbers to help borrowers find HUD-*
9 *approved housing counselors or civil legal aid resources. Watson v. Nw. Tr. Servs., Inc.,*
10 *180 Wn. App. 81*

11 We see in RCW 61.24.005 (2) "Beneficiary" means the holder of the instrument or
12 document evidencing the obligations secured by the deed of trust, excluding persons holding
13 the same as security for a different obligation. (Emphases added!) Within this chapter we
14 see the Foreclosure Fairness Act as well.

15 Plaintiff was in shock when he noticed the Notice of Trustee Sale (NTS) See Ex G, filed
16 in his chain of title online with the Clark County Auditors/GIS website on Friday March 3,
17 2016. The Plaintiff was totally unaware that such action was in progress. See Ex H. On
18 Tuesday March 8th, 2016 said notice was taped to Plaintiff's house on the backdoor. Until
19 this point NO other notices were received by Plaintiff of said action. The Plaintiff than sent a
20 CEASE & DESIST & DEMAND FOR PRESENTMENT OF THE ORIGANAL NOTE on
21 3/9/2016. See Ex H. Since this was the initial contact with the Borrower, this statue should
22 apply:

23 *RCW 61.24.031 Notice of default under RCW 61.24.030(8)—Beneficiary's duties—*
24 *Borrower's options. (1)(a) A trustee, beneficiary, or authorized agent may not issue a*
25 *notice of default under RCW61.24.030(8) until: (i) Thirty days after satisfying the due*
diligence requirements as described in subsection (5) of this section and the borrower has
not responded; or (ii) if the borrower responds to the initial contact, ninety days after the
initial contact with the borrower was initiated. (Emphases added!)

1 The following are the fatal errors in the Defendant's process that is required under
2 RCW 61.24. Each represents an action of bad faith and fraud.

3 (a) Notice of Trustee Sale (NTS) does NOT have a recording stamp indicating when or if
4 it was recorded in the Clark County Auditors office. See Ex G P. 3. This is also in
5 violation of the "Good Faith Doctrine" in RCW 61.24.010 (4) "*The trustee or*
6 *successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.*"
7 & RCW 62A.1-304. "*Obligation of good faith. Every contract or duty within this title*
8 *imposes an obligation of good faith in its performance and enforcement.*" (Section
9 VI. Says a Notice of Default was mailed on 1/12/16? Plaintiff never seen it?)

10 (b) Section X. P. 5 is signed on 2-29-16 by Petiprin along with P. 10. However, the
11 Notary stamp and date is 3/1/1206? Thus making this document fraudulent for Notary
12 fraud! This is also in violation of the "Good Faith Doctrine" in RCW 61.24.010 (4)
13 & RCW 62A.1-304. See Ex G and Ex L which show a supposed copy of the Notaries
14 Journal confirming the 3/1/16 log entry which is contradictory to the 2/29/16
15 signings.
16

17 (c) The DOT See EX C does not contain a statement under RCW 61.24.030 (2), "*That*
18 *the deed of trust contains a statement that the real property conveyed is not used*
19 *principally for agricultural purposes;*" This is also in violation of the "Good Faith
20 Doctrine" in RCW 61.24.010 (4) & RCW 62A.1-304. Defendant puts a copy of the
21 DOT in their NTS, maybe they should read it? See Ex G.
22
23
24

1 (d) Trustee is not in compliance with RCW 61.24.030 (6),

2 *"That prior to the date of the notice of trustee's sale and continuing thereafter through*
3 *the date of the trustee's sale, the trustee must maintain a street address in this state where*
4 *personal service of process may be made, and the trustee must maintain a physical*
5 *presence and have telephone service at such address;".*

6 See Ex J, Trustee Petirpin lists a California address. This is also in violation of the
7 "Good Faith Doctrine" in RCW 61.24.010 (4) & RCW 62A.1-304. Trustee is not in
8 compliance with RCW 61.24.030 (7) (a),

