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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR COUNTY OF RIVERSIDE**

LARSEN JUSTICE CENTER

CASE NO INC 090697

BRIAN W DAVIES

Plaintiff

**SECOND AMENDED COMPLAINT
VERIFIED**

DAMAGES EXCESS \$25,000

DEMAND JURY TRIAL

V.

**NDEX WEST LLC, DEUTSCHE BANK
NATIONAL TRUST COMPANY AS
TRUSTEE OF THE RESIDENTIAL ASSET
SECURITIZATION TRUST 2007-A5,
MORTGAGE PASS THROUGH
CERTIFICATES SERIES 2007 E UNDER THE
POOLING AND SERVICING AGREEMENT
DATED 3-1-07, INDYMAC MORTGAGE
SERVICES, A DIVISION OF ONEWEST BANK
FSB, UNIVERSAL AMERICAN MORTGAGE
COMPANY OF CALIFORNIA, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS
INC., UAMC LLC, DOES 1-20**

Defendants,

1. **FRAUD - DECEIT**
2. **Violation Sections § 2923.5,
2924, 2015.5, 2932.5 Ca.
Code**
3. **SLANDER OF TITLE**
4. **Violation of BUS & P C
§17200 et. Seq. —**
5. **BREACH OF COVENANT
GOOD FAITH AND FAIR
DEALING**
6. **DECEIT INTENTIONAL
MISREPRESENTATION**
7. **Violation of
FINANCIAL CODE
Section 50505**
8. **Violation of Section §726
Ca. Code of Civ Procedure**

HONORABLE JUDGE

RANDALL WHITE

DEPT 2H

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2 COMES NOW, THE PLAINTIFF, BRIAN W DAVIES, Here in after referred to as
3 "PLAINTIFF" and for his Causes of Action herein, alleges, and states as follows:

4 **JURISDICTION AND VENUE**

5 1. Jurisdiction for this action is properly founded in the Superior Court State of
6 California, County of Riverside, Indio District, Indio, California.

7 2. The underlying property of this controversy is located in the
8 jurisdiction of Riverside Superior Court District of Indio, California.

9 3. The Riverside County is the location of the real property, located at 43277
10 Sentiero Drive Indio, California 92203.

11 **THE PARTIES**

12 4. Plaintiff, is the owner of the property. The property is identified in the Riverside
13 County land records as Assessor's Parcel Number 601710020-5, (abbreviated legal
14 description as LOT 075 TR 31601-4), commonly known as 43277 Sentiero Drive,
15 Indio, California 92203.

16 5. Defendant **UNIVERSAL AMERICAN MORTGAGE COMPANY OF**
17 **CALIFORNIA**, (hereinafter "UAMCC") is a California Corporation Subsidiary of the
18 builder Lennar Homes. "UAMCC" also maintains a principal place of business at
19 700 N. W. 107th Avenue Suit 400 Miami, Florida. Defendant "UAMCC" holds itself
20 as forth as the origination lending party as respects such a certain claimed a Deed
21 of Trust dated November 16, 2006, in the Riverside Recorders office.

22 6. Defendant **Mortgage Electronic Registration Systems, Inc.** refers to itself
23 and is hereinafter also referred to as ("MERS") is organized and existing under the
24 Laws of Delaware, and maintains it sole address at P. O. Box 2026 Flint, Michigan
25 48501- 2026. Upon information and belief "MERS"who holds the note is a taker entity
26 created by subsidiary entities of Bank of American, where memberships to a computer
27 tracking system are sold to member banks. "MERS" assigned "Vice Presidents" are in
actualities employees of member banks and work as agents for effecting
transfers of Mortgagees. "MERS" is not registered with the Secretary in California.

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2 7. Defendant **UNIVERSAL AMERICAN MORTGAGE COMPANY LLC**, hereinafter
3 referred to as ("**UAMC**"), is also located at 700 NW 107th Avenue, 3rd floor Miami,
4 Florida is also part of the Lennar, UAMCC and other subsidiary group . Defendant
5 "UAMC" appears as "Trustee" on a certain documented styled as a Deed of Trust,
6 recorded in the Riverside County Clerk as document number DOC# 2006-0853245.

7 8. Defendant **INDYMAC MORTGAGE SERVICES**, hereinafter referred to
8 as is a subsidiary of ONEWEST BANK FSB ("**ONEWEST**") . "ONEWEST"
9 was chartered on March 19,2009 as a Federal Depository Institution.

10 9. Defendant **DEUTSCHE BANK NATIONAL TRUST COMPANY** hereinafter
11 Defendant ("**DEUTSCHE**") represents itself and holds itself out as the Trustee for
12 the INDYMAC BANK FSB 2007-A5 RAST Special Purpose Vehicle issued
13 pursuant to the Registration Statements filed with the Security and Exchange
14 Commission. Defendant "**DEUTSCHE**" represents itself that it is in possession of
15 a promissory due by Plaintiff by assignment August 20 ,2009 as recorded in the
16 Riverside County Records as Doc. #2009-0434707.

17 10. Defendant **NDEX WEST, LLC**, hereinafter referred to as ("**NDEX**") holds
18 itself forth as an agent of unknown beneficiaries related to a complex securitized
19 instrument manufactured by now insolvent Defendant INDYMAC BANK FSB, as
20 depositor of such trust. "NDEX" is a Limited Liability Corporation chartered by the
21 State of California. It's sole apparent place of business is 15000 Surveyor Blvd. Ste.
22 100 Addison, Texas.

23 11. Plaintiff is informed and believes and thereon alleges that at all times mentioned
24 herein **Defendants Does 1-20**, inclusive, were the agents and/or employees
25 of all defendants and in doing the things herein alleged, were acting in the course and
26 scope of such agency and/or employment and with the consent of his co-defendants.
27 Plaintiff seeks leave to amend to cite in as their identities become known.

1 12. The Corporate Defendants herein as a matter of custom have constructed a
2 veneer of opacity to obscure the true identities of Does 1-20.

3 **GENERAL AND FACTUAL ALLEGATIONS**

4 13. Mortgage Lenders cause Mortgage Electronic Registration Systems ("MERS")
5 to go on title as the "Nominee Beneficiary," of securitized instruments in order to hide
6 the true identity of the successor assignees of the notes, including the note of the
7 Plaintiff in controversy herein. "MERS", however, comports as if it is the actual
8 beneficiary. Plaintiff alleges that the Deed of Trust was never perfected and is a nullity
as the "MERS" recording separates the Debt from the Lien

9 14. The newly recorded assignment of Plaintiff's Deed of Trust by "MERS" on
10 August 20, 2009 appears to create a paper trail, for an assignment allegedly done
11 years before, but done that time to Opteum Financial from Universal American
12 Mortgage of California.

13 15. This August 20, 2009, recorded assignment was from the original lender
14 Universal American Mortgage Company Of California to Deutsche Bank National Trust
15 Company, as Trustee of a Mortgage Back Security Trust. It was signed and witnessed
16 in Texas by an authorized signer of "MERS" who is gainfully employed by "ONEWEST",
17 all done while to loan was in default.

18 16. The loan was originated, funded, sold on multiple occasions, bundled into a
19 group of Trust Deeds with Notes and subsequently sold to investors as a Derivative,
20 "Mortgage Backed Security". Security Laws, Trust Laws of New York, and tax
21 implications controlled by the Internal Revenue Services govern this transaction.

22 17. The "Originators" or original "lenders" rarely lend their own money as is herein
23 alleged against "UAMCC". The usual practice was for the originating "pretender
24 lender" to have already contracted to resell the loan to a "loan aggregator" in a pool, on
25 the the loan closing. This is alleged herein with "Indymac Bank FSB using Colonial
26 Bank as a warehouse lender" on the closing date 11-17-06. The originator "UAMCC"
was paid it commissions nearly \$24,000 immediately.

27 18. Wall Street would fund the loan through its investors, and encouraged the

1 originating "lenders" to cut corners on proper underwriting standards
2 to produce as many assignable notes as possible without regard to the consequences
3 and as such is alleged herein against Lender Defendants.(Ex #3)

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5 19. The Securitization system was further designed so as to minimize the risks of
6 predatory lending, defaulting loans, and other risks by insuring and cross-collateralizing
7 thousands of loans in a loan pool. If a loan defaulted and resulted in a foreclosure, and
8 foreclosure was pursued, the loan would be paid-off in full by insurance proceeds.

9 20. Defendants are also alleged to have failed to comply with Sections
10 §2923.5 & § 2924 of the California Code "**The Perata Mortgage Relief Act**". The Act
11 increases burden on Lenders and Servicers to provide counseling and other requirements
12 prior to filing the Notice of Default. This step is mandatory prior to the allowances
13 granted and set forth in the Non Judicial steps of Section § 2924 of the California Code.

