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3-16-2018

### Losee v. Deutsche Bank National Trust Company Clerk's Record Dckt. 45721

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Jerry Losee, Jocarol Losee vs. New Century Mortgage Corporation, Deutsche Bank National Trust Company

Date	Code	User		Judge
8/16/2015	LOCT	TAMILYN	cr	Stephen S Dunn
8/17/2015	NCOC	TAMILYN	New Case Filed-Other Claims	Stephen S Dunn
	COMP	TAMILYN	Complaint Filed	Stephen S Dunn
	SMIS	TAMILYN	Summons Issued	Stephen S Dunn
		TAMILYN	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Jerry Losee Receipt number: 0026441 Dated: 8/17/2015 Amount: \$221.00 (Credit card) For:	Stephen S Dunn
		TAMILYN	Filing: Technology Cost - CC Paid by: Jerry Losee Receipt number: 0026441 Dated: 8/17/2015 Amount: \$3.00 (Credit card) For:	Stephen S Dunn
		CAMILLE	Plaintiffs original Petition Breach of contract, Slander of Title for Declaratory Judgment and Motion for Temporary restraining order and application for temporary injunction: pro se	Stephen S Dunn
8/20/2015	ORDR	KARLA	Order Denying Plaintiff's Motion for Temporary Restraining Order and Application for Temporary Injunction; /s J Dunn 08/18/15	Stephen S Dunn
9/14/2015	MOTN	KARLA	Plaintiff's Motion for Temporary Restraining Order and Application for Temporary Injunction (Plaintiff ProSe)	Stephen S Dunn
		KARLA	Plaintiff's Amended Breach of Contract of Title, Wrongful Foreclosure and Declatory Judgment (Plaintiff ProSe)	Stephen S Dunn
9/16/2015	ORDR	KARLA	Order Denying Plaintiff's Motion for Temporary Restraining Order and Application for Temporary Injunction; /s J Dunn 09/15/15	Stephen S Dunn
		CAMILLE	Plaintiffs Motion for Temporary restraining order, and for an order to Show Cause RE: injunctive relief: aty Jerry Losee and JoCarol Losee, pro se	Stephen S Dunn
	MOTN	KARLA	Plaintiff's Motion for Temproary Restraining Order and for an Order to Show Case Re; Injunction Relief (Plaintiff ProSe)	Stephen S Dunn
9/17/2015	ORDR	KARLA	Order on Plaintiff's Motion for TRO and for Order to Shaw Cause in Re; Injunctive Relief; set hearing; Plaitniff shall post bond \$1000; /s J Dunn 09/17/15	Stephen S Dunn
	HRSC	KARLA	Hearing Scheduled (Order to Show Cause 09/28/2015 09:30 AM)	Stephen S Dunn
	BNDC	MARLEA	Bond Posted - Credit card (Receipt 29724 Dated 9/17/2015 for 1000.00)	Stephen S Dunn
9/21/2015		CAMILLE	Notice of appearance; aty Lisa McMahon -Myhran	Stephen S Dunn
		CAMILLE	Proof of service - s/ Carissa Dahlgren	Stephen S Dunn

Jerry Losee, Jocarol Losee vs. New Century Mortgage Corporation, Deutsche Bank National Trust Company

Date	Code	User	Judge
9/21/2015	ATTR	CAMILLE	Defendant: New Century Mortgage Corporation Attorney Retained Lisa MCMahon-Myhran
9/25/2015		MARLEA	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: robinson tait Receipt number: 0030622 Dated: 9/25/2015 Amount: \$136.00 (Check) For: Deutsche Bank National Trust Company (defendant)
		CAMILLE	Defendant Deutsche Bank National trust companys opposition to injunctive relief; aty Jennifer Tait
		CAMILLE	Request for Judicial notice: aty Jennifer Tait
		CAMILLE	Proof of service - (Defendant Deutsche Bank National Trust companys opposition to injunction relief, Request for Judicial notice, and Proof of service) aty
9/30/2015	DCHH	KARLA	Hearing result for Order to Show Cause scheduled on 09/28/2015 02:00 PM: District Court Hearing Held Court Reporter: Sheri Nothelphim Number of Transcript Pages for this hearing estimated: less 100
		CAMILLE	Proof of service - srvd on Deutsche Bank National Trust Company, (thru Suzanne Patten, on 9-14-2015)
		CAMILLE	Affidavit of service - srvd on New Century Mortgage Corporation on 9-16-2015
10/5/2015	HRSC	KARLA	Hearing Scheduled (Hearing Scheduled 11/02/2015 02:30 PM)
	MEOR	KARLA	Minute Entry and Order; Temporary Restraining Order continued; set further proceedings; s/ J Dunn 10/05/15
10/30/2015	CONT	KARLA	Hearing result for Hearing Scheduled scheduled on 11/02/2015 02:30 PM: Continued
	MOTN	KARLA	Motion for Continuance (Plaintiff prose)
11/2/2015		CAMILLE	Supplemental request for judicial notice; aty Craig Peterson
		CAMILLE	Proof of service - s/ Isabelle Evans
		CAMILLE	Defendant deutsche Bank National Trust Companys Supplemental opposition to injunctive relief: aty Craig Petersen
11/23/2015		CAMILLE	Amended notice of filing; aty Jerry Losee, pro se and Jocarol Losee, pro se
12/1/2015	ORDR	KARLA	Order Denying Plaintiff's Motion for Default /s J Dunn 12/01/15
12/7/2015		CAMILLE	Amended Summons issued
12/21/2015		CAMILLE	Amended Summons

Jerry Losee, Jocarol Losee vs. New Century Mortgage Corporation, Deutsche Bank National Trust Company

Date	Code	User	Judge
1/29/2016		KARLA	Proof of Service Stephen S Dunn
7/11/2016	HRSC	KARLA	Hearing Scheduled (Status Conference 08/01/2016 02:00 PM) Stephen S Dunn
7/22/2016	MOTN	KARLA	Motion and Affidavit to Continue (Plaintiff) Stephen S Dunn
7/27/2016		TAMILYN	Deutsche Bank National Trust Company's Opposition to Plaintiff's Motion to Continue Hearing-thru atty Jennifer Tait Stephen S Dunn
		TAMILYN	Declaration of Mailing-motion to continue hearing sent to Jerry Losee by atty Jennifer Tait Stephen S Dunn
8/3/2016	HRHD	KARLA	Hearing result for Status Conference scheduled on 08/01/2016 02:00 PM: Hearing Held Stephen S Dunn
3/13/2017	MOTN	KARLA	Defendant Deutsche Bank National Trust Company's Motion for Summary Judgment (Peterson for Def) Stephen S Dunn
	MEMO	KARLA	Defendant Deutsche Bank National Trust Company's Memorandum in Support of Motion for Summary Judgment; (Petersen for Def) Stephen S Dunn
	BRFS	KARLA	Defendant Deutsche Bank National Trust Company's Supplemental Briefing in Support of Motion for Summary Judgment (Petersen for Def) Stephen S Dunn
		KARLA	Proof of Service (Petersen for Def) Stephen S Dunn
		KARLA	Defendant Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital 1 Inc. Trust 2003-5, Mortgage Pass-Throug Certificates, Series 2003-NC5's Request for Judicial Notice in Support of Motion for Summary Judgment (Petersen for Def) Stephen S Dunn
3/31/2017		TAMILYN	Opposition to Defendant, Deutsche Bank National Trust Company's Motion for Summary Judgment-by Jerry Losee, pro se and JoCarol Losee, pro se Stephen S Dunn
4/6/2017	MOTN	TAMILYN	Motion for Extension of Time to File Affidavit of Jacarol Losee in Support of Plaintiffs Opposition to Defendant, Deutsche Bank National Trust Company's Motion for Summary Judgment-by Jery Losee and JoCarol Losee, pro se Stephen S Dunn
	AFFD	TAMILYN	Affidavit of JoCarol Losee in Support of Plaintiffs Opposition to Defendant, Deutsche Bank National Trust Company's Motion for Summary Judgment Stephen S Dunn
4/10/2017		TAMILYN	Reply of Defendant Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2003-5, Mortgage Pass-Through Certificates Series 2003-NC5 on Motion for Summary Judgment and to Expunge the lis Pendens-thru atty Craig Peterson Stephen S Dunn

Jerry Losee, Jocarol Losee vs. New Century Mortgage Corporation, Deutsche Bank National Trust Company

Date	Code	User	Judge
4/10/2017		TAMILYN	Proof of Service-by atty Craig Peterson Stephen S Dunn
4/11/2017	HRSC	KARLA	Hearing Scheduled (Motion for Summary Judgment 04/17/2017 02:00 PM) Stephen S Dunn
	NOTC	TAMILYN	Notice of Filing for Judicial Review-by Jerry Losee, pro se Stephen S Dunn
4/19/2017	DCHH	KARLA	Hearing result for Motion for Summary Judgment scheduled on 04/17/2017 02:00 PM: District Court Hearing Held Court Reporter: Sheri Nothelphim Number of Transcript Pages for this hearing estimated: less 100 Stephen S Dunn
4/21/2017	HRSC	KARLA	Hearing Scheduled (Status Conference 06/12/2017 02:00 PM) Stephen S Dunn
5/12/2017	MEOR	KARLA	Minute Entry and Order; Plaintiffs to submit load modification within 60 days; set tel status conference; /s J Dunn 5/12/17 Stephen S Dunn
6/9/2017	NOTC	KARLA	Notice of Filing (Losee) Stephen S Dunn
6/12/2017	DCHH	KARLA	Hearing result for Status Conference scheduled on 06/12/2017 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: less 100 Stephen S Dunn
6/14/2017	NOTC	TAMILYN	Notice of Filing for Judicial Review-by Jerry Losee, pro se Stephen S Dunn
6/16/2017	MEOR	KARLA	Minute Entry and Order; within 14 days def to submit written response regarding status of Plaintiff's loan modification application; /s j Dunn 06/16/17 Stephen S Dunn
6/27/2017		TAMILYN	Declaration of Nicolas Daluiso Re Response to Loan Modification and Settlement Offer Stephen S Dunn
		TAMILYN	Proof of Service-by Isabelle Evans Stephen S Dunn
7/6/2017	HRSC	KARLA	Hearing Scheduled (Status Conference 08/07/2017 02:00 PM) Stephen S Dunn
8/3/2017	CONT	KARLA	Continued (Status Conference 08/14/2017 02:00 PM) Stephen S Dunn
8/14/2017	DCHH	KARLA	Hearing result for Status Conference scheduled on 08/14/2017 02:00 PM: District Court Hearing Held Court Reporter: Sheri Nothelphim Number of Transcript Pages for this hearing estimated: less 100 Stephen S Dunn
8/25/2017	DEOP	KARLA	Memorandum Decision Granting Defendant's Deutsche Bank National Trust Company's Motion for Summary Judgment /s J Dunn 08/25/17 Stephen S Dunn
9/6/2017	MOTN	TAMILYN	Motion for Reconsideration-by plaintiffs, pro se Stephen S Dunn

Jerry Losee, Jocarol Losee vs. New Century Mortgage Corporation, Deutsche Bank National Trust Company

Date	Code	User	Judge
9/6/2017	MOTN	KARLA	Plaintiff's Motion for Reconsideration (Plaintiff ProSe) Stephen S Dunn
10/19/2017	HRSC	KARLA	Notice of Hearing-Hearing Scheduled (Motion 11/13/2017 02:00 PM) Plaintiff Motion to Reconsider-by Jerry Losee, pro se Stephen S Dunn
10/30/2017	MOTN	KARLA	Motion to Appear by Telephone (Peterson for Def) Stephen S Dunn
	MOTN	KARLA	Motion for Judgment of Defendant (Peterson for Def) Stephen S Dunn
		KARLA	Declaration of Mailing (Peterson for Def) Stephen S Dunn
11/3/2017	ORDR	KARLA	Order Granting Motion to Appear by Telephone /s J Dunn 11/02/17 Stephen S Dunn
11/9/2017	RESP	TAMILYN	Defendant Deutsche Bank National Trust Company's Response to Plaintiffs' Motion for Reconsideration-thru atty Crait Petersen Stephen S Dunn
		KARLA	Declaration of Mailing (Peterson for Def) Stephen S Dunn
11/13/2017	DCHH	KARLA	Hearing result for Motion scheduled on 11/13/2017 02:00 PM: District Court Hearing Held Court Reporter: Sheri Nothelphim Number of Transcript Pages for this hearing estimated: less 100 Plaintiff Motion to Reconsider Stephen S Dunn
11/15/2017	AFFD	TAMILYN	Motion to Show Cause Affidavit-by Jerry Losee and JoCarol Losee, pro se Stephen S Dunn
11/22/2017	ORDR	KARLA	Order Denying Plaintiff's Motion to Reconsider /s J Dunn 11/22/17 Stephen S Dunn
	JDMT	KARLA	Judgment for Defendant /s J Dunn 11/22/17 Stephen S Dunn
	CSTS	KARLA	Case Status Changed: Closed pending clerk action Stephen S Dunn
12/5/2017	ORDR	KARLA	Order Re; Plaintiff's Motion to Show Cause and Affidavit; Denied; /s J Dunn 12/05/17 Stephen S Dunn
12/29/2017		CAMILLE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Jerry & Jocarol Losee Receipt number: 0038905 Dated: 12/29/2017 Amount: \$129.00 (Check) For: Losee, Jerry (plaintiff) and Losee, Jocarol (plaintiff) Stephen S Dunn
	APSC	DCANO	Appealed To The Supreme Court Stephen S Dunn
	NOTC	DCANO	Notice of Appeal: Jerry Losee & JoCarol Losee, Pro se Stephen S Dunn
1/9/2018		DCANO	CLERK'S CERTIFICATE OF APPEAL: Signed and Mailed to SC on 1-9-18. Stephen S Dunn
		DCANO	Deposited \$100.00 for Clerk's Record on 1-9-18. Stephen S Dunn

Jerry Losee, Jocarol Losee vs. New Century Mortgage Corporation, Deutsche Bank National Trust Company

Date	Code	User	Judge
2/13/2018	MISC	DCANO	IDAHO SUPREME COURT; Received Notice of Appeal. No Transcript Requested. Due in Supreme Court on 4-13-18, 5 weeks prior to Counsel on 3-9-18.
2/14/2018	JDMT	KARLA	Amended Judgment /s J Dunn 02/12/18
3/12/2018	MISC	DCANO	CLERK'S RECORD received in Court Records on 3-12-18

Jerry Losee & JoCarol Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2015 AUG 17 PM 2:21  
BY                       
DEPUTY CLERK

STEPHEN S. DUNN

**SIXTH DISTRICT COURT OF IDAHO  
IN AND FOR THE COUNTY OF BANNOCK**

JERRY LOSEE AND JOCAROL LOSEE,  
Plaintiffs,

VS.

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE  
BANK NATIONAL  
TRUST COMPANY

, et all

Defendants.

Case No.: CV-2015-2863-α

AA \$ 221.00

PLAINTIFF'S ORIGINAL PETITION  
BREACH OF CONTRACT, SLANDER  
OF TITLE FOR DECLARATORY  
JUDGMENT  
and MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
APPLICATION FOR TEMPORARY  
INJUNCTION

---

COMES NOW, Jerry Losee & JoCarol Losee, Pro se (hereinafter "Plaintiffs"), and file this Original Petition for Breach of Contract, Slander of Title, Declaratory Judgment and Motion for Temporary Restraining Order and Application for Temporary Injunction. In support of their petition, Plaintiffs will show the Court as follows:

**SUMMARY OF THE CASE**

1. Defendants are attempting to foreclose on Plaintiff's property with insufficient showing of authority to do so. Although Trustees are able to foreclose, that ability derives from a principal/agency relationship with the owner of the indebtedness.

2. Defendants have committed Slander of Title against the Plaintiffs causing them injury and harm.

### **PARTIES**

3. Plaintiffs are Jerry Losee and JoCarol Losee, who are residents of Bannock County and are the record title holders to the real property located at 9253 Frandsen Road, Lava Hot Springs, Idaho.

4. Defendant New Century Mortgage Corporation, (hereinafter Defendant "NCMC") is a California entity formerly doing business in the State of Idaho. Defendant NCMC withdrew its registration with the Idaho Secretary of State on or about October 31, 2007. Defendant NCMC may be served through C T Corporation System 921 S. Orchard St., Ste. G, Boise, ID 83705.

5. Deutsch Bank National Trust Company as Trustee for the Morgan Stanley ABS Capital I Inc. 2003-NC5, (hereinafter "Defendant DBNTC") is a Delaware entity not registered with the Idaho Secretary of State. Defendant DBNTC may be served at Deutsche Bank Trust Company, Legal Department, 1761 E Saint Andrew Pl., Santa Ana, CA 92705-4934

### **JURISDICTION AND VENUE**

6. Venue is proper in Bannock County, as the actions complained of occurred in Bannock County. Jurisdiction is conveyed upon this court by the Idaho Statute 5-401.

### **PROPERTY**

7. The Real Property description which is the subject of this suit is a follows:

**LOT 9, BLOCK 1, MT JUNIPER RANCHETTES, BANNOCK COUNTY, IDAHO,  
AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF. Parcel ID  
Number RRMJR00D90D**

Which currently has the address of 9253 Frandsen Road, Lava Hot Springs, ID 83246.

### **BACKGROUND FACTS**

8. Jerry Losee and JoCarol Losee obtained the services of a private investigator, Joseph R. Esquivel, Jr., in order to obtain the facts which are the basis of issues presented in this case.(Exhibit A)
9. On February 6, 2003, Plaintiffs and Defendant NCMC entered into a contract for real property, called Deed of Trust which was accompanied by a Note signed by Plaintiffs. (Exhibit B)
10. The contract between the parties is specific as to the duties of each party.
11. Plaintiffs signed the note as the accommodation party for Defendant NCMC the accommodated party Exhibit C).
12. Shortly after Plaintiffs signed the contract, Defendant NCMC sold its interest in the Deed of Trust and Note and immediately was in violation of the contract. Defendant NCMC did not comply with the requirements of the Deed of Trust, Covenant 23.
13. NCMC filed document purported to be an "Assignment of Deed of Trust", dated February 20, 2003 in the Official Records of the Bannock County Clerk-Recorder's Office on April 7, 2003, 2011 as ins# 888, purporting to assign to Deutsch Bank National Trust Company all right, title and interest in the note and the Deed of Trust. (Exhibit D)

### **CAUSES OF ACTION**

#### **BREACH OF CONTRACT**

14. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.
15. After signing the Deed of Trust and Note on February 6, 2003, Plaintiffs did all, or substantially all of the significant things that the contract required him to do. All conditions

required by the contract on the part of the Plaintiffs had occurred. At some point, unknown to Plaintiffs, Defendant NCMC, for payment rendered, divested itself of the Note and Deed of Trust but did not comply with the covenants of the Deed of Trust, specifically, Covenant 23.

16. As a result of its failure to comply with the contract, Plaintiff was harmed. The Pooling and Servicing Agreement for the Specialty Underwriting & Residential Finance Trust, Series 2007-BC2 manual Section, specifically Article II section 2.01 “ The Depositor, concurrently with the execution and delivery hereof, hereby sells, transfers, assigns, sets over and conveys to the Trustee for the benefit of the Cwertificateholders,”. Such instrument remained within the collateral file and was never submitted for recordation to perfect defendants’ rights to real property. It may be true that defendants have a right to the paper instrument(s) being the note and the unrecorded assignment as personal property, but such rights do not extend to real property without compliance to statutory law. Plaintiff is NOT attempting to seek enforcement of a third party contract but is merely showing beyond any reasonable doubt that such withholding of evidence that prove defendants were without rights to make a claim to real property in withholding such facts have potentially committed a grave error breach of contract.. Such instrument remained within the collateral file and was never submitted for recordation to perfect defendants’ rights to real property, if the document exists. (Exhibit E).

#### **SLANDER OF TITLE**

17. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

18. Had the Trustee for Defendant NCMC reconveyed the Property and surrendered the Security Instrument to the person or persons legally entitled to it upon the payment of all sums secured by Defendant NCMC, rather than breach the contract, Plaintiffs would have a clear and

marketable title. Instead, the chain of title has not been disclosed nor recorded, and Plaintiffs have suffered damage as a result of the incomplete and slanderous title.

19. Shortly after Plaintiffs signed the contract, Defendant NCMC sold its interest in the Deed of Trust and Note and immediately was in violation of the contract. Defendant NCMC did not comply with the requirements of the Deed of Trust, Covenant 23.

20. Subsequent to February 6, 2003, Assignments to other parties are recorded in the property records of the Bannock County records.

### **DECLARATORY JUDGMENT**

21. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein. An actual controversy has arisen and now exists between Plaintiffs and Defendants specified hereinabove, regarding their respective rights and duties in the subject note and security instrument. Plaintiffs request a judicial determination of the rights, obligations and interest of the parties with regard to the subject property, and such determination is necessary and appropriate at this time under the circumstances so that all parties may ascertain and know their rights, obligations and interests with regard to the subject property.

### **TEMPORARY RESTRAINING ORDER and FOR INJUNCTIVE RELIEF**

22. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

23. Plaintiffs are the record title holder of the real property located at 9253 Frandsen Road, Lava Hot Springs, ID. 83246 which is now being threatened with irreparable injury by the conduct of the Defendants to foreclose on said property.

24. Plaintiffs have and will continue to be damaged and injured by the Defendants' wrongful conduct by the now threatened foreclosure sale irrevocably damaging Plaintiffs by denying them the right to maintain the *status quo* between the parties pending resolution of the present dispute.

25. Plaintiffs have no adequate remedy at law for both the factual and threatened injuries just described. The injuries and losses are continuing. The Plaintiffs' real property residence and rights involved are utterly unique and irreplaceable, so that it will be impossible to accurately measure, in monetary terms, the damages caused by the Defendants' wrongful conduct.

26. For these reasons, it is essential that the Court immediately and temporarily restrain Defendants from continuing with the conduct described in this petition. It is essential that the Court act immediately, prior to notice on the Defendant and a hearing on the matter, because Defendant intends to sell the property at foreclosure.

27. Defendant NCMC is no longer registered with the State of Idaho to do business and does not hold a current business license.

28. Further, for the reasons stated in this pleading, the Plaintiffs request that, after hearing on a temporary restraining order that Defendants and/or its agents, be enjoined from prosecuting any continuance of a foreclosure sale of the subject property pending a trial on the merits of this case.

#### **PRAYER**

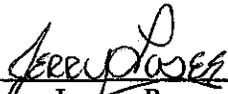
**WHEREFORE PREMISES CONSIDERED** as Prayer for Relief, and for the foregoing reasons, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final hearing, Plaintiffs be awarded judgment:

- Declaring that Defendants lack any interest in the subject property which would permit them to foreclose, evict, or attempt to foreclose or evict, the trust deed and/or to sell the subject properties;

- Declaring that the trust deed is not a lien against the subject properties, ordering the immediate release of the trust deed of record, and quieting title to the subject properties in Plaintiffs against Defendants and all claiming by, through, or under them;
- A refund of any wrongfully or improperly collected fees and payments to Defendant to which it had no right;
- Pre- and post-judgment interest at the maximum rate allowed by law;
- Attorney's fees;
- Monetary relief over \$100,000 but not more than \$2,000,000,000; and
- Such other and further relief at law and/or in equity to which Plaintiffs may be justly entitled including but not limited to damages within the jurisdictional limits of this Court, together with pre-judgment and post-judgment interest as are allowed by law.

Dated: 17 August, 2015

Respectfully submitted,

  
 \_\_\_\_\_  
 Jerry Losee, Pro se

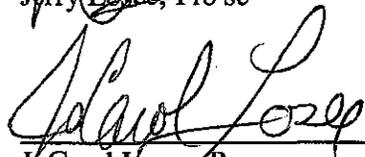
  
 \_\_\_\_\_  
 Jo Carol Losee, Pro se

Exhibit A: Affidavit of Joseph Esquivel  
 Exhibit B: Deed of Trust  
 Exhibit C: Note  
 Exhibit D: Assignment of Deed of Trust filed April 7, 2003  
 Exhibit E: Pooling and Servicing agreement

Jerry Losee & JoCarol Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2015 SEP 14 AM 11:12  
BY KH  
DEPUTY CLERK

**SIXTH DISTRICT COURT OF IDAHO  
IN AND FOR THE COUNTY OF BANNOCK**

JERRY LOSEE AND JOCAROL LOSEE,

Plaintiffs,

VS.

Case No.: CV-2015-2863-OC

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE  
COMPLAINT  
BANK NATIONAL TRUST  
SLANDER  
COMPANY, et all

PLAINTIFF'S AMENDED  
BREACH OF CONTRACT,  
OF TITLE, WRONGFUL  
FORECLOSURE AND  
DECLARATORY JUDGMENT

Defendants.

---

COMES NOW, Jerry Losee & JoCarol Losee, Pro se (hereinafter "Plaintiffs"), and file this Original Petition for Breach of Contract, Slander of Title, Wrongful Foreclosure and Declaratory Judgment. In support of their petition, Plaintiffs will show the Court as follows:

**SUMMARY OF THE CASE**

1. Defendant, New Century Mortgage Corporation is attempting to foreclose on Plaintiffs

property with insufficient showing of authority to do so. Although Trustees are able to foreclose, that ability derives from a principal/agency relationship with the owner of the indebtedness.

2. Defendants have committed Slander of Title against the Plaintiffs causing them injury and harm.

### **PARTIES**

3. Plaintiffs are Jerry Losee and JoCarol Losee, who are residents of Bannock County and are the record title holders to the real property located at 9253 Frandsen Road, Lava Hot Springs, Idaho.

4. Defendant New Century Mortgage Corporation, (hereinafter Defendant "NCMC") is a California entity formerly doing business in the State of Idaho. Defendant NCMC withdrew its registration with the Idaho Secretary of State on or about October 31, 2007. Defendant NCMC may be served through C T Corporation System 921 S. Orchard St., Ste. G, Boise, ID 83705.

5. Deutsch Bank National Trust Company as Trustee for the Morgan Stanley ABS Capital I Inc. 2003-NC5, (hereinafter "Defendant DBNTC") is a Delaware entity not registered with the Idaho Secretary of State. Defendant DBNTC may be served at Deutsche Bank Trust Company, Legal Department, 1761 E Saint Andrew Pl., Santa Ana, CA 92705-4934.

### **JURISDICTION AND VENUE**

6. Venue is proper in Bannock County, as the actions complained of occurred in Bannock County. Jurisdiction is conveyed upon this court by the Idaho Statute 5-401.

### **PROPERTY**

7. The Real Property description which is the subject of this suit is as follows:

LOT 9, BLOCK 1, MT JUNIPER RANCHETTES, BANNOCK COUNTY,  
IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF.  
Parcel ID Number RRMJR00D90D

Which currently has the address of 9253 Frandsen Road, Lava Hot Springs, ID  
83246.

### **BACKGROUND FACTS**

8. Jerry Losee and JoCarol Losee obtained the services of a private investigator, Joseph R. Esquivel, Jr., in order to obtain the facts which are the basis of issues presented in this case. (Exhibit A)

9. On February 6, 2003, Plaintiffs and Defendant NCMC entered into a contract for real property, called Deed of Trust which was accompanied by a Note signed by Plaintiffs. (Exhibit B)

10. The contract between the parties is specific as to the duties of each party.

11. Plaintiffs signed the note as the accommodation party for Defendant NCMC the accommodated party (Exhibit C).

12. Shortly after Plaintiffs signed the contract, Defendant NCMC sold its interest in the Deed of Trust and Note and immediately was in violation of the contract. Defendant NCMC did not comply with the requirements of the Deed of Trust, Covenant 23.

13. NCMC filed document purported to be an "Corrective Assignment of Deed of Trust", dated November 12, 2013 in the Official Records of the Bannock County Clerk-Recorder's Office on November 21, 2013 as ins# 21319850, purporting to assign to Deutsch Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc.

2003-NC5, Mortgage pass through Certificates, Series 2003-NCS, all right, title and interest in the note and the Deed of Trust. (Exhibit D).

**CAUSES OF ACTION  
BREACH OF CONTRACT**

14. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

15. After signing the Deed of Trust and Note on February 6, 2003, Plaintiffs did all, or substantially all of the significant things that the contract required him to do. All conditions required by the contract on the part of the Plaintiffs had occurred. At some point, unknown to Plaintiffs, Defendant NCMC, for payment rendered, divested itself of the Note and Deed of Trust but did not comply with the covenants of the Deed of Trust, specifically, Covenant 23.

16. As a result of its failure to comply with the contract, Plaintiff was harmed. The Pooling and Servicing Agreement for the Specialty Underwriting & Residential Finance Trust, Series 2007-BC2 manual Section, specifically Article II section 2.01 "(a)The Depositor, concurrently with the execution and delivery hereof, hereby sells, transfers, assigns, sets over and otherwise conveys to the Trustee for the benefit of the Certificateholders and the Class A-2 Certificate Insurer, without recourse, all the right, title and interest of the Depositor in and to the Trust Fund, and the Trustee, on behalf of the Trust, hereby accepts the Trust Fund. (b) In connection with the transfer and assignment of each Mortgage Loan, the Depositor has delivered or caused to be delivered to the Trustee for the benefit of the Certificateholders and the Class A-2 Certificate Insurer the following documents or instruments with respect to each Mortgage Loan so

assigned: (v) the original Assignment of Mortgage for each Mortgage Loan endorsed in blank". Such instrument remained within the collateral file and was never submitted for recordation to perfect defendants' rights to real property, until 10 years after the closing date of the Trust, May 30, 2003. It may be true that defendants have a right to the paper instrument(s) being the note and the unrecorded assignment as personal property, but such rights do not extend to real property without compliance to statutory law. Plaintiff is NOT attempting to seek enforcement of a third party contract but is merely showing beyond any reasonable doubt that such withholding of evidence that prove defendants were without rights to make a claim to real property in withholding such facts have potentially committed a grave error breach of contract. (Exhibit E).

#### **SLANDER OF TITLE**

17. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

18. Had the Trustee for Defendant NCMC reconveyed the Property and surrendered the Security Instrument to the person or persons legally entitled to it upon the payment of all sums secured by Defendant NCMC, rather than breach the contract, Plaintiffs would have a clear and marketable title. Instead, the chain of title has not been disclosed nor recorded, and Plaintiffs have suffered damage as a result of the incomplete and slanderous title.

19. Shortly after Plaintiffs signed the contract, Defendant NCMC sold its interest in the Deed of Trust and Note and immediately was in violation of the contract. Defendant

NCMC did not comply with the requirements of the Deed of Trust, Covenant 23.

20. Subsequent to February 6, 2003, Assignments to other parties are recorded in the property records of the Bannock County records.

### **WRONGFUL FORECLOSURE**

21. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 20 inclusive, as though fully set forth herein.

22. Plaintiff is informed and believe and thereon allege that after the origination and funding of their loan, it was sold to investors as a "Deed of Trust Security Instrument backed security" and that New Century Mortgage Corporation in this action does not own this loan, or the corresponding note. Accordingly New Century Mortgage Corporation in this action did not have the right to declare default or foreclose on Plaintiff's interest in the Subject Property. New Century Mortgage Corporation is no longer the note holder or a beneficiary with regard to Plaintiff' loan.

23. Plaintiff further alleges on information and belief that New Century Mortgage Corporation in this action is not the beneficiary or representative of the beneficiary and, if New Century Mortgage Corporation alleges otherwise, they do not have the original note to prove that they are in fact the party authorized to conduct the foreclosure.

24. Thus, New Century Mortgage Corporation engaged in a fraudulent foreclosure of the Subject Property in that New Century Mortgage Corporation did not have the legal authority to foreclose on the Subject Property.

25. As a result of the above alleged wrongs, Plaintiff has suffered general and special damages in an amount to be determined at trial.

## **DECLARATORY JUDGMENT**

26. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein. An actual controversy has arisen and now exists between Plaintiffs and Defendants specified hereinabove, regarding their respective rights and duties in the subject note and security instrument. Plaintiffs request a judicial determination of the rights, obligations and interest of the parties with regard to the subject property, and such determination is necessary and appropriate at this time under the circumstances so that all parties may ascertain and know their rights, obligations and interests with regard to the subject property.