9 *"That, for residential real property, before the notice of trustee's sale is recorded,*
10 *transmitted, or served, the trustee shall have proof that the beneficiary is the owner of*
11 *any promissory note or other obligation secured by the deed of trust. A declaration by the*
12 *beneficiary made under the penalty of perjury stating that the beneficiary is the actual*
13 *holder of the promissory note or other obligation secured by the deed of trust shall be*
14 *sufficient proof as required under this subsection. (b) Unless the trustee has violated his*
15 *or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's*
16 *declaration as evidence of proof required under this subsection. ""*

17 Trustee failed to comply with 10 day demand to produce the original Note per
18 RCW 61.24.005 (2) "Beneficiary" means the holder, & RCW 61.24.030 (7) (a) (b). See
19 Ex H. This is also in violation of the "Good Faith Doctrine" in RCW 61.24.010 (4) &
20 RCW 62A.1-304. We see in RCW 61.24.030 (7) (b), since the Trustee has violated the
21 "Good Faith Doctrine" in RCW 61.24.010 (4). The Trustee can NO LONGER rely on the
22 beneficiary's declaration as evidence of proof required under this subsection, referring to
23 (7) (a) as owner of the promissory note. Thus the beneficiary must produce the
24 Original Note! Period! As a matter of law!
25

1 (e) No Notice of Default was served upon the Plaintiff which is in violation of RCW
2 61.24.030 (8). *"That at least thirty days before notice of sale shall be recorded,*
3 *transmitted or served, written notice of default shall be transmitted by the beneficiary*
4 *or trustee to the borrower and grantor at their last known addresses by both first-*
5 *class and either registered or certified mail, return receipt requested, and the*
6 *beneficiary or trustee shall cause to be posted in a conspicuous place on the*
7 *premises, a copy of the notice, or personally served on the borrower and grantor.*
8 *This notice shall contain the following information:*" Therefore Plaintiff never
9 received Notice of Such per RCW 62A.1-202 (a) (1) (2). *"Notice; knowledge: (a) (1)*
10 *Has actual knowledge of it; (2) Has received a notice or notification of it;"* This is
11 also in violation of the "Good Faith Doctrine" in RCW 61.24.010 (4) & RCW 62A.1-
12 304.

14 (f) Since the Notice of Default was not served, the Defendant's are also in non
15 compliance with RCW 61.24.030 (9) & RCW 61.24.008 & RCW 61.24.163
16 Mediation & RCW 61.21.031 (1) (a) (b) (c) (5) (a) (b) (c) (d) (e). With NO initial
17 contact, with NO letter sent per RCW 61.24.031 (1) (c). The Plaintiff has been **highly**
18 **prejudiced** and lost the right to mediation, housing counseling and other rights like a
19 meeting with the lender etc. Plaintiff lost about 120 days in the process as well.
20 Therefore they are also in violation of any declaration in any Notice of Default they
21 may produce per RCW 61.24.031 (2) *"A notice of default issued under*
22 *RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this*
23 *section, from the beneficiary or authorized agent that it has contacted the borrower*
24

1 as provided in subsection (1) of this section, it has tried with due diligence to contact the
2 borrower under subsection (5) of this section, or the borrower has surrendered the
3 property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated
4 his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the declaration
5 as evidence that the requirements of this section have been satisfied,” and (9) Form. This
6 is also in violation of the “Good Faith Doctrine” in RCW 61.24.010 (4) & RCW 62A.1-
7 304. And since the Trustee has violated the RCW 61.24.010 (4), “Good Faith Doctrine”,
8 he can not rely on the Beneficiary’s declaration that the requirements were done!

9
10 (g) Since there is NO recording stamp in Ex G, P. 3 of the Notice of Trustee sale. The
11 most uneducated person would have NO idea when this was recorded! Thus the
12 Defendant’s are also in violation in the spirit of the law under RCW 61.24.040 (1) (a)
13 “the 120 day recording requirement”, of the Notice of Trustee Sale. This is also in
14 violation of the “Good Faith Doctrine” in RCW 61.24.010 (4) & RCW 62A.1-304.