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FIRST CAUSE OF ACTION
FRAUD AND INTENTIONAL DECEIT

(UAMCC, UAMC DOES 1-20)

Plaintiff refers to and incorporates, as though fully set forth herein paragraphs 1-21:

21. Jeffrey Feig (hereinafter, "Feig") at all material times was the agent (loan advisor) and employee of defendant Universal American Mortgage Company, acting on behalf of and under the direction of "UAMCC" and as such UAMC. Feig held himself as an expert of home loan procurement and reposes his faith trust and confidence in Lennar, "UAMC", and "UAMCC". The acts and practices of Feig, "UAMCC", "UAMC" and Lennar as respect to the purchase, sale, and financing of homes including the Purchase of Plaintiff herein are the acts and practices so commingled considered to be in severable.

22. Days prior to November 10, 2006, defendant JEFFREY FEIG made the following representations to plaintiff:

- a) That Plaintiff was receiving a 30 year fixed interest rate loan from "UAMCC".
- b) That Feig had proper documentation to support 100% financing of the proposed home price purchase.
- c) That the loan information which Plaintiff conveyed via a telephone interview

1 would be accurately transcribed into accurate loan documents.

- 2 d) That Plaintiff's divorce was not a problem in getting him a loan.
- 3 e) That Plaintiff having other loans with the Plaintiffs spouse was not an
- 4 impediment to the proposed transaction.
- 5 f) That Feig had exceptional skill obtaining proposed loans for others.
- 6 g) That the market value of the house would continually rise and would be and
- 7 would remain an appropriate investment for Plaintiff and family.
- 8 h) That Plaintiff could refinance in a few years with no difficulties.

9 23. The representations made by defendant were untruthful. The actual facts were:

- 10 a) Plaintiff's loan was not a 30 years fixed interest rate loan.
- 11 b) There was not adequate documentation to support such a loan.
- 12 c) That the loan application as manufactured by Feig had misleading inputs.
- 13 d) That the divorce of Plaintiff was impediment to receiving the most
- 14 favorable terms to any loan offered.
- 15 e) That other loans were an impediment to Plaintiff receiving the most
- 16 favorable terms to any offered.
- 17 f) That loans were misleadingly documented and proffered.
- 18 g) That the value of the home is today is 60% off from the price offered by
- 19 Lennar and "UAMCC".
- 20 h) That there was no refinancing available in two years.

21 24. Defendants through its Loan Advisor Jeffrey Feig had a duty & obligation

22 to be truthful to Plaintiff. Defendants failed in these duties and obligations.

23 25. Defendant's knew that plaintiff is and was unaware of, and could not

24 reasonably discover, material information about the loan transaction diligence needs.

25 26. Defendant's and loan advisor Feig willfully and knowingly set forth a

26 misleading scenario as to the foundations of the loan transaction they proposed to

27 Plaintiff, to the harm losses and detriment of Plaintiff.

28 27. At the time Loan Advisor Jeffrey Feig made these representations, Defendants

29 and their alter egos Lennar, and the immediate supervisors of Feig and Feig, knew

30 these representation to be untruthful and misleading.

31 28. These representations were made with the intention to deceive plaintiff and to

32 induce plaintiff to act in reliance on these representations, to his detriment in the

33 expectation that plaintiff would so act to his detriment, whereby the fruits of these

34 inducements would inure to the enrichment and benefits to the defendant herein.

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2 29. Plaintiff, at the time these representations were made by defendant and at the
3 time plaintiff took the actions herein alleged, was ignorant of the falsity of Defendant's
4 representations and believed them to be true, In reliance on these representations,
5 plaintiff was induced to and did accept the loan that is the subject of this litigation.

6 30. Had plaintiff known the actual facts, he would not have taken such action.
7 He visited the Terra Lago looking for a place to rent, next to the model homes being
8 sold by Lennar.

9 31. Plaintiffs reliance on defendant's representations was justified because there
10 was no reason for plaintiff to suspect that defendant lender was deceiving him.

11 32. FEIG was very charismatic. Feig also met Plaintiff in the Lennar Sales Office.
12 Plaintiff visited Feig's new house by invite. He has a nice wife and family. Feig was
13 in a new house putting in a large pool and beautiful landscaping. All done with a 100%
14 financed Interest Only Loan.

15 33. FEIG stated he would help Plaintiff do it the same way, and would help to
16 refinance in a year or two as the property valued went up. He was from Midwest, just as
17 Plaintiff. He reference was check as trustworthy and as confirmed by the Lennar
18 Salesperson Rita. The two other Lennar real estate sales people in the office said he
19 was the best. It was these same sales people who said that Plaintiff needed to fill out a
20 loan application with their preferred lender UAMCC and if Plaintiff did not use this
21 lender he would forfeit and thousand of dollars in discounts offered by Lennar.

22 34. Feig represented to Plaintiff he would continue to be a personal confidant in
23 achieving the goal of acquiring a house from Lennar which would equivalently have the
24 accouterments including 100% Interest only. Plaintiff reposed his faith trust and
25 confidence in Feig, and a fiduciary relationship emanated from the relationship.

26 35. As a proximate result of the fraudulent conduct of defendants and their culpable
27 state of mind with the intent to perpetrate falsities upon on unsophisticated consumer as

1 herein alleged, Plaintiff was duped and subject to onerous foreclosure proceeding,
2 drained of personal savings, and has been damaged in the sum well over \$ 100,000
3 plus additional loss of personal money, and emotional distress.

4 36. The conduct of defendant was an intentional misrepresentation, deceit, or
5 concealment of a material facts, and was despicable conduct that subjected plaintiff to
6 a cruel and unjust hardship. Plaintiff's audit indicates that "UAMCC" collected over
7 \$24,000.00 for extending it services.

8 37. These acts may justify an award of compensatory, consequential, emotional
9 distress, and punitive damages as well as injunctive relief. CC § 1709, CC §
3294(a)(b)(3), CC § 3343.

10 **SECOND CAUSE OF ACTION**

11 Violations Sections § 2923.5, § 2924, §2015.5 ,§ 2943, §2934 of the California Code
12 ("NDEX", "ONEWEST", "DEUTSCHE", "MERS", "UAMC", "UAMCC")
Plaintiff incorporates and refers to 1-37 inclusive as if set forth the same.

13 38. On July 14, 2009 "NDEX" acting as an agent of an unknown beneficiary or note
14 holder filed a Notice of Default on Plaintiff's property, Document No.2009-0362260.

15 39. The Beneficiary, Trustee ("UAMC"), and agent of the beneficiary ("NDEX"),
16 breached the duty to follow Sections § 2923.5, CC§ 2924 of the California Codes.
17 Plaintiff is in the class that is protected by such statutes.

18 40. Indymac Mortgage Services, a Division of Onewest Bank FSB, had a duty to
19 Plaintiff as part of its newly assigned servicing duties acquired when it purchased from
20 the FDIC, ("Indymac Federal Bank FSB") on March 16, 2009. It failed in its duties to
21 provide accurate ownership and debt information required by law, including the
22 (FDCPA), and failed to provide contact and counseling requirements outlined in Section
23 § 2923.5 of the California Code.

24 **PERATA MORTGAGE RELIEF ACT**

(6-8 weeks added for the diligence and counseling prior to initiating foreclosure)

25 41. California Civil Code § 2923.5 amends provisions of the non-judicial foreclosure
26 procedures found in Section §2924 of the California Code Statutory requirements added
27 meetings, due diligence, counseling, and imposes an unprecedented duty upon lenders

1 to contact borrowers.

2 42. "ONEWEST" took over for Indymac Federal Bank FSB on March 16, 2009.
3 Plaintiffs account credited as paid on April 13, 2009, from that time Plaintiff was not
4 provided access to information on counseling, help or meetings as required by Section
5 § 2923.5 of the California Code. "ONEWEST" did not provide debt validation or identity
6 of the debts owner as required by the FDCPA.

7 43. "ONEWEST" wrote Plaintiff two letters that were sent as part of their new
8 servicing due diligence requirements of Section § 2923.5 (g) of the California Code.

9 44. First letter sent on July 1, 2009 *"In reviewing our records we have determined
10 you have fallen behind. Our goal is to help you maintain ownership of your property.*

11 45. On **August 19, 2009**, Certified letter # 7100 4047 5100 7590 8943 stated:
12 *"We have made repeated attempts to contact you by first class mail and by phone to
13 discuss your financial situation. Despite our best efforts we have been unable to contact
14 you as of this date... HUD counseling number to call. We will progress to foreclosure
15 within thirty (30) days from the date of this notice (30 days = **September 19, 2009**),
16 unless you contact us..and we reach an agreement to avoid foreclose." (Ex #1)*

17 46. On **July 14, 2009** "NDEX" filed the Notice of Default, months before the certified
18 letter stated it would happen, and as proffered by Section § 2923.5 of the California
19 Code. (Ex #2)

20 47. The premature Notice of Default included an Declaration from an entity not known
21 to Plaintiff or unconformity with the urgently enacted "Perata Mortgage Relief Act".