### **PRAYER**

**WHEREFORE PREMISES CONSIDERED** as Prayer for Relief, and for the foregoing reasons, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final hearing, Plaintiffs be awarded judgment:

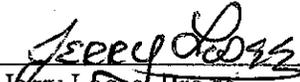
- Declaring that Defendants lack any interest in the subject property which would permit them to foreclose, evict, or attempt to foreclose or evict, the trust deed and/or to sell the subject properties;
- Declaring that the trust deed is not a lien against the subject properties, ordering the immediate release of the trust deed of record, and quieting title to the subject properties in Plaintiffs against Defendants and all claiming by, through, or under them;
- A refund of any wrongfully or improperly collected fees and payments to Defendant to which it had no right;

- Pre- and post-judgment interest at the maximum rate allowed by law;
- Attorney's fees;
- Monetary relief over \$100,000 but not more than \$2,000,000,000; and
- Such other and further relief at law and/or in equity to which Plaintiffs may be

justly entitled including but not limited to damages within the jurisdictional limits of this Court, together with pre-judgment and post-judgment interest as are allowed by law.

Dated: 14 September, 2015

Respectfully submitted,

  
Jerry Losee, Pro se

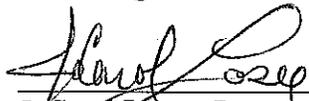
  
Jo Carol Losee, Pro se

Exhibit A: Affidavit of Joseph Esquivel

Exhibit B: Deed of Trust

Exhibit C: Note

Exhibit D: Corrective Assignment of Deed of Trust filed November 21, 2013

Exhibit E: Pooling and Servicing agreement

# EXHIBIT "A"

After Recording Return to:  
Jerry and JoCarol Losee  
9253 Frandsen Road Blvd.  
Lava Hot Springs ID 83246

**AFFIDAVIT OF JOSEPH R. ESQUIVEL JR.**

I, Joseph R. Esquivel Jr, declare as follows:

1. I am over the age of 18 years and qualified to make this affidavit.
2. I am a licensed private investigator of in the State of Texas, License # A18306.
3. I make this affidavit based on my own personal knowledge.
4. I make this affidavit in support of *Mortgage Compliance Investigators' Chain Of Title Analysis & Mortgage Fraud Investigation* prepared for Jerry and JoCarol Losee regarding the Security Instrument and the real property located at 9253 Frandsen Road Blvd, Lava Hot Springs ID 83246, as referenced in the Bannock County Record.
5. I have no direct or indirect interest in the outcome of the case at bar for which I am offering my observations.
6. I have personal knowledge and experience in the topic areas related to the securitization of mortgage loans, real property law, Uniform Commercial Code practices, predatory lending practices, assignment and assumption of securitized loans, creation of trusts under deeds of trust, pooling and servicing agreements, issuance of asset-backed securities and specifically mortgage-backed securities by special purpose vehicles in which an entity is named as trustee for holders of certificates of mortgage backed securities, the foreclosure process of securitized and non-securitized residential mortgages in both judicial and non-judicial states, and the various forms of foreclosure-related fraud.

7. I perform my research through the viewing of actual business records and Corporate/Trust Documents.
8. I use professional resources to view these records and documents.
9. I have the training, knowledge and experience to perform these searches and understand the meaning of these records and documents with very reliable accuracy.
10. I am available for court appearances, in person or via telephone for further clarification or explanation of the information provided herein, or for cross examination if necessary.
11. My research through professional services and the viewing of actual business records and Corporate/Trust Documents, determined that an interest in the Jerry and JoCarol Losee Mortgage Loan Instrument was sold sometime shortly after February 6, 2003 to multiple classes of the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust.
12. I have looked at a purported to be true and correct copy of a Tangible Promissory Note of Jerry and JoCarol Losee, dated February 6, 2003, regarding a loan for \$96,000.00. The Original Lender of the February 6, 2003 Losee loan is New Century Mortgage Corporation:
  - a. This copy of the Jerry and JoCarol Losee Note shows an indorsement,, on the Note itself, from New Century Mortgage Corporation, signed by Magva Villanueva as A.V.P /Shipping Manager, made payable to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 being named as payee.
13. The multiple classes of the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust are not named in any way on the Jerry and JoCarol Losee Note.
  - a. Ocwen Loan Servicing, LLC is not named or referenced in any way on the Jerry and JoCarol Losee Note.

b. NC Capital Corporation is not named or referenced in any way on the Jerry and JoCarol Losee Note.

c. Morgan Stanley ABS Capital I Inc. is not named or referenced in any way on the Jerry and JoCarol Losee Note

14. I have looked at a Deed of Trust of Jerry and JoCarol Losee, dated February 6, 2003 and filed in the Official Records of the Bannock County Recorder's Office on February 14, 2003 as ins# 20303818.

a. The multiple classes of the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust are not named in any way to the Jerry and JoCarol Losee Deed of Trust

b. Ocwen Loan Servicing, LLC is not named or referenced in any way on the Jerry and JoCarol Losee Deed of Trust

c. NC Capital Corporation is not named or referenced in any way on the Jerry and JoCarol Losee Deed of Trust

d. Morgan Stanley ABS Capital I Inc. is not named or referenced in any way on the Jerry and JoCarol Losee Deed of Trust

15. I have looked at Complaint filed into District Court Bannock County Idaho on July 6, 2011 in case # CV-2011-000-2662-OC.

16. I have looked at the Bannock County Record relating to the Jerry and JoCarol Losee Deed of Trust dated February 6, 2003. The Bannock County Record shows an "Assignment of Deed of Trust", dated February 4, 2011 and filed in the Official Records of the Bannock County Recorder's Office on February 28, 2011 as ins# 21103201, signed by Christina Carter as Account Management Manager and notarized February 4, 2011 by Lesli D Goodman, Florida Notary Commission #EE025740, where Deutsche Bank National Trust Company as Trustee grants, assigns, and transfers to Deutsche Bank National Trust Company, and

Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5.

17. I have looked at the Bannock County Record relating to the Jerry and JoCarol Losee Deed of Trust dated February 6, 2003. The Bannock County Record shows an “Corrective Assignment of Deed of Trust”, dated November 12, 2013 and filed in the Official Records of the Bannock County Recorder's Office on November 21, 2013 as ins# 21319850, signed by Leticia N. Arias as Contract Manager and notarized November 12, 2013 by Derek Garrett, Florida Notary Commission #FF063536, where New Century Mortgage Corporation grants, assigns, and transfers to Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2003-NC5, Mortgage Pass – Through Certificates, Series 2003-NC5
  
18. I have looked at the Bannock County Record relating to the Jerry and JoCarol Losee Deed of Trust dated February 6, 2003. The Bannock County Record shows an “Notice of Default”, dated August 22, 2012 and filed in the Official Records of the Bannock County Recorder's Office on August 22, 2012 as ins# 21214195, signed by Joel Meng as Assistant Secretary of Alliance Title & Escrow Corp., and notarized August 22, 2012 by Lindsy Allred, Idaho Notary Commission #N/A
  
19. I have looked at the Bannock County Record relating to the Jerry and JoCarol Losee Deed of Trust dated February 6, 2003. The Bannock County Record shows an “Notice of Default and Election To Sell Under Deed of Trust”, dated March 17, 2014 and filed in the Official Records of the Bannock County Recorder's Office on March 20, 2014 as ins# 21403394, signed by Elida Rostado as Authorized Signature of Fidelity National Title Insurance Company, and notarized March 20, 2014 by Tara Louise Daniel, California Notary Commission #2030387
  
20. I have looked at the Bannock County Record relating to the Jerry and JoCarol Losee Deed of Trust dated February 6, 2003. The Bannock County Record shows no record of a



# EXHIBIT "B"

Return To:  
NEW CENTURY MORTGAGE CORPORATION

18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

Prepared By:  
NEW CENTURY MORTGAGE CORPORATION

20303818

NORTHERN TITLE OF IDAHO CO  
RECORDED AT REQUEST OF

FEE 630 DEPUTY \$

2003 FEB 14 PM 4 30

OFFICIAL RECORD BK # 203  
LARRY W SHAN RECORDER  
BANKOCC COUNTY IDAHO

LTC-2002397

(Space Above This Line For Recording Date)

20303818

### DEED OF TRUST

#### 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 February 6, 2003 together with all Riders to this document.

(B) "Borrower" is  
JERRY LOSEE AND JOCAROL LOSEE, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is NEW CENTURY MORTGAGE CORPORATION

Lender is a CORPORATION  
organized and existing under the laws of CALIFORNIA

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

Form 3913 1/01

922 - 6(1D) (0006)

Page 1 of 15

Initials: JL

VMP MORTGAGE FORMS - 16801821-0291 JCC



EXHIBIT

B

2/2

20303818

Lender's address is 18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is NORTHERN TITLE COMPANY

(E) "Note" means the promissory note signed by Borrower and dated February 6, 2003

The Note states that Borrower owes Lender Ninety-Six Thousand and No/100 ----- Dollars

(U.S. \$ 96,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 1, 2033

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

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

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

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

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

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

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

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

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

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

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

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

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"federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of BANNOCK

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LOT 9, BLOCK 1, MT. JUNIPER RANCHETTES, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE OFFICIAL PLAT THEREOF.

Parcel ID Number: ARMJR000900  
9253 FRANSEN ROAD  
LAVA HOT SPRINGS  
("Property Address"):

which currently has the address of  
[Street]  
[City], Idaho 83246 [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 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.

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currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

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

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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, instrumentally, 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

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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 in 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction to 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

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 13 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.

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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.

Witness:

\_\_\_\_\_  
JERRY LOSEE (Seal)  
Borrower

\_\_\_\_\_  
JUDY LOSEE (Seal)  
Borrower

\_\_\_\_\_  
(Seal) Borrower

\_\_\_\_\_  
(Seal) Borrower

\_\_\_\_\_  
(Seal) Borrower

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STATE OF IDAHO,

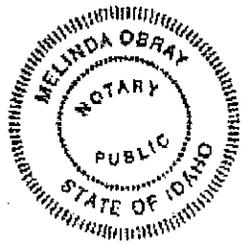
Barnock County ss:

On this 10th day of February, 2003, before me,  
a Notary Public in and for said county and state, personally appeared

Jerry Losee and JoCarol Losee

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.



Melinda O'Bray  
Notary Public residing at: Pacafello  
Comm. exp: 2-15-07

In State: JK  
JLL

# EXHIBIT “C”

2 YEAR RATE LOCK  
ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In The Wall Street Journal) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

February 6, 2003  
[Date]

LAVA HOT SPRINGS  
[City]

IDAHO  
[State]

8253 FRANSEN ROAD , LAVA HOT SPRINGS, IDAHO 83246  
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 86,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is

NEW CENTURY MORTGAGE CORPORATION

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

I understand that Lender may transfer this Note. 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 8.7500 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(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 payments on the first day of each month beginning on April 1, 2003

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on March 1, 2033, I still owe amounts under this

Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18400 VON KARMAN, SUITE 1000 IRVINE, CA 92612

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 755.24 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

MULTISTATE ADJUSTABLE RATE NOTE - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) -  
Single Family - Fannie Mae UNIFORM INSTRUMENT

838N (0005)

Form 3520 1/01

VMP MORTGAGE FORMS - (800)621-7291

Page 1 of 4

Initials: *JK*

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#### 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

##### (A) Change Dates

The interest rate I will pay may change on the first day of March 2005, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

##### (B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

##### (C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and Thirty-Five Hundredths percentage points ( 6.3500 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

##### (D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.2500 % or less than 8.7500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage point(s) ( 1.500 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.7500 %.

##### (E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

##### (F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

#### 5. 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 this Note.

I may make a full Prepayment or partial Prepayments without paying any 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

#### 6. 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 that 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.

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**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

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

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder will require me to pay immediately the full amount of Principal that 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.

**8. 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.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given 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.

**9. 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.

**10. 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.

**11. 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 that might result if I do not keep the promises that 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 read as follows:

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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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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

<p><i>[Signature]</i>          _____ (Seal)  <b>JERRY LOSEE</b> -Borrower</p>	<p><i>[Signature]</i>          _____ (Seal)  <b>JOGAROL LOSEE</b> -Borrower</p>
<p>_____ (Seal)          -Borrower</p>	<p>_____ (Seal)          -Borrower</p>
<p>_____ (Seal)          -Borrower</p>	<p>_____ (Seal)          -Borrower</p>
<p>_____ (Seal)          -Borrower</p>	<p>_____ (Seal)          -Borrower</p>

01

Pay to the order of, without recourse  
**Deutsche Bank National**  
 New Century Mortgage Corporation  
 By: *[Signature]*  
 Name: Magda Villanueva  
 Title: A.M.P. / Shipping Manager

*Trust Company, as trustee*  
 under Pooling and Servicing Agreement dated  
 as of May 1, 2003 Morgan Stanley ABS  
 Capital Inc. TRST 2003 MCO

(Sign Original Only)

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# EXHIBIT “D”



SIXTH DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF BANNOCK

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT

2015 SEP 16 AM 10:34

CASE NO.: CV-2015-2868-OC

BY *[Signature]*  
DEPUTY CLERK

JERRY LOSEE, and JoCAROL LOSEE,  
Plaintiffs,

vs.

NEW CENTURY MORTGAGE CORP.  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY, and DOES 1-X,

Defendants,

---

**PROPOSED ORDER ON PLAINTIFF'S MOTION FOR TEMPORARY  
RESTRAINING ORDER AND APPLICATION FOR TEMPORARY  
INJUNCTION**

**THIS MATTER** having come before the Court upon PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION FOR TEMPORARY INJUNCTION, and the Court having reviewed such Motion and the file in this cause and being advised it is hereby:

**ORDERED AND ADJUDGED** that:

- The Motion is ~~GRANTED~~ **DENIED** *[Signature]*

- Failed to comply with all requirements of IRCP 65(b).

---

**DONE AND ORDERED**, this 15<sup>th</sup> day of Sept., 2015.



Judge/Commissioner

**Copies Furnished to:**

Jerry Losee & JoCarol Losee, 9253 Frandsen Road, Lava Hot Springs, Idaho 83246

New Century Mortgage Corporation, CT Corporation System, 921 Orchard St., Ste. G,  
Boise, ID 83705

Deutsch Bank National Trust Company, Legal Department, 1761 E Saint Andrew Pl.,  
Santa Ana, CA 92705-4934.

FILED  
CLERK OF THE COURT

2015 SEP 17 AM 11:25

BY KID  
DEPUTY CLERK

1 Jerry Losee & JoCarol Losee, Pro se  
2 9253 Frandsen Road  
3 Lava Hot Springs, Idaho 83246  
4 Ph: (208) 251-6968  
5 Email: jj68mobile@gmail.com

6 SUPERIOR COURT OF IDAHO  
7 IN AND FOR THE COUNTY OF BANNOCK

8 JERRY LOSEE, PRO SE AND JOCAROL  
9 LOSEE, PRO SE,

Case No.: CV-2015-2863-OC

10 Plaintiffs,

PROPOSED ORDER ON PLAINTIFFS'  
MOTION FOR TRO AND FOR ORDER TO  
SHOW CAUSE IN RE: INJUNCTIVE  
RELIEF

11 vs.

12 NEW CENTURY MORTGAGE  
13 CORPORATION, DEUTSCHE BANK  
14 NATIONAL TRUST COMPANY, ET AL.,

15 Defendants

16 PROPOSED ORDER ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING  
17 ORDER AND FOR ORDER TO SHOW CAUSE IN RE: INJUNCTIVE RELIEF

18 THIS MATTER having come before this Court upon Plaintiff's Motion for Temporary  
19 Restraining Order and for an Order to Show Cause In re: Injunctive Relief, and this Court,  
20 having reviewed the Motion, the Affidavit filed therewith and the files of record and being  
21 advised HEREBY ORDERS:

- 22 1. This Motion is GRANTED / DENIED
- 23 2. This foreclosure scheduled for September 18, 2015 is cancelled.
- 24 3. Defendants, individually and collectively are prohibited from pursuing foreclosure  
25 against Plaintiffs until further Order of this Court.
- 4. This Court finds that the injury to Plaintiffs is irreparable, and no notice to Defendants  
was required for the following reasons: Minimal compliance with the

PROPOSED ORDER ON PLAINTIFFS' MOTION FOR TRO AND FOR ORDER TO SHOW CAUSE IN RE:  
INJUNCTIVE RELIEF - 1

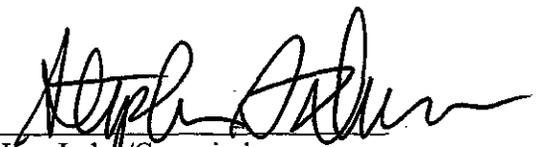
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1 Notice requirements of I.R.C.P. 65(b).

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4 5. The Parties shall appear before the Court on September 28, 2015 at  
5 2:30 a.m./p.m. in COURTROOM 301 and Defendants shall show cause why  
6 this issued Temporary Restraining Order should not be converted to an Injunction.

7 6. Further relief <sup>requirements:</sup> ~~Further relief.~~ Pursuant to I.R.C.P. 65(c), Plaintiffs  
8 shall post security in the amount of \$1000<sup>00</sup>. Failure  
9 to post security shall result in dismissal of this order.

10  
11 Signed and dated this 17<sup>th</sup> day of September 2015 at 10:40 a.m./p.m.

12   
13  
14 Hon. Judge/Commissioner  
of the above entitled court

COPIES FURNISHED TO THE FOLLOWING PARTIES

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New Century Mortgage Corporation, CT Corporation System, 921 Orchard St., Ste. G, Boise, ID 83705

DUETSCHKE BANK NATIONAL TRUST COMPANY, Legal Department, 1761 E Saint Andrew Pl., Santa Ana, CA 92705-4934

PROPOSED ORDER ON PLAINTIFFS' MOTION FOR TRO AND FOR ORDER TO SHOW CAUSE IN RE:  
INJUNCTIVE RELIEF - 3

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2015 SEP 21 AM 11:23  
BY CW  
DEPUTY CLERK

1 Lisa McMahon-Myhran, ID #8963  
2 Robinson Tait, P.S.  
3 710 Second Avenue, Suite 710  
4 Seattle, WA 98104  
5 Telephone: (206)676-9640  
6 Facsimile: (206)676-9659

7 SIXTH DISTRICT COURT OF IDAHO  
8 IN AND FOR THE COUNTY OF BANNOCK

9  
10 JERRY LOSEE AND JOCAROL LOSEE,  
11  
12 Plaintiff,

Case No. CV-2015-2863-OC

13 v.

14 NEW CENTURY MORTGAGE  
15 CORPORATION, DEUTSCHE BANK  
16 NATIONAL TRUST COMPANY  
17 Defendant.

NOTICE OF APPEARANCE

18 TO: CLERK OF THE COURT.

19 PLEASE TAKE NOTICE that Lisa McMahon-Myhran, of Robinson Tait, P.S., hereby appears  
20 in the above entitled action as attorneys for Ocwen Loan Servicing service for Deutsche Bank National  
21 Trust Company, its successors and/or assigns, without waiving defenses.

22 PLEASE ALSO TAKE NOTICE that all further papers and pleadings, except original process,  
23 should be served upon the undersigned at the address shown below.

24  
25 //  
26 //

1 DATED this 17th day of September, 2015.  
2  
3

4 

5 Lisa McMahon-Myhran, ID #8963  
6 Robinson Tait, P.S.  
7 710 Second Avenue, Suite 710  
8 Seattle, WA 98104  
9 Telephone: (206)676-9640  
10 Facsimile: (206)676-9659  
11 Attorneys for Deutsche Bank National Trust Company  
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BANNOCK COUNTY  
CLERK OF THE COURT  
2015 SEP 21 AM 11:23  
BY *cew*  
DEPUTY CLERK

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3 Lisa McMahon-Myhran, ID #8963  
4 Robinson Tait, P.S.  
5 710 Second Avenue, Suite 710  
6 Seattle, WA 98104  
7 Phone: 206-676-9640  
8 Fax: 206-676-9659

9 SIXTH DISTRICT COURT OF IDAHO  
10 IN AND FOR THE COUNTY OF BANNOCK

11 JERRY LOSEE AND JOCAROL LOSEE,

Case No. CV-2015-2863-OC

12 Plaintiff,

PROOF OF SERVICE

13 NEW CENTURY MORTGAGE  
14 CORPORATION, DEUTSCHE BANK  
15 NATIONAL TRUST COMPANY.,

16 Defendant.

17 Carissa Dahlgren, under penalty of perjury under the laws of the United States,  
18 declares as follows:

19 1. That I am a citizen of the United States, over the age of 21 years, and  
20 competent to be a witness herein.

21 2. That on September 17, 2015 I transmitted by depositing in the United  
22 States mail, postage prepaid (as indicated herein), copies of the:  
23

24 NOTICE OF APPEARANCE

25 addressed as follows:  
26  
27

28 Jerry and Jocarol Losee  
9253 Frandsen Rd  
Lava Hot Springs, ID 83246

PROOF OF SERVICE - 1  
60128-12991-BK-WA

*Dunn*  
Law Offices of  
ROBINSON TAIT, P.S.  
710 Second Avenue, Suite 710  
Seattle WA 98104  
(206) 676-5921 of 211

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Dated September 17, 2015

  
Carissa Dahlgren

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2015 SEP 25 PM 5:43  
BY \_\_\_\_\_  
DEPUTY CLERK

1 Lisa McMahon-Myhran, ID #8963  
2 Jennifer Tait, ID #8243  
3 Robinson Tait, P.S.  
4 710 Second Avenue, Suite 710  
5 Seattle, WA 98104  
6 Telephone: (206)676-9640  
7 Facsimile: (206)676-9659

8 SIXTH DISTRICT COURT OF IDAHO  
9 IN AND FOR THE COUNTY OF BANNOCK

11 JERRY LOSEE AND JOCAROL LOSEE,  
12 Plaintiff,  
13 v.  
14 NEW CENTURY MORTGAGE  
15 CORPORATION, DEUTSCHE BANK  
16 NATIONAL TRUST COMPANY  
Defendant.

Case No. CV-2015-2863-OC

REQUEST FOR JUDICIAL NOTICE

17  
18 COMES NOW Defendant Deutsche Bank National Trust Company, by and through its  
19 attorneys of record, Robinson Tait, P.S., and requests pursuant to Rule 201 of the Idaho Rules of  
20 Evidence that the Court take judicial notice of the following documents that are not subject to  
21 reasonable dispute and are capable of accurate and ready determination by resort to sources whose  
22 accuracy cannot reasonably be questioned:

23  
24 Rule 201 (d) provides that "[w]hen a party makes an oral or written request that a court take  
25 judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the  
26 party shall identify the specific documents or items for which the judicial notice is requested or shall  
27 proffer to the court and serve on all parties copies of such documents or items. A court shall take

1 judicial notice if requested by a party and supplied with the necessary information." Accordingly,  
2 Defendant Deutsche Bank National Trust Company requests the Court take judicial notice of the  
3 following publicly recorded documents:

- 4 1. The Deed of Trust recorded on February 14, 2003 in Bannock County under recording  
5 number 20303818, a true and correct copy of which is attached hereto as Exhibit "A."  
6  
7 2. The Corrective Assignment of the Deed of Trust recorded on November 21, 2013 in  
8 Bannock County under recording number 21319850, a true and correct copy of which  
9 is attached hereto as Exhibit "B."

10  
11 DATED this 25 day of September, 2015.

12  
13  
14  
15  89123  
16 Lisa McMahon-Myhran, ID #8963  
17 Jennifer Tait, ID #8243  
18 Robinson Tait, P.S.  
19 710 Second Avenue, Suite 710  
20 Seattle, WA 98104  
21 Telephone: (206)676-9640  
22 Facsimile: (206)676-9659  
23 Attorneys for Deutsche Bank National Trust Company  
24  
25  
26  
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5570705493855

852026733

Return To:  
NEW CENTURY MORTGAGE CORPORATION

18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

Prepared By:  
NEW CENTURY MORTGAGE CORPORATION

20303818 8051  
NORTHERN TITLE OF IDAHO CO  
RECORDED AT REQUEST OF  
FEE 63 DEPUTY \$

2003 FEB 14 PM 4 30  
OFFICIAL RECORD BK #25  
LARRY W BAH RECORDER  
BANKOCC COUNTY IDAHO

UTC-2002397

(Space Above This Line For Recording Data)

20303818

DEED OF TRUST

MORLEY  
3/28/03

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 February 6, 2003 together with all Riders to this document.

(B) "Borrower" is  
JERRY LOSEE AND JOCAROL LOSEE, HUSBAND AND WIFE



HQ0320126733RMGCPY S1 000805047

Borrower is the trustor under this Security Instrument.  
(C) "Lender" is NEW CENTURY MORTGAGE CORPORATION

Lender is a CORPORATION  
organized and existing under the laws of CALIFORNIA

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

Form 3013 1/01

8(1D) (0005)

Page 1 of 16

Initials: JL

VMP MORTGAGE FORMS - (800) 821-7201 JCL



EXHIBIT  
A

**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

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

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument 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.

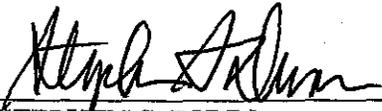
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JCL





NOVEMBER 2, 2015 AT THE HOUR OF 2:30 P.M.

DATED October 2, 2015.

  
STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5 day of Oct, 2015, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

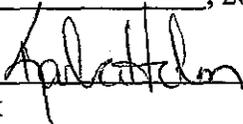
Jerry and JoCarol Losee  
9253 Frandsen Rd  
Lava Hot Springs, ID 83246

U.S. Mail  
 Email  
 Hand Deliver  
 Facsimile

Duetsche Bank National Trust Company  
Legal Department  
1761 E Saint Andrew Pl.  
Santa Ana, CA 92705-4934

U.S. Mail  
 Email  
 Hand Deliver  
 Facsimile

DATED this 5 day of Oct, 2015.

  
Deputy Clerk

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2015 OCT 30 PM 12:55  
KJ  
DEPUTY CLERK

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE, PRO SE AND JOCAROL  
LOSEE, PRO SE,

Plaintiffs,

vs.

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE BANK  
NATIONAL TRUST COMPANY, ET AL.,

Defendants

Case No.: CV-2015-2863-OC

MOTION FOR CONTINUANCE

**PLAINTIFFS' MOTION FOR CONTINUANCE OF HEARING**

Plaintiffs Jerry Losee and JoCarol Losee files this Motion for Continuance of Hearing. In support of this Motion, Plaintiffs hereby show the following:

- 1. This case is presently set for non-jury trial on November 2, 2015.
- 2. Defendants have been diligently searching for counsel to defend them in this action.

Defendants request a 30 day continuance to obtain counsel.

- 3. This continuance is not sought solely for delay but that justice may be done.

WHEREFORE Defendant prays that the Court grant this Motion for Continuance.

Respectfully Submitted,

MOTION FOR CONTINUANCE - I

1 Jerry Losee  
2 Jerry Losee, Pro se  
3 9253 Frandsen Road  
4 Lava Hot Springs, Idaho 83246  
5 Ph: (208) 251-6968  
6 Email: jj68mobile@gmail.com

7 JoCarol Losee  
8 JoCarol Losee, Pro se  
9 9253 Frandsen Road  
10 Lava Hot Springs, Idaho 83246  
11 Ph: (208) 251-6968  
12 Email: jj68mobile@gmail.com

13 **CERTIFICATE OF SERVICE**

14 WE HEREBY CERTIFY, that a true copy of this pleading has been sent by US

15 Mail to the following parties: ROBINSON TAIT, P.S., Jennifer Tait, Lisa McMahon-Myhran,  
16 710 Second Ave, Ste 710, Seattle, WA 98104; New Century Mortgage Corporation, 350  
17 Commerce, Ste 100, Irvine, CA 92602; on this \_\_\_ day of October, 2015.

18 Jerry Losee  
19 Jerry Losee, Pro se  
20 9253 Frandsen Road  
21 Lava Hot Springs, Idaho 83246  
22 Ph: (208) 251-6968  
23 Email: jj68mobile@gmail.com

24 JoCarol Losee  
25 JoCarol Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com

MOTION FOR CONTINUANCE - 2

2015 NOV -2 PM 2:02

BY aw  
DEPUTY CLERK

1 Lisa McMahon-Myhran, ID #8963  
2 Jennifer Tait, ID #8243  
3 Craig Peterson, ID #9434  
4 Robinson Tait, P.S.  
5 710 Second Avenue, Suite 710  
6 Seattle, WA 98104  
7 Telephone: (206)676-9640  
8 Facsimile: (206)676-9659

9 SIXTH DISTRICT COURT OF IDAHO  
10 IN AND FOR THE COUNTY OF BANNOCK

11 JERRY LOSEE AND JOCAROL LOSEE,  
12

13 Plaintiff,

Case No. CV-2015-2863-OC

14 v.

15 NEW CENTURY MORTGAGE  
16 CORPORATION, DEUTSCHE BANK  
17 NATIONAL TRUST COMPANY

SUPPLEMENTAL REQUEST FOR  
JUDICIAL NOTICE

18 Defendants.

19 COMES NOW Defendant Deutsche Bank National Trust Company, by and through its  
20 attorneys of record, Robinson Tait, P.S., and requests pursuant to Rule 201 of the Idaho Rules of  
21 Evidence that the Court take judicial notice of the following documents that are not subject to  
22 reasonable dispute and are capable of accurate and ready determination by resort to sources whose  
23 accuracy cannot reasonably be questioned:

24 Rule 201 (d) provides that "[w]hen a party makes an oral or written request that a court take  
25 judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the  
26 party shall identify the specific documents or items for which the judicial notice is requested or shall  
27  
28

REQUEST FOR JUDICIAL NOTICE - 1  
60364-04198-LIT-ID

Law Offices  
ROBINSON TAIT, P.S.

710 Second Avenue, Suite 710  
Seattle WA 98104  
(206) 676-9640

ORIGINAL

Dum

1 proffer to the court and serve on all parties copies of such documents or items. A court shall take  
2 judicial notice if requested by a party and supplied with the necessary information." Accordingly,  
3 Defendant Deutsche Bank National Trust Company requests the Court take judicial notice of the  
4 following publicly recorded documents:

- 5 1. The Deed of Trust recorded on February 14, 2003 in Bannock County under recording  
6 number 20303818, a true and correct copy of which is attached hereto as Exhibit "A."
- 7 2. Bannock County District Court docket for Case No. CV-2011-0002662-OC, a true and  
8 correct copy of which is attached hereto as Exhibit "B."
- 9 3. Idaho Bankruptcy Court dockets relating to Plaintiffs' bankruptcy filings, true and  
10 correct copies of which are attached hereto as Exhibit "C."
- 11 4. The Corrective Assignment of the Deed of Trust recorded on November 21, 2013 in  
12 Bannock County under recording number 21319850, a true and correct copy of which  
13 is attached hereto as Exhibit "D."
- 14
- 15
- 16

17 DATED this 28 day of October, 2015.

18  
19  
20 

21 \_\_\_\_\_  
22 Craig Peterson, ID #9434  
23 Lisa McMahon-Myhran, ID #8963  
24 Jennifer Tait, ID #8243  
25 Robinson Tait, P.S.  
26 710 Second Avenue, Suite 710  
27 Seattle, WA 98104  
28 Telephone: (206)676-9640  
Facsimile: (206)676-9659  
Attorneys for Deutsche Bank National Trust Company

5570705493855

552026733

Return To:  
NEW CENTURY MORTGAGE CORPORATION

18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

Prepared By:  
NEW CENTURY MORTGAGE CORPORATION

20303818 8051  
NORTHERN TITLE OF IDAHO CO  
RECORDED AT REQUEST OF  
FEE 63 DEPUTY \$

2003 FEB 14 PM 4 30  
OFFICIAL RECORD BK 225  
LARRY W CHAN RECORDER  
BANKOCC COUNTY IDAHO

UTC-2002397 (Space Above This Line For Recording Data) 20303818

DEED OF TRUST

MORLAN  
3/22/03

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 February 6, 2003 together with all Riders to this document.

(B) "Borrower" is JERRY LOSEE AND JOCAROL LOSEE, HUSBAND AND WIFE



HQ0320126733RMGCPY S1 0000805047

Borrower is the trustor under this Security Instrument.

(C) "Lender" is NEW CENTURY MORTGAGE CORPORATION

Lender is a CORPORATION organized and existing under the laws of CALIFORNIA

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

Form 3013 1/01

6(1D) (0005)

Page 1 of 15

Initials: JL

VMP MORTGAGE FORMS - (800)521-7261 JCL



EXHIBIT

73 of 21 A

**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.

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument 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.