15 (h) RCW 61.24.040 (8) reads” *The sale as authorized under this chapter shall not take*
16 *place less than one hundred ninety days from the date of default in any of the*
17 *obligations secured;*” If we look at Ex G, it gives a date of 1/12/2016 as a date that
18 the supposed Notice of Defaults were mailed to the Plaintiff which is only **178 days**
19 until July 8, 2016, the date of the sale. Therefore once again Defendant’s are in
20 violation of this statute as well! This is also in violation of the “Good Faith Doctrine”
21 in RCW 61.24.010 (4) & RCW 62A.1-304.
22
23
24

1 (i) Plaintiff gave the Defendant's an opportunity to restart the Illegal Foreclosure
2 process. Defendants have failed to do so as they have everything else! *See* Ex M.
3 Defendants have a well know and long running history of violating the laws and
4 statues in the States in the foreclosures they do to continue in their illegal enterprises
5 under the Criminal Profiteering Act, RCW 9A.82. Here are three (3) Consent Orders
6 from the The Comptroller of the Currency of the United States of America against
7 Wells Fargo Bank N.A., the party alleging to be a Trustee for Defendant Bear
8 Stearns, *See* Ex E and Ex G, Bear Stearns who went out of business and was
9 voluntarily Delisted on 1/20/2009, almost two and a half years (2.5) before the ADT
10 in EX G and in *Section 2.02* of the PSA, where the Defendant only has two (2) years
11 to sell a defaulted mortgage back to EMC from the Closing date of 4/30/2007 + 2
12 years = 4/30/2009, so the ADT was illegally fabricated a little over two (2) years from
13 this **BARR** date in the PSA as well.).
14

15 1) **AA-EC-11-19 dated April 13, 2011:** [http://www.occ.gov/news-](http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47k.pdf)
16 [issuances/news-releases/2011/nr-occ-2011-47k.pdf](http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47k.pdf)
17

18 2) **#2011-051 AMENDS AA-EC-11-19, dated February 28, 2013:**
19 <http://www.occ.gov/static/enforcement-actions/ea2013-132.pdf>
20

21 3) **#2015-067 Amends #2011-051 and #2013-132, dated June 16,**
22 **2015:** [http://www.occ.treas.gov/static/enforcement-actions/ea2015-](http://www.occ.treas.gov/static/enforcement-actions/ea2015-067.pdf)
23 [067.pdf](http://www.occ.treas.gov/static/enforcement-actions/ea2015-067.pdf)
24

25 *I ask the Court to Judicially Notice these linked documents.

2 **COMPTROLLER'S FINDINGS**

3 (2) *In connection with certain foreclosures of loans in its residential mortgage*
4 *servicing portfolio, the Bank:*

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

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

17 (c) *litigated foreclosure proceedings and initiated non-judicial foreclosure*
18 *proceedings without always ensuring that either the promissory note or the*
19 *mortgage document were properly endorsed or assigned and, if necessary, in*
20 *the possession of the appropriate party at the appropriate time;*

21 (d) *failed to devote sufficient financial, staffing and managerial resources to*
22 *ensure proper administration of its foreclosure processes;*

23 (e) *failed to devote to its foreclosure processes adequate oversight, internal*
24 *controls, policies, and procedures, compliance risk management, internal audit,*
25 *third party management, and training; and*

(f) *failed to sufficiently oversee outside counsel and other third-party providers*
handling foreclosure-related services.

(3) *By reason of the conduct set forth above, the Bank engaged in unsafe or*
unsound banking practices. (Emphases added!)

Id. At P. 7.

ARTICLE IV

COMPLIANCE PROGRAM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy
Comptroller and the Examiner-in-Charge an acceptable compliance program to ensure
that the mortgage servicing and foreclosure operations, including Loss Mitigation and
loan modification, comply with all applicable Legal Requirements, OCC supervisory
guidance, and the requirements of this Order and are conducted in a safe and sound
manner ("Compliance Program"). The Compliance Program shall be implemented
within one hundred twenty (120) days of this Order.

