

9-18-2014

Countrywide Home Loans, Inc. v. Sheets Clerk's Record v. 3 Dckt. 42063

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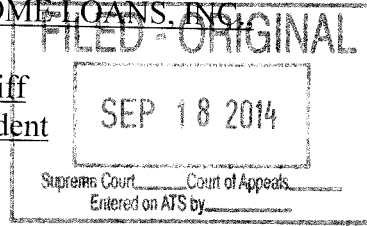
Volume 3
Pg 383-550

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

COUNTRYWIDE HOME LOANS, INC.

Plaintiff
Respondent

VS



RALPH E. SHEETS, JR. AND DEBRA SHEETS; and DOES 1-10

Defendant
Appellant

Appealed from the District Court of the
Third Judicial District of the State of
Idaho, in and for Adams County

Hon. BRADLY S. FORD, District Judge

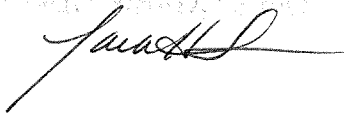
JOHN CURTIS HUCKS
Attorney for Defendants/Appellants

DERRICK J. O'NEILL
Attorney for Plaintiff/Respondent

SUPREME COURT NO.

42063-2014

JOHN CURTIS HUCKS
ATTORNEY AT LAW, P.C.
P.O. Box 737
New Meadows, ID 83654
Tel: (208) 347-4128; Facsimile: (208) 347-4128
Email: huckslaw@yahoo.com
ISB No. 6473
Attorney for Defendants

HILLMAN
FEB 14 2019 3:00 pm
HENRY WARD, CLERK


IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;
and DOES 1-10 as individuals with an interest in
the property legally described as:

Defendants.

Case No. CV-2010-2564

**AFFIDAVIT OF JONATHON D.
HALLIN**

STATE OF IDAHO)
 ss.
County of Kootenai)

JONATHON D. HALLIN, being first duly sworn upon his oath, deposes and says:

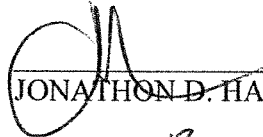
1. At all times pertinent hereto, I have been licensed to practice law in the State of Idaho. I make this Affidavit upon my own personal knowledge and belief.
2. From September 2005 through April 2010, I maintained an active legal practice in McCall, Idaho.
3. On or about December 1, 2009, I was retained by Ralph and Debbie Sheets regarding their failed attempt to refinance their home located in Pollock, Idaho with Bank of America. Additionally, they consulted me in reference to a deed of reconveyance they received from the Adams County Recorder (Adams County Instrument No. 119343).
4. On December 3, 2009, I faxed a letter addressed to Paul Campbell, a loan officer with Bank of America that my clients had been dealing with. My letter requested that Mr.

Campbell contact me to discuss the deed of reconveyance and my clients' attempts refinance.

5. Having received no response to my December 3, 2009 letter, I emailed Mr. Campbell on December 15, 2009 again requesting that he contact me.
6. On December 16, 2009, I received an email from a Bank of America employee stating that he had forwarded my email to Mr. Campbell.
7. On December 27, 2009, I received a telephone message from Caelee Opheikens, who identified herself as an employee of Bank of America. In her message, Ms. Opheikens indicated that a demand letter must be sent to the Office of Chairman before anyone could speak with me regarding Mr. and Mrs. Sheets' accounts. She further advised that she would fax me details on where the demand letter should be sent.
8. Having received no letter as promised, on December 29, 2009, I contacted Ms. Opheikens. Ms. Opheikens indicated that she forgot to fax the letter as promised and would do so as soon as possible.
9. On December 30, 2009, Ms. Opheikens faxed a letter to my office in which she provided the contact information for the office of the chairman.
10. On January 6, 2010, I mailed a demand letter to the Office of Chairman as directed by Ms. Opheikens.
11. Having received no response to my January 6, 2010 letter, on January 19, 2010 I faxed a letter to Ms. Opheikens inquiring as to the status.
12. On January 29, 2010, I was provided a copy of a letter entitled "Notice of Action Taken" that my clients received from Bank of America.
13. On February 2, 2010, I mailed a letter to Bank of America addressed to the address listed in the Notice of Action Taken. My February 2, 2010 letter again requested that someone at Bank of America contact me to resolve my clients' concerns regarding their failed attempts to refinance and the deed of reconveyance they had received.
14. On February 9, 2010, I received a letter from Mona Levario, Customer Advocate with Bank of America. The letter dated February 4, 2010, noted receipt of my letter dated January 6, 2010. The letter further stated that written authorization from my clients was required before Bank of America could discuss the matters raised with me.
15. On February 11, 2010 at 10:20 a.m., I spoke with Ms. Levario. During our conversation, she advised that she had not received written authorization from my clients. In response, I advised her that I would have my clients refax their written authorization to her office.

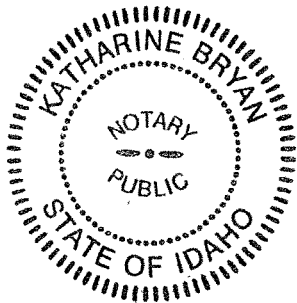
16. On February 11, 2010 at 2:45 p.m., I spoke with Ms. Levario after she received a copy of my clients' written authorization. During this telephone conference, I was finally able to discuss the substantive concerns of my clients regarding their failed refinance, the impact to their credit, and the deed of reconveyance they had received. In response, Ms. Levario advised that she would look into the issues and get back to me within 48 hours.
17. As of February 17, 2010, I had not received any further contact from Ms. Levario as promised. That same date, I faxed a letter to her office inquiring as to the status.
18. On February 19, 2010, I received a message from Ms. Levario. In her message, she advised that she was still researching the issues and would reply by February 23, 2010.
19. On March 2, 2010 at 1:53 p.m., I emailed Ms. Levario again inquiring as to the status.
20. On March 3, 2010 at 9:00 a.m., I spoke with Ms. Levario. During our conversation, she advised that she was still working to address the issues raised during our February 11th conversation and that she would call back later that same day.
21. On March 3, 2010 at 4:47 p.m., I spoke with Ms. Levario. During conversation, she advised that it would be acceptable if my clients did not make any further payments on their loan until the matter was resolved. Further, she advised that she would check back with me in 48 hours.
22. On March 8, 2010 at 10:39 a.m, I again spoke with Ms. Levario. During this telephone call, she again reiterated that it was acceptable if my clients refrained from making further loan payments until the issues surrounding their failed refinance and deed of reconveyance were resolved. She further advised that the matter had been turned over to outside counsel to resolve, but that she would remain the contact person. Ms. Levario further promised to contact me every Wednesday with a status report.
23. On Wednesday, March 17, 2010 at 9:30 a.m., I received a phone call from an employee of Bank of America. At that time, I was advised that there were no updates.
24. At no point in my dealings with Bank of America, did I state that my clients were not interested in moving forward with the refinance of their loan obligation as originally planned. Rather, my clients and I were under the impression that Bank of America needed time to research what had transpired before moving forward with a resolution.
25. It has always been by custom and practice to make handwritten notes of all telephone conferences and meetings I participate in. These notes are generally taken contemporaneously with the conference or meeting. During the course of my representation of Mr. and Mrs. Sheets, I maintained notes of my contacts with Bank of America. A true and correct copy of these notes is attached and incorporated hereto as **Exhibit 1**.

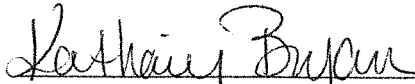
26. Due to the shorthand employed and my challenging handwriting, I personally transcribed the notes attached hereto as Exhibit 1. This was completed on February 8, 2013. The transcribed notes truly and accurately reflect my handwritten notes. A true and correct copy of the transcribed notes is attached and incorporated hereto as **Exhibit 2**.
27. Attached hereto as **Exhibit 3** are true and correct copies of my correspondence with Bank of America related to matter
28. Effective April, 2010, I closed my practice in McCall, Idaho to relocate to Coeur d'Alene, Idaho. In anticipation of closing my practice, I advised Mr. and Mrs. Sheets to retain replacement counsel. On April 15, 2010, I terminated my representation of Mr. and Mrs. Sheets when they retained Mr. Hucks to represent them with respect to their failed refinance with Bank of America. I have not performed any legal services for Mr. and Mrs. Sheets since that time with respect to this matter.
29. At no point prior to handing this matter over to Mr. Hucks, did I receive a proposal from Bank of America to fix the issues surrounding my clients' failed refinance of their loan obligation, the deed of reconveyance they had received, or the issues surrounding the two loans that were showing on their credit reports.



JONATHON D. HALLIN

SUBSCRIBED AND SWORN to before me this B day of February, 2013.





Notary Public for Idaho
Residing at: Coeur d'Alene
Commission Expires: 9-2-2014

CASE SUMMARY

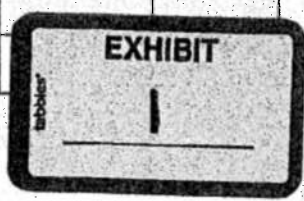
CLIENT NAME: Ralph E. Sheets
P.O. Box 202
Pollock, Idaho 83547
 PHONE: (208) 628-9222 (hm)
(208) 315-4560 (cell)
 EMAIL: doodlebug-17@hotmail.com

MONIKA LEVASIO
 1-866-387-2856 x3258

TYPE OF CASE: Bank of America - Refinance

DATE	NOTES	WHO	TIME
12/1/09	OPENED FILE	JDH	
12/27/09	Receive message from Kaili with BoA (801) 446-2625	JDH	3:04p
	<ul style="list-style-type: none"> - Needs demand letter send to office of chairman before she can speak with me about Ralph Sheet's loan modification. - Will fax over details on who to send letter to 		
12/29/09	Telephone conference w/ Kaili	JDH	9:59a
	<ul style="list-style-type: none"> - Forgot to send letter to me regarding demand letter - Will fax over asap - If do not receive response from board, she advised to call her and she will expedite - BoA has locked in rate for Ralph but it is being charged to client 		
1/1/10	Tlc w/ Debbie	JDH	2:30p
1/1/10	Tlc w/ Debbie	JDH	3:20p
	- Will fax Ltr to BOA RE: Amortization This PM.		
1/1/10	Tlc w/ MONIKA LEVASIO	JDH	10:20a
	- Ltr + Power Note		
	- Draft for RA review. Review		
1/1/10	Tlc w/ Mon	JDH	2:45p
	- App for Refinance to Credit Case No 1/1/10		
	- Advice of Debt of Refinance		
	- Underwrite of Debt + Refinance		
	- Advice 2 Loani Showed to Business Processes		
	- Underwrite		
	- Advice THAT FAVOR (the fees) cannot be for new business		

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2/11/10	Thru w/ Maura (Cont'd)		2:45p
	<ul style="list-style-type: none"> - Linda Look into Issues & Give Back w/ 13 48/10 - Maura Discuss 2 Aztec Source of History - Answer d. nbc. Editor's Request - Maura Show Some Other Look 13/10 - Preview Maura's at History of Frontier 2/17 		
2/19/10	Rec'd msg from Maura LeVero	JOH	4:05p
	<ul style="list-style-type: none"> msg. LeVero @ h-mkotamerica.com - See Attachment, Will Reply By 2/23/10 		
2/23/10	Rec'd. msg from Maura	JOH	11:22a
	<ul style="list-style-type: none"> - Re Case 866-327-2856 & 3252 		
2/25/10	Call Maura & Ld msg	JOH	1:04p
3/3/10	Thru w/ Maura	JOH	9:00a
	<ul style="list-style-type: none"> - Proceed Credit Block Off Account So No Returns Went Over - Working on Reinsurance Lines - Does Not Know How Long it Will Take - Will Call Back Tomorrow w/ Emergency 		
3/10/10	Rec'd Maura w/ Back	3/10/10 JOH	
	<ul style="list-style-type: none"> - That Place Referred Back to Customer - Ask w/ History diff w/ Maura Premiums Under Refrain - Will Contact Back w/ 48/10 		
3/14/10	Rec'd msg from Maura	4:55p	
3/15/10	Rec'd msg from Maura	9:13a	
3/16/10	Thru w/ Maura	10:39a	JOH
	<ul style="list-style-type: none"> - ok if # Make Payer Under Returned - Credit Block - Forwarded to Attorney to Get Premium Return - Maura Give B- Customer Print - Any Will # Customer Decision - Will Contact Every Week 		

31710 De V. Bar, N. S. W. A. S. T.

J. D. H. 9-10-67

31711 C. M. De V. Bar, N. S. W. A. S. T.

J. D. H. 12-10-67

3/7/10	Tre w/ BOA - No Updates	JOH	9:30a
3/10/10	Call DEBBIE LV mlb	JOH	12:46p
4/1/10	Tre w/ DEANNE O'NEILL	JOH	1:20p
	- And has been filed in Attorney Co.		
	- Will file Sure Default w/o notifying FRS		
	- Will contact BOA about Reissue FRS		
	's Report Issues & Commission for Asset Fees		
	- Proposing Mediation To Put BOA To TABLE To		
	Address All Issues		
4/1/10	Tre w/ DEBBIE	JOH	1:30p
	- Advice Asset Filed		
	- Will Contact John Hucker Asset Re Takeover Once Done		
	- Advice of Tre w/ O'NEILL		
4/1/10	Tre w/ Maura	JOH	11:40a
	- Working To Clean Up Court		
	- Working To Clean Up Issue Re FRS Report		
4/1/10	Tre w/ Jim Hucker		
	- Has Taken Over Top of Sheets		

2/11/10 – Telephone conference with Mona Levario 10:20 a.m.

- Has not received authorization
- Refax per Mona's request

2/11/10 – Telephone conference with Mona 2:45 p.m.

- Application fee refunded to credit card as of 2/11/10
- Advise of deed of reconveyance
 - Unaware of deed of reconvey
- Advise 2 loans showing on online banking
 - Unaware
 - Advise that ralph has received coupon book for new agreement

2/11/10 – T/C with Mona (continued)

- Will look into issues and get back within 48 hours
- Mona discovers 2 accounts showing on history
- Advise of negative credit rating
 - Mona says she will look into it
- Provide Monda with history of failed refinance

2/19/10 – Receive message from Mona Levario 4:05 p.m.

Mona.levario@bankofamerica.com

- Still researching, will reply by 2/23/10

2/23/10 – Receive message from Mona 11:22 a.m.

- Please call 866-387-2856 x 3258

2/25/10 – Call Mona and leave message 1:00 p.m.

3/3/10 – Telephone conference with Mona 9:00 a.m..

- Placed credit block on account so negative reporting wont occur
- Working on reinstating loan
 - Does not know how long it will take
- Will call back today with timeline

3/3/10 – Telephone conference with Mona with BoA 4:47 p.m.

- Has placed credit block on client's account
- OK with holding off on monthly payments until resolved
- Will check back in 48 hours

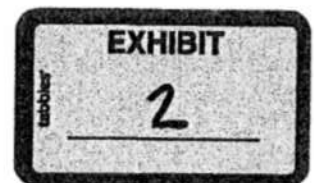
3/4/10 – Receive message from Mona 4:58 p.m.

3/5/10 – Receive message from Mona 9:13 a.m.

3/8/10 – Telephone conference with Mona 10:39 a.m.

- OK if not make payments until resolved
- Credit block
- Forwarded to attorney to get paperwork resolved
 - Mona still be contact person
 - Attorney will not contact directly
 - Will contact every Wednesday

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3/7/10 – Telephone conference with BoA, no updates

9:30 a.m.

4/8/10 – Telephone conference with Derrick O'Neill

1:20 p.m.

- Action has been filed in Adams Co.
- Will not seek default without notifying first
- Will contact BoA about resolving IRS and credit issues & compensation for attorney fees
- Proposes mediation to get BoA to table to address all issues

4/9/10 – Telephone conference with Mona

11:10 a.m.

- Working to clear up credit
- Working to clear up issue regarding IRS report



Customer Relationship Advocacy

April 9, 2010

Hallin Law, PLLC
P.O. Box 1067
McCall, ID 83638
Attention: Jonathon D. Hallin

Bank of America account ending: 9532
Borrower: Ralph Sheets
Property Address: 5603 Highway 95, New Meadows, ID 83654

Dear Mr. Hallin:

Thank you for contacting our office with your letter dated January 6, 2010, regarding the above-referenced loan. Your concerns were forwarded to my attention for review and response.

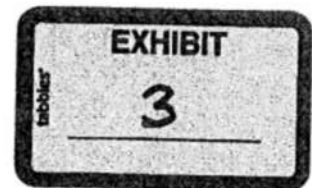
I apologize for the delay in responding to your inquiry and appreciate your patience in allowing us to thoroughly research your concerns.

Mr. Hallin, thank you for this opportunity to be of service. In the event you should require additional assistance, please contact Customer Relationship Advocacy at 1.800.669.6607, Monday through Friday, 8 a.m. to 5 p.m., Pacific.

Sincerely,

Mona Levario

Mona Levario
Customer Advocate
Customer Relationship Advocacy



Bank of America, CORPORATE CENTER
100 North Tryon Street, Charlotte, NC 28255-0001

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J.D. Hallin <hallinlaw@gmail.com>

**Ralph E. Sheets, 5603 Highway 95, New Meadows, Idaho
83654**

1 message

J.D. Hallin <hallinlaw@gmail.com>
To: mona.levario@bankofamerica.com

Tue, Mar 2, 2010 at 1:53 PM

Ms. Levario -

I have not received any contact from you since our last telephone conversation on February 11, 2010 regarding this matter. My client IS understandably anxious to get this matter resolved. In the meantime, he continues to receive letters and phone calls from your company attempting to collect on the putative loan that should not be encumbering their property.

Please contact me at your earliest convenience to advise you as to the status of this matter.

JDH

Hallin Law, PLLC
136 E. Lake Street, Ste. 1
P.O. Box 1067
McCall, Idaho 83638
PH: (208) 634-5040
FX: (208) 634-5041

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J.D. Hallin <hallinlaw@gmail.com>

Ralph E. Sheets - Deed of Reconveyance

1 message

J.D. Hallin <hallinlaw@gmail.com>

Fri, Feb 19, 2010 at 4:17 PM

To: mona.levario@bankofamerica.com


Bcc: Debra Sheets <doodlebug-17@hotmail.com>

Ms. Levario -

Attached per our conversation is a copy of the Deed of Reconveyance filed by BoA with respect to Mr. Sheets' property.

JDH

Hallin Law, PLLC
136 E. Lake Street, Ste. 1
P.O. Box 1067
McCall, Idaho 83638
PH: (208) 634-5040
FX: (208) 634-5041

 JDH02192010_00001.pdf
62K

HALLIN LAW, PLLC

136 E. Lake Street, Suite 1
P.O. Box 1067
McCall, Idaho 83638
Telephone: (208) 634-5040
Facsimile: (208) 634-5041
Email: hallinlaw@gmail.com

February 17, 2010

VIA FACSIMILE: 1-800-658-9364

Mona Levario
Customer Advocate
Customer Relationship Advocacy
Bank of America, N.A.
450 American Street
Simi Valley, CA 93065

RE: Ralph E. Sheets
Property Address: 5603 Highway 95, New Meadows, Idaho 83654
SSN: [REDACTED]
BoA Loan No: 209378504

Dear Mona:

As you recall, on February 11, 2010 we spoke regarding the issues pertaining to my client's failed attempts to refinance his home loan through your company. After our discussion, you advised me you were going to look into the various issues and get back within forty-eight (48) hours. Having not received any response from your company, I am writing to inquire as to the status of this matter.

Very truly yours,

HALLIN LAW, PLLC

JONATHAN D. HALLIN

3960

HALLIN LAW, PLLC

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Mona Levario	J.D. Hallin
COMPANY:	DATE:
Bank of America, N.A.	2/17/2010
FAX NUMBER:	TOTAL NO. OF PAGES, EXCLUDING COVER:
(800) 658-9364	1
PHONE NUMBER:	RE:
(866) 387-2856	Ralph E. Sheets.

ORIGINAL TO FOLLOW BY MAIL PLEASE COMMENT PLEASE REPLY

NOTES/COMMENTS:

THE CONTENTS OF THIS FAX ARE PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT LISTED ABOVE, ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

136 E. LAKE STREET, SUITE 1, P.O. BOX 1067, MCCALL, IDAHO 83638

TELEPHONE: 208.634.5040

FACSIMILE: 208.634.5041

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TRANSMISSION VERIFICATION REPORT

TIME : 02/17/2010 16:24
NAME : HALLIN LAW, PLLC
FAX : 2086345041
TEL : 2086345040
SER.# : A9J120408

DATE, TIME	02/17 16:23
FAX NO./NAME	18006589364
DURATION	00:00:32
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

HALLIN LAW, PLLC

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Mona Levario	J.D. Hallin
COMPANY:	DATE:
Bank of America, N.A.	2/17/2010
FAX NUMBER:	TOTAL NO. OF PAGES, EXCLUDING COVER:
(800) 658-9364	1
PHONE NUMBER:	RE:
(866) 387-2856	Ralph E. Sheets

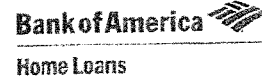
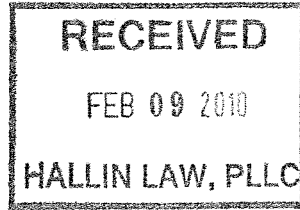
ORIGINAL TO FOLLOW BY MAIL PLEASE COMMENT PLEASE REPLY

NOTES/COMMENTS:

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February 4, 2010

Hallin Law, PLLC
P.O. Box 1067
McCall, Idaho 83638
Attention: Jonathon D. Hallin



Property Address: 5603 Highway 95, New Meadows, ID 83654

Dear Mr. Hallin:

Thank you for contacting our office with your letter dated January 6, 2010, regarding the above-referenced property address. The concerns referenced in your correspondence were forwarded to my attention for review and response.

Bank of America values and protects our customer's confidential information. As such, we do not provide personal information to unauthorized third parties.

In order for our office to discuss or disclose any information to you related to this account, we require our customer's written authorization. Upon receipt of appropriate authorization, Bank of America will respond to your correspondence.

Please forward the requested documentation to my attention by fax to 1.800.658.9364 by February 18, 2010, so that your concerns may be addressed. In the event the requested information is not received, we will consider this matter closed. If you should require additional assistance, please contact me directly at 1.866.387.2856, extension 3258, Monday through Friday, 8 a.m. to 5 p.m., Pacific. Thank you for this opportunity to be of service.

Sincerely,

Mona Levario

Mona Levario
Customer Advocate
Customer Relationship Advocacy

Customer Relationship Advocacy, CA6-919-02-39
450 American St., Simi Valley, CA 93065

Equal Housing Lender.

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HALLIN LAW, PLLC

136 E. Lake Street, Suite 1

P.O. Box 1067

McCall, Idaho 83638

Telephone: (208) 634-5040

Facsimile: (208) 634-5041

Email: hallinlaw@gmail.com

February 2, 2010

VIA FIRST CLASS MAIL

Bank of America, N.A.
10701 S. River Front Pkwy #400
South Jordan, Utah 84095

RE: Ralph E. Sheets
Property Address: 5603 Highway 95, New Meadows, Idaho 83654
SSN: [REDACTED]
BoA Loan No: 209378504

To Whom It May Concern:

This firm represents Mr. Sheets with respect to his good faith attempts to refinance the above-referenced home loan with Bank of America. By letter entitled "Notice of Action Taken" dated January 22, 2010, my client was informed your firm has been "unable to verify qualifying income," and therefore his application has been denied.