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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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**Case Number Result Page**

**Bannock**

**1 Cases Found.**

<b>Jerry Losee, etal. vs. Pioneer Title of Ada County, etal.</b>			
<b>CV-2011-</b>	<b>Case: 0002662- District</b>	<b>Filed: 07/06/2011</b>	<b>Subtype: Other Claims</b>
<b>OC</b>			<b>Judge: David Nye</b>
			<b>Status: Closed pending clerk action</b>
			<b>01/11/2012</b>
<b>Defendants: Deutsche Bank National Trust Company Homeq Servicing Morgan Stanley ABS Capital I Inc. Trust 2003-NC5 OCWEN Loan Servicing, LLC Pioneer Title of Ada County Regional Trustees Services Corporation</b>			
<b>Plaintiffs: Losee, Jerry Losee, Jocarol</b>			
Register Date of actions:			
07/06/2011	Clerks		
07/06/2011	New Case Filed-Other Claims		
07/06/2011	Complaint Filed		
07/06/2011	Summons Issued		
07/06/2011	VOIDED- BAD CHECK. Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Craig R. Jorgesen Receipt number: 0023306 Dated: 7/6/2011 Amount: \$88.00 (Check) For:		
07/06/2011	Plaintiff: Losee, Jerry Attorney Retained Craig R Jorgensen		
07/06/2011	Plaintiff: Losee, Jocarol Attorney Retained Craig R Jorgensen		
07/06/2011	Attorneys certification of notice efforts; aty Craig Jorgensen for plntt		
07/06/2011	Motion for temporary restraining order and preliminary injunction; aty Craig Jorgensen for pintf		
07/06/2011	Order granting temporary restraining order and notice of hearing; s/ Judge Dunn		
07/21/2011	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Jennifer Tait Receipt number: 0025198 Dated: 7/21/2011 Amount: \$58.00 (Check) For: Deutsche Bank National Trust Company (defendant), Morgan Stanley ABS Capital I Inc. Trust 2003-NC5 (defendant), OCWEN Loan Servicing, LLC (defendant), Pioneer Title of Ada County (defendant) and Regional Trustees Services Corporation (defendant)		
07/21/2011	Hearing Scheduled (Hearing Scheduled 07/25/2011 10:00 AM)		
07/21/2011	Notice Of Appearance; aty Jennifer Tait		
07/21/2011	Defendant: Pioneer Title of Ada County Attorney Retained Jennifer Tait		
07/21/2011	Defendant: Deutsche Bank National Trust Company Attorney Retained Jennifer Tait		
07/21/2011	Defendant: Morgan Stanley ABS Capital I Inc. Trust 2003-NC5 Attorney Retained Jennifer Tait		

- 07/21/2011 Defendant: OCWEN Loan Servicing, LLC Attorney Retained Jennifer Tait
- 07/21/2011 Affidavit of mailing; (notice of appearance) aty Jenifer Tait
- 07/25/2011 Continued (Hearing Scheduled 08/01/2011 09:00 AM)
- 07/25/2011 Stipulation to Extend Temporary Restraining Order and to Continue Hearing
- 07/26/2011 Order Extending Temporary Restraining Order and Continuing Hearing; hrg on TRO is reset for 8/1/11 at 9:00 am; /s/ J Nye, 7-26-11
- 07/28/2011 Response to Plaintiffs request for a preliminary injunction; aty Jennifer Tait
- 07/28/2011 Affidavit of Deborah Kufman in support of defs response to plaintiffs request for a preliminary injunction; aty Jennifer Tait
- 07/28/2011 Affidavit of mailing; (response to plntfs request for a preliminary injunction ; affidavit of Deborah Kaufman in support of response to plaintiffs request for a preliminary injunction) aty Jennifer Tait
- 08/01/2011 Hearing result for Hearing Scheduled scheduled on 08/01/2011 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.
- 08/01/2011 Hearing Scheduled (Hearing Scheduled 08/29/2011 09:00 AM)
- 08/03/2011 Minute Entry and Order; counsel appeared for hrg on 8/1/11, matter continued to allow plttf to inspect original note, TRO to remain in place until hrg, sale continued as well, hrg reset for 8/29/11 at 9:00 am; /s/ J Nye, 8-3-11
- 08/25/2011 Motion to Continue Hearing and to Extend Temporary Restraining Order; /s/ Craig Jorgensen, atty for pltfs
- 08/25/2011 Motion to Shorten Time; /s/ Craig Jorgensen, atty for Pltfs
- 08/29/2011 Hearing result for Hearing Scheduled scheduled on 08/29/2011 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.
- 08/29/2011 Defendant's Opposition to Plaintiffs' Motion to Continue Hearing and to Extend Temporary Restraining Order; /s/ Jennifer Tait, atty for Defs
- 08/29/2011 Affidavit of Jennifer Tait in Response to Plaintiffs' Motion to Continue Hearing and to Extend Temporary Restraining Order; /s/ Jennifer Tait, atty for defs
- 08/29/2011 Affidavit of Service; /s/ Jennifer Tait, atty for defs
- 08/30/2011 Hearing Scheduled (Hearing Scheduled 09/06/2011 09:00 AM)
- Minute Entry and Order; counsel appeared for hrg on 8/29/11, mtn to continue hearing is

- 09/01/2011 GRANTED, tro extended for 30 days provided plaintiff's post a \$1000 bond by no later than the end of business on 9/6/11, briefing to be submitted by the end of business on 9/2/11 regarding jurisdiction; hrg reset for 9/6/11 at 9:00 am; /s/ J Nye, 9-1-11
- 09/02/2011 Brief in support of Motion for inspection/forensic analysis; aty Criag Jorgensen for plntf
- 09/02/2011 Request for production; aty Craig Jorgensen for plntf
- 09/06/2011 Bond Posted - Cash (Receipt 30902 Dated 9/6/2011 for 1000.00)- by Jerry and Jocarol Losee.
- 09/06/2011 Hearing result for Hearing Scheduled scheduled on 09/06/2011 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.
- 09/06/2011 Affidavit of Jennifer Tait in opposition to plaintiffs request for expert analysis of the original adjustable rate note; Jennifer Tait
- 09/06/2011 Defendants Opposition to plaintiffs request for expert analysis of the original adjustable rate note; aty Jennifer Tait
- 09/06/2011 Affidavit of Service; Served Dfdts. Opposition to Plntfs. request for expert analysis of the original adjustable rate note and Affd. of Jennifer Tait in Opposition to Plntfs. Request for Expert analysis of the Original Adjustable Rate Note; Jennifer Tait, Attorney for Dfdts.
- 09/12/2011 Minute Entry and Order; counsel appeared for hrg on 9/6/11; court took matter under advisement and will issue a written decision, pltf required to post \$1,000 bond by end of 9/6/11 business day; /s/ J Nye, 9-12-11
- 09/30/2011 Decision : Plaintiffs Motion for inspection forensic Analysis and Request for production; (moiton for inspection forensic analysis and requests for production are both DENIED: s/ Judge Nye 9-30-2011
- 10/14/2011 Motion to reconsider; aty Craig Jorgensen for plntf
- 10/14/2011 Memorandum in support of motion to reconsider and amend: aty Craig Jorgensen
- 10/14/2011 Affidavit of JoCarol Losee; aty Craig Jorgensen
- 10/25/2011 Motion to shorten time for giving notice of hearing onplaintiffs motion to reconsider; aty Craig Jorgensen
- 10/26/2011 Defendants Opposition to plaintiffs motionto reconsider; aty Jennifer Tait
- 10/27/2011 Hearing Scheduled (Motion 10/27/2011 10:00 AM)
- 10/27/2011 Hearing result for Motion scheduled on 10/27/2011 10:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.

Filing: L4 - Appeal, Civil appeal or cross-appeal  
to Supreme Court Paid by: Craig R. Jorgensen

10/28/2011 Receipt number: 0037518 Dated: 10/28/2011  
Amount: \$101.00 (Check) For: Losee, Jerry  
(plaintiff) and Losee, Jocarol (plaintiff)

10/28/2011 Appealed To The Supreme Court

10/28/2011 NOTICE OF APPEAL; Craig R. Jorgensen, Atty for  
Plntfs.

10/28/2011 Recieved check # 9911 for \$100.00 deposit on  
Clerk's Record.

10/28/2011 Defendants opposition to plaintiffs motion to  
reconsider; aty Jennifer Tait

10/28/2011 Affidavit of Service: Served Craign R. Jorgensen  
on 10-26-11 with Defendants Oppositon to  
Plaintiffs Motion to Reconsider.; Jennifer Tait;  
Attorney for Dfdts.

10/31/2011 Minute Entry and Order; Court GRANTED plntfs  
motion to shorten time, court then exercised its  
discretion and DENNIED the Motion : s/ Judge  
Nye 10-31-2011

11/02/2011 CLERK'S CERTIFICATE OF APPEAL; Signed and  
Mailed to Supreme Court and Counsel on 11-2-  
11.

11/04/2011 Motion for stay of execution or enforcement; aty  
Craig Jorgensen for plntf

11/15/2011 Order Denying Stay of Execution or  
Enforcement; court declines to grant the stay  
because no final judgment has been entered and  
no request has been made for an interlocutory  
appeal; /s/ J Nye, 11-15-11

11/21/2011 Notice of hearing on motion for rule 54b  
certificatation and new motion for stay of  
execution; aty Craig Jorgensen for plntf

11/21/2011 Motion for rule 54b certification and new  
motionfor staty of execution; aty Craig  
Jorgensen for plntf

11/21/2011 Hearing Scheduled (Motion 12/19/2011 11:00  
AM)

11/23/2011 Hearing Scheduled (Motion 11/28/2011 11:00  
AM)

11/28/2011 Hearing result for Motion scheduled on  
11/28/2011 11:00 AM: District Court Hearing  
Held Court Reporter: Stephanie Morse Number of  
Transcript Pages for this hearing estimated: Less  
than 100 pages.

12/02/2011 IDAHO SUPREME COURT: Clerk's Record due  
date suspended. Reason for Suspension:  
Suspended to 12-20-11 for response to  
Conditional Dismissal.

12/02/2011 IDAHO SUPREME COURT; Order Conditionally  
Dismissing Appeal. It hereby is Ordered that the  
Notice of Appeal be Conditionally Dismissed  
because it appears it is not from a final,  
appealable Order or Judgment; however, the  
Appellant may file a Response with this Court  
within 21 days from the date of this Order, which  
shall show good cause, if any exists, why this

appeal should not be dismissed.

12/05/2011 Affidavit of service - s/ Isabelle Evans

12/05/2011 Statement for attorneys fees; aty Jennifer Tait  
Defendants request for an Appeal Bond and

12/05/2011 Memorandum in support thereof; aty Jennifer  
Tait  
Judgment; ag def Deutsche Bank National Trust  
Company , Defs are entitled to reasonable costs  
and attys fees in the amount of \$14,476.50: s/  
12/07/2011 Judge Nye 12-7-2011

12/12/2011 IDAHO SUPREME COURT; Clerk's Certificate  
received in SC on 12-8-11. Please carefully  
examine the Title and Cert. If any corrections  
contact Dist. Clerk. The title in the Cert. must  
appear on all Docuemtns filed in SC.

Hearing result for Motion scheduled on  
12/19/2011 11:00 AM: District Court Hearing

12/19/2011 Held Court Reporter: Stephanie Morse Number of  
Transcript Pages for this hearing estimated: Less  
than 100 pages.

Minute Entry and Order; parties appeared  
telephonically for hearing on 12/19/11, court will  
grant Stay of Execution if plaintiffs post \$60,000  
12/19/2011 bond, if pitfs want court to consider lowering the  
bond, documentation will need to be provided  
that verifies the equity in the home; /s/ J Nye,  
12-19-11

12/21/2011 Affidavit of Jerry Losee; aty Craig Jorgensen for  
plntf

01/11/2012 Order; the court declines to lower the bond in  
this matter, bond remains set at \$60,000 for the  
appeal; /s/ J Nye, 1-11-12

01/11/2012 Case Status Changed: closed pending clerk  
action

02/02/2012 Order Exonerating Bond; \$1000 bond is  
exonerated and disbursed to Defendant's atty,  
Jennifer Tait; /s/ J Nye, 2-2-12

02/21/2012 CLERK'S RECORD received in Court Records on  
2-21-12.

02/27/2012 IDAHO SUPREME COURT; Documents received in  
SC. Minute Entry and Order, Order, Order  
Exonerating Bond.

02/29/2012 IDAHO SUPREME COURT; Order Dismissing  
Appeal. An Order Conditionally dismissing appeal  
was entered 11-29-11 because it appeared this  
appeal was not from a final appealable order or  
judgment. Appellant having failed to comply with  
this Court's order of 11-29-11; therefore; it  
hereby is ordered that this appeal be, and  
hereby is Dismissed. s/Stephen Kenyon/ 2-23-  
12.

04/10/2012 IDAHO SUPREME COURT; Acknowledgment of  
Receipt: Remittitur. Signed and Mailed back to  
SC on 4-12-12.

04/10/2012 Remittitur: The Court having entered an Order  
dismissing this appeal on 2-23-12. Appeal  
Dismissed signed Stephen Kenyon on 3-19-12.

*Connection: Public*

Losee Bankruptcy Chronology:

BK No. 96-40077-JDP

Filed: 2/14/1996

Discharge: 6/27/1996

BK No. 10-41246-JDP

Filed: 7/14/2010

Dismissed: 9/8/2010

Reason for Dismissal: Voluntary Motion to Dismiss filed by the Losees' on 8/27/10

BK No. 12-40033-JDP

Filed: 1/12/2012

Dismissed: 2/8/2012

Reason for Dismissal: Voluntary Motion to Dismiss filed by the Losees' on 1/26/12

BK No. 12-41726-JDP

Filed: 12/26/2012

Dismissed: 1/25/2013

Reason for Dismissal: Voluntary Motion to Dismiss filed by the Losees' on 1/9/13

C

**LDF**

**U.S. Bankruptcy Court  
 District of Idaho [LIVE] (Pocatello)  
 Bankruptcy Petition #: 96-40077-JDP**

*Assigned to:* Jim D Pappas  
 Chapter 7  
 Voluntary  
 No asset

*Date filed:* 02/14/1996  
*Date terminated:* 11/06/1996  
*Date discharged:* 06/27/1996  
*341 meeting:* 04/03/1996  
*Deadline for objecting to discharge:* 06/03/1996 00:00

**Debtor**  
**Jerry Lee Losee**  
 POB 54  
 Lava Hot Springs, ID 83246  
 BANNOCK-ID

represented by **Jerry Lee Losee**  
 PRO SE

**Debtor**  
**JoCarol Losee**  
 POB 54  
 Lava Hot Springs, ID 83246  
 BANNOCK-ID

represented by **JoCarol Losee**  
 PRO SE

*aka* **JoCarol Messer**

**Trustee**  
**LD Fitzgerald**  
 PO Box 818  
 Pocatello, ID 83204-0818  
 208-233-0500

**U.S. Trustee**  
**US Trustee**  
 Washington Group Central Plaza  
 720 Park Blvd, Ste 220  
 Boise, ID 83712  
 208-334-1300

Filing Date	#	Docket Text
02/14/1996	1	Voluntary Petition all schedules and statements. # Prop Schs (ABC) = 5 # Debt Schs (DEF) = 10 Filing Fee Pd -0-. tj (Entered: 02/20/1996)

02/14/1996	2	Application By Debtor JoCarol Losee, Debtor Jerry Lee Losee To Pay Filing Fee In Installments tj (Entered: 02/20/1996)
02/20/1996	3	Order Granting [2-1] Application To Pay Filing Fee In Installments by Jerry Lee Losee, JoCarol Losee ; Next Installment Payment Due On 3/21/96 ( Amount Paid \$ -0-) . zz
02/20/1996	4	Income Tax Turnover Order. zz
02/20/1996		First Meeting of Creditors Scheduled For 9:00 4/3/96 At Pocatello U.S. Courtroom Last Day To Oppose Discharge: 6/3/96 zz
02/21/1996	5	Courts Certificate of Mailing Re: [0-0] First Meeting # of Notices Sent: 34 zz
02/27/1996	6	Order to File Amended Schedules ; Amended Schedule Due: 3/18/96 drh
02/27/1996	7	Objection to Exemption By Trustee L D Fitzgerald - all exemptions. drh
03/01/1996	8	Amended Schedules C, E, (1 pg of C; 6 pgs of E) drh (Entered: 03/05/1996)
03/04/1996	9	Notice of Appointment of Trustee, LD Fitzgerald drh (Entered: 03/06/1996)
03/15/1996		Installment Fee Paid. ; Next Installment Payment Due on 4/15/96 ( Amount Paid \$ 43.75 Receipt # 45953) drh (Entered: 03/21/1996)
04/08/1996	11	First Meeting Held and Examination of Debtor; Debtor PRESENT. Tape # 1 Counter #: 1360 drh (Entered: 04/16/1996)
04/08/1996	10	Trustee's No Asset Report. admin (Entered: 06/27/1996)
04/10/1996		Installment Fee Paid. ; Next Installment Payment Due on 5/10/96 ( Amount Paid \$ 43.75 Receipt # 46409) drh (Entered: 04/15/1996)
05/20/1996		Installment Fee Paid. ; Next Installment Payment Due on 6/19/96 ( Amount Paid \$ 43.75 Receipt # 46995) drh
		Final Installment Fee Paid. ( Amount Paid \$ 43.75 Receipt #

06/12/1996		47468) drh (Entered: 06/17/1996)
06/27/1996	12	Order of Discharge admin
06/27/1996		Text not available.
09/04/1996	13	Courts Certificate of Mailing Re: [12-1] Order Discharge by Jerry Lee Losee, JoCarol Losee # of Notices Sent: 34 drh (Entered: 11/05/1996)
11/06/1996	14	Order Approving Accounting, Discharging Trustee and Closing Estate. rkb
11/06/1996		Case Closed. rkb

PACER Service Center			
Transaction Receipt			
10/28/2015 10:10:19			
<b>PACER Login:</b>	rt0476:2695245:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	96-40077-JDP Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Format: html Page counts for documents: included
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

**FeeDueINST, DebtEd, DSOForm283, FeeBalance, CLOSED, DISMISSED**

**U.S. Bankruptcy Court  
District of Idaho [LIVE] (Pocatello)  
Bankruptcy Petition #: 10-41246-JDP**

Assigned to: Jim D Pappas  
Chapter 13  
Voluntary  
Asset

Date filed: 07/14/2010  
Date terminated: 09/27/2010  
Debtor dismissed: 09/08/2010  
Joint debtor dismissed: 09/08/2010  
341 meeting: 08/05/2010

Debtor disposition: Dismissed for Other Reason  
Joint debtor disposition: Dismissed for Other Reason

**Debtor**

**Jerry Lee Losee**  
9253 Frandsen Rd  
Lava Hot Springs, ID 83246  
BANNOCK-ID  
[REDACTED]

represented by **Jerry Lee Losee**  
PRO SE

**Joint Debtor**

**JoCarol Losee**  
9253 Frandsen Rd  
Lava Hot Springs, ID 83246  
BANNOCK-ID  
[REDACTED]

represented by **JoCarol Losee**  
PRO SE

**Trustee**

**Kathleen A. McCallister**  
POB 1150  
Meridian, ID 83680  
208-922-5100

**U.S. Trustee**

**US Trustee**  
Washington Group Central Plaza  
720 Park Blvd, Ste 220  
Boise, ID 83712  
208-334-1300

Filing Date	#	Docket Text
	<u>1</u> (29 pgs; 2 docs)	Chapter 13 Voluntary Petition . Filed by Jerry Lee Losee , JoCarol Losee :Petition signature pages due

07/14/2010		by 7/19/2010 Chapter 13 Plan due by 7/28/2010. Statement of Domestic Support due 7/28/2010. Employee Income Record Due: 7/28/2010. Schedule F due 7/28/2010. Statement of Financial Affairs due 7/28/2010. Statistical Summary of Certain Liabilities due 7/28/2010. Incomplete Filings due by 7/28/2010.: SOFA signature page due by 8/3/2010: Declaration of Schedules signature page due by 7/19/2010. Installment application due by: 7/15/2010. (ad)
07/14/2010	<u>2</u> (2 pgs)	Meeting of Creditors with 341(a) meeting to be held on 08/05/2010 at 02:00 PM at Pocatello - US Courthouse Pocatello. Confirmation hearing to be held on 09/14/2010 at 01:30 PM at Pocatello - US Courthouse Pocatello. Proof of Claim due by 11/03/2010. Last day to oppose dischargeability of certain debts is 10/04/2010. (ad)
07/14/2010	<u>3</u> (1 pg)	Application to Pay Filing Fee in Installments Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (ad)
07/14/2010	<u>4</u>	Social Security Statement - SEALED Document Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee . (ad)
07/14/2010	<u>5</u> (8 pgs)	Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form B22C) Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee . (ad)
07/14/2010	<u>6</u> (2 pgs)	Certificate of Credit Counseling Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee . (ad)
07/14/2010		The Court has received the following original signature page[s]: Petition page 2, Petition page 3, Declaration of Schedules, (RE: related document(s)) 1 Voluntary Petition (Chapter 13) filed by Debtor Jerry Lee Losee, Joint Debtor JoCarol Losee) (ad)
07/14/2010	<u>7</u> (1 pg)	Confirmation Memo (ad)
07/14/2010	<u>8</u> (3 pgs; 3 docs)	Income Tax Turnover Order, Notice of Appointment of Trustee, and Order to Pay Trustee (ad)

07/14/2010	<u>9</u> (1 pg)	Order Granting Application To Pay Filing Fees In Installments. (Related Doc # 3). Signed on 7/14/2010. Final Installment Payment due by 11/11/2010 (120 days from filing date). (ad)
07/16/2010	<u>10</u> (5 pgs)	BNC Certificate of Mailing - Meeting of Creditors Service Date 07/16/2010. (Admin.)
07/16/2010	<u>11</u> (2 pgs)	BNC Certificate of Mailing - Confirmation Memo Service Date 07/16/2010. (Admin.)
07/16/2010	<u>12</u> (2 pgs)	BNC Certificate of Mailing - Deficiency Notice Service Date 07/16/2010. (Admin.)
07/16/2010	<u>13</u> (2 pgs)	BNC Certificate of Mailing - Notice of Appointment of Trustee Service Date 07/16/2010. (Admin.)
07/16/2010	<u>14</u> (2 pgs)	BNC Certificate of Mailing - Ch.13 Income Tax Turnover Order Service Date 07/16/2010. (Admin.)
07/16/2010	<u>15</u> (2 pgs)	BNC Certificate of Mailing - Order regarding Application To Pay Filing Fee in Installments Service Date 07/16/2010. (Admin.)
07/16/2010	<u>16</u> (2 pgs)	BNC Certificate of Mailing - Order to Debtor Directing Payment to Trustee Service Date 07/16/2010. (Admin.)
07/20/2010		Receipt of Chapter 13 Installment Fee - \$68.50 by AD. Receipt Number 00452953. (admin)
07/28/2010	<u>17</u> (11 pgs)	Statement of Financial Affairs Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document(s)) <u>1</u> Voluntary Petition (Chapter 13)). (drh)
07/28/2010	<u>18</u>	Employee Income Records (SEALED) Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document(s)) <u>1</u> Voluntary Petition (Chapter 13)). (drh)
07/28/2010	<u>19</u> (10 pgs)	Chapter 13 Plan Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document (s)) <u>1</u> (drh)
07/28/2010	<u>20</u> (1 pg)	Letter Re: confirmation requirements, etc. Filed by Dana Hoyle, Deputy Clerk. (drh)

07/28/2010		The Court has received the following original signature page[s]: SOFA, (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 13) filed by Debtor Jerry Lee Losee, Joint Debtor JoCarol Losee) (drh)
07/30/2010	<u>21</u> (11 pgs)	BNC Certificate of Mailing - Ch.13 Plan Service Date 07/30/2010. (Admin.)
07/30/2010		Receipt of Amendment Filing Fee - \$26.00 by AD. Receipt Number 00452958. (admin)
08/02/2010	<u>22</u> (2 pgs)	Statement of Domestic Support Obligations Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 13)). (drh) (Entered: 08/03/2010)
08/02/2010	<u>23</u> (6 pgs)	Schedule[s] F - Amount \$106728.81, Summary of Schedules, Statistical Summary of Certain Liabilities, Amended Declaration. Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document(s) <u>1</u> Voluntary Petition (Chapter 13)). [Original signature page retained] (drh) (Entered: 08/03/2010)
08/02/2010	<u>24</u>	Employee Income Records (SEALED) Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee . (drh) (Entered: 08/03/2010)
08/02/2010	<u>25</u> (1 pg)	Notice of Confirmation Hearing Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document(s) <u>19</u> Chapter 13 Plan Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee). Confirmation hearing to be held on 9/14/2010 at 01:30 PM at Pocatello - US Courthouse Pocatello. (drh) (Entered: 08/03/2010)
08/02/2010	<u>26</u> (3 pgs)	Certificate of Service Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee (RE: related document(s) <u>19</u> Chapter 13 Plan, <u>25</u> Notice of Hearing). (drh) (Entered: 08/03/2010)
08/09/2010	<u>27</u> (1 pg)	341(a) Meeting Minutes - Debtor Present. (McCallister, Kathleen)
	<u>28</u> (9 pgs; 2 docs)	Objection to Confirmation of Plan Filed by Creditor Idaho Company The (RE: related document(s) <u>19</u> Chapter 13 Plan Filed by Debtor Jerry Lee Losee,

08/10/2010		Joint Debtor JoCarol Losee). (Attachments: <u>1</u> Exhibit A and B)(Johnston, Alan)
08/17/2010		Repeat Filer: ID Ch 7 96-40077 Date filed: 02/14/1996 Date terminated: 11/06/1996 Date discharged: 06/27/1996 (nl)
08/27/2010	<u>29</u> (4 pgs)	Creditor Request for Notice (Goldberg, Andrew)
08/27/2010	<u>30</u> (4 pgs)	Voluntary Motion to Dismiss Case Filed by Debtor Jerry Lee Losee , Joint Debtor JoCarol Losee Objections to Voluntary Dismissal due by:9/7/2010. (drh)
09/06/2010	<u>31</u> (2 pgs)	Statement of No Response or Objection to Debtors' Motion to Dismiss Filed by Trustee Kathleen A. McCallister (RE: related document(s) <u>30</u> Voluntary Motion to Dismiss Case). (McCallister, Kathleen)
09/08/2010	<u>32</u> (1 pg)	Order Dismissing Case Signed on 9/8/2010. (cs)
09/10/2010	<u>33</u> (2 pgs)	BNC Certificate of Mailing - Order Dismissing Case. Service Date 09/10/2010. (Admin.)
09/24/2010	<u>34</u> (2 pgs)	Chapter 13 Trustee's Final Report and Account. (McCallister, Kathleen)
09/27/2010	<u>35</u> (1 pg)	Order Discharging Trustee and Closing Dismissed Estate Signed on 9/27/2010. (drh)
09/29/2010	<u>36</u> (2 pgs)	BNC Certificate of Mailing - Order Discharging Trustee and Closing Dismissed Estate Service Date 09/29/2010. (Admin.)

<b>PACER Service Center</b>			
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			10-41246-JDP Fil or Ent:

<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	filed Doc From: 0 Doc To: 99999999 Term: included Format: html Page counts for documents: included
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30

FeeDueINST, FeeBalance, PRVDISM, CLOSED, DISMISSED

**U.S. Bankruptcy Court  
District of Idaho [LIVE] (Pocatello)  
Bankruptcy Petition #: 12-40033-JDP**

Assigned to: Jim D Pappas  
Chapter 13  
Voluntary  
Asset

Date filed: 01/12/2012  
Date terminated: 02/13/2012  
Debtor dismissed: 02/08/2012  
Joint debtor dismissed: 02/08/2012  
341 meeting: 03/01/2012

Debtor disposition: Dismissed for Other Reason  
Joint debtor disposition: Dismissed for Other Reason

**Debtor**

**Jerry Losee**  
9253 Fransen Rd  
Lava Hot Springs, ID 83246  
BANNOCK-ID  
[REDACTED]

represented by **Jerry Losee**  
PRO SE

**Joint Debtor**

**JoCarol Losee**  
9253 Fransen Rd  
Lava Hot Springs, ID 83246  
BANNOCK-ID  
[REDACTED]

represented by **JoCarol Losee**  
PRO SE

**Trustee**

**Kathleen A. McCallister**  
POB 1150  
Meridian, ID 83680  
208-922-5100

**U.S. Trustee**

**US Trustee**  
Washington Group Central Plaza  
720 Park Blvd, Ste 220  
Boise, ID 83712  
208-334-1300

Filing Date	#	Docket Text
	<u>1</u> (10 pgs; 2 docs)	Chapter 13 Voluntary Petition. Filed by Jerry Losee, JoCarol Losee Chapter 13 Plan due by 1/26/2012.