Any corrective action timeframe in the Compliance Program that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The Compliance Program shall include, at a minimum:

(a) appropriate written policies and procedures to conduct, oversee, and monitor mortgage servicing, Loss Mitigation, and foreclosure operations;

(b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Bank are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Bank's books and records when the affidavit or declaration so states;

(c) processes to ensure that affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements;

(d) processes to review and approve standardized affidavits and declarations for each jurisdiction in which the Bank files foreclosure actions to ensure compliance with applicable laws, rules and court procedures;

(e) processes to ensure that the Bank has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;

(f) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower and/or claimable by the investor;

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

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

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

THIRD PARTY MANAGEMENT

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge acceptable policies and procedures for outsourcing foreclosure or related functions, including Loss Mitigation and loan modification, and property management functions for residential real estate acquired through or in lieu of foreclosure, to any agent, independent contractor, consulting firm, law firm (including local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of the owners of mortgages), property management firm, or other third-party (including any affiliate of the Bank) ("Third Party Providers"). Third-party management policies and procedures shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The policies and procedures shall include, at a minimum:

(a) appropriate oversight to ensure that Third-Party Providers comply with all applicable Legal Requirements, OCC supervisory guidance (including applicable portions of OCC Bulletin 2001-47), and the Bank's policies and procedures;

(b) measures to ensure that all original records transferred from the Bank to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the appropriate court or the loan is otherwise transferred to another party), and are returned to the Bank or designated custodians at the conclusion of the performed service, along with all other documents necessary for the Bank's files, and that the Bank retains imaged copies of significant documents sent to Third-Party Providers;

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

#2015-067 at P. 3 reads in part:

ARTICLE I

COMPTROLLER'S FINDINGS

(1) The Comptroller's Findings under Article I of the Consent Order are hereby incorporated in full.

(2) **The OCC has determined the Bank has failed to comply with Articles II, III, IV, VIII, and IX of the Consent Order.**

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1 (3) The OCC has determined the Bank is in continuing noncompliance with
2 and in violation of the Consent Order, and continues to engage in
3 unsafe and unsound practices.

4 (4) This Amendment includes the fifteen (15) remaining actionable items under
5 the Consent Order and imposes business restrictions upon the Bank
6 through termination of the Consent Order.

7 ARTICLE XIII

8 OTHER PROVISIONS

9 The provisions of Article XIII of the Consent Order are hereby revised as follows:

10 (1) The Bank is in continuing noncompliance with and in violation of
11 the Consent Order, and continues to engage in unsafe and unsound practices.
12 Id. At P. 12. (Emphases added!)

13 ARTICLE XIV

14 BUSINESS RESTRICTIONS

15 (3) The Bank shall not outsource or sub-service any new residential mortgage
16 servicing related activities to other parties without prior OCC supervisory non-
17 objection until termination of the Consent Order. (Emphases added!) Did
18 Wells Fargo Bank N.A. get permission from the OCC to hire Defendant Petriprin
19 to act as a Trustee?

20 The Defendant's illegal enterprise as described the Criminal Profiteering Act,
21 RCW 9A.82, has even gone as far as setting up their own web site to enable it's
22 Attorney's, Trustee's and other parties to commit fraud with fake and forged documents
23 such as NOTES and ASSIGNMENTS OF DEEDS OF TRUST. This is the first internal
24 document that has a step by step manual on how to commit the fraud! It's fraud because
25 Wells Fargo is endorsing the note on behalf of another party, than using it for its own
26 unjust enrichment!

27 [https://assets.documentcloud.org/documents/1088761/wells-fargo-foreclosure-](https://assets.documentcloud.org/documents/1088761/wells-fargo-foreclosure-manual.pdf)
28 [manual.pdf](https://assets.documentcloud.org/documents/1088761/wells-fargo-foreclosure-manual.pdf) *We ask the Court to Judicially Notice this linked document.

