

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICK OF TEXAS  
HOUSTON DIVISION**

**United States Courts  
Southern District of Texas  
FILED**

JUN 07 2012

David J. Bradley, Clerk of Court

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,  
*Plaintiffs***

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*vs.*

**COUNTRYWIDE HOME LOANS, INC,  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, N.A.,  
MORGAN STANLEY ABS CAPITAL I, INC.,  
DEUTSCHE BANK, AG,  
BARRETT DAFLIN FRAPPIER,  
TURNER AND ENGEL, L.L.P., and  
ANGELO MOZILO  
*Defendants*  
DEUTSCHE BANK TRUST COMPANY  
*Defendant and Counter-claimant***

CIVIL ACTION NO. 4:12-cv-01538

**PLAINTIFFS’ FIRST AMENDED COMPLAINT**

**TO THE HONORABLE COURT:**

COMES NOW, RICHARD A. HAASE AND AUDREY L. HAASE, Plaintiffs, complain of COUNTRYWIDE HOME LOANS, INC. (“Countrywide”), BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A. (Collectively, BANK OF AMERICA, N.A. and BANK OF AMERICA CORPORATION are termed “Bank of America”), DEUTSCHE BANK, AG, DEUTSCHE BANK TRUST COMPANY (Collectively, DEUTSCHE BANK, AG, and DEUTSCHE BANK TRUST COMPANY are termed “Deutsche”), MORGAN STANLEY ABS CAPITAL I, INC. (“Morgan”); BARRETT DAFLIN FRAPPER TURNER AND ENGEL, L.L.P. (“Daflin”) and ANGELO MOZILO (“Mozilo”), Defendants, and for cause of action show:

## I. PARTIES

1. Plaintiffs are U.S. Citizens with an address of 4402 Ringrose Drive, Missouri City, Fort Bend, County, Texas 77459.

2. Countrywide Home Loans, Inc., on information and belief, is a California Corporation with an address of 35 North Lake Avenue, Pasadena, CA 91101-4110, along with a Texas address of 4610 Sweetwater Boulevard, Sugar Land, Texas 77479.

3. Bank of America Corporation, on information and belief, is a Delaware Corporation with an address of 401 North Tryon Street, Charlotte, North Carolina 28255, doing business in Texas.

4. Bank of America, N.A., on information and belief, is a Delaware Corporation with an address of 401 North Tryon Street, Charlotte, North Carolina 28255, doing business in Texas.

5. Deutsche Bank, AG, on information and belief, is a German Corporation, with a U.S. address of 60 Wall Street, New York, New York, doing business in Texas.

6. Deutsche Bank Trust Company, on information and belief, is a Delaware Corporation, with an address of 60 Wall Street, New York, New York, doing business in Texas.

7. Morgan Stanley ABS Capital I, Inc., on information and belief, is a Delaware Corporation with an address of 1585 Broadway, New York, New York 10036, doing business in Texas.

8. Barrett Daflin Frappier Turner and Engel, L.L.P., on information and belief, is a Texas Corporation with an address of Suite 100, 15000 Surveyor Blvd., Addison, Texas 75001.

9. Defendant Angelo Mozilo is an individual, with an address of Thousand Oaks, California 91461, doing business in Texas.

10. On information and belief, Countrywide is successor by merger with Bank of America or is a wholly owned subsidiary of Bank of America.

## **II. NATURE OF THIS ACTION**

11. This is an action for mortgage lender violation(s) of 12 USC Section 2605.

12. This is also an action under Texas State Law for mortgage lender violation(s) of Article XVI Section 50(a)(6)(Q)(x) of the Texas Constitution.

13. This is an action under Texas State Law for Breach of Contract.

14. This is an action under Texas State Law for Fraud, Conspiracy and Conversion.

15. This is further an action under Texas State Law for violation of Texas Fair Debt Collection Practices Act (TDCPA).

16. This is further still an action under Federal Law for violation of Federal Fair Debt Collection Practices Act (FDCPA).

## **III. JURISDICTION AND VENUE**

17. This Honorable Court has original jurisdiction over 12 USC Section 2605, RESPA, claims under 28 U.S.C. § 1331.

18. This Honorable Court has subject matter jurisdiction over the Texas Constitution, Breach of Contract, Fraud, Conspiracy and Conversion claims by diversity jurisdiction under 28 U.S.C. § 1367.

19. Defendants are subject to personal jurisdiction by virtue of their contacts with the State of Texas, and with the Southern District of Texas in particular.

20. Venue for this Removal is proper in the U.S. District Court for the Southern District of Texas, Houston Division because the District and division includes Fort Bend County, Texas, which is the location of the previous pending Texas State Court Action.

#### IV. FACTS

21. On or about June 5, 2006, Plaintiffs executed a TEXAS HOME EQUITY NOTE<sup>1</sup> (“NOTE”), LOAN AGREEMENT ADDENDUM<sup>2</sup> (“ADDENDUM”) and TEXAS HOME EQUITY SECURITY INSTRUMENT<sup>3</sup> (“SECURITY”) with New Century Mortgage Corporation (“New Century”); while receiving a FEDERAL TRUTH IN LENDING DISCLOSURE STATEMENT<sup>4</sup> (“DISCLOSURE”) from the same.

22. In pertinent part, the NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> AND DISCLOSURE<sup>4</sup> provided that Plaintiffs make a monthly payment to New Century in the amount of \$1,243.70, pay all taxes for the property and maintain hazard insurance for the property. Plaintiffs paid all taxes prior to this action and Plaintiffs maintain hazard insurance for the property; while, Plaintiffs made the contracted monthly payments to New Century.

23. On or about November 3, 2006, Countrywide (now Bank of America) demanded of Plaintiffs to make their monthly payment of \$1,243.70 to Countrywide<sup>5</sup>.

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1 Exhibit A.

2 Exhibit B.

3 Exhibit C, (excerpts, as a long document).

4 Exhibit D.

5 Exhibit E.

24. On or about August 30, 2007 Plaintiffs began to have difficulty with Countrywide accepting Plaintiffs' contracted monthly payment of \$1,243.70. On August 30, 2007, Plaintiffs informed Countrywide by certified mail<sup>6</sup> that Countrywide was refusing the contracted monthly payment and that Countrywide needed to comply with NOTE<sup>1</sup>, as well as SECURITY<sup>3</sup>.

25. On or about September 11, 2007, Countrywide mailed to Plaintiffs notice that "all future payments are required to be in the amount of \$1,493.56 or until evidence of sufficient insurance coverage has been received"<sup>7</sup>. And within days receipt thereof, Plaintiffs obtained a new Homeowner's Insurance Carrier on or about September 19, 2007, thereby satisfying the notice, demand and requirement of Countrywide<sup>8</sup>.

26. Plaintiffs continued to have difficulty with Countrywide accepting Plaintiffs' contracted monthly payment of \$1,243.70; Countrywide requested of Plaintiffs payments ranging from \$1,290.62 to \$2,987.12.

27. Plaintiffs made their contracted monthly payment of \$1,243.70 to Countrywide until Countrywide refused said contractual monthly payment of \$1,243.70 on or about November 8, 2007<sup>9</sup>.

28. On or about November 2, 2007 and then again on or about December 2, 2007, Countrywide provided Plaintiffs notice of intent to accelerate and the act of acceleration<sup>10</sup>.

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6 Exhibit F.  
7 Exhibit G.  
8 Exhibit H.  
9 Exhibit I.  
10 Exhibit J.

29. On or about December 31, 2007, Plaintiffs filed suit against Countrywide in the State of Texas for Breach of Contract. Plaintiffs have amended their claims since that time.

30. On or about April 2008, Countrywide forcibly took over Plaintiff's Homestead tax payments; as, Countrywide claimed to Fort Bend County to hold Plaintiffs' mortgage.

31. On or about June 4, 2008, New Century allegedly filed an assignment of Plaintiffs' Security Instrument to Morgan Stanley ABS Capital Trust I Inc. Trust 2006-HE6, Mortgage Pass Through Certificates, Series 2006-HE6 in Fort Bend County, Texas; wherein, Deutsche is the Trustee<sup>11</sup>. This was finally evidenced by Countrywide after refusing to do so in discovery; after, Plaintiffs on two (2) occasions were unable to locate in Fort Bend County Records; and after, New Century filed for Bankruptcy protection on or about April 7, 2007. Said assignment has no mention of Countrywide or of Bank of America.

32. On or about June 8, 2008, Deutsche on behalf of Morgan Stanley ABS Capital Trust I Inc. Trust 2006-HE6, Mortgage Pass Through Certificates, Series 2006-HE6 filed Cause No. 08-DCV-164880 in the 434'th District Court of Texas in Ft. Bend County to foreclose on Plaintiffs' Homestead. After consultation with Plaintiffs, on or about July 14, 2008, Deutsche non-suited 08-DCV-164880.

33. On or about July 21, 2008, Defendant Bank of America Corporation purchased Countrywide Home Loans, Inc. While, Countrywide communicates to credit bureaus as holding Plaintiffs' Mortgage.

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<sup>11</sup> Exhibit K.

34. On or about October 23, 2009, Countrywide filed its first Amended answer and Original counterclaim against Plaintiffs for Breach of Contract and making late payments on the same loan for which Countrywide refused the contractual monthly payments. And, on or about July 21, 2011, Countrywide filed its Third Amended Answer and Original Counterclaim, seeking Judicial Foreclosure of the property, declaratory judgment and attorney fees from Plaintiffs.

35. On or about November 9, 2009, Plaintiffs filed suit against Bank of America.

36. Plaintiffs have made numerous discovery production requests to Countrywide in effort to ascertain Standing of Countrywide or if Countrywide, Bank of America, Deutsche or any person/legal entity is Holder-in-Due-Course to Plaintiffs' mortgage. Countrywide, Bank of America and Deutsche refused to produce any evidence of Standing. Countrywide has refused to even produce a document demonstrating that Countrywide has had, at any time, Standing to Service Plaintiffs' Mortgage. In fact, Countrywide, in open hearing before the 400<sup>th</sup> Judicial District of Texas on August 15, 2011, stated to the Court "That contract is none of Plaintiffs' or this court's business".

37. On August 15, 2011, Bank of America Noticed that as of July 1, 2008, Bank of America acquired Countrywide; and that as of July 1, 2001 Bank of America is successor by merger to BAC Home Loans Servicing, LP, and the successor by merger to Home Loan Services, Inc<sup>12</sup>.

38. On or about August 17, 2011, Deutsche Bank, AG was served Citation.

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<sup>12</sup> Exhibit L.



39. On or about October 31, 2011, Default Judgment was Granted against Bank of America.

40. On or about November 11, 2011, Bank of America filed their motion to set-aside the default judgment against them.

41. On or about November 15, 2011, Deutsche Bank Trust Company filed its original answer to Plaintiffs' claim against Deutsche Bank, AG (without counterclaim).

42. On or about February 27, 2012, Defendant Countrywide non-suited all claims against Plaintiffs and the court set-aside Default Judgment against Bank of America.

43. On or about March 13, 2012, Bank of America filed its Original Answer (with no counterclaim).

44. On or about April 26, 2012, Deutsche filed its First Amended Answer and Original Counterclaim against Plaintiffs seeking "Judicial Foreclosure" of Plaintiffs' Texas Homestead".

45. The property; LOT 1, IN BLOCK 1, OF FINAL PLAT OF PLANTATION CREEK, SECTION 2-A, A SUBDIVISION IN FORT BEND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED UNDER SLIDES 1140/B OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS; is Plaintiffs' Texas Homestead<sup>13</sup>.

46. As Plaintiffs continue to have difficulty obtaining discovery from Countrywide, Bank of America and Deutsche, Plaintiffs filed a motion to compel

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13 Exhibit M.

discovery; wherein, a hearing on Plaintiffs' Motion to Compel was scheduled in the 400<sup>th</sup> District Court for the State of Texas on May 21, 2012.

47. On or about May 15, 2012, Plaintiffs filed suit against Morgan.

48. On or about May 18, 2012, Defendants Removed this Action from the 400<sup>th</sup> District Court for the State of Texas to the Southern District of Texas, a time prior to ability of the State of Texas to Service Citation to Morgan; as well as, avoid the scheduled hearing to compel discovery. The 400<sup>th</sup> District Court for the State of Texas had scheduled trial for the week of June 19, 2012.