01/12/2012		Credit Counseling due 1/26/2012. Statement of Domestic Support due 1/26/2012. Employee Income Records due 1/26/2012. Chapter 13 Monthly and Disposable Income Form 22C Due 1/26/2012. Schedules A-J due 1/26/2012. Statement of Financial Affairs due 1/26/2012. Statistical Summary of Certain Liabilities due 1/26/2012. Summary of schedules due 1/26/2012. Incomplete Filings due by 1/26/2012. (ad)
01/12/2012	<u>2</u> (2 pgs)	Meeting of Creditors with 341(a) meeting to be held on 03/01/2012 at 01:00 PM at Pocatello - US Courthouse, Jury Assembly Room 177. Confirmation hearing to be held on 04/10/2012 at 01:30 PM at Pocatello - US Courthouse, Bankruptcy Courtroom. Proof of Claim due by 05/30/2012. Last day to oppose dischargeability of certain debts is 04/30/2012. (ad)
01/12/2012	<u>3</u>	Social Security Statement - SEALED Document Filed by Debtor Jerry Losee, Joint Debtor JoCarol Losee. (ad)
01/12/2012	<u>4</u> (1 pg)	Application to Pay Filing Fee in Installments Filed by Debtor Jerry Losee , Joint Debtor JoCarol Losee (ad)
01/12/2012		The Court has received the following original signature page[s]: Petition page 2 & Petition page 3. (ad)
01/12/2012	<u>5</u> (3 pgs; 3 docs)	Income Tax Turnover Order, Notice of Appointment of Trustee, and Order to Pay Trustee. (ad)
01/12/2012	<u>6</u> (1 pg)	Order Granting Application To Pay Filing Fees In Installments. (Related Doc # 4). Signed on 1/12/2012. Final Installment Payment due by 5/11/2012 (120 days from filing). (ad)
01/13/2012	<u>7</u> (1 pg)	Confirmation Memo (nl)
01/13/2012		Repeat Filer: ID Ch 13 10-41246 Date filed: 07/14/2010 Date terminated: 09/27/2010 Debtor dismissed: 09/08/2010 Joint debtor dismissed: 09/08/2010 and ID Ch 7 96-40077 Date filed: 02/14/1996 Date terminated: 11/06/1996 Date discharged: 06/27/1996 (nl)

01/14/2012	<u>8</u> (4 pgs)	BNC Certificate of Mailing - Meeting of Creditors Notice Date 01/14/2012. (Admin.)
01/14/2012	<u>9</u> (3 pgs)	BNC Certificate of Mailing - Deficiency Notice Notice Date 01/14/2012. (Admin.)
01/14/2012	<u>10</u> (3 pgs)	BNC Certificate of Mailing - Notice of Appointment of Trustee Notice Date 01/14/2012. (Admin.)
01/14/2012	<u>11</u> (3 pgs)	BNC Certificate of Mailing - Ch.13 Income Tax Turnover Order Notice Date 01/14/2012. (Admin.)
01/14/2012	<u>12</u> (3 pgs)	BNC Certificate of Mailing - Order regarding Application To Pay Filing Fee in Installments Notice Date 01/14/2012. (Admin.)
01/14/2012	<u>13</u> (3 pgs)	BNC Certificate of Mailing - Order to Debtor Directing Payment to Trustee Notice Date 01/14/2012. (Admin.)
01/15/2012	<u>14</u> (3 pgs)	BNC Certificate of Mailing - Confirmation Memo Notice Date 01/15/2012. (Admin.)
01/23/2012	16	Returned mail received for Bonneville Collections, 2627 Washington Blvd., Ogden, UT 84401-3613. Forwarded to Pro Se debtors. (RE: related document (s)8 BNC Certificate of Mailing - Meeting of Creditors) (st) (Entered: 02/03/2012)
01/26/2012	<u>15</u> (2 pgs)	Voluntary Motion to Dismiss Case Filed by Debtor Jerry Losee , Joint Debtor JoCarol Losee Objections to Voluntary Dismissal due by:2/5/2012. (tw)
02/08/2012	<u>17</u> (1 pg)	Order Granting Motion to Dismiss Case. <b>Both Debtors</b> Dismissed.(Related Doc # <u>15</u> ) Signed on 2/8/2012. (tw)
02/10/2012	<u>18</u> (3 pgs)	BNC Certificate of Mailing - Order Dismissing Case. Notice Date 02/10/2012. (Admin.)
02/12/2012	<u>19</u> (2 pgs)	Chapter 13 Trustee's Final Report and Account. (McCallister, Kathleen)
02/13/2012	<u>20</u> (1 pg)	Order Discharging Trustee and Closing Dismissed Estate Signed on 2/13/2012. (tw)

02/15/2012	<u>21</u> (3 pgs)	BNC Certificate of Mailing - Order Discharging Trustee and Closing Dismissed Estate Notice Date 02/15/2012. (Admin.)
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PACER Service Center			
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<b>PACER Login:</b>	rt0476:2695245:0	<b>Client Code:</b>	
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<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

**FeeDueINST, PRVDISM, DISMISSED, FeeBalance, CLOSED**

**U.S. Bankruptcy Court  
 District of Idaho [LIVE] (Pocatello)  
 Bankruptcy Petition #: 12-41726-JDP**

Assigned to: Jim D Pappas  
 Chapter 13  
 Voluntary  
 Asset

Date filed: 12/26/2012  
 Date terminated: 02/07/2013  
 Debtor dismissed: 01/25/2013  
 Joint debtor dismissed: 01/25/2013  
 341 meeting: 02/07/2013

Debtor disposition: Dismissed for Other Reason  
 Joint debtor disposition: Dismissed for Other Reason

**Debtor**

**Jerry Losee**  
 9253 Frandsen Rd.  
 Lava Hot Springs, ID 83246  
 BANNOCK-ID

represented by **Jerry Losee**  
 PRO SE

**Joint Debtor**

**JoCarol Losee**  
 9253 Frandsen Rd.  
 Lava Hot Springs, ID 83246  
 BANNOCK-ID

represented by **JoCarol Losee**  
 PRO SE

**Trustee**

**Kathleen A. McCallister**  
 POB 1150  
 Meridian, ID 83680  
 208-922-5100

**U.S. Trustee**

**US Trustee**  
 Washington Group Central Plaza  
 720 Park Blvd, Ste 220  
 Boise, ID 83712  
 208-334-1300

Filing Date	#	Docket Text
	<u>1</u> (10 pgs; 3 docs)	Chapter 13 Voluntary Petition . Filed by Jerry Losee , JoCarol Losee Chapter 13 Plan due by

12/26/2012		1/9/2013.Credit Counseling Date: 1/9/2013. Statement of Domestic Support due 1/9/2013.Employee Income Records due 1/9/2013. Chapter 13 Monthly and Disposable Income Form 22C Due 1/9/2013. Schedules A-J due 1/9/2013. Statement of Financial Affairs due 1/9/2013.Statistical Summary of Certain Liabilities due 1/9/2013. Summary of schedules due 1/9/2013. Incomplete Filings due by 1/9/2013.Installment application due by: 12/27/2012. (ad) Additional attachment(s) added on 12/26/2012 (ad).
12/26/2012	<u>2</u> (3 pgs; 2 docs)	Meeting of Creditors with 341(a) meeting to be held on 02/07/2013 at 09:00 AM at Pocatello - US Courthouse, Jury Assembly Room 177. Confirmation hearing to be held on 03/05/2013 at 01:30 PM at Pocatello - US Courthouse, Bankruptcy/Magistrate Courtroom. Proof of Claim due by 05/08/2013. Last day to oppose dischargeability of certain debts is 04/08/2013. (ad)
12/26/2012	<u>3</u> (1 pg)	Application to Pay Filing Fee in Installments Filed by Debtor Jerry Losee , Joint Debtor JoCarol Losee (ad)
12/26/2012	<u>4</u>	Social Security Statement - SEALED Document Filed by Debtor Jerry Losee , Joint Debtor JoCarol Losee . (ad)
12/26/2012		The Court has received the following original signature page[s]: Petition page 2 & Petition page 3. (ad)
12/26/2012	<u>5</u> (2 pgs; 2 docs)	Confirmation Memo (ad)
12/26/2012	<u>6</u> (6 pgs; 6 docs)	Income Tax Turnover Order, Notice of Appointment of Trustee, & Order to Pay Trustee. (ad)
12/26/2012		Repeat Filers: ID Ch 13 10-41246 Date filed: 07/14/2010 Date terminated: 09/27/2010 Debtor dismissed: 09/08/2010 Joint debtor dismissed: 09/08/2010 and ID Ch 7 96-40077 Date filed: 02/14/1996 Date terminated: 11/06/1996 Date discharged: 06/27/1996 (ad)
	<u>7</u> (2 pgs; 2 docs)	Order Granting Application To Pay Filing Fees In Installments. (Related Doc # 3). Signed on

12/27/2012		12/27/2012. Final Installment Payment due by 4/25/2013 (120 days from filing). (ad)
12/29/2012	<u>8</u> (4 pgs)	BNC Certificate of Mailing - Meeting of Creditors Notice Date 12/29/2012. (Admin.)
12/29/2012	<u>9</u> (3 pgs)	BNC Certificate of Mailing - Confirmation Memo Notice Date 12/29/2012. (Admin.)
12/29/2012	<u>10</u> (3 pgs)	BNC Certificate of Mailing - Deficiency Notice Notice Date 12/29/2012. (Admin.)
12/29/2012	<u>11</u> (3 pgs)	BNC Certificate of Mailing - Notice of Appointment of Trustee Notice Date 12/29/2012. (Admin.)
12/29/2012	<u>12</u> (3 pgs)	BNC Certificate of Mailing - Ch.12/13 Income Tax Turnover Order Notice Date 12/29/2012. (Admin.)
12/29/2012	<u>13</u> (3 pgs)	BNC Certificate of Mailing - Order to Debtor Directing Payment to Trustee Notice Date 12/29/2012. (Admin.)
12/30/2012	<u>14</u> (3 pgs)	BNC Certificate of Mailing - Order regarding Application To Pay Filing Fee in Installments Notice Date 12/30/2012. (Admin.)
01/09/2013	<u>15</u> (2 pgs)	Voluntary Motion to Dismiss Case Filed by Debtor Jerry Losee , Joint Debtor JoCarol Losee Objections to Voluntary Dismissal due by:1/22/2013. (drh)
01/10/2013	<u>16</u> (2 pgs)	Statement of No Response or Objection to Debtors Voluntary Motion to Dismiss Filed by Trustee Kathleen A. McCallister (RE: related document(s) <u>15</u> Voluntary Motion to Dismiss Case). (McCallister, Kathleen)
01/25/2013	<u>17</u> (2 pgs; 2 docs)	Order Dismissing Case Signed on 1/25/2013. (cs)
01/30/2013	<u>18</u> (3 pgs)	BNC Certificate of Mailing - Order Dismissing Case. Notice Date 01/30/2013. (Admin.)
01/31/2013	<u>19</u> (2 pgs)	Chapter 13 Trustee's Final Report and Account. (McCallister, Kathleen)
	<u>20</u>	Order Discharging Trustee and Closing Dismissed

02/07/2013	(2 pgs; 2 docs)	Case Signed on 2/7/2013. (cs)
02/10/2013	<u>21</u> (3 pgs)	BNC Certificate of Mailing - Order Discharging Trustee and Closing Dismissed Estate Notice Date 02/10/2013. (Admin.) (Entered: 02/11/2013)

PACER Service Center			
Transaction Receipt			
10/28/2015 10:11:38			
<b>PACER Login:</b>	rt0476:2695245:0	<b>Client Code:</b>	
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<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20





summons was included, Plaintiffs did not personally serve Defendant New Century Mortgage with a copy of the amended complaint or summons as required by Rule 4.

Thus, for the above stated reasons, Plaintiffs' Motion for Default is DENIED according to law.

IT IS SO ORDERED.

DATED this 30<sup>th</sup> day of November, 2015



STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 1 day of Dec, 2015, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jerry and JoCarol Losee  
9253 Frandsen Road  
Lava Hot Springs, ID 83246

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

Jennifer Tait  
ROBINSON TAIT, P.S.  
710 Second Avenue, Suite 710  
Seattle, WA 98104

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

Bradley Morrice  
18400 VonKarman, Ste. 1000  
Irvine, CA 92612

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

DATED this 1 day of Dec, 2015.



Deputy Clerk

2016 JUL 11 AM 9:13

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Register#CV-2016- -OC

JERRY LOSEE AND JOCAROL LOSEE,

Plaintiff,

-vs-

NEW CENTURY MORTGAGE CORPORATION,  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY,

Defendants.

ORDER SETTING  
TELEPHONE STATUS  
CONFERENCE

A TELEPHONE STATUS CONFERENCE before Judge Stephen S. Dunn, District Judge,  
IS SET FOR THE HOUR OF 2 P.M. ON THE 1<sup>ST</sup> DAY OF AUGUST, 2016.

Plaintiff's counsel shall make arrangements for and initiate the conference at the time specified above and include all parties. The court telephone number to be called shall be 208-236-7250.

DATED July 11, 2016.

  
STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11 day of July, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jerry and JoCarol Losee  
9253 Frandsen Rd  
Lava Hot Springs, ID 83246

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

Duetsche Bank National Trust Company  
Legal Department  
1761 E Saint Andrew Pl  
Santa Ana, CA 92705-4934

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

DATED this 11 day of July, 2016.

April Helton  
Deputy Clerk

*Deann*

FILED  
BANNOCK COUNTY  
2017 APR 11 PM 3:28  
*JL*  
DEPUTY CLERK

SIXTH DISTRICT COURT OF IDAHO  
IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE AND JOCAROL LOSEE,

Plaintiffs,

VS.

Case No.: CV-2015-2863-OC

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE  
BANK NATIONAL TRUST  
COMPANY, et all

Defendants.

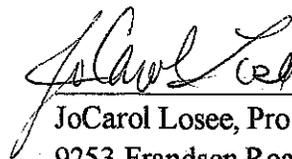
**NOTICE OF FILING FOR JUDICIAL REVIEW**

COME NOW, the Plaintiffs, Jerry Losee and JoCarol Losee, Pro Se, and hereby files  
this Notice of Filing for Judicial Review, in support of Affidavit of Joseph Esquivel, Jr, the  
Chain of Title Analysis. Said documentation is attached to this Notice of Filing as Exhibit "A

”

Respectfully Submitted,

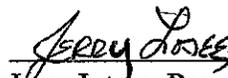
*Jerry Losee*  
Jerry Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com



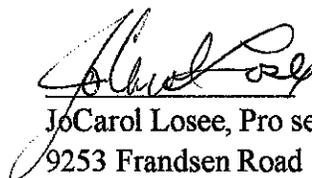
JoCarol Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY, that a true copy of this pleading has been sent by US Mail to the following parties: ROBINSON TAIT, P.S., Craig Peterson, Jennifer Tait, Lisa McMahon-Myhran, 901 Fifth Ave, Ste 400, Seattle, WA 98164; on this 11 day of April, 2017.



Jerry Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com



JoCarol Losee, Pro se  
9253 Frandsen Road  
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Email: jj68mobile@gmail.com

# EXHIBIT "A"

# **MORTGAGE COMPLIANCE INVESTIGATORS**



## **CHAIN OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION**

**Prepared For:  
Jerry and JoCarol Losee**

**Real Property Located at:  
9253 Frandsen Road Blvd  
Lava Hot Springs ID 83246**

**Prepared By:  
Mortgage Compliance Investigators  
7901 Cameron Road, Bldg. 2, #259  
Austin, TX 78759  
Private Investigation License # A18306**

**DISCLAIMER:** NOTHING IN THIS DOCUMENT SHALL BE CONSTRUED AS LEGAL ADVICE. THIS MATERIAL IS FOR EDUCATIONAL PURPOSES ONLY, AND IS TO BE USED FOR SELF-HELP AND AT READERS' INDIVIDUAL DISCRETION.

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- What should have happened
- What did happen
- Conveyance of an "eNote"
- Non Holder in Due Course alleges default (Trustee/Mortgage Servicer)

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- Unique Securitization Details

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## SECTION 1: CONVEYANCE OF A SECURITIZED MORTGAGE LOAN

### **Elements of a Mortgage Loan Instrument and how they are governed:**

- A. **Promissory Note (Tangible)** = A “writing” in tangible form, signed, unconditional, and identifying an indebtedness or unsecured promise by one party (the Maker or Promisor) to another \*drawer\* (the Payee or Promisee or Tangible Oblige) that commits the maker (Debtor or Tangible Obligor) to pay a specified sum on demand, or on a fixed or a determinable date. If the Paper Promissory Note is to be a “Secured” indebtedness, the Security Instrument is also identified within the Paper Promissory Note. The Paper Promissory Note is governed by Uniform Commercial Code Article 3 or the State equivalent. *A signature on The Paper Promissory Note is NOT governed by the ESIGN Act – 15 USC §7003 – which clearly excludes items governed by Uniform Commercial Code (UCC) Article 3 or the State equivalent, and as such the indebtedness can be only in paper tangible form.*
- B. **Security Instrument (Tangible)** = A “writing” in tangible form to memorialize Obligor’s or Debtor’s Pledging of an asset or property as an alternate method to secure payment to a Tangible Obligation if in accordance with all applicable laws of local jurisdiction.
- C. **Security Interest (Pledging of tangible alternate Real Property Rights for Payment)** = An Interest constituting a lien or claim created by a security agreement (Mortgage or Deed of Trust), or by the operation of law, that if valid and enforceable provides the alternate means to fulfill value of an intangible financial obligation between the Tangible Oblige and Tangible Obligor. Thus, if such Security Interest (Mortgage or Deed of Trust) is no longer valid or enforceable in accordance to local laws of jurisdiction then the Tangible UCC 3 Note is no longer secured by such Security Interest.
- D. **Promissory Note (Intangible “eNote” / Intangible Payment Obligation)** = An electronic transferrable record (created during securitization) and signed in accordance with ESIGN Act that commits the maker (Account Debtor or Intangible Obligor) to pay a specified sum on demand in accordance with a contract NOT governed by UCC Article 3 to an Intangible Oblige. Transferrable records are governed by UCC Article 8 and the Security Interests securing transferrable records are governed by UCC Article 9.
- E. **Security Interest (Intangible to UCC Article 8 “eNote”)** = Intangible Obligations (created during securitization by an Account Debtor) are routinely swapped for another Intangible Obligation (Certificates), and as being a Transferable Record such transaction would fall under governance of UCC 8. For this Certificate Intangible to be secured by an Intangible Account Debtor's Personal Property, the negotiation of the Intangible Obligation must be in compliance with UCC 8 as it applies to Transferable Records. As to the Personal Property securing the Transferable Record, UCC 9 would provide governing law.

## SECTION 1: CONVEYANCE OF A SECURITIZED MORTGAGE LOAN (cont'd)

### **Mortgage Loan Instrument or Personal Property – What really got securitized?**

We begin with the mortgage loan originator. Immediately after closing, the mortgage loan originator has taken possession of many documents of which only two (2) are required to be followed through to the securitization process. These two (2) documents are the *Paper Tangible Promissory Note* and the *Paper Tangible Security Instrument* (Mortgage, Deed of Trust, or Security Deed). The Promissory Note and the Mortgage (or Deed of Trust or Security Deed) together can be considered one tangible instrument. With a perfected Tangible lien of record securing a Tangible Promissory Note, this would then be in compliance to all applicable laws. As such, intangible and tangible laws apply granting the mortgage loan originator legal and equitable rights to the Note (tangible and intangible) as Holder in Due Course that would have legal and equitable rights to the security securing if the Note and security (tangible and intangible) are in compliance to all applicable law.

Assuming originating lender has complied with all applicable laws in origination of the mortgage loan; the originating lender could and routinely does offer up the mortgage loan to securitization by selling the payment stream interest to an Account Debtor (Sponsor/Seller) who then in accordance to an intangible contract swaps the intangible payment stream for certificates which are sold to investors. Such swap in legal parlance is considered to be a "True Sale".

The "unknown fact" is that the monetary value contained within the Tangible Obligation, and the Security Instrument securing it, were offered for sale in the secondary market as an UCC Article 8 note (eNote/Transferable Record usually tracked on a national database [book entry system]), the book entry system tracks who is the UCC8 Intangible Obligee with rights to the UCC 9 security interest. Although, the electronic book entry system does not track who has a vested legal interest in the tangible security instrument that is reserved by statutory law governed by local laws of jurisdiction.

The instrument is an Intangible Obligation. Thus, a second (non- UCC Article 3) instrument was created. The existence of the (non- UCC Article 3) Intangible instrument is dependent upon the existence of the UCC Article 3 Tangible instrument. To provide a security interest to allow for an alternate method to collect value for the (UCC Article 8) Intangible instrument, the maker of the (UCC Article 8) Intangible instrument pledged as collateral the "*Electronic Mortgage Loan Package*", evidenced by the UCC Article 3 Tangible instrument and its underlying security interest (instrument).

### **What should have happened:**

For the UCC Article 8 Intangible Obligee (Trust) to have a perfected and continuous alternate method to collect via alternate tangible such as a true sale of real property (Alternate method of value for the Tangible Payment Stream); the UCC Article 8 transferable record Intangible Obligee (Trust) would need to have been assigned rights to the Tangible Security Instrument in accordance to laws of local jurisdiction securing the UCC Article 3 obligation in order to be in compliance with state and federal law.

A Tangible Paper Promissory note denotes two distinguishing values, one of legal rights contained within which is routinely stripped out as an intangible obligation thus leaving the second value to be only the value of paper and ink being that of tangible property without legal rights but limited to that of being of personal property of the party that stripped the rights value (legal and monetary).

Thus, a Tangible Obligee may or may not be a holder in due course of a secured UCC 3 Instrument, whereas when distinct and separate laws applying to the tangible security instrument have not been followed, even if Tangible Obligee was entitled to enforce the UCC 3 Instrument does not mean that the Tangible Obligee is a party entitled to enforce security instrument [party to enforce the tangible note and the tangible security instrument].

When an Intangible claim (Payment Stream) or lien created by an Intangible security agreement extends to the Tangible Note and the Tangible Security Instrument, such actions must be in compliance with all applicable law. Signatures on Intangible Security Interest, Tangible Note and the Tangible Security Interest (Security Instrument) are not governed by Uniform Commercial Code Article 9 or State equivalent. The collection rights are governed under UCC 9 but the transfer of an intangible is governed under UCC 8; therefore negotiation of the Article 8 Instrument cannot be negotiated with an electronic signature attempting to effect transfer and thus the Security Interest falling under UCC 9 is also not transferred.

Legal guidance for signatures under E-SIGN Act – 15 USC §7003 – clearly excludes instruments governed by the Uniform Commercial Code Article 3, 8, & 9 or the State equivalent so the Intangible Claim cannot be negotiated electronically. The Tangible Personal Property Security Interest (Tangible Note and continuously assigned perfection of the Tangible Security securing the Tangible Note) can only be pledged as an intangible interest in the payment stream as a UCC8 instrument. As such the Intangible Payment Obligation can only be negotiated in paper form. The Intangible Security Interest cannot be sold as an electronic transferable record.

### **What Did Happen: Outside Applicable Law**

To provide a security interest to allow for an alternate method to collect value (Payment Stream) for the (UCC Article 8) Intangible instrument, the maker of the (UCC Article 8) Intangible instrument pledged as collateral the “Electronic Mortgage Loan Package”, evidenced by the UCC Article 3 Tangible instrument and its underlying security interest (instrument). This “Electronic Mortgage Loan Package” is simply an intangible interest in personal property (Intangible Payment Obligation). As future legal actions were unanticipated, the paper documents were either placed in storage (Custodial and Non-Custodial Custody) or deliberately destroyed.

It's important to understand Standard Operating Procedure in regards to the conveyance of a securitized mortgage loan; specifically the conversion of a Tangible Mortgage Loan Instrument into an Intangible, electronic “eNote” Form, which is typical in this new world of Electronic Securitization. Illusion of legality is the key to this scheme.

Upon the loan closing, the paper Promissory Note and the Security Instrument are scanned into an electronic digitized graphics package. The data from both sets of documents is converted to an electronic data file and paired with the electronic version of the Promissory Note and Security Instrument, along with all other closing documents which is called a “Mortgage Loan Package”. Where this “Electronic Mortgage Loan Package” is routinely addressed as the “Mortgage Loan Package”, it is nothing more than an interest in the [monetary] Intangible Payment Obligation, whose source of funding is captured

by the payments made regarding the Tangible Promissory Note Obligation. The "Electronic Digitized Mortgage Loan Package" is now falsely represented as the legal "Mortgage Loan Package".

The electronic version of the Warranty Deed may have been electronically submitted to be filed in Public Records by a third-party submitter as approved by the state; as the Warranty Deed contains the information that transfers the title (legal and equitable) of the property from the Seller to the Buyer (Homeowner). Title to the property is required to offer the property as security in the Security Instrument as collateral for the paper Promissory Note. The Warranty Deed is required to be filed in Public Records. The Warranty Deed is not governed under the Uniform Commercial Code or State equivalent and would be allowable under ESIGN Act to be filed in electronic form.

The electronic version of the Security Instrument is then electronically filed in Public Records. If the Obligee attempts to apply UCC Article 9 laws of perfection to support legal claims within the Security Instrument, then this filing would be unlawful. If the Obligee uses the laws of local jurisdiction to support perfection, then the filing would be lawful.

#### **Conveyance of an "eNote":**

If Mortgage Electronic Registration Systems (hereinafter "MERS") is involved, registration on the MERS system is required, and when this registration occurs, an 18-digit Mortgage Identification Number "MIN" is created. The first seven (7) digits identify the registering lender and the last digit is a checksum number. If the "Electronic Mortgage Loan Package" is registered in the MERS Registry, there is no physical transfer of the "Electronic Mortgage Loan Package". The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file identified as a non-lawful and intangible form of the electronic Promissory Note "eNote".

The First Electronic Sale / Assignment (Investment Vehicle as Example, Fannie/Freddie Similar) occurs when The "Loan Originator" (Assignor, Tangible Obligee) offers the "Electronic Mortgage Loan Package" to a perspective buyer (Intangible Obligor) to offset a prearranged line-of-credit by intangible obligee (Lender). In this scenario, Recipient (Assignee, Seller/Securitizer) of the Investment Vehicle, Intangible Obligee) of the "Electronic Mortgage Loan Package" has already conditionally agreed to accept the (conveyance) as a tender of funds has already occurred leaving only taking control of the "Electronic Mortgage Loan Package" as a transferable record, unbeknownst that it is a transaction not supported by law.

There are counties that identify on the face of the instrument that the instrument was submitted for recording in electronic form from the submitter, where the submitter has received from an intangible obligee an instrument that is to be recorded. If a "Notice of Assignment" reflecting this "electronic negotiation" is NOT filed in Public Records, as such a filing would be unlawful. There is no law that requires notice to be filed of Public Records upon the selling or purchasing of an electronic Promissory Note "eNote". As such, an "eNote" would only apply to personal property (Article 8 Intangible payment obligation) and not real property (Article 3 negotiable instruments), in order to be in compliance with UCC Article 9, ESIGN Act and UETA.

The First Transfer of Personal Property (Payment Intangible) differs from the first Electronic Sale as the Intangible Obligation (Payment Stream, rights to future payments, or beneficial interest) has been bifurcated from the Tangible Obligation (Paper Promissory Note), and in accordance to UCC Article 3-3203(d), rights to enforce the Tangible Obligation have not been negotiated to the Intangible Obligor

(Seller/Securitizer), the only rights conveyed are rights to simply hold and possess the Tangible Paper Obligation.

The Second Electronic Sale / Assignment happens when the "Seller/Securitizer of the Investment Vehicle," (Assignor/Intangible Obligor), sells/assigns the "Electronic Mortgage Loan Package" to the Buyer (Depositor of the Investment Vehicle / Subsequent Intangible Obligor). The recipient (Assignee, Depositor of the Investment Vehicle / Subsequent Intangible Obligor) of the "Electronic Mortgage Loan Package" under the terms of the trust accepts the transfer and takes control of the "Electronic Mortgage Loan Package".

The Third Electronic Sale / an Assignment happens when the "Depositor of the Investment Vehicle" (Assignor) sells/assigns the electronic loan package to the Trustee of the Investment Vehicle. The recipient (Assignee, Depositor of the Investment Vehicle) then takes control of the "Electronic Mortgage Loan Package". The "Depositor of the Investment Vehicle", in compliance with the Investment Trust's documents, takes control of the Investment Trust's Electronic Certificates in exchange for selling/assigning the "Electronic Mortgage Loan Package".

It is not uncommon to find in Public Records a "Notice of Assignment" filed reflecting a transfer of lien rights from the Original Assignor (Tangible Obligor) to a 3rd subsequent Intangible Assignee (Subsequent Intangible Obligor) of the Intangible Obligation, usually the Trustee or Mortgage Servicer). In this scenario the perfection of lien rights (Perfected Chain of Title) does not match the match the "Chain of Negotiation" of the Paper Promissory Note shown by indorsements, and, as such, proves the Paper Promissory Note is no longer secured by the Security Instrument as the Security Instrument has become a "Nullity" by operation of law. These filings in public records are fraud upon public records.

As an illusion, to allegedly provide a security interest to allow for an alternate method to collect value for the (UCC Article 8) Intangible instrument, the maker of the (UCC Article 8) Intangible instrument pledged as collateral the "Electronic Mortgage Loan Package", evidenced by a digitized copy of an UCC Article 3 Tangible instrument and its underlying security interest (instrument), not perfected of record in the intangible purchaser's name. To further the account debtor's deception, claims are made that Account Debtor was executing a true sale of the tangible note and its security to the purchaser of the intangible obligation, this is a legal impossibility Intangible purchaser never obtained legal rights to alternate tangible method of payment.

Security Interest to an alleged Account Debtor (rights to collect Future Payments pledged by the Account Debtor), which was to have been secured by the Payment Stream from the Tangible Obligation; where an alternate method to receive value was done via a properly attached and perfected real property security interest, could not have taken place legally under the current governing laws without having been in written tangible paper form. Real property Security Interests are governed by local laws of jurisdiction. UCC Article 9 governance for attachment and perfection of security rights to the intangible obligation is limited to personal property security interests such as goods and services.

A Tangible Obligor or Account Debtor may or may not be a holder in due course of an UCC 3 Instrument, where distinct and separate laws apply to the tangible security instrument have not been followed, even if Tangible Obligor/Account Debtor was entitled to enforce the UCC 3 Instrument does not mean that the Tangible Obligor is a party entitled to enforce security instrument (party to enforce the tangible note and the tangible security instrument). The trust has been conveyed a transferable record, leaving a Tangible paper UCC Article 3 Note **LESS** the rights securing it, as would have existed if the

Security Instrument securing the UCC Article 3 Tangible Note had been assigned in accordance to laws of local jurisdiction.

Furthermore, by NOT assigning the Security Instrument securing the UCC Article 3 Tangible Note in accordance to local laws of jurisdiction, the UCC 8 Intangible Obligees has taken possession of an "Electronic Mortgage Loan Package" lacking legal rights to the tangible security instrument. Pursuant to local laws of jurisdiction, without the UCC Article 8 transferable record and the Intangible Obligees perfecting of record, (the tangible rights that are found in the Tangible Security Instrument include the power of sale) the UCC 8 transferable record Intangible Obligees is NOT a Perfected Tangible Obligees.

It is important to understand that UCC Article 9 does not distinguish a difference between negotiable UCC Article 3 (Tangible Negotiable Instruments) and non-negotiable (Intangible non-Article 3 instrument such as an eNote or Transferable Record), as transferable record instruments are governed by UCC Article 8; which is also exclusion of ESIGN Act and UETA. UCC Article 9 governance is limited to personal property security interests, such as goods and services. Personal property Security Interests are governed by UCC Article 9. Within the current process of securitizing real property mortgage instruments, it is not uncommon to notice an improper use of applying UCC Article 9 laws to real property security interests in Note transactions where such UCC 8 Transferable record Intangible Promissory Note transactions are in fact non-negotiable transactions.

This system of securitization has a serious legal flaw as it provides that the Account Debtor (Intangible Obligor) and the Debtor (Tangible Obligor) have to be one in the same which is a logistical and legal impossibility. As the Intangible Obligees is not perfected of record to the Tangible Mortgage (Tangible Security securing the Tangible Article 3 Note) and not having the Tangible Article 3 instrument negotiated from Tangible Obligees to Intangible Obligees as provided under UCC 3, the Intangible Obligees has no real property securing an Obligation created by the Account Debtor. Whereas UCC 3 allows proving up an Article 3 Tangible Instrument, such law does not extend to the Tangible Security that once secured the Tangible Article 3 Note made payable to the Originating Tangible Obligees.