On page 15-18 you will find the process for missing NOTES and missing NOTE
INDORSMENTS and ALLONGES. **This is proof of their ongoing criminal and
fraudulent foreclosure process!**

XIII CONSUMER PROTECTION ACT (CPA) ACTION

In section XII (a) thru (i) above we see: (1) **Unfair or deceptive act or practices
repeatedly;** (2) **Occurring in trade or commerce;** of the trustee and Wells in their
foreclosure process; (3) **Public interest impact;** it is not in the public's interests or of that of
the Plaintiff to have Trustee's in non compliance to RCW 61.24 as the Washington
legislature has intended; (4) **Injury to Plaintiff in his or her business or property;**
Plaintiff has already been hospitalized, *See* Ex N and Section XV, with a Hypertensive
Crises due to this stress, Plaintiff's title has been seriously clouded with the NTS recorded,
Plaintiff's business has suffered tremendously since his time has been devoted to this law
suit instead of his enterprise; (5) **Causation;** it is the Defendant's illegal actions that have
been the catalyst to the Plaintiff's health issues, his business income dropping, and the
reason for this law suit. It is simple cause and effect. We see how the Defendant actions
have substantially alters the status quo or substantially limits the freedom of a party to act; in
this case the Plaintiff!

¶49 *As recently summarized by the Court of Appeals:*
*To prove that an act or practice is deceptive, neither intent nor actual deception is
required. The question is whether the conduct has "the capacity to deceive a substantial
portion of the public."* *Hangman Ridge, 105 Wn.2d at 785. Even accurate information
may be deceptive "if there is a representation, omission or practice that is likely to
mislead."* *Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 50, 204 P.3d 885
(2009) (quoting Sw. Sunsites, Inc. v. Fed. Trade Comm'n, 785 F.2d 1431, 1435 (9th Cir.
1986)). Misrepresentation of the material terms of a transaction or the failure to disclose
material terms violates the CPA.*

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1 *State v. Ralph Williams' Nw. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 305-09, 553 P.2d
2 423 (1976). Whether particular actions are deceptive is a question of law that we review
3 *de novo*. *Leingang v. Pierce County Med. Bureau*, 131 Wn.2d 133, 150, 930 P.2d 288
4 (1997). *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011) (Emphases added!)
5 and ¶50 The attorney general of this state maintains a consumer protection division and
6 has considerable experience and expertise in consumer protection matters. As amicus,
7 the attorney general contends that MERS is claiming to be the beneficiary "when it
8 knows or should know that under Washington law it must hold the note to be the
9 beneficiary" and seems to suggest we hold that claim is *per se* deceptive and/or unfair.
10 AG Br. at 14. This contention finds support in *Indoor Billboard/Wash., Inc. v. Integra*
11 *Telecom of Wash., Inc.*, 162 Wn.2d 59, 170 P.3d 10 (2007), (Emphases added!) *Bain v.*
12 *Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83

13 In Defendant's Notice of Trustee Sale Ex G, P. 4, VI. We see an alleged statement of: "A
14 written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower or
15 Grantor at the following addresses: "17005 NE 164th Avenue, Brush Prairie, WA 98606-
16 6302. (Listed twice, once for me and once for a spouse I don't have? This is my current
17 address; however the ONLY document I ever got was the Notice of Trustee sale on my
18 home on 3/8/2016, than in the mail the same day as well). Than we see my very old address
19 of: 3605 SE 52nd Ave., Portland, OR 97206. (Portland) Listed twice two. Once for me and
20 once for a spouse I don't have? This address I moved from in January/February 2002 when
21 I bought and moved to the present address of 17005 NE 164th Avenue, Brush Prairie, WA
22 98606. That is 14 years ago. Why on earth would a competent Trustee or a National Bank
23 send mail to a knowingly wrong address? In what I think, February 2016, I did receive a
24 call from a woman named Pam, who claimed to be a renter at my very old Portland address:

25 She got my number off Google. She told me there was several letters there
addressed to me. I asked her where they where from and sent by whom? She said from a
PO Box in San Diego, CA and from an unknown sender. I told her it sounded like junk
mail, so she ask me if I wanted to pick it up, or she'd even mail it to me. I declined both

1 since it sounded like junk mail, which being in business 25 years, I get a ton of it! Come
2 to find out when I did get the Notice of Trustee sale on my home on 3/8/2016 and in the
3 mail too that same day. It was from an unknown person/business and from a PO Box
4 in San Diego, CA. I therefore believe, what ever service the Trustee and Beneficiary use
5 to mail their documents messed up greatly and sent all the required documents/notices
6 under RCW 61.24 to my old address of: 3605 SE 52nd Ave., Portland, OR 97206. See Ex
7 G, P. 1, 4 & 5. However, this does NOT excuse the required **Statutory Requirements**
8 under RCW 61.24 the Trustee and Beneficiary must comply with!

10 **XIV ADVERSE POSSESSION BY PLAINTIFF**

11 **RCW 7.28.050 Limitation of actions for recovery of real property—Adverse**
12 **possession under title deducible of record.** *“That all actions brought for the*
13 *recovery of any lands, tenements or hereditaments of which any person may be*
14 *possessed by actual, open and notorious possession for seven successive years,*
15 *having a connected title in law or equity deducible of record from this state or the*
16 *United States, or from any public officer, or other person authorized by the laws of*
17 *this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal*
18 *or other person authorized to sell such land on execution or under any order,*
19 *judgment or decree of any court of record, shall be brought within seven years next*
20 *after possession being taken as aforesaid, but when the possessor shall acquire title*
21 *after taking such possession, the limitation shall begin to run from the time of*
22 *acquiring title.* (Emphases added!)

23 **RCW 7.28.070 Adverse possession under claim and color of title—Payment of**
24 **taxes.** *“Every person in actual, open and notorious possession of lands or*
25 *tenements under claim and color of title, made in good faith, and who shall for*
26 *seven successive years continue in possession, and shall also during said time pay*
27 *all taxes legally assessed on such lands or tenements, shall be held and adjudged to*
28 *be the legal owner of said lands* or tenements, to the extent and according to the
29 purport of his or her paper title. All persons holding under such possession, by
30 purchase, devise or descent, before said seven years shall have expired, *and who*
31 *shall continue such possession and continue to pay the taxes as aforesaid, so as to*
32 *complete the possession and payment of taxes for the term aforesaid, shall be*
33 *entitled to the benefit of this section.”* (Emphases added!)

1 **RCW 7.28.230 Mortgagee cannot maintain action for possession. “(1) A mortgage**
2 **of any interest in real property shall not be deemed a conveyance so as to enable the**
3 **owner of the mortgage to recover possession of the real property, without a**
4 **foreclosure and sale according to law:”** (Emphases added!) So the only way for the
5 Defendants to take possession is in a lawful foreclosure action!

6 The Plaintiff has been in constant possession since the purchase of said property
7 since January 7, 2002 evidenced by Ex A, DEED.

8 And the real property taxes have been paid since that time, evidenced by Ex I.

9 Therefore the Plaintiff has met the statutory requirements as an **ADVERSE**
10 **POSSESSION** owner who also holds legal title as well. Thus the **Statue of**
11 **Limitations** for **ADVERSE POSSESSION** (if it would of applied to the Defendants)
12 and the **BARRING** of such adverse possession by the Mortgagee per the statute
13 leaves this remedy closed for the Defendants as well.