22 48. The California Statutory requirements of Section § 2015.5 of the California Code,
23 requires such a sworn Declaration to be under penalty of perjury, and the
24 **"Strict Statutory Requirements"** of Section § 2924 of the California Code are to be
25 taken serious since there is little judicial interference with the process once begun.

26 49. Plaintiff contacted (phone and in writing) "NDEX" to question the due diligence
27 process, and compliance with Section § 2923.5 of the California Code. Plaintiff
explained the error. "NDEX" would not supply information regarding such decisions.

50. On October 12, 2009 Plaintiff requested proof of debt amount as required by law
in the Section § 2943 of the California Code, it is called a "beneficiary statement".

1 "NDEX" and "ONEWEST" ignored such request.

2 51. On October 30, 2009 a recorded Substitution of the Trustee was filed whereby
3 "NDEX" was appointed as Trustee. The newly assigned beneficiary of August
4 10, 2009 "DEUTSCHE" appointed "NDEX". proffered by an employee of
5 "ONEWEST". JC San Pedro in Texas was an alleged authorized signatory for
6 "DEUTSCHE. There was no attachment as to the attestation of
7 the signatory validity. The notary signed *who is known to me* and in Texas.

8 52. In California a notary cannot take an acknowledgement on the basis of personal
9 knowledge. Noncompliance may cause the notary to be subjected for a penalty of up
10 to \$10,000. Notary must also sign under penalty of perjury (Civil Code § 1189(a)(1).

11 53. "UAMC", as Trustee of the Deed of Trust, on 7-14-09 had a contractual duty
12 of good faith and fair dealings to Plaintiff as part of its trustee duties as outlined in the
13 Deed of Trust contracted by Plaintiff, under Sections 22 and 24.

14 54. "UAMC" failed to act with prudence and caution. *"Trustees do have a duty to act with*
15 *reasonably diligence and good faith on the borrower's behalf consistent with the trustees'*
16 *primary obligation to assure payment of the secured debt. A trustee cannot allow the urgency*
17 *of the lender to override the trustee's duty to act with fairness and impartiality to both*
18 *parties".*

19 55. Section § 2934 of the California Civil Code outlines these unbiased duties. *"The*
20 *trustee under a trust deed given to secure an obligation to pay money and conferring no*
21 *other duties upon the trustee may be substituted by the recording in the county in*
22 *which the property is located.*

23 56. The trustee duties required due care. These duties and the apparent incestuous
24 conflicts of interest between the original lender "UAMCC", Plaintiff, and "UAMC" as
25 Trustee appears show a lack of prudence in its duties an obligation that maybe
26 considered self dealing.

27 57. "DEUTSCHE" as a Mortgage Back Securities Trustee, had an assigned
contractual duty of good faith and fair dealing to Plaintiff as the alleged beneficiary.
"DEUTSCHE" failed by accepting an assignment of Plaintiff's loan while it was in
default on August 20, 2009. "DEUTSCHE'S" culpable state of mind demonstrated the

1 intent of perpetrating falsities upon an unsophisticated consumer.

2 58. "MERS" as nominee beneficiary of the Deed of Trust, had a contractual duty of
3 good faith and fair dealing as nominee and to provide accurate assignments of the
4 Deed of Trust, and to ensure that its members comply with its rules.

5 59. "UAMCC" as original lender on Plaintiff's deed of trust had a contractual duty
6 of good faith and fair dealing with Plaintiff's contract of the Deed of Trust.

7 60 "UAMCC" indicated by letter that on 12-21-07 it has sold and assigned Plaintiff's
8 Deed of Trust and Note to Opteum Financial. ("Opteum" bankrupted in 2007.)

9 61. "UAMCC", two years later on August 10, 2009 made the same assignment, but
10 this time it was to "DEUTSCHE".

11 62. Documents obtained from Indymac Bank, outlined a different scenario of
12 assignments. Their documents suggest that "Colonial Bank", a warehouse lender
13 originally funded Plaintiffs loan on 11-17-06. This particular assignment would be
14 present on the MERS records if viewed, and is why discovery is imperative.

15 63. The Indymac Document outlines a "wet funding" by Colonial Bank on
16 11-17-06. It further implies that Indymac Bank was the investor on 3-15-07. (Ex #4).

17 64. "UAMCC" has a duty to use due care, and honest dealings as outlined in the
18 Deed of Trust. "UAMCC" could anticipate the damages of this daring behavior.

19 65. The monetary penalty for a Section §2923.5 of the California Code violation is
20 triple damages or \$10,000, whichever is greater. Further damages include damages of
21 credit, work, and such other damages the court see fit. Violations of Section § 2924 of
22 the California Code allows immediate voiding of the Notice of Default and further
23 statutory damages that the court see fit.

24 **THIRD CAUSE OF ACTION: SLANDER OF 'TITLE**
25 **("NDEX", "ONEWEST", "DEUTSCHE", "MERS", "UAMC", "UAMCC")**

26 Plaintiff incorporates and refers to 1-65 inclusive as if set forth the same.

27 66. "NDEX", while seeking to act as and in representing itself as the agent of the
MERS's nominee beneficiary of the Deed of Trust, and without a grant of privilege,

1 color of right, caused a Notice of Default to be recorded against Plaintiff's Property on
2 July 14, 2009.

3 67. None of the Defendants, whether jointly or severally, were a recorded beneficiary or
4 assignee of any beneficiary of any Deed of Trust recorded against the property with the
5 exception of "UAMCC", the original lender. (Ex #4)

6 68. "UAMCCs" possibly color able claim to be eligible to act by contract, but was not an
7 endorsed assignee of the note. The only recorded beneficiary known eligible to act by
8 contract did not hold the note. An endorsed in blank copy of such note exists.(Ex #4).

9 69. This "Cause of Action", challenges the overall validity of the foreclosure proceeding
10 on the ground that Defendants, each of them had no legal authority to conduct such a
11 proceeding in as much as they breached Sections §2923.5,§ 2924 of the California
12 Code.

13 70. Defendants are liable for slander of title are liable in damages to plaintiff for
14 slander of title because none of the Defendants, whether jointly or severally, are a legal
15 Beneficiary or Assignee of any Deed of Trust recorded against the property.

16 Defendants did not have the privilege to record the notice of default and by such
17 breached the requirements outlined by Section § 2923.5 & CC §2924 California Code
18 and contract rights listed in Sections 22 and 24 of the Deed of Trust.

19 71. Defendants have acted with oppression , and when requested to correct such
20 error, they failed, refused and neglected for which acts and failures to act the
21 Plaintiff is entitled to damages, general damages, special damages. and exemplary
22 damages.

23 **FOURTH CAUSE OF ACTION**

24 (VIOLATION of BUSINESS & PROFESSIONAL CODE § 17200 et. seq. ALL)

25 (Violation Sections § 2923.5, § 2924, § 2015.5, § 2943, §2932.5 - California Code)

26 (Violation of Financial Code 50505-"UAMCC")

27 PLAINTIFF refers to ¶ 1 - 71, and incorporates the same as if fully set forth herein.

72. The defendants, business practices involves deceptive lending ("UAMCC"),

1 and the deceptive foreclosure processes done without privilege and against the
2 legislative emergent polices set forth in, **The Perata Mortgage Act (ALL)**.

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4 73. The declaration attached to the Notice of Default was in breach of Sections
5 §2923.5 and **§ 2015.5** of the California Code. Receiving and not responding to the
6 beneficiary statement is in breach of Section **§ 2943** of the California Code.
7 Defendants, and each of them, had no legal authority to conduct such a proceeding
8 inasmuch as they were in breach of Sections §2923.5, 2924, **§ 2932.5** of the
9 California Code.

10 74. Plaintiff's Deed of Trust, is contractually governed by the Trustee, along with proper
11 timely recording of such assigned transfers and outline in such document.

12 75. The definition of unfair competition in Sect. 17200 "demonstrates a clear design to
13 protect consumers. The Defendants foreclosure conduct and unresponsive practices
14 were clearly and substantially injurious to many consumers.

15 76. Defendants each of them have taken unfair advantage of Section §2924 of the
16 California Code to facilitate non communications, wrongful communications, purposeful
17 delays, avoiding to answer debt validations, and to avoid facilitation of the education or
18 counseling for those who are in financial difficulties.

19 77. As a direct and proximate result of these violations (Perata Mortgage Act) this
20 court may impose a remedy of Injunction for past, present, and future proposed unfair
21 competition. Furthermore this Court may have the money and properties restored by
22 such unfair practices as it relates to the above statutory violations.