**NON-Holder-in-Due-Course Alleges Default: (Trustee/Mortgage Servicer)**

- **The Mortgage Servicer or the Trustee of the INTANGIBLE Investment Vehicle declares default.**
- Numerous actions of fraud are readily identifiable.
- As noted in the four (4) electronic negotiations of the electronic loan package to securitization, there is a lack of supporting law to allow electronic negotiation. Only the Holder of the "Paper Promissory Note" entitled in the indebtedness has a right to collect payments.
- Lost Note Affidavits based on Electronic Records are Hearsay
- Introduction of fraud into the Securities Market
- Fraudulent creation of assignments in attempt to transfer lien rights from Originator to 3<sup>rd</sup> or 4<sup>th</sup> subsequent purchaser bypassing 1<sup>st</sup> and 2<sup>nd</sup> purchasers resulting in fraudulent filing in public records.
- **Reader note: Specific details of client's unique transaction history found in the Chain of Title Analysis and Mortgage Fraud Investigation will determine if a violation has occurred.**

## SECTION 2: MORTGAGE LOAN TRANSACTION HISTORY

### Mortgage Loan Details:

<b>BORROWER(S)</b>	Jerry and JoCarol Losee
<b>SUBJECT ADDRESS</b>	9253 Frandsen Road Blvd Lava Hot Springs ID 83246
<b>MORTGAGE LENDER</b>	New Century Mortgage Corporation
<b>MORTGAGE NOMINEE/BENEFICIARY</b>	New Century Mortgage Corporation
<b>MORTGAGE TRUSTEE</b>	Northern Title Company
<b>TITLE COMPANY</b>	
<b>CLOSING DATE</b>	February 6, 2003
<b>ORIGINAL LOAN AMOUNT</b>	\$\$96,000.00
<b>ORIGINAL INTEREST RATE</b>	8.75%%
<b>TYPE OF LOAN (ARM or FIXED)</b>	ARM
<b>LOAN NUMBER</b>	0707054938
<b>CURRENT SERVICER</b>	Ocwen Loan Servicing, LLC

### Securitization Details:

<b>INVESTMENT BANK</b>	RMBS: New Century Mortgage Corporation
<b>Responsible Party</b>	NC Capital Corporation
<b>DEPOSITOR</b>	Morgan Stanley ABS Capital I Inc.
<b>TRUSTEE</b>	Deutsch Bank National Trust Company
<b>REMIC NAME</b>	Morgan Stanley ABS Capital I Inc. 2003-NC5
<b>MASTER SERVICER</b>	
<b>ISSUE DATE</b>	May 1, 2003
<b>MATURITY DATE</b>	May 29, 2003

## Loan Found In RMBS Trust:

### Morgan Stanley ABS Capital I Inc. 2003-NC5

ABSNet Deal ID:	14278	Region:	United States
Asset Class/Collateral Type:	RMBS/Subprime	Issuer:	Morgan Stanley Capital I Inc.
Deal Size:	897,422,000	Underwriter:	Morgan Stanley
Remittance Frequency:	Monthly	Trustee:	Deutsche Bank
Bloomberg Name:	MSAC 2003-NC5	Service:	HomeEq Servicing

[Third Party Summary](#)

### Classes Active/Paid:

Pool Performance Data														
Name	Currency	Pool Bal - Original	Pool Bal - End	WAC - Net	WARM	WALA	CPR - Current	CDR - Current	30 Day Delq Bal %	60 Day Delq Bal %	90 Day Delq Bal %	BK Bal %	FCL Bal %	REO Bal %
1	USD	620,177,657	12,191,151	-	208	148	1.268%	0.003%	3.230%	0.883%	-	4.329%	13.879%	1.110%
2	USD	364,837,481	11,907,789	-	199	149	14.327%	5.102%	2.289%	2.812%	-	10.036%	7.084%	1.331%
Aggregate Pool	USD	1,029,515,118	23,798,937	-	195	149	7.677%	2.530%	2.775%	1.339%	-	7.281%	10.612%	1.242%

Credit Support							
Name	Current Amt	Current Support %	OC Bal - Target	OC % - Target	OC Bal - Original	OC % - Original	
O/C	1,300,302	5.473%	5,026,076	21.150%	17,683,118	1.781%	
Name	Current Amt	Current Support %					
Free Excess Spread	0	0.000%					
Gross Excess Spread	62,677	2.636%					
Net Excess Spread	1,598	0.075%					

Capital Structure														
Name	Currency	ID	Pools	Class Bal - Original	Class Bal - End	Class Factor	Coupon % - Current	Subordination % - Original	Subordination % - Current	S&P	Moody's	Fitch	DBRS	Price
A-1	USD	81748RA80	1	502,341,000	-	-	-	17.260%	-	AAA	WR	PIF	-	-
A-2	USD	81748RB89	2	165,000,000	-	-	-	17.260%	-	AAA	WR	PIF	-	-
A-3	USD	81748RB99	2	211,716,000	-	-	-	17.260%	-	AAA	WR	PIF	-	-
M-1	USD	81748RBC4	1,2	83,513,000	17,747,926	216102	1.482%	10.900%	19.827%	BB+	Ba3	CCC	-	-
M-2	USD	81748RBD2	1,2	65,276,000	1,020,735	015467	3.157%	5.400%	15.531%	CCC	Caal	CCC	-	-
M-3	USD	81748RBE0	1,2	17,588,000	958,499	054497	3.837%	3.850%	11.408%	CCC	C	CC	-	-
B-1	USD	81748RBF7	1,2	13,065,000	1,237,226	140822	5.187%	2.350%	3.764%	CC	C	CC	-	-
B-2	USD	81748RBF5	1,2	11,055,000	804,201	080887	5.299%	1.250%	0.000%	D	C	D	-	-
B-3	USD	81748RBF3	1,2	12,569,000	-	-	-	0.000%	-	D	WR	NR	-	-
P	USD	-	1,2	0	0	-	0.000%	-	-	NR	NR	NR	-	-
UT-R	USD	-	1,2	0	0	-	0.000%	-	-	NR	NR	NR	-	-
X	USD	-	1,2	17,858,672	1,300,302	-	0.000%	-	-	-	-	-	-	-

## SECTION 3: MCI MORTGAGE FRAUD INVESTIGATION

### Intro:

1. The chain of custody refers to the chronological documentation or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence both physical and electronic. I have included research regarding documents that were not found to be recorded in the chain of custody. To allow for the Power of Sale to be available for a party to have standing, the chain of indorsements appearing on the face of the Note Instrument must be in tandem match the recordation of the chain of Assignments of [Security Instrument] in the Public Records. Failure to properly record Assignments of the [Security Instrument] (lien) which would memorialize a Note's negotiation, where without indorsements as it pertains to the transfer of beneficial and security interest in real property, can render the [Security Instrument] a nullity by operation of law as the Note is unenforceable under UCC 3-201, 3-204 & 3-302(d). "A security interest cannot exist independent of the obligation it secures." *Negus-Sons, Inc.*, 460 B.R. at 758, quoting *In re Advanced Aviation, Inc.*, 101 B.R. 310, 313 Bankr. M.D. Fla. 1989
2. Banking Practice does not overcome Uniform Commercial Code USCA (1988). The United States Court of Appeals Fifth Circuit determined that banking practice cannot overcome or substitute for enacted Uniform Commercial Code Statute: "Hibernia's reliance on commercial custom is misplaced. Commercial custom does not apply where the UCC provides otherwise. See UCC Sec. 1-103; also UCC Sec. 3-104, Official Comment 2 ("writing cannot be made a negotiable instrument within this Article by contract or by conduct.") Moreover, it would be inequitable to apply the banking industry's unilateral "custom" to a maker, such as the Army, that is unaware of or may not recognize such a custom." 841 F. 2d 592 *United States of America v. Hibernia National Bank* 96 A.L.R.Fed. 895, 5 UCC Rep.Serv. 2d 1392 *United States Court of Appeals, Fifth Circuit 1988*"
3. It is a cornerstone and long held concept within United States Law, that when the rights to the Tangible Paper Note and the rights to the Security Instrument are separated, the Security Instrument, because it can have no separate existence, cannot survive and becomes a nullity. In *Carpenter v. Longan* 16 Wall 271,83 U.S. 271, 274, 21 L.Ed. 313 (1872), *the U.S. Supreme Court stated "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while assignment of the latter alone is a nullity... The mortgage can have no separate existence. When the note is paid the mortgage expires. It cannot survive for a moment the debt which the note represents. This dependent and incidental relation is the controlling consideration . . . ."*

### SECTION 3: MORTGAGE FRAUD INVESTIGATION

#### **Chain of Title Analysis and Mortgage Fraud Investigation:**

The following Chain of Title details are a listing of the documents related to the property in chronological order. This chain of custody is necessary to maintain an "unbroken" chain at all times pursuant to State Law. We have investigated the documents that were recorded within the County Recorder's Office where the real property resides, as well as the documents that were NOT recorded within the County Recorder's Office but were made official by filing into public record as exhibits.

We have examined the following documents:

Complaint filed into District Court Bannock County Idaho on July 6, 2011 in case # CV-- 2011-- 000-2662-OC.

Copy of a document purporting to be the Tangible Promissory Note of Jerry and JoCarol Losee, dated February 6, 2003, regarding a loan for \$\$96,000.00. (see Exhibit "A" attached within) The Original Lender of the February 6, 2003 Losee loan is New Century Mortgage Corporation.

Copy of a Recorded document purporting to be the Tangible Deed of Trust of Jerry and JoCarol Losee, dated February 6, 2003 and filed in the Official Records of the Bannock County Recorder's Office on February 14, 2003 as ins# 20303818. (see Exhibit "B" attached within)

Copy of a Recorded document purported to be an "Assignment of Deed of Trust", dated February 4, 2011 and filed in the Official Records of the Bannock County Recorder's Office on February 28, 2011 as ins# 21103201 (see Exhibit "C" attached within)

Copy of a Recorded document purported to be an "Corrective Assignment of Deed of Trust", dated November 12, 2013 and filed in the Official Records of the Bannock County Recorder's Office on November 21, 2013 as ins# 21319850 (see Exhibit "D" attached within)

Copy of a Recorded document purporting to be a "Notice of Default", dated August 22, 2012 and filed in the Official Records of the Bannock County Recorder's Office on August 22, 2012 as ins# 21214195. (see Exhibit "E" attached within)

Copy of a Recorded document purporting to be a "Notice of Default and Election To Sell Under Deed of Trust", dated March 17, 2014 and filed in the Official Records of the Bannock County Recorder's Office on March 20, 2014 as ins# 21403394. (see Exhibit "F" attached within)

Voluntary Lien Search pertaining to the Transaction Details for 9253 Frandsen Road Blvd, Lava Hot Springs ID 83246 which includes all publicly recorded documents filed in the Official Records of the Bannock County Recorder's Office.

The Pooling and Servicing Agreement dated May 1, 2003 for the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust

The Prospectus Supplement (To Prospectus dated May 22, 2003) for the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust

## **An Examination of the Jerry and JoCarol Losee Mortgage Loan**

### **The Losee Intangible Obligation had been sold by New Century Mortgage Corporation on or before May 29, 2003**

1. On August 11, 2015 I researched Jerry and JoCarol Losee whose property address is 9253 Frandsen Road Blvd, Lava Hot Springs ID 83246. Jerry and JoCarol Losee had allegedly signed a Note in favor of New Century Mortgage Corporation on February 6, 2003. This loan was identified in multiple classes of the Morgan Stanley ABS Capital I Inc. 2003-NC5 (hereinafter "MSAC 2003-NC5") Trust, which has a Closing Date of May 29, 2003. The loan is being serviced by Ocwen Loan Servicing, LLC.

2. Pursuant to a thorough research I have found the aforementioned Losee Mortgage Loan in multiple classes of the MSAC 2003-NC5 Trust. The Losee Intangible Obligation has been sold to multiple classes of the MSAC 2003-NC5 Trust. Where records show the intangible payment stream remains an asset, a fact to determine, that is beyond the scope of this analysis, is why if there is a default of the tangible is there not also a default of the intangible. It is possible that a third party contract known as a Credit Default Obligation could account for the reason why the intangible is not in default, such supposition offers a reasonable explanation.

3. The income stream from the Losee Intangible Obligation is owned in a unified manner as described by the Prospectus when discussing the Classes within the Trust Pool. Each class of the MSAC 2003-NC5 Trust owns a different partial interest in the Losee Intangible Obligation. Even though a Trust may show a Class within that Trust as being paid, this is a predetermined action by the Trust. It does not mean that the Losee Intangible Obligation is in default. It is impossible to make that determination as the Losee Intangible Obligation no longer exists in its original form. Subsequently, the precise ownership of partial interests in the Losee Intangible Obligation can no longer be determined, nor can it be determined what or which partial interest in Losee Intangible Obligation has been paid nor

what percentage of that partial interest in the Losee Intangible Obligation has been satisfied/settled. Even though there is some division of performance of the loan from class to class. If the ownership of the Losee Intangible Obligation exists in any class as the Transferable Record of the ownership, the Losee Intangible Obligation exists in total within the Trust.

4. Securitization is the process of aggregating the Intangible Obligations from a large number of mortgage loans, into what is called a mortgage pool and then selling "shares" (called certificates) of ownership of partial interest of the Intangible Obligations to investors. The income stream from the Intangible Obligation that Jerry and JoCarol Losee's mortgage payments produce, flows through fractionalized payments into many different classes to many different investors, of the MSAC 2003-NC5 Trust depending on which certificates of which class were purchased by which investor. My research shows that ownership of the Losee Intangible Obligation does appear in the schedules and agreements. The divided monthly loan payments paid by Jerry and JoCarol Losee to Ocwen Loan Servicing, LLC most definitely flowed into multiple classes of the MSAC 2003-NC5 Trust.

5. The rights to the Losee Intangible Obligation have been conveyed as a Transferable Record to multiple classes of the MSAC 2003-NC5 Trust. For the rights to the Losee Intangible Obligation not to have been stripped away from the rights to the Losee Note by that conveyance, the rights to the Losee Note must have also been transferred to multiple classes of the MSAC 2003-NC5 Trust.

6. Even though the Losee Intangible Obligation is owned by multiple classes of the MSAC 2003-NC5 Trust, it can only be determined if the original Losee Note had been physically delivered to multiple classes of the MSAC 2003-NC5 Trust by checking with the custodian of documents. Until then, there is no evidence multiple classes or even one class of the MSAC 2003-NC5 Trust possessed in any manner the Losee Note before the Closing Date of May 29, 2003, as required by its own agreements.

7. The rights to the Losee Intangible Obligation have been conveyed as a Transferable Record to multiple classes of the MSAC 2003-NC5 Trust. For the conditions of Losee Deed of Trust over the Losee Intangible Obligation not to have been stripped away by that conveyance, the rights to the Losee Deed of Trust must have also been transferred to multiple classes of the MSAC 2003-NC5 Trust.

8. The beneficial interest (ownership) of the Losee Deed of Trust has been recorded in the Official Records of Bannock County Recorder's Office as being in the name of New Century Mortgage

Corporation, the Original Lender of the loan dated February 6, 2003. However, it is clear that New Century Mortgage Corporation sold all ownership interest in the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust on or about May 29, 2003, the Closing Date of the MSAC 2003-NC5 Trust. Ownership of the Losee Intangible Obligation is held in multiple classes of the MSAC 2003-NC5 Trust, and the payments under the Losee Intangible Obligation are disbursed to the investors of MSAC 2003-NC5 Trust who hold certificates to the investment classes into which payments under the Losee Intangible Obligation are scheduled to flow. Therefore the transfer of beneficial interest in the Losee Deed of Trust by New Century Mortgage Corporation might be accomplished, but that beneficial interest is no longer attached to the rights to the Losee Intangible Obligation.

As Multiple Classes of the MSAC 2003-NC5 Trust have an Interest in  
the Losee Intangible Obligation,  
Multiple Classes of the MSAC 2003-NC5 Trust  
Are Required to Have Interest in the Losee Note  
and Interest in the Losee Deed of Trust

9. By multiple classes of the MSAC 2003-NC5 Trust purchasing the Losee Intangible Obligation and doing with it whatever was done, multiple classes of the MSAC 2003-NC5 Trust were exercising rights of ownership over the Losee Mortgage Loan and the payment stream. By exercising rights of ownership over the Losee Mortgage Loan and the payment stream, multiple classes of the MSAC 2003-NC5 Trust were making a claim of rights to all three parts of the Losee Mortgage Loan, a claim which is misplaced.

10. The Losee Mortgage Loan only exists through the tangible instruments creating it, the Losee Note and the Losee Deed of Trust. The sale of the rights to the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust without stripping away the rights to the Losee Intangible Obligation from the rights to the Losee Note could only be accomplished with the accompanying negotiation of the Losee Note and the accompanying assignment of the Losee Deed of Trust to the multiple classes of the MSAC 2003-NC5 Trust which is a legal impossibility. Whereas the Trust as a standalone party has not lawfully been conveyed the Losee Note, much less been filed of record as a secured creditor.

11. Multiple classes of the MSAC 2003-NC5 Trust have made and continue to make claims of ownership of the rights to the Losee Intangible Obligation and exercise those claims. To exercise claims of rights to the Losee Intangible Obligation, proper assignments of the Losee Deed of Trust should have been accomplished. Multiple classes of the MSAC 2003-NC5 Trust are acting as if proper assignments of the Losee Deed of Trust have been accomplished.

12. The assignment of the Losee Deed of Trust is a conveyance of an instrument concerning real property which must be recorded to be acted upon. United States Code considers that anyone certifying that a real estate instrument has been assigned when in fact it has not is guilty of a felonious criminal act.

*Title 18 USC Chapter 47 § 1021*

*Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, knowingly certifies falsely that such conveyance or instrument has or has not been recorded, shall be fined under this title or imprisoned not more than five years, or both.*

Multiple Classes of the MSAC 2003-NC5 Trust can not  
Claim Ownership of either  
the Losee Note or the Losee Deed of Trust

13. Multiple classes of the MSAC 2003-NC5 Trust own the Losee Intangible Obligation. However the transfer of rights to either of the two tangible parts of the security instrument that evidence the Losee Intangible Obligation from New Century Mortgage Corporation to multiple classes of the MSAC 2003-NC5 Trust is not memorialized in the Official Records of the Bannock County Recorder's Office in a manner which observes United States Code.

14. Under the Consumer Credit Protection Act Title 15 USC Chapter 41 § 1641(g): any transfers of the Losee Mortgage Loan to multiple classes of the MSAC 2003-NC5 Trust would be in violation of Federal Statute, if those transfers had not been recorded in the Official Records of the Bannock County Recorder's Office within 30 days along with notification of Jerry and JoCarol Losee that the transfers had occurred. As there are no recorded assignments of the Losee Deed of Trust to multiple classes of the MSAC 2003-NC5 Trust within 30 days of February 6, 2003, either there has been a violation of

Federal Law or multiple classes of the MSAC 2003-NC5 Trust, who are the owners of the Losee Intangible Obligation, are not the owners of either the Losee Note or the Losee Deed of Trust.

Title 15 USC Chapter 41 § 1641(g)

*(g) Notice of new creditor*

*(1) In general*

*In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—*

*(A) the identity, address, telephone number of the new creditor;*

*(B) the date of transfer;*

*(C) how to reach an agent or party having authority to act on behalf of the new creditor;*

*(D) the location of the place where transfer of interest in the debt is recorded; and*

*(E) any other relevant information regarding the new creditor.*

15. Multiple classes of the MSAC 2003-NC5 Trust are the owners of the Losee Intangible Obligation; however, according to Idaho State Law, multiple classes of the MSAC 2003-NC5 Trust can only be entitled to enforce the Losee Deed of Trust if they took the Losee Deed of Trust by way of assignments pursuant to:

*I.C. § 45-1003. Acknowledgment and Recordation.*

*Mortgages, and deeds of trust or transfers in trust of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants and conveyances thereof.*

16 The Losee Deed of Trust must have been duly assigned to multiple classes of the MSAC 2003-NC5 Trust for multiple classes of the MSAC 2003-NC5 Trust to be entitled to enforce the Losee Deed of Trust.

17. A duly recorded assignment of the Losee Deed of Trust constitutes constructive notice while an unrecorded assignment of the Losee Deed of Trust is notice only to immediate parties. With constructive notice, all persons attempting to acquire rights in the Losee Property are deemed to have notice of the recorded instrument. In this way, the Recording Statute is intended to expose the chain of title of the Losee Deed of Trust to inspection by examination of real property records, protecting innocent junior purchasers and lenders from secret titles and the subsequent fraud attendant to such titles.

18. Assignments of the Losee Deed of Trust must be accompanied by parallel endorsements of the Losee Note for the Losee Mortgage Loan to remain secured by the Losee Property. Because

endorsements are very often undated and because a plaintiff must prove that it had standing at the inception of a case, *Marianna & B.R. Co. v. Maund*, 56 So. 670, 672 (Fla. 1911), the assignment will be determinative of, or at least evidence that would support or contradict, a plaintiff's claim of standing. No evidence is available to evidence negotiations of the Losee Note to multiple classes of the MSAC 2003-NC5 Trust. This would have required indorsements and proper negotiations of the Losee Note from New Century Mortgage Corporation to multiple classes of the MSAC 2003-NC5 Trust, including any intervening claims of ownership. Of course for the Losee Mortgage Loan to remain a secured loan, there would have been assignments and transfers of the beneficial interest of the Losee Deed of Trust, concurrent to negotiations of the Losee Note and those transfers of the Losee Deed of Trust would have to be entered into the Official Records of the Bannock County Recorder's Office.

19. Importantly, mere presentment of the Losee Note (even if shown to be the original), is not in itself proof of an equitable transfer of the Losee Mortgage Loan along with its Security Instrument. This demonstration of possession may be sufficient to enforce the Losee Note, but carries no indicia of ownership or intent to transfer the Losee Mortgage Loan. The Uniform Commercial Code ("UCC") consecrates a preference in commercial transactions for simple possession of indorsed instruments over proof of actual ownership, an exception in the law that was intended to foster free trade of commercial paper.

20. The concept that a noteholder, even one who is not legitimate, may nevertheless bring an action on the Losee Note, is entrenched in commercial law and commonly summarized by the axiom "even a thief may enforce a note." However, the taking of the Losee Home by foreclosure is an equitable remedy, and equity does not allow a "thief" to use a stolen Losee Note to foreclose on the Losee Mortgage lien.

21. The claim that "the mortgage follows the note" is incorrect, as under Idaho Law the Lien follows the Secured Party of record. That equitable right must be proven with evidence of a delivery. Intention does not override the requirements of law.

22. For all three parts of the Losee Mortgage Loan as a whole to have been transferred into the MSAC 2003-NC5 Trust there is a chain of entities through which the Losee Deed of Trust must be assigned and the Losee Note must be indorsed. This chain of transfer, as described to be required in the MSAC 2003-NC5 Trust PSA, is to have begun with a recorded assignment of the Losee Deed of Trust

and an indorsement of the Losee Note from the Original Lender (New Century Mortgage Corporation) to the Responsible Party (NC Capital Corporation). Once the Responsible Party (NC Capital Corporation) had taken complete ownership, then a recorded assignment of the Losee Deed of Trust and an indorsement of the Losee Note from the Responsible Party (NC Capital Corporation) to the Depositor (Morgan Stanley ABS Capital I Inc.) were to have occurred. After the Depositor (Morgan Stanley ABS Capital I Inc.) had taken complete ownership, a recorded assignment of the Losee Deed of Trust and an indorsement of the Losee Note from the Depositor (Morgan Stanley ABS Capital I Inc.) to the Trustee (Deutsch Bank National Trust Company) were next to have occurred. Finally, once the Trustee (Deutsch Bank National Trust Company) had taken complete ownership, a recorded assignment of the Losee Deed of Trust and an indorsement of the Losee Note from the Trustee (Deutsch Bank National Trust Company) to the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust (hereinafter "MSAC 2003-NC5") were to have occurred.

23. Moreover, these assignments were to all be recorded in the Official Records of the Bannock County Recorder's Office as per the PSA for the MSAC 2003-NC5 Trust. To explain further with a simple example, Party A must contract and assign to Party B, and Party B must contract and assign to Party C, and Party C must contract and assign to Party D and so on. So a contract and an assignment from Party A to Party D are not allowable. Of course, all of these dealings must be recorded within the Official Records of the Bannock County Recorder's Office which date-stamps each recording so as to prevent any "back-dating".

24. Any electronic transfers of the Losee Deed of Trust that may have been executed without recording within the Official Records of the Bannock County Recorder's Office are void under Uniform Electronic Transactions Act (UETA) USC § 15-96-1-7003:

*(a) Excepted requirements*

*The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—*

*(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A*

25. The Losee Note dated February 6, 2003 specifically states that it is secured by a Deed of Trust dated February 6, 2003, and the Losee Deed of Trust refers to the Losee Note and incorporates the Losee Note into its terms and conditions.

26. The written agreement that created the MSAC 2003-NC5 Trust is a "Pooling & Servicing Agreement" (PSA) dated May 1, 2003, and is a matter of public record, available on the website of the Securities Exchange Commission (SEC). The MSAC 2003-NC5 Trust is also described in a "Prospectus Supplement" to a Prospectus dated May 22, 2003, also available on the SEC website. The MSAC 2003-NC5 Trust by its terms set a "CLOSING DATE" of (on or about) May 29, 2003. The Losee Note in this case did not become MSAC 2003-NC5 Trust property in compliance with this requirement set forth in the PSA. The MSAC 2003-NC5 Trust agreement is filed under oath with the SEC. The acquisition of the assets of the MSAC 2003-NC5 Trust and the PSA are governed under the laws of the State of New York.

27. The PSA is the document that governs this trust. The MSAC 2003-NC5 Trust operates in the State of New York, and New York State Law requires strict compliance and adherence to the MSAC 2003-NC5 Trust documents. Any action by the MSAC 2003-NC5 Trust in contravention to the MSAC 2003-NC5 PSA is void under New York State Trust Law.

New York Trust Law:

*Chapter 17- B § 7-2.4 Act of trustee in contravention of trust  
if the trust is expressed in the instrument creating the estate of the trustee, every sale,  
conveyance or other act of the trustee in contravention of the trust, except as authorized by this  
article and by any other provision of law, is void.*

*New York Estates Powers and Trusts Law § 7-2.1*

*(c) property must be registered in the name of the trustee for a particular trust in order for  
transfer to the trustee to be effective*

As stated on page 105 of the Pooling and Servicing Agreement dated May 1, 2003 for the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust:

***Section 10.03 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN  
ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF  
NEW YORK  
APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THE STATE OF NEW  
YORK AND  
THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HERETO AND THE  
CERTIFICATEHOLDERS SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.***

28. According to the PSA for the MSAC 2003-NC5 Trust, the transfer and sale of all Beneficial Interest of the Losee Deed of Trust to MSAC 2003-NC5 Trust should have been done on or before the Closing Date of the MSAC 2003-NC5 Trust which was May 29, 2003. These requirements from the

PSA also mean the MSAC 2003-NC5 Trust is unable to have any other assets put into the MSAC 2003-NC5 Trust after the Closing Date.

29. The PSA for the MSAC 2003-NC5 Trust holds any conveyance of instrument into the MSAC 2003-NC5 Trust subject to the specific procedures explained above and in further paragraphs. Therefore, the conveyance of the Losee Note and Deed of Trust into the MSAC 2003-NC5 Trust cannot be true unless compliance with the PSA's specific procedures of conveyance is also proved to be true. The conveyance of the Losee Note and Deed of Trust into the MSAC 2003-NC5 Trust lacks proof of execution of these specific procedures. Then, as proof of PSA-compliant conveyance of the Losee Note and Deed of Trust into the MSAC 2003-NC5 Trust is lacking, and can not now be made to exist, the MSAC 2003-NC5 Trust can not claim have taken the Losee Note and Deed of Trust as a secured instrument into its collateral pool.

30. The Losee Deed of Trust contains notice to the Borrowers that the Losee Note or a partial interest in the Losee Note may be sold. However, a sale of a "partial interest" in the Losee Note strips the rights to the Losee Intangible Obligation from the rights to the Losee Note, leaving the Losee Note without an obligation to evidence and the Losee Deed of Trust without an obligation to hold conditions over:

From the Losee Deed of Trust:

*"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..."*

The document purporting to be an  
"Assignment of Deed of Trust" dated February 4, 2011  
is Invalid as an Assignment of Deed of Trust

*Black's Law Dictionary defines the term valid as "having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or sent aside... Founded on trust of fact; capable of being justified; supported, or defended; not weak or defective... of binding force; legally sufficient or efficacious; authorized by law... as distinguished from that which exists or took place in fact or appearance, but has not the*

*requisites to enable it to be recognized and enforced by law.” (See Black’s Law Dictionary, Sixth Edition, 1990, page 1550)*

31. There is a document purporting to be an “Assignment of Deed of Trust”, dated February 4, 2011 and filed in the Official Records of the Bannock County Recorder's Office on February 28, 2011 as ins# 21103201, signed by Christina Carter as Account Management Manager and notarized February 4, 2011 by Lesli D Goodman, Florida Notary Commission #EE025740, where Deutsche Bank National Trust Company as Trustee grants, assigns, and transfers to Deutsche Bank National Trust Company, and Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5 all beneficial interest under a Deed of Trust dated February 6, 2003 and filed in the Official Records of the Bannock County Recorder's Office on February 14, 2003 as ins# 20303818.

32. First and most importantly, the filing of this document purporting to be an “Assignment of Deed of Trust” did not and does not assign/convey any legal rights to enforce the Losee Note. Enforceability of a lien is dependent upon compliance with state law and local laws of jurisdiction and, contrary to popular misconception, does NOT fall under the jurisdiction of UCC Article 9 or state equivalent I.C. § 28-9, as stated in:

*I.C. § 28-9-109. Scope*

*(d) This chapter does not apply to:*

*(A) liens on real property in sections 28-9-203 and 28-9-308;*

*(D) security agreements covering personal and real property in section 28-9-604;*

33. The purpose of the “Assignment of Deed of Trust” document is to simply memorialize the purported sale of the Losee Tangible Promissory Note and the acquiring of rights; it does not cause the sale nor the acquiring of rights. The sale is to be done in accordance with statutory requirement of law I.C. § 28-7-501 which has not happened. The acquiring of rights is to be done in accordance with statutory requirement of law I.C. § 28-3-203 which has not happened.

*I.C. § 28-7-501. Form of negotiation and requirements of due negotiation*

*(a) The following rules apply to a negotiable tangible document of title:*

*(1) if the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery... (emphasis added)*

*(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.*

34. With New Century Mortgage Corporation selling only the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust, the Losee Tangible Promissory Note is no longer eligible for negotiation per I.C. § 28-3-203 (4) as it is now less than the full value. In order to claim the

full value of the Losee Tangible Promissory Note, a party would need to both be named as payee to the Losee Tangible Promissory Note and have sole claim to the Losee Intangible Obligation. With no negotiation, transfer, and delivery of the Losee Tangible Promissory Note evidenced through proper indorsement with multiple classes of the MSAC 2003-NC5 Trust being named to the Losee Tangible Promissory Note, a true "Assignment of Deed of Trust" could not take place.

*I.C. § 28-3-203. Transfer of instrument--Rights acquired by transfer*

*(4) if a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.*

35. The borrower, Jerry and JoCarol Losee, is NOT the party that created the transferable record that was sold. A third-party, the Account Debtor, created this Intangible Obligation using the Intangible payment stream of the Losee Tangible Promissory Note. New Century Mortgage Corporation was acting as the Account Debtor pursuant to *I.C. § 28-9-102 (3)* when they created and sold a transferable record to NC Capital Corporation

*I.C. § 28-9-102. Definitions and index of definitions*

*(a) In this chapter:*

*(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.*

36. The Assignee, Deutsche Bank National Trust Company, and Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5, is not made the sole party of interest in the Losee Deed of Trust on the face of this document purporting to be an "Assignment of Deed of Trust" dated February 4, 2011. Additionally, there are other issues that render this document invalid as an Assignment of Deed of Trust...

37. Deutsche Bank National Trust Company as Trustee was paid a value by Deutsche Bank National Trust Company, and Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5 for the beneficial interest in the Losee Deed of Trust. This means the Original Lender, New Century Mortgage Corporation, may not be paid good and valuable consideration for its beneficial interest which is recorded in the Official Records of the Bannock County Recorder's Office.

38. The value that was paid to Deutsche Bank National Trust Company as Trustee is certainly not the full and complete value of the Losee Deed of Trust. When Deutsche Bank National Trust Company as Trustee transfers its value of beneficial interest, while ignoring the value held by New Century Mortgage Corporation, it purports to transfer less than the entire instrument of the Losee Deed of Trust and Deutsche Bank National Trust Company, and Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5 does not become the sole party of interest in the Losee Deed of Trust. Someone, being perhaps either New Century Mortgage Corporation or Deutsche Bank National Trust Company as Trustee, still maintains their interest which can still be exercised.

39. The Original Lender, New Century Mortgage Corporation, gave up all rights to the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust on or before May 29, 2003. Once New Century Mortgage Corporation had given up the rights to the Losee Intangible Obligation, the rights to the Losee Intangible Obligation were stripped away from the rights to the Losee Note and the rights to the Losee Deed of Trust. New Century Mortgage Corporation could transfer beneficial rights to the Losee Note or Deed of Trust; however, that beneficial interest would not include rights to the Losee Intangible Obligation.

40. The consequences of the rights to the Losee Intangible Obligation being stripped away from the beneficial interests of the Losee Note and Deed of Trust are that the Note is without an Intangible Obligation to evidence and the Losee Deed of Trust is without an Intangible Obligation to enforce conditions against.

41. New Century Mortgage Corporation can assign beneficial interest in the Losee Deed of Trust, albeit with no rights to the Losee Intangible Obligation, to whomever they please. In order for this document purporting to be an “Assignment of Deed of Trust” dated February 4, 2011 to be valid as an Assignment of Deed of Trust, it would have to be determined if a transfer could be made to the Assignee. I will explain how transfer to the Assignee named could not have been accomplished by this document purporting to be an “Assignment of Deed of Trust”.

42. In order to exist, the MSAC 2003-NC5 Trust agreed to operate under the MSAC 2003-NC5 Trust PSA and all applicable Law. As previously explained in ¶22, in order to for the Losee Mortgage Loan to be transferred to the MSAC 2003-NC5 Trust, a chain of negotiations needed to occur. A direct

transfer from the Original Lender, New Century Mortgage Corporation, to the Trustee, Deutsch Bank National Trust Company, violates the terms and conditions under the MSAC 2003-NC5 Trust PSA, under New York State Trust Law governing the MSAC 2003-NC5 Trust, and is therefore void. These principles were recently confirmed in US District Court and New York Supreme Court and the California Supreme Court:

“See *Wells Fargo Bank, N.A. v. Erobobo, et al.*, 2013 WL 1831799 (N.Y. Sup. Ct. April 29, 2013). In *Erobobo*, defendants argued that plaintiff (a REMIC trust) was not the owner of the note because plaintiff obtained the note and mortgage after the trust had closed in violation of the terms of the PSA governing the trust, rendering plaintiff’s acquisition of the note void. *Id.* at \*2. The *Erobobo* court held that under § 7-2.4, any conveyance in contravention of the PSA is void; this meant that acceptance of the note and mortgage by the trustee after the date the trust closed rendered the transfer void. *Id.* at 8. Based on the *Erobobo* decision and the plain language of N.Y. Est. Powers & Trusts Law § 7-2.4, the Court finds that under New York law, assignment of the Saldivars’ Note after the start up day is void ab initio”

43. Furthermore, this document purporting to be an “Assignment of Deed of Trust” dated February 4, 2011 is not timely to properly transfer the Losee Note and Deed of Trust to the MSAC 2003-NC5 Trust where it has been shown to be an asset.