#### **V. CONDITIONS PRECEDENT**

49. All conditions precedent to NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> and DISCLOSURE<sup>4</sup> were performed or occurred between Plaintiffs and New Century prior to Countrywide informing Plaintiffs' of Countrywide alleged loan servicing.

50. Plaintiffs performed all conditions precedent prior to filing against Countrywide, Bank of America, Deutsche and Morgan.

51. Venue is proper as actions of Defendants occurred in Fort Bend County, Texas.

#### **VI. PLAINTIFFS' PERFORMANCE**

52. Plaintiffs fully performed their obligations under NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> and DISCLOSURE<sup>4</sup>. Plaintiffs paid all taxes prior to this Cause and maintain hazard insurance for the property, while having made regular monthly payments of \$1,243.70 to New Century as contracted and then continued the same to Countrywide upon notice to do so from Countrywide, up to and until Countrywide refused to accept the

contracted regular monthly payment(s). At no time did Plaintiffs make a single monthly payment untimely, e.g. all required monthly payments of \$1,243.70 were made in the month due, prior to refusal by Countrywide.

## **VII. AFFIRMATIVE DEFENSES**

53. Plaintiffs generally deny all counter-claims as alleged by Lender, Defendants; Plaintiffs respectfully pray that the Defendant(s), Lender, be required to prove any claim by preponderance of the evidence or such higher standard as may be applicable before a jury.

## **VIII. BREACH OF CONTRACT**

54. As it is still not evidenced in this Action as to a Mortgagee or Mortgage Loan Servicer to Plaintiffs' Mortgage, Lender is herein meant to convey at least one selected from a list comprising Countrywide, Bank of America, Deutsche, Morgan and any combination therein.

55. Countrywide, e.g. Lender, beginning in August 2007, attempted from Plaintiffs sums greater than the contracted monthly payment of \$1,243.70. Specifically, the Lender began to demand of Plaintiffs a monthly payment ranging from \$1,290.62 to \$2,987.12. Then, on or about November 8, 2007, the Lender communicated to Plaintiffs that the Lender would not accept a monthly payment of less than \$1,290.62 and that "future payments that are less than the total amount due each month [\$1,290.62] will be returned to you"<sup>9</sup>. Even at that late date, in the November 8, 2007 Lender communication, there was no financial or contractual reason for the Lender to change Plaintiffs' monthly payment

amount. While in this Action, there is not evidenced any communication or notice to Plaintiffs of any due amount or contractual reason for a change in monthly payment. Therefore, the Lender, upon its refusal to accept Plaintiffs' contracted principal and interest payment, breached the mortgage contract<sup>1,2,3,4,9</sup>.

56. During pendency of this Action, the Lender claimed in defense and counter-claim that it is Plaintiffs who breached the contract by not paying and/or refusing to pay for five (5) months of homeowner's insurance purchased by the Lender, pursuant to a lapse in Plaintiffs' policy. It is evidenced that the Lender did not inform Plaintiffs of any amount due, much less that an amount was due for purchase of the five (5) months of homeowner's insurance until November 28, 2007<sup>14</sup>, a time after the Lender had refused Plaintiffs' monthly principal and interest payment, therein breaching the mortgage contract and forcing Plaintiffs' Mortgage into default. It is further still evidenced that SECURITY ¶ 5<sup>3</sup> required the Lender to timely inform Plaintiffs of the amount due in order to be paid by Plaintiffs. It is still further evidenced that Plaintiffs repeatedly communicated with the office of Defendant Mozilo at Countrywide from August 30, 2007<sup>6</sup> until December 14, 2007 in regard to the Lender's refusal of regular monthly payment(s). It is also still evidenced that ¶ 19 of SECURITY<sup>3</sup> and Article XVI Section 50(a)(6)(Q)(x) of the Texas Constitution<sup>15</sup> require the Lender to comply within 60 days when notified of a breach of its obligations; when, the Lender took over 90 days from August 30<sup>6</sup> to November 28, a time after the Lender forced Plaintiffs' Mortgage into default, thereby breaching the contract.

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14 Exhibit N.

15 Exhibit O.

57. Prior to Plaintiffs' Original Petition, Plaintiffs unsuccessfully communicated to the Lender, writing to the office of Defendant Mozilo, asking the Lender to honor NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> and DISCLOSURE<sup>4</sup>. It was not until 90 days later, well past the 60 day contractual and constitutional requirement, as well as after the Lender forced Plaintiffs' Mortgage into default by refusing the regular monthly payments, that the Lender informed Plaintiffs of the amount due for purchase of the five (5) months of homeowner's insurance.

58. Assuming that Countrywide was the contracted mortgage loan Servicer (there is no evidence in this cause to substantiate), Bank of America is culpable to Plaintiff's Breach of Contract Claim due to its successor by merger with Countrywide, as evidenced by Bank of America in this Action<sup>12</sup>.

59. Further, default or breach of contract by one party excuses performance by the other party<sup>16</sup>. More accurately, the breach of a "mutually dependent promise" excuses the performance of a reciprocal "dependant promise"<sup>17</sup>. Among other things, this means that when one party breaches a dependent promise, the party not in breach may bring suit for breach of contract without having preformed the party's contractual obligations<sup>18</sup>. A contention that a party to a contract is excused from performance because of a prior material

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16 *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 196 (Tex. 2004); *Quick v. Plastic Solutions of Texas, Inc.*, 270 S.W.3d 173, 190 (Tex. App. – El Paso 2008, no pet. h.); *Compass Bank v. MFP Financial Services*, 152 S.W.3d 844, 852 (Tex. App. – Dallas 2005, pet. denied); *Gupta v. Eastern Idaho Tumor Inst.*, 140 S.W.3d 747, 756 (Tex. App. – Houston [14th Dist.] 2004, pet. denied); *Barnett v. Coppell North Texas Court, Ltd.*, 123 S.W.3d 804, 815 (Tex. App. – Dallas 2003, pet. denied)

17 *Tesoro Petroleum v. Nabors Drilling USA*, 106 S.W.3d 118, 127 (Tex. App. – Houston [1st Dist.] 2002, no pet.) (prerequisite to remedy of excuse of performance is that covenants must be mutually dependent promises).

18 *Arceneaux v. Price*, 468 S.W.2d 473, 474 (Civ. App. – Austin 1971, no writ).

breach by the other party is an affirmative defense that must be affirmatively [pled]<sup>19</sup>; while, Plaintiffs herein so plead. Further, breach by the Lender was material; as, Plaintiffs' Homestead is at risk of foreclosure, as sought by the Lender. A party's release from further obligation under the contract depends on whether the other party's breach of the contract was material<sup>20</sup>. The Restatement lists five circumstances that are significant in determining whether a failure to perform is material: 1) The extent to which the [Plaintiffs] will be deprived of the benefit that [Plaintiffs] reasonably expected; 2) The extent to which [Plaintiffs] can be adequately compensated for the part of that benefit of which [Plaintiffs] will be deprived; 3) The extent to which [Plaintiffs] will suffer forfeiture; 4) The likelihood that [the Lender] will cure this failure, taking account of the circumstances, including any reasonable assurances; and 5) The extent to which that [the Lender] comports with standards of good faith and fair dealing. It is obvious that the loss of Plaintiffs' Homestead at the hands of the Lender: 1) deprives Plaintiffs of the benefit reasonably expected, e.g. a home; 2) deprives Plaintiffs to an extent that is difficult to compensate, e.g. loss of a home; 3) entails significant forfeiture, e.g. loss of a home; 4) comprises no likelihood of [the Lender] making an offer to perform or provide any assurances, and 5) after refusing a contractual payment, represents bad faith on the part of [the Lender].

60. The Restatement also describes the significant circumstances for determining whether a party's contractual duties are discharged because of the other party's material breach. The relevant factors are: 1) The extent to which it reasonably appears to the injured

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<sup>19</sup> *Compass Bank v. MFP Financial Services*, 12 S.W.3d 844, 852 (Tex. App. – Dallas 2005, pet. denied).  
<sup>20</sup> *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 196 (Tex. 2004).

party that delay may prevent or hinder the injured party in making reasonable substitute arrangements; and 2) The extent to which the agreement provides for performance without delay, but a material failure to perform or to offer to perform on a stated day does not, of itself, discharge the other party's remaining duties, unless the circumstances, including the language of the agreement, indicate that performance or an offer to perform by that day is important. It is obvious that: 1) the Lender's delay causing default significantly impaired or eliminated Plaintiffs to another arrangement; and 2) the Lender material failure was not corrected by a contractual date, e.g. 60 days as required in SECURITY<sup>3</sup>.

#### **IX. TEXAS CONSTITUTION**

61. Plaintiffs show this Honorable Court that the Lender did not perform pursuant to obligations under SECURITY ¶ 5<sup>3</sup>, that Plaintiffs provided Notice of the failure in a certified letter dated August 30, 2007<sup>6</sup> and that the Lender did not cure the failure within 60 days as is required under ¶ 19 of SECURITY<sup>3</sup> and the Texas Constitution Article XVI Section 50(a)(6)(Q)(x)<sup>15</sup>; therefore, pursuant to SECURITY<sup>3</sup>, e.g. the Loan Contract, and the Texas Constitution Article XVI Section 50(a)(6)(Q)(x)<sup>15</sup>, all principal and interest of Plaintiffs' extension of credit, e.g. NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> and DISCLOSURE<sup>4</sup>, is forfeited by the Lender.

#### **X. DEFENDANT COUNTERCLAIM(S) and STATUTES of LIMITATIONS**

62. Lender cannot have a claim of foreclosure; as, Deutsche filed its claim four (4) years and eight (8) months after Countrywide performed Breach of Contract<sup>6</sup>, four (4) years and six (6) months after Countrywide breached SECURITY<sup>3</sup> and Article XVI

Section 50(a)(6) of the Texas Constitution (ref. herein previous, § IX), four (4) years and five (5) months after notice by Countrywide of acceleration and foreclosure<sup>10</sup>, and four (4) years and four (4) months after Plaintiffs filed their Original Petition for this Action. This is while, there can be no excuse of knowledge by Deutsche; as, Deutsche was aware of this cause: 1) on or about July 11, 2008 with its non-suit at that time, 2) on August 17, 2011 with service of Citation; while, 3) Bank of America, alleged loan servicer for Deutsche, was served citation on or about November 9, 2009, 4) Bank of America filed its Motion to Set Aside on November 11, 2011, 5) Countrywide, alleged loan servicer for Deutsche, was served citation on or about January 4, 2008; and, 6) Plaintiffs communicated with Bank of America by providing Bank of America a copy of all Plaintiffs' Motions since Citation Service<sup>21</sup>.

63. The Statute of Limitations for a Breach of Contract Claim is four (4) years. "A person must bring suit on the following actions not later than four years after the day the cause of action accrues: (1) specific performance of a contract for the conveyance of real property"<sup>22</sup>. While, there can be no question that this cause of action accrued on December 31, 2007 with Plaintiffs' Original Petition [*Willis v. Maverick*, 760, S.W.2d 642, 644 (Tex. 1988)]. A cause of action generally accrues, and the statute of limitations begins to run, when facts come into existence that authorize a claimant to seek a judicial remedy, regardless of when [Deutsche] discovers the injury or whether all resulting damages have yet occurred [*John & Higgins of Tx. V. Kenneco Energy*, 268, 962 S.W.2d

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21 Texas Cause DOC ID # 65.

22 *Tex. Civ. Prac. and Rem. Code 16.004 (a)*.



507, 514 (Tex. 1998); and, *Exxon Corp. v. Emerald Oil and Gas Co.*, \_\_\_ S.W.3d \_\_\_, 54 Tex. Sup. Ct. J. 3247 (Tex. 2010)].

64. “A cause of action for breach of contract accrues when the contract is breached. Consequently, the limitation period commences at the time of the breach” [*Hurbrough v. Cain*, 671, S.W.2d 216, 221 (Civ. App.-Tyler 1978, no writ); and *Slusser v. Union Bankers Ins. Co.*, 72 S.W.3d 713, 717-18 (Tex. App.-Eastland 2002, no pet.)]. In this Action, breach of contract occurred on or about October 29, 2007, e.g. breach of SECURITY<sup>3</sup> and of Article XVI Section 50(a)(6) of the Texas Constitution (ref. herein § IX previous).