For nearly two (2) months, I have been attempting to contact your firm in an effort to resolve this matter. Despite my best efforts, I have received no contact from your company regarding my client's attempted refinance.

Pursuant to the Notice of Action Taken dated January 22, 2010 and the Fair Credit Reporting Act, my client requests disclosure of the nature of the information "obtained from an affiliate or from an outside source other than a consumer reporting agency," and which was the basis for the credit decision. Should you have any questions, please do not hesitate to contact me at the number and address listed above.

Very truly yours,

HALLIN LAW, PLLC

JONATHAN D. HALLIN

4/00

HALLIN LAW, PLLC

136 E. Lake Street, Suite 1
P.O. Box 1067
McCall, Idaho 83638
Telephone: (208) 634-5040
Facsimile: (208) 634-5041
Email: hallinlaw@gmail.com

January 19, 2010

VIA FACSIMILE: (866) 409-6103

Caelee Opheikens
Team Fulfillment Lead
Operations Department
Bank of America Home Loans

RE: Ralph E. Sheets
Property Address: 5603 Highway 95, New Meadows, Idaho 83654
SSN: [REDACTED]
BoA Loan No: 209378504

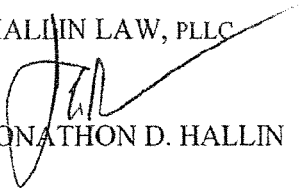
Dear Ms. Opheikens:

As you shall recall, we spoke last month regarding my client, Ralph E. Sheets, and his failed attempts to refinance his home loan with Bank of America. At your request, I sent a letter to the Office of the Chairman. Since that time, I have not had any contact from Bank of America regarding this matter. As time is of the essence, I would appreciate it if you could advise me as to the status.

Should you have any questions, please do not hesitate to contact me at the number and address listed above.

Very truly yours,

HALLIN LAW, PLLC


JONATHON D. HALLIN

HALLIN LAW, PLLC

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Caelee Opheikens	J.D. Hallin
COMPANY:	DATE:
Bank of America Home Loans	1/19/2010
FAX NUMBER:	TOTAL NO. OF PAGES, EXCLUDING COVER:
(866) 409-6103	1
PHONE NUMBER:	RE:
(866) 446-2625	Ralph E. Sheets.

ORIGINAL TO FOLLOW BY MAIL PLEASE COMMENT PLEASE REPLY

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136 E. LAKE STREET, SUITE 1, P.O. BOX 1067, MCCALL, IDAHO 83638
TELEPHONE: 208.634.5040
FACSIMILE: 208.634.5041

472

TRANSMISSION VERIFICATION REPORT

TIME : 01/19/2010 07:43
NAME : HALLIN LAW, PLLC
FAX : 2086345041
TEL : 2086345040
SER.# : A9J120408

DATE, TIME 01/19 07:43
FAX NO./NAME 18664096103
DURATION 00:00:22
PAGE(S) 02
RESULT OK
MODE STANDARD
ECM

HALLIN LAW, PLLC

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Caelee Opheikens	J.D. Hallin
COMPANY:	DATE:
Bank of America Home Loans	1/19/2010
FAX NUMBER:	TOTAL NO. OF PAGES, EXCLUDING COVER:
(866) 409-6103	1
PHONE NUMBER:	RE:
(866) 446-2625	Ralph E. Sheets.

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NOTES/COMMENTS:

HALLIN LAW, PLLC

136 E. Lake Street, Suite 1

P.O. Box 1067

McCall, Idaho 83638

Telephone: (208) 634-5040

Facsimile: (208) 634-5041

Email: hallinlaw@gmail.com

January 6, 2010

VIA FIRST CLASS MAIL

Office of the Chairman
400 Countrywide Way
Mailcode CA6-919-02-39
Simi Valley, California 93065

RE: Ralph E. Sheets
Property Address: 5603 Highway 95, New Meadows, Idaho 83654
SSN: [REDACTED]
BoA Loan No: 209378504

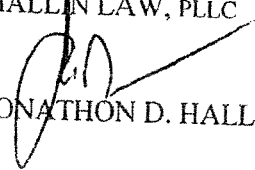
To Whom It May Concern:

I have been retained by Mr. Ralph E. Sheets with respect to his failed attempts to refinance his home loan with Bank of America and the subsequent reconveyance of the Deed of Trust previously encumbering his property. Despite my best efforts to contact Paul Campbell, the loan officer handling my client's refinance, I have received no response from your company. After my unsuccessful attempts to contact Mr. Campbell, Ms. Caelee Opheikens recently contacted me and advised she cannot communicate with me until she has received consent from the Office of the Chairman.

Accordingly, I direct this letter to your Office in the hopes that this matter can be resolved quickly and amicably. Should you have any questions, please do not hesitate to contact me at the number and address listed above.

Very truly yours,

HALLIN LAW, PLLC


JONATHON D. HALLIN

404

**Fax Cover Sheet**

To: J D Hallin

Company: Hallin Law PLLC

Telephone Number: 208-634-5040

Fax Number: 208-634-5041

Date: 12/30/2009

From: Caelee Opheikens

Department: Operations

Telephone Number: 801-446-2625

Fax Number: 866-409-6103

Number of pages including this cover sheet: 1

If transmission problems occur, please call:

Mr. Hallin,

The phone number for the office of the chairman 972-608-2531 and the address is 400 Countrywide Way, Mailcode CA6-919-02-39, Simi Valley, CA 93065.

Please mail the notice that you will be representing Mr. Sheets to this address and they can let you know how to proceed.

**Thanks,
Caelee Opheikens
Team Fulfillment Lead**

The information contained in this FAX message is intended only for the confidential use of the designated recipient named above. This message may contain contractual and proprietary information and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the message to us by mail.

4105

Bank of America



Home Loans

Fax Transmittal

The following information is **PERSONAL & CONFIDENTIAL** and is provided exclusively to the individual addressed on this Transmittal Cover Letter.

Date: Wednesday, December 30, 2009 9:54:32 AM

To: JD Hallin **Pages:** 02

To Fax #: 208-634-5041 **To Phone:**

From: Caelee Opheikens

From Fax #: 1-866-409-6103 **From Phone:** 801-446-2625

Comments:

Confidentiality Notice: The information contained in and transmitted with this communication is strictly confidential, is intended only for the use of the intended recipient, and is the property of Bank of America Home Loans or its affiliates and subsidiaries. If you are not the intended recipient, you are hereby notified that any use of the information contained in or transmitted with the communication or dissemination, distribution, or copying of this communication is strictly prohibited by law. If you have received this communication in error, please immediately return this communication to the sender and destroy the original message or any copy of it in your possession. Thank You.

4060

Gmail - Ralph E. Sheets, BoA [REDACTED]

[REDACTED] of 2



J.D. Hallin <hallinlaw@gmail.com>

Ralph E. Sheets, BoA [REDACTED]

3 messages

J.D. Hallin <hallinlaw@gmail.com>
To: paul.campbell@bankofamerica.com

Tue, Dec 15, 2009 at 4:21 PM

Mr. Campbell -

I represent Mr. Sheets with respect to the above-listed BoA loan. I have been trying to get a hold of you to discuss the status of his current loan and attempted refinancing. Can you please contact me at your earliest convenience.

Best,

Jonathon D. Hallin

Hallin Law, PLLC
136 E. Lake Street, Ste. 1
P.O. Box 1067
McCall, Idaho 83638
PH: (208) 634-5040
FX: (208) 634-5041

Campbell, Paul <paul.campbell@bankofamerica.com>

Wed, Dec 16, 2009 at 12:59 AM

To: "J.D. Hallin" <hallinlaw@gmail.com>
Cc: "Campbell, Paul L" <paul.l.campbell@bankofamerica.com>

Dear Mr Hallin

I suspect that you have the wrong the Paul Campbell as I am based in the UK.

I have copied in the person I think that you were trying to reach.

Regards

Paul

407

From: J.D. Hallin [mailto:hallinlaw@gmail.com]
Sent: 15 December 2009 23:21
To: Campbell, Paul
Subject: Ralph E. Sheets, BoA Loan No. [REDACTED]

[Quoted text hidden]

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J.D. Hallin <hallinlaw@gmail.com>
To: "Campbell, Paul L" <paul.l.campbell@bankofamerica.com>

Wed, Dec 23, 2009 at 10:41 AM

Paul -

My attempts to contact you regarding my client, Ralph E. Sheets, have been unsuccessful. I really need to speak with someone who can help clear up the mess surrounding his home loan. If you cannot help me, please direct me to someone who can assist. I will out of the office beginning today and returning next monday.

thanks and happy holidays,

J.D. Hallin

Hallin Law, PLLC
136 E. Lake Street, Ste. 1
P.O. Box 1067
McCall, Idaho 83638
PH: (208) 634-5040
FX: (208) 634-5041

[Quoted text hidden]

408



J.D. Hallin <hallinlaw@gmail.com>

Ralph E. Sheets, BoA [REDACTED]

1 message

J.D. Hallin <hallinlaw@gmail.com>
To: paul.campbell@bankofamerica.com

Tue, Dec 15, 2009 at 4:21 PM

Mr. Campbell -

I represent Mr. Sheets with respect to the above-listed BoA loan. I have been trying to get a hold of you to discuss the status of his current loan and attempted refinancing. Can you please contact me at your earliest convenience.

Best,

Jonathon D. Hallin

Hallin Law, PLLC
136 E. Lake Street, Ste. 1
P.O. Box 1067
McCall, Idaho 83638
PH: (208) 634-5040
FX: (208) 634-5041

409

HALLIN LAW, PLLC

136 E. Lake Street, Suite 1
P.O. Box 1067
McCall, Idaho 83638
Telephone: (208) 634-5040
Facsimile: (208) 634-5041
Email: hallinlaw@gmail.com

December 3, 2009

VIA FACSIMILE: (866) 409-2150

Paul Campbell
Bank of America Home Loans

RE: Ralph E. Sheets
Property Address: 5603 Highway 95, New Meadows, Idaho 83654
SSN: [REDACTED]
BoA Loan No: [REDACTED]

Dear Mr. Campbell:

I have been retained by Mr. Sheets with respect to his failed attempts to refinance his home loan with Bank of America and the subsequent reconveyance of the Deed of Trust previously encumbering his property. My client would like to resolve this matter and confusion created by your company as soon as feasible. Please contact me via telephone or email at your earliest convenience so we may discuss this matter.

Very truly yours,

HALLIN LAW, PLLC

JONATHON D. HALLIN

HALLIN LAW, PLLC

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Paul Campbell	J.D. Hallin
COMPANY:	DATE:
Bank of America Home Loans	12/3/2009
FAX NUMBER:	TOTAL NO. OF PAGES, EXCLUDING COVER:
(866) 409-2150	1
PHONE NUMBER:	RE:
(866) 645-5357, ext. 5019	Ralph E. Sheets.

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136 E. LAKE STREET, SUITE 1, P.O. BOX 1067, MCCALL, IDAHO 83638
TELEPHONE: 208.634.5040
FACSIMILE: 208.634.5041

2/11

017

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136 E. LAKE STREET, SUITE 1, P.O. BOX 1067, MCCALL, IDAHO 83638
TELEPHONE: 208.634.5040
FACSIMILE: 208.634.5041

DATE, TIME	12/03 10:57
FAX NO./NAME	18664092150
DURATION	00:00:22
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

TIME : 12/03/2009 10:58
NAME : HALLIN LAW, PLLC
FAX : 2086345041
TEL : 2086345040
SER.# : A9J120408

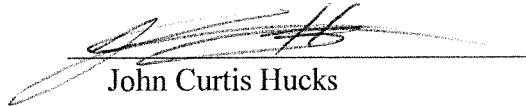
TRANSMISSION VERIFICATION REPORT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above document has been served via U.S. Mail and Email attachment this 17~~th~~ day of February 2013 upon:

Derrick J. O'Neill
O'Neill Law, PLLC
300 Main Street, Suite 150
Boise, ID 83702
derrick@oneillpllc.com
doneill@rcolegal.com

Eric R. Coakley
Bloom, Murr & Accomazzo, P.C.
410 17th Street, Suite 2400
Denver, CO 80202-4402
ecoakley@bmas.co

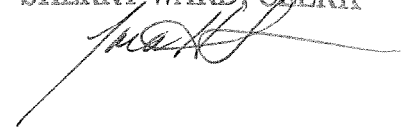

John Curtis Hucks

FILED

APR 29 2013

1:15 pm

SHERRY WARD, CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,)

Plaintiff,)

vs.)

RANPH E. SHEETS, JR. and DEBRA)
SHEETS, and DOES 1-10 as individuals with)
an interest in the property legally described)
as:)

Defendants.)

Case No. CV-2010-2564

FINDINGS OF FACT, CONC LUSIONS
OF LAW AND ORDER ON PLAINTIFF'S
MOTIONS FOR SUMMARY JUDGMENT

Procedural History

This court has heard a number of motions regarding the allegations of the respective parties as detailed in the court's prior orders. The court will not set forth the complex procedural history previously documented in those orders and incorporates by reference the previous recitation of the procedural history of this action. The court recognizes that the named Plaintiff in the case-in-chief is Countrywide, but for simplicity and consistency the court will use the term of "Bank of America" or "B of A" throughout the following analysis of the pending motions given the nature of the relationship between B of A with Countrywide and other named Counterdefendants.

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On April 18, 2012, Sheets filed an Amended Answer, Second Amended Counterclaims, Third Party Complaint and Demand for Jury Trial. On May 7, 2012, BofA filed an Answer to Plaintiff's Second Amended Counterclaims and Third Party Complaint. On October 22, 2012, BofA filed a Motion for Summary Judgment on Defendants' Counterclaims and Third Party Complaint, along with supporting memorandum and exhibits. On December 18, 2012, BofA filed a Motion for Summary Judgment on its Complaint. On February 12, 2013, Sheets filed a Responsive Memorandum opposing both pending motions for summary judgment. Sheets also filed Motions to Strike Affidavits filed by BofA in Support of its motions for Summary Judgment. On February 19, 2013, Sheets filed the Affidavit of Jonathan Hallin. On February 22, 2013, BofA filed a Response to Motions to Strike and Reply Briefs in Support of the Motions for Summary Judgment. Oral argument was held on March 1, 2013. BofA was represented by Eric Coakley, and the Sheets were present and represented by John Curtis Hucks.

Motion to Strike Affidavits

Idaho Rule of Civil Procedure 56(e) requires that a when affidavits are submitted in support of or in opposition to a motion for summary judgment those "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." IRCP 56(e). Thus, when a court's decision on a motion for summary judgment is reviewed, an appellate court will only consider that which complies with IRCP 56(e). That is evidence that is based upon personal knowledge and containing material that would be admissible at trial. *Cates v. Albertson's Inc.*, 126 Idaho 1030, 1034, 895 P.2d 1223, 1227 (1995).

In support of its Motion for Summary Judgment on the Complaint, BofA filed the Affidavit of Shiranthika Haworth. The Haworth Affidavit references the original Note and Deed of Trust, as well as the Deed of Reconveyance. The affidavit essentially states that BofA did not intend that the Deed of Reconveyance be issued because Sheets has not made full payment on the original Note, the refinance loan did not close, and because the Deed of Reconveyance was issued in error. Sheets seeks to strike the Haworth Affidavit alleging that Haworth, as the affiant has failed to make a proper allegation of the basis of her personal knowledge of the facts alleged, what documents were relied on in support of the allegations, and thus the affidavit is conclusory. In support of its Motion for Summary Judgment on the Counterclaims, BofA supplied the Affidavit of Ronald Odeyemi. The Odeyemi Affidavit provides statements by BofA as to the failed refinance loan closing. Sheets seek to strike that affidavit on similar grounds to the Haworth Affidavit. Sheets argue that Odeyemi has a lack of personal knowledge and that the allegations are hearsay. Sheets argue that the affidavit fails to provide information as to the duties of Odeyemi which indicates a lack of personal knowledge. In response to the motions, BofA argues that both affiants state their positions within the corporation, makes reference to specific documents attached to the affidavit and/or accompanying brief, and that the statements were made under oath. Finally, BofA argues that most of the allegations are adequately supported in the record and are undisputed by the parties to this action. BofA asks the court to deny the motions.

The court having reviewed the affidavits and pending objections to the affidavits, finds that it will exercise its discretion and deny the Motions to Strike. The court finds that while the affidavits are not the most detailed affidavits as to the duties and qualifications of the affiants,

that the majority of the allegations are contained within documents that are squarely before this court as exhibits that have been part of this court's record since the pendency of this action. The court finds that there is sufficient support in the record for the authenticity of the documents. The court recognizes that there are certain statements to which Sheets have objected and which BofA has recognized as having less support in the record, and the court will properly and carefully weigh those statements in issuing its decision on the pending motions for summary judgment. To the extent that those statements are deemed to be irrelevant, inadmissible hearsay, and/or unsupported by the record, the court will disregard those statements. The Motions to Strike are DENIED.

Standard of Review on Motion for Summary Judgment

Summary judgment is appropriate where the pleadings, depositions, admissions and affidavits on file show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *City of Idaho Falls v. Home Indemnity Co.*, 126 Idaho 604, 606 (1995). At all times, the burden of proving the absence of a genuine issue of material fact rests upon the moving party. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517 (1991).

In consideration of the motion, the court must liberally construe the facts and inferences contained in the existing record in favor of the party opposing the motion. *Bonz v. Sudweeks*, 119 Idaho 539, 541 (1991). To withstand a motion for summary judgment, the non-moving party's case must be anchored in something more solid than speculation. A mere scintilla of evidence is not enough to create a genuine issue. *Edwards v. Conchemco Inc.*, 111 Idaho 851

(Ct. App. 1986). The party opposing the motion for summary judgment may not merely rest on the allegations contained in the pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the assertions of the moving party. *Ambrose v. Buhl School Dist. #412*, 126 Idaho 581 (Ct. App. 1995).

The existence of disputed facts will not defeat summary judgment when the plaintiff fails to make a showing sufficient to establish the existence of an element essential to his case, an on which he will bear the burden of proof at trial. *Garzee v. Barkley*, 121 Idaho 771 (Ct. App. 1992). Facts in dispute cease to be “material” facts when the plaintiff fails to establish a prima facie case. In such cases, there can be “no genuine issue of material fact,” since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial. *Id. citing Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). This rule facilitates the dismissal of factually unsupported claims prior to trial. *Id.* Summary judgment dismissing a claim is appropriate when the plaintiff fails to submit evidence to establish an essential element of the claim. *Nelson v. City of Rupert*, 128 Idaho 199, 202 (1996).

Motion for Summary Judgment on Complaint

In the pending motion, BofA moves for summary judgment on the Complaint seeking 1) declaratory judgment finding the Deed of Reconveyance erroneously recorded November 9, 2009 is void and/or 2) an order voiding the Deed of Reconveyance to prevent Sheets from being unjustly enriched. Sheets opposes the motion and argues that the court should deny the motion because BofA has failed to support its claim for rescission of the reconveyance deed that such

relief is available for a unilateral mistake, and argues that BofA should be denied equitable relief due to the doctrine of unclean hands.

This court's authority to issue a declaratory judgment is codified at Idaho Code 10-1201 which states:

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

I.C. 10-1201.

In this case, BofA asks this court to exercise its discretion and to declare as void and to rescind the Deed of Reconveyance issued as will be further described below. This appears to be an unusual situation that has not been previously considered by appellate courts, as neither party has cited this court to any controlling or persuasive authority on the issue. Sheets does argue, without citation to authority the general rule that rescission may be a remedy upon a finding of mutual mistake, but not a unilateral misstate as is the case in this action. The court notes that usually the doctrine of rescission is used in a situation involving a contract between two parties and is held to be a remedy which ideally brings the parties to their pre-contract status quo. *O'Connor v. Harger Const., Inc.*, 145 Idaho 904, 909, 188 P.3d 846, 851 (2008). In this contract situation, rescission may be a proper remedy when there is a mutual mistake of fact that is material or fundamental to the contract. *Id.* Rescission is also a statutory remedy provided to a transferee of property pursuant to the Property Condition Disclosure Act, codified at Idaho Code 55-2501 *et seq.* available when certain disclosure requirements are not met. The court does not find that either legal scenario is applicable to the facts at hand because the situation that led to

the Deed of Reconveyance being issued is neither a contractual or property condition disclosure issue.

Due to the fact that this court is faced with an unusual factual and legal scenario, the court will rely on the general authority pursuant to Idaho Code 10-1201 in which it is tasked with the ability to determine and declare the rights and legal status of the parties. The court makes the following findings of fact in the exercise of its discretion pursuant to this statute.

It is undisputed that on December 21, 2004, Ralph Sheets executed a Note in which he promised to pay \$65,250 in monthly installments of \$563.92 from February 1, 2005 until January 1, 2020. (Exhibit 1, Countrywide Motion for Summary Judgment). It is further undisputed that on December 21, 2005, Ralph Sheets executed a Deed of Trust to secure the above referenced Note. (Exhibit 2, Countrywide Motion for Summary Judgment). The record of the case shows that Sheets made payments in satisfaction of the terms of the Note and Deed of Trust up until October 30, 2009, but that no payment has been made since that date. (See Undisputed Fact ¶ 10, Countrywide Motion for Summary Judgment and Exhibit 3 to Deposition of Ralph Sheets). Finally, the Deed of Reconveyance was recorded on November 9, 2009. (Exhibit 6, Countrywide Motion for Summary Judgment).

The court finds the following term of the Deed of Trust relevant and dispositive of the pending motion for summary judgment. The Deed of Trust states, in relevant part, as follows:

Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it.

Deed of Trust, ¶23.

It is clear from this term of the Deed of Trust that the parties agreed that reconveyance of the Property would occur after Sheets made full payment according to the terms of the Note. In addition, it is clear that full payment of the Note was not accomplished and thus, the Trustee was not entitled to reconvey the property, nor would Sheets be entitled to receive full reconveyance of the property.

The court is fully aware of the claims and arguments made by Sheets about the conduct of BofA throughout the loan refinancing, failed loan closing, and all subsequent actions of BofA. However, the court does not find that the conduct of Bank of America as it relates to the failed refinancing and all subsequent actions, to be relevant to this specific legal issue because the court has determined that the plain language of the Note and Deed of Trust controls the actions and rights and obligations of the parties to those agreements. The court need not delve into the specific conduct of the parties outside those agreements other than as set forth above.

Therefore, the court finds that BofA is entitled to summary judgment on its claim that the Deed of Reconveyance was issued in error and should be considered void because the repayment terms of the Note and Deed of Trust were not complied with prior to the Trustee issuing the Deed of Reconveyance. BofA's Motion for Summary Judgment on the Complaint is GRANTED.

The second theory upon which BofA seeks summary judgment is the equitable principal of unjust enrichment. Unjust enrichment, as a fictional promise or obligation implied by law, allows recovery where the defendant has received a benefit from the plaintiff that would be inequitable for the defendant to retain without compensating the plaintiff for the value of the

benefit. *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 132 Idaho 754, 767-68, 979 P.2d 627, 640-41 (1999). The elements of unjust enrichment are that (1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit. *Teton Peaks Inv. Co., LLC v. Ohme*, 146 Idaho 394, 398, 195 P.3d 1207, 1211 (2008). In this case, BofA argues that the court's failure to rescind the Deed of Reconveyance would unjustly enrich Sheets because Sheets would benefit by retaining the property without having to make full payment on the Promissory Note and that this result would be inequitable given the contractual agreement between the parties.