As stated on page 59 of the Pooling and Servicing Agreement dated May 1, 2003 for the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust:

**CONVEYANCE OF MORTGAGE LOANS;  
REPRESENTATIONS AND WARRANTIES**

*Section 2.01 Conveyance of Mortgage Loans. (a) The Depositor, concurrently with the execution and delivery hereof, hereby sells, transfers, assigns, sets over and otherwise conveys to the Trustee for the benefit of the Certificateholders and the Class A-2 Certificate Insurer, without recourse, all the right, title and interest of the Depositor in and to the Trust Fund, and the Trustee, on behalf of the Trust, hereby accepts the Trust Fund.*

*(b) In connection with the transfer and assignment of each Mortgage Loan, the Depositor has delivered or caused to be delivered to the Trustee for the benefit of the Certificateholders and the Class A-2 Certificate Insurer the following documents or instruments with respect to each Mortgage Loan so assigned:*

*(i) the original Mortgage Note bearing all intervening endorsements showing a complete chain of endorsement from the originator to the last endorsee, endorsed "Pay to the order of \_\_\_\_\_, without recourse" and signed (which may be by facsimile signature) in the name of the last endorsee by an authorized officer. To the extent that there is no room on the face of the Mortgage Notes for endorsements, the endorsement may be contained on an allonge, if state law so allows and the Trustee is so*

*advised in writing by the Responsible Party that state law so allows;*

*(ii) the original of any guaranty executed in connection with the Mortgage Note;*

*(iii) the original Mortgage with evidence of recording thereon or a certified true copy of such Mortgage submitted for recording. If, in connection with any Mortgage Loan, the original Mortgage cannot be delivered with evidence of recording thereon on or prior to the Closing Date because of a delay caused by the public recording office where such Mortgage has been delivered for recordation or because such Mortgage has been lost or because such public recording office retains the original recorded Mortgage, the Responsible Party shall deliver or cause to be delivered to the Trustee a photocopy of such Mortgage, together with (A) in the case of a delay caused by the public recording office, an Officer's Certificate of the Responsible Party or a certificate from an escrow company, a title company or closing attorney stating that such Mortgage has been dispatched to the appropriate public recording office for recordation and that the original recorded Mortgage or a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage will be promptly delivered to the Trustee upon receipt thereof by the Responsible Party; or (B) in the case of a Mortgage where a public recording office retains the original recorded Mortgage or in the case where a Mortgage is lost after recordation in a public recording office, a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage;*

*(iv) the originals of all assumption, modification, consolidation or extension agreements, with evidence of recording thereon;*

*(v) the original Assignment of Mortgage for each Mortgage Loan endorsed in blank;*

*(vi) the originals of all intervening assignments of Mortgage (if any) evidencing a complete chain of assignment from the applicable originator to the last endorsee with evidence of recording thereon, or if any such intervening assignment has not been returned from the applicable recording office or has been lost or if such public recording office retains the original recorded assignments of Mortgage, the Responsible Party shall deliver or cause to be delivered a photocopy of such intervening assignment, together with (A) in the case of a delay caused by the public recording office, an Officer's Certificate of the Responsible Party or a certificate from an escrow company, a title company or a closing attorney stating that such intervening assignment of Mortgage has been dispatched to the appropriate public recording office for recordation and that such original recorded intervening assignment of Mortgage or a copy of such intervening assignment of Mortgage certified by the appropriate public recording office to be a true and complete copy of the*

*original recorded intervening assignment of Mortgage will be promptly delivered to the Trustee upon receipt thereof by the Responsible Party; or (B) in the case of an intervening assignment where a public recording office retains the original recorded intervening assignment or in the case where an intervening assignment is lost after recordation in a public recording office, a copy of such intervening assignment certified by such public recording office to be a true and complete copy of the original recorded intervening assignment;*

*(vii) the original mortgagee title insurance policy or, in the event such original title policy is unavailable, a certified true copy of the related policy binder or commitment for title certified to be true and complete by the title insurance company; and*

*(viii) the original of any security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage (if provided).*

*The Responsible Party shall cause to be delivered to the Trustee the applicable recorded document promptly upon receipt from the respective recording office but in no event later than 120 days from the Closing Date.*

*From time to time, the Depositor or the Servicer, as applicable, shall forward to the Trustee, additional original documents, additional documents evidencing an assumption, modification, consolidation or extension of a Mortgage Loan, in accordance with the terms of this Agreement upon receipt of such documents. All such mortgage documents held by the Trustee as to each Mortgage Loan shall constitute the "Custodial File".*

*On or prior to the Closing Date, the Responsible Party shall deliver to the Trustee, Assignments of Mortgages, in blank, for each Mortgage Loan. The Responsible Party shall cause the Assignments of Mortgages and complete recording information to be provided to the Servicer in a reasonably acceptable manner. No later than thirty (30) Business Days following the later of the Closing Date and the date of receipt by the Servicer of the complete recording information for a Mortgage, the Servicer shall promptly submit or cause to be submitted for recording, at the expense of the Responsible Party and at no expense to the Trust Fund, the Trustee, the Servicer, or the Depositor, in the appropriate public office for real property records, each Assignment of Mortgage referred to in Section 2.01(b)(v). Notwithstanding the foregoing, however, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignments of Mortgage shall not be required to be completed and submitted for recording with respect to any Mortgage Loan (i) if the Trustee, each Rating Agency and the Class A-2 Certificate Insurer have received an opinion of counsel, satisfactory in form and substance to the Trustee, each Rating Agency and the Class A-2 Certificate Insurer to the effect that the recordation of such Assignments of Mortgage in any specific jurisdiction is not necessary to protect the Trustee's interest in the related Mortgage Note or (ii) if the Rating Agencies have each notified the Depositor in writing that not*

recording any such Assignments of Mortgage would not cause the initial ratings on any LIBOR Certificates to be downgraded or withdrawn (without taking into account the Class A-2 Certificate Insurance Policy); provided, however, that the Servicer shall not be held responsible or liable for any loss that occurs because an Assignment of Mortgage was not recorded, but only to the extent that the Servicer does not have prior knowledge of the act or omission that causes such loss. However, with respect to the Assignments of Mortgage referred to in clauses (i) and (ii) above, if the Class A-2 Certificate Insurer reasonably requests or if foreclosure proceedings occur against a Mortgaged Property, the Depositor shall notify the Servicer and the Servicer shall record such Assignment of Mortgage at the expense of the Responsible Party. If the Assignment of Mortgage is to be recorded, the Mortgage shall be assigned to "Deutsche Bank National Trust Company, as trustee under the Pooling and Servicing Agreement dated as of May 1, 2003, Morgan Stanley ABS Capital I Inc. Trust 2003-NC5". In the event that any such Assignment of Mortgage is lost or returned unrecorded because of a defect therein, the Responsible Party shall promptly cause to be delivered a substitute Assignment of Mortgage to cure such defect and thereafter cause each such assignment to be duly recorded.

In the event that such original or copy of any document submitted for recordation to the appropriate public recording office is not so delivered to the Trustee within 90 days following the Closing Date, and in the event that the Responsible Party does not cure such failure within 30 days of discovery or receipt of written notification of such failure from the Depositor, the related Mortgage Loan shall, upon the request of the Depositor, be repurchased by the Responsible Party at the price and in the manner specified in Section 2.03. The foregoing repurchase obligation shall not apply in the event that the Responsible Party cannot deliver such original or copy of any document submitted for recordation to the appropriate public recording office within the specified period due to a delay caused by the recording office in the applicable jurisdiction; provided, that the Responsible Party shall instead deliver a recording receipt of such recording office or, if such recording receipt is not available, an officer's certificate of an officer of the Responsible Party, confirming that such document has been accepted for recording.

Notwithstanding anything to the contrary contained in this Section 2.01, in those instances where the public recording office retains or loses the original Mortgage or assignment after it has been recorded, the obligations of the Responsible Party shall be deemed to have been satisfied upon delivery by the Responsible Party to the Trustee, prior to the Closing Date of a copy of such Mortgage or assignment, as the case may be, certified (such certification to be an original thereof) by the public recording office to be a true and complete copy of the recorded original thereof.

(c) The Depositor does hereby establish, pursuant to the further provisions of this Agreement and the laws of the State of New York, an express trust (the "Trust") to be known, for convenience, as "MORGAN STANLEY ABS CAPITAL I INC. TRUST 2003-NC5" and Deutsche Bank National Trust Company is hereby appointed as Trustee in accordance with the provisions of this Agreement.

*(d) The Trust shall have the capacity, power and authority, and the Trustee on behalf of the Trust is hereby authorized, to accept the sale, transfer, assignment, set over and conveyance by the Depositor to the Trust of all the right, title and interest of the Depositor in and to the Trust Fund (including, without limitation, the Mortgage Loans) pursuant to Section 2.01(a). The Trustee on behalf of the Trust is hereby authorized to enter into the Cap Agreement.*

44. The Closing Date for the MSAC 2003-NC5 Trust was May 29, 2003. What this means is that the MSAC 2003-NC5 Trust is unable to have any other assets put into the MSAC 2003-NC5 Trust after the May 29, 2003 Closing Date.

45. In view of the foregoing, all assignments executed after the MSAC 2003-NC5 Trust's Closing Date are void for the reason that all assignments into the Trust after May 29, 2003 violate the express terms of the MSAC 2003-NC5 Trust PSA. All assignments of Mortgages/Deeds of Trust and or indorsements of notes executed after the MSAC 2003-NC5 Closing Date are void.

46. The Prospectus Supplement (To Prospectus dated May 22, 2003) for the MSAC 2003-NC5 Trust provides that any attempted or purported transfer in violation of these transfer restrictions will be null and void and will vest no rights in any purported transferee. Any transferor or agent to whom the Trustee provides information as to any applicable tax imposed on such transferor or agent may be required to bear the cost of computing or providing such information.

47. There are enormous tax consequences if the document purporting to be an "Assignment of Deed of Trust" dated February 4, 2011, filed in the Official Records of the Bannock County Recorder's Office, would be authentic, in that this trust has elected to be a REMIC Trust. According to the Prospectus Supplement, under the heading "Federal Income Tax Consequences", multiple classes of the MSAC 2003-NC5 Trust, that the Losee Intangible Obligation is owned by, elected to be treated as a REMIC, which provides for pass-through tax treatment of the income generated by the Trust assets:

As stated on page 325 whole of the Prospectus Supplement (To Prospectus dated May 22, 2003) for the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust:

*Prohibited Transactions and Contributions Tax. The REMIC will be subject to a 100% tax on any net income derived from a "prohibited transaction."*

*It is anticipated that a REMIC will not engage in any prohibited transactions in which it would recognize a material amount of net income. In addition, subject to a number of exceptions, a tax is imposed at the rate of 100% on amounts contributed to a REMIC after the close of the three-month period beginning on the startup day*

48. Internal Revenue Code Section 860 regulates the activities and requirements of a REMIC Trust.

*According to 26 CFR§ 1.860D-1(c) (2)*

*Identification of assets. The formation of the REMIC does not occur until (i) The sponsor identifies the assets of the REMIC, such as through execution an indenture with respect to the asset; and (ii) The REMIC issues the regular and residual interests in the REMIC.*

49. In other words, the REMIC is not officially formed until NC Capital Corporation, the Responsible Party of the MSAC 2003-NC5 Trust, identifies and transfers all the specific assets (the specific loans) of the REMIC.

50. The PSA for the MSAC 2003-NC5 Trust specifically identifies a Closing Date which is the last day that an asset (loan) can be “identified for inclusion” in the Trust/REMIC. The Closing Date also serves as the Startup Day for the REMIC. According to Internal Revenue code Section, “All of a REMIC’s loans must be acquired on the startup day of the REMIC or within three months thereafter”.

The document purporting to be an “Corrective Assignment of Deed of Trust” dated November 12, 2013 is Invalid as an Corrective Assignment of Deed of Trust

51. There is a document purporting to be an “Corrective Assignment of Deed of Trust”, dated November 12, 2013 and filed in the Official Records of the Bannock County Recorder's Office on November 21, 2013 as ins# 21319850, signed by Leticia N. Arias as Contract Manager and notarized November 12, 2013 by Derek Garrett, Florida Notary Commission #FF063536, where New Century Mortgage Corporation grants, assigns, and transfers to Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2003-NC5, Mortgage Pass – Through Certificates, Series 2003-NC5 all beneficial interest under a Deed of Trust dated February 6, 2003 and filed in the Official Records of the Bannock County Recorder's Office on February 14, 2003 as ins# 20303818.

52. First and most importantly, the filing of this document purporting to be an “Corrective Assignment of Deed of Trust” did not and does not assign/convey any legal rights to enforce the Losee Note. Enforceability of a lien is dependent upon compliance with state law and local laws of

jurisdiction and, contrary to popular misconception, does NOT fall under the jurisdiction of UCC Article 9 or state equivalent I.C. § 28-9 as stated in:

*I.C. § 28-9-109. Scope*

*(d) This chapter does not apply to:*

*(A) liens on real property in sections 28-9-203 and 28-9-308;*

*(D) security agreements covering personal and real property in section 28-9-604;*

53. The purpose of the “Corrective Assignment of Deed of Trust” document is to simply memorialize the purported sale of the Losee Tangible Promissory Note and the acquiring of rights; it does not cause the sale nor the acquiring of rights. The sale is to be done in accordance with statutory requirement of law I.C. § 28-7-501 which has not happened. The acquiring of rights is to be done in accordance with statutory requirement of law I.C. § 28-3-203 which has not happened.

*I.C. § 28-7-501. Form of negotiation and requirements of due negotiation*

*(a) The following rules apply to a negotiable tangible document of title:*

*(1) if the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery... (emphasis added)*

*(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.*

54. With New Century Mortgage Corporation selling only the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust, the Losee Tangible Promissory Note is no longer eligible for negotiation per I.C. § 28-3-203 (4) as it is now less than the full value. In order to claim the full value of the Losee Tangible Promissory Note, a party would need to both be named as payee to the Losee Tangible Promissory Note and have sole claim to the Losee Intangible Obligation. With no negotiation, transfer, and delivery of the Losee Tangible Promissory Note evidenced through proper indorsement with multiple classes of the MSAC 2003-NC5 Trust being named to the Losee Tangible Promissory Note, a true “Assignment of Deed of Trust” could not take place.

*I.C. § 28-3-203. Transfer of instrument--Rights acquired by transfer*

*(4) if a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.*

55. The Assignee, Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2003-NC5, Mortgage Pass – Through Certificates, Series 2003-NC5, is not made the sole party of interest in the Losee Deed of Trust on the face of this document purporting to be an “Corrective Assignment of Deed of Trust” dated November 12, 2013. Additionally, there are other issues that render this document invalid as an Corrective Assignment of Deed of Trust...

56. New Century Mortgage Corporation was paid a value by Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2003-NC5, Mortgage Pass – Through Certificates, Series 2003-NC5 for the beneficial interest in the Losee Deed of Trust. This means the Original Lender, New Century Mortgage Corporation, may not be paid good and valuable consideration for its beneficial interest which is recorded in the Official Records of the Bannock County Recorder's Office.

57. The value that was paid to New Century Mortgage Corporation is certainly not the full and complete value of the Losee Deed of Trust. When New Century Mortgage Corporation transfers its value of beneficial interest, while ignoring the value held by New Century Mortgage Corporation, it purports to transfer less than the entire instrument of the Losee Deed of Trust and Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2003-NC5, Mortgage Pass – Through Certificates, Series 2003-NC5 does not become the sole party of interest in the Losee Deed of Trust. Someone, being perhaps either New Century Mortgage Corporation or New Century Mortgage Corporation, still maintains their interest which can still be exercised.

58. The Original Lender, New Century Mortgage Corporation, gave up all rights to the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust on or before the Trust Closing Date of May 29, 2003. Once New Century Mortgage Corporation had given up the rights to the Losee Intangible Obligation, the rights to the Losee Intangible Obligation were stripped away from the rights to the Losee Note and the rights to the Losee Deed of Trust. New Century Mortgage Corporation could transfer beneficial rights to the Losee Note or Deed of Trust; however, that beneficial interest would not include rights to the Losee Intangible Obligation.

59. The consequences of the rights to the Losee Intangible Obligation being stripped away from the beneficial interests of the Losee Note and Deed of Trust are that the Note is without an Intangible Obligation to evidence and the Losee Deed of Trust is without an Intangible Obligation to enforce conditions against.

60. In view of the foregoing, the Document purporting to be an “Corrective Assignment of Deed of Trust”, dated November 12, 2013 and recorded in the Official Records of the Bannock County Recorder's Office on November 21, 2013, can have no validity as it is unlawful attempt to reestablish

legal title rights of the Losee Note and Losee Deed of Trust from an entity who has no authority to another entity who can have no authority.

The document purporting to be a “Notice of Default” dated August 22, 2012  
is Invalid as a Notice of Default

61. There is a document purporting to be a “Notice of Default”, dated August 22, 2012 and filed in the Official Records of the Bannock County Recorder's Office on August 22, 2012 as ins# 21214195, signed by Joel Meng as Assistant Secretary of Alliance Title & Escrow Corp., and notarized August 22, 2012 by Lindsi Allred, Idaho Notary Commission #N/A, where Alliance Title & Escrow Corp. claims to be Trustee of a Deed of Trust dated February 6, 2003 and filed in the Official Records of the Bannock County Recorder's Office on February 14, 2003 as ins# 20303818.

62. The document purporting to be a “Notice of Default” dated August 22, 2012 is invalid as it claims Alliance Title & Escrow Corp. to be the agent of the beneficiary of the Losee Deed of Trust, yet the beneficiary at that time is unknown. So the claim of Alliance Title & Escrow Corp. and all its agents to be Trustee under the Losee Deed of Trust can only be a false and unsupportable claim.

The document purporting to be a “Notice of Default and Election To Sell Under Deed of  
Trust” dated March 17, 2014  
is Invalid as a Notice of Default and Election To Sell Under Deed of Trust

63. There is a document purporting to be a “Notice of Default and Election To Sell Under Deed of Trust”, dated March 17, 2014 and filed in the Official Records of the Bannock County Recorder's Office on March 20, 2014 as ins# 21403394, signed by Elida Rostado as Authorized Signature of Fidelity National Title Insurance Company, and notarized March 20, 2014 by Tara Louise Daniel, California Notary Commission #2030387, where Fidelity National Title Insurance Company claims to be Trustee of a Deed of Trust dated February 6, 2003 and filed in the Official Records of the Bannock County Recorder's Office on February 14, 2003 as ins# 20303818.

64. The document purporting to be a “Notice of Default and Election To Sell Under Deed of Trust” dated March 17, 2014 is invalid as it claims Fidelity National Title Insurance Company to be the agent

of the beneficiary of the Losee Deed of Trust, yet the beneficiary at that time is unknown. So the claim of Fidelity National Title Insurance Company and all its agents to be Trustee under the Losee Deed of Trust can only be a false and unsupportable claim.

### No One Can Claim the Right to Enforce the Losee Note

65. The Losee Note has been indorsed by the Original Lender, New Century Mortgage Corporation, signed by Magva Villanueva as A.V.P./Shipping Manager. The indorsement states "Pay to the Order of Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 without Recourse". This constitutes a negotiation under *I.C. § 28-7-501* concerning negotiable instruments with the intent of New Century Mortgage Corporation transferring ownership to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5. With Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 named as Payee, clearly New Century Mortgage Corporation has released all interest in the Losee Note.

*I.C. § 28-7-501. Form of negotiation and requirements of due negotiation*

*(a) The following rules apply to a negotiable tangible document of title:*

*(1) if the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery... (emphasis added)*

*(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.*

66. As explained in ¶ 42 an indorsement of the Losee Note directly from New Century Mortgage Corporation to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 would be an act in contravention with the governing documents of the MSAC 2003-NC5 Trust and would be void.

67. Beside the fact that the act of an indorsement from New Century Mortgage Corporation to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 would be void, there is also an issue of enforceability of the Losee Note through the Losee Deed of Trust.

### The Terms of the Losee Deed of Trust have been Violated and the Losee Deed of Trust is Unenforceable

68. New Century Mortgage Corporation has released all interest in the Losee Note to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5. The Losee Deed of Trust as a contract can only enforce its contractual terms against the obligation evidenced by the Losee Note.

69. The Losee Deed of Trust is governed by Idaho State Law. Idaho State Law and Federal Law recognize and require proper recordation of assignment to transfer ownership of the Losee Deed of Trust.

From the Losee Deed of Trust:

*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.*

70. There is a document concerning the Losee Deed of Trust recorded in the Official Records of the Bannock County Recorder's Office, with New Century Mortgage Corporation releasing all rights to the Losee Deed of Trust intending that transfer to be to Deutsche Bank National Trust Company, and Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5. Therefore, New Century Mortgage Corporation no longer has any rights to the Losee Deed of Trust. Deutsche Bank National Trust Company, and Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage Stanley ABS Capital I Inc., Trust 2003 – NC5 may now claim ownership of the Losee Deed of Trust, but that ownership would have nothing to enforce the Losee Deed of Trust contractual terms against. The Losee Deed of Trust is an unenforceable contract.

71. The Losee Deed of Trust is part of the overall Losee Mortgage Loan Instrument. While supposedly delivering the Losee Note to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5, New Century Mortgage Corporation did not deliver the Losee Deed of Trust to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital

Inc. Trust 2003 – NC5. When New Century Mortgage Corporation indorsed the Losee Note to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 without assigning the Losee Deed of Trust, New Century Mortgage Corporation attempted to deliver less than the entire Losee Mortgage Loan Instrument. By delivering the Losee Note to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 without delivering the Losee Deed of Trust, New Century Mortgage Corporation was also attempting to deliver the Losee Note without delivering the rights to enforce.

72. Under *I.C. § 28-3-203* (4), a negotiation of the Losee Note or a negotiation of the Losee Loan can not occur without the transfer of the entire interest in the Losee Note or transfer of the entire interest in the Losee Loan.

*I.C. § 28-3-203. Transfer of instrument--Rights acquired by transfer  
(4) if a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.*

73. When New Century Mortgage Corporation indorsed the Losee Note to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 without assigning the Losee Deed of Trust, New Century Mortgage Corporation purported to deliver the Losee Note without delivering the rights to enforce the Losee Deed of Trust. Negotiation of either the Losee Deed of Trust or negotiation of the Losee Note did not occur.

74. Beside the fact that the indorsement did not accomplish a negotiation of the Losee Note, New Century Mortgage Corporation still no longer has an entire interest in the Losee Note. New Century Mortgage Corporation must have an entire interest in the Losee Note for a negotiation to occur. The intangible interest in the Losee Note has been transferred to multiple classes of the MSAC 2003-NC5 Trust. New Century Mortgage Corporation can no longer claim an entire interest in the Losee Note. Neither New Century Mortgage Corporation nor Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5 can now accomplish a negotiation of the Losee Note.

75. Interest in the Losee Deed of Trust is no longer with New Century Mortgage Corporation, yet no one else has any authority to enforce its terms, while the interest in the Losee Note has been negotiated

to Deutsche Bank National Trust Company, as trustee under Pooling And Servicing Agreement as of May 1, 2003 Stanley ABS Capital Inc. Trust 2003 – NC5. The Losee Deed of Trust is an unenforceable contract, no longer tied to an obligation to enforce its contractual terms over.

76. Under long existing contract law, if the terms of a contract are violated, affecting the conditions under which the Payor is obligated, without the properly evidenced consent of the Payor, that contract is void and cannot be returned to without the consent of the Payor. Even if ownership of the Losee Note and the Losee Deed of Trust could be rejoined, the Losee Deed of Trust, as a now unenforceable contract, no longer being tied to an obligation to enforce its contractual terms over, can not be returned to being an enforceable contract without Jerry and JoCarol Losee's consent.

---

Ownership of the Losee Intangible Obligation  
Can Not be Rejoined to Ownership of the  
Losee Note or the Losee Deed of Trust

77. Multiple classes of the MSAC 2003-NC5 Trust have rights to the Losee Intangible Obligation. Multiple classes of the MSAC 2003-NC5 Trust were not each and all named as payee on the Losee Note and do not now have rights to the Losee Note. For multiple classes of the MSAC 2003-NC5 Trust to gain rights to the Losee Note, multiple classes of the MSAC 2003-NC5 Trust would each and all have to be named payee.

78. There is no possible way for the Losee Note to be transferred to each and all multiple class of the MSAC 2003-NC5 Trust for the partial rights to the Losee Intangible Obligation that each owns. Interest in the Losee Intangible Obligation and rights to the Losee Note will remain separate.

79. MSAC 2003-NC5 Trust and its classes, its officers and its agents are prohibited from accepting any assets on behalf of the Trust after May 29, 2003. MSAC 2003-NC5 Trust and its classes, its officers its and agents can longer accept the rights to the Losee Note. Ownership of the Losee Note and the rights to the Losee Intangible Obligation will remain separate.

80. Because the rights to the Losee Deed of Trust were separated from the rights to the Losee Intangible Obligation, and will remain separate, the Losee Deed of Trust is left with no way to enforce its conditions over the obligation which should be evidenced by the Losee Note, making the Losee Deed of Trust an unenforceable contract.

With Ownership of the Losee Intangible Obligation  
Stripped Away and No Way to Enforce the Conditions  
Under the Losee Deed of Trust,  
the Losee Mortgage Contract is a Nullity

81. The ownership of the Losee Intangible Obligation was separated from the rights to the Losee Note and the rights to the Losee Deed of Trust, leaving the Losee Note no Intangible Obligation to evidence and the Losee Deed of Trust no Intangible Obligation to enforce conditions over.

82. New Century Mortgage Corporation retained no beneficial interest in the Losee Intangible Obligation after selling the Losee Intangible Obligation to multiple classes of the MSAC 2003-NC5 Trust on or before May 29, 2003. No acceptable assignments of the Losee Deed of Trust to each and all multiple class of the MSAC 2003-NC5 Trust have been recorded into the Official Records of the Bannock County Recorder's Office. There is no evidence of negotiations of the Losee Note to each and all multiple class of the MSAC 2003-NC5 Trust. With no properly-recorded owner of the Losee Deed of Trust, there is no one to enforce the conditions over the Losee Intangible Obligation which is no longer evidenced by the Losee Note. The Losee Intangible Obligation is no longer secured by the Losee Property.

83. Having no specific properly-secured owner of the limited beneficial interest of the Losee Note, there is no way to enforce the stripped-away Losee Intangible Obligation through the Losee Note.

## **SECTION 4: APPLICABLE EDUCATIONAL MATERIAL**

Note: This information may or may not apply to reader's mortgage loan depending on your given documents and the transactions that have or have not taken place.

### **NY TRUST LAW (EXAMPLE)**

#### **NY Estates, Powers and Trust Law § 7-1.18 Trust Asset**

Unless an asset is transferred into a lifetime trust, the asset does not become trust property.

#### **NY Estates, Powers and Trust Law § 7-2.4 Trustees Duties**

A trustee's act that is contrary to the trust agreement is void.

#### **NY Estates, Powers and Trust Law § 5-1401. Choice of law**

1. The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection one of section 1-105 of the uniform commercial code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection two of section 1-105 of the uniform commercial code.

2. Nothing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement or undertaking.

#### **NY Estates, Powers and Trust Law § 5-1402. Choice of forum**

1. Notwithstanding any act which limits or affects the right of a person to maintain an action or proceeding, including, but not limited to, paragraph (b) of section thirteen hundred fourteen of the business corporation law and subdivision two of section two hundred-b of the banking law, any person may maintain an action or proceeding against a foreign corporation, non-resident, or foreign state where the action or proceeding arises out of or relates to any contract, agreement or undertaking for which a choice of New York law has been made in whole or in part pursuant to section 5-1401 and which (a) is a contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate, not less than one million dollars, and (b) which contains a provision or provisions whereby such foreign corporation or non-resident agrees to submit to the jurisdiction of the courts of this state.

2. Nothing contained in this section shall be construed to affect the enforcement of any provision respecting choice of forum in any other contract, agreement or undertaking.

## **SECTION 4: APPLICABLE EDUCATIONAL MATERIAL (CONT'D)**

### **INFORMATION ON INDORSEMENT**

*Uniform Commercial Code or Reader's State Equivalent*

#### **§ 3-204. INDORSEMENT**

- (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

#### **§ 3-205. SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT**

- (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 apply to special indorsements.
- (b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.
- (c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.
- (d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

**SECTION 4: APPLICABLE EDUCATIONAL MATERIAL (CONT'D)**

**TYPES OF INDORSEMENTS, ILLUSTRATED:**

**BLANK INDORSEMENT:**

<p><i>Lender Signature</i></p>
--------------------------------

**\*INCOMPLETE\* STAMPING:**  
Intent is shown; however, Payee is not yet named.

<p><b>Pay to the Order of:</b> _____</p> <p><i>Lender Signature</i></p>
-----------------------------------------------------------------------------

**SPECIAL INDORSEMENT:**

<p><b>Pay to the Order of:</b> <u>ABC Mortgage Inc.</u></p> <p><i>Lender Signature</i></p>
------------------------------------------------------------------------------------------------

**RESTRICTIVE INDORSEMENT:**

<p><b>For Deposit Only</b></p> <p><i>Lender Signature</i></p>
---------------------------------------------------------------

**BEARER PAPER:**

<p><b>Pay to Bearer</b></p> <p><i>Lender Signature</i></p>
------------------------------------------------------------



A TELEPHONE STATUS CONFERENCE before Judge Stephen S. Dunn, District Judge,  
IS SET FOR THE HOUR OF 2 P.M. ON THE 12<sup>th</sup> DAY OF JUNE, 2017.

The Court shall initiate the conference call at the time stated and to the numbers provided to  
the Court.

DATED May 11, 2017.

  
STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12 day of May, 2017, I  
served a true and correct copy of the foregoing document upon each of the following individuals  
in the manner indicated.

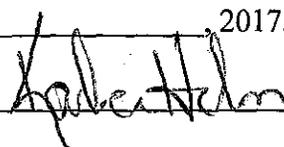
Jerry Losee & JoCarol Losee  
9253 Frandsen Rd  
Lava Hot Springs, ID 83246

U.S. Mail  
 Email  
 Hand Deliver  
 Facsimile

Craig Petersen  
Robinson Tait, PS  
710 Second Ave., Ste 710  
Seattle, WA 98104

U.S. Mail  
 Email  
 Hand Deliver  
 Facsimile

DATED this 12 day of May, 2017.

  
Deputy Clerk

Deem

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2017 JUN -9 PM 12:35  
BY   
DEPUTY CLERK

SIXTH DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE, PRO SE AND JOCAROL  
LOSEE, PRO SE,

Case No.: CV-2015-2863-OC

Plaintiffs,

NOTICE OF FILING

vs.

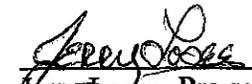
NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE BANK  
NATIONAL TRUST COMPANY, *ET AL.*,

Defendants

**NOTICE OF FILING FOR JUDICIAL REVIEW**

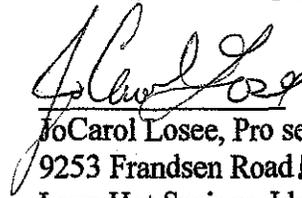
COME NOW, the Plaintiffs, Jerry Losee and JoCarol Losee, Pro Se, and hereby file this  
Notice of Filing of email sent to Attorney Jennifer Tait April 21, 2017 to which she has not  
replied, Plaintiff's submitted loan modification, and email sent June 8, 2017, with settlement  
offer. Said documentation is attached to this Notice of Filing as Exhibits "A", "B", and C.

Respectfully Submitted,

  
Jerry Losee, Pro se  
9253 Frandsen Road 

NOTICE OF FILING - 1

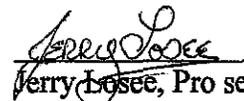
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com



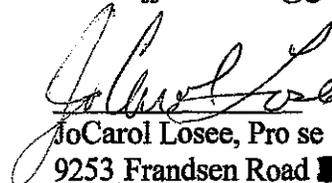
To Carol Losee, Pro se  
9253 Frandsen Road [REDACTED]  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY, that a true copy of this pleading has been has  
been sent by US Mail to the following parties: ROBINSON TAIT, P.S., Jennifer Tait, Lisa  
McMahon-Myhran, 710 Second Ave, Ste 710, Seattle, WA 98104; New Century Mortgage  
Corporation, Bradley Morrice, 18400 VonKarman, Ste. 1000, Irvine, CA 92612; Robinson Tait,  
P.S., Nicolas A Daluiso, 901 Fifth Ave, Ste 400. Seattle., WA. 98164; on this 9 day of June,  
2017.



Jerry Losee, Pro se  
9253 Frandsen Road [REDACTED]  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com



To Carol Losee, Pro se  
9253 Frandsen Road [REDACTED]  
Lava Hot Springs, Idaho 83246  
Ph: (208) 251-6968  
Email: jj68mobile@gmail.com

# EXHIBIT "A"



Jerry Losee <jj68mobile@gmail.com>

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## loan information

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Jerry and JoCarol Losee <jj68mobile@gmail.com>  
To: Jennifer Tait <jtait@robinsontait.com>

Fri, Apr 21, 2017 at 12:49 PM

Attn Jennifer Tait

April 21, 2017

Please provide us with a full documented breakdown of all payments to date that we have made along with dates of when the payments were applied to the loan. Also a breakdown of all other expenses that have been added to the loan with dates and what the total amount owing.