65. “An action for judicial foreclosure or sale of real property under a power of sale in a mortgage or deed of trust must be undertaken not later than four years after the day the cause of action accrues” [*Tex. Civ. Prac. & Rem. Code § 16.035(a), (b)*; *Financial Freedom Senior Funding Corp. v. Horrocks*, 294 S.W.3d 749, 754-56 (Tex. App.-Houston [14<sup>th</sup> District] 2009, no pet). And, “if a party seeks to enforce the lien or deed of trust, or seeks to foreclose on the property used as security, the four-year period of Section 16.0035(a) applies to the action” [*Aguero v. Ramirez*, 70 S.W.3d 372, 374-75 (Tex. A.-Corpus Christi 2002, pet. denied)]. “The exercise of right of acceleration requires two acts: (1) notice of intent to accelerate, and (2) notice of acceleration” [*Shumway v. Horizon Credit Corp.*, 801 S.W.2d 890, 892 (Tex. 1991); and *Holly Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 569-70 (Tex. 2001)]. As evidenced by Countrywide<sup>10</sup>, Countrywide noticed Plaintiffs, on or about November 2, 2007 “You have the right to cure the default. To cure the default, on or before December 2, 2007, [Countrywide] must

receive the amount of \$3,265.33 plus any additional regular monthly payment or payments, late charges, fees and charges which become due on or before December 2, 2007... If the default is not cured on or before December 2, 2007, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time.”<sup>10</sup> **This is an unequivocal notice of Countrywide to both accelerate the note and begin foreclosure on December 2, 2007, a time which is more than four (4) years prior to Deutsche counter-claim.** Whether the right of acceleration was exercised is a fact question [*Holly Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 569-70 (Tex. 2001)].

66. “On the expiration of the four-year limitations period, the real property lien and a power of sale to enforce the real property lien become void” [*Tex. Civ. Prac. & Rem. Code § 16.035(d)*; *Burney v. Citigroup Global Markets Realty Corp.*, 244 S.W.3d 900, 903-04, (Tex. App. Dallas 2007, no pet.)]. Again, **the Deutsche Claim is past four (4) years.**

67. “If a series of notes or obligations or a note or obligation payable in installments is secured by a real property lien, the four-year limitations period does not begin to run until the maturity date of the last note, obligation, or installment” [*Tex. Civ. Prac. & Rem. Code § 16.035(e)*]. However, “[t]his statutory provision postponing the running of the limitations period as to installments is applicable only to notes secured by a real property lien. Accordingly, if the lien is invalidated for some reason, the note becomes unsecured and the creditor loses the protection of the delayed limitations provision.” [*Montague v. National Loan Investors*, 70 S.W.3d 242, 249, (Tex. App.-San Antonio 2001, pet. denied)]. Therefore

and in this case, the loan became invalid; when, Countrywide breached SECURITY<sup>3</sup> and Section 50(a)(6), Article XVI of the Texas Constitution (ref. § VIII, IX and ¶ 61 herein previous). Both of which occurred on or about October 29, 2007 (ref. § VIII, IX and ¶ 61 herein previous). Therefore, both occurred more than four (4) years prior to the filed Deutsche Counterclaim of April 26, 2012 in this Cause. As the note became invalid on or about October 29, 2007, **the Lender lost protection of the delayed limitations provision.**

68. Countrywide non-suited its counterclaims on February 27, 2012; while, the Texas Tolling Statute<sup>23</sup> is only 60 days there from; and, the Statues of Limitations for a counter-claim against Plaintiffs' Homestead and in regard to Plaintiffs' Mortgage have run. Therefore, there is no available counter-claim for Lender.

#### **XI. DEFENDANT(S) STANDING FOR COUNTERCLAIM(S)**

69. Regardless of Plaintiffs' Breach of Contract and Texas Constitution Claims, there is no evidence that Countrywide was actually the Servicer to Plaintiffs' Mortgage Contract. There is no evidence of any contract between Plaintiffs and Countrywide or between New Century and Countrywide or between Deutsche and Countrywide. This is in combination with the fact that there is no evidence that Countrywide, at any time, was Plaintiff's Mortgage Loan Servicer; as, all discovery requests for a document to support loan servicing, as well as Standing, have been refused by Countrywide, Bank of America and Deutsche. Further, the only evidence and very recent evidence of Deutsche legally assuming Plaintiffs' Mortgage is dated a full six (6) months after filing this Cause.

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<sup>23</sup> *Tex. Civ. Prac. & Rem. Code 16.064.*

70. “All unrecorded deeds of trust and mortgages are void as to all creditors and subsequent purchasers for value without notice”<sup>24</sup>. Specifically, Section 13.001 of the Texas Property Code:

§ 13.001. VALIDITY OF UNRECORDED INSTRUMENT.

(a) **A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.** (Emphasis added)

Further, “A party to an instrument has notice of every instrument that forms an essential link in the party’s chain of title”<sup>25</sup>. Therefore, as the Lender has proven unable to provide any original document to reveal Holder-in-Due-Course of Plaintiffs’ Mortgage, be that of the Mortgage Note or of Mortgage Service, there is not evidenced Standing by Countrywide, Bank of America, Deutsche nor Morgan.

71. Deutsche has not demonstrated, either in petition or discovery, that Deutsche is the Trustee, Mortgagee or Servicer of Plaintiffs’ Mortgage. This is especially the case, at time of Contract Breach. In fact, Plaintiffs specifically required of Deutsche to provide in discovery documents demonstrating Standing in this Cause in regard to Plaintiffs’ Mortgage<sup>26</sup>. Deutsche refused, as is evidenced in Plaintiffs’ Motion to Compel<sup>27</sup>.

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24 *Tex. Prop. Code § 13.001*; and *Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App.-Beaumont 1987, no writ).

25 *MBank Abilene, N.A. v. Westwood Energy, Inc.*, 95 O.&G.R. 589, 723 S.W.2d 246, 250 (Tex. App.-Eastland 1986, no writ.).

26 Texas Cause DOC ID # 111.

27 Texas Cause DOC ID # 121.

72. There does exist in Fort Bend County records, an electronic document of transfer from New Century<sup>10</sup>. However, there are four (4) issues with the recordation. First, the recordation is dated at a time after contract breach, a full eight (8) months after contract breach. The recordation is dated on or about June 4, 2008; when, contract breach occurred on or about October 29, 2007 (ref. § VIII and ¶ 61 herein previous); and, Plaintiffs filed suit against Countrywide for Breach of Contract on or about December 31, 2007. Second, there is no indication in the recordation of either Countrywide or Bank of America; therefore and again, Standing of both Countrywide and Bank of America to have had a counterclaim remains in question to Service Plaintiffs' Mortgage. Third, the Fort Bend County Clerk does not have an original of the recordation for inspection; while, Bank of America and Deutsche have refused to provide in document discovery (ref. herein previous ¶ 69). Therefore, there is not at this time any ability to validate authenticity of said recordation document; while, the original of all electronic recorded documents must be available. "A county clerk who accepts electronic documents for recording must continue to accept paper documents, and must place the entries for both paper documents and electronic documents in the same index" (*Tex. Prop. Code § 15.005(c)*). "If a document is not presented for recording electronically, it is considered a 'paper document'" [*Tex. Prop. Code § 12.0011(a)*]. "An electronic document must either (1) contain an original signature or signature that are acknowledged, sworn to with a proper jurat, or proved according to law, or (2) be attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn

to with a proper jurat, or proved according to law. If a paper document presented for recording lacks an original signature, it cannot be recorded and does not provide notice of the paper document [*Tex. Prop. Code § 12.0011(b)*]. Fourth, there is no recordation of NOTE<sup>1</sup>, which is Plaintiffs' Mortgage. This is while, Deutsche and MERS are under investigation and have been sued for document fraud throughout the nation, most notably, in the State of Texas. "All unrecorded deeds of trust and mortgages are void as to all creditors and subsequent purchasers for value without notice" [*Tex. Prop. Code § 13.001; Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App.-Beaumont 1987, no writ)]. While, to demonstrate Holder-in-Due-Course "A party to an instrument has notice of every recital, reference, and reservation contained in or fairly disclosed by any instrument that forms an essential link in the party's chain of title" [*MBank Abilene, N.A. v. Westwood Energy, Inc.*, 95 O.&G.R. 589, 723 S.W.2d 784, 786-87 ) Tex. App.-Eastland 1986, no writ)].

73. Who or whom in this world is Morgan Stanley ABS Capital I Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6, as stated in the counterclaim of Deutsche. Plaintiffs' Mortgage Holder cannot be a "certificate". The Lender cannot be a "certificate". (If the Mortgagee, Lender, is a certificate, Plaintiffs have a Right to face their accuser, e.g. counter-claimant; therefore, Plaintiffs have a right to place Morgan Stanley ABS Capital I Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6, e.g. the certificate, on the Stand and have "it" sworn in.) Such is, obviously, ridiculous; while, Plaintiffs have a ***Right of Confrontation***, a Right to Confront

the Lender, a Right of Due Process [*Carey v. Piphus*, 435 U.S. 247, 259 (1978); *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976); *Greene v. McElroy*, 360 U.S. 474, 496-97 (1959). *But see Richardson v. Perales*, 402 U.S. 389 (1971)].

74. Per the Texas Property Code Chapter 51, a mortgagee must be a party, a legal entity, e.g. grantee, beneficiary, owner, or holder of the security instrument<sup>28</sup>. Therefore, the mortgagee cannot be a certificate. “A deed of trust is a type of security interest that involves a conveyance of real property in trust to a third party (the trustee) to hold the property as security for the payment of the debt to the lender” [*Owens v. Grimes*, 539, S.W.2d 387, (Civ. App.-Tyler 1976, ref. n.r.e.)]. This is while, there is no evidence of this so called “Morgan Stanley ABS Capital I Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6”; as, Defendants Deutsche, Bank of America and Countrywide have all refused in discovery to provide the certificate<sup>26,27</sup>.

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28 DEFINITIONS. In this chapter:

- (1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.
- ...
- (3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.
- (4) "Mortgagee" means:
  - (A) the grantee, beneficiary, owner, or holder of a security instrument;
  - (B) a book entry system; or
  - (C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.
- (5) "Mortgagor" means the grantor of a security instrument.
- (6) "Security instrument" means a deed of trust, mortgage, or other contract lien on an interest in real property.
- (7) "Substitute trustee" means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.
- (8) "Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.  
[*Texas Property Code, Title 5, Subchapter B, Chapter 51*]

75. In summary, the Lender has *refused* to provide ANY document to demonstrate Standing as to Plaintiffs' Mortgage. All that exists is an electronic recordation filed with the Fort Bend County Clerk; while, the recordation does not mention Countrywide nor Bank of America, nor any entity which could be construed as a loan Servicer, grantee, beneficiary, owner, or holder of the security instrument; and while, neither the Lender, Mortgagee nor the loan Servicer can be a certificate; as, a certificate is only a piece of paper and cannot be either a servicer, grantee, beneficiary, Lender, owner, or holder of the security instrument. In short, a piece of paper cannot be a party or legal entity. Again, Plaintiffs have even asked Countrywide, Deutsche and Bank of America in discovery for an original and for a copy of Morgan Stanley ABS Capital I Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6. In all cases, Defendants have refused<sup>26,27</sup>. Defendants have refused open opportunity to demonstrate Standing.

76. The Lender's financial charade and pyramid scheme have left the Lender without Legal Standing in regard to Plaintiffs' Mortgage. Plaintiffs respectfully present to this Honorable Court that such financial charades and pyramid schemes, as those performed, are why the State of Texas requires all Deed and Mortgage Holders Register their interest in the County of the Mortgaged Property. "A deed of trust, mortgage, or other instrument that is properly recorded in the correct county provides notice to all persons of the existence of the instrument"<sup>29</sup>. "A deed of trust or other instrument transferring an interest in real property are public records subject to inspection by the

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<sup>29</sup> *Tex. Prop. Code § 13.002(1)*.



public”<sup>30</sup>. While, “The concept of standing is essential to subject matter jurisdiction and is grounded in the Texas Constitution”<sup>31</sup>. “Standing may also be required by statute [Texas Property Code 13.001], and if so, standing will be conferred only if a party complies with the statutory provisions”<sup>32</sup>. While, “A person [entity] has standing to sue only when the person [entity] is personally aggrieved by an alleged wrong”<sup>33</sup>. “[Lender] must show an actual or threatened invasion of [Lender’s] rights, not someone else’s rights”<sup>34</sup>. The Lender has not followed the Texas Property Code nor established rights; therefore, the Lender has no Standing; and therefore in conclusion, the Lender has no legal ability of counter-claim against Plaintiffs’ Homestead.