23 78. "UAMCC"'s alleged violations of Financial Code 50505, demonstrates unfair
24 practices. These practices are designed with the culpable state of mind and with the
25 intent to perpetrate falsities upon unsophisticated consumers by steering and fully
26 controlling the loan process to enhance profits at the expense, loss and injuries of
27 Plaintiff and other consumers and are listed as follows are defined if Cause of Action
One incorporated supra.

79. Misrepresenting to Plaintiff (consumers) -- the original terms of the loans, the

1 nature, and details of the transactions entered, including, the true costs of the loan, the
2 distribution of the loan proceeds, and if the loan was pre sold into a securitization trust, and
3 if there were undisclosed fees.

4 80. Misrepresenting to Plaintiff (consumers) that the mortgage loan transaction
5 had benefits that they did not have, or failing to inform others that said transactions
6 had little or no benefits.

7 81. Unfairly inducing Plaintiff (consumers) to enter into mortgage loan transactions that
8 he and others did not have the original documented ability to repay;

9 82. Misrepresenting to Plaintiff (consumers) that the points and fees payable from the
10 proceeds of the mortgage were bona fide and reasonably and necessary for the
11 extension of credit, or failing to inform others that they were not;

12 84. Requiring Plaintiff (consumers) to execute and/or executing on behalf of Plaintiff
13 inaccurate documents in order to close loans.

14 85. Extending credit to Plaintiff on the basis of the "Value of their Premises", rather
15 than on the basis of his documented or situational ability to pay, and in violation of law.

16 86. Paying (or purportedly paying brokerage fees Does 1 through 20) that
17 were in no way reasonably related to brokerage services actually rendered. These
18 rather constituted "kickbacks" for the referral of deliberately deceptive induced loans.

19 87. Engaging in high pressure sales tactics to induce Plaintiff to enter into deceptive,
20 unfair and unconscionable transactions that were steered without a referee of integrity.

21 88. Plaintiff and others reasonably relied on above-identified deceptive lender acts
22 and practices, and entered into mortgage loan transactions that he and many consumers
23 otherwise would not have entered into, but for those deceptive acts and practices.

24 89. Plaintiffs' injuries were a result of his reasonable reliance on "UAMCC'S" above-
25 identified deceptive acts and practices.

26 90. Plaintiff is entitled to the equitable and monetary relief set by state statutes, and
27 an order enjoining "UAMCC" and Doe Corporations 1 through 20 from continuing to
engage in the unfair and deceptive lending practices described herein.

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FIFTH CAUSE OF ACTION
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
("UAMC"-- "UAMCC")

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Plaintiff further alleges and incorporates ¶¶1-90 as the same herein.

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91. Plaintiff and Defendants entered into a Deed of Trust contract on about 11-16-2006. Furthermore there were two notes a first position promissary note, and a silent second note, that totaled 100% of the appraised valued. Excluding fees

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92. The contract stated among other things the representations that the lender was the actual person lending the money. That the money came from UAMCC.

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93. Plaintiff has found that this information may not be accurate, and further investigations the details and material questions of fact. Documents from ONEWEST suggest that this money came from the Investor Indymac Federal Bank, and "wet funded" through Colonial Bank and thus supplied the money for Plaintiff to close on 11-17-06.

94. Plaintiff has received a letter from UAMCC in January 15, 2010, stating that this loan was sold to Opteum Financial on 12-21-06, both the first note and silent second note.

95. Lennar, the builder and Principal owner of UAMC, UAMCC, TILE & ESCROW, and other related entities are part of the "Special Relationship" as outlined in Cause of Action #1, and as such incorporated herein. Plaintiff was excessively controlled and dominated by such a "Special Relationship", whereby the fruits of these inducements would inure to the enrichment and benefits to the defendants herein. (Ex #4)

96. UAMC as Trustee of such contract, failed to protect Plaintiff interest as Trustee.

97. UAMC on escrow instructions was listed as the actual lender in Plaintiff's purchase, and not UAMCC. This further demonstrates the misty veil that surrounds the indistinct entities on the contract. A Trustee is to have equal protection interest to both parties subject to the agreement.

98. On Plaintiff insurance contract the agent was Universal American Insurance, and the

1 Mortgagee was Universal American Mortgage Company, 700 NW 107th Avenue 3 Miami, Florida
2 33172, it was listed as the beneficiary of Plaintiff's fully paid insurance contract.

3 99. Plaintiff requests compensatory damages as a result of these breaches.

4 **SIXTH CAUSE OF ACTION**
5 **INTENTIONAL DECEIT**
6 **ALL DEFENDANTS**

7 **Plaintiff further alleges and incorporates 1-99 as the same herein and further states:**

8 100. The State of California has statutorily prescribed non-judicial foreclosure
9 procedures, in Sections §2924 et seq. In the Cal. Civil Code. Homes are normally
10 foreclosed pursuant to the statutory power of sale, without a pre-foreclosure court
11 hearing.

12 101. Pursuant to Statutory requirements, entities seeking to exercise a right of
13 foreclosure pursuant to a Deed of trust, [foreclosing on mortgages] must strictly comply
14 with the State's Statutory Prerequisites to foreclosure.

15 102. The foreclosing entity must have actual assigned legal authority to file the Notice
16 of Default ...the power of sale, Cal. Civil Code §725 a, §726. The statutory power of
17 sale, ...in virtually all California residential mortgages provides for foreclosure sales
18 approve by the "beneficiary" and **by the trustee** named in a deed .. or if there be a
19 successor trustee duly recorded, as in Section "§725 Cal. Civil Code.

20 103. Deed of Trusts, rights to exercise a power of sale by the Trustee and dictated by
21 the owner of the note under the contract may be assigned, but a valid written
22 assignment, consistent with the statute of frauds, is a prerequisite to effectuate an
23 assignment Section §2932.5 of the California Code.

24 104. Absent [effective][perfected] assignment, an entity attempting to avail of any
25 rights of a Trustee, has no rights as a "trustee", and there is only one Trustee to act at
26 a time. The trustee ...or to send notices required by the statute of fraud, governing the
27 Deed of Trust Contract acknowledged and signed by Plaintiff.

105. A foreclosing trustee and beneficial owner owes the mortgagor a duty of good
faith and reasonable diligence in the foreclosure process. Failure to send a legally
correct statutorily required notice is inconsistent with the duty of good faith and
reasonable diligence .

1 106. Statute of frauds, Section §2932.5 Cal. Civil Code , dictates how an assignee, is
2 required to possess such assignment in writing and record such.

3
4 107. The Defendants owed a duty of good faith and reasonable prudence while doing
5 the diligence in the commencement and conduct of foreclosing proceedings.

6 108. The complexities of MERS, Securitization, Credit Default Swaps, Insurance
7 Reimbursements, HAMP Monies, FDIC, and the AIG bailout make the tradition
8 lending practices incongruent.

9 109. This is not the traditional model most everyone older than 40 grew up
10 understanding. It is complex and has many side agreements.(Ex # 3).

11 110. "The assignment of a mortgage without a transfer of the Indebtedness confers no
12 right, since debt and security are inseparable and the mortgage alone is not a subject of
13 transfer. "A trust deed has no assignable quality independent of the debt; it may not be
14 assigned or transferred apart from the debt; and an attempt to assign the trust deed
15 without a transfer of the debt is without effect."

16 111. The Promissory Note is a negotiable instrument. Transferring a Deed of Trust
17 by itself does not allow enforcement of the instrument unless the Promissory Note is
18 properly negotiated. Where an instrument has been transferred, enforcement abilities
19 based upon possession, Section §3301(Cal. Com. Code) negotiable instrument.

20 112. None of the Defendants are present holders of the instrument or are non holders
21 in possession with rights of the holder. None of the Defendants are entitled to enforce
22 the instrument Sections 3309 & 3418 sub. (d) of the California Com. Code.

23 113. On July 10, 2009 NDEX stated in the Notice of Default that: The present
24 beneficiary under such deed of trust, has executed and delivered to said agent, ..
25 Declaration of Default and Demand .. and has **deposited with said agent such deed of**
26 **trust and all documents evidencing obligations secured** thereby,.....trust property to
27 be sold to satisfy the obligations secured thereby.

1 114. Defendants have no enforceable rights under Ca. Com. Code 3301(a) and it is
2 unknown where Plaintiff security interest is located. NDEX states they have the note and
3 the Deed of Trust in a publically recorded document.

4 115. A newly recorded assignment August 20, 2009 by "UAMCC" to "DEUTSCH"
5 processed by an agent of "MERS", who is gainfully employed by "ONEWEST".(Ex #4).

6 116. NY Trust Laws and IRS Tax Statutes suggest, as a matter of law, that this feat
7 would cause a large tax burden by such acceptance into a tax exempt trust.

8 117. Defendants knew these actions were a false representation, done with the intent
9 to deceive and induce reliance by Plaintiff, and others whereby the fruits of these
10 inducements would inure to the enrichment and benefits to the defendants herein.