In opposing the motion on this basis, Sheets relies on the doctrine of unclean hands in which a party may be denied equitable relief when the opposing party's misconduct is "inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue." *Ada County Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 370-71, 179 P.3d 323, 333-34 (2008). This doctrine is not favored and is to be applied with reluctance and scrutiny. *Sword v. Sweet*, 140 Idaho 242, 251-52, 92 P.3d 492, 501-02 (2004). The application of this doctrine is left to the discretion of the court and the court is given discretion to "evaluate the relative conduct of both parties and to determine whether the conduct of the party seeking an equitable remedy should, in the light of all the circumstances, preclude such relief." *Id.*

The court has determined that summary judgment is appropriate and will issue a declaratory judgment as set forth above but will consider the alternative theory upon which BofA pursues this motion. This court has determined that Sheets has not made full payment of the Note and is not entitled pursuant to the terms of the Deed of Trust to full reconveyance of the property

pursuant to the Deed of Reconveyance. Therefore, the court finds that if it were to allow Sheets to retain the property subject to the Deed of Reconveyance without full payment of the Note that Sheets would be unjustly enriched to the detriment of BofA. To that extent, the court would grant BofA's Motion for Summary Judgment on the grounds that Sheets would be unjustly enriched if the Deed of Reconveyance was not set aside.

As to Sheets' defense of unclean hands, Sheets raises the question as to whether or not BofA should be entitled to the relief sought because there are two exhibits that show that the Deed of Reconveyance may have been issued due to willful misconduct, gross negligence, and/or a lack of mistake in issuing documents that are patently false. Sheets relies on Exhibit H and Exhibit I to his responsive brief. Exhibit H is referred to as the Beltran Document and is a document entitled the Disbursement Authorization Checklist issued on November 4, 2009 and a week after the failed closing of the 2009 refinancing loan. In this document, Beltran certifies that certain actions were taken, documents were signed, and that the 2009 loan should be funded and recorded. It is clear from the record that these statements are most likely false given that there is no dispute that the 2009 loan did not close as expected. Exhibit I, known as the Wigner document, is a Loan Quality Checklist also dated November 4, 2009 and appears to be a post-closing checklist that again would appear to represent that the 2009 loan actual closed as expected. Sheets argue that the apparent falsity of these documents should be used as evidence that BofA acted with unclean hands when it issued the Deed of Reconveyance.

The court does not disagree with Sheets that the issuance of the Deed of Reconveyance as well as the Beltran and Wigner documents show that BofA clearly acted without oversight and without awareness of the actions of its agents, and that this conduct might amount to willful

misconduct and/or gross negligence on the part of BofA. However, the court cannot find that such conduct amounts to “inequitable, unfair and dishonest, or fraudulent and deceitful” conduct “as to the controversy in issue” such that it would prevent this court from issuing summary judgment by granting a declaratory judgment or by finding that Sheets would be unjustly enriched by being allowed to retain the property without making full payment pursuant to the terms of the Note and Deed of Trust. The court is aware that the plight of the Sheets is not unique and that many Americans have been victims to the corporate failings of BofA and the well-publicized accusations of the public against BofA’s conduct related to home mortgages, refinancing, and the like. However, the court does not find that BofA’s failure as a corporation to exercise proper oversight over its many divisions and employees amounts to unclean hands such that it would prevent the relief sought, in this particular case.

The court also finds that the true relief sought by BofA was rescission of the Deed of Reconveyance and the true purpose of the doctrine of rescission is to place the parties back in the position they were in before the conduct occurred that requires rescission. In this case, granting summary judgment in favor of BofA puts both Sheets and BofA back in the position they were in prior to October 30, 2009. That is, BofA returns to being the lender and Sheets returns to being the borrower. Both return to the position of having to comply with their respective rights and obligations pursuant to the Note and Deed of Trust. The court does not find that the conduct of BofA that led to this litigation should, for the limited issue presented in the Complaint and this motion, prevent the rescission of the Deed of Reconveyance either as a matter of issuing a declaratory judgment on the issue, or because as a matter of equity, it would be inequitable for Sheets to be unjustly enriched and to retain the property without proper payment. To that end,

the court will grant the motion for summary judgment on the issue of unjust enrichment and does not find that the doctrine of unclean hands prevents summary judgment on this issue.

That being said, the court issues the following directions. Due to the nature of the Complaint and the request on summary judgment, the court limits its findings to a determination that the Deed of Reconveyance was improperly issued because 1) the 2009 loan did not close and thus no new Note or Deed of Trust existed to replace the terms of the current Note and Deed of Trust, and 2) more importantly, because the plain language of the Note and Deed of Trust require full payment of the terms of the Note prior to reconveyance of the property to the Sheets. Therefore, the court finds that the Deed of Reconveyance should be declared void and should be rescinded so that the parties may be placed back in the position they were in as of the Sheets' last payment, October 30, 2009.

However, before this court will take further action (i.e. the entry of a Judgment or further orders) the court will require BofA to present to the court a detailed plan in which BofA sets forth its proposal as to how to move forward with its relationship with Sheets. The court notes with some concern that at the deposition of Mr. Sheets, counsel for BofA asked questions about Mr. Sheet's ability to bring the loan current or to make a large payment that would cover the missing payments from October 30, 2009 to the present. (See Sheets Deposition, p. 21, 11.4-24). In addition, counsel asked questions of Mr. Sheets related to the bank's possible intent to seek attorney fees from Sheets for failing to sign a Stipulation to Judgment (Exhibit 5, Sheets Deposition) after BofA discovered its error in issuing the Deed of Reconveyance which caused this litigation. (See Sheets Deposition, p. 23 – 28). The court raises these issues because it is necessary to remind BofA that this action is based on its own conduct and mistakes and that the

issuance of the Deed of Reconveyance was done through absolutely no fault of the Sheets and that any action by BofA at this time to lay such blame at the feet of the Sheets or any actions to treat the current (2004) loan in a negative manner will be met with strong disapproval of this court. BofA is reminded that it asked for rescission, and that in granting that relief, the court is putting the parties back in the position in which they were placed as of October 30, 2009. The court has determined that this relief is being granted as both the legally and equitably proper result; however, the court will retain its discretion to ensure that the Sheets are treated properly under the existing terms and obligations of the Note and Deed of Trust.

BofA/Countrywide's Motion for Summary Judgment on the Complaint is GRANTED with the qualifications and requirements set forth above.

Motion for Summary Judgment on Sheets' Counterclaims

In Sheets' Amended Answer, Second Amended Counterclaims, Third Party Complaint and Demand for Jury Trial, Sheets makes the following claims: Breach of Contract against Bank of America; Demand for Specific Performance of Contract by Bank of America; Violation of the Idaho Consumer Protection Act by Bank of America; Violation of Federal Fair Credit Reporting Act by Bank of America; Slander of Credit by Bank of America; and Violation of Idaho Code 45-1502(1) by Bank of America and ReconTrust. BofA moves for summary judgment on all of these claims.

Breach of Contract

Sheets' Breach of Contract claim is made pursuant to Idaho Code 9-505, the Statute of Frauds that provides in relevant part, the following:

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In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit.

I.C. 9-505(5).

Sheets alleges that “Bank of America committed in writing to loan Sheets the sum of \$87,750, by approving the application for the 2009 Loan,” and argues that by making this written commitment to lend money that Sheets and BofA entered into an enforceable contract.

It is the basic premise of contract law that in order to form a valid contract, there must be a meeting of the minds between the parties who intend to be bound by the contract. Evidence of a meeting of the minds is found in the offer and acceptance that indicate that there is a mutual intent as to the terms of the contract. *Justad v. Ward*, 147 Idaho 509, 512, 211 P.3d 118, 121 (2009). A contract must be complete, definite, and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty. *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (Ct. App. 2009). In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the parties. *Id.* Generally, so long as some consideration is provided for in the contract, the court will not inquire as to the adequacy of such consideration supporting the agreement. *Sirius LC v. Erickson*, 244 P.3d 224 (2010). “To constitute consideration, a performance or a return promise must be bargained for. A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that

promise.” Restatement (Second) of Contracts § 71 (1981). *Boise Tower Associates, LLC v. Hogland*, 147 Idaho 774, 780 215 P.3d 494, 500 (2009).

BofA argues, and this court agrees, that Sheets has failed to show that an enforceable contract existed between BofA and Sheets because Sheets has failed to show a meeting of the minds. As noted above, Sheets alleges in the Counterclaim that BofA entered into an enforceable contract to lend Sheets \$87,750.00. The court has reviewed the evidence provided to it by the parties and makes the following findings. Sheets rely on the exhibits attached to his responsive brief, the Sheets Affidavit, and the Sheets Deposition. The court finds that in support of Sheets’ argument that in Exhibit C to Sheets’ Responsive Brief, Bank of America admitted in Request for Admission No. 4, that on October 27, 2009 it provided copies of proposed closing documents for a loan in the amount of \$87,750. In addition, at Exhibit F to the Responsive Brief, the document dated October 26, 2009 provides that “there are no outstanding conditions for this loan.” However, the court notes that neither party has provided to the court a copy of the alleged closing documents that were provided to Sheets in October 2009 so the only evidence of the loan amount is the admission of BofA as set forth above.

While these documents provide evidence of a loan amount that matches the allegation in Sheets’ Counterclaim, the court must also look to other evidence provided by Sheets. In his Affidavit, Sheets alleges that during the process to get the loan refinance approved, he and Paul Campbell, a loan officer, had a series of negotiations over the several months it took for BofA to get to the point of closing. Sheets alleges that at one point Campbell told him the loan would be in the amount of \$108,000 but the final Truth in Lending documentation indicated a loan amount of \$87,750. (Sheets Affidavit, ¶7). In addition, Sheets alleges that after the failed loan closing,

when he returned home and had an opportunity to review the documents that had been sent to him, "Upon my subsequent review of those documents (the 2009 loan closing documents), the terms contained therein were different than the terms that had been represented by Paul Campbell." (Sheets Affidavit, ¶10). Finally, the court has reviewed the Sheets Deposition provided by Sheets and finds that Sheets testified that Campbell had promised him a loan in the amount of 80% of the appraised value of the property, which would amount to approximately \$108,000. (Deposition pg. 30. L. 24 – pg. 31, l.15). In addition, Sheets testified that when he reviewed the October 27, 2009 terms of a loan in the amount of \$87,750 with a 5.125% interest rate, that those terms did not reflect the agreement between Campbell and Sheets. (Deposition, pg. 32, ll. 20.) Finally, Sheets admitted in his testimony that had he been given the opportunity to sign the October 27, 2009 Note, he would not have done so because the document did not reflect the terms that he believed were the agreement he had entered into with Paul Campbell. (Deposition, pg. 32, l. 23-p. 33, l. 21; pg. 34, ll. 6-25). Based on this evidence, the court cannot conclude that there was a meeting of the minds between Sheets and BofA about the terms of the loan agreement because there is a conflict in Sheets' own understanding as to both the amount of the loan and potentially the interest rate, if not other terms. In addition, Sheets has testified that even if he had been presented with the October 27, 2009 documents, he likely would not have signed the documents because they did not reflect the terms of the agreement he believed he had with Paul Campbell. The Statute of Frauds makes it clear that an agreement of this kind must be in writing and the very essence of contract law requires a meeting of the minds, and in this case the court does not have evidence of either element. Therefore, the court must grant BofA's motion for summary judgment on the Breach of Contract claim because there is not a valid

contract between the parties. The Motion for Summary Judgment on the Breach of Contract claim is GRANTED.

Specific Performance

Sheets' second cause of action is a claim for specific performance of the contract or agreement as described above. Specific performance is an extraordinary remedy that can provide relief when legal remedies are inadequate. The decision to grant specific performance is a matter within the district court's discretion. When making its decision the court must balance the equities between the parties to determine whether specific performance is appropriate. *Fazzio v. Mason*, 150 Idaho 591, 594-98, 249 P.3d 390, 393-97 (2011). In *Fazzio*, the court stated, "The remedy of specific performance may be invoked where necessary to complete justice between the parties. The object of specific performance is to best effectuate the purpose for which the contract is made, and specific performance should be granted upon such terms and conditions as justice requires." *Id.*, at 598, 397 citing 81A C.J.S. *Specific Performance* § 2 (2011). The court fully recognizes that the decision to award specific performance as relief for an alleged breach of contract is a matter of this court's discretion and the court is exercising its discretion in denying Sheets' request for specific performance as a remedy in this action.

The court finds that because there was no existing written contract between the parties there is no contract to enforce by way of specific performance. In addition, the court finds that Sheets' own evidence provides different terms of the alleged agreement which does not provide this court a basis upon which to fashion proper specific performance. Therefore, the court finds that it will not exercise its discretion and order specific performance because there is no contract to be enforced. The Motion for Summary Judgment on the claim for Specific Performance is

GRANTED.

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Idaho Consumer Protection Act

In the Counterclaim, Sheets alleges that BofA has “engaged in conduct in violation of the Idaho Consumer Protection Act...which conduct proximately caused financial damages.” The Idaho Consumer Protection Act is codified at Idaho Code 48-601 *et seq.* Idaho Code 48-603 provides a list of nineteen (19) possible acts or conduct upon which a claim for “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” are declared to be unlawful. The Counterclaim does not specify which subsection of I.C. 48-603 that Sheets is relying on in its claim for damages.

In its Motion for Summary Judgment on this issue, BofA cites to *Taylor v. McNichols*, 149 Idaho 826, 846, 243 P.3d 642, 662 (2010) in which the Idaho Supreme Court held the following:

In order to have standing under the Idaho Consumer Protection Act (ICPA), I.C. § 48-601, *et seq.*, the aggrieved party must have been in a contractual relationship with the party alleged to have acted unfairly or deceptively. *See* I.C. 48-608(1) (“Any person who purchases or leases goods or services and thereby suffers ...”); *Haskin v. Glass*, 102 Idaho 785, 788, 640 P.2d 1186, 1189 (Ct.App.1982) (holding “that a claim under the ICPA must be based upon a contract”). It is clear from Reed's complaints that he is not alleging that he entered into a contractual relationship with Respondents. Therefore, Reed's complaints have failed to state claims for relief under the ICPA. Respondents further point out that the ICPA only permits recovery for certain specific prohibited actions that are deemed to be unfair or deceptive. *See* I.C. § 48-603-48-603(E). Reed's complaints fail to allege which specific prohibited unfair or deceptive practice they are meant to have engaged in. Even assuming all facts pled by Reed to be true, he has failed to state a claim for which relief may be granted under the ICPA.

Id.

BofA argues that Sheets has failed to identify a specific subsection of the ICPA that would be applicable to this action and urges the court to apply to reasoning from *Taylor* above to this action. In addition, in BofA’s Reply Memorandum, it correctly points out that Sheets failed

to address the motion for summary judgment as it relates to the ICPA claim. The court must agree with BofA and grant the motion for summary judgment. The court makes two specific findings consistent with the ruling in *Taylor*. First, the Idaho Supreme Court has held that a party must have a contractual relationship with the party against who the ICPA is being claimed. In this case, Sheets has not made any allegation related to the 2004 loan agreement and that is the only contract of record in this action. This court has held that no contract was created in 2009 as described above. Second, the court finds that *Taylor* is also applicable because Sheets has failed to identify any specific act of BofA that would fall within the ICPA statute and without such an allegation, Sheets has failed to state a claim upon which relief can be granted. Finally, the court notes that the summary judgment standards and rules require Sheets to raise a genuine issue of material fact in order to survive summary judgment and Sheets has failed to specifically address the pending motion as it relates to the ICPA claim. The Motion for Summary Judgment is GRANTED as to the ICPA claim.

Fair Credit Reporting Act

In Sheets' claim that BofA violated the Federal Fair Credit Reporting Act, he alleges that BofA provided false information to credit reporting agencies and engaged in conduct that violates the FCRA, 15 U.S.C. 1681 *et seq.* BofA moves for summary judgment and argues that the FCRA limits a private cause of action and remedy to a situation in which the party provides notice to a credit reporting agency, who then provides notice to the furnisher of credit information. That is, Sheets would have had to make a claim of dispute with one or more of the credit reporting agencies who would have then in turn had to contact BofA. Countrywide argues that Sheets only contacted BofA about the credit concerns and thus, cannot make a sufficient

showing on this issue. In its Reply Brief, BofA argues that summary judgment is appropriate because Sheets failed to address the issue and should be considered to have conceded the issue by failing to raise a genuine issue of material fact that would preclude the entry of summary judgment. The court agrees that Sheets has failed to address the issue as it was raised in the Motion for Summary Judgment.

In *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153-54 (9th Cir. 2009), the Ninth Circuit provided the following explanation of the FCRA and the causes of action available to a credit consumer pursuant to the FCRA:

Congress enacted the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681–1681x,⁶ in 1970 “to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.” *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 127 S.Ct. 2201, 2205, 167 L.Ed.2d 1045 (2007). As an important means to this end, the Act sought to make “consumer reporting agencies exercise their grave responsibilities [in assembling and evaluating consumers' credit, and disseminating information about consumers' credit] with fairness, impartiality, and a respect for the consumer's right to privacy.” 15 U.S.C. § 1681(a)(4). In addition, to ensure that credit reports are accurate, the FCRA imposes some duties on the sources that provide credit information to CRAs, called “furnishers” in the statute.⁷

Section 1681s–2 sets forth “[r]esponsibilities of furnishers of information to consumer reporting agencies,” delineating two categories of responsibilities.⁸ Subsection (a) details the duty “to provide accurate information,” and includes the following duty:

(3) Duty to provide notice of dispute

If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

§ 1681s–2(a)(3).

Section 1681s–2(b) imposes a second category of duties on furnishers of information. These obligations are triggered “upon notice of dispute”—that is, when a person who furnished information to a CRA receives notice from the CRA that the consumer disputes the information. See § 1681i(a)(2) (requiring CRAs

promptly to provide such notification containing all relevant information about the consumer's dispute).

Subsection 1681s-2(b) provides that, after receiving a notice of dispute, the furnisher shall:

- (A) conduct an investigation with respect to the disputed information;
 - (B) review all relevant information provided by the [CRA] pursuant to section 1681i(a)(2) ...;
 - (C) report the results of the investigation to the [CRA];
 - (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other [CRAs] to which the person furnished the information ...; and
 - (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1) ...
 - (i) modify ...
 - (ii) delete[or]
 - (iii) permanently block the reporting of that item of information [to the CRAs].
- § 1681s-2(b)(1).

These duties arise only after the furnisher receives notice of dispute from a CRA; notice of a dispute received directly from the consumer does not trigger furnishers' duties under subsection (b). *See id.; Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057, 1059-60 (9th Cir.2002).

The FCRA expressly creates a private right of action for willful or negligent noncompliance with its requirements. §§ 1681n & o; *see also Nelson*, 282 F.3d at 1059. However, § 1681s-2 limits this private right of action to claims arising under subsection (b), the duties triggered upon notice of a dispute from a CRA. § 1681s-2(c) ("Except[for circumstances not relevant here], sections 1681n and 1681o of this title do not apply to any violation of ... subsection (a) of this section, including any regulations issued thereunder."). Duties imposed on furnishers under subsection (a) are enforceable only by federal or state agencies.⁹ *See* § 1681s-2(d).

Id.

In this case, BofA argues that Sheets' claim pursuant to the FCRA fails because Sheets has failed to allege and to provide supporting documentation that shows that he provided a notice of dispute to a credit reporting agency (CRA), rather BofA argues the only evidence in the record is that Sheets only informed BofA, directly, of the dispute which is insufficient for purposes of a cause of action under the FCRA. The court agrees with BofA as to the extent and nature of a

claim pursuant to FCRA, and also agrees with BofA as to the record as it exists in this case. It is clear to this court that the statute and interpreting case authority require specific actions by a consumer before a private right of action may arise under the FCRA. The court finds that Sheets has failed to address this issue on summary judgment, has failed to support his claim with proper evidence that would allow the claim to proceed, and has failed to raise a genuine issue of material fact that would preclude summary judgment on this issue. The Motion for Summary Judgment on the FCRA claim is GRANTED.

Slander of Credit

In Sheets' claim that BofA committed slander of title he alleges that BofA provided false information to third-party credit reporting agencies and to the Office of the Comptroller of Currency. BofA moves for summary judgment and argues that a common law claim for slander of credit is preempted by the FCRA described above, and in the alternative, that Sheets has failed to show either 1) that any false report was made or 2) that he suffered any damages as a result of the credit reporting. In its Reply Brief, BofA argues that summary judgment is appropriate because Sheets failed to address the issue on summary judgment and thus, has conceded the issue by failing to raise a genuine issue of material fact that would prohibit the entry of summary judgment. The court agrees that Sheets has failed to address the issue as it was raised in the Motion for Summary Judgment.

The court finds that a review of Idaho case authority shows that this state has not previously considered and does not recognize a common law claim for slander of credit. In addition, the court notes that most jurisdictions have determined that common law claims of this kind are to be preempted by the FCRA. *See El-Aheidab v. Citibank (S. Dakota), N.A.*, C-11-FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

5359 EMC, 2012 WL 506473 (N.D. Cal. Feb. 15, 2012). In this case, the court finds that even if the common law claim were not preempted by the FCRA as argued by BofA, Sheets has failed both to support his claim such that this court could properly consider the merits of the claim and has failed to address the issue on summary judgment, therefore failing to raise a genuine issue of material fact. The Motion for Summary Judgment on the Slander of Credit claim is GRANTED.

Violation of Idaho Code 45-1502(1)

In the final Counterclaim, Sheets alleges that BofA and ReconTrust have violated Idaho Code 45-1502(1) because that code section “expressly prohibits the trustee from being the same as the beneficiary under the deed of trust.” (Counterclaim ¶37). Sheets allege that the beneficiary under the 2004 Deed of Trust is MERS and that the person who executed both the Substitution of Trustee and the Full Reconveyance is listed as an officer of both MERS and ReconTrust. Sheets further alleges that “as a result of Bank of America’s willful violation of §45-1502, it is equitably ineligible to pursue correction or rescission of the unilateral mistake committed by ReconTrust in connection with the recording of the Full Reconveyance.” (Counterclaim ¶38).

BofA moves for summary judgment and argues first that if, as Sheets claims, that ReconTrust did not have the authority to issue the Deed of Reconveyance then it should be set aside, which is the relief requested by BofA and that has been granted by this court as indicated above. Second, BofA argues that that Sheets has failed to support its claim with any evidence in the record. Finally, BofA argues that Sheets failed to address this issue in its responsive brief and has thus conceded the issue on summary judgment.

Idaho Code 45-1502 provides the statutory definitions of "beneficiary" and "trustee" as well as the rights of the trustee as is set forth below:

Definitions -- Trustee's charge.

As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full. The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee.

I.C. 45-1502(1),(2)(6).

The court also finds Idaho Code 45-1504 to be relevant as it is set forth below:

Trustee of trust deed -- Who may serve -- Successors.