## XII. UNFAIR DEBT COLLECTION PRACTICES

77. The term “debt collection” is defined by statute as “the action, conduct, or practice in collecting or in soliciting for collection, consumer debts that are due or alleged to be due a creditor”<sup>35</sup>. While, a “consumer debt is an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction”<sup>36</sup>. And while, a debt collector “includes any person engaging directly or indirectly in debt collection”<sup>37</sup>. Therefore, Plaintiffs are consumers;

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30 *Tex. Prop. Code §§ 11.008(g) and 13.002(2)*.

31 *Tex. Ass’n of Business v. Air Control Bd.*, 852 S.W.2d 440, 443-444 (Tex. 1993)(discussed the constitutional basis for Standing.)

32 *Bowles v. Wade*, 913 S.W.2d 644, 647-651 (Tex. App.-Dallas 1995, den.)(plaintiff could not maintain action because standing requirements of Government Code provisions had not been met).

33 *Nootsie, Ltd. V. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996).

34 *Texas Worker’ Compensation Com’n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995).

35 *Texas Financial Code § 392.001(5)*-definition under Texas Debt Collection Practices Act (DCPA).

36 *Texas Finance Code § 392.001(3)*.

37 *Texas Finance Code § 392.001(5)*.

as, Plaintiffs via New Century created an obligation for personal, family and household purposes arising from a transaction. Lender is a debt collector.

78. As the Lender has no Standing (§ XI herein previous), Lender's debt collection efforts are unreasonable<sup>38</sup>. Further, there exist unreasonable collection efforts due to negligence on the part of the Lender to inform Plaintiffs that their homeowner's insurance had lapsed and then tying the lapse to acceleration of Plaintiffs' Mortgage. Further still, there exist unreasonable collection efforts on the part of the Lender due to negligence on the part of the Lender to inform Plaintiffs of an amount due for purchase of five (5) month's homeowner's insurance when required by SECURITY ¶ 5<sup>3</sup>. Still further, there exist unreasonable collection efforts on the part of the Lender due to negligence on the part of the Lender to respond within 60 days to Plaintiffs' August 30, 2007 letter of contract performance<sup>6</sup>; when, 60 days to correct is required under SECURITY ¶ 19<sup>3</sup> and under the Texas Constitution Article XVI Section 50(a)(6)(Q)(x)<sup>15</sup>. Unreasonable collection efforts are a measure of the degree of culpability of creditor<sup>39</sup>. Further, in debt collection, the debt collector cannot threaten to take any action prohibited by law<sup>40</sup>; the Lender violated this statute within the Lender's Answer and Counterclaim in efforts to take Plaintiffs' Homestead when the Lender had already violated ¶ 19 of SECURITY<sup>3</sup> and therefore invoked the Texas Constitution Article XVI Section 50(a)(6)(Q)(x)<sup>15</sup>.

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38 *Signature Indorsement Co. v. Wilson*, 392 S.W.2d 484, 489 (Civ. App.-Texarkana 1965, re. n.r.e.);  
*Salazar v. Bond Fin. Co.*, 410 S.W.2d 839, 841 (Civ. App.-Dallas 1966, ref. n.r.e.).

39 *Moore v. Savage*, 362 S.W.2d 298, 298 (Tex. 1962).

40 *Texas Finance Code § 392.001(a)(8)*; also, *Dixon v. Brooks*, 604 S.W.2d 330,34 (Civ. App.-Houston [14th Dist.] 1980, ref. n.r.e.)-creditor sent letter threatening to terminate contract for deed without providing required statutory notice.

79. In debt collection, a debt collector may not use a fraudulent, deceptive or misleading representation that employs misrepresenting the character, extent, or amount of a debt against a consumer<sup>41</sup>; and, a debt collector may not use threats, coercion, or attempts to coerce that employ representing to a third person that a consumer is willfully refusing to pay a nondisputed debt when the debt is in dispute for any reason and the consumer has notified the debt collector in writing of the dispute<sup>42</sup>. The Lender has violated both of these statutes within Answer and Counterclaim, as well as, demand of \$2,987.12 in monthly principal and interest payments. Countrywide asserted in its amended answers and counterclaim: 1) “Plaintiffs cannot assert a claim for breach of contract because they have failed to perform their obligations under the home-equity note by not making payments on the loan”; when, the Lender refused contracted principal and interest payments from Plaintiffs; 2) the Lender asserts “Plaintiffs come before the court with unclean hands and cannot seek relief for a breach of contract while they stand in default on the very same note”; all the while, it is the Lender whose breach caused default, as the Lender refused Plaintiffs’ contractual principal and interest payments<sup>6</sup> and did not Notice Plaintiffs of an amount due for homeowner’s insurance when the Notice is required in SECURITY ¶ 5<sup>3</sup>; 3) the Lender further asserted by Countrywide “Plaintiffs have refused to submit payments as agreed”; when, Plaintiffs were blocked by the Lender from making payments as agreed and Plaintiffs put forth significant effort to communicate with the Lender to correct the situation created by the Lender by Countrywide obtaining no response until after the Lender refused contractual

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41 *Gonzalez v. Temple-Inland Mortg. Corp.*, 28 S.W.3d 622, 625 (Tex. App.-San Antonio 2000, no pet.).  
42 *Texas Finance Code* § 392.301(a)(3).

payments; 4) the Lender, via Countrywide, also asserted “Further, because Plaintiffs have breached the Note, Countrywide is entitled to reasonable and necessary attorney fees under the terms of the Note”; while, it is impossible for Plaintiffs to have breached the Contract when the Lender: refused contractual principal and interest payments, did not notify Plaintiffs of an additional amount of payment as contractually required in SECURITY ¶ 5<sup>3</sup>, and did not perform pursuant to obligations in answer to Plaintiffs’ letters of Notice<sup>11,34</sup> within 60 days when required to do so in SECURITY ¶ 19<sup>3</sup>; 5) the Lender via Countrywide asserted “The Plaintiffs are in material breach of the Note and have failed to cure their breach and remain in default of the Note”; when, it is actions of the Lender that breached the Note; 6) the Lender, further also seeks foreclosure; when, actions of the Lender, via Countrywide, are in violation of the Texas Constitution Art. 16, Sec. 50(a)(6)(Q)(x) (ref. herein §VIII previous); 7) while, the Lender asserts “Pursuant to Texas Civil Practice and Remedies Code § 37.004, [the Lender] requests a declaration from the Court that Plaintiffs’ Note and Security Instrument remain in full force and effect”; therefore, the Lender attempts to use this Honorable Court to cure its own breach; 8) the Lender further attempts to have this Honorable Court Rule on an issue of fact and thereby cure its own breach, as the Lender argues for this Honorable Court to rule “that its lien on the Property in question is valid”; 9) Then, in still further attempt to have this Honorable Court Rule on an issue of fact to thereby cure the Lender’s breach, the Lender argues for this Honorable Court to Rule “that the principal balance of the Note is due and payable and that [the Lender] is entitled to judicial foreclosure on the Property”; 10) then, the Lender makes a false representation in effort to persuade this Honorable Court “In addition

and/or in the alternative, Countrywide seeks restitution for the money it loaned to the Plaintiffs along with interest and all other costs associated with the Note, which Plaintiffs promised to repay but have refused”; all the while, there is no evidence of any refusal by Plaintiffs; while, there is significant evidence of communication by Plaintiffs to the Lender to correct the situation created by the Lender; and while, there is significant evidence that the Lender breached ¶ 5 of SECURITY<sup>3</sup> by not informing Plaintiffs of an amount due.

80. Further, in debt collection, a debt collector may not use a fraudulent, deceptive or misleading representation that employs misrepresenting the character, extent, or amount of a debt against a consumer; while, the Lender lists Plaintiffs as delinquent with the credit bureaus for payments refused by Countrywide.

81. In debt collection, a debt collector may not use a fraudulent, deceptive or misleading representation that employs falsely representing the status or true nature of the services rendered by the debt collector<sup>43</sup>; while, the Lender represents to hold Plaintiffs’ Mortgage and have Standing in this cause for Plaintiffs’ Mortgage; when, Standing of the Lender has not been demonstrated in this Action.

82. The Federal Fair Debt Collection Practices Act (“FDCPA”) also forbids a debt collector to use any false, misleading, or deceptive representation to collect a debt. As presented above, the Lender made false representations regarding Plaintiffs. Further, the Lender has no Standing nor is Holder-in-Due-Course of Plaintiffs’ Mortgage; therefore, Plaintiffs also claim that the Lender has violated the FDCPA.

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<sup>43</sup> *Texas Finance Code* § 392.304(a)(14).

### XIII. FRAUD

83. “Acts of omission or concealment involving a breach of legal duty, trust, or confidence that is injurious, or by which an undue and unconscientious advantage has been taken is the foundation for an action for constructive fraud”<sup>44</sup>. Plaintiffs have the foundation for an action of Constructive Fraud against the Lender and Daflin.

84. “The elements of fraud are: (1) that a material misrepresentation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party suffered injury”<sup>45</sup>.

85. First, the Lender has committed Constructive Fraud against Plaintiffs. The Lender breached a trust and confidence with Plaintiffs in that Countrywide 1) did not inform Plaintiffs for five (5) months of a lapse in Plaintiffs Homeowners’ Insurance Policy when the Lender knew of the lapse<sup>46</sup>; wherein, the Lender only informed Plaintiffs of the lapse upon investigation by Plaintiffs<sup>6</sup>; 2) mislead Plaintiffs in a letter dated September 11, 2007<sup>7</sup>, which was in response to Plaintiffs’ investigation; 3) failed to timely Notice Plaintiffs of an amount due Lender for the Lender purchasing five (5) months of homeowner’s insurance when SECURITY ¶ 5<sup>3</sup> requires Notice; 4) forced Plaintiffs’ Mortgage into default by refusing the monthly contracted payment from Plaintiffs; and 5) informed Plaintiffs of the

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44 *Ruebeck v. Hunt*, 171, S.W.2d 895, 896 (Civ. App.-Waco 1943), aff’d, 142 Tex. 167, 176 S.W.2d 738 (1943).

45 *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768, 774 (Tex. 2009).

46 Texas Cause Doc. ID # 43, ¶¶ 11 and 19.

amount due a full 90 days past request of same by Plaintiffs when SECURITY ¶ 19<sup>3</sup> requires less than 60 days and informed Plaintiffs at a time after forcing Plaintiffs' Mortgage into default. Since these deplorable actions of the Lender, Plaintiffs have been forced to defend their home from foreclosure efforts by the Lender. Therefore, the Lender has taken an undue and unconscientious advantage over Plaintiffs. Most notably, Countrywide and Bank of America communicated to Plaintiffs to be the Servicer of Plaintiffs' Mortgage; while, there is no evidence to such Standing by Countrywide or Bank of America; therefore, said communications have been fraudulent.

86. The elements of fraud are present; as (1) Countrywide made a material misrepresentation in the September 11, 2007 letter<sup>7</sup> when the Lender informed Plaintiffs "[A]ll future payments are to be in the amount of \$1,493.56 or until evidence of sufficient insurance coverage has been received"<sup>7</sup>; (2) the representation was false in that the Lender refused Plaintiffs' contracted monthly payment of \$1,243.70<sup>1</sup> in November of 2007 when Plaintiffs had obtained sufficient insurance coverage<sup>8</sup>; (3) it is now known that when the Lender made the representation, the Lender had an expenditure for five (5) months of homeowner's insurance coverage for which the Lender wished to be paid; therefore, the Lender either knew that the September 11, 2007 statement was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the Lender made the representation with the intent that Plaintiffs purchase homeowner's insurance; (5) Plaintiffs acted in reliance on the representation in the purchase of a new homeowner's insurance policy<sup>8</sup>; and (6) Plaintiffs suffered injury in that the Lender is attempting judicial foreclosure on Plaintiffs' Texas Homestead.