11 118. The Securities and Exchange filings for the N Y Trust outlines proper legal
12 procedure. Sections of the Pooling and Servicing Agreement dated 3-1-2007, outline in
13 detail procedures for proper processing of both the Deed of Trust and Notes, and placing
14 them in trust in a recordable form. This specific step is necessary for the underwriting
15 and insurance guarantees. This enforceable agreement demonstrates the deceit placed
16 on this Court. This is an SEC regulated offering not a simple loan.

17 119. The SEC documents and actual documents currently in the public domain show
18 that the Trust funding cut off date was 3-29-2007, and any transfer subsequent to that
19 date would require a tax attorney letter that it would not impact the tax status.

20 120. This Pooling and Servicing agreement further demonstrates deceit on this court.
21 The assignment presented in the recording is untrue by operation of law. This Trust was
22 closed to any substitutions after March 1, 2009.

23 121. Assigning a defaulted loan into a tax sheltered fund would cause a major tax
24 implication, tax impact to the shareholder into the millions of dollars, and in violation of
25 the Securities Laws for which they used to register such an offering.

26 122. The deed of trust substitution, is absolute trickery and a means to mislead the
27 court and others into the devious and dishonest business practices these entity continue
to propagate on innocent people such as Plaintiff.

1
2 123. Plaintiff has a document that states Colonial Bank was the original lender. It
3 came from Indymac Bank. It states that Colonial Bank was the warehouse lender and
4 that the money was funded from them. This positions "UAMCC" as a broker of a security
5 transaction.

6 124. The Securities and Exchange Commission filings in 2006 and 2007 publically
7 submitted by Lennar, the parent company of "UAMC" and "UAMCC" did not reveal a
8 warehouse line from Colonial Bank. Colonial Bank since has been closed and is now
9 formally being investigated by the Department of Justice.

10 125. The document further indicates that Indymac Bank FSB was the investor, as
11 INDYMAC BANK FSB. That bank was closed by the FDIC (6- 2008).

12 126. Plaintiff's copy of this note after it was endorsed in blank without recourse. It
13 would appear to be a nullity and separates the note from any recordable interest.(ex-4)

14 127. The deceit above may be summarized for easy access of each of the parties:

15 a) "UAMCC" information including deceit outlined in Cause of Action #1. "UAMCC"
16 apparently failed to lend any of their own money for Plaintiff's loan despite indicating it
17 had done so both contractually and verbally. Plaintiff relied on this information, acted on
18 this information, "UAMCC" intended Plaintiff to act on such information while knowing
19 this information was not true, and Plaintiff so acted to his detriment. UAMCC was fully
20 aware of such self dealings and deceptions. This may have may issues with excessive
21 and undisclosed "Yield Spread Premiums".

22 b) "UAMC" as Trustee with such duties was patently false on its surface as it was
23 the lender and has responded to suit as such. This Trustee has a contractual conflict
24 of interest because the lender "UAMCC" was put forth to mislead and allow the events
25 to take place in a closed closely controlled transaction without representation of
26 Plaintiff's interests, while knowing that the information was not true and that Plaintiff
27

1 relied on such honesty and presentation to act, and was induced with "Scienter" to act
2 and that Plaintiff did to his detriments. This dual action of lender and trustee is a
3 conflict unroofed due to the extra ordinary efforts to detail the mortgage proffering
4 business. This "Special Relationship" goes from Insurance, Escrow, Lennar, Lennar
5 home services, salespeople (friends), Universal American Mortgage Company LLC,
6 Universal American Mortgage of California, and is incestuous, omnipresent, and
7 indistinct able.
8

9 c) "NDEX", acting through instructions from LPS Default Services by contract, and not
10 a signed agent of the beneficiary and not with an agency agreement to perform for that
11 Beneficiary. "NDEX" acted without regards to the truth, and not in compliance with
12 requests. Distortion of truths done knowing the actual truth, with the intent for others to
13 act including Plaintiff, Courts and other consumers , to the detriment of the same. They
14 are involved in thousands of foreclosures the full extent is just now starting to surface.
15 NDEX did not have an agency agreement with "DEUTSCHE"the alleged Beneficiary.
16 LPS DEFAULT has the agreement with "ONEWEST, the Master Servicer. Filing
17 documents known to be false as "DEUTSCHE'S" agent of the beneficiary is incorrect
18 and further misleading. Plaintiff has sworn testimony in court depositions which allows
19 further light to shine on these activities
20

21 d) "ONEWEST" as outlined above has acted without regards to the statutory FD CPA
22 duties of the newly acquired Master Servicer, including notifying Plaintiff of any change
23 in ownership or what amount was due on his account. "ONEWEST" had the duty to
24 respond to the Beneficiary Statement request governed by Section §2943 of the
25 California Code. It did not. All done while knowing the truth. All done contrary to the
26 statutory requirements set forth, with the intent for Plaintiff and others to act, and while
27

1
2 knowing what they were doing was not truthful. The Plaintiff relied on this to his
3 detriments, and has been damaged. Plaintiff diligence and documents will support
4 these claims, and that of expert witnesses.

5 e) "MERS" has a duty as part of the agreements set for in the "MERS" contracts
6 with member banks and as nominee of the beneficiary and note holder. The
7 requirements are set forth in their rules 6, 7, 8. "MERS" knows that its rules are not
8 followed especially rule 8, Foreclosures. "MERS" did not own or could not own an
9 interest in Plaintiff property as set forth with the Notice of Default in "MERS" name.
10 "MERS" knew this and they have acted to create an opaque window into the
11 "Securitization" and selling of home loans. Members are to follow rules. "MERS" has
12 purposely allowed this to occur while knowing all the time the damages that would
13 result. Plaintiff has been damaged by such reckless behaviors and the surface is now
14 being scrapped. The governmental Agency Fannie Mae will not allow MERS to be
15 named in any Foreclosure proceedings as announced in their March 30, 2010 SVC-
16 2010-5 publication.

17 f) "DEUTSCHE" has a duty as Trustee of an SEC filed Securitization Trust to follow
18 the Pooling and Servicing Agreements and also to follow NY Trusts, SEC Security
19 Laws and IRS tax laws. "DEUTSCHE" as alleged assigned Beneficiary took in
20 assignment of this defaulted loan had a direct assigned contractual duty to Plaintiff. A
21 loan in default is not allowed to be added to a tax free trust by the NY Trust Laws.
22 "DEUTSCHE" knew this was the fact. "DEUTSCHE" did these acts knowing that they
23 were not allowed. "DEUTSCHE" did this while creating a paper trail that Plaintiff and
24 others would rely on to their detriments. "DEUTSCHE" knew the damages that this
25 would cause. DEUTSCHE" further knew that Plaintiff's loan was paid by either cross
26 collateralization, insurance, swaps, or other mechanisms. DEUTSCHE is trying to
27 collect on the same loan multiple times."

128. Plaintiff had no indication that he should not rely on the fraudulent and deceitful
misrepresentation and for that he has suffered the resulting damages of loss of personal
savings, costs of the representation, credit damages, and opportunity costs resulting in

1 the full time focus of his representation, and other damages determined at trial. This
2 maybe subject to punitive, consequential, emotional distress, and recession.

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF THE FINANCIAL CODE 50505**

5 ("UAMCC")

6 Plaintiff incorporates ¶ 1-126 and incorporates it as the same and further alleges:

7 **129. Financial Code 50505** states:

8 *Any person who violates any provision of any of the following acts*

9 *a) The federal **Real Estate Settlement Procedures Act**, (12 U.S.C. Sec. 2601 et*
10 *seq.), b) The federal **Truth in Lending Act**, (15 U.S.C. Sec. 1601 et seq.), c) The*
11 *federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639) or any of the*
12 *federal acts supra*

13 **COUNT #1**

14 **VIOLATION OF RESPA: Reg X 24 C.F.R. § 3500.6 (a)(1)**

15 130. Booklet on Closing Costs Not Provided Within 3 Days of Application, by lender
16 "UAMCC". This was recognized by the January 2010 audit done for Plaintiff and **the**
17 **equitable tolling extension of any statute of limitation** will apply.

18 *Source, the detailed audit done by The Consumer Mortgage Audit Center. This is the*
19 *certified center used by the Nationally recognized consumer advocate group NACA,*
20 *Neighborhood Assistance Corporation of America and performed for Brian Davies.*

21 131. Neighborhood Assistance Corporation of America ("NACA") is a non-profit,
22 community advocacy and home ownership organization.

23 132. NACA has helped working people by counseling them honestly and effectively,
24 enabling them to purchase a home or refinance a predatory loan with far better terms
25 than those provided even in the prime market. This violation is considered a serious
26 violation.

27 **COUNT #2**

VIOLATION OF TILA: Reg. Z, 12 C.F.R. §226.18 (D)(1)(1)

(Finance Charge Error Greater Than \$100 of Total Credit Extended.)