Thank you,

Jerry and JoCarol Losee

# EXHIBIT "B"



Jerry Losee <jj68mobile@gmail.com>

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## loan information

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Nicolas Daluiso <NicolasD@robinsontait.com>  
To: "jj68mobile@gmail.com" <jj68mobile@gmail.com>  
Cc: Jennifer Tait <jtait@robinsontait.com>

Thu, Jun 8, 2017 at 1:16 PM

Mr. Losee

Please forward further communication with our office to me as I will be working with our Idaho attorneys on your case.

I have forwarded your settlement offer to the client for review.

Thank you

Nicolas A. Daluiso  
Managing Attorney  
Litigation Department

robinson | tait, p.s.

901 Fifth Avenue, Suite 400

Seattle, WA 98164

Direct: (206) 876-3307

Main: (206) 676-9640

Fax: (206) 676-9659

ndaluiso@robinsontait.com

\*Admitted in WA, OR & CA

**From:** Jennifer Tait  
**Sent:** Thursday, June 08, 2017 11:51 AM  
**To:** Nicolas Daluiso <NicolasD@robinsontait.com>  
**Subject:** FW: loan information

Jennifer L. Tait\*

Admitted in WA, OR & ID

President

Robinson Tait, P.S.

901 5<sup>th</sup> Ave, Suite 400

Seattle, WA 98164

Telephone: (206) 676-9642

Facsimilie: (206) 676-9659

[jtait@robinsontait.com](mailto:jtait@robinsontait.com)

**From:** Jerry Losee [<mailto:jj68mobile@gmail.com>]  
**Sent:** Thursday, June 08, 2017 10:38 AM  
**To:** Jennifer Tait <[jtait@robinsontait.com](mailto:jtait@robinsontait.com)>  
**Subject:** Re: loan information

June, 8 2017

Craig Peterson, Jennifer Tait, Lisa McMahon-Myhran,

We the Losee's would like to propose the following settlement for case CV-2015-2863-OC, my husband and I would like to live out our remaining lives in our home that we poured a lot of personal expenses and sweat in building the home ourselves along with the memories of raising our family. To date we have paid to the lender, \$89,171.21 towards the original purchase amount of \$96,000.00 for the property. We feel that a settlement amount to be paid upfront of \$6,828.79 and 8.75% interest of \$597.51, for a total of \$7426.31, which will bring the total amount paid to the lender at \$96,597.51 to satisfy our Deed of Trust with all interest. We will agree to dismiss all current action and not file any future actions. We are not saying that we have been current on our payments, we admit to that for obvious reasons stated below, but please note before any of this got out of hand, that we have given enormous effort and tried numerous times to keep everything together before this

unnecessary long legal battle to try to save our home which would have saved a lot of unnecessary expenses by both sides. Our offer is taking into consideration that your clients lack of effort of never allowing us to do a modification on the property, which we have applied for multiple times even though we were easily within the qualification to be accepted for one by Ocwen, which Ocwen also stated that they were quite confused that your client turned it down. All of this litigation and attempts at obtaining a loan modification have made it so that our credit is in shambles and life a lot harder then it needed to be, because we have had to pay higher interest rates for insurance and what other personal loans we could qualify for ect. This has weighed heavily on us going through so much stress and hardship because of the banks wrongful actions. Again if the banks actions were done legally through out, then we most defiantly would propose a different settlement or better yet we would not have had to go through all this to start with, but of course this is not the case. We feel that it would be better if all parties just settle with the above offer knowing that we the Losee's, will have paid the full amount borrowed plus interest on the remaining balance. We feel that our above offer is a very fair settlement.

Please note that we are not trying to show aggression with pointing out the above wrongful matters, but rather just letting it be known why we came to the proposed above settlement offer.

We will be awaiting a response regarding this matter, your consideration is appreciated.

Thank you.

Jerry and JoCarol Losee

On Apr 21, 2017, at 12:49 PM, Jerry and JoCarol Losee <jj68mobile@gmail.com> wrote:

Attn Jennifer Tait

April 21, 2017

Please provide us with a full documented breakdown of all payments to date that we have made along with dates of when the payments were applied to the loan. Also a breakdown of all other expenses that have been added to the loan with dates and what the total amount owing.

Thank you,

Jerry and JoCarol Losee

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**CONFIDENTIALITY NOTICE:** The information contained herein may be privileged and protected by the attorney/client and/or other privilege. It is confidential in nature and intended for use by intended addressee only. If you are not the intended recipient, you are hereby expressly prohibited from dissemination, distribution, copying or any use whatsoever of this transmission and its contents. If you receive this transmission in error, please reply or call the sender.

This email has been scanned for email related threats and delivered safely by Mimecast.  
For more information please visit <http://www.mimecast.com>

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# EXHIBIT “C”

# UNIFORM BORROWER ASSISTANCE FORM

If you are experiencing a temporary or long-term hardship and need help, you must complete and submit this form along with other required documentation to be considered for available solutions. On this page, you must disclose information about (1) you and your intentions to either keep or transition out of your home; (2) the property's status; (3) bankruptcy; and (4) your credit counseling agency.

On Page 2 you must disclose information about **all** of your income, expenses and assets. Page 2 also lists the required income documentation that you must submit in support of your request for assistance. Then on Page 3, you must complete the Hardship Affidavit in which you disclose the nature of your hardship. The Hardship Affidavit informs you of the required documentation that you must submit in support of your hardship claim.

**NOTICE:** In addition, when you sign and date this form, you will make important certifications, representations and agreements, including certifying that all of the information in this Borrower Assistance Form is accurate and truthful and any identified hardship has contributed to your submission of this request for mortgage relief.

**REMINDER:** The Borrower Response Package you need to return consists of: (1) this completed, signed and dated Borrower Assistance Form; (2) completed and signed IRS Form 4506T-EZ (4506T for self-employed borrowers or borrowers with rental income); (3) required income documentation, and (4) required hardship documentation.

Loan Number **0707054938** (usually found on your monthly mortgage statement)

Servicer's Name **Ocwen**

I want to:  Keep the Property  Vacate the Property  Sell the Property  Undecided

The property is currently:  My Primary Residence  A Second Home  An Investment Property

The property is currently:  Owner Occupied  Renter occupied  Vacant

BORROWER	CO-BORROWER
BORROWER'S NAME <b>Jerry Losee</b>	CO-BORROWER'S NAME
<b>[REDACTED]</b>	SOCIAL SECURITY NUMBER
<b>[REDACTED]</b>	DATE OF BIRTH
HOME PHONE NUMBER WITH AREA CODE <b>(208) 251 - 6968</b>	HOME PHONE NUMBER WITH AREA CODE
CELL OR WORK NUMBER WITH AREA CODE	CELL OR WORK NUMBER WITH AREA CODE

MAILING ADDRESS  
**9253 Frandsen Rd, Lava Hot Springs, ID 83246.**

PROPERTY ADDRESS (IF SAME AS MAILING ADDRESS, JUST WRITE SAME)  
**9253 Frandsen Rd, Lava Hot Springs, ID 83246.**

EMAIL ADDRESS  
**jj68mobile@gmail.com**

<p>Is the property listed for sale? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, what was the listing date? _____</p> <p>If property has been listed for sale, have you received an offer on the property? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Date of offer: _____ Amount of Offer: \$ <b>0.00</b></p> <p>Agent's Name: _____</p> <p>Agent's Phone Number: _____</p> <p>For Sale by Owner? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Have you contacted a credit-counseling agency for help? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, please complete the counselor contact information below:</p> <p>Counselor's Name: _____</p> <p>Agency's Name: _____</p> <p>Counselor's Phone Number: _____</p> <p>Counselor's Email Address: _____</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Do you have condominium or homeowner association (HOA) fees?  Yes  No

Total monthly amount: \$ **0.00**

Name and address that fees are paid to: \_\_\_\_\_

Have you filed for bankruptcy?  Yes  No If Yes?  Chapter 7  Chapter 11  Chapter 12  Chapter 13

If yes, what is the filing date: \_\_\_\_\_ Has your bankruptcy been discharged?  Yes  No Bankruptcy case number: \_\_\_\_\_

Is any borrower an active duty service member?  Yes  No

Has any borrower been deployed away from his/her primary residence or received a Permanent Change of Station order?  Yes  No

Is any borrower the surviving spouse of a deceased service member who was on active duty at the time of death?  Yes  No

# UNIFORM BORROWER ASSISTANCE FORM

Monthly Household Income		Monthly Household Expenses/Debt		Household Assets (associated with the property and/or borrower(s))	
Gross wages	\$0	First Mortgage Payment	\$763.57	Checking Account(s)	\$0
Overtime	\$0	Second Mortgage Payment	\$0	Checking Account(s)	\$
Child Support / Alimony*	\$0	Homeowner's Insurance	\$0	Savings / Money Market	\$0
Non-taxable social security/SSDI	\$0	Property Taxes	\$135.24	CDs	\$
Taxable SS benefits or other monthly income from annuities or retirement plans	\$0	Credit Cards / Installment Loan(s) (total minimum payment per month)	\$25.00	Stocks / Bonds	\$0
Tips, commissions, bonus and self-employed income	\$2,500.00	Alimony, child support payments	\$0	Other Cash on Hand	\$0
Rents Received	\$0	Car Lease Payments	\$459.00	Other Real Estate (estimated value)	\$0
Unemployment Income	\$0	HOA/Condo Fees/Property Maintenance	\$0	Other _____	\$0
Food Stamps/Welfare	\$0	Mortgage Payments on other properties	\$0		
Other _____	\$0	Other Food, Auto, Utils	\$580.00		
<b>Total (Gross income)</b>	<b>\$2,500.00</b>	<b>Total Household Expenses and Debt Payments</b>	<b>\$1,962.81</b>	<b>Total Assets</b>	<b>\$0</b>

Any other liens (mortgage liens, mechanics liens, tax liens, etc.)

Lien Holder's Name	Balance and Interest Rate	Loan Number	Lien Holder's Phone Number
	/		
	/		
	/		

### Required Income Documentation

<input type="checkbox"/> <b>Do you earn a salary or hourly wage?</b> For each borrower who is a salaried employee or paid by the hour, include paystub(s) reflecting the most recent 30 days' earnings and documentation reflecting year-to-date earnings, if not reported on the paystubs (e.g. signed letter or printout from employer).	<input checked="" type="checkbox"/> <b>Are you self-employed?</b> For each borrower who receives self employed income, include a complete, signed individual federal income tax return and, as applicable, the business tax return; AND either the most recent signed and dated quarterly or year-to-date profit/loss statement that reflects activity for the most recent three months; OR copies of bank statements for the business account for the last two months evidencing continuation of business activity.
<input type="checkbox"/> <b>Do you have any additional sources of income?</b> Provide for each borrower as applicable: <b>"Other Earned Income" such as bonuses, commissions, housing allowance, tips, or overtime:</b> <input type="checkbox"/> Reliable third-party documentation describing the amount and nature of the income (e.g., employment contract or printouts documenting tip income). <b>Social Security, disability or death benefits, pension, public assistance, or adoption assistance:</b> <input type="checkbox"/> Documentation showing the amount and frequency of the benefits, such as letters, exhibits, disability policy or benefits statement from the provider, and <input type="checkbox"/> Documentation showing the receipt of payment, such as copies of the two most recent bank statements showing deposit amounts. <b>Rental income:</b> <input type="checkbox"/> Copy of the most recent filed federal tax return with all schedules, including Schedule E-Supplement Income and Loss. Rental income for qualifying purposes will be 75% of the gross rent you reported reduced by the monthly debt service on the property, if applicable; or <input type="checkbox"/> If rental income is not reported on Schedule E-Supplemental Income and Loss, provide a copy of the current lease agreement with either bank statements or cancelled rent checks demonstrating receipt of rent. <b>Investment income:</b> <input type="checkbox"/> Copies of the two most recent investment statements or bank statements supporting receipt of this income. <b>Alimony, child support, or separation maintenance payments as qualifying income:*</b> <input type="checkbox"/> Copy of divorce decree, separation agreement, or other written legal agreement filed with a court, or court decree that states the amount of the alimony, child support, or separation maintenance payments and the period of time over which the payments will be received, and <input type="checkbox"/> Copies of your two most recent bank statements or other third-party documents showing receipt of payment.	

\*Notice: Alimony, child support, or separate maintenance income need not be revealed if you do not choose to have it considered for repaying this loan

# UNIFORM BORROWER ASSISTANCE FORM

## HARDSHIP AFFIDAVIT

I am requesting review of my current financial situation to determine whether I qualify for temporary or permanent mortgage relief options.

Date Hardship Began is: \_\_\_\_\_

I believe my situation is:  Short-term (under 6 months)  Medium-term (6-12 months)  Long-term or Permanent Hardship (greater than 12 months)

I am having difficulty making my monthly payment because of reasons set forth below:

(Please check all that apply and submit required documentation demonstrating your hardship)

If Your Hardship Is:	Then the Required Hardship Documentation Is:
<input type="checkbox"/> Unemployment	<input type="checkbox"/> No hardship documentation required
<input type="checkbox"/> Reduction in Income: a hardship that has caused a decrease in your income due to circumstances outside your control (e.g., elimination of overtime, reduction in regular working hours, a reduction in base pay)	<input type="checkbox"/> No hardship documentation required
<input type="checkbox"/> Increase in Housing Expenses: a hardship that has caused an increase in your housing expenses due to circumstances outside your control	<input type="checkbox"/> No hardship documentation required
<input type="checkbox"/> Divorce or legal separation; Separation of Borrowers unrelated by marriage, civil union or similar domestic partnership under applicable law	<input type="checkbox"/> Divorce decree signed by the court; OR <input type="checkbox"/> Separation agreement signed by the court; OR <input type="checkbox"/> Current credit report evidencing divorce, separation, or non-occupying borrower has a different address; OR <input type="checkbox"/> Recorded quitclaim deed evidencing that the non-occupying Borrower or co-Borrower has relinquished all rights to the property
<input type="checkbox"/> Death of a borrower or death of either the primary or secondary wage earner in the household	<input type="checkbox"/> Death certificate; OR <input type="checkbox"/> Obituary or newspaper article reporting the death
<input type="checkbox"/> Long-term or permanent disability; Serious illness of a borrower/co-borrower or dependent family member	<input type="checkbox"/> Doctor's certificate of illness or disability; OR <input type="checkbox"/> Medical bills; OR <input type="checkbox"/> Proof of monthly insurance benefits or government assistance (if applicable)
<input type="checkbox"/> Disaster (natural or man-made) adversely impacting the property or Borrower's place of employment	<input type="checkbox"/> Insurance claim; OR <input type="checkbox"/> Federal Emergency Management Agency grant or Small Business Administration loan; OR <input type="checkbox"/> Borrower or Employer property located in a federally declared disaster area
<input type="checkbox"/> Distant employment transfer / Relocation	<p><b>For active-duty service members:</b> Notice of Permanent Change of Station (PCS) or actual PCS orders.</p> <p><b>For employment transfers/new employment:</b></p> <input type="checkbox"/> Copy of signed offer letter or notice from employer showing transfer to a new employment location; OR <input type="checkbox"/> Pay stub from new employer; OR <input type="checkbox"/> If none of these apply, provide written explanation <p>In addition to the above, documentation that reflects the amount of any relocation assistance provided, if applicable (not required for those with PCS orders).</p>
<input type="checkbox"/> Business Failure	<input type="checkbox"/> Tax return from the previous year (including all schedules) AND <input type="checkbox"/> Proof of business failure supported by one of the following: <ul style="list-style-type: none"> <li>• Bankruptcy filing for the business; or</li> <li>• Two months recent bank statements for the business account evidencing cessation of business activity; or</li> <li>• Most recent signed and dated quarterly or year-to-date profit and loss statement</li> </ul>
<input type="checkbox"/> Other: a hardship that is not covered above	<input type="checkbox"/> Written explanation describing the details of the hardship and relevant documentation

# UNIFORM BORROWER ASSISTANCE FORM

## Borrower/Co-Borrower Acknowledgement and Agreement

I certify, acknowledge, and agree to the following:

1. All of the information in this Borrower Assistance Form is truthful and the hardship that I have identified contributed to my need for mortgage relief.
2. The accuracy of my statements may be reviewed by the Servicer, owner or guarantor of my mortgage, their agent(s), or an authorized third party\*, and I may be required to provide additional supporting documentation. I will provide all requested documents and will respond timely to all Servicer, or authorized third party\*, communications.
3. Knowingly submitting false information may violate Federal and other applicable law.
4. If I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this request for mortgage relief or if I do not provide all required documentation, the Servicer may cancel any mortgage relief granted and may pursue foreclosure on my home and/or pursue any available legal remedies.
5. The Servicer is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request.
6. I may be eligible for a trial period plan, repayment plan, or forbearance plan. If I am eligible for one of these plans, I agree that:
  - a. All the terms of this Acknowledgment and Agreement are incorporated into such plan by reference as if set forth in such plan in full.
  - b. My first timely payment under the plan will serve as acceptance of the terms set forth in the notice of the plan sent by the Servicer.
  - c. The Servicer's acceptance of any payments under the plan will not be a waiver of any acceleration of my loan or foreclosure action that has occurred and will not cure my default unless such payments are sufficient to completely cure my entire default under my loan.
  - d. Payments due under a trial period plan for a modification will contain escrow amounts. If I was not previously required to pay escrow amounts, and my trial period plan contains escrow amounts, I agree to the establishment of an escrow account and agree that any prior waiver is revoked. Payments due under a repayment plan or forbearance plan may or may not contain escrow amounts. If I was not previously required to pay escrow amounts and my repayment plan or forbearance plan contains escrow amounts, I agree to the establishment of an escrow account and agree that any prior escrow waiver is revoked.
7. A condemnation notice has not been issued for the property.
8. The Servicer or authorized third party\* will obtain a current credit report on all borrowers obligated on the Note.
9. The Servicer or authorized third party\* will collect and record personal information that I submit in this Borrower Response Package and during the evaluation process. This personal information may include, but is not limited to: (a) my name, address, telephone number, (b) my social security number, (c) my credit score, (d) my income, and (e) my payment history and information about my account balances and activity. I understand and consent to the Servicer or authorized third party\*, as well as any investor or guarantor (such as Fannie Mae or Freddie Mac), disclosing my personal information and the terms of any relief or foreclosure alternative that I receive to the following:
  - a. Any investor, insurer, guarantor, or servicer that owns, insures, guarantees, or services my first lien or subordinate lien (if applicable) mortgage loan(s) or any companies that perform support services to them; and
  - b. The U.S. Department of Treasury, Fannie Mae and Freddie Mac, in conjunction with their responsibilities under the Making Home Affordable program, or any companies that perform support services to them.
10. I consent to being contacted concerning this request for mortgage assistance at any telephone number, including mobile telephone number, or email address I have provided to the Lender/Servicer/ or authorized third party\*. By checking this box, I also consent to being contacted by  text messaging.

  
Borrower Signature

5-30-2017  
Date

\_\_\_\_\_  
Co-Borrower Signature

\_\_\_\_\_  
Date

\*An authorized third party may include, but is not limited to, a counseling agency, Housing Finance Agency (HFA) or other similar entity that is assisting me in obtaining a foreclosure prevention alternative.

2017 JUN 16 AM 9:33

BY KH  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Register No. CV-2015-02863-OC

JERRY LOSEE AND JOCAROL LOSEE, )

Plaintiffs, )

-vs- )

MINUTE ENTRY & ORDER

NEW CENTURY MORTGAGE )  
CORPORATION; DEUTSCHE BANK )  
NATIONAL TRUST COMPANY, )

Defendants. )

On June 12, 2017, the above entitled matter came before the Court for the purpose of a status conference. JoCarol Losee, Plaintiff, appeared by telephone prose. Craig Petersen appeared by telephon for the Defendant, Deutsche Bank.

Stephanie Morse performed as Court Reporter for this proceeding.

The Court heard updates of the case from the parties.

IT IS HEREBY ORDERED that within 14 days of this hearing, Counsel for the Defendant shall submit a written response to the Court regarding the status of the loan modification application submitted to the Defendant by the Plaintiff. Counsel for the Defendant shall advise if

Register CV-2015-02863-OC  
MINUTE ENTRY & ORDER

Page 1

the application is a complete application and if not what is needed to make it complete.

DATED June 15, 2017.



STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of June, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jerry and JoCarol Losee

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

Craig Petersen  
Robinson Tait PS

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

DATED this 16 day of June, 2017.

  
\_\_\_\_\_  
Deputy Clerk

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT

2017 JUL -6 AM 11:03

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE K11  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK  
DEPUTY CLERK

Register#CV-2015-02863-OC

JERRY LOSEE AND JOCAROL LOSEE, )

Plaintiff, )

-vs- )

NEW CENTURY MORTGAGE CORPORATION )  
DEUTSCHE BANK NATIONAL TRUST )  
COMPANY, )

Defendants. )

ORDER SETTING  
STATUS CONFERENCE

A STATUS CONFERENCE before Judge Stephen S. Dunn, District Judge, IS SET FOR  
THE HOUR OF 2 P.M. ON THE 7<sup>th</sup> DAY OF AUGUST, 2017 in courtroom 301 at the Bannock  
County Courthouse

DATED July 6, 2017.

  
STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 6 day of July, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

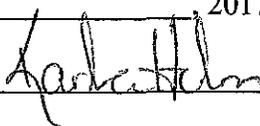
Jerry and JoCarol Losee

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

Craig Petersen  
Robinson Tait, PS  
710 Second Ave., Ste 710  
Seattle, WA 98104

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

DATED this 6 day of July, 2017.

  
\_\_\_\_\_  
Deputy Clerk

COURT MINUTES

CV-2015-0002863-OC

Jerry Losee, etal. vs. New Century Mortgage Corporation, etal.

Hearing type: Status Conference

Hearing date: 8/14/2017

Time: 2:03 pm

Judge: Stephen S Dunn

Courtroom: Room #301, Third Floor

Court reporter: Sheri Nothelphim

Minutes Clerk: Karla Holm

Tape Number:

Party: Deutsche Bank National Trust Company

Party: Jocarol Losee

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204 Status conference;  
204 Losee update of case  
208 Peterson  
209 Losee  
210 Court; anything to be filed prior to court take Motion for Summary Judgment  
under advisement  
211 Losee response; Peterson nothing further  
215 Court take under advisement and will issue decision



Certificates Series 2003-NC5 on Motion for Summary Judgment and to Expunge the Lis Pendens. On April 11, 2017, Plaintiffs filed a Notice of Filing for Judicial Review.

The Court held a hearing on these matters on April 17, 2017. There, the Court instructed Plaintiffs to submit a complete loan modification application within sixty days in an effort to resolve this case. The Court set the matter for a status conference for June 12, 2017.

During the status conference on June 12, 2017, counsel for Deutsche Bank indicated that Plaintiffs' loan modification application was being considered. The Court instructed Deutsche Bank to write a written response to Plaintiffs within fourteen days outlining whether it considered Plaintiff's loan modification application complete or whether additional information is required to make it complete.

On June 27, 2017, Deutsche Bank submitted the Declaration of Nicolas Daluiso Re: Response to Loan Modification and Settlement Offer, which indicates that he emailed Plaintiffs a letter advising them that their loan would not be modified and that the Plaintiffs' settlement offer was rejected.

A status conference was held August 14, 2017. The parties confirmed that they have been unable to resolve this case or reach an agreement for a loan modification. The Court advised the parties that, because the parties have been unable to reach a resolution, it would consider Deutsche Bank's Motion and the evidence that the parties have submitted in support of and in opposition to it, and it took the matter under advisement.

Having reviewed the facts and law, the Court now issues this Memorandum Decision Granting Defendant Deutsche Bank National Trust Company's Motion for Summary Judgment.

## FACTS<sup>1</sup>

Plaintiffs and New Century Mortgage Corporation ("New Century") entered into a home mortgage loan ("Note") on or about February 6, 2003. The Note was secured by a Deed of Trust. The Deed of Trust provides in Paragraph 23, in part, that property will be reconveyed to Plaintiffs as follows:

**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.

The Deed of Trust also provides that the Note may be sold in Paragraph 20, in part, as follows:

**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.

The Note and Deed of Trust were transferred from New Century to Deutsche Bank by an Assignment of Deed of Trust, which was recorded on April 7, 2003. Plaintiff's continued to make payments thereafter. In 2009, Plaintiffs defaulted on the Note after becoming delinquent on their payments, and Deutsche Bank initiated foreclosure proceedings. A Notice of Default was recorded on March 3, 2011. Plaintiffs failed to cure their default. A Notice of Trustee's Sale, setting a trustee's sale for July 7, 2011, was issued.

On November 21, 2013, a Corrective Assignment of Deed of Trust was recorded to correct the name of the assignee of the Deed of Trust to its proper name.

On July 6, 2011, Plaintiffs filed a complaint in this Court in Case No. CV-2011-2662-OC, and were granted a temporary restraining order to stop the trustee's sale. The Court entered judgment in favor of Deutsche Bank on December 7, 2011, thereby allowing Deutsche Bank to

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<sup>1</sup> The following facts have been taken from the parties' pleadings, requests for judicial notice, and the record.

proceed with foreclosure. Plaintiffs filed for bankruptcy relief on January 12, 2012, staying the foreclosure proceedings. After Plaintiff's bankruptcy case was dismissed, Deutsche Bank set a foreclosure sale date for December 28, 2012. However, Plaintiffs again filed for bankruptcy relief on December 26, 2012, and the foreclosure sale was stayed.

A second Notice of Default was recorded on April 20, 2014. The sale was postponed due to Plaintiffs' request for loss mitigation review. Loss mitigation was denied because the owner of the loan would not allow loan modification. Plaintiffs were advised that the only loss mitigation available would be a short sale of the property. A foreclosure sale was rescheduled but was postponed after Plaintiffs initiated this case.

New Century filed for Chapter 11 bankruptcy relief on April 2, 2007. The bankruptcy proceedings were terminated on August 26, 2016.

#### **STANDARD OF REVIEW**

"Summary judgment is proper 'if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'"<sup>2</sup> When considering a motion for summary judgment, the Court should liberally construe all facts and draw all reasonable inferences in favor of the nonmoving party.<sup>3</sup> Summary judgment must be denied where reasonable persons could reach different conclusions or draw conflicting inferences from the evidence presented.<sup>4</sup>

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<sup>2</sup> *Arreguin v. Farmers Ins. Co. of Idaho*, 145 Idaho 459, 461, 180 P.3d 498, 500 (2008); *Northwest Bec-Corp v. Home Living Service*, 136 Idaho 835, 838, 41 P.3d 263, 267 (2002); see also *Cox v. Clanton*, 137 Idaho 492, 494, 50 P.3d 987, 989 (2002).

<sup>3</sup> *Northwest Bec-Corp*, 136 Idaho at 838, 41 P.3d at 266 (citing *S. Griffin Contr., Inc. v. City of Lewiston*, 135 Idaho 181, 185, 16 P.3d 278, 282 (2000)).

<sup>4</sup> *Id.*

The moving party has the burden of showing the lack of a genuine issue of material fact.<sup>5</sup> To meet this burden, the moving party must establish through evidence that no issue of material facts exists on an element of the nonmoving party's case.<sup>6</sup> Once the moving party meets this burden, the burden shifts to the nonmoving party to show of the existence of a genuine issue of material fact.<sup>7</sup> The nonmoving party "may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."<sup>8</sup> The Court may only consider evidence in support of factual assertions which would be admissible at trial.<sup>9</sup> Summary judgment is properly granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party's case upon which that party bears the burden of proof at trial.<sup>10</sup>

### ANALYSIS

Plaintiffs' causes of action against New Century and Deutsche Bank (collectively "Defendants") are Breach of Contract and Slander of Title. Before the Court may rule on Deutsche Bank's Motion for Summary Judgment, it must determine whether it may rule on Deutsche Bank's Motion notwithstanding New Century's Chapter 11 bankruptcy case.

#### **I. MAY THE COURT ON THE MOTION FOR SUMMARY JUDGMENT NOTWITHSTANDING NEW CENTURY'S CHAPTER 11 BANKRUPTCY?**

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887P.2d 1034, 1037-38 (1994).

<sup>8</sup> *Id.*

<sup>9</sup> *Taft v. Jumbo Foods, Inc.*, 155 Idaho 511, 515, 314 P.3d 193, 197 (2013).

<sup>10</sup> *Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996).

Section 362(a) of the United States Code requires an automatic stay on litigation against a debtor of a bankruptcy case.<sup>11</sup> Generally, the automatic stay does not apply to suits against non-debtors.<sup>12</sup> The automatic stay applies to non-debtor co-defendants in special circumstances when the debtor asserts the automatic stay. In other words, the stay does not automatically apply to a non-debtor co-defendant.<sup>13</sup> The debtor must typically raise the issue that the automatic stay should apply to the non-debtor co-defendant when a judgment against the non-debtor co-defendant will be a judgment against the debtor for reimbursement or indemnification.<sup>14</sup>

At the time this case was filed, New Century had filed for Chapter 11 bankruptcy relief and was a bankruptcy debtor. Deutsche Bank was not part of that bankruptcy proceeding and is, therefore, a non-debtor co-defendant in this case. Deutsche Bank seeks summary judgment on Plaintiffs claims. New Century has not requested that the automatic stay be imposed on litigation against Deutsche Bank. Because Deutsche Bank is a non-debtor co-defendant and because New Century has not sought to stay this litigation against Deutsche Bank, these proceedings against Deutsche Bank are not stayed pursuant to Section 362(a).

Therefore, the Court may proceed with disposing of this case notwithstanding New Century's Chapter 11 bankruptcy.

## **II. IS SUMMARY JUDGMENT PROPER ON PLAINTIFFS' BREACH OF CONTRACT CLAIM?**

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<sup>11</sup> *In re Miller*, 262 B.R. 499, 505 (9<sup>th</sup> Cir. BAP 2011).

<sup>12</sup> *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1095 (C.A.9, 2007).

<sup>13</sup> *In re All Seasons Resorts, Inc.*, 79 B.R. 901, 903-04 (Bkrcty. C.D.Cal. 1987).

<sup>14</sup> *In re Excel Innovations, Inc.*, 502 F.3d 1086 at 1095.

The elements of a claim for breach of contract are: “(a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.”<sup>15</sup>

Plaintiffs allege in their Complaint that Defendants breached the Note because: (1) the sale of New Century’s interest in the Deed of Trust violated paragraph 23 of the Deed of Trust; (2) Plaintiffs were harmed by New Century’s failure to comply with the Deed of Trust; and (3) the Pooling and Servicing Agreement was never recorded to perfect “defendants’ rights to real property,” such that Deutsche Bank has no right to make a claim against the property. Specifically, Plaintiffs allege: “It may be true that defendants have a right to the paper instrument(s) being the note and the unrecorded assignment as personal property, but such rights do not extend to real property without compliance to statutory law.”

Plaintiffs have not supported any factual assertions with evidence that would be admissible at trial or legal authority that supports their position.

Deutsche Bank argues that Plaintiffs are mistaken that the sale of New Century’s interest to Deutsche Bank violated the Deed of Trust. Paragraph 23 provides:

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...

Deutsche Bank argues that the sale of rights do not equate to “the payment of all sums” secured by the security instrument. Because the loan has not been paid off, no reconveyance was required. Additionally, Paragraph 20 of the contract allows for the original lender to sell the Note together with the Security Instrument. Paragraph 20 provides:

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<sup>15</sup> *Mosell Equities, LLC v. Berryhill & Co., Inc.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013).

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.

Thus, because no reconveyance was necessary and because the contract permitted New Century to sell the note, Deutsche Bank argues that there was not breach of contract.

There is no dispute of material fact regarding the existence or terms of the Deed of Trust, when the sale of the Note and Deed of Trust occurred, or between whom the sale occurred. Thus, whether Defendants breached the Deed of Trust is a question of law that the Court may resolve by summary judgment.

The Deed of Trust clearly allowed New Century to sell its interest in the Note and the Deed of Trust without prior notice to Plaintiffs. Furthermore, the Security Instrument provided that the property would only be reconveyed to Plaintiffs upon full payment of the amount secured by the Security Instrument. Plaintiffs' allegation that the sale violated the terms of the Security Instrument lacks merit because the Security Instrument explicitly permits such a sale of New Century's interest without reconveyance. Thus, the payment by Deutsche Bank to New Century is not "payment of all sums secured" as argued by Plaintiffs, and does not trigger the reconveyance requirement. Plaintiffs have not shown that all sums secured by the Deed of Trust were paid by them; thus, New Century was not required to reconvey the property to Plaintiffs. Additionally, Plaintiffs have not demonstrated, through admissible evidence, that the Pooling and Servicing Agreement was never recorded. Even if Plaintiffs had demonstrated that it was not recorded, Plaintiffs have not demonstrated how an alleged failure to perfect a security interest constitutes a breach of the Deed of Trust.