87. Further, the elements of fraud are present in a second series of events: (1) Countrywide made a material representation to Plaintiffs by informing Plaintiffs that “The transfer of the servicing of your mortgage loan does not affect any term or condition of the mortgage instruments”; (2) the representation was false in that the Lender accumulated \$563 for the purchase of five (5) months homeowner’s insurance which was to be Noticed to Plaintiffs pursuant to SECURITY ¶ 5<sup>3</sup>; wherein, the Lender did not timely notice Plaintiffs, and wherein as a result forced Plaintiffs’ Mortgage into default; (3) the Lender made the representation recklessly without any knowledge of the truth and as a positive assertion; (4) the Lender made the assertion so that Plaintiffs would make payments to the Lender; (5) Plaintiffs acted in reliance on the representation in that Plaintiffs believed that the NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> and DISCLOSURE<sup>4</sup> to be in effect with the Lender as is evidenced in letters from Plaintiffs to Countrywide and (6) Plaintiffs suffered injury in that the Lender is attempting foreclosure of Plaintiffs’ Homestead.

88. The elements of fraud are still further present in that (1) the Lender made a material misrepresentation to Plaintiffs by informing Plaintiffs via Countrywide that “The transfer of the servicing of your mortgage loan does not affect any term or condition of the mortgage instruments”<sup>5</sup>; (2) the representation was false in that the Lender cannot evidence Standing or a Service position in regard to Plaintiffs’ Mortgage; (3) Lender made the representation recklessly without any knowledge of the truth and as a positive assertion; while, the Lender can provide no evidence in support of its representation and demanded of Plaintiffs monthly mortgage payments; (4) the Lender made the assertion so that Plaintiffs would make payments to Countrywide; (5) Plaintiffs acted in reliance on the representation



in that Plaintiffs believed NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup> and DISCLOSURE<sup>4</sup> to be in effect with the Lender via Countrywide, as is evidenced in letters from Plaintiffs to the Lender via Countrywide; and (6) Plaintiffs suffered injury in that the Lender is attempting foreclosure of Plaintiffs' Homestead.

89. Therefore, as there is no evidence that the Lender is a party or has Standing to Plaintiffs' mortgage contract, representations by the Lender in regard to said contract in both Trustee and in Service Standing have been fraudulent.

90. Further, Defendant Bank of America "is the successor by merger" with Countrywide; therefore, Defendant Bank of America is culpable to all of Plaintiffs' Claims against Countrywide, as evidenced by Bank of America.

91. Defendant Mozilo committed Constructive Fraud upon Plaintiffs. Plaintiffs communicated directly with the office of Mozilo, as evidenced. While, it was in response to Plaintiffs' communications with Mozilo that (1) a material misrepresentation was made in a September 11, 2007 letter that "[A]ll future payments are to be in the amount of \$1,493.56 or until evidence of sufficient insurance coverage has been received"<sup>7</sup>; (2) the representation was false in that Plaintiffs' contracted monthly payment of \$1,243.70 was refused in November of 2007 when Plaintiffs had timely obtained sufficient insurance coverage<sup>8</sup> and in that Countrywide had no Standing or Service ability to Plaintiffs' Mortgage to accept any payments; (3) it is now known that when Countrywide made the representation, Countrywide had an expenditure in amount for five (5) months of homeowner's insurance coverage for which Countrywide wished to be paid; and that, Countrywide has never had Standing to Plaintiffs' Mortgage; therefore, Countrywide

either knew that the September 11, 2007 statement was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) Countrywide made the representation with the intent that Plaintiffs purchase homeowner's insurance and make payments to Countrywide; (5) Plaintiffs acted in reliance on the representation in the purchase of a new homeowner's insurance policy<sup>8</sup> and in continuing to make payments to Countrywide; and, (6) Plaintiffs suffered injury in that the Lender is attempting judicial foreclosure on Plaintiffs' Homestead.

92. Defendants Deutsche and Daflin have committed Document Fraud in both creation of a document and filing the document as recordation in regard to Plaintiffs' Mortgage in Fort Bend Country Records. Said recordation states that Deutsche is Trustee for "Morgan Stanley ABS Capital I Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6". It is impossible for a "certificate" to be a mortgagee; as, a certificate cannot be a legal entity or a party (ref. herein previous). Certainly, a certificate cannot be a party to litigation; therefore, said recordation is document fraud. This is while, *it is beyond reason that a "1<sup>st</sup> Vice President" for New Century would be so inept as to assign a mortgage to a certificate.* Therefore, the document is of fraudulent nature and questionable origin.

93. Deutsche and Daflin document Fraud upon Plaintiffs: (1) a material misrepresentation was made in the electronic filing of said recordation stating "DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE ON BEHALF OF MORGAN STANLEY ABS CAPTIAL I INC. TRUST 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6"; (2) the representation was false in that a certificate cannot

be a mortgagee; while, there is no evidence that said certificate in any way can comply with The Texas Property Code Chapter 51 (ref. herein previous); (3) Deutsche and Daflin filed said recordation in effort to obtain funds from Plaintiffs and/or foreclose on Plaintiffs' Mortgage, while said recordation was performed after contract breach; (4) Deutsche and Daflin made the representation with the intent to either obtain sums from Plaintiffs or that Plaintiffs lose their homestead; (5) Plaintiffs have been forced to act in reliance on the recordation; and, (6) Plaintiffs suffered injury in that the Lender is attempting judicial foreclosure on Plaintiffs' Homestead.

#### XIV. CONSPIRACY

94. A conspiracy is a combination by two or more person to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means<sup>47</sup>; while, Plaintiffs had a Mortgage Contract with New Century<sup>1,2,3,4</sup> which was breached by the Lender when Countrywide refused contracted monthly payments in combination with not informing Plaintiffs of \$563 due, as is both contracted in SECURITY ¶19<sup>3</sup> and required in the Texas Constitution Article XVI Section 50(a)(6)(Q)(x)<sup>15</sup> after Plaintiffs' notice.

95. The essential elements of conspiracy are present. First, to perform fraud in regard to Plaintiffs' Mortgage Contract, Lender had to assume Servicing responsibility of Plaintiffs' Mortgage, even though there is no evidence that the Lender had such legal responsibility or authority. Then, Countrywide, Bank of America, Deutsche and Daflin

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<sup>47</sup> *Alpert v. Crain, Caton & James, P.C., Id.*; also, *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex. 1983).

had to agree to assignment of Plaintiffs' Mortgage<sup>14</sup> at a time after contract breach in effort to provide assignment of Plaintiffs' Mortgage for foreclosure proceedings.

96. Then, the Lender commits Fraud before the Court in ¶ 6 of the Affidavit of Ms. Pirritano, therein demonstrating the effort:

"Since Plaintiffs' default, there have been no assignments or transfers of the Plaintiffs' promissory note and security instrument."<sup>48</sup>

97. While, Countrywide, Bank of America, Deutsche and Daflin all perform the same false representation before the Court, in regard to Standing, to form said Conspiracy in regard to Standing and the Mortgage Trustee.

98. Second, the object to be accomplished is underway in this Cause as the Lender efforts to foreclose on Plaintiffs' Homestead after already having obtained payment via the derivative of the mortgage backed security, e.g. Pass-through Certificate. Third, a meeting of the minds of was performed; as, all have made the same false representation in assignment of Plaintiffs' Mortgage and Standing after breach. Fourth, false representations were made and/or the facts were concealed, e.g. misrepresentations and/or omissions in regard to Standing and Servicing of Plaintiffs' Mortgage. Fifth, Plaintiffs are significantly damaged in both the potential loss of their Homestead, as well as, the time, effort and expense required in this Cause.

99. The conspiracy is compounded by and could only have been potentially effective if Plaintiffs were unable to refute Lender false representations made and omissions performed. When forced to provide, the Lender provides a recorded Assignment document

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48 Texas Cause Doc. ID # 38, Exh. A.

from New Century, which hides the Mortgagee and is therefore fraudulent on its face; and which, was both executed and filed over six (6) months after this Cause<sup>14</sup>.

100. Similar to activities which resulted in the SEC action against Mozilo, Mozilo authorized the fraudulent assignment of Plaintiffs' Mortgage Note<sup>14</sup> at a time after the Mortgage Note was breached and in effort to cover up the actions of Countrywide in regard to Servicing Plaintiffs' Mortgage without legal authority. Further, with the merger of Countrywide and Bank of America, Bank of America is culpable to the Fraudulent assignment of Mozilo.

101. In summary, Mozilo, the Lender and Daflin acted as a group and together to "to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means".

## XV. RESPA VIOLATION

102. There is not evidenced 1) New Century proving Notice to Plaintiffs that Countrywide was to Service Plaintiffs' Mortgage, 2) Countrywide providing Notice to Plaintiffs that Bank of America was to Service Plaintiffs' Mortgage, nor 3) Bank of America providing Notice to Plaintiffs that Bank of America is the new Servicer of Plaintiffs' Mortgage pursuant to 12 USC Section 2605, which requires<sup>49</sup>.

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<sup>49</sup> (a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing.

Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) Notice by transferor of loan servicing at time of transfer

(1) Notice requirement.

Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice

(A) In general

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Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings.

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage

loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by-- (i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing.

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice.

The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee of loan servicing at time of transfer.

(1) Notice requirement.

Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice.

(A) In general.

Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings.

103. There also is no evidence of the Lender responding within 60 days of Plaintiffs' August 30, 2007 letter in regard to Plaintiffs' Monthly payments<sup>6</sup> and \$561 sought by the lender in regard to Homowner's Insurance; while, the only available evidence is that of the Lender misleading Plaintiffs<sup>7</sup>; and while, 12 USC Section 2605 Title 12 requires response<sup>50</sup>.

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The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

<sup>50</sup> (e) Duty of loan servicer to respond to borrower inquiries

(1) Notice of receipt of inquiry.

(A) In general.

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request.

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that--

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry.

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall--

- (A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);
- (B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--
  - (i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and
  - (ii) the name and telephone number of an individual employed by, or the office or

## XVI. CONVERSION

104. Goal of Lender Fraud and/or Conspiracy has been Conversion of Plaintiffs' Homestead. This goal is evidenced in the Lender's Counter-claims.

## XVII. TRCP RULES 13 and 166a(h)

105. Within Defendants Amended Answers and Counterclaims, Defendants assert: "Plaintiffs cannot assert a claim for breach of contract because they have failed to perform their obligations under the home-equity note by not making payments on the loan"; "Plaintiffs come before the court with unclean hands and cannot seek relief for a breach of contract while they stand in default on the very same note"; "Plaintiffs executed the Note and Security Instruments [ ] agreeing to make payments on the mortgage"; "Plaintiffs have refused to submit payments as agreed"; "In fact, Plaintiffs have not made a payment on the Note since October 2007"; "Further, because Plaintiffs have breached the Note,

- 
- department of, the servicer who can provide assistance to the borrower; or
- (C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--
- (i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and
  - (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.
- (3) Protection of credit rating.
- During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 1681a of title 15).
- (f) Damages and costs.
- Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:
- (1) Individuals.
- In the case of any action by an individual, an amount equal to the sum of--
- (A) any actual damages to the borrower as a result of the failure; and
  - (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$1,000.



Countrywide is entitled to reasonable and necessary attorney fees under the terms of the Note”; “The Plaintiffs are in material breach of the Note and have failed to cure their breach and remain in default of the Note”; “Moreover, according to the requirements of the Texas Constitution Art. 16, Sec. 50(a)(6)(D), the Texas Rules of Civil Procedure 309 and 735 as well as the Texas Property Code § 51.002, Countrywide is entitled to judicial foreclosure its lien”; “Therefore, Countrywide seeks judicial foreclosure of its lien along with an order of sale directing that the Property be sold to satisfy the Plaintiffs’ debt”; “Pursuant to Texas Civil Practice and Remedies Code § 37.004, Countrywide requests a declaration from the Court that Plaintiffs’ Note and Security Instrument remain in full force and effect”; “that its lien on the Property in question is valid”; “that the principal balance of the Note is due and payable and that Countrywide is entitled to judicial foreclosure on the Property”; “In addition and/or in the alternative, Countrywide seeks restitution for the money it loaned to the Plaintiffs along with interest and all other costs associated with the Note, which Plaintiffs promised to repay but have refused”; “Plaintiffs have been unjustly enriched by accepting the benefits of the Note while refusing to repay it”; “Countrywide seeks enforcement of its lien under the Note and Security Instrument”; “Countrywide seeks an order foreclosing its lien and an order of sale in satisfaction of the debt Plaintiffs owe”; “Countrywide is also entitled to recover its reasonable and necessary attorney fees pursuant to the terms of the Note”.

106. There has already been performed discovery in this cause; wherein, it has been factually established that Plaintiffs made efforts to pay the Note as contractually agreed and that Countrywide refused payment. Therefore, the assertions made by

Defendants are known to be False Representations. Therefore, Defendants have committed Fraud before the Court. In so doing, Defendants and their Attorneys have violated Texas Rules of Civil Procedure 13.