133. The Consumer Mortgage Audit Center has performed a Forensic Audit for
NACA on behalf of Brian Davies. This violation is considered a **SERIOUS**

1 **VIOLATION** committed by "UAMCC". This was just identified by Plaintiff on his
2 professional audit done January 2010. The defect would fall into the category of
3 **equitable tolling and extends the statute of limitations** for TILA claims as such
4 to include this violation.

5 ****MATERIAL VIOLATION LEADING TO TILA STATUTORY DAMAGES****

6 **COUNT #3**
7 **VIOLATION REGULATION Z OF THE TRUTH AND LENDING ACT**
8 **UNFAIR AND DECEPTIVE PRACTICES**

9 134. Plaintiff incorporates ¶78 thru ¶90 as included and stated in this count.

10 135. Each of such violations have statutory damages, and also include reasonably
11 attorney fees. Damages will be proven at trial.

12 **EIGHTH CAUSE OF ACTION**
13 **Violation of Section § 726 of the California Code of Civil Procedure**
14 **"DEUTSCHE"**

15 California's "single-action" or "one action" anti-deficiency statute

16 Plaintiff alleges and incorporates 1-133 as the same.

17 136. These provisions are "to prevent multiplicity of actions, to compel
18 exhaustion of all security and to require the debtor to be credited with the fair market
19 value of the secured property. It may well be interpreted as to an entity collection twice
20 or more for the same debt. This may cause the security interest to be cancelled.

21 137. "DEUTSCHE" is not a registered trust in California to do business.
22 and has received over \$8.5 billion payments from AIG's **default**, HAMP program, and
23 has been paid untold amounts from any default that occurs, it is paid by counter
24 parties, and mortgage insurance reimbursements of untold amounts.

25 138. Plaintiff alleges that "DEUTSCHE" has already been paid for the value of the
26 security interest Plaintiff's property, which furthers the need for accurate
27 accounting including previous payoff that would have cover such debt.

139. "DEUTSCHE" is requested by discovery to present an accurate detail of the
accountings. Including appropriately timed sales and assignments and payoffs.
and If defendant has received such credits first, then the security interest in

1 Plaintiff's property would be lost. "DEUTSCHE" takes advantage of the insurances
2 and credit enhancements inside of the trust (such as excess interest reserves, over
3 collateralization reserves, NIMS or other insurance policies which were written by
4 AIG), which cover losses on the mortgage loans.

5 140. Plaintiff request that the security interest in his property be removed based on
6 Section § 726 of California Code of Civil Procedure as this interest has been paid.

7 Please take notice that Plaintiff demands trial by jury in this action.

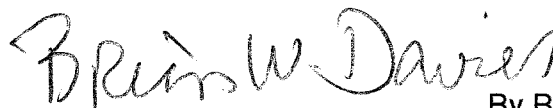
8 WHEREFORE, PLAINTIFF prays for Judgment as follows:

9 FIRST THROUGH EIGHTH CAUSES OF ACTION:

- 10 1. Actual Economic and Non-Economic Damages.
- 11 2. General Damages in a sum in excess of the minimum unlimited
12 jurisdiction of this Court, but according to proof at trial with such other
13 and further relief as the Court may deem reasonable and just under
14 the circumstances.
- 15 3. For a declaration of the rights and duties of the parties relative to
16 the Plaintiff home to determine the actual status and validity of
17 the loan, Deed of Trust, and Notice of Default
- 18 4. For damages as provided by statutes.
- 19 5. For an order enjoining the Defendants from continuing to violate the
20 statutes alleged.
- 21 6. For punitive damages.
- 22 7. For special damages.
- 23 8. For an order, restraining defendants and his, hers or its agents,
24 employee, officers, attorneys and representatives from engaging in or
25 performing any of the following acts: a) offering or advertizing sale, and
26 b) attempting to transfer title to this property.
- 27 9. To VOID the Notice of Default and Election to Sell.
- 10 10. For Costs of Suit incurred in this action; and, attorney fees pursuant to
11 California Civil Code § 1717, § 1788.30(b), § 1788.30 ().
- 12 11. For other and further relief as to the Court appears proper.

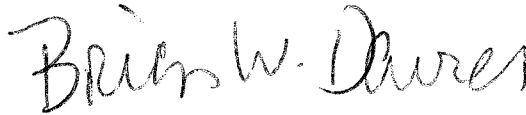
13 Respectfully Submitted,

14 April 8, 2010



15 By BRIAN W DAVIES

1 I, Brian W Davies, the Plaintiff in the above entitled action, has read and written this
2 document and found it to be true. Of my knowledge , except of those matters
3 which therein stated upon my information or belief, and as to those matters I
4 believe it to be true by the Laws of California and the County of Riverside.
5 The exhibits attached are authentic and accurate.

6
7 

8 BY BRIAN W DAVIES

9 Executed on April 8, 2010 in Indio, California 92203

10 VERIFICATION 446.2015.5 C. C. P.
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EXHIBIT # 1

Page 1-2 LETTER DATED JULY 1, 2009 FROM
 ONEWEST BANK FSB.

Letter Is The First Step In The Due
 Diligence Requirements Of Cc§ 2923.5 (G).

Page 3 CERTIFIED LETTER date August 19, 2009.

IndyMac Mortgage Services,
a division of OneWest Bank, FSB
6900 Beatrice Drive • Kalamazoo, MI 49009

July 01, 2009

#BWDXCT
#6685504562003079#

000516/XC099/668

Brian Davies
43-277 Sentiero Dr
Indio CA 92203

RE: Loan No 3002654055

In reviewing our records, we have determined that you have fallen behind on your mortgage payments. Financial distress can happen to anyone and Indymac Mortgage Services, a division of OneWest Bank, FSB wants to find a way to help you through this financial challenge. Our goal is to help you maintain ownership of your property.

Depending upon your financial circumstances, there are several alternatives that we can pursue in order to assist you in keeping you in your home.

Based on information that you provide to us, we may be able to qualify you for one of the following loss mitigation options:

* Repayment Plan

If you now have sufficient income, this plan allows you to pay an increased amount on a monthly basis toward the delinquency and eventually catch up. You must be willing to sign a Repayment Plan agreement and will be subject to foreclosure if the plan is broken.

* Loan Modification

Your loan may be modified to re-amortize the unpaid principal balance over the remaining loan term, capitalize past due payments, or in some instances, reduce the interest rate.

* Pre-Foreclosure Sale or Short Payoff

If you would consider selling your property but do not feel there would be enough to pay off the loan in full, we still may be able to work with you by accepting less than what you owe. This is not a choice for people who want to stay in their home, and can afford to do so. If we agree to take a loss by accepting a short payoff, you may be required to pay some or all of the loss with a low or no interest loan.

* Deed in Lieu of Foreclosure

If you cannot afford to continue payments and are unable to sell the property, we may be able to accept the deed to your property instead of foreclosure, and reduce the negative impact to your credit. This may not be feasible if there are junior liens or other encumbrances that would prevent us from obtaining clear title.

Help us in helping you by calling an Indymac representative today at 1-866-705-8647.

Additionally, you may also contact a HUD-approved housing counseling agency toll-free at 1-800-569-4287 or TDD 1-800-877-8339 for the housing counseling agency nearest you. These services are usually free of charge.

It is important to meet this financial challenge head on. You have more alternatives and are less likely to lose your home if we work together now. Please contact us immediately and work with us to see if we can set up a program to bring your payments up to date.

Para ciertos prestamos que atendemos somos requeridos por la ley federal a informar a los prestatarios que este es una tentativa de coleccionar una deuda y cualquier informacion obtenida sera utilizada para ese proposito. Si usted tiene cualquier pregunta con respecto a esta carta, por favor nos contacta en 877-908-4357.

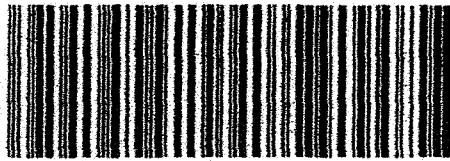
Sincerely,

Indymac Mortgage Services, a division of OneWest Bank, FSB

Loan Resolution

(For certain loans that we service, we are required by Federal law to inform borrowers that we are attempting to collect a debt and any information obtained will be used for that purpose)

IndyMac Mortgage Services,
a division of OneWest Bank, FSB
6900 Beatrice Drive • Kalamazoo, MI 49009



7100 4047 5100 7590 8943

August 19, 2009

#BWNDXCT
#6685504562003087#

007267/XC111/668

Brian Davies
43-277 Sentiero Dr
Indio CA 92203

Attempting
to collect debt
- No Auction
→ Status
→ No auction

RE: Loan No: 3002654055
Property Address: 43 -277 Sentiero D

Dear Brian Davies :

We have made repeated attempts to contact you by first class mail and by phone to discuss your financial situation. Despite our best efforts, we have been unable to contact you as of this date.