14 **XV PERSONAL HARM & HARDSHIP CAUSED BY DEFENDANTS**

15 Since 3/4/2016 when I saw the NTS in my chain of title my life, my family, my business,
16 and my health have been turned upside down and inside out. Than on Tuesday 3/8/16 a
17 Notice of Trustee Sale was also tape to the backdoor my home. The stress is unimaginable!
18 Who are these people? Why the hell are they trying to take my home? Having to prepare this
19 case on top of my daily task of a father, a son to two aging parents, a boyfriend to a loving
20 and amazing woman, business owner and mentor to many business associates and a home
21 owner, has taken its toll in every area of my life. Plus as a Christian, Father, Son, Business
22 Man and a Veteran; the following holidays have also been missed completely because I have
23 had to spend every available moment researching and preparing this law suit because the
24

1 Defendants have unquenchable greed and have no moral compass. Palm Sunday, Good
2 Friday, Easter, Passover, Cinco de Mayo, National day of Pray with FGBM, Mother's day,
3 Armed Forces Day, Memorial Day and Father's day. These special and memorable days and
4 events have passed by unattended and uncelebrated due to Defendant's illegal foreclosure.

5 **Three** major events have happened since getting the NTS. **One** my first
6 grandchild/grandson was born on May 11. I was unable to be there at the birth due to this
7 illegal foreclosure. I have only been able to drive up to Renton, WA once on a Saturday only
8 to return the next day to continue in this nightmare from hell. **Secondly**, my dear friend and
9 mentor of 25 years passed away on June 1st. Once again I was unable to go to Spokane for
10 his funeral and to comfort his family due to this unnecessary and illegal time line I am under
11 due to the Defendant's greed and wanting of an unjust enrichment at my expense. **Thirdly**,
12 the weight of the stress the Defendant's have put me under at age 50 took its tool on Monday
13 June 6.

14
15 My body went into **Hypertensive Crises!** My blood pressure soared to 237/148! I was
16 admitted immediately to Peach Health Hospital for 4 days, with a barrage of test needing to
17 be done to and treatments needed to avoid an eminent stroke or heart attack. **My blood**
18 **pressure soared to deadly levels twice that Monday**, I am thankful to God that I am alive!
19 **The cause was single handedly the stress from this illegal foreclosure!** I have NEVER
20 had high blood pressure in my life! In fact when I ran 10 marathons years ago I have real
21 low blood pressure and pulse. **Defendant's actions are intentional infliction of emotional**
22 **distress!**

1 How can one put a price on those three once in a life time events? Than the holidays as
2 well and the special times I should have had with family, friends and business associates.
3 Not to mention business meeting and large weekend events I have also missed in my
4 business due to this illegal foreclosure! I know this; injury has been made already due to the
5 looming illegal foreclosure pending and the stress and fear of loosing my home, sanctuary,
6 my place of business and my largest asset in which I have invested probably \$2,000,000.00
7 in since January 2002. Not to mention my life savings, my blood, sweat and tears working
8 and up keeping a home this large in a gated community.
9

10 **XVI DAMAGES SOUGHT**

11 **Foremost;** Plaintiff seeks **\$10,000,000.00** in damages for **Personal Injury and**
12 **Emotional Duress!** That is the value I put on my life that Defendants almost took from me
13 on June 6, 2016 when the **Hypertensive Crises** happened. The fear and the pains in my
14 head, neck and chest were extreme. *See* Ex N. **Plus full reimbursement for the cost of**
15 **treatments at both Peach Health Hospital and the VA for treating me for the Hypertensive**
16 **Crises and all the follow up care and medicines.**

17 **Secondly;** Plaintiff seeks **Triple Treble Damages** under the CPA, RCW 19.86.090 Civil
18 action for damages—Treble damages authorized, Consumer Protection Act.

19 **Thirdly;** Plaintiff seeks **Reputation Slander Damages** for the **Illegal Libel and**
20 **Slander of my Title** with the Notice of Trustee Sale (NTS) being filed in my chain of title.
21 In the form of **Actual Damages, Assumed Damages** of value of the home **\$899,000.00** *Se*
22 *Ex O*, per each Defendant, and **Punitive Damages** of **\$1,000,000.00** per each Defendant.
23
24

1 **Fourthly;** Plaintiff seeks All Cost for having to bring this action against the Defendant's
2 Illegal Foreclosure of the Plaintiff's home. Including Plaintiff's time preparing and litigating
3 this case at the same hourly rate Defendant Petitprin charges **Trebeled** and shared equally
4 between all the Defendants.