107. Under Texas Rules of Civil Procedure 13, an attorney is required to sign pleadings as a certification that the attorney has read the pleadings; that to the best of the attorney's knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and not brought in bad faith. Had Defendants and/or Defendants' Attorneys investigated Defendants' claim with the proper diligence, then Defendants, as well as Defendants Attorneys, should have been aware that many of Defendants' Assertions within said Answer and Counterclaim are baseless and a false representation.

108. The Lender further realizes its Standing and Servicing predicament inserting a fraudulent statement in the Affidavit of Laura M. Pirritano<sup>71</sup> in effort to correct:

¶ 6 of her Affidavit, Ms. Pirritano states:

"Since Plaintiffs' default, there have been no assignments or transfers of the Plaintiffs' promissory note and security instrument."

Ms. Pirritano's sworn statement conflicts with the assignment document presented by Countrywide in response to Plaintiffs' No Evidence Motion for Summary Judgment. Therefore, Ms. Pirritano and Bank of America filed a fraudulent affidavit with the Court, violating TRCP 166a(h).

### **XVIII. KNOWLEDGE**

109. Plaintiffs will show this Honorable Court that the Lender performed Breach of Contract and/or Fraud and/or Document Fraud against Plaintiffs with knowledge of the

facts or with reckless disregard of the truth. Therefore and pursuant to the laws of Texas, Plaintiffs will show this Honorable Court Intentional Misconduct and Malice on the part of Defendants. Plaintiffs will show this Honorable Court that Deutsche both accepted the untimely assignment of Plaintiffs' Mortgage and was aware of this Cause; therefore, the Lender is aware of the performed Breach of Contract and/or Fraud performed by their alleged Servicer, yet wishes to continue in effort to take Plaintiffs' Homestead.

### **XIX. DAMAGES**

110. As a result of Defendants' Breach of Contract and/or Fraud and/or Document Fraud, in combination with the Lender's debt collection practices, as set out in the preceding paragraphs, Plaintiffs' Texas Homestead is at risk of foreclosure. The Lender, after refusing to accept said contractual monthly payment(s) of Plaintiffs, as required in NOTE<sup>1</sup>, ADDENDUM<sup>2</sup>, SECURITY<sup>3</sup>, and DISCLOSURE<sup>4</sup> has filed with this Honorable Court to foreclose on the mortgage note. Further, as a result of Defendants' Actions, as set out in the preceding paragraphs, Plaintiffs are in a position; wherein, an attempt to refinance Plaintiffs' Texas Homestead would be futile, wherein Plaintiffs' Credit Rating is significantly harmed, and wherein, Plaintiffs are significant innovators in the areas of water and energy, being unable to raise capital . Plaintiffs:

- a. Texas Homestead is under attack by Defendants while Defendants operate in Breach of Contract, violation of the Texas Constitution, RESPA and Fraud toward Plaintiffs. The most recent appraisal of Plaintiffs Texas Homestead is in excess of \$197,260.
- b. Are damaged by Lender disparagement, creating an inability to obtain capital to further their significant innovations in water and energy.

- c. Are damaged by consequential damages, which include professional time required to protect Plaintiffs' Homestead and Name via this Cause.
- d. Are damaged by professional expert fees required to protect Plaintiffs' Homestead via this Complaint.
- e. Are damaged by the emotional duress placed upon family of Plaintiffs to protect their Homestead; wherein, an expert will be required to evaluate.
- f. Are damaged by court costs required to protect Plaintiffs' Homestead and Name via this Petition.
- g. Are damaged by costs required in addition to court costs to protect Plaintiffs' Homestead and Name via this Petition.

## **XX. SPECIAL AND EXEMPLARY DAMAGES**

111. As complained hereinabove, Plaintiffs will show this Honorable Court that the actions performed by Defendants and complained of herein were committed "knowingly" or with a reckless disregard for the truth. Further, Plaintiffs will show this Honorable Court that Defendants demonstrated intent to commit an unlawful act or cause harm to Plaintiffs without legal justification or excuse.

112. In regard to Plaintiffs Fraud claim, Defendants have actual awareness. Plaintiffs further aver that said Breach of Contract and/or Fraud and/or document Fraud were committed "intentionally" in that Defendants specifically intended that Plaintiffs act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness. Plaintiffs will show this Honorable Court attempted "blackmail" on the part of Defendants in relation to Plaintiffs Homestead and this cause of action. Plaintiffs aver further that a known consequential harm to Plaintiffs by the knowing Breach of Contract and/or knowing Fraud of Defendants would be the loss of home to Plaintiffs and family of

Plaintiffs. Said loss of home would deprive Plaintiffs of Plaintiffs' Texas Homestead and cause significant personal harm to Plaintiffs and Plaintiffs' Family. Therefore, Plaintiffs are entitled to recover Special and Exemplary Damages.

113. Plaintiffs are entitled to Special Damages, which are a direct result and consequential of the actions of Defendants. Plaintiffs are entitled to compensation of time required to defend their homestead and name. As neither Plaintiff is an Attorney, the time expended by Richard Haase in this cause is significant; wherein, Richard Haase deserves appropriate compensation as a consequential damage. Further, as Richard Haase is kept from furthering his income via his business, further compensation is deserved for income loss.

#### **XXI. TRIAL BY JURY**

114. In accordance with Rule 38(b), Fed. Civ. P., Plaintiffs hereby demand a trial by jury for all issues triable in this matter.

#### **PRAYER**

**WHEREFORE**, Plaintiffs respectfully pray that Defendants be fined by this Honorable Court for violations of TRCP 13, TRCP 166a(h), TDCPA and FDCPA.

**WHEREFORE**, Plaintiffs respectfully pray that Defendants be cited to appear and answer, and that upon a final trial, judgment be entered for Plaintiffs against Defendants for the following:


1. Plaintiff's Homestead; wherein, Plaintiffs owe no moneys to Lender.

2. Economic damages, as a consequential damage, to include loss of ability to obtain capital to finance Plaintiffs' innovations in water and energy. These damages are estimated to be at least about \$1,000,000 to in excess of \$10,000,000.
3. Special damages, including consequential damages, within the jurisdictional limits of this Honorable Court.
4. Consequential damages, as Special Damages, in the time of Plaintiffs for this action at a rate of \$150 per hour.
5. Exemplary Damages in an amount at least equal to the most recent tax appraisal for Plaintiff's Homestead.
6. Further exemplary damages as may be awarded by this Honorable Court.
7. Prejudgment interest as provided by law.
8. Post judgment interest as provided by law.
9. Cost of suit.
10. Such other and further relief in law and in equity to which Plaintiffs are justly entitled.

Respectfully submitted,



By: \_\_\_\_\_  
Mr. Richard Alan Haase, Pro Se'



By: \_\_\_\_\_  
Mrs. Audrey Lois Haase, Pro Se'

4402 Ringrose Drive  
Missouri City, Texas 77496-8856  
Tel. (281) 261-9543  
Fax. (281) 261-6505

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2012 a true and correct copy of the above and foregoing document has been served by *Certified Mail, Return Receipt Requested*, by depositing in an enclosed, postpaid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service to the address indicated below.

Mr. Jeffrey Seewald  
Suite 1500  
1001 McKinney  
Houston, Texas 77702  
Tel. (713) 520-1900  
Fax. (713) 520-1025  
Attorneys for Defendants Countrywide and Mozilo  
**CM/RRR – 7009-2820-0002-9461-1708**

Attn: Damian W. Abreco  
Marrett Daffin Frappier  
Turner & Engel, L.L.P.  
Suite 500  
1900 St. James Place  
Houston, Texas 77056  
**CM/RRR – 7009-2820-0002-9461-1692**

Morgan Stanley ABS Capital I, Inc.  
1585 Broadway  
New York, New York 10036  
**CM/RRR – 7009-2820-0002-9461-1685**



Richard A. Haase, Pro Se'

4402 Ringrose Drive  
Missouri City, Texas 77459  
Phone: (281) 261-9543  
Facsimile: (281) 261-6505

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF TEXAS  
 HOUSTON DIVISION**

**RICHARD A. HAASE and  
 AUDREY LOIS HAASE,**  
*Plaintiffs*

vs.

**COUNTRYWIDE HOME LOANS, INC,  
 BANK OF AMERICA CORPORATION,  
 BANK OF AMERICA, N.A.,  
 MORGAN STANLEY ABS CAPITAL I, INC.,  
 DEUTSCHE BANK, AG,  
 BARRETT DAFLIN FRAPPIER,  
 TURNER AND ENGEL, L.L.P., and  
 ANGELO MOZILO**  
*Defendants*  
**DEUTSCHE BANK TRUST COMPANY**  
*Defendant and Counter-claimant*

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CIVIL ACTION NO. 4:12-cv-01538

**PLAINTIFFS' FIRST AMENDED COMPLAINT  
DECLARATION**

1. “My name is RICHARD ALAN HAASE. I am a plaintiff in the Styled Action. I am over the age of eighteen (18), and of sound mind. I reside in Fort Bend County, Texas. I have never been convicted of a crime; and, I am fully competent to make this Declaration. I am not disqualified to testify as a witness in any Court in Texas. I have personal knowledge of the facts stated in this Declaration; they are all true and correct. I am in possession of my mental faculties and am otherwise competent to make this Declaration.”
2. “Exhibits A – O are true and correct copies of the original as kept in my personal business records. Further, I declare under penalty of perjury that my statements in this Declaration are true and correct.”

Richard Alan Haase  
 4402 Ringrose Drive  
 Missouri City, Texas 77459

**Signature of Declarant**



June 7, 2012



**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISCTRICT OF TEXAS  
 HOUSTON DIVISION**

**RICHARD A. HAASE and  
 AUDREY LOIS HAASE,**  
*Plaintiffs*

*vs.*

**COUNTRYWIDE HOME LOANS, INC,  
 BANK OF AMERICA CORPORATION,  
 BANK OF AMERICA, N.A.,  
 MORGAN STANLEY ABS CAPITAL I, INC.,  
 DEUTSCHE BANK, AG,  
 BARRETT DAFLIN FRAPPIER,  
 TURNER AND ENGEL, L.L.P., and  
 ANGELO MOZILO**  
*Defendants*  
**DEUTSCHE BANK TRUST COMPANY**  
*Defendant and Counter-claimant*

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT A**

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),  
ARTICLE XVI OF THE TEXAS CONSTITUTION

TEXAS HOME EQUITY NOTE  
(Fixed Rate - First Lien)

June 5, 2006  
[Date]

Missouri City  
[City]

Texas  
[State]

4402 RINGROSE DR, Missouri City, TX 77459

[Property Address]

1. BORROWER'S PROMISE TO PAY

This is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (the "Extension of Credit"). In return for the Extension of Credit that I have received evidenced by this Note, I promise to pay U.S. \$173,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The 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 the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."  
I understand that this is not an open-end account that may be debited from time to time or under which credit may be extended from time to time.  
The property described above by the Property Address is subject to the lien of the Security Instrument executed concurrently herewith (the "Security Instrument").

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 7.750%. It is agreed that the total of all interest and other charges that constitute interest under applicable law shall not exceed the maximum amount of interest permitted by applicable law. Nothing in this Note or the Security Instrument shall entitle the Note Holder upon any contingency or event whatsoever, including by reason of acceleration of the maturity or Prepayment of the Extension of Credit, to receive or collect interest or other charges that constitute interest in excess of the highest rate allowed by applicable law on the Principal or on a monetary obligation incurred to protect the property described above authorized by the Security Instrument, and in no event shall I be obligated to pay interest in excess of such rate.

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

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payment on the 1st day of each month beginning August 1, 2006

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 07/01/2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18400 Von Karman, Suite 1000, Irvine, CA 92612 or at a different place if required by the Note Holder

TEXAS HOME EQUITY NOTE (Fixed Rate-First Lien)-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$1,243.70



**4. BORROWER'S RIGHT TO PREPAY**

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

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

**5. LOAN CHARGES**

All agreements between Note Holder and me are expressly limited so that any interest, loan charges, or fees (other than interest) collected or to be collected from me, any owner or the spouse of any owner of the property described above in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by applicable law.

If a law, which applies to this Extension of Credit 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 Extension of Credit exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder will make this refund by making a payment to me. The Note Holder's payment of any such refund will extinguish right of action I might have arising out of such overcharge.