(1) The trustee of a trust deed under this act shall be:

(a) Any member of the Idaho state bar;

(b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;

(c) An authorized trust institution having a charter under chapter 32, title 26, Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or

(d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity,

disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

I.C. 45-1504.

In this case, the 2004 Deed of Trust lists as "Trustee" Timberline Title & Escrow and lists MERS as the "Beneficiary." In the Substitution of Trustee document, ReconTrust Company is listed as the replacement trustee. Jewel Elsmere, Assistant Secretary of MERS appears to have signed that document. In the Full Reconveyance (Deed of Reconveyance), Jewel Elsmere signs that document as Assistant Secretary of ReconTrust. The court assumes that it is from these documents that Sheets makes its argument that MERS is acting both as the beneficiary and as the trustee because Jewel Elsmere appears as "Assistant Secretary" for both entities.

However, the court is left to assume the nature of the full extent of this claim and argument because Sheets failed to address this issue in response to the Motion for Summary Judgment on this issue. Therefore, the court is left in the position of granting summary judgment because Sheets has appeared to have conceded the issue and has failed to adequately raise a genuine issue of material fact. That being said, the court also notes that because Sheets has failed to address the issue, he has failed to provide this court with any authority that would support the cause of action and has failed to provide the court with any authority as to how the court is to decide the merits of this cause of action. The court has reviewed the statutes as listed above and fails to find within those statutes an actual cause of action available to Sheets. While it is true that the statute states that the beneficiary shall not be the trustee, Sheets has failed to identify a penalty or remedy for failure to act according to the statute. In addition, Sheets has failed to support his claim that MERS and ReconTrust are entities to be treated as one and the

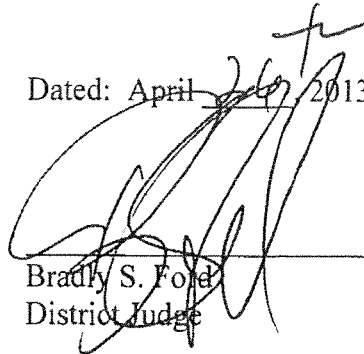
same such that they would be considered to be acted as both beneficiary and trustee in violation of the statute. The court notes that while the documents and the signature of Jewel Elsemere appear to show that MERS and ReconTrust are acting as a single entity, there is nothing in the statute and Sheets has provided no authority for the argument that closely held corporate entities may not or shall not serve as both beneficiary and trustee. Finally, the court notes that Sheets appears to be using this cause of action as a basis upon which to further contest BofA's right to seek rescission of the Deed of Reconveyance and the court has issued its decision on that issue. Therefore, the court must find that Sheets has failed to make a claim upon which relief can be granted and summary judgment should be awarded as to this cause of action. The Motion for Summary Judgment on the I.C. 45-1502 claim is GRANTED.

Conclusion and Order

Pursuant to Idaho Rule of Civil Procedure 56(c) and for the reasons set forth above, the court grants the Plaintiff COUNTRYWIDE HOME LOANS, INC.'S October 22, 2012 MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIMS AND THIRD PARTY COMPLAINT. Pursuant to Idaho Rules of Civil Procedure 56(c), 57 and for the reasons set forth above, the court grants the Plaintiff COUNTRYWIDE HOME LOANS, INC.'S December 18, 2012 MOTION FOR SUMMARY JUDGMENT. In entering this order, the court has considered the pleadings, depositions, admissions, and affidavits offered in support and in opposition to the Plaintiff's Motions for Summary Judgment and finds that there exist no genuine issues of material fact and that the Plaintiff is entitled to summary judgment as a matter of law on the issues as specifically addressed and set forth above. In reaching these conclusions, the court has construed all relevant facts in the record and any reasonable inferences that can be made from such evidence liberally in favor of the Defendants in their oppositions to the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

Plaintiff's respective Motions for Summary Judgment. Counsel for the Plaintiff is ordered to submit a Judgment in compliance with I.R.C.P. 54(a) to the court within fourteen (14) days of this order. Any request for attorney fees and costs shall be submitted to the court in accordance with the applicable Idaho Statute and Rule of Civil Procedure.

Dated: April ~~24~~²⁶ 2013.



Bradley S. Foye
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO)
 : ss.
COUNTY OF ADAMS)

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was forwarded to the following:

Derrick J. O'Neill
ROUTH CRABTREE OLSEN, PS
300 Main St, Ste 150
Boise, ID 83702

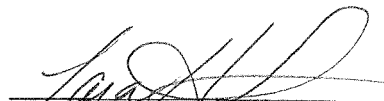
Eric R. Coakley
Bloom, Murr & Accomazzo, P.C.
410 17th Street, Ste. 2400
Denver, CO 80202-4402

John Curtis Hucks
Attorney at Law
PO Box 737
New Meadows, ID 83654

Either by depositing the same in the U.S. Mail, first class postage prepaid, or by personal service.

DATED this 29th day of April, 2013.

SHERRY WARD
Clerk of the District Court


By Deputy Clerk of the Court

Derrick J. O'Neill, ISB #4021
ROUTH CRABTREE OLSEN, P.S.
300 Main Street, Suite 150
Boise, Idaho 83702
Telephone: 208-489-3035
Facsimile: 208-854-3998

Eric R. Coakley, ISB #9109
BLOOM MURR ACCOMAZZO & SILER, PC
410 17th Street – Suite 2400
Denver, Colorado 80202
Telephone: 303-534-2277
ecoakley@bmas.com

Attorneys for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company N.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA
SHEETS; et. al.

Defendants.

Case No. CV-2010-2564

**NOTICE REGARDING PLAN
GOING FORWARD**

Countrywide Home Loans, Inc. (“Countrywide”), Bank of America, N.A. and BAC Home Loan Servicing, L.P.¹ (“Bank of America”) and ReconTrust Company N.A.’s (“ReconTrust”) (Countrywide, Bank of America, and ReconTrust are collectively referred to herein as the “Bank of America”) by and through their attorneys of record, hereby submit their Notice Regarding Plan Going Forward, in response to the Court’s Order of April 30, 2013.

¹ Bank of America Home Loan Servicing, L.P. is now known as Bank of America, N.A.

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FILED
JUN 25 2013
3:30 pm
SHERRY WARD, CLERK
[Signature]

A. Mr. Sheets was never released from his obligation to repay the money he borrowed in accordance with the terms of the Note.

It has long been held in Idaho, as in every jurisdiction in the United States, that a release of the security does not release a debtor from obligations to repay a debt pursuant to the terms of a note. *Millick v. O'Malley*, 273 P. 947, 949 (Idaho, 1928); *see also, Berryman v. Dore*, 251 P. 757 (Idaho, 1926). In this case, Mr. Sheets promised to repay his mortgage loan by making monthly payments of principal and interest in the amount of \$563.92 beginning February 1, 2005 and continuing each month thereafter until paid in full upon the maturity date, January 1, 2020. Exhibit 1 at p. 1, ¶ 3. The Note also contains a non-waiver provision, under which Mr. Sheets promised “[e]ven 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.” Exhibit 1 at p. 2, ¶6(D). Thus, in this case, Mr. Sheets’ obligations to pay the debt due under the Note were not at any time an issue. Bank of America could have, and may still, accelerate the Note and obtain an *in personum* judgment against Mr. Sheets for the balance due on the Note, late fees, costs, attorney fees and other charges provided by the Note regardless of the erroneous release of the security.

From the outset of this case, counsel for Bank of America recognized the risk that the borrowers would end up in default far beyond any potential value of their claims in this case and that the amount of the default could become an impediment to any resolution of this case. To that end, counsel for Bank of America repeatedly communicated to borrower’s counsel the importance of bringing current payments due under the Note. As it became apparent the borrowers had not been setting aside the payments they owed, counsel for Bank of America encouraged counsel for the borrowers to consider applying for a loan modification. The parties also engaged in mediation with Hon. Ron Schilling on October 3, 2012 at which the borrowers

rejected proposals to resolve these issues and bring the loan current. Following the mediation, Judge Schilling attempted to facilitate further settlement discussions. Bank of America made another proposal through Judge Schilling to which the borrowers did not respond.

While Bank of America has acknowledged responsibility for the error in processing the two loans at issue in this case, it is not responsible for Mr. Sheets' current ability to bring his loan current. As was uncontroverted on the motion for summary judgment, except for the erroneously recorded reconveyance of the Deed of Trust, the errors with loan servicing were corrected by April of 2010. Counsel for Bank of America believed it had a resolution with the Sheets' prior counsel at that time. Rather than cooperate with Bank of America to reach a quick resolution, the Sheets suddenly decided to hold up correction of the recording error and assert counterclaims in an effort to leverage a large and unwarranted settlement. The Sheets then continued with this litigation for three years, refusing to cooperate in discovery or scheduling of depositions, and without ever demonstrating they were damaged during the short time there was an error on their account. Even recently, counsel for the Sheets has refused to participate in Bank of America's efforts to find a resolution, insisting on waiting until Bank of America files a "formal response" with the Court.

It should also not go without notice that during the time this litigation has been pending, Mr. Sheets has enjoyed a windfall in the form of not paying monthly payments for principal, interest, and hazard insurance. Regardless, Bank of America is willing to make the following proposal to help Mr. Sheets get back on track with his loan payments.

B. The amounts currently due from Mr. Sheets under the terms of the loan.

1. Principal and interest. Under the terms of the Note, Mr. Sheets promised to repay his debt in monthly payments of \$563.92. Exhibit 1 at p. 1, ¶ 3. Mr. Sheets currently

owes the last 43 monthly payments, or a total of about \$24,248.56 in past due principal and interest payments.

2. Hazard insurance payments. Under the terms of the Deed of Trust, Mr. Sheets promised to keep the property insured or be responsible for any costs expended by the lender in the event the borrower fails to insure the property. Mr. Sheets failed to keep the property insured or provide proof of insurance and, as a result, Bank of America has advanced \$1,201.68 to Mr. Sheets to keep the property insured under this provision.

3. Late fees. Mr. Sheets promised in the Note to pay a late fee of 5% for any late payments, which is \$28.196 per late payment, and is rounded down to \$28.19. Exhibit 1 at p. 1, ¶ 6. The late fees that Mr. Sheets owes under the terms of the note would total about \$1,212.17. However, Bank of America is willing to waive those provided Mr. Sheets timely exercises one of the options outlined below and does not continue this litigation.

4. Attorney fees and costs. Mr. Sheets promised in the Note to pay attorney fees costs and expenses incurred in enforcing the note. Exhibit 1 at p. 2, ¶ 6. In the Deed of Trust, Mr. Sheets and Mrs. Sheets agreed that any attorney fees and costs incurred in protecting the lender's security in the property would become additional principal due on the loan. Exhibit 2 at p. 6, ¶ 9. Mr. Sheets also executed a "Document Correction and Fees Due Agreement" in which he promised,

If any document is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the Loan, or otherwise missing upon request of the Lender, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost, misplaced, misstated, inaccurate or otherwise missing document.

Exhibit 3 at p. 1, paragraph starting "Agreement to Correct . . ." Mr. Sheets agreed there to be liable for any damages or costs, including attorney fees, incurred by the lender in the event of his failure to comply. Exhibit 3 at p. 1. Under these provisions, Mr. Sheets has incurred approximately \$70,000 in fees, costs and expenses which may be added to the principal. As described below, Bank of America will waive those fees, costs and expenses provided Mr. Sheets timely exercises one of the options outlined below and does not continue this litigation.

C. Plan moving forward.

The investor on this loan is Fannie Mae, which was not named as a party. As the Court may notice, Fannie Mae is a government sponsored entity. Accordingly, Bank of America is limited by law and regulations in regard to what it can do to modify or forgive the past due principal and interest payments or hazard insurance payments owed by Mr. Sheets under the terms of the Note and Deed of Trust. Undersigned counsel represents that the following plan is the best that can be offered at this time taking these limitations into account.

Bank of America will waive all late fees, attorney fees, costs, and expenses provided Mr. Sheets either pays all the past due interest and fees and brings his loan current, or timely applies for a loan modification and that this litigation reaches a conclusion. To that end, Bank of America will not pursue collection or foreclosure for 120 days from the date of this Notice, and may extend that period as necessary to allow consideration of a loan modification application if Mr. Sheets timely provides all necessary documents and information. If Mr. Sheets elects to pursue a loan modification, Bank of America cannot guarantee that Mr. Sheets will be granted a loan modification. However, it will proceed to process his application in good faith and without prejudice or consideration of the lawsuit.

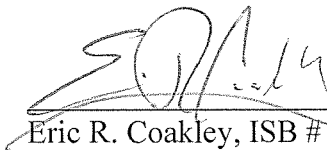
Undersigned counsel can be available for a telephonic conference to answer any questions and address any issues the Court may have.

WHEREFORE, Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P., and ReconTrust Company N.A. respectfully request the Court, being duly notified of Bank of America's intent moving forward, enter judgment in their favor.

DATED this 18th day of June, 2013.

BLOOM MURR ACCOMAZZO & SILER, PC

By:



Eric R. Coakley, ISB # 9109

Attorneys for Countrywide Home Loans,
Inc., Bank of America, N.A., BAC Home
Loan Servicing, L.P. and ReconTrust
Company N.A.

NOTE

DECEMBER 21, 2004
[Date]

COUNCIL
[City]

IDAHO
[State]

5603 HIGHWAY 95, NEW MEADOWS, ID 83654
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 65,250.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is AMERICA'S WHOLESALE LENDER

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 6.375 %.

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

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payment on the FIRST day of each month beginning on

FEBRUARY 01, 2005 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JANUARY 01, 2020 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

P.O. Box 10219, Van Nuys, CA 91410-0219
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. \$ 563.92

4. BORROWER'S RIGHT TO PREPAY

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

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

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 FIFTEEN 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 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.

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

VMP MORTGAGE FORMS - (800)521-7291

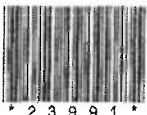
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5N (0207).01

CHL (03/03)(d)

Page 1 of 2

Form 3200 1/01



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EXHIBIT 1

EXHIBIT

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(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 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.

PAY TO THE ORDER OF

WITHOUT RECOURSE

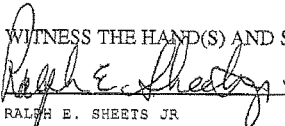
Courtwide Home Loans, Inc., a New York Corporation
Doing Business as America's Wholesale Lender

BY



David A. Spector
Managing Director

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


RALPH E. SHEERTS JR

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

[Sign Original Only]

4419

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
KIMBERLY MONTEZ

[Space Above This Line For Recording Data]

SHEETS
[Escrow/Closing #]

0008545953212004
[Doc ID #]

DEED OF TRUST

MIN 1000157-0004643292-4

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated DECEMBER 21, 2004, together with all Riders to this document.

(B) "Borrower" is
RALPH E SHEETS JR, A MARRIED MAN

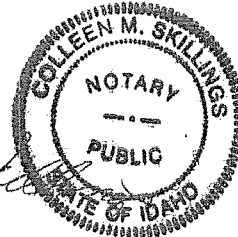
Borrower is the trustor under this Security Instrument.

(C) "Lender" is
AMERICA'S WHOLESAL LENDER
Lender is a CORPORATION
organized and existing under the laws of NEW YORK
Lender's address is
P.O. Box 10219, Van Nuys, CA 91410-0219

(D) "Trustee" is
TIMBERLINE TITLE & ESCROW
204 ILLINOIS AVENUE,, COUNCIL, ID 83612

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

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 21, 2004. The Note states that Borrower owes Lender SIXTY FIVE THOUSAND TWO HUNDRED FIFTY and 00/100



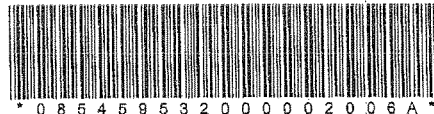
Ralph E. Sheets Jr.

IDAHO-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

Initials: *RES*
Form 3013 1/01

6A(ID) (0005) CHL (08/00)(d) VMP MORTGAGE FORMS - (800)521-7291
CON/VVA



450

EXHIBIT 2

EXHIBIT

2

tabbles

Dollars (U.S. \$ 65,250.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2020 .

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

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

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

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

0

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of ADAMS
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

Initials: 
Form 3013 1/01

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SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: RP22N01E160150A which currently has the address of
5603 HIGHWAY 95, NEW MEADOWS
[Street/City]
Idaho 83654 ("Property Address"):
[Zip Code]

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

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

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

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

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

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

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

Initials:



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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount, Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

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priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous

Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

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

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

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

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Area and Location of Property. Either the Property is not more than 40 acres in area or the Property is located within an incorporated city or village.

Initials: 

Form 3012 1/01

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

Witnesses:

Ralph E. Sheets Jr.
RALPH E. SHEETS JR. (Seal)
-Borrower

Debra Sheets
DEBRA SHEETS (Seal)
-Borrower

DEBRA SHEETS shall have no personal liability t
the obligation herein or secured thereby, and
executes this instrument only to (Seal)
subordinate any interest she may-Borrower
acquire, including without reservation her
homestead rights, to this mortgage.

(Seal)
-Borrower

STATE OF IDAHO,

County ss: *Adams*

On this *21st* day of *December* *2004*, before me,
Colleen M. Skillings, a Notary Public in and for said county and state,
personally appeared
Ralph E. Sheets Sr and Debra Sheets

known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged to me that he/she/they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Colleen M. Skillings
Notary Public residing at: *Indian Valley*
7/1/2010

Initials: *RS DS*

4100

EXHIBIT 'A'

Township 22 North, Range 1 East, Boise Meridian, Adams
County, Idaho

Section 16: A parcel of land in the NE1/4NE1/4 lying
Westerly of the Westerly line of the right-of-way of
U.S. Highway 95, as it existed in 1977

EXCEPTING THEREFROM the following parcel:

Commencing at a point on the south line of the
NE1/4NE1/4 as intersected by the West line of U.S.
Highway 95 (as established in 1953), the REAL POINT OF
BEGINNING;

Thence Northeasterly along the West line of said
Highway 550 feet;

Thence West and parallel to the South line of the
NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of
said Highway 550 feet to the South line of the
NE1/4NE1/4;

Thence along said South line 550 feet to the REAL
POINT OF BEGINNING.

AFFIXATION AFFIDAVIT
MANUFACTURED HOME

Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
KIMBERLY MONTEZ

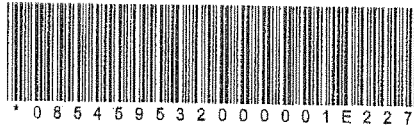
SHEETS
[Escrow/Closing #]

0008545953212004
[Doc ID #]

THE STATE OF *Idaho*
COUNTY OF *Adams*

• Affixation Affidavit Manufactured Home
1E227-US (05/04)(d)

Page 1 of 5



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Red SW

BEFORE ME, the undersigned authority, on this day personally appeared
RALPH E. SHEETS JR

("Borrower"), known to me to be the person(s) whose name(s) is/are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

- 1) The manufactured home located on the following described property located
5603 HIGHWAY 95, NEW MEADOWS, ID 83654
in ADAMS County, ("Property Address") is permanently affixed to a foundation, is made a part of the land and will assume the characteristics of site-built housing.

- 2) The manufactured home is described as follows:

New/Used	Manufacturer's Name	Manufacturer's Name and Model No.
Manufacturer's Serial No.	Length/Width	Attach Legal Description

- 3) The wheels, axles, towbar or hitch were removed when the manufactured home was placed and anchored on its permanent foundation, and the manufactured home was constructed in accordance with applicable state and local building codes and manufacturer's specifications in a manner sufficient to validate any applicable manufacturer's warranty.
- 4) All foundations, both perimeter and piers, for the manufactured home have footings that are located below the frost line and the foundation system for the manufactured home was designed by an engineer to meet the soil conditions of the Property Address.
- 5) If piers are used for the manufactured home, they are placed where the home manufacturer recommends.
- 6) If state law so requires, anchors for the manufactured home have been provided.
- 7) The foundation system of the manufactured home meets applicable state installation requirements and all permits required by governmental authorities have been obtained.
- 8) The manufactured home is permanently connected to appropriate residential utilities such as electricity, water, sewer and natural gas.
- 9) The financing transaction is intended to create a first lien in favor of Lender. No other lien or financing affects the manufactured home, other than those disclosed in writing to Lender.
- 10) The manufactured home was built in compliance with the federal Manufactured Home Construction and Safety Standards Act.
- 11) The undersigned acknowledge his or her intent that the manufactured home will be an immovable fixture, a permanent improvement to the land and a part of the real property securing the Security Instrument.

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DOC ID #: 0008545953212004

- 12) The manufactured home will be assessed and taxed by the applicable taxing jurisdiction as real estate.
- 13) The borrower is the owner of the land and any conveyance or financing of the manufactured home and the land shall be a single real estate transaction under applicable state law.

Borrower(s) certifies that Borrower(s) is in receipt of manufacturer's recommended maintenance program regarding the carpet and manufacturer's warranties covering the heating/cooling systems, hot water heater, range, etc.; and the formaldehyde health notice. This affidavit is being executed pursuant to applicable state law.

Witness

Witness

Ralph E. Sheets Jr.
RALPH E. SHEETS JR

5608 HIGHWAY 95, NEW MEADOWS, ID 83654

(Borrower)
(Date)

Ralph E. Sheets Jr.

(Borrower)
(Date)

(Borrower)
(Date)

(Borrower)
(Date)

[Acknowledgment on Following Pages]

4/6/04

BORROWER ACKNOWLEDGMENT

State of Idaho

County of Adams

This instrument was acknowledged before me on December 21, 2004
by Ralph E. Sheets Jr and Debra Sheets



Colleen M. Skillings
Signature of Notarial Officer

Notary / Escrow Assistant
Title of Notarial Officer

My commission expires: 7/1/2010

4105

LENDER ACKNOWLEDGMENT

Lender's Statement of Intent:

The undersigned Lender intends that the manufactured home be an immovable fixture and a permanent improvement to the land.

LENDER:

By: _____

Its: _____

State of Colorado

County of Proprietary

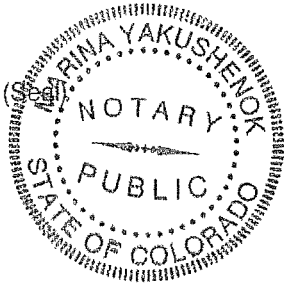
This instrument was acknowledged before me on 27 day of December [date],

by Scott Hansen [name of agent],
[title of agent] of

[name of entity acknowledging],

a

[state and type of entity], on behalf of
[name of entity acknowledging].