You may contact us by phone at 1.877.908.4357 to explore options that may be available to avoid foreclosure.

You may also obtain emergency homeowner counseling by calling 1.800.569.4287 to receive a list of HUD-certified housing counseling agencies in your area.

We will progress foreclosure within thirty (30) days from the date of this notice, unless you contact us before then and we reach an agreement to avoid foreclosure.

Sincerely,

June 27

Loan Resolution Department
Indymac Mortgage Services, a division of OneWest Bank, FSB

10-25-09

Robert →

4065
Profit/Loss - Last
Quarter



OWB.COM

EXHIBIT #2

- Notice Of Default Filed 7-14-2009
List Mers As Beneficiary, And Signs
Ndex West Llc, As Beneficiary, Aaron
W. Brown, (Page #2)
Aaron Wayne Brown - #257281
Current Status: Active
Address Barrett Daffin Frappier Turner
15000 Surveyor Blvd Ste 500
Addison, TX 75001 Phone Number (972) 897-7888
- Declaration For Brian Davies
Pursuant To §2923.5 9(b).(PAGE #3)
- Declaration Signed As Indymac
Mortgage Servicing.
- Plaintiff Worked With Indymac Mortgage
Services, A Division Of Onewest Bank

Recording requested by:
1. PS Default Title & Closing

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013

DOC # 2009-0362260
07/14/2009 08:00A Fee:18.00
Page 1 of 3
Recorded in Official Records
County of Riverside
Larry W. Ward
Assessor, County Clerk & Recorder



DFF20090159908346

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
1			3		1				
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
							T:	CTY	UNI

Trustee Sale No. : 20090159908346

Title Order No.: 090480135

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IMPORTANT NOTICE NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this Notice of Default may be recorded (which date of recordation appears on this notice).

This amount is \$22,256.51 as of 7/10/2009 and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

Trustee Sale No. : 20090159908346

Title Order No.: 090480135

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

ONEWEST BANK, FSB
c/o NDEX WEST, LLC
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013
(866) 795-1852

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT: NDEX WEST, LLC is the original Trustee, duly appointed Substituted Trustee, or acting as Agent for the Trustee or Beneficiary under a Deed of Trust dated 11/16/2006, executed by BRIAN W. DAVIES, as Trustor, to secure obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), as Beneficiary Recorded on 11/17/2006 as Instrument No. 2006-0853245 of official records in the Office of the Recorder of RIVERSIDE County, California, as more fully described on said Deed of Trust. Including a Note(s)/ Unconditional Guaranty which had a principal amount of \$441,350.00 that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; that a breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of:

THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 12/1/2008 AND ALL SUBSEQUENT INSTALLMENTS, TOGETHER WITH LATE CHARGES AS SET FORTH IN SAID NOTE AND DEED OF TRUST, ADVANCES, ASSESSMENTS, FEES, AND/OR TRUSTEE FEES, IF ANY.

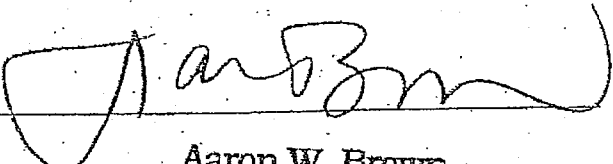
NOTHING IN THIS NOTICE SHALL BE CONSTRUED AS A WAIVER OF ANY FEES OWING TO THE BENEFICIARY UNDER THE DEED OF TRUST, PURSUANT TO THE TERMS OF THE LOAN DOCUMENTS.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said agent, a written Declaration of Default and Demand for same, and has deposited with said agent such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATED: 7/10/2009

NDEX WEST, LLC as Agent for Beneficiary

By:


Aaron W. Brown

BRIAN DAVIES

DECLARATION PURSUANT TO CAL. CIV. CODE SECTION 2923.5(b):

The undersigned mortgagee, beneficiary or authorized agent hereby declares under penalty of perjury, under the laws of the State of California, as follows:

- The mortgagee, beneficiary or authorized agent has contacted the borrower to discuss the borrower's financial situation and to explore options for the borrower to avoid foreclosure in compliance with Cal. Civ. Code Section 2923.5. Thirty days or more have elapsed since the borrower was contacted.
- The mortgagee, beneficiary or authorized agent has tried with due diligence to contact the borrower to discuss the borrower's financial situation and to explore options for the borrower to avoid foreclosure as required by Cal. Civ. Code Section 2923.5. Thirty days or more have elapsed since these due diligence efforts were completed.
- The mortgagee, beneficiary or authorized agent was not required to comply with Cal. Civ. Code Section 2923.5 because:
 - the borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary or authorized agent.
 - the borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.
 - the borrower has filed for bankruptcy, and the proceedings have not yet been finalized.

INDYMAC MORTGAGE SERVICING

Date: 7/9/2009

By:

Emilee Pearce
Emilee Pearce

Exhibit #3

The over view of the complex transactions in the formation of a Securitized Mortgage Backed Security.

There is a complex Set of Security and Exchange Commision documents that are filed. It is a public offering and regulated by those who are such licensed.

The Special Purpose Vehicle, is set up to avoid paying taxes for the Investors and such are also regulated by the Internal Revenue Service. Any untold tax implication would cause this Vehicle to pay taxes.

There are Reps and Warranties and many side agreements with insurance coverages all along the way.

That coverage does not consider the recent Federal Bail out of AIG. The FDIC took over IndyMac Bank in June 2008.

Onewest Bought Indymac FDIC(FEDERAL) Bank March 16, 2009.

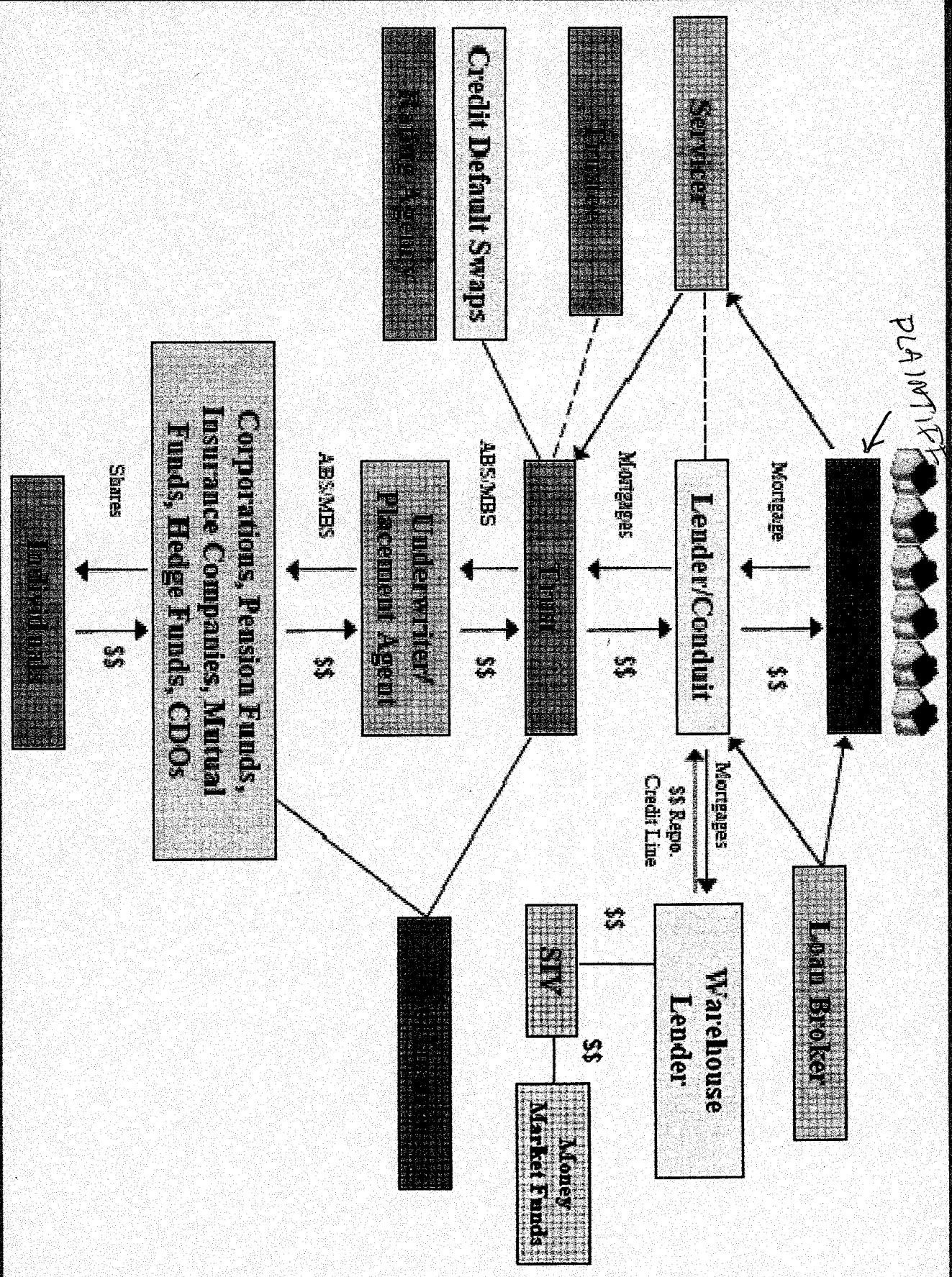


EXHIBIT # 4

PAGE #1

Document From Onewest Bank Fsb During Discovery By Qualified Written Request.