It is the express intention of the Note Holder and me to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of this Note, the Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by applicable law, then such promise, payment, obligation or provision shall be reduced to the limit of such validity or eliminated as a requirement, if necessary for compliance with such law, and such document may be reformed by written notice from the Note Holder without the necessity of the execution of any new amendment or new document by me.

The provisions of this Section 5 shall supersede any inconsistent provision of this Note or the Security Instrument.

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

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

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

**(B) Default**

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

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means. This Note may not be accelerated because of a decrease in the market value of the property described above or because of my default under any indebtedness not evidenced by this Note or the Security Instrument.

**(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.

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Initials

**(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, including Section 50(a)(6), Article XVI of the Texas Constitution. Those expenses include, for example, reasonable attorneys' fees. I understand that these expenses are not contemplated as fees to be incurred in connection with maintaining or servicing this Extension of Credit.

**7. GIVING OF NOTICES**

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

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address. However, if the purpose of the notice is to notify Note Holder of failure to comply with Note Holder's obligations under this Extension of Credit, or noncompliance with any provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then notice by certified mail is required.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

Subject to the limitation of personal liability described below, each person who signs this Note is responsible for ensuring that all of my promises and obligations in this Note are performed, including the payment of the full amount owed. Any person who takes over these obligations is also so responsible.

I understand that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that this Note is given without personal liability against each owner of the property described above and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, the Note Holder can enforce its rights under this Note solely against the property described above and not personally against any owner of such property or the spouse of an owner.

If this Extension of Credit is obtained by such actual fraud, I will be personally liable for the payment of any amounts due under this Note. This means that a personal judgment could be obtained against me if I fail to perform my responsibilities under this Note, including a judgment for any deficiency that results from Note Holder's sale of the property described above for an amount less than is owing under this Note.

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Section 8 shall not impair in any way the right of the Note Holder to collect all sums due under this Note or prejudice the right of the Note Holder as to any promises or conditions of this Note.

**9. WAIVERS**

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

**10. SECURED NOTE**

In addition to the protections given to the Note Holder under this Note, the Security Instrument, dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 14 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.

\*

11. APPLICABLE LAW

This Note shall be governed by the law of Texas and any applicable federal law. In the event of any conflict between the Texas Constitution and other applicable law, it is the intent that the provisions of the Texas Constitution shall be applied to resolve the conflict. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

\*

12. NO ORAL AGREEMENTS

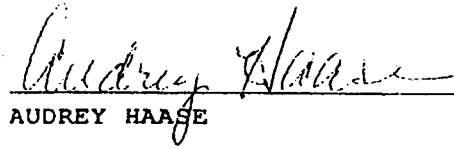
THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

  
RICHARD HAASE

(Seal)  
-Borrower

  
AUDREY HAASE

(Seal)  
-Borrower

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

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

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

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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

*[Sign Original Only]*

1008288578

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,**  
*Plaintiffs*

**vs.**

**COUNTRYWIDE HOME LOANS, INC,  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, N.A.,  
MORGAN STANLEY ABS CAPITAL I, INC.,  
DEUTSCHE BANK, AG,  
BARRETT DAFLIN FRAPPIER,  
TURNER AND ENGEL, L.L.P., and  
ANGELO MOZILO**  
*Defendants*  
**DEUTSCHE BANK TRUST COMPANY**  
*Defendant and Counter-claimant*

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT B**

# LOAN AGREEMENT ADDENDUM

THIS LOAN AGREEMENT ADDENDUM is made this 5th day of June, 2006, and is incorporated by and into and shall be deemed to amend and supplement any and all documents constituting the "Loan Agreement" as defined by Section 26.02 of the Texas Business & Commerce Code by and between

RICHARD HAASE and AUDREY HAASE,

("Borrower")

and New Century Mortgage Corporation

("Lender")

of the same date and covering the property located at

4402 RINGROSE DR, Missouri City, TX 77459

In addition to the covenants made in the Loan Agreement, Borrower and Lender further covenant and agree as follows:

1. The rights and obligations of Borrower and Lender shall be determined solely from the written Loan Agreement and any prior oral agreements between Lender and Borrower are superseded by and merged into the Loan Agreement.
2. The Loan Agreement may not be varied by any oral agreements or discussions that occur before, contemporaneously with, or subsequent to the execution of the Loan Agreement.
3. A Loan Agreement in which the amount involved in the Loan Agreement exceeds \$50,000 in value is not enforceable unless the agreement is in writing and signed by the Borrower of the agreement or the Borrower's authorized agent.
4. The following Notice is provided pursuant to Section 26.02 of the Texas Business & Commerce Code:

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

By: [Signature]  
Nabil Bawa  
Its: Regional Manager

[Signature]  
RICHARD HAASE  
Borrower

[Signature]  
AUDREY HAASE  
Borrower

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and**  
**AUDREY LOIS HAASE,**  
*Plaintiffs*

**vs.**

**COUNTRYWIDE HOME LOANS, INC,**  
**BANK OF AMERICA CORPORATION,**  
**BANK OF AMERICA, N.A.,**  
**MORGAN STANLEY ABS CAPITAL I, INC.,**  
**DEUTSCHE BANK, AG,**  
**BARRETT DAFLIN FRAPPIER,**  
**TURNER AND ENGEL, L.L.P., and**  
**ANGELO MOZILO**  
*Defendants*  
**DEUTSCHE BANK TRUST COMPANY**  
*Defendant and Counter-claimant*

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT C**





22 PGS

HOME EQUITY 2005070506

222

United Title of Texas  
GF No.: 06-26865-402 DM

Return To:

New Century Mortgage Corporation  
18400 Von Karman, Ste 1000  
Irvine, CA 92612

After Recording Return to  
United Title of Texas  
5177 Richmond Ave Suite 400  
Houston TX 77056

Prepared By:

New Century Mortgage Corporation  
18400 Von Karman, Ste 1000  
Irvine, CA 92612

[Space Above This Line for Recording Data]

**THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.**  
**TEXAS HOME EQUITY SECURITY INSTRUMENT**  
**(First Lien)**

This Security Instrument is not intended to finance Borrower's acquisition of the Property.

**NOTICE OF CONFIDENTIALITY RIGHTS:**

If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated June 5, 2006 together with all Riders to this document.

(B) "Borrower" is RICHARD HAASE and AUDREY HAASE

Borrower is the grantor under this Security Instrument.

1008288578

TEXAS HOME EQUITY SECURITY INSTRUMENT (First Lien) Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3044.1 1/01

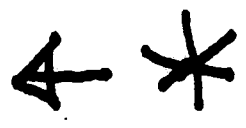
VMP-8038(TX) (0411)01

(rev. 10/03)

Page 1 of 18

Initials

VMP Mortgage Solutions, Inc. (800)521-7291



(C) "Lender" is New Century Mortgage Corporation

Lender is a Corporation organized and existing under the laws of California  
Lender's address is 18400 Von Karman, Suite 1000, Irvine, CA 92612

Lender includes any holder of the Note who is entitled to receive payments under the Note. Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is Eldon L. Youngblood. Trustee's address is  
2711 North Haskell Avenue, Suite 2700 LB 25, Dallas, Texas 75204

(E) "Note" means the promissory note signed by Borrower and dated June 5, 2006  
The Note states that Borrower owes Lender ONE HUNDRED SEVENTY-THREE THOUSAND SIX  
HUNDRED AND 00/100 Dollars  
(U.S. \$ 173,600.00) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than 07/01/2036

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

(G) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(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]:

- Texas Home Equity Condominium Rider
- Texas Home Equity Planned Unit Development Rider
- Other:

(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) "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.

Inhibit:  1008288578  
Form 3044.1 1/01 (rev. 10/03)

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

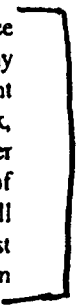
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Extension of Credit.


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 Extension of Credit. 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 Extension of Credit, 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.

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Initials:   
Form 304.1

1008288578

1/01 (rev. 10/03)

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 17.

**19. Sale of Note; Change of Loan Servicer; Notice of Grievance; Lender's Right-to-Comply.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Extension of Credit 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 14) 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. For example, Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution, generally provides that a lender has 60 days to comply with its obligations under the extension of credit after being notified by a borrower of a failure to comply with any such obligation. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 21 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

It is Lender's and Borrower's intention to conform strictly to provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution.

All agreements between Lender and Borrower are hereby expressly limited so that in no event shall any agreement between Lender and Borrower, or between either of them and any third party, be construed not to allow Lender 60 days after receipt of notice to comply, as provided in this Section 19, with Lender's obligations under the Extension of Credit to the full extent permitted by Section 50(a)(6), Article XVI of the Texas Constitution. Borrower understands that the Extension of Credit is being made on the condition that Lender shall have 60 days after receipt of notice to comply with the provisions of Section 50(a)(6), Article XVI of the Texas Constitution. As a precondition to taking any action premised on failure of Lender to comply, Borrower will advise Lender of the noncompliance by a notice given as required by Section 14, and will give Lender 60 days after such notice has been received by Lender to comply. Except as otherwise required by Applicable Law, only after Lender has received said notice, has had 60 days to comply, and Lender has failed to comply, shall all principal and interest be forfeited by Lender, as required by Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution in connection with failure by Lender to comply with its obligations under this Extension of Credit. Borrower will cooperate in reasonable efforts to correct any failure by Lender to comply with Section 50(a)(6), Article XVI of the Texas Constitution.

In the event that, for any reason whatsoever, any obligation of Borrower or of Lender pursuant to the terms or requirements hereof or of any other loan document shall be construed to violate any of the provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then any such obligation shall be subject to the provisions of this Section 19, and the document may be reformed, by written notice from Lender, without the necessity of the execution of any amendment or new document by Borrower, so that Borrower's or Lender's obligation shall be modified to conform to the Texas Constitution, and in no event shall Borrower or Lender be obligated to perform any act, or be bound by any requirement which would conflict therewith.

All agreements between Lender and Borrower are expressly limited so that any interest, Extension of Credit charge or fee collected or to be collected (other than by payment of interest) from Borrower, any owner or the spouse of any owner of the Property in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by Applicable Law.

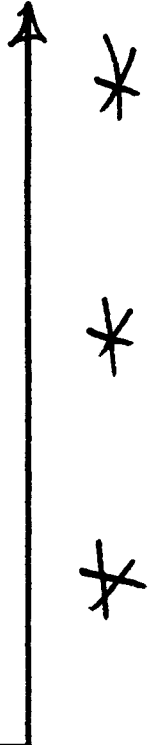
It is the express intention of Lender and Borrower to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of the Note, this Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by Applicable Law, then any promise, payment, obligation or provision shall be reduced to the limit of such validity, or eliminated as a requirement if necessary for compliance with such law, and such document may be reformed, by written notice from Lender, without the necessity of the execution of any new amendment or new document by Borrower.

Lender's right-to-comply as provided in this Section 19 shall survive the payoff of the Extension of Credit. The provision of this Section 19 will supersede any inconsistent provision of the Note or this Security Instrument.

**20. Hazardous Substances.** As used in this Section 20: (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




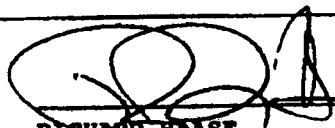
Initials

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.


[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THIS EXTENSION OF CREDIT WITHOUT PENALTY OR CHARGE.

  
Printed Name: Richard Alan Haase  
(Please Complete)

 (Seal)  
RICHARD HAASE -Borrower

\_\_\_\_\_  
Printed Name: Audrey Haase  
(Please Complete)

 (Seal)  
AUDREY HAASE -Borrower

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

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

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-Borrower

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

1008288578





Date: June 5, 2006 Loan#: 1008288578

Borrowers: RICHARD HAASE & AUDREY HAASE

Property Location: 4402 RINGROSE DR, Missouri City, TX 77459

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate.	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you.	<b>Amount Financed</b> The amount of credit provided to you or on your behalf.	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled.
8.233%	\$ 282,743.10	\$ 164,977.08	\$ 447,720.18

Preliminary  Redisclosure  Final

Your payment schedule will be:

No. of Payments	Amount of Payments **	When Payments are Due
359	\$ 1,243.70	08/01/06
1	\$ 1,231.88	07/01/36
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	

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This obligation has a demand feature. Filing Fees \$ 228.00

Security: You are giving a security interest in Non-Filing Insurance \$ N/A

the property being purchased.