Marina Yakushenok
Signature of Notarial Officer

senior lender
Title of Notarial Officer
My commission expires:

MY COMMISSION EXPIRES 7/11/2006

2/6/06

DATE: 12/21/2004
BORROWER: RALPH E. SHEETS JR
CASE #:
LOAN #:

Branch #: 0009164
5813 DTC PARKWAY, SUITE 700
GREENWOOD VILLAGE, CO 80111
Phone: (720)200-6000
Br Fax No.: (720)200-7000

5603 HIGHWAY 95
NEW MEADOWS, ID 83654

DOCUMENT CORRECTION AND FEES DUE AGREEMENT

AGREEMENT TO CORRECT MISSTATED OR PROVIDE ADDITIONAL DOCUMENTATION OR FEES: In consideration of Lender disbursing funds for the closing of the Loan secured by the Property being encumbered, and regardless of the reason for any loss of, misplacement of, inaccuracy in, or failure to sign any Loan documentation, Borrower(s) agrees as follows: If any document is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the Loan, or otherwise missing upon request of the Lender, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost, misplaced, misstated, inaccurate or otherwise missing document(s). If the original promissory note is replaced, the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of Borrower(s) shall be referred to as "Documents." Borrower(s) agrees to deliver the Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacement. Borrower(s) also agrees that at any time, upon request by Lender, including at the time of loan pay-off, Borrower(s) will supply additional amounts and/or pay to Lender any additional sum previously disclosed to Borrower(s) as a cost or fee associated with the Loan, which for whatever reason was not collected at closing ("Fees"). Such amount due from Borrower(s) may also be off-set by Lender from any funds held by Lender, for Borrower's benefit, after loan pay-off. Borrower(s) further agrees that if funds are collected by Lender at closing to pay any outstanding Escrow Items for (a) taxes and assessments; (b) hazard or property insurance premiums; (c) leasehold payments or ground rents on the property; (d) flood [redacted] premiums; or (e) mortgage insurance premiums, and if those Escrow Items have been or are paid by Lender from Borrower's old escrow account, then Lender may retain those funds to reimburse Lender for any shortage in Borrower's old escrow account that results from such payment.

REQUEST BY LENDER: Any request under this Agreement may be made by the Lender, (including assignees and persons acting on behalf of the Lender) or Settlement Agent, and shall be prima facie evidence of the necessity for same. A written statement addressed to Borrower(s) at the address indicated in the Loan documentation shall be considered conclusive evidence of the necessity for the Documents.

FAILURE TO DELIVER DOCUMENTS CAN CONSTITUTE DEFAULT: If the Loan is to be guaranteed by the Department of Veterans Affairs ("VA") or insured by the Federal Housing Administration ("FHA"), Borrower(s) failure or refusal to comply with the terms of the correction request may constitute a default under the note and/or deed of trust, and may give Lender the option of declaring all sums secured by the loan documents immediately due and payable. If applicable, Borrower(s) further acknowledges that Lender estimated the amount of the one-time FHA Mortgage Insurance Premium (MIP) or VA Funding Fee at the time the loan was made. Borrower(s) hereby agrees and consents that Lender has the right to the debt any amount held by the Lender in excess of the actual MIP or VA Funding Fee, as an offset against the debt.

BORROWER LIABILITY: If Borrower(s) fails or refuses to execute, acknowledge, initial and deliver the Documents or pay the Fees to Lender more than ten (10) days after being requested to do so by Lender, and understanding that Lender is relying on these representations, Borrower(s) agree(s) to be liable for any and all loss or damage which Lender reasonably sustains thereby, including but not limited to all reasonable attorney's fees and costs incurred by Lender.

RETURNED PAYMENTS: The Borrower understands and agrees that for the life of the loan, Borrower will be charged a fee for each transaction that results in nonpayment from Borrower's financial institution account. The maximum amount that Borrower will be charged is that legally permitted in the state the property associated with this loan is located, unless otherwise expressly limited or prohibited by law.

This agreement shall survive the closing of the Loan, and inure to the benefit of Lender's successors and assigns and be binding upon the heirs, devisees, personal representatives, successors and assigns of Borrower(s).

WALTER J. EGGERT
(Seller/Contractor)

Ralph E. Sheets Jr.

RALPH E. SHEETS JR
(Borrower)

JANET F. EGGERT
(Seller/Contractor)

(Borrower)

(Borrower)

(Borrower)

FHVA/VAQONV
9 Document Correction and Fees Due Agreement
20040-US (08/04)(d)



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EXHIBIT

tabbles

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 2013, a true and correct copy of the NOTICE REGARDING PLAN GOING FORWARD was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input checked="" type="checkbox"/> E-Mail
---	--



Nicole Marsade, Paralegal

JOHN CURTIS HUCKS
ATTORNEY AT LAW, P.C.
P.O. Box 737
New Meadows, ID 83654
Tel: (208) 347-4128; Facsimile: (208) 347-4128
Email: huckslaw@yahoo.com
ISB No. 6473
Attorney for Defendants

FILED
JUL 03 2013 2:30 pm
SHERRY WARD, CLERK
[Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;
and DOES 1-10 as individuals with an interest in
the property legally described as:

Defendants.

Case No. CV-2010-2564

**DEFENDANTS' OBJECTION TO
PLAINTIFF'S NOTICE REGARDING
PLAN MOVING FORWARD AND
PROPOSED FINAL JUDGMENT**

Defendants, RALPH E. SHEETS and DEBRA SHEETS (hereinafter "Defendants"), by and through their undersigned counsel, hereby object to the Notice Regarding Plan Going Forward (hereinafter the "Plan") and proposed Final Judgment (hereinafter the "Judgment"), both filed by Plaintiff on June 18, 2013 in response to the Court's Findings of Fact, Conclusions of Law and Order on Plaintiff's Motions for Summary Judgment issued on April 26, 2013 (hereinafter "Findings and Order"), and in support thereof state as follows:

**PLAINTIFFS PLAN AND PROPOSED JUDGMENT DO NOT COMPLY WITH
THE COURT'S FINDINGS AND ORDER**

4/69

1. In its Findings and Order, the Court expressly states that the effect of its ruling is to place the parties back in the position they were in as of October 30, 2009. This statement of intention is repeated three times in the Findings and Order (Pages 11, 12 and 13), and the Court elaborates as to its reason for this result. (Pages 12-13). The Court further notes that the underlying rescission action brought by Plaintiff was:

"based on its own conduct and mistakes and that the issuance of the Deed of Reconveyance was done through absolutely no fault of the Sheets and that any action by BofA at this time to lay such blame at the feet of the Sheets or any actions to treat the current (2004) loan in a negative manner will be met with strong disapproval of this court." (Pages 12-13)

2. The Court goes on to state that it will "retain its discretion" to ensure that the Sheets are treated properly under the existing terms and obligations of the Note and Deed of Trust. (Page 13).

3. Further, the Court required as a pre-condition to "the entry of a Judgment or further orders" that BofA present a detailed plan in which BofA sets forth its proposal as to how to move forward with its relationship with Sheets. (Page 12) By definition, placing the parties back in the position that they occupied on October 30, 2009, would require re-establishing the principal balance of the Note at approximately \$43,264.00, and fully reinstating the 2004 Loan. After entry of Judgment and release of the Lis Pendens, interest would again begin to accrue at the rate set forth in the Note, unless the parties agreed to a modification or refinance of the Loan. The Sheets would resume payments of principal and interest under the Note until paid or refinanced with either BofA or another lender.

4. Unfortunately, the Plan put forward by Plaintiff does not comply with the conditions set forth in the Findings and Order to put the parties back in the position they occupied as of October

30, 2009. BofA attempts to claim both interest and principal payments as being due between October 30, 2009 and the present (see attached Reinstatement Calculation dated 5/18/2013), ignores both the Court's directive and the undisputed fact that the Full Reconveyance recorded by ReconTrust Company N.A. (copy attached) expressly recited that the underlying Note had been surrendered for cancellation. Plaintiff also argues that it is entitled to recovery of \$70,000.00 in attorney fees and other costs, but then offers to waive those fees and costs if the Defendants agree to "bring the loan current" and waive any rights of appeal. However, the Plan is silent as to what steps, if any, BofA would take to correct still listed credit entries previously made with regard to the 2004 Loan, or what incentives or assistance Plaintiff would offer Defendants to facilitate them refinancing with another lender.

5. In addition to proposing a course of action that does not comply with the Court's directive, Plaintiff now throws another curve by alleging that it is powerless to make any assurances that the Sheets can get any type of modification of their existing loan, because the true owner of the loan is Fannie Mae. If Fannie Mae was the owner of the loan at the time that this action was originally filed, why was the action not filed in its name? Conversely, if Fannie Mae was not the true owner when suit was filed, why was the loan transferred during the course of litigation. Finally, it is not credible to believe that BofA is not in a position to repurchase a \$43,000 loan for the purpose of resolving a case that has gone on for over 3 years.

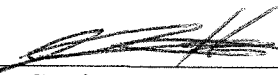
6. The final problem with Plaintiff's Plan is that it does not condition entry of Judgment on completion of remedial actions required by the Court's Findings and Order. Rather, Plaintiff seeks a blanket Judgment which does not incorporate any requirements of the Findings and

Order, and which provides the Sheets no assurance that any further action will be taken to reinstate or modify the 2004 Loan, or put them in a position to complete a third party refinancing. Under the Plan as submitted, BofA gets all the benefits of rescission of the Deed of Reconveyance, but can thereafter wash its hands of further responsibility moving forward. Given the extremely poor track record that BofA has in dealing with loan modifications in general, and the undisputed lack of diligence and competence it has shown in previous dealings with the Sheets, the Plan as presently configured is fundamentally flawed and unfair, and should be rejected by the Court.

7. Plaintiff makes a number of allegations in its Plan which are expressly disputed by Defendants and counsel, and which will be addressed in detail should this matter be scheduled for hearing. In particular, Defendants specifically reject any claim that they did not mediate in good faith, when in fact it was BofA who failed to put forth any settlement offer that did not include payment of interest and principal attributable to the period after the Deed of Reconveyance was recorded to the present. However, prior to scheduling this objection for hearing, counsel for Defendants will contact opposing counsel directly and attempt to reach a resolution consistent with the Court's directive. In the meantime, Defendants request that the Court take no further action on Plaintiff's proposed Plan and Judgment, pending either resolution by the parties or hearing by the Court.

Submitted this 15th day of July, 2013.

John Curtis Hucks,
Attorney at Law, P.C.

By 
John Curtis Hucks
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above document has been served via Email attachment and U.S. Mail this 15th day of July, 2013 upon:

Eric R. Coakley
Bloom, Murr & Accomazzo, P.C.
410 17th Street, Suite 2400
Denver, CO 80202-4402
ecoakley@bmas.co

Derrick J. O'Neill
O'Neill Law, PLLC
300 Main Street, Suite 150
Boise, ID 83702
derrick@oneillpllc.com
doneill@rcolegal.com



John Curtis Hucks

Recording Requested By:
ReconTrust Company, N.A.
2575 W. Chandler Blvd.
Mail Stop: AZ1-804-02-11
Chandler, AZ 85224
(800) 540-2684

Instrument # 119343

COUNCIL, ADAMS, IDAHO
11-9-2009 03:32:31 No. of Pages: 1
Recorded for : RECONTRUST COMPANY
SHERRY WARD Fee: 3.00
Ex-Officio Recorder Deputy *Sherri Ward*
Index to: DEED OF RECONVEYANCE

When recorded return to:
RALPH E SHEETS, JR
PO Box 202
Pollock, ID 83547

Above Space for Recorder's Use



UID: 5f4787fb-7468-4502-a35b-30e0781c9046
DOCID_000854595322005N

FULL RECONVEYANCE

ReconTrust Company, N.A., as Trustee under Deed of Trust Dated 12/21/2004 And made by:

RALPH E SHEETS, JR

as Trustor, recorded as Instrument or Document No.107860, on 12/28/2004 in Book N/A, Page N/A of Official Records in the office of the Recorder of ADAMS County, Idaho having received from holder of the obligations thereunder a written request to reconvey reciting that all sums secured by said Deed of Trust have been fully paid, and said Deed of Trust and the note or notes secured thereby having been surrendered to said Trustee for cancellation, does hereby RECONVEY, without warranty to the person or persons, legally entitled thereto, the estate now held by it thereunder.

In Witness Whereof, ReconTrust Company, N.A., as Trustee.

Dated: 11-4-05

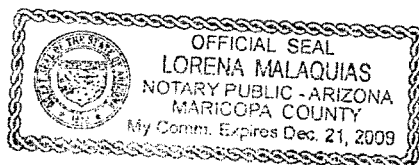
ReconTrust Company, N.A.

By: *Jewel Elsmere*
Jewel Elsmere
Assistant Secretary

All Purpose Acknowledgment

STATE OF ARIZONA
COUNTY OF MARICOPA

On 11/4/05, before me, Lorena Malaquias, Notary Public, personally appeared Jewel Elsmere, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument. Witness my hand and official seal.



Lorena Malaquias
Before me: Lorena Malaquias
Notary Public for said State and County
Notary Expiration: 12/21/2009

EXHIBIT " A "

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This Reinstatement Calculation is Only Good Through 05/29/2013

Customer: Ralph E Sheets, Jr

Loan Number: 081459532

Date/Time Created: 05/15/2013 13:40

Payments*: \$24,212.24

37 Monthly Payments @	\$563.92
5 Monthly Payments @	\$689.44

*For certain loan types, monthly payments in default will be calculated based on the "Minimum Payment" due, as defined in your loan documents.

Accrued Late Charges: \$0.00

Uncollected Late Charges: \$84.57

Escrow Delinquency: \$674.08

Property Inspection Fees: \$36.00

Property Preservation Fees: \$0.00

Foreclosure Attorney/Trustee Fees: \$480.00

Foreclosure Expenses: \$0.00

Bankruptcy Attorneys' Fees: \$0.00

Bankruptcy Expenses: \$0.00

Other/Miscellaneous Fees: \$0.00

Sub-Total: \$25,536.89

Suspense/Partial Payment: \$0.00

***Total Due:** \$25,536.89

Fees Waived in FULL Reinstatement:

Title Fees: \$0.00

Foreclosure Attorney/Trustee Fees: \$0.00

Total Fees Waived: \$0.00

***Net Total Due:** \$25,536.89

*The Net Total Due reflects the waiver of Foreclosure Attorney/Trustee Fees and/or Title fees (included within Foreclosure Expenses) incurred in processing the foreclosure. This waiver is to assist you in bringing your loan current and is available if you pay the full Net Total Due. However, if you only pay a portion of the Net Total Due or require other assistance in bringing your loan current, these fees will not be waived. You then will be required to pay the Total Due.

THIS AMOUNT MUST BE PAID WITH CERTIFIED FUNDS OR MONEY ORDEREscrow Disclaimer

Please note: Even if you reinstate this loan in accordance with this reinstatement quote, the escrow account balance may still be short of what we require. Following reinstatement, an escrow analysis will be performed on the account and if any escrow shortage exists, the regular monthly payments will be increased to eliminate this shortage.

*(See following page for important information.)

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Customer: Ralph E Sheeh, Jr.
Loan Number: 085459532

(1) Disclaimer About "TOTAL DUE - You May Owe More:

The reinstatement amount is subject to change for various reasons, including but not limited to the following:

- Payments returned to us by the bank for any reason.
- Scheduled payment or payments from the escrow account (for taxes, insurance premiums or other escrow items).
- Additional foreclosure, bankruptcy, or other collection charges and fees.
- If the servicing of the loan was transferred to Bank of America, N.A., there may be adjustments to the reinstatement amount to reflect escrow disbursements made by, or payments owed to, the prior lender.
- If an error was made in the calculation of the *Total Due*.

(2) Disclaimer About "TOTAL DUE - Amounts not included in the 'Total Due':

- Additional amounts may be due to Bank of America, N.A., but are not included in the reinstatement.
- These amounts will remain due and payable even if the account is reinstated in accordance with this reinstatement quote.

(3) Disclaimer About "TOTAL DUE - You May Owe Less:

- You may owe less if a recently mailed payment has not yet posted to this account -- (Please do **not** place a stop payment on any check).
- To provide you with the convenience of an extended 'Good Through' date, the *Total Due* (see page 2) may include estimated expenses and fees, any additional payment which will become due during the 'Good Through' date, but which is not yet due, and other anticipated future disbursements.
- You will receive a refund if you pay the *Total Due* and the fees(s) or expense(s) have not been incurred at the time you pay. However, we will retain and apply any regular monthly payments that are not yet due.
- If you are attempting to payoff your loan after the 'Good Through' date of 05/25/2013, please call 1-800-869-6607, Monday-Friday 7a.m. - 7p.m. Local Time and request an up-to-date payoff quote be mailed or faxed to you.

(4) Unauthorized Transfers - No Waiver:

Lender's acceptance of reinstatement funds from a person or entity that is an unauthorized transferee of the Property is without prejudice to, or a waiver of, its right to require payment in full of all sums secured by the Security Instrument immediately or in the future. Lender reserves the option to pursue the acceleration remedies under the Security Instrument, notwithstanding reinstatement of any monetary default, if all or any part of the Property or any interest in the Property was sold or transferred without Lender's prior written consent.

(5) Bankruptcy Discharge:

If in the past you received a discharge of this debt in a bankruptcy case, you have no personal obligation to repay the debt under the Bankruptcy Code. The discharge protects you from any efforts by anyone to collect this discharged debt from you personally. On the other hand, your loan documents permit foreclosure if the requirements under the loan documents are not met. This quick summary is not intended as legal advice. You should consult with your own advisors if you have legal questions about your rights. *This is not an attempt to collect a debt that has been discharged. This is not a demand for payment.*

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FILED
OCT 01 2013 1:30 pm
SHERRY WARD, CLERK
[Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS,
INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA
SHEETS; and DOES 1-10 as individuals
with an interest in the property legally
described as:

Defendants.

Case No. CV-2010-2564

**DEFENDANTS' RESPONSE
TO COURT'S REQUEST FOR
LEGAL AUTHORITY**

COME NOW, the Defendants, Ralph E. Sheets and Debra Sheets (hereinafter "Defendants"), by and through their undersigned counsel, and file their Response to Court's Request for Legal Authority made at the hearing held on September 6, 2013 on Defendants' Objection the Proposed Plan Going Forward and Judgment filed by Plaintiff pursuant to the Findings of Fact, Conclusions of Law and Order on Plaintiff's Motions for Summary Judgment issued on April 26, 2013 (the "Findings of Fact"), and in support thereof state as follows. In the interest of not repeating in detail pleadings or exhibits previously submitted, Defendants incorporate by reference Defendants' Brief in Opposition to Motions for Summary Judgment ("Defendants' Brief") and Defendants' Objection to Proposed Plan Going Forward and Judgment ("Defendants' Objection") as if fully set forth herein.

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1. At the September 6th hearing, the Court requested that counsel for the parties submit legal authority as to the boundaries of authority that the Court has within which to craft a decision and legal remedy for Plaintiff's pending action for equitable rescission of a Full Reconveyance of a deed of trust and promissory note (the "Reconveyance"), which was recorded through the error, gross negligence, and dishonest conduct of employees and agents of Plaintiff, Countrywide Home Loans, Inc., n/k/a BAC Home Loans, Inc. (hereinafter "Plaintiff"). The Court's request was based in part on its stated frustration that the parties have been unable to reach a settlement of the pending case, and it is with full respect of the Court's efforts to resolve this matter that Defendants make the arguments set forth herein.

2. It is imperative to keep in mind that Plaintiff's Complaint only sets forth a single cause of action, that being a request for equitable rescission based on mistake. While this case has been pending since April 2010, Plaintiff has made no effort to amend its Complaint or add any additional causes of action. Specifically, Plaintiff has failed to plead any causes of action based on either breach of contract or declaratory relief. This is despite the Court having brought the issue to the attention of Plaintiff's counsel during the early stages of this case.

3. As has been argued consistently by counsel for Defendants, the sole legal basis of Bank of America's request is unilateral mistake, and there is a complete absence of any allegations or evidence establishing that (a) the filing of the Reconveyance was the result of any mutual mistake; or (b) that the unilateral mistake was in any way caused by the actions of Defendants.

4. There is also no factual disagreement that the Reconveyance was filed by Plaintiff following almost a year of continuous mistakes and miscommunications by Plaintiff and various subsidiaries thereof, in connection with what should have been a routine refinancing of Defendants' prior existing home loan (hereinafter the "2004 Loan").

5. Prior to filing of Plaintiff's Motions for Summary Judgment, Plaintiff had previously filed and argued both a Motion to Dismiss Counterclaims and a Motion for Judgment on the Pleadings, both of which motions were substantively denied by the Court.

6. At the time that Plaintiff filed its Motions for Summary Judgment, Plaintiff failed to submit any affidavits or other evidence from any employees of Bank of America having actual knowledge of the underlying dispute which in any way refuted Defendants' version of events. The scope of the affidavits filed by Plaintiff focused exclusively on the amounts allegedly due and owing under the underlying promissory note and the summary statement that the Reconveyance was filed by mistake.

7. No documentation produced by Plaintiff in response to Requests for Production, fully explains how the alleged mistake that Plaintiff now seeks to rescind occurred, even though such an explanation is an essential requirement for determining whether Plaintiff is legally entitled to the equitable relief being sought.

8. **The Court erred in Granting Full Summary Judgment.** Given the nature of the relief plead by Plaintiff, the Court erred in granting full summary judgment. Summary judgment in Idaho is governed by I.R.C.P. 56, which is patterned on F.R.C.P. Rule 56. There is a plethora of cases (both Idaho and federal) interpreting this rule, and the burden of proof and standard of review are well established, and set forth in detail in Defendants' prior Brief.

On summary judgment, a court must decide whether there is a "genuine issue as to any material fact, "not weigh the evidence or determine the truth of contested matters". Fed.R.Civ.P. 56(a), (c); *see also, Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The evidence of the party opposing summary judgment is to be believed and all reasonable inferences from the facts must be drawn in favor of the opposing party. *Anderson*, 477 U.S. at 255; *Matsushita*, 475 U.S. at 587. The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-252.

An issue of fact is genuine " 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir.2002)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). The court must draw all reasonable inferences in favor of the nonmoving party. *Id.* "Summary judgment cannot be granted where contrary inferences may be drawn from the evidence as to material issues. " *Easter v. Am. W. Fin.* 381 F.3d 948 (9th Cir.2004)(citing *Sherman Oaks Med. Arts Ctr., Ltd. v. Carpenters Local Union No.1936*, 680 F.2d 594, 598 (9th Cir.1982)).

Summary judgment proceeding is not a substitute for trial of factual issues which are genuine and material. *Tri State National Bank v. Western Gateway Storage Co.* 447 P.2nd 409, 92 Idaho 543. Summary judgment is only appropriate when genuine issues of material fact are absent and the case can be decided as a matter of law. *Edmondson v. Shearer Lumber Products*, 75 P.3rd 733, 139 Idaho 172

If reasonable people could reach different conclusions based on the evidence, motion for summary judgment must be denied. *Harpole v. State*, 958 P.2nd 594, 131 Idaho 437

The burden of demonstrating the absence of a genuine issue of material fact is on the party moving for summary judgment. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 246 P.2nd 961, 150 Idaho 308.

The standards for granting summary judgment are of particular importance in the present case, because the Plaintiff's underlying claim seeks purely equitable relief, and is not supported by a specific statute or any case law directly on point. Rescission is not a favored remedy, and the standard of proof in most cases involving equitable relief is clear and convincing evidence. In seeking equitable relief, Plaintiff has the burden of overcoming equitable defenses, a number of which have been raised by Defendants. In order for Plaintiff to prevail on its motion for summary judgment, it was required to meet the burden of establishing that there was no material fact or issue pertaining to the counterclaims or equitable defenses pleaded and raised by Defendants. Plaintiff was also required to establish that it had not engaged in conduct that would preclude the equitable relief it seeks. Plaintiff did not come close to meeting that burden. The twenty-two (22) Undisputed Facts and Admissions set forth in Defendants' Summary Judgment Response established sufficient and unrefuted material issues of fact to preclude the entry of summary judgment, at least as related to Defendants' equitable defenses of estoppel and unclean hands. Defendants did not have the responsibility to proof those defenses at the time of the summary judgment hearing, only to establish that the issues were genuine and material. By issuing its Findings of Fact prior to hearing actual testimony from employees of Plaintiff as to

circumstances surrounding the recording of the Reconveyance, the Court improperly weighed evidence that it had not yet heard.