Original Funding By It Warehouse Lender Colonial Bank In 11-17-06.

Investor Indymac Bank Fsb 3-15-07.

Page #2

Certified letter from Universal American Mortgage Company LLC, the listed Trustee of Deed of Trust, notifying Plaintiff, that the Trustee of his Deed of Trust sold the loan to Opteum Financial on 12-21-06.

Page #3

Assignment Deed Of Trust 8-20-09 from Universal American Mortgage Company of California to Deutsche Bank by Authorized signatory Suchan Murray, Onewest.

Page #4

Substitution of Trustee recorded date 10-30-09, and after the filing of this lawsuit substituting NDEX for UAMC, LLC done by Onewest employee JC Pedro for Deutsche as attorney in fact. Witness by Alex McBride in Texas as

Who is Personally Known to Me.

SSN

BORROWER NAME : Davies, Brian

LOAN # : 8600018614

STREET ADDRESS: 43-277 Sentiero Drive

Indio, CA 92203

DATE FUNDED : 11/17/2006

DATE DISBURSED: 11/17/2006

WAREHOUSE BANK: Colonial Bank

PRODUCT CODE : 38030FBUI

DESCRIPTION : 30 Year Fixed Alt A 1/0 Buydown Interest
Only

LOAN TYPE : Conv

INVESTOR : Indy Mac Bank, F.S.B.

INVESTOR LN# :

DATE/SOLD : 3/15/2007

STATUS : 708-Fund

SERVICER : Indy Mac Bank, F.S.B.

POOL # : IMAC020507

EXHIBIT #4 PAGE#1



UNIVERSAL AMERICAN MORTGAGE COMPANY

January 15, 2010

Brian W. Davies
43277 Sentiero Drive
Indio, CA 92203

RE: Loan No: 0008042863 and 0008044463

Dear Mr. Davies:

We acknowledge receipt of your letter, via certified mail on January 13, 2010, regarding your mortgage loans. The letter purported to be a "qualified written request" under Section 6 of the Real Estate Settlement Procedures Act ("RESPA").

Please note that Universal American Mortgage Company is not the servicer of this loan, and is therefore not subject to the qualified written request rules in Section 6 of RESPA and Section 3500.21 of Regulation X. "Servicer" is defined, in pertinent part, as "the person responsible for the servicing of a mortgage loan." 24 C.F.R. § 3500.2. "Servicing" is defined, in pertinent part, as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts[.]" *Id.* § 3500.2. Universal American Mortgage Company sold the senior loan to Opteum Financial Services on December 21, 2006 and the second lien to Opteum Financial Services on December 21, 2006.

Additionally, a request received more than a year after servicing has been transferred is not subject to the qualified written request provisions of RESPA and Regulation X. *Id.* § 3500.21(e)(2)(ii) ("A written request does not constitute a qualified written request if it is delivered to a servicer more than one year after the date of transfer of servicing[.]").

Sincerely,

Michele LePage
Quality Assurance Analyst

IVA

DOC # 2009-0434707

08/20/2009 08:00A Fee:12.00

Page 1 of 1

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

Recording requested by:
LPS Default Title & Closing

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013



*ASSG20090159
ASSG20090159908346

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Trustee Sale No. : 20090159908346 Title Order No.: 090480135

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE RESIDENTIAL ASSET SECURITIZATION TRUST 2007-A5, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-E UNDER THE POOLING AND SERVICING AGREEMENT DATED MARCH 1, 2007. all beneficial interest under that certain Deed of Trust dated 11/16/2006, executed by BRIAN W. DAVIES, as Trust or to UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, Trustee, and Recorded on 11/17/2006 as Instrument No. 2006-0853245 of Official Records in the County Recorder's office of RIVERSIDE County, California. Describing land therein: AS DESCRIBED IN DEED OF TRUST MENTIONED ABOVE.

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated 8/10/2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA

[Signature]
Suchan Murray
Authorized Signatory

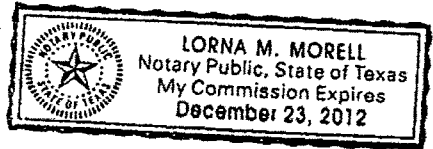
State of Texas
County of Texas

Before me Lorna Morell, the undersigned Notary Public, on this day personally appeared Suchan Murray, who is the Authorized Signatory of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA, a corporation, on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 10 day of August, 2009.

My Commission Expires:

[Signature]
Notary Public Signature
Lorna Morell
Printed Name of Notary Public



Texas
Exp. Dec. 23, 2012

T
061

[Handwritten mark]

DOC # 2009-0562051

10/30/2009 08:00A Fee:15.00

Page 1 of 2

Recorded in Official Records

County of Riverside

Larry M. Ward

Assessor, County Clerk & Recorder



Recording requested by: ³⁴ LPS
LPS Default Title & Closing

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013



SUB20090159908346

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
							T:	CTY	UNI

Trustee Sale No. : 20090159908346 Title Order No.: 090480135

SUBSTITUTION OF TRUSTEE

15- T
039

WHEREAS, BRIAN W. DAVIES was the original Trustor, UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") was the original Beneficiary Recorded on 11/17/2006 as Instrument No. 2006-0853245 of official records in the Office of the Recorder of RIVERSIDE County, California, as more fully described on said Deed of Trust; and WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said prior Trustee.

NOW, THEREFORE, the undersigned hereby substitutes, NDEx West, L.L.C., WHOSE ADDRESS IS: 15000 Surveyor Boulevard, Suite 500, Addison, Texas 75001-9013, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

DATED: 10/16/2009

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE RESIDENTIAL ASSET SECURITIZATION TRUST 2007-A5, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-E UNDER THE POOLING AND SERVICING AGREEMENT DATED MARCH 1, 2007 by OneWest Bank, FSB as Attorney in Fact

JC San Pedro

JC San Pedro Authorized Signatory

State of Texas
County of Texas

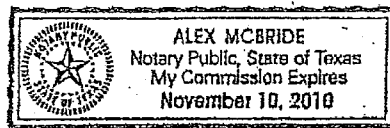
who is known to me
Am

On 10/16/2009 before me, Alex McBride, Notary Public, personally appeared JC San Pedro ^{Arw} who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Alex McBride (Seal)

My commission expires: 11-10-10



Alex McBride
exp. nov 10, 2010

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Exhibit #5

Plaintiff's First Promissory Note Obtained In Late 2009.

The Note Shows An Open Non Endorsed Pay To The Order Of And Without Recourse. It Is A Bearer Note.

Plaintiff's Original Contract With Universal American Mortgage Company Of California Represented That It Was The Lender, And The Company Was Putting Its Own Capital To Risk In The Mortgage.

6100459

3002654055

1st - NOT3

MIN: 100059600080428639

Loan Number: 0008042863

INTEREST-ONLY PERIOD FIXED RATE NOTE

NOVEMBER 16, 2006
[Date]

PALM SPRINGS
[City]

CALIFORNIA
[State]

43-277 SENTIERO DRIVE, INDIO, CALIFORNIA 92203
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 441,350.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA, A CALIFORNIA CORPORATION. I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.500%.

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

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month. This payment will be for interest only for the first 120 months, and then will consist of principal and interest.

I will make my monthly payment on the 1st day of each month beginning on JANUARY 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest it will be applied to interest before Principal. If, on DECEMBER 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 700 NW 10TH AVENUE, 3RD FLOOR, MIAMI, FLORIDA 33172-3139

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$2,390.65 for the first 120 months of this Note, and thereafter will be in the amount of U.S. \$3,290.59. The Note Holder will notify me prior to the date of change in monthly payment.

4. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. However, if the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest as well as during the time that my payments consist of principal and interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, the amount of my monthly payment will not decrease; however, the principal and the interest required under this Note will be paid prior to the Maturity Date.

5. LOAN CHARGES

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

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest and/or principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

2

be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

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

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

Brian W. Davies (Seal)
BRIAN DAVIES -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Without recourse, pay to the order of:
IndyMac Bank, F.S.B.
Optimum Financial Services, LLC
Casey Limp, Assistant Vice President



Pay To The Order Of

Without Recourse
IndyMac Bank, F.S.B.
By: Brian Brouillard
Brian Brouillard
First Vice President



[Sign Original Only]

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