5 **XVII PRAY FOR RELIEF**

6 Foremost the Plaintiff would ask the Court for **Leave to Amend** his Compliant since the
7 proper notices were not followed per RCW 61.24, the Deeds of Trust Act along with his
8 medical crises and recovery times that where caused by the Defendants, **has prejudiced the**
9 **Plaintiff greatly in his proper defense to this unlawful foreclosure.** I estimate I lost ~90+
10 days with out receiving the proper preforeclosure documents, than the right to mediate, then
11 **not getting a Notice of Default** etc added another 60 days I estimate I lost. Than add to that,
12 I was hospitalized 4 days, had to recover more and get functional on my new 6 medications.
13

14 Even having "settled" into being on the new medications, I am having troubles with my
15 eye sight, which is a side effect from one of the blood pressure medicines. Prior to this I
16 was on NO medications!

17 The Plaintiff Prays for **Declaratory Judgments** on the rights of the Parties regarding the
18 NOTE, and its value as a legal debt, or its nullity. *See* Ex B.

19 The Plaintiff Prays for **Declaratory Judgments** on the rights of the Parties regarding the
20 DEED OF TRUST(s), and it's (their) enforcebilty, or it's (their) nullity. *See* Ex C and Ex
21 E. RCW 7.24.080 Further relief.

22 The Plaintiff Prays for **Injunctive relief both Temporary and Permanent** against the
23 Defendants in their ability to collect on the NOTE and the in their ability to enforce the
24 DEED OF TRUST(s) in either payments and/or in Foreclosure. RCW 7.40.010
25

1 Injunctive Relief: Who may grant restraining orders and injunctions.

2 RCW 7.40.040 Injunction: Time of granting. RCW 9A.82.090 Orders restraining
3 criminal profiteering—When issued. Ceasing all collections under: (FDCPA) 15 USC
4 Chapter 41, section 1692g (b), "Disputed debts".

5 The Plaintiff Prays for **Quiet Title** in both deeds in Ex C and Ex E, and in the NTS *See*
6 Ex G and the Appointment of Successor Trustee, *See* Ex J and all other illegal documents
7 in my chain of title, *i.e. the other* Appointment of Successor Trustee and ADT as well up
8 to this point in time. RCW 7.28.300 Quieting title against outlawed mortgage or deed of
9 trust.

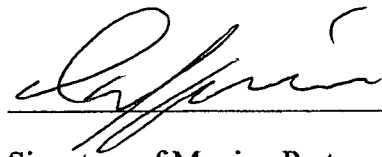
10 The Plaintiff Prays **seperatley on top of the above, for all cost to bring this action**
11 **and his cost in lost time to prepare said action, Trebled** at the same hourly rate that
12 Defendant Petiprin charges per hour as an attorney. **Payable by Defendant Petiprin alone**
13 **for negligence in not following the strict Statutory guidelines of RCW 61.24.**

14 The Plaintiff Prays for any and all relief available to him or the Court or other agencies,
15 under both the RCW 9A.82 CRIMINAL PROFITEERING ACT. RCW19.86 UNFAIR
16 BUSINESS PRACTICES—CONSUMER PROTECTION ACT.

17 The Plaintiff Prays for any other and all relief, either monitory or equitable that the
18 Court deems just.
19

20 DATED: this 27 day of June, 2016

21 Submitted by:

22 
23

Signature of Moving Party,

, Daniel G. Szmania

Printed Name

24 Presented: Daniel G. Szmania, Plaintiff, Pro Se'.
25 17005 NE 164th Ave., Brush Prairie, WA 98606
360-260-2280, Email: dszmania@quixnet.net

COMPLIANT

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