Both Idaho and federal cases have consistently ruled that appellate review of a summary judgment decision is essentially a de novo review rather than a review that enjoys a presumption of correctness as to the court decision being reviewed. *Reynolds v. Trout Jones Gledhill Fuhrman, P.A.*, 38933 Supreme Court of Idaho January 23, 2013. The reason for this heightened burden of proof on appeal is the fact that summary judgment rulings shortcut the trial process, and are expressly intended to be the exception rather than the rule. A trial judge is fully entitled to deny summary judgment when the more prudent course would be to proceed to a full trial, presumably because a trial creates a fuller record and affords a more substantial basis for evaluating evidence and witnesses and rendering a decision on the merits.

In order for Plaintiff to have prevailed on its motions for summary judgment, there must have been an absence of any genuine dispute as to any material fact or issue and the movant must show that it is entitled to judgment as a matter of law. Neither of those thresholds were met. In the absence of such a showing by the movant, the non-moving party does not have any affirmative duty to establish its case as part of the summary judgment proceedings. Rather, the motion is simply to be denied in whole or in part.

9. **The burden was on Plaintiff to establish that it was legally entitled to relief for a unilateral mistake?** Given the fact that the Plaintiff has presented no evidence that this was a mutual mistake, rather than a unilateral mistake which took place entirely without fault of the Defendants, there is a material issue of whether it was a legally excusable mistake, eligible for the equitable remedy of rescission. *O'Connor v. Harger Const., Inc.*, 188 P.3d 846, 145 Idaho 904 (Idaho 2008). A unilateral mistake is not normally grounds for relief. *Moore v. Mullen*, 855 P.2d 70, 123 Idaho 985 (Idaho App. 1993).

To date, Plaintiff has been unable to cite any statute or on point case supporting its Complaint for rescission. That burden is on Plaintiff, not the Defendants. More importantly, Plaintiff has been unable or unwilling to explain how the series of mistakes took place. The material legal issue remains whether an action for rescission that arises from an admittedly

unilateral mistake of the Plaintiff qualifies for equitable relief at all, much less through the vehicle of summary judgment.

10. **The Beltron and Wigner Documents were sufficient evidence of Unclean Hands to preclude Summary Judgment.** Since Plaintiff's Complaint sounds solely in equity, it is subject to all applicable equitable defenses, including but not limited to the long established defense of unclean hands. The Idaho Supreme Court in the case of *Ada County Highway Dist. v. Total Success Investments, LLC*, 179 P.3d 323, 145 Idaho 360 (Idaho 2008) set forth the general concept of unclean hands as relates to actions in equity as follows:

The clean hands doctrine "stands for the proposition that 'a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.' " *Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983) (citing 27 Am. Jur. 2d Equity § 136 (1996)).

[E]quity will consider the conduct of the adversary, the requirements of public policy, and the relation of the misconduct to the subject matter of the suit and to [the] defendant.

Id. at 145-46, 657 P.2d at 9-10 (internal quotations and citations omitted).

While the unclean hands doctrine may not be a favored doctrine, it is still in effect, and the Court should have allowed the issue to go to trial and required Plaintiff's employees and agents to testify before making the final determination as to whether the evidence supported application of the defense.

11. **The Court may have exceeded its authority under I.C. 10-1210** In its Findings of Fact, the Court bases its decision largely on authority granted courts pursuant to I.C. 10-1210 to issue declaratory judgments. According to the Casemaker database there are 39 reported cases in Idaho that make express reference to I.C. 10-1210. However, a review of the procedural history of those cases shows no instance where the court created a declaratory judgment in the absence of declaratory relief being actually pleaded by one of the parties, or both of the parties expressly agreeing to consider the pending action one for declaratory relief.

Neither of those conditions are present in this case. Further, a reading of the excerpt of the statute contained in the Court's Finding of Facts appears to require that declaratory relief be either affirmatively or defensively prayed for before the Court may exercise its declaratory authority.

11. **Rescission should restore the status quo ante.** Setting aside the question of whether the entry of summary judgment was correct, by granting Plaintiff the remedy of equitable rescission of the Reconveyance, the result should have been to place the parties back in the respective positions that they occupied immediately before the conduct occurred that required rescission. The Court expressly states this intention on Pages 11, 12 and 13 of the Findings of Fact. This concept of *status quo ante* has been recognized in a number of cases *Barnard & Son, Inc. v. Akins*, 708 P.2d 871, 109 Idaho 466 (Idaho 1985); *Frink v. Thomas*, 20 Or. 265, 25 P. 717, 12 L.R.A. 239; *Howard v. Jackson*, 213 Or. 447, 459, 324 P.2d 757.

As stated in the Findings of Fact, the Court states its intention to place the parties back in the position they occupied at the end of October 2009. At that point, the principal balance on the 2004 Loan was approximately \$43,500.00, and assuming that neither party appeals the ruling of the Court, the loan would then be reinstated and move forward accordingly. However, based on that concept, no interest, costs, or attorney fees incurred prior to rescission of the Reconveyance would be recoverable by either party. That conclusion was further contemplated by the express language of the Findings of Fact, wherein the Court pointedly reminded Plaintiff that the Reconveyance was Plaintiff's fault, and required Plaintiff to set forth a plan for dealing fairly with Defendants as a condition precedent to issuing final judgment. Finally, the Court expressly warned the Plaintiff against trying to "lay such blame at the feet of the Sheets", which is exactly what the Plaintiff's proposed plan does. The plain reading of the Court's Findings of Fact also makes equitable sense because it sets a clear reset point for both parties. Defendants can either choose to recommence payments under the 2004 Loan, or alternatively, can move with certainty to refinance with another lender.

Conversely, the position being taken by Plaintiff is neither supported by the plain language of the Findings of Fact, the existing case law, or recognized concepts of equity.

Plaintiff instead attempts to both rescind an legally inexcusable act, and simultaneously reap the economic benefit of acting as if the 2004 Loan debacle, the Reconveyance and the pending suit never happened. Plaintiff's proposed solution is for the Court to reinstate the status quo ante for a nanosecond and then flash forward to the present. There is no legal support for such a position, and it is inconsistent with the directive of the Court in the Findings of Fact. It also leaves the Defendants in an untenable position in that their attempts to refinance the 2004 Loan with a different lender cannot move forward because of the uncertainty of what is due and owing after rescission is clarified. Defendants have approached two different lenders, both of whom responded positively to a refinance, but neither of which will move forward without final resolution of the pending suit. Efforts to resolve this matter with Plaintiff's counsel have not been successful.

In summary, while the Defendants do not agree with the ruling of the Court as set forth in the Findings of Fact, counsel would strongly recommend that they accept the decision set forth in the Findings of Fact as written, provided that:

- a. the status quo ante is fully restored;
- b. that the loan balance is reset to the outstanding principal existing on October 30, 2010, with all pre-rescission interest, late fees, penalties, costs and attorney fees waived; and
- c. that Plaintiff is required as a condition to entry of Final Judgment to follow through with its obligation to put forth a fair and equitable path moving forward that is consistent with the Court's directive and the nature of the relief sought by Plaintiff, including the filing of corrective reports to applicable credit agencies.

Respectfully submitted this 30th day of September, 2013.

John Curtis Hucks, Attorney at Law, P.C.

By



John Curtis Hucks
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above document has been served via U.S. Mail and via email attachment this 30~~th~~ day of September, 2013 upon:

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA
SHEETS; et. al.

Defendants.

Case No. CV-2010-2564

**PLAINTIFFS' SUPPLMENTAL
BRIEF IN SUPPORT OF PROPOSED
PLAN AND ENTRY OF FINAL
JUDGMENT**

Countrywide Home Loans, Inc. ("Countrywide"), Bank of America, N.A. and BAC Home Loan Servicing, L.P.¹ ("Bank of America") and ReconTrust Company N.A.'s ("ReconTrust") (Countrywide, Bank of America, and ReconTrust are collectively referred to herein as the "Bank of America") by and through their attorneys of record, hereby submit their Supplemental Brief in Support of Proposed Plan and Entry of Final Judgment.

¹ Bank of America Home Loan Servicing, L.P. is now known as Bank of America, N.A.

INTRODUCTION

This Court does not have authority to order an equitable remedy because an adequate contractual remedy is available. Bank of America, N.A.'s (successor by merger to "Countrywide Home Loans, Inc.") (hereinafter "Bank of America") Complaint stated a claim for declaratory judgment based on the Loan Agreement between Bank of America and the Defendants. A court has equitable jurisdiction only if there is no adequate legal remedy. Claims involving express contracts, such as the Loan Agreement in this case, preclude the exercise of equitable jurisdiction. Furthermore, a declaratory judgment is a legal remedy and precludes the court's authority to enter an equitable remedy.

FACTS

On or about December 21, 2004, Defendant Ralph Sheets borrowed \$65,250.00 from Countrywide Home Loans, Inc., d/b/a America's Wholesale Lender. Complaint filed March 30, 2010 (herein, the "Complaint) at ¶ 6; admitted in Defendants' Amended Answer, Second Amended Counterclaims, Third Party Complaint, and Demand for Jury Trial, dated April 16, 2002 (herein, the "Answer and Counterclaims") at p. 2, ¶ 6 and p. 7, ¶ 9. In order to borrow the money, Mr. Sheets executed a Deed of Trust pledging as security property commonly known as 5603 Highway 95, New Meadows, Idaho, 83654 (the "Property"). Complaint at ¶ 6 and Exhibit A thereto. The Deed of Trust was recorded on December 28, 2004 as Instrument No. 107860. Deed of Trust, attached hereto as Exhibit 1.

On November 9, 2009, the trustee erroneously recorded a reconveyance of said Deed of Trust, apparently as part of a proposed refinance that was not completed. Answer and Counterclaim at p. 11, ¶ 19. Bank of America did not intend for the trustee to record a reconveyance because the Note had not in face been paid in full.

PROCEDURAL HISTORY

Bank of America filed the Complaint in this action on March 30, 2010 to have the reconveyance of the Deed of Trust declared void. Three years of extensive litigation followed, which need not be set forth in detail here. On December 18, 2012, Bank of America filed a Motion for Summary Judgment on its Complaint. The Motion was opposed by Defendants. On April 29, 2013, this Court entered an order granting Bank of America's Motion for Summary Judgment. Findings of Fact, Conclusions of Law and Order on Plaintiff's Motion for Summary Judgment at p. 13. (hereinafter "Findings of Fact").

In the Findings of Fact, the Court expressed its concern about the relationship between Bank of America and the Defendants moving forward. Findings of Fact at p. 12-13. The Court required Bank of America to present a detailed plan setting forth its proposal as to how to move forward in its relationship with the Defendants and additionally expressed that it would use its equitable powers to ensure that the Defendants "are treated properly under the existing terms and obligations of the Note and Deed of Trust moving forward." *Id.*

On June 18, 2013, Bank of America filed a Notice Regarding Plan Going Forward, which provided the Defendants with 120 days to either bring the loan current or apply for a loan modification with Bank of America. Notice Regarding Plan Going Forward at p. 5. (hereinafter the "Plan"). If the Defendants took either step within the time frame specified, Bank of America would waive all late fees, attorney fees, costs, and expenses relating to the payments of principal and interest not made by the defendant since October 2009 and the costs of this litigation. *Id.* The Defendants objected to the proposed plan, and a hearing on the Defendants' objection was held on September 6, 2013. At the hearing, the Court requested supplemental briefing regarding its authority to grant equitable relief in this matter.

ARGUMENT

1. The Court does not have equitable jurisdiction because an adequate legal remedy is available

It is a well-established rule in Idaho that equitable claims will not be considered when an adequate legal remedy is available, *Thomas v. Campbell*, 690 P.2d 333, 339-40 (Idaho 1984), even if the legal action also involves equitable claims such that concurrent jurisdiction would ordinarily extend. *Farmer v. Loofbourrow*, 267 P.2d 113, 115 (Idaho 1954). Where an express contract exists between the parties, a claim based in equity is not allowed because it is precluded by the express contract. *Iron Eagle Dev., LLC v. Quality Design Systems, Inc.*, 492, 65 P.3d 509, 514 (Idaho 2003).

Rescission, which historically is an equitable remedy, may be transformed into a legal remedy when it is codified in law or arises from an express contract. *See, e.g. Mickelson v. Broadway Ford, Inc.*, 280 P.3d 176, 180 (Idaho 2012) (for the proposition that the codification of the remedy of rescission converts it from an equitable remedy to a legal remedy). The requirement that the obligation secured by the deed of trust have been paid in full prior to the reconveyance of the deed of trust, while originally arising in equity, has been codified into law in Idaho. I.C. § 45-1202.

This action arises from an express contract between the Defendants and Bank of America, memorialized in the Note and Deed of Trust (the "Loan Agreement"). The Loan Agreement specifically sets forth the Defendant's promise to repay the \$65,250.00 he borrowed from Countrywide Home Loans, Inc., and his intention that said promise be secured by an interest in the Property. Deed of Trust p. 2. The Loan Agreement also set forth the conditions under which the Deed of Trust could be reconveyed. Deed of Trust ¶ 23.

It is undisputed that those conditions were not satisfied, and that the amount secured by the Deed of Trust was not repaid. This Court may provide adequate legal remedy by declaring the reconveyance

void. Because an adequate legal remedy is available, the court is precluded from also entering an equitable remedy.

2. Bank of America's complaint stated a claim for declaratory relief

A claim for declaratory judgment is made when a party asks the court "to declare the rights, status and legal relations of the parties." I.C. § 10-1201. In stating a claim for declaratory judgment, the plaintiff must show that there is a judiciable controversy between the parties and that "the judgment or decree will terminate the controversy or remove an uncertainty." I.C. § 10-1205. A "judiciable controversy" is one that "is appropriate for judicial determination... definite and concrete, touching the legal relations of parties having adverse legal interests... It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be based upon a hypothetical state of facts." *Harris v. Cassia County*, 681 P.2d 988, 991 (Idaho 1984).

Idaho has adopted a system of notice pleading. I.R.C.P. Rule 8; *Youngblood v. Higbee*, 182 P.3d 1199, 1203 (Idaho 2008). The general rules of pleading state that "no technical forms of pleading or motions are required" and "all pleadings shall be so construed as to do substantial justice." I.R.C.P. Rule 8(e)(1),(f). A complaint need "only contain a concise statement of the facts constituting the cause of action and a demand for relief." *Youngblood*, 182 P.3d at 1203.

Idaho law requires that all pleadings be so construed as to do substantial justice. Therefore, the fact that the claim is labeled as one for "rescission," should not prevent this court from treating it as a claim for declaratory judgment. Bank of America's Complaint in this action stated all of the facts necessary to state a claim for declaratory judgment and requested declaratory relief. The Complaint outlined the existence of a judiciable controversy regarding the status of the deed of reconveyance.

Complaint ¶ 7, 9. The Complaint also outlined the specific relief requested, the voiding of the deed of reconveyance, which would conclusively end the controversy. Complaint ¶ 9.

3. In the alternative, Bank of America should be allowed to amend its complaint to include a claim for declaratory judgment

In the alternative, if the Court finds that the Complaint did not state a claim for declaratory judgment, the Court should allow Bank of America to amend the Complaint pursuant to I.R.C.P. Rule 15 to include such a claim. Rule 15(a) states that the leave of the court to amend a pleading “shall be freely given when justice so requires” and Rule 15(b) states that the pleadings “may be amended as necessary to cause them to conform to the judgment upon motion of any party at any time, *even after judgment.*” (emphasis added). Such an amendment is appropriate unless the party opposing the amendment can show that he was prejudiced by the variance between the pleading and proof. *Hughes v. Fisher*, 129 P.3d 1223, 1234 (Idaho 2006). To do so a party must show that it was misled or unaware of the facts upon which the judgment was based and point to evidence it would have otherwise introduced or arguments that it would have otherwise made had it been aware of the unpled cause of action. *Id.*

In the instant case, the evidence presented by the parties and the arguments of the parties fully supported a claim for summary judgment, as discussed above. Furthermore, the Defendants cannot claim that they had no notice that this case was being tried as a declaratory judgment case, as that fact was specifically referenced in Bank of America’s Motion for Summary Judgment. Therefore, the Defendants would not be prejudiced by the amendment of the Complaint to state a claim for declaratory judgment.

4. In the alternative, voiding the deed of reconveyance is a full and complete equitable remedy

The purpose of an equitable remedy is “to restore the plaintiff to her entitlement, no more, no less.” Dan Dobbs, *Dobbs Law of Remedies*, 2d 118 (1993). Although incidental burdens may be imposed on third parties as the result of such restoration, the imposition of such burdens is not

objectionable unless the plaintiff obtained more than their entitlement. *Id.* at 122. In most cases, the incidental burden does no more than force the third party to disgorge an entitlement that was never rightfully theirs in the first place. *Id.* at 122 n.19.

A full and complete equitable remedy is entered by voiding the deed of reconveyance and restoring Bank of America to its entitlement to a security interest in the Property. It is true that this restoration imposes a burden on the defendants. However, that burden is limited to the fact that the promissory note that they executed to Bank of America is again secured by the Property. The Defendants have merely been disgorged from an entitlement to a property free and clear of all security interests that was never rightfully theirs to begin with.

Bank of America does not dispute that the accounting errors and execution of the deed of reconveyance were the result of its own error. However, the Defendants have no actual damages stemming from the execution of the deed of reconveyance, and virtually no damages stemming from the short term errors on their account which were resolved by Bank of America within a few months three years ago. The Defendants object to the proposed Plan because it requires them to make their past due payments of principal and interest. However, it is not equitable to force Bank of America to bear the cost of the Defendants' decision not to make the monthly payments that they were legally obligated to make under the promissory note. Nor should the Defendants be given the unwarranted benefit of three years without making payments on a loan while enjoying the benefits of the Property that loan allowed them to purchase.

CONCLUSION

This Court has no authority to order an equitable remedy regarding the Parties' relationship, when that relationship is governed by the terms of an express contract, and the Court's authority is

grounded in law, rather than equity. However, the appropriate equitable remedy would be for the Court to void the deed of reconveyance, thus restoring to Bank of America to its entitlement.

DATED this 30th day of September, 2013.

BLOOM MURR ACCOMAZZO & SILER, PC

By: Eric Coakley by Kara Snow
Eric R. Coakley, ISB # 9109
Attorneys for Countrywide Home Loans, Inc., Bank
of America, N.A., BAC Home Loan Servicing, L.P.
and ReconTrust Company N.A.

INSTRUMENT NO. **107860**

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

Prepared By:
KIMBERLY MONTEZ

Instrument # 107860

COUNCIL, ADAMS, IDAHO
2004-12-28 03:43:08 No. of Pages: 17
Recorded for: TIMBERLINE TITLE & ESCROW
MICHAEL FISK (Fees: \$1.00)
Ex-Officio Recorder Deputy
Index to: DEED OF TRUST

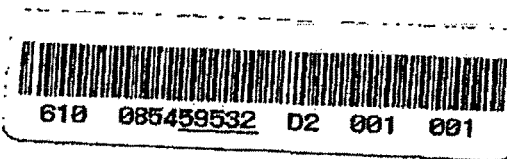
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SHEETS
[Escrow/Closing #]

2004
[Doc ID #]

DEED OF TRUST

MIN 1000157-0004643292-4



DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated **DECEMBER 21, 2004**, together with all Riders to this document.

(B) "Borrower" is

RALPH E SHEETS JR, A MARRIED MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

AMERICA'S WHOLESALE LENDER

Lender is a CORPORATION

organized and existing under the laws of **NEW YORK**

Lender's address is

P.O. Box 10219, Van Nuys, CA 91410-0219

(D) "Trustee" is

TIMBERLINE TITLE & ESCROW

204 ILLINOIS AVENUE, COUNCIL, ID 83612

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

(F) "Note" means the promissory note signed by Borrower and dated **DECEMBER 21, 2004**. The Note states that Borrower owes Lender

SIXTY FIVE THOUSAND TWO HUNDRED FIFTY and 00/100

IDAHO-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

CON/VVA

CHL (08/09)(d)

VMP MORTGAGE FORMS - (800)521-7281

Initials: *Res*

Form 3013 1/01



EXHIBIT
1

495

Dollars (U.S. \$ 65,250.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2020

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

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

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

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

0

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY
[Type of Recording Jurisdiction]

of

ADAMS
[Name of Recording Jurisdiction]

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SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: RP22N01E160150A which currently has the address of
 5603 HIGHWAY 95, NEW MEADOWS
 [Street/City]
 Idaho 83654 ("Property Address"):
 [Zip Code]

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

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

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

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

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous

Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

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

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

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

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Area and Location of Property. Either the Property is not more than 40 acres in area or the Property is located within an incorporated city or village.

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

Witnesses:

Ralph E. Sheets Jr. (Seal)
RALPH E. SHEETS JR -Borrower

Debra Sheets (Seal)
DEBRA SHEETS -Borrower

DEBRA SHEETS shall have no personal liability to the obligation herein or secured thereby, and executes this instrument only to (Seal) subordinate any interest she may Borrower acquire, including without reservation her homestead rights, to this mortgage.

(Seal)
-Borrower

STATE OF IDAHO,

County ss: *Adams*

On this *21st* day of *December* 2004, before me, *Colleen M. Skillings*, a Notary Public in and for said county and state, personally appeared *Ralph E. Sheets Sr and Debra Sheets*

known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged to me that he/she/they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Colleen M. Skillings
Notary Public residing at: *Indian Valley*
7/1/2010

Initials: *RS DS*

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EXHIBIT 'A'

Township 22 North, Range 1 East, Boise Meridian, Adams
County, Idaho

Section 16: A parcel of land in the NE1/4NE1/4 lying
Westerly of the Westerly line of the right-of-way of
U.S. Highway 95, as it existed in 1977

EXCEPTING THEREFROM the following parcel:

Commencing at a point on the south line of the
NE1/4NE1/4 as intersected by the West line of U.S.
Highway 95 (as established in 1953), the REAL POINT OF
BEGINNING;

Thence Northeasterly along the West line of said
Highway 550 feet;

Thence West and parallel to the South line of the
NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of
said Highway 550 feet to the South line of the
NE1/4NE1/4;

Thence along said South line 550 feet to the REAL
POINT OF BEGINNING.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2013, a true and correct copy of **COUNTRYWIDE HOME LOANS, INC.'S SUPPLEMENTAL BRIEF IN SUPPORT OF PROPOSED PLAN AND ENTRY OF FINAL JUDGMENT** was sent to the Clerk of Court for filing via overnight service and served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input type="checkbox"/> E-Mail
---	---

Nicole Marsade

Nicole Marsade, Paralegal

FILED

DEC 06 2013

9:00 am

SHERRY WARD, CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,)	
)	Case No. CV-2010-2564
Plaintiff,)	
)	ORDER ON PROPOSED JUDGMENT
vs.)	AND PLAN OF IMPLEMENTATION
)	
RANPH E. SHEETS, JR. and DEBRA)	
SHEETS, and DOES 1-10 as individuals with)	
an interest in the property legally described)	
as:)	
)	
Defendants.)	
_____)	

Procedural History

On April 29, 2013, this court entered its Findings of Fact, Conclusions of Law, and Order on Plaintiff's Motions for Summary Judgment in which it granted summary judgment in favor of the Plaintiff. However, as part of that order the court directed the parties to submit to the court information regarding Bank of America's (BofA) plan for proceeding with the processing of the loan at issue in this case. BofA filed its Notice Regarding Plan Going Forward on June 25, 2013. The Sheets responded with an Objection on July 3, 2013. Oral argument was held on September 6, 2013. On October 1, 2013, BofA filed a Supplemental Brief in Support of Proposed Plan and Entry of Final Judgment and Sheets filed a Response to Court's Request for Legal Authority.