Plaintiffs have not established that Defendants breached the Deed of Trust when New Century assigned its interest in the Note and Deed of Trust to Deutsche Bank. Because Plaintiffs

have not established a breach of contract, summary judgment is proper on Plaintiffs' Breach of Contract claim. Therefore, Deutsche's Bank's Motion for Summary Judgment is GRANTED on Plaintiffs' Breach of Contract claim.

### III. IS SUMMARY JUDGMENT PROPER ON PLAINTIFFS' SLANDER OF TITLE CLAIM?

The elements of a claim for slander of title are: "(1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special damages."<sup>16</sup> A "slanderous statement is one "tending to harm a person's reputation, [usually] by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business."<sup>17</sup> Malice means "a reckless disregard for the truth or falsity of a statement."<sup>18</sup>

Plaintiffs allege in their Complaint that: (1) Plaintiffs would have a clear title if the Trustee for Defendant had reconveyed the property and surrendered the Security Instrument "to the person or persons legally entitled to it upon the payment of all sums secured by Defendant [New Century]"; (2) the Chain of Title has not been disclosed nor recorded, and Plaintiffs have suffered damage as a result of the incomplete and slanderous title; (3) New Century sold its interest in the Deed of Trust, which violated Covenant 23 of the contract; and (4) other assignments have been recorded in Bannock County since that sale.

Plaintiffs submitted with their Complaint the Affidavit of Joseph R. Esquivel Jr., an investigator whom Plaintiffs' hired. This Affidavit states: (1) an interest in the loan agreement was sold in February 2003 to multiple classes of the Morgan Stanley ABS Capital I Inc. 2003-NC5 Trust; (2) the Note was indorsed to Deutsche Bank National Trust Company, as trustee

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<sup>16</sup> *Weitz v. Green*, 148 Idaho 851, 862, 230 P.3d 743, 754 (2010).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

under a Pooling and Servicing Agreement, with Stanley ABS Capital Inc. Trust 2003-NC5 as payee; (3) the multiple classes of the Morgan Stanley Trust are not named in the Note; (4) there was an assignment of Deed of Trust in February 2011 where “Deutsche Bank National Trust Company as Trustee grants, assigns, and transfers to Deutsche Bank National Trust Company, and [sic] Trustee for the Pooling and Servicing Agreement dated as of May 1, 2003 Mortgage [sic] Stanley ABS Capital I Inc., Trust 2003-NC5”; and (5) a Corrective Assignment of Deed of Trust was recorded in November 2013 “where New Century Mortgage Corporation grants, assigns, and transfers to Deutsche Bank National Trust Company, as Trustee for Morgan Stanley..., Mortgage Pass – Through Certificates, Series 2003-NC5.”

On April 11, 2017, Plaintiffs submitted a Notice of Filing for Judicial Review, to which they attached a Fraud Investigation (“Report”). Although the Notice states that it supports the “Affidavit of Joseph Esquivel, Jr., the Chain of Title Analysis,” the Report is not an affidavit and the statements are not sworn to. Therefore, the statements in the Report are hearsay and inadmissible evidence which the Court may not consider.

Deutsche Bank argues that Plaintiffs do not have standing to challenge the Pooling and Servicing Agreement, through which Deutsche Bank became Trustee of the assignment of the Note, because they were not a party to it. Moreover, Deutsche Bank argues that the Pooling and Servicing Agreement is not law and that any violation to it would not affect Plaintiffs’ title to the property. Furthermore, Deutsche Bank argues that the Corrective Assignment of Deed of Trust did not cloud Plaintiff’s title because it merely corrected the name of the assignee.

The Deed of Trust permits the sale of the Note and Deed of Trust. Plaintiffs have not cited any law that was violated by this sale. Although the Note was sold to Morgan Stanley ABS Capital Inc. 2003-N5 Trust, with Deutsche Bank as Trustee, and the assignment did not name

specifically the multiple classes of that Trust, Plaintiffs have not demonstrated that this sale clouded Plaintiffs' title to the property. Therefore, Plaintiffs have not shown their title is clouded by Defendants' failure to reconvey the property. There is simply no law or facts to support Plaintiffs' claims in this case.

Furthermore, Plaintiffs have not cited any law to show that the Corrective Assignment of Deed of Trust clouded Plaintiffs' title. Deutsche Bank has provided copies of both the Assignment from New Century to Deutsche Bank and the Corrective Assignment of Deed of Trust, which corrected the name of Deutsche Bank. Plaintiffs have not submitted any admissible evidence to show that the Chain of Title has not been recorded or evidence of other assignments that cloud their title. Therefore, Plaintiffs have not shown that Defendants published a slanderous statement through either the sale of the Note and Deed of Trust or through the Corrective Assignment of Deed of Trust.

Furthermore, Deutsche Bank argues that Plaintiffs have not demonstrated any harm from a failure to record the assignment of the Note and Deed of Trust or from the Corrective Assignment of Deed of Trust. Deutsche Bank provided copies of the original assignment that was recorded April 7, 2003, and the Corrective Assignment of Deed of Trust that was recorded November 21, 2013, to show that there was no failure to record the assignment. Deutsche Bank argues that Plaintiffs cannot claim that they were harmed by these recordings because the recording of the assignment and Corrective Assignment act only to the benefit or detriment of the beneficiary of the Deed of Trust. That is, these recordings only protect the beneficiary against claims from a third-party.

Deutsche Bank has shown that the sale of the Note and Deed of Trust did not violate the Deed of Trust and that recording the Corrective Assignment of Deed of Trust does not cloud

Plaintiffs' title because its purpose is to protect Deutsche Bank from third-party claims to the property. Plaintiffs have not provided any evidence or cited any law to show otherwise. Therefore, Plaintiffs have not demonstrated that they were harmed when New Century sold its interest in the Note and Deed of Trust to Deutsche Bank or when Deutsche Bank recorded the Corrective Assignment of Deed of Trust.

There is no issue of material fact as to the instruments that have been recorded. Because Plaintiffs have failed to demonstrate that Deutsche Bank published a slanderous statement or that they were harmed thereby, summary judgment is proper on Plaintiffs' Slander of Title claim. Plaintiffs have not shown that the instruments that have been recorded were publications of a slanderous statement that clouded their title or that they were harmed by the recording of these instruments. Therefore, Deutsche Bank's Motion for Summary is GRANTED on Plaintiffs' Slander of Title Claim.

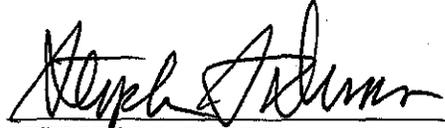
### CONCLUSION

Plaintiffs have failed to show, through admissible evidence, that Defendants breached the Deed of Trust when New Century assigned its interest in the Note and Deed of Trust to Deutsche Bank, Trustee for the Morgan Stanley ABS Capital Inc. 2003-N5 Trust. Plaintiffs have failed to show, through admissible evidence, that Defendants published a slanderous statement or that they were harmed thereby when New Century sold its interest in the Note and Deed of Trust to Deutsche Bank or when Deutsche Bank recorded the Corrective Assignment of Deed of Trust.

For the reasons stated above, the Court GRANTS Deutsche Bank's Motion for Summary Judgment on Plaintiff's claims against Deutsche Bank.

IT IS SO ORDERED.

DATED this 25<sup>th</sup> day of August, 2017.

  
STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 25 day of August, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jerry and JoCarol Losee  
9253 Frandsen Road  
Lava Hot Springs, ID 83246

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

Craig Petersen  
Jennifer Tait  
Lisa McMahon-Myhran  
Robinson Tait, P.S.  
901 Fifth Avenue, Ste. 400  
Seattle, WA 98164

- U.S. Mail
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- Hand Deliver
- Facsimile

DATED this 25 day of August, 2017.

  
Deputy Clerk



✓ Attorney for Defendant will call the Court \_\_\_ minutes before the hearing at 208-236-7250  
(number).

DONE this 2<sup>nd</sup> day of Nov., 2017.

  
\_\_\_\_\_  
JUDGE

Presented by:

  
\_\_\_\_\_  
Craig Peterson, ISB #9434  
Lisa McMahon-Myhran, ISB #8963  
Jennifer Tait, ISB #8243  
Robinson Tait, P.S.  
Attorney for Defendant

Dunn

FILED  
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2017 SEP -6 PM 1:26  
BY       
DEPUTY CLERK

SIXTH DISTRICT COURT OF IDAHO  
IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE AND JOCAROL LOSEE,

Plaintiffs,

VS.

Case No.: CV-2015-2863-OC

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE  
BANK NATIONAL TRUST  
COMPANY, et all

Defendants.

**PLAINTIFFS MOTION FOR RECONSIDERATION**

COME NOW, Jerry Losee and JoCarol Losee, Plaintiffs herein, and moves this Court to reconsider its August 26, 2017 decision on Defendant's Motion for Summary Judgment and for an Order allowing Plaintiffs to amended their Original Complaint.

**ARGUMENT**

Idaho Rule of Civil Procedure 11(a)(2)(B) provides: "A motion for reconsideration of the trial court may be made at any time before the entry of final judgment...." A party making a motion for reconsideration may present new facts, but the trial court is not required to search the record to determine if there is new information. Coeur d'Alene Mining Co. v. First National Bank 118 Idaho 812, 800 P.2d 1026 (1990). Granting or denying motion to reconsider is a discretionary decision. Johnson v. Lambros. 143 Idaho 468, 473, 147, P.3d 100, 105 (Ct. App. 2006), *citing* Watson v. Navistar Int'l Transp. Corp., 121 Idaho 643, 654, 827 P.2d 656, 667 (1992) Slaathaug v Allstate Ins. Co., 132 Idaho 705, 979 P.2d 107 (1999).

On reconsideration, Plaintiffs, argue that there are still genuine issues as to the authenticity of the documents Defendants purport to have. Plaintiffs question all signatures on said documents. Plaintiff hereby request, pursuant to IRCP 56(d) additional time to take the depositions of the key witnesses and acquire original documents in this dispute. Defendant's Motion is premature in that no merit discovery has occurred. Instead of filing an answer, Defendant filed its instant Motion, such that no discovery has yet even been allowed to commence. Pertinent discovery of key witnesses and original documents is needed to help resolve the following genuine issues of material fact.

Defendant has not submitted and answer to Plaintiffs complaint and Discovery has not been conducted. Therefore, it is impossible to take all material facts into consideration. "The requirements of Rule 56(e) are intended to provide the trial court with sworn factual statements based on personal knowledge that are intended to be put on as evidence at trial." McCoy, 120 Idaho at 770, 820 P.2d at 365.

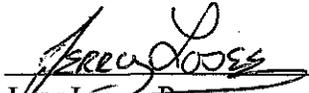
Idaho Rule of Civil Procedure 56(d) allows the Court to refuse summary judgment, continue a hearing or make such other order as is just when a party opposing summary judgment demonstrates that it cannot for reasons, stated present by affidavit, facts essential to justify the party' opposition. Rule 56(f) provides a device for litigants to avoid summary judgment when they have not yet had sufficient time to develop affirmative evidence.

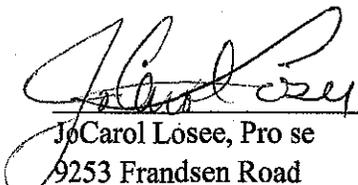
The timing of a summary judgment motion is particularly significant when considering a Rule 56(f) request for more time. Thus, where a summary judgment motion is brought early in the litigation, a Rule 56(f) motion for additional time should be granted as a matter of course.

Furthermore, on August 3, 2016, Defendant was ordered, by this court, to submit a memorandum to this court advising the Judge, and Plaintiffs, as to how this court could proceed in this case, when New Century Bank was in Bankruptcy. Defendant never submitted said memorandum as instructed by the court and instead waited until March 7, 2017 to file their Motion for Summary Judgment. New Century, based in Irvine, Calif., could be the poster-child for the meltdown in subprime mortgages. Few of its problems were known in April 2007, when they filed for bankruptcy, but since then it has announced federal prosecutors had begun a criminal probe of accounting errors and securities trading into its practices, a cut-off of financing by lenders, questions by its auditors, and its shares have been delisted by the New York Stock Exchange. Therefore, it is reasonable to infer that documents filed into Idaho public record, after New Century had withdrawn their registration with the Idaho Secretary of State on October 31, 2007, to conduct business in the state of Idaho, to be fraudulent and there is no evidence of any grant of authority from the New Century Bankruptcy Court which would permit any other party to execute such assignments in the first place. Further, the separate company which purchased the New Century brand out of bankruptcy has made it clear on its "Legal" page that the company has no connection to or power over the old company's loans. As such, any "new" assignments by the "new" New Century are also most likely fraudulent.

Based on the foregoing, it is abundantly evident that numerous questions of fact exist which preclude summary judgment. Moreover, pursuant to URCP 56(f), it is clear that substantial discovery should be conducted by the parties, allowing this action to proceed on its merits.

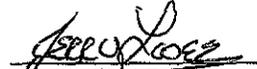
Respectfully submitted,

  
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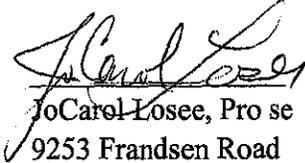
  
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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY, that a true copy of this pleading has been sent by US Mail to the following parties: ROBINSON TAIT, P.S., Craig Peterson, Jennifer Tait, Lisa McMahon-Myhran, 901 Fifth Ave, Ste 400, Seattle, WA 98164; on this 6 day of September, 2017.



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BANNOCK COUNTY  
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2017 NOV 16 AM 10:21

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

DEPUTY CLERK

Register No. CV-2015-02863-OC  
 JERRY LOSEE AND JOCAROL LOSEE, )  
 )  
 Plaintiffs, )  
 )  
 -vs- )  
 )  
 NEW CENTURY MORTGAGE )  
 CORPORATION; DEUTSCHE BANK )  
 NATIONAL TRUST COMPANY, )  
 )  
 Defendants. )

MINUTE ENTRY & ORDER

On November 13, 2017, the above entitled matter came before the Court for the purpose of a hearing on the Plaintiff's Motion to Reconsider. JoCarol Losee, Plaintiff, appeared by telephone prose. Craig Petersen appeared by telephone for the Defendant, Deutsche Bank.

Sheri Nothelphim performed as Court Reporter for this proceeding.

The Court heard comments from the Plaintiff; Counsel for the Defendant objected to the Motion and provided argument.

The Court took the Motion to Reconsider under advisement and advised that a written decision shall be issued.

DATED November 13, 2017.



STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of Nov, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jerry and JoCarol Losee

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

Craig Petersen  
Robinson Tait PS

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

DATED this 16 day of Nov, 2017.

[Signature]  
Deputy Clerk



## STANDARD OF REVIEW

Under IRCP 11.2, a motion to reconsider a court order “may be made at any time prior to, or within 14 days after the entry of a final judgment.”<sup>1</sup> No final judgment has been entered, therefore the Plaintiff’s motion is timely. The standard of review applied by the Court is the same standard of review applied when initially deciding the order to be reconsidered.<sup>2</sup> If the original order is within the Court’s discretion, so is the decision to grant or deny a motion for reconsideration.<sup>3</sup> A district court reviewing a motion to reconsider must arrive at its decision through an exercise of reason.<sup>4</sup> Where a court denies a motion to reconsider on mistaken facts, unarticulated reasons, and without particular facts demonstrating good cause, it has abused its discretion.<sup>5</sup>

The Court must grant summary judgment if “the pleadings, depositions, and admissions on file, together with affidavits, if any, show there is no genuine issue of material fact, and the moving party is entitled to summary judgment as a matter of law.”<sup>6</sup> The Court must liberally construe all facts and reasonable inferences in favor of the non-moving party.<sup>7</sup> However, the non-moving party must nevertheless set forth specific facts to show that there is a genuine issue of material fact to be resolved at trial, and may not simply rest upon mere allegations or denials to oppose the motion.”<sup>8</sup> As a threshold matter, the Court must determine whether the evidence

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<sup>1</sup> I.R.C.P. 11.2(b)(1).

<sup>2</sup> *Westby v. Schaefer*, 157 Idaho 616, 621, 338 P.3d 1220, 1225 (Idaho 2014); *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (Idaho 2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Westby v. Schaefer*, 157 Idaho 616, 625, 338 P.3d 1220, 1229 (2014).

<sup>5</sup> *Id.*

<sup>6</sup> I.R.C.P. 56.

<sup>7</sup> *Esser Elec. V. Lost River Ballistics Tech., Inc.*, 145 Idaho 912, 917, 188 P.3d 854, 859 (Idaho 2008); *Ray v. Nampa School Dist. No. 131*, 120 Idaho 117, 122, 814 P.2d, 17, 19 (1991); *Tri-State Nat. Bank, v. Western Gateway Storage Co.*, 92 Idaho 543, 546, 447 P.2d 409, 412 (1968).

<sup>8</sup> *McCoy v. Lions*, 120 Idaho 765, 770, 820 P.2d 360, 365 (1991); *Brown v. Matthews Mortuary Inc.*, 118 Idaho 830, 840, 801 P.2d 37, 48 (1990).

presented by either party is admissible.<sup>9</sup> Summary judgment, therefore, is appropriate only where the non-moving party fails to establish through admissible evidence that there is a genuine issue of material fact that should be resolved at trial.<sup>10</sup>

### ANALYSIS

When a trial court reconsiders summary judgment, it reconsiders facts deemed established for trial.<sup>11</sup> The trial court, therefore, should exercise its discretion “in light of any new or additional facts that are submitted in support of the motion”.<sup>12</sup> This is because “the chief virtue of a reconsideration is to obtain a full and complete presentation of all available facts so that the truth may be ascertained, and justice done”.<sup>13</sup> The burden is on the moving party to bring the trial court’s attention to new facts, and a trial court will not be required to search the record to ascertain additional facts for it to consider.<sup>14</sup>

All arguments presented by the Plaintiff were considered at length by this Court in a memorandum decision granting summary judgment issued August 25, 2017. The principal concerns of the Plaintiff, are the effects of the New Century Mortgage bankruptcy on Deutsche Bank’s ability to litigate the case, and alleged procedural deficiencies in a loan modification process attempted by the parties.

This Court has already addressed the New Century Mortgage bankruptcy and held that it does not bar the Court from disposing of the case.<sup>15</sup> The loan modification is not an appropriate subject for review on a motion to reconsider because it was merely an attempt to settle the

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<sup>9</sup> *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10,13, 175 P.3d 172, 175 (2007).

<sup>10</sup> *Id.*

<sup>11</sup> *Coeur d’Alene Mining Co. v. First Nat. Bank of N. Idaho*, 118 Idaho 812, 822, 800 P.2d 1026, 1035 (1990).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Memorandum Decision Granting Defendant Deutsche Bank National Trust Company’s Motion for Summary Judgment at 6.

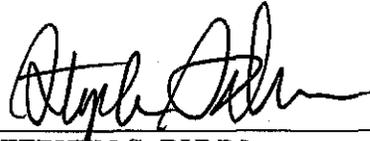
dispute outside the litigation and was not related to the merits of the case. No addition facts were submitted by the Plaintiff in support of this motion.

**CONCLUSION**

The Court now DENIES Plaintiff's Motion for Reconsideration.

IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of November, 2017



---

STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22 day of NOV, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Craig Petersen,  
Jennifer Tait  
Lisa McMahon-Myhran  
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JoeCarol Losee, Pro se  
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Lava Hot Springs, Idaho 83246  
(208) 251-6968  
jj68mobile@gmail.com

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

DATED this 22 day of NOV, 2017.



Deputy Clerk

Craig Peterson, ISB #9434  
Lisa McMahon-Myhran, ISB #8963  
Jennifer Tait, ISB #8243  
Joe Solseng, ISB #9737  
Robinson Tait, P.S.  
901 Fifth Avenue, Suite 400  
Seattle, WA 98164  
Phone: (206) 676-9640  
Facsimile: (206) 676-9659  
Attorneys for Defendant

SEAL  
BANK COUNTY  
CLERK OF THE COURT  
2017 NOV 22 PM 2:17  
BY KH  
DEPUTY CLERK

SIXTH DISTRICT COURT OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE AND JOCAROL LOSEE,

Plaintiff,

v.

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE BANK  
NATIONAL TRUST COMPANY,

Defendants.

No. CV-2015-2863-OC

JUDGMENT FOR DEFENDANT

JUDGMENT IS ENTERED AS FOLLOWS:

The Order Granting Motion for Summary Judgment having been entered on August 25, 2017, Judgment is entered for Defendant. The Plaintiff's Complaint is HEREBY DISMISSED WITH PREJUDICE.

DATED this 22<sup>nd</sup> day of November, 2017.

Stephen S. Dunn  
The Honorable Stephen S. Dunn  
District Judge

Presented by:

Craig Peterson  
Craig Petersen, ID # 9434  
Attorneys for Defendant

JUDGMENT FOR DEFENDANT  
60128-26705-LIT-ID

Law Offices  
ROBINSON TAIT, P.S.

901 Fifth Avenue, Suite 400  
Seattle WA 98164  
(206) 676-9640

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22 day of Nov, 2017, I mailed (served) a true and correct copy of the within instrument to:

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- By United States mail
- By telefacsimile
- By personal delivery
- By overnight mail/Federal Express
- By email

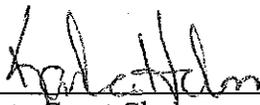
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- By telefacsimile
- By personal delivery
- By overnight mail/Federal Express
- By email

CLERK OF THE DISTRICT COURT

By:   
Deputy Court Clerk



In the pendency of the litigation in this case, a temporary restraining order ("TRO") was issued to prevent the foreclosure sale of the subject property.<sup>1</sup> The TRO was granted in order to preserve the status quo during the pendency of the litigation. The TRO was issued through a proposed order drafted by the Plaintiffs, and issued by this Court on September 17, 2015.<sup>2</sup> The TRO prohibited the Defendants from "pursuing foreclosure against Plaintiffs until further Order of this Court".<sup>3</sup>

Summary Judgment was issued in favor of the Defendants on August 25, 2017.<sup>4</sup> Judgment was entered and the Plaintiff's Complaint was dismissed with prejudice on November 22, 2017.<sup>5</sup>

Because the matter has been fully litigated and a final judgment has been entered, there is no acceptable reason for the TRO to remain in place. Therefore, the Plaintiff's Motion to Show Cause is dismissed, and the TRO granted September 17, 2015 is hereby lifted, effective November 22, 2017. The Defendants may proceed with foreclosure proceedings.

IT IS SO ORDERED.

DATED this 5 day of December, 2017

  
STEPHEN S. DUNN  
District Judge

<sup>1</sup> Proposed Order on Plaintiff's Motion for TRO and for Order to Show Cause in Re: Injunctive Relief ("Order Granting TRO") at 1.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Judgment for Defendant at 1.

<sup>5</sup> Id.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5 day of Dec, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

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- Facsimile

DATED this 5 day of Dec, 2017.

  
\_\_\_\_\_  
Deputy Clerk

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BANNOCK COUNTY  
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**SIXTH DISTRICT COURT OF IDAHO  
IN AND FOR THE COUNTY OF BANNOCK**

JERRY LOSEE AND JOCAROL LOSEE,

Appellants,  
VS.

Case No.: CV-2015-2863-OC

NEW CENTURY MORTGAGE  
CORPORATION, DEUTSCHE  
BANK NATIONAL TRUST  
COMPANY, et all

NOTICE OF APPEAL

L4 \$ 129.00  
pd

Respondents.

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TO: THE ABOVE-NAMED RESPONDENTS, AND THE PARTYS' ATTORNEYS, AND  
THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellants, Jerry Losee and JoCarol Losee, appeal against the above-named respondents to the Idaho Supreme Court from the final judgment entered in the above-entitled action on the 22nd day of November, 2017, Honorable Judge Stephen S. Dunn presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

4. Has an order been entered sealing all or any portion of the record? No.

5.(a) Is a reporter's transcript requested? No.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R. None. The appellant only requests those documents automatically included under Rule 28, I.A.R.

7. I certify:

(a) that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below: None.

(b) (1)  That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2)  That the appellant is exempt from paying the estimated transcript fee because no transcript is requested.

(c) (1)  That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2)  That appellant is exempt from paying the estimated fee for preparation of the record because \_\_\_\_\_

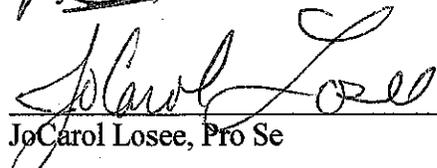
(d) (1)  That the appellate filing fee has been paid.

(2)  That appellant is exempt from paying the appellate filing fee because \_\_\_\_\_

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 29 day of December, 2017.

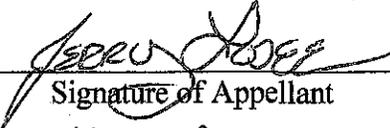
  
\_\_\_\_\_  
Jerry Losee, Pro Se

  
\_\_\_\_\_  
JoCarol Losee, Pro Se

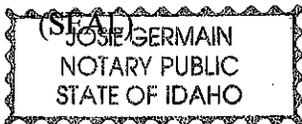
State of Idaho )  
 ) ss.  
County of Bannock )

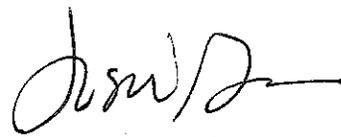
Jerry Losee, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal, and that all statements in this notice of appeal are true and correct to the best of his or her knowledge and belief.

  
Signature of Appellant

Subscribed and Sworn to before me this 29<sup>th</sup> day of December, 2017.

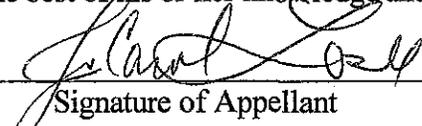


  
Title Loan Officer  
Residence 2133 E. Center St.  
exp. 2/16/2019

State of Idaho )  
 ) ss.  
County of Bannock )

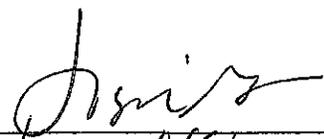
JoCarol Losee, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal, and that all statements in this notice of appeal are true and correct to the best of his or her knowledge and belief.

  
Signature of Appellant

Subscribed and Sworn to before me this 29<sup>th</sup> day of December, 2017.



  
Title Loan Officer  
Residence 2133 E. Center St.  
exp. 2/16/2019

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK.

JERRY LOSEE AND JOCAROL LOSEE,	)	
	)	
	)	
Plaintiffs-Appellants,	)	Supreme Court No.
	)	
vs.	)	
	)	CLERK'S CERTIFICATE
NEW CENTURY MORTGAGE,	)	OF
CORPORATION, DEUTSCHE	)	
BANK NATIONAL TRUST COMPANY,	)	
et all	)	APPEAL
Defendants-Respondents,	)	
	)	
	)	

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Appealed from: Sixth Judicial District, Bannock County

Honorable Judge Stephen S. Dunn presiding

Bannock County Case No: CV-2015-2863-OC

Order of Judgment Appealed from: Judgment filed on the 22<sup>nd</sup> day of November, 2017.

Attorney for Appellant: Jerry Losee & JoCarol Losee, pro se

Attorney for Respondent: Lawrence G. Wasden, Attorney General, Boise

Appealed by: Jerry Losee and JoCarol Losee

Appealed against: New Century Mortgage Corporation, Deutsche Bank National Trust Company, et all

Notice of Appeal filed: **December 29-2017**

Notice of Cross-Appeal filed: No

Appellate fee paid: Yes

Request for additional records filed: No

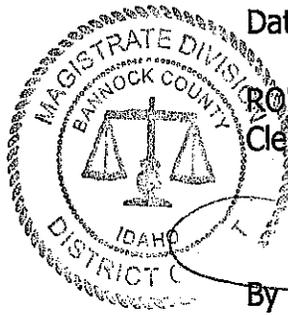
Request for additional reporter's transcript filed: No

Name of Reporter: N/A

Was District Court Reporter's transcript requested? No

Estimated Number of Pages:

Dated January 11, 2018



(Seal)

ROBERT POLEKI,  
Clerk of the District Court

By [Signature]  
Deputy Clerk

2018 FEB 14 PM 4:17

BY HL  
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE AND JOCAROL LOSEE, ) Case No. CV-2015-2863-OC

Plaintiffs, )

vs. )

NEW CENTURY MORTGAGE )  
CORPORATION, DEUTSCHE BANK )  
NATIONAL TRUST COMPANY, )

Defendants. )

AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS: Judgment is granted in favor Defendant,  
Deutsche Bank National Trust Company. Plaintiffs' claims against Deutsche Bank National  
Trust Company are dismissed with prejudice.

DATED this 12<sup>th</sup> day of February, 2017.

  
STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 14 day of Feb, 2018, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

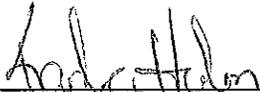
Jerry and JoCarol Losee  
9253 Frandsen Road  
Lava Hot Springs, ID 83246

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

Craig Petersen  
Jennifer Tait  
Lisa McMahon-Myhran  
Robinson Tait, P.S.  
901 Fifth Avenue, Ste. 400  
Seattle, WA 98164

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Facsimile

DATED this 14 day of Feb, 2018.

  
\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE AND JOCAROL LOSSE, )  
 )  
 Plaintiffs – Appellants, )  
 )  
 vs. )  
 )  
 NEW CENTURY MORTGAGE, )  
 CORPORATION, DEUTSCHE )  
 BANK NATIONAL TRUST COMPANY, )  
 ET AL., )  
 Defendants – Respondents, )  
 )  
 \_\_\_\_\_ )

Supreme Court No. 45721

CERTIFICATE OF EXHIBITS

I, Robert Poleki, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho appellate Rules.

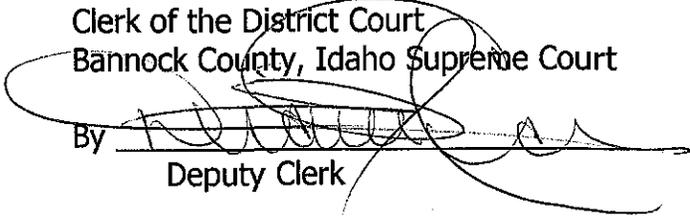
I do further certify that there were no exhibits marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 12 day of March, 2018.

(Seal)



ROBERT POLEKI,  
Clerk of the District Court  
Bannock County, Idaho Supreme Court

By   
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

JERRY LOSEE AND JOCAROL LOSSE, )

Plaintiffs – Appellants, )

) Supreme Court No. 45721

vs. )

) CERTIFICATE OF SERVICE

NEW CENTURY MORTGAGE, )  
CORPORATION, DEUTSCHE )  
BANK NATIONAL TRUST COMPANY, )  
ET AL., )

Defendants – Respondents, )

I, ROBERT POLEKI, Clerk of the District Court of the Sixth Judicial District,

of the State of Idaho, in and for the County of Bannock, do hereby certify that I

have personally served or mailed, by United States mail, one copy of the

CLERK’S RECORD to each of the Attorneys of Record in this cause as follows:

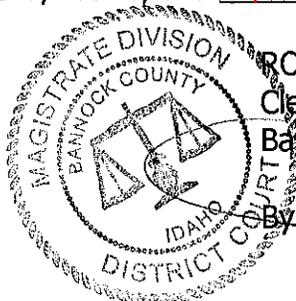
Jerry Losee & JoCarol Losee, Pro se  
9253 Frandsen Road  
Lava Hot Springs, Idaho 83246

Lisa McMahon-Myhran  
Robinson Tait, P.S.  
710 Second Avenue, Suite 710  
Seattle, WA 98104

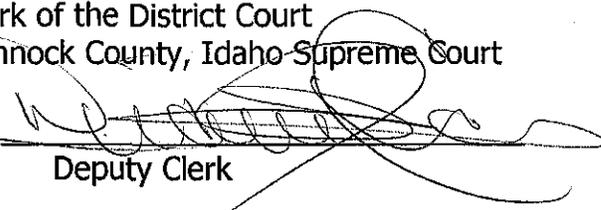
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal

of said Court at Pocatello, Idaho, this 16 day of March, 2018.

(Seal)



ROBERT POLEKI,  
Clerk of the District Court  
Bannock County, Idaho Supreme Court

By   
Deputy Clerk