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The court has determined that no additional oral argument is necessary and this order serves as the court's final order on the pending issues in this action.

Analysis

As an initial matter, the court feels the need to address an argument raised by Sheets in the Defendants' Response to Court's Request for Legal Authority. In sections 8, 9 and 10 of that brief, Sheets' attorney identifies what he believes to be errors made by this court in granting summary judgment and appears to urge the court to reconsider its findings and decision in granting the Motion for Summary Judgment. The court will not consider or address these arguments because the Sheets have not filed a motion to reconsider in compliance with the applicable Idaho Rules of Civil Procedure that govern such requests for reconsideration.

The ultimate issue asserted by the Complaint filed in this action was BofA's request that the court determine that the "deed of reconveyance should be declared null and void and the original deed of trust restored in the same force and effect as on the date originally executed and intended by Plaintiff and Sheets." (Complaint, ¶9). In the prayer for relief, BofA seeks as relief the following:

- a. For rescission of the deed of reconveyance recording in the mortgage records of Adams County, Idaho as Instrument No. 119343, and further declaring that the said deed of reconveyance is void and shall have no effect.
- b. That the deed of trust executed in favor of Plaintiff's predecessor in interest recorded on December 28, 2004 as Instrument No. 107860, mortgage records of Adams County, Idaho, together with all assignments thereunder shall be reinstated in full force and effect as and from the date originally executed.

(Complaint, page 4).

While BofA's Complaint does not specifically state that the Plaintiff is pursuing this action as an action for a declaratory judgment pursuant to Idaho Code 10-1201, it did move the court for entry of summary judgment granting a "declaratory judgment" that the reconveyance erroneously recorded November 9, 2009 is void. The mistaken, unilateral release of loan security issue presented in this contract based dispute is appropriately addressed as an action for declaratory relief. The BofA's complaint adequately gives notice of such a claim. The language of the Complaint as set forth above asks this court to "declare rights, status, and other legal relations" as is contemplated by Idaho Code 10-1201 in that the Complaint asks this court to declare the Deed of Reconveyance to be null and void and to determine that the Deed of Trust should be reinstated in full force and effect. This court cited Idaho Code 10-1201 as the basis on which it granted summary judgment on the issue of whether the mistakenly recorded deed of reconveyance should be rescinded. Idaho Rule of Civil Procedure 8 and supporting case authority support this court's granting relief as a declaratory judgment because Idaho is a notice pleading state and that "no technical forms of pleading or motions are required." I.R.C.P. 8(e)(1). The court finds that the Complaint clearly sets forth the factual allegations of the transaction between the parties, as well as the request for a determination of legal rights and the remedies requested. While this court raised the issue throughout these proceedings in order to ensure that the matter was handled properly, the court after further consideration of the parties' arguments finds that the Complaint is sufficient to state a claim for declaratory judgment and the court has issued a decision on the basis of entry of declaratory judgment.

This court has determined after carefully considering the positions of the parties along with all evidence and argument presented throughout this action, and specifically as presented in the Motion for Summary Judgment that there is not an issue of fact that the Deed of

Reconveyance was mistakenly issued and should be determined to be null and void, and that the Deed of Trust as described above shall be reinstated with full force and effect. The court incorporates by this reference the findings of fact and conclusions of law set forth in the court's April 29, 2013 order.

Having made this determination, the court ordered Bank of America to present to the court a plan for moving forward in order to avoid any further complications in this action that would delay final resolution of the matter. BofA complied with this request and presented its argument and proposed plan which entails the following:

- That Bank of America, relying on the underlying Note, finds that Sheets currently owes¹ approximately \$24,248.56 in past due principal and interest payments;
- That Bank of America has advanced \$1,201.68 in hazard insurance payments;
- That Bank of America, relying on the underlying Note, finds that Sheets currently owes approximately \$1212.17 in late fees;
- That Bank of America is entitled to an award of attorney fees and costs;
- That in order to resolve this matter, Bank of America will waive all late fees, attorney fees, costs, and expenses provided that Sheets pays all past due interest and fees; brings the loan current or timely applies for a loan modification; and that this litigation is concluded.
- That Bank of America will not pursue collection of the unpaid amounts described above or pursue foreclosure while Sheets is attempting to accomplish a loan modification.

In response to Bank of America's proposal, the Sheets argue that the plan does not comply with the spirit of the court's order and the court's finding that the parties shall be

¹ As of the filing of the Notice Regarding Plan Going Forward filed on June 25, 2013.

returned to the same relative positions that existed as of October 30, 2009. The Sheets also argue that this determination should be extended to a finding that the principal of the Note should be as it was on that date - \$43,264.00 and that the loan under the previous terms should be reinstated. Sheets further argue that they should then be allowed to resume payments under the Note under these terms until it is paid, or until a loan modification is accomplished.

The court does not agree with the Sheets' interpretation or criticism of this court's Order. The court's Findings of Fact, Conclusions of Law and Order make it clear that the only issue before the court was reinstatement of the Deed of Trust and rescission of the Deed of Reconveyance based on its determination that the defenses and counterclaims asserted by the Sheets were unfounded. Neither the Complaint in this matter, nor the court's Order can be read to have any effect on the Sheets' obligations pursuant to the Note secured by the disputed Deed of Trust. The mistaken recordation of the Deed of Reconveyance did not relieve the Sheets of their obligation to BofA pursuant to the Promissory Note, dated December 21, 2004. At all times during this pending litigation, the Sheets have been or should have been aware that their obligations under that Note remained in effect and were not excused by the mistakenly recorded Deed of Reconveyance. When the court stated that the parties would be returned to the positions they occupied as of October 30, 2009, that finding was limited to declaring the Deed of Reconveyance null and void, and reinstating the Deed of Trust, not to a position of forgiven debt as asserted by the Sheets. The Sheets have not presented this court with any authority that would allow this court to disregard the terms of the Note as agreed to by the parties or to support their assertion that they should be excused from complying with their contract obligations for the last four years. As this court has stated on several occasions, the court has sympathy for the Sheets and the frustration they experienced as a result of the failed loan modification in 2009 and this

subsequent litigation. However, the Sheets have made strategic decisions throughout the course of this litigation that has, in all likelihood, protracted the litigation that was resolved by the simple reinstatement of the deed of trust.

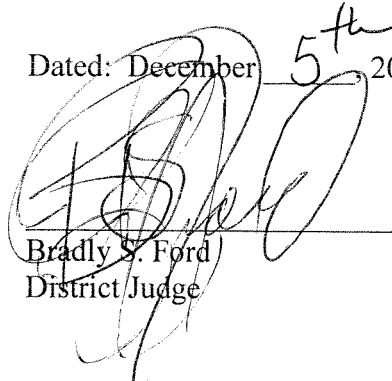
This court agrees with BofA's position as set forth in the Plaintiff's Supplemental Brief In Support Of Proposed Plan and Entry of Final Judgment. This court does not find that it has the authority to fashion the type of equitable remedy (relieving the Sheets of certain obligations under the terms of the note) as was suggested in paragraph 11 of the Defendant's Response to Court's Request for Legal Authority filed October 1, 2013. The court's authority is limited to the legal conclusions it reached in the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT filed April 29, 2013. The court's request in the order that the parties submit a plan for effectuating the order was an effort to encourage the parties' to reach a consensus in the implementation of the court's order and to avoid further stress, inconvenience and legal expense that might result from the acceleration of debt and immediate foreclosure proceedings. The court never intended to suggest that it had the authority to equitably revise the terms of the note or arbitrarily forgive debt.

That being said, the Bank of America's suggestions for moving forward appeared to be reasonable but should not be considered binding on either party unless they agree. While the court is fully aware that the genesis of this case was a unilateral mistake made by the Bank of America and its agents, the court also finds that the matter could have been more easily resolved then the extended litigation that resulted in its entry of summary judgment.

Conclusion and Order

Within fourteen days of this order, the Plaintiff's attorney shall submit to the court a proposed Judgment consistent with the court's FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT filed April 29, 2013 and in compliance with IRCP 54(a). Any request for costs and attorney fees shall be submitted pursuant to applicable Idaho rule, statute or precedent.

Dated: December 5th 2013.



Bradley S. Ford
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO)
 : ss.
COUNTY OF ADAMS)

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was forwarded to the following:

Derrick J. O'Neill
ROUTH CRABTREE OLSEN, PS
300 Main St, Ste 150
Boise, ID 83702

Eric R. Coakley
Bloom, Murr & Accomazzo, P.C.
410 17th Street, Ste. 2400
Denver, CO 80202-4402

John Curtis Hucks
Attorney at Law
PO Box 737
New Meadows, ID 83654

Either by depositing the same in the U.S. Mail, first class postage prepaid, or by personal service.

DATED this 6th day of December, 2013.

SHERRY WARD
Clerk of the District Court



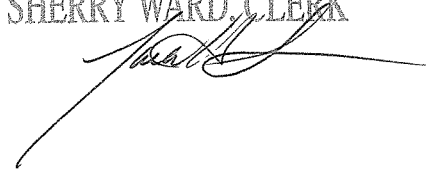
By Deputy Clerk of the Court

FILED

MAR 06 2014

3:30
pm

SHERRY WARD, CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

v.

RALPH E. SHEETS, JR. and DEBRA
SHEETS; and DOES 1-10 as individuals
with an interest in the property legally
described as:

Township 22 North, Range 1 East, Boise
Meridian, Adams County, Idaho
Section 16: A parcel of land in the
NE1/4NE1/4 lying Westerly of the Westerly
line of the right-of-way of U.S. Highway 95,
as it existed in 1977

EXCEPTING THEREFROM the following
parcel:

Commencing at a point on the south line of
the NE1/4NE1/4 as intersected by the West
line of U.S. Highway 95 (as established in
1953), the REAL POINT OF BEGINNING;
Thence Northeasterly along the West line of
said Highway 550 feet;
Thence West and parallel to the South line of
the NE1/4NE1/4 550 feet;
Thence Southeasterly and parallel to the
West line of said Highway 550 feet to the
South line of the NE1/4NE1/4;
Thence along said South line 550 feet to the
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603
Highway 95, New Meadows, Idaho, 83654,

Defendants,

Case No. CV-2010-2564

JUDGMENT

516

Ralph E. Sheets, Jr. and Debra Sheets,

Counterclaimants,

v.

Countrywide Home Loans, Inc.,

Counterdefendant,

and

Ralph E. Sheets, Jr. and Debra Sheets,

Third Party Plaintiffs,

v.

Bank of America, N.A successor by merger
and name change to BAC HOME LOANS,
INC. f/k/a COUNTRYWIDE HOME
LOANS, INC., and BAC HOME LOAN
SERVICING, L.P., f/k/a COUNTRYWIDE
HOME LOAN SERVICING, LP; and
RECONTRUST COMPANY, N.A.

Third Party Defendants.

The Court, in its April 29, 2013 written Findings of Fact, Conclusions of Law and Order on Plaintiff's Motions for Summary Judgment: (1) granted Summary Judgment in favor of the Plaintiff, Countrywide Home Loans, Inc., now known as Bank of America, N.A. ("Plaintiff"); (2) dismissed the counterclaims and third party claims of Defendants, Counterclaimants and Third Party Plaintiffs, Ralph E. Sheets, Jr. and Deborah Sheets (the "Sheets"), in their entirety; and (3) denied the Sheets' Motion to Strike. The Court's ruling was reaffirmed by the Court in its Order on Proposed Judgment and Plan of Implementation dated December 6, 2013.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that judgment is granted and rendered against the Sheets and in favor of Plaintiff and third party defendants Bank of America, N.A., successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., BAC Home Loan Servicing, L.P., f/k/a Countrywide Home Loan Servicing, LP, and

Recontrust Company, N.A. (the "Third Party Defendants") on each of the counterclaims and third party claims contained in the Sheet's April 18, 2013 Amended Answer, Second Amended Counterclaims, Third Party Complaint and Demand for Jury Trial, and that said counterclaims and third party claims are DISMISSED, with prejudice.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that judgment is granted and rendered in favor of Plaintiff and against the Sheets on Plaintiff's Complaint, and that:

- (1) The deed of reconveyance recorded in the real property records of Adams County, Idaho on November 9, 2009 as Instrument No. 119343 (the "Deed of Reconveyance") is hereby RESCINDED;
- (2) The Deed of Reconveyance is VOID and of no effect;
- (3) Plaintiff and the Sheets shall continue to comply with their respective rights and obligations under the promissory note (the "Note") and deed of trust (the "Deed of Trust") executed by Ralph E. Sheets, Jr. on or about December 21, 2004;
- (4) The Deed of Trust, which is recorded in the real property records of Adams County, Idaho on December 28, 2004 as Instrument No. 107860, and which encumbers real property legally described as:

Township 22 North, Range 1 East, Boise Meridian, Adams County, Idaho

Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977

EXCEPTING THEREFROM the following parcel:

Commencing at a point on the south line of the NE1/4NE1/4 as intersected by the West line of U.S. Highway 95 (as established in 1953), the REAL POINT OF BEGINNING;

Thence Northeasterly along the West line of said Highway 550 feet;

Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of said Highway
550 feet to the South line of the NE1/4NE1/4;
Thence along said South line 550 feet to the REAL POINT OF
BEGINNING.

together with all assignments thereof, is hereby REINSTATED and is in full force
and effect as and from the date originally executed.

DATED this 6 day of March, 2014



HONORABLE BRADLY S. FORD
District Court Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby
CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is
no just reason for delay of the entry of a final judgment and that the court has and does hereby
direct that the above judgment or order shall be a final judgment upon which execution may issue
and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 6th day of March, 2014



HONORABLE BRADLY S. FORD
District Court Judge

Copies to:

John Curtis Hucks
Attorney at Law
PO Box 737
New Meadows, ID 83654
Attorney for Ralph and Debra Sheets

Derrick O'Neill
RCO Legal, P.C.
300 Main Street, Suite 150

Boise, ID 83702

Co-Counsel for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company N.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

Countrywide Home Loans Inc ,)	
Plaintiff,)	Case No: CV-2010-0002564
vs.)	
)	CERTIFICATE OF MAILING NOTICE
Ralph E Sheets Jr, etal.,)	PURSUANT TO RULE 77(d) and 55(b)(1)
Defendant.)	I.R.C.P.
_____)	

I, Tara Horton, the undersigned authority, do hereby certify that I have mailed, by United States mail, one copy of the:

JUDGMENT

as notice pursuant to Rule 77(d) and 55(b) (1) I.R.C.P. to each of the attorneys of record in this cause in envelopes addressed as follows:

Plaintiff's Counsel:

Derrick J O'Neill
RCO Legal, P.C.
300 Main Street, Suite 150
Boise ID 83702

Plaintiff's Counsel:

Bloom Murr & Accomazzo, P.C.
410 17th Street, Suite 2400
Denver CO 80202

Defendant's Counsel:

John Curtis Hucks
PO Box 737
New Meadows ID 83654

Dated: Thursday, March 06, 2014

Sherry Ward
Clerk Of District Court

By: 
Deputy Clerk

Derrick J. O'Neill, ISB #4021
RCO Legal, P.C.
300 Main Street, Suite 150
Boise, Idaho 83702
Tel: 208-489-3035; Fax: 208-854-3998

Eric R. Coakley
CoakleyKrol, LLC
2723 Central Park Blvd. - Suite 100
Denver, Colorado 80238
Tel: 303-594-0542

Attorneys for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company N.A.

FILED

MAR 11 2014

9:30 am

SHERRY WARD, CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

vs.

RALPH E. SHEETS, JR. and DEBRA
SHEETS; et. al.

Defendants.

Case No. CV-2010-2564

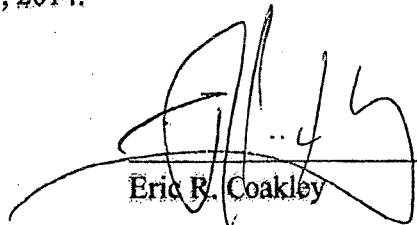
**NOTICE OF WITHDRAWAL
OF COUNSEL**

Pursuant to Rule 11 of the Idaho Rules of Civil Procedure, Eric R. Coakley, the undersigned counsel for Countrywide Home Loans, Inc. ("Countrywide"), Bank of America, N.A. ("BANA"), BAC Home Loan Servicing, L.P. ("BAC"), and ReconTrust Company, N.A. ("ReconTrust") hereby respectfully advise the Court and all counsel or pro se parties that I, Eric R. Coakley have left the firm of Bloom Murr Accomazzo & Siler, PC, and have also terminated

by law practice in Idaho, surrendering my Idaho license. I therefore respectfully withdraw as counsel for Countrywide, BANA, BAC and ReconTrust.

Attorney Derrick O'Neill of RCO Legal, P.C., will remain as counsel for Countrywide, BANA, BAC and ReconTrust. Countrywide, BANA, BAC and ReconTrust respectfully requests that all future notices and pleadings be directed to Derrick O'Neill.

DATED this 11 day of ^{March}~~February~~, 2014.


Eric R. Coakley

And



Derrick J. O'Neill, ISB #4021

Attorneys for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of March, 2014, a true and correct copy of the NOTICE OF WITHDRAWAL OF COUNSEL was served, which service was effectuated by the method indicated below and addressed as follows:

John Curtis Hucks Attorney at Law PO Box 737 New Meadows, ID 83654	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile (208) 347-4128 <input checked="" type="checkbox"/> E-Mail
---	--



 Derrick J. O'Neill

FILED
APR 14 2014 11:45 am

SHERRY WARD, CLERK
[Signature]

JOHN CURTIS HUCKS
ATTORNEY AT LAW, P.C.
P.O. Box 737
New Meadows, ID 83654
Tel: (208) 347-4128; Facsimile: (208) 347-4128
Email: huckslaw@yahoo.com
ISB No. 6473
Attorney for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff /Respondent

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;
and DOES 1-10 as individuals with an interest in
the property legally described as:

Township 22 North, Range 1 East, Boise
Meridian, Adams County, Idaho
Section 16: A parcel of land in the NE1/4NE1/4
lying Westerly of the Westerly line of the right-
of-way of U.S. Highway 95, as it existed in 1977
EXCEPTING THEREFROM the following
parcel:

Commencing at a point on the south line of the
NE1/4NE1/4 as intersected by the West line of
U.S. Highway 95 (as established in 1953), the
REAL POINT OF BEGINNING;
Thence Northeasterly along the West line of said
Highway 550 feet;
Thence West and parallel to the South line of the
NE1/4NE1/4 550 feet;
Thence Southeasterly and parallel to the West
line of said Highway 550 feet to the South line of
the NE1/4NE1/4;

Thence along said South line 550 feet to the
REAL POINT OF BEGINNING.
Which may commonly be known as: 5603
Highway 95, New Meadows, Idaho, 83654,

Defendants / Appellants

Case No. CV-2010-2564

NOTICE OF APPEAL

525

Ralph E. Sheets, Jr. and Debra Sheets,

Counterclaimants,

vs.

Countrywide Home Loans, Inc.,

Counterdefendant,

and

Ralph E. Sheets, Jr. and Debra Sheets,

Third Party Plaintiffs,

vs.

Bank of America, N.A. successor by merger
and name change to BAC HOME LOANS,
INC. f/k/a COUNTRYWIDE HOME LOANS,
INC., and BAC HOME LOAN SERVICING,
L.P., f/k/a COUNTRYWIDE HOME LOAN
SERVICING, LP, and RECONTRUST
COMPANY, N.A.

Third Party Defendants

TO: ABOVE NAMED RESPONDENTS, BANK OF AMERICA, N.A. SUCCESSOR BY MERGER AND NAME CHANGE TO BAC HOME LOANS, INC. f/k/a COUNTRYWIDE HOME LOANS, INC., and BAC HOME LOAN SERVICING, L.P., f/k/a COUNTRYWIDE HOME LOAN SERVICING, LP, and RECONTRUST COMPANY, N.A., AND THE RESPONDENT'S ATTORNEYS, DERRICK J. O'NEILL, RCO LEGAL, P.C., 300 MAIN STREET, SUITE 150, BOISE, ID 83702, AND JESSICA DEBROISSE, BLOOM, MURR, ACCOMAZZO AND SILERS, P.C., 410 17TH STREET, SUITE 2400, DENVER, CO 80202, AND THE CLERK OF THE ABOVE ENTITLED COURT.


NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Ralph E. Sheets, Jr. and Debra Sheets, appeal against the above named Respondents to the Idaho Supreme Court from the Judgment entered in the above entitled action on the 6th day of March 2014, the Honorable Judge Bradly S. Ford presiding. Said Judgment was issued pursuant to the Court's Findings of Fact, Conclusions of Law and Order on Plaintiff's Motion for Summary Judgment dated April 29, 2013, and the Order on Proposed Judgment and Plan of Implementation dated December 6, 2013.
2. That the Appellants have a right to appeal to the Idaho Supreme Court, and the Judgment or order described in Paragraph 1. above is an appealable judgment under and pursuant to Rule 11(a) (1) IAR and I.C. § 13-201.
3. The Appellants are appealing the decision of the district court to:
 - a. Grant summary judgment in favor of Plaintiff and Third Party Defendants:
 - b. Deny Appellants' motions to strike certain affidavits filed in support of Plaintiff's Motion for Summary Judgment; and
 - c. Deny Appellants' Objection to Proposed Judgment and Plan of Implementation
4. No order sealing any portion of the record has issued in this case.
5. Reporters' transcripts have been requested and the estimated fees for the preparation of said transcripts have been paid.
6. That in addition to the documents already required to be included in the Clerk's record pursuant to Rule 28 IAR, Appellants request that the following additional documents be included in said record:

- a. Plaintiff's Motion for Summary Judgment on Defendant's Counterclaim and Third Party Complaint, together with all exhibits and supporting briefs filed on December 18, 2012.
 - b. Countrywide Home Loan Inc.'s Motion ofor Summary Judgment, together with all exhibits and supporting briefs filed on December 18, 2012.
 - c. Defendants' Responsive Brief in Opposition to Motion for Summary Judgment filed on February 12, 2013, together with all exhibits.
 - d. Affidavit of Ralph Sheets in Opposition to Summary Judgment filed on February 12, 2013.
 - e. Defendants' Motions to Strike Affidavits of Ronald Odeyemi and Shranthike Haworth filed on February 22, 2013.
 - f. Affidavit of Jonathan D. Hallin filed on February 19, 2013.
 - g. Defendants' Objection to Plaintiff's Notice of Plan Moving Forward and Proposed Judgment filed on July 3, 2013 and Defendants' Objection to Proposed Plan Moving Forward and Judgment filed on July 15, 2013.
 - h. Defendants' Response to Court's Request for Legal Authority filed on October 1, 2013.
7. I certify:
- a. That the estimated fees for reporter's transcripts have been paid.
 - b. That the estimated fee for preparation of the Clerk's record has been paid.
 - c. That the appellate filing fee has been paid.
 - c. That service has been made upon all parties required to be served pursuant to Rule 20 IAR.

DATED THIS 14th day of April, 2014.

JOHN CURTIS HUCKS
ATTORNEY AT LAW, P.C.

By 
John Curtis Hucks
Attorney for Defendants / Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above document has been served via U.S. Mail this 14th day of April 2014 upon:

Derrick J. O'Neill
RCO Legal
300 Main Street, Suite 150
Boise, ID 83702

Jessica M. Debrousse
Bloom, Murr, Accomazzo & Silers, P.C.
410 17th Street, Suite 2400
Denver, CO 80202-4402

Tucker and Associates, LLC
Attn: Ryan Crisp
PO Box 1625
Boise, ID 83701

Deborah Kreidler, Court Reporter
3rd District Court
1115 Albany Street
Caldwell, ID 83605


John Curtis Hucks

FILED

MAY 01 2014

1:00 pm

SHERRY WARD, CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

v.

RALPH E. SHEETS, JR. and DEBRA SHEETS; and DOES 1-10 as individuals with an interest in the property legally described as:
Township 22 North, Range 1 East, Boise Meridian, Adams County, Idaho
Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977
EXCEPTING THEREFROM the following parcel:
Commencing at a point on the south line of the NE1/4NE1/4 as intersected by the West line of U.S. Highway 95 (as established in 1953), the REAL POINT OF BEGINNING;
Thence Northeasterly along the West line of said Highway 550 feet;
Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;
Thence Southeasterly and parallel to the West line of said Highway 550 feet to the South line of the NE1/4NE1/4;
Thence along said South line 550 feet to the REAL POINT OF BEGINNING.
Which may commonly be known as: 5603 Highway 95, New Meadows, Idaho, 83654,

Defendants

CV-2010-2564

AMENDED JUDGMENT

AMENDED JUDGMENT

1

Ralph E. Sheets, Jr. and Debra Sheets,

Counterclaimants,

v.

Countrywide Home Loans, Inc.,

Counterdefendant,

and

Ralph E. Sheets, Jr. and Debra Sheets,

Third Party Plaintiffs,

v.

Bank of America, N.A successor by merger
and name change to BAC HOME LOANS,
INC. f/k/a COUNTRYWIDE HOME
LOANS, INC., and BAC HOME LOAN
SERVICING, L.P., f/k/a COUNTRYWIDE
HOME LOAN SERVICING, LP; and
RECONTRUST COMPANY, N.A.

Third Party Defendants.

IT IS HEREBY ORDERED ADJUDGED AND DECREED¹ that judgment is granted and rendered against the Sheets and in favor of Plaintiff and third party defendants Bank of America, N.A., successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., BAC Home Loan Servicing, L.P., f/k/a Countrywide Home Loan Servicing, LP, and Recontrust Company, N.A. (the "Third Party Defendants") on each of the counterclaims and third party claims contained in the Sheet's April 18, 2013 Amended Answer, Second Amended Counterclaims, Third Party Complaint and Demand

¹ This Amended Judgment is done pursuant to Order of the Idaho Supreme Court and in compliance with Idaho Rule of Civil Procedure 54(a).

for Jury Trial, and that said counterclaims and third party claims are DISMISSED, with prejudice.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that judgment is granted and rendered in favor of Plaintiff and against the Sheets on Plaintiff's Complaint, and that:

- (1) The deed of reconveyance recorded in the real property records of Adams County, Idaho on November 9, 2009 as Instrument No. 119343 (the "Deed of Reconveyance") is hereby RESCINDED;
- (2) The Deed of Reconveyance is VOID and of no effect;
- (3) Plaintiff and the Sheets shall continue to comply with their respective rights and obligations under the promissory note (the "Note") and deed of trust (the "Deed of Trust") executed by Ralph E. Sheets, Jr. on or about December 21, 2004;
- (4) The Deed of Trust, which is recorded in the real property records of Adams County, Idaho on December 28, 2004 as Instrument No. 107860, and which encumbers real property legally described as:

Township 22 North, Range 1 East, Boise Meridian, Adams County, Idaho

Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977

EXCEPTING THEREFROM the following parcel:

Commencing at a point on the south line of the NE1/4NE1/4 as intersected by the West line of U.S. Highway 95 (as established in 1953), the REAL POINT OF BEGINNING;

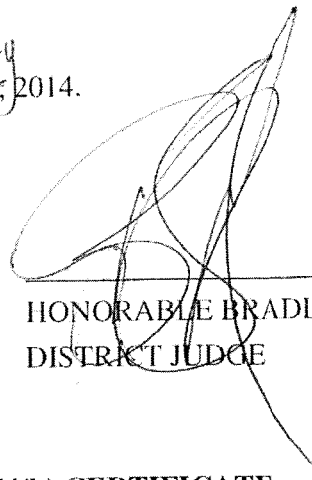
Thence Northeasterly along the West line of said Highway 550 feet;

Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of said Highway
550 feet to the South line of the NE1/4NE1/4;
Thence along said South line 550 feet to the REAL POINT OF
BEGINNING.

together with all assignments thereof, is hereby REINSTATED and is in full
force and effect as and from the date originally executed.

DATED this 1ST day of ~~APR~~ MAY, 2014.

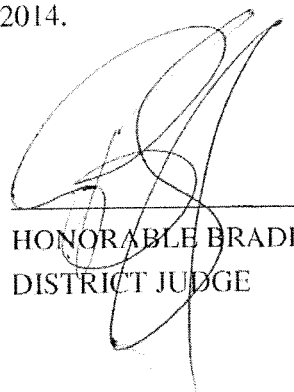


HONORABLE BRADLY S. FORD
DISTRICT JUDGE

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby
CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that
there is no just reason for delay of the entry of a final judgment and that the court has and
does hereby direct that the above judgment or order shall be a final judgment upon which
execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 1 day of ~~APR~~ MAY, 2014.



HONORABLE BRADLY S. FORD
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of ~~April~~^{May} 2014, I caused a true and correct copy of the AMENDED JUDGMENT to be served upon the following listed below:

John Curtis
Hucks Attorney at
Law PO Box 737
New Meadows, ID 83654
Attorney for Ralph and Debra Sheets

Derrick O'Neill
RCO Legal, P.C.
300 Main Street, Suite 150
Boise, ID 83702
Counsel for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company

FILED

MAY 14 2014

1:00 pm

SHERRY WARD, CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff,

v.

RALPH E. SHEETS, JR. and DEBRA SHEETS; and DOES 1-10 as individuals with an interest in the property legally described as:

Township 22 North, Range 1 East, Boise Meridian, Adams County, Idaho
Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977
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Thence Northeasterly along the West line of said Highway 550 feet;

Thence West and parallel to the South line of the NE1/4NE1/4 550 feet;

Thence Southeasterly and parallel to the West line of said Highway 550 feet to the South line of the NE1/4NE1/4;

Thence along said South line 550 feet to the REAL POINT OF BEGINNING.

Which may commonly be known as: 5603 Highway 95, New Meadows, Idaho, 83654,

Defendants

CV-2010-2564

SECOND AMENDED
JUDGMENT

AMENDED JUDGMENT

1

536

Ralph E. Sheets, Jr. and Debra Sheets,

Counterclaimants,

v.

Countrywide Home Loans, Inc.,

Counterdefendant,

and

Ralph E. Sheets, Jr. and Debra Sheets,

Third Party Plaintiffs,

v.

Bank of America, N.A successor by merger
and name change to BAC HOME LOANS,
INC. f/k/a COUNTRYWIDE HOME
LOANS, INC., and BAC HOME LOAN
SERVICING, L.P., f/k/a COUNTRYWIDE
HOME LOAN SERVICING, LP; and
RECONTRUST COMPANY, N.A.

Third Party Defendants.

IT IS HEREBY ORDERED ADJUDGED AND DECREED¹ that judgment is granted and rendered against the Sheets and in favor of Plaintiff and third party defendants Bank of America, N.A., successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., BAC Home Loan Servicing, L.P., f/k/a Countrywide Home Loan Servicing, LP, and Recontrust Company, N.A. (the "Third Party Defendants") on each of the counterclaims and third party claims, and that said counterclaims and third party claims are DISMISSED, with prejudice.

¹ This Amended Judgment is done pursuant to Order of the Idaho Supreme Court and in compliance with Idaho Rule of Civil Procedure 54(a).

IT IS FURTHER ORDERED ADJUDGED AND DECREED that judgment is granted and rendered in favor of Plaintiff and against the Sheets, and that:

- (1) The deed of reconveyance recorded in the real property records of Adams County, Idaho on November 9, 2009 as Instrument No. 119343 (the "Deed of Reconveyance") is hereby RESCINDED;
- (2) The Deed of Reconveyance is VOID and of no effect;
- (3) Plaintiff and the Sheets shall continue to comply with their respective rights and obligations under the promissory note (the "Note") and deed of trust (the "Deed of Trust") executed by Ralph E. Sheets, Jr. on or about December 21, 2004;
- (4) The Deed of Trust, which is recorded in the real property records of Adams County, Idaho on December 28, 2004 as Instrument No. 107860, and which encumbers real property legally described as:

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Section 16: A parcel of land in the NE1/4NE1/4 lying Westerly of the Westerly line of the right-of-way of U.S. Highway 95, as it existed in 1977

EXCEPTING THEREFROM the following parcel:

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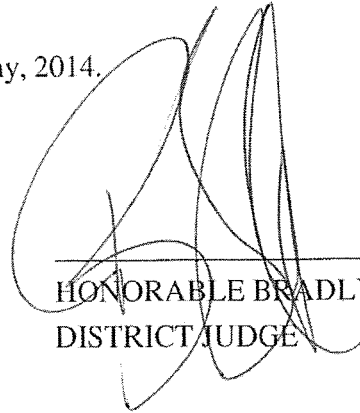
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Thence Southeasterly and parallel to the West line of said Highway
550 feet to the South line of the NE1/4NE1/4;
Thence along said South line 550 feet to the REAL POINT OF
BEGINNING.

together with all assignments thereof, is hereby REINSTATED and is in full
force and effect as and from the date originally executed.

DATED this 14th day of May, 2014.

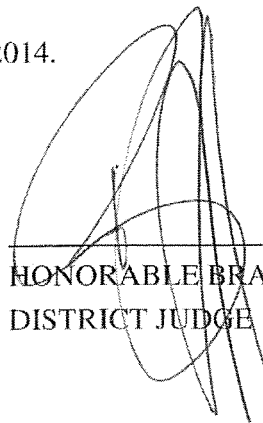


HONORABLE BRADLY S. FORD
DISTRICT JUDGE

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby
CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that
there is no just reason for delay of the entry of a final judgment and that the court has and
does hereby direct that the above judgment or order shall be a final judgment upon which
execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 14th day of May, 2014.



HONORABLE BRADLY S. FORD
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of ~~April~~^{May} 2014, I caused a true and correct copy of the AMENDED JUDGMENT to be served upon the following listed below:

John Curtis
Hucks Attorney at
Law PO Box 737
New Meadows, ID 83654
Attorney for Ralph and Debra Sheets

Derrick O'Neill
RCO Legal, P.C.
300 Main Street, Suite 150
Boise, ID 83702
Counsel for Countrywide Home Loans, Inc., Bank of America, N.A., BAC Home Loan Servicing, L.P. and ReconTrust Company

JOHN CURTIS HUCKS
ATTORNEY AT LAW, P.C.
P.O. Box 737
New Meadows, ID 83654
Tel: (208) 347-4128; Facsimile: (208) 347-4128
Email: huckslaw@yahoo.com
ISB No. 6473
Attorney for Defendants

FILED

MAY 16 2014

4:45 pm

SHERRY WARD, CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff / Respondent

vs.

RALPH E. SHEETS, JR. and DEBRA SHEETS;
and DOES 1-10 as individuals with an interest in
the property legally described as:

Township 22 North, Range 1 East, Boise
Meridian, Adams County, Idaho
Section 16: A parcel of land in the NE1/4NE1/4
lying Westerly of the Westerly line of the right-
of-way of U.S. Highway 95, as it existed in 1977
EXCEPTING THEREFROM the following
parcel:

Commencing at a point on the south line of the
NE1/4NE1/4 as intersected by the West line of
U.S. Highway 95 (as established in 1953), the
REAL POINT OF BEGINNING;
Thence Northeasterly along the West line of said
Highway 550 feet;
Thence West and parallel to the South line of the
NE1/4NE1/4 550 feet;
Thence Southeasterly and parallel to the West
line of said Highway 550 feet to the South line of
the NE1/4NE1/4;

Thence along said South line 550 feet to the
REAL POINT OF BEGINNING.
Which may commonly be known as: 5603
Highway 95, New Meadows, Idaho, 83654,

Defendants / Appellants

Case No. CV-2010-2564

AMENDED
NOTICE OF APPEAL

Ralph E. Sheets, Jr. and Debra Sheets,

Counterclaimants,

vs.

Countrywide Home Loans, Inc.,

Counterdefendant,

and

Ralph E. Sheets, Jr. and Debra Sheets,

Third Party Plaintiffs,

vs.

Bank of America, N.A. successor by merger
and name change to BAC HOME LOANS,
INC. f/k/a COUNTRYWIDE HOME LOANS,
INC., and BAC HOME LOAN SERVICING,
L.P., f/k/a COUNTRYWIDE HOME LOAN
SERVICING, LP, and RECONTRUST
COMPANY, N.A.

Third Party Defendants

TO: ABOVE NAMED RESPONDENTS, BANK OF AMERICA, N.A. SUCCESSOR
BY MERGER AND NAME CHANGE TO BAC HOME LOANS, INC. f/k/a COUNTRYWIDE
HOME LOANS, INC., and BAC HOME LOAN SERVICING, L.P., f/k/a COUNTRYWIDE
HOME LOAN SERVICING, LP, and RECONTRUST COMPANY, N.A., AND THE
RESPONDENT'S ATTORNEYS, DERRICK J. O'NEILL, RCO LEGAL, P.C., 300 MAIN
STREET, SUITE 150, BOISE, ID 83702, AND JESSICA DEBROISSE, BLOOM, MURR,
ACCOMAZZO AND SILERS, P.C., 410 17TH STREET, SUITE 2400, DENVER, CO 80202,
AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Ralph E. Sheets, Jr. and Debra Sheets, appeal against the above named Respondents to the Idaho Supreme Court from the Amended Judgment entered in the above entitled action on the ~~6th day of March~~ 2014, 1st day of May 2014, the Honorable Judge Bradley S. Ford presiding. Said Judgment was issued pursuant to the ~~Court's Findings of Fact, Conclusions of Law and Order on Plaintiff's Motion for Summary Judgment dated April 29, 2013, and the Order on Proposed Judgment and Plan of Implementation dated December 6, 2013.~~
2. That the Appellants have a right to appeal to the Idaho Supreme Court, and the Judgment or order described in Paragraph 1. above is an appealable final judgment under and pursuant to Rule 11(a) (1) IAR and I.C. § 13-201.
3. The Appellants are appealing the decision of the district court to:
 - a. Grant summary judgment in favor of Plaintiff and Third Party Defendants;
 - b. Deny Appellants' motions to strike certain affidavits filed in support of Plaintiff's Motion for Summary Judgment; and
 - c. Deny Appellants' Objection to Proposed Judgment and Plan of Implementation
4. No order sealing any portion of the record has issued in this case.
5. The following Reporters' transcripts have been requested and the estimated fees for the preparation of said transcripts have been paid to the Clerk of Court:
 - a. Standard Transcript (in compressed format) of hearing on Plaintiff's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment on

Defendant's Counterclaims and Third Party Complaint, said hearing held on March 1, 2013, transcript prepared by Tucker and Associates, LLC.

b. Standard Transcript (in compressed format) of hearing on Defendants' Objection to Plaintiff's Notice Regarding Plan Moving Forward and Proposed Final Judgment, said hearing held on September 6, 2013, transcript prepared by Deborah Kreidler.

6. That in addition to the documents already required to be included in the Clerk's record pursuant to Rule 28 IAR, Appellants request that the following additional documents be included in said record:

- a. Plaintiff's Motion for Summary Judgment on Defendant's Counterclaim and Third Party Complaint, together with all exhibits and supporting briefs filed on December 18, 2012.
- b. Countrywide Home Loan Inc.'s Motion for Summary Judgment, together with all exhibits and supporting briefs filed on December 18, 2012.
- c. Defendants' Responsive Brief in Opposition to Motion for Summary Judgment filed on February 12, 2013, together with all exhibits.
- d. Affidavit of Ralph Sheets in Opposition to Summary Judgment filed on February 12, 2013.
- e. Defendants' Motions to Strike Affidavits of Ronald Odeyemi and Shranthike Haworth filed on February 22, 2013.
- f. Affidavit of Jonathan D. Hallin filed on February 19, 2013.
- g. Defendants' Objection to Plaintiff's Notice of Plan Moving Forward and

Proposed Judgment filed on July 3, 2013 and Defendants' Objection to Proposed Plan Moving Forward and Judgment filed on July 15, 2013.

h. Defendants' Response to Court's Request for Legal Authority filed on October 1, 2013.

7. I certify:

- a. That the estimated fees for reporter's transcripts have been paid.
- b. That the estimated fee for preparation of the Clerk's record has been paid.
- c. That the appellate filing fee has been paid.
- c. That service has been made upon all parties required to be served pursuant to Rule 20 IAR.

DATED THIS ~~27~~ day of April, May 2014.

JOHN CURTIS HUCKS
ATTORNEY AT LAW, P.C.

By 

John Curtis Hucks

Attorney for Defendants / Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above document has been served via U.S. Mail this 12th day of ~~April~~ May 2014 upon:

Derrick J. O'Neill
RCO Legal
300 Main Street, Suite 150
Boise, ID 83702

Jessica M. Debrousse
Bloom, Murr, Accomazzo & Silers, P.C.
410 17th Street, Suite 2400
Denver, CO 80202-4402

Tucker and Associates, LLC
Attn: Ryan Crisp
PO Box 1625
Boise, ID 83701

Deborah Kreidler, Court Reporter
3rd District Court
1115 Albany Street
Caldwell, ID 83605


John Curtis Hucks

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,
Plaintiff/Respondent,

vs

RALPH E. SHEETS, JR. and DEBRA
SHEETS; and DOES 1-10 as individuals
with an interest in the property described as:

Township 22 North, Range 1 East, Boise
Meridian, Adams County, Idaho

Section 16: A parcel of land in the
NE1/4NE1/4 lying Westerly of the Westerly
line of the right-of-way of U.S. Highway 95
as it existed in 1977 EXCEPTING
THEREFROM the following parcel:

Commencing at a point on the south line of
the NE1/4NE1/4 as intersected by the West
line of U.S. Highway 95(as established in
1953), the REAL POINT OF BEGINNING;
Thence Northeasterly along the West line of
said Highway 550 feet;

Thence West and parallel to the South line of
the NE1/4NE1/4 550 fee;

Thence Southeasterly and parallel to the
West line of said Highway 550 feet to the
South line of the NE1/4NE1/4;

Thence along said South line 550 feet to the
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603
Highway 95, New Meadows, Idaho, 83654,
Defendants/Appellants.

Ralph E. Sheets, Jr. and Debra Sheets,
Counterclaimants,

Vs.

Countrywide Home Loans, Inc.,
Counterdefendant,

And

Ralph E. Sheets, Jr. and Debra Sheets,
Third Party Plaintiffs,

Vs.

Bank of America, N.A. successor by merger

SUPREME COURT #42063-2014

CLERK'S CERTIFICATE

CLERK'S CERTIFICATE

547

and name change to BAC HOME LOANS, INC., f/k/a COUNTRYWIDE HOME LOANS, INC., and BAC HOME LOAN SERVICING, L.P., f/k/a COUNTRYWIDE HOME LOAN SERVICING, LP, and RECONTRUST COMPANY, N.A.

Third Party Defendants

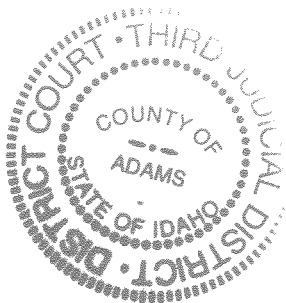
I, Sherry Ward, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for Adams County, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction as, and is a true, correct and complete Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that there were no exhibits which were marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Council, Idaho, this 18th day of June, 2014.

Sherry Ward
Clerk of the District Court

By [Signature]
Deputy Clerk



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

COUNTRYWIDE HOME LOANS, INC.,
Plaintiff/Respondent,

vs

RALPH E. SHEETS, JR. and DEBRA
SHEETS; and DOES 1-10 as individuals with
an interest in the property described as:

Township 22 North, Range 1 East, Boise
Meridian, Adams County, Idaho

Section 16: A parcel of land in the
NE1/4NE1/4 lying Westerly of the Westerly
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said Highway 550 feet;

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Thence Southeasterly and parallel to the West
line of said Highway 550 feet to the South line
of the NE1/4NE1/4;

Thence along said South line 550 feet to the
REAL POINT OF BEGINNING.

Which may commonly be known as: 5603
Highway 95, New Meadows, Idaho, 83654,
Defendants/Appellants.

Ralph E. Sheets, Jr. and Debra Sheets,
Counterclaimants,

Vs.

Countrywide Home Loans, Inc.,
Counterdefendant,

And

Ralph E. Sheets, Jr. and Debra Sheets,
Third Party Plaintiffs,

SUPREME COURT #42063-2014

CERTIFICATE OF SERVICE

Vs.

Bank of America, N.A. successor by merger and name change to BAC HOME LOANS, INC., f/k/a COUNTRYWIDE HOME LOANS, INC., and BAC HOME LOAN SERVICING, L.P., f/k/a COUNTRYWIDE HOME LOAN SERVICING, LP, and RECONTRUST COMPANY, N.A.

Third Party Defendants

I, Sherry Ward, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Adams, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the

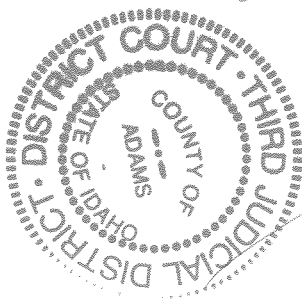
REPORTER'S TRANSCRIPT AND CLERK'S RECORD

TO each of the Attorneys of Record in this cause as follows:

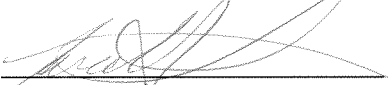
JOHN CURTIS HUCKS
Attorney at Law, P.C.
PO Box 737
New Meadows, ID. 83654
ISB#6473

DERRICK J. O'NEILL
RCO Legal, P.C
300 Main Street, Suite 150
Boise, ID 83702
ISB#4021

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 22nd day of July, 2014.



Sherry Ward
Clerk of the District Court


By Deputy Clerk