4402 RINGROSE DR, Missouri City, TX 77459

Late Charge: If payment is 15 days late, you will be charged 5.000% of the payment.

Prepayment: If you pay off early, you

may  will not have to pay a penalty.  
 may  will not be entitled to a refund of part of the finance charge.

Assumption: Someone buying your home

cannot assume the remainder of the mortgage on the original terms.  
 may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.  
 e means an estimate

PROPERTY INSURANCE:  Property hazard insurance to replace the cost of improvements with a loss payable clause to the lender is a required condition of this loan. Borrower may purchase this insurance from any company acceptable to the lender. Hazard insurance  is  is not available through the lender at an estimated cost of N/A for a N/A year term.

We hereby acknowledge receipt of this disclosure.

RICHARD HAASE

6/10/06  
Date

Audrey Haase  
AUDREY HAASE

6/10/06  
Date

Date

Date

\*\* NOTE: Payments shown above do not include deposits for taxes, assessments, and property or flood insurance.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,**  
*Plaintiffs*

vs.

**COUNTRYWIDE HOME LOANS, INC,  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, N.A.,  
MORGAN STANLEY ABS CAPITAL I, INC.,  
DEUTSCHE BANK, AG,  
BARRETT DAFLIN FRAPPIER,  
TURNER AND ENGEL, L.L.P., and  
ANGELO MOZILO**  
*Defendants*  
**DEUTSCHE BANK TRUST COMPANY**  
*Defendant and Counter-claimant*

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT E**



**HOME LOANS**  
P.O. Box 10229  
Van Nuys CA 91410-0229

Send Correspondence to:  
P.O. Box 5170  
Simi Valley CA 93062-5170

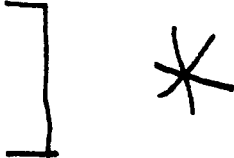
Business Address:  
450 American Street  
Simi Valley CA 93065-6285

November 3, 2006

CGS23302307364  
Richard Haase & Audrey Haase  
4402 Ringrose Dr  
Missouri City, TX 77459

Account No.: 073295735  
Property Address:  
4402 Ringrose Dr  
Missouri City, TX 77459

Welcome! The servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from New Century Mortgage Corporation to **Countrywide Home Loans, Inc.** The effective date of the transfer will be the date that your first payment will be due to the new servicer, which will be December 01, 2006. Countrywide is one of the nation's largest independent home mortgage lenders, and we are looking forward to providing you with both superior customer service and an extensive network of mortgage services.



**NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS**

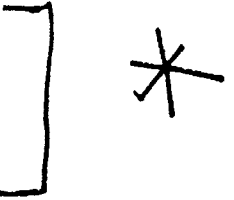
The transfer of the servicing of your mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan. Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing.

**YOUR PRESENT SERVICER:**

Your present servicer is New Century Mortgage Corporation. If you have any questions relating to the transfer of servicing from New Century Mortgage Corporation, call Customer Service, toll-free, at 1-800-561-4567 between 6:00 a.m. and 6:00 p.m. Pacific Time on the following days: Monday through Friday.

**YOUR NEW SERVICER CONTACT AND PAYMENT REMITTANCE ADDRESS:**

Your new servicer will be Countrywide. The business address for Countrywide is: 450 American Street, Simi Valley, CA 93065-6285. The address to send correspondence is: P.O. Box 5170, Simi Valley, CA 93062-5170. The address to send your first payment is: P.O. Box 10334, Van Nuys, CA 91410-0334. The toll-free telephone number of Countrywide is 1-800-669-6607. If you have any questions relating to the transfer of servicing to your new servicer, call Countrywide Customer Service, toll-free, at 1-800-689-6607 between 6:00 a.m. and 5:00 p.m., Pacific Time, Monday through Friday. Calls may be monitored or recorded for quality purposes. Please write the Countrywide loan number on all checks and correspondence and have your loan number available when you call. Your complete loan file is being transferred to your new servicer.



**INFORMATION CONCERNING YOUR PAYMENTS AND OPTIONAL INSURANCE:**

The date that New Century Mortgage Corporation will stop accepting payments from you is November 1, 2006. The date that your new servicer, Countrywide, will start accepting payments from you is November 2, 2006. Send all payments on or after that date to Countrywide. Countrywide will send you new billing statements. If you have a payment due before you receive your new billing statement, write your Countrywide account number (073295735) on your check and mail it to Countrywide at the payment address shown above. Please note that your account information is subject to change to reflect disbursements that are made by, and payments that are due to, your prior lender.

If your previous servicer was automatically drafting/deducting your monthly payment from your bank account, please be advised that this service will be discontinued. Enclosed is an application to re-apply for automatic monthly drafting through Countrywide Home Loans, Inc.

The transfer of servicing rights may affect the terms of or the continued availability of mortgage life, disability, accidental death insurance or any other type of optional insurance in the following manner: if you currently have optional insurance, we will continue to bill you for the same premium, at least initially. You do not need to take any action to maintain coverage until you receive notification from Countrywide indicating if there are any changes concerning the terms or continued availability of this insurance. If your current insurance cannot be continued by Countrywide, you will be offered other alternatives without interruption in your coverage. If you have any questions about optional insurance, please contact our affiliate, Countrywide Insurance Services, Inc. at 1-800-669-6656. Countrywide Insurance Services, Inc. has an array of high quality, affordable insurance products including homeowners, earthquake, flood, life, disability and fixed annuities products to help protect you and your home.

If the terms of your loan provide for an escrow account to pay taxes and/or insurance, Countrywide may elect to re-analyze the escrow payment amount and make any necessary adjustments. In compliance with the Real Estate Settlement Procedures Act (RESPA), Countrywide analyzes escrow accounts utilizing the aggregate method.

**This communication is from a debt collector.**

We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.  
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

ADW/LCX 9/6/2006

**PAYMENT INSTRUCTIONS**

• Make your check payable to Countrywide Home Loans

Account Number: 073295735-2  
Richard Haase  
4402 Ringrose Dr

Next Payment

\$1,243.70

Please update e-mail information on the reverse side of this coupon.

November 3, 2006

CGS23302307364  
Richard Haase & Audrey Haase  
4402 Ringrose Dr  
Missouri City, TX 77459

Account No.: 073295735  
Property Address:  
4402 Ringrose Dr  
Missouri City, TX 77459

Welcome! The servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from New Century Mortgage Corporation to Countrywide Home Loans, Inc.. The effective date of the transfer will be the date that your first payment will be due to the new servicer, which will be December 01, 2006. Countrywide is one of the nation's largest independent home mortgage lenders, and we are looking forward to providing you with both superior customer service and an extensive network of mortgage services.

**NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS**

The transfer of the servicing of your mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan. Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing.

**YOUR PRESENT SERVICER:**

Your present servicer is New Century Mortgage Corporation. If you have any questions relating to the transfer of servicing from New Century Mortgage Corporation, call Customer Service, toll-free, at 1-800-561-4567 between 6:00 a.m. and 6:00 p.m. Pacific Time on the following days: Monday through Friday.

**YOUR NEW SERVICER CONTACT AND PAYMENT REMITTANCE ADDRESS:**

Your new servicer will be Countrywide. The business address for Countrywide is: 450 American Street, Simi Valley, CA 93065-6285. The address to send correspondence is: P.O. Box 5170, Simi Valley, CA 93062-5170. The address to send your first payment is: P.O. Box 10334, Van Nuys, CA 91410-0334. The toll-free telephone number of Countrywide is 1-800-669-6607. If you have any questions relating to the transfer of servicing to your new servicer, call Countrywide Customer Service, toll-free, at 1-800-669-6607 between 6:00 a.m. and 5:00 p.m., Pacific Time, Monday through Friday. Calls may be monitored or recorded for quality purposes. Please write the Countrywide loan number on all checks and correspondence and have your loan number available when you call. Your complete loan file is being transferred to your new servicer.

**INFORMATION CONCERNING YOUR PAYMENTS AND OPTIONAL INSURANCE:**

The date that New Century Mortgage Corporation will stop accepting payments from you is November 1, 2006. The date that your new servicer, Countrywide, will start accepting payments from you is November 2, 2006. Send all payments on or after that date to Countrywide. Countrywide will send you new billing statements. If you have a payment due before you receive your new billing statement, write your Countrywide account number (073295735) on your check and mail it to Countrywide at the payment address shown above. Please note that your account information is subject to change to reflect disbursements that are made by, and payments that are due to, your prior lender.

If your previous servicer was automatically drafting/deducting your monthly payment from your bank account, please be advised that this service will be discontinued. Enclosed is an application to re-apply for automatic monthly drafting through Countrywide Home Loans, Inc..

The transfer of servicing rights may affect the terms of or the continued availability of mortgage life, disability, accidental death insurance or any other type of optional insurance in the following manner: if you currently have optional insurance, we will continue to bill you for the same premium, at least initially. You do not need to take any action to maintain coverage until you receive notification from Countrywide indicating if there are any changes concerning the terms or continued availability of this insurance. If your current insurance cannot be continued by Countrywide, you will be offered other alternatives without interruption in your coverage. If you have any questions about optional insurance, please contact our affiliate, Countrywide Insurance Services, Inc. at 1-800-669-6656. Countrywide Insurance Services, Inc. has an array of high quality, affordable insurance products including homeowners, earthquake, flood, life, disability and fixed annuities products to help protect you and your home.

If the terms of your loan provide for an escrow account to pay taxes and/or insurance, Countrywide may elect to re-analyze the escrow payment amount and make any necessary adjustments. In compliance with the Real Estate Settlement Procedures Act (RESPA), Countrywide analyzes escrow accounts utilizing the aggregate method.

**This communication is from a debt collector.**

We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.  
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

ACWL CX 9/6/2006

**PAYMENT INSTRUCTIONS**

- Make your check payable to Countrywide Home Loans
- Write your account number on your check or money order
- Write in any additional amounts you are including. (If total is more than \$5000, please send certified check.)
- Don't attach your check to the payment coupon
- Don't include correspondence
- Don't send cash

Account Number: 073295735-2  
Richard Haase  
4402 Ringrose Dr

Next Payment \$1,243.70

AQCMB0.doc  
Prior Loan # X08294578  
SRCCO 15090

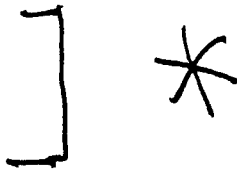
Please update e-mail information on the reverse side of this coupon.

Additional Principal
Additional Escrow
Other
Check Total

Countrywide  
PO Box 10334  
Van Nuys CA 91410-0334



073295735200000124370000000000



**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISCTRICT OF TEXAS  
 HOUSTON DIVISION**

**RICHARD A. HAASE and** §  
**AUDREY LOIS HAASE,** §  
     *Plaintiffs* §

*vs.* §

**COUNTRYWIDE HOME LOANS, INC,** §  
**BANK OF AMERICA CORPORATION,** §  
**BANK OF AMERICA, N.A.,** §  
**MORGAN STANLEY ABS CAPITAL I, INC.,** §  
**DEUTSCHE BANK, AG,** §  
**BARRETT DAFLIN FRAPPIER,** §  
     **TURNER AND ENGEL, L.L.P., and** §  
**ANGELO MOZILO** §  
     *Defendants* §  
**DEUTSCHE BANK TRUST COMPANY** §  
     *Defendant and Counter-claimant* §

**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT F**

*Richard A. Haase*

4402 Ringrose Drive  
Missouri City, Texas 77459

richard.haase@clearvalue.com

Phone 281.261.7710  
Facsimile 281.261.6505

August 30, 2007



Mr. Angelo R. Mozilo,  
Chairman & CEO  
Countrywide Financial Corporation  
4500 Park Granada  
Calabasas, CA 91302

Express Mail Receipt: EB 400011401 US

**Subject: Loan Number 073295735 – Unwillingness of Countrywide to Accept Payment**

Chairman Mozilo:

It is with the most unfortunate displeasure and circumstance that I find myself sending this communication.

My home loan with your company, loan number 073295735, is current as of this mailing and has never been in delinquent status.

Most unfortunately, your corporation is refusing to accept my monthly principal and interest payment, which is \$1,243.70. Your on-line system will not accept \$1,243.70 and your customer service organization will not accept \$1,243.70. Attached herein is my monthly principal and interest payment of \$1,243.70. Should your corporation decide not to cash the attached check, then I will be forced to conclude that your corporation is in breach of contract.



For your reference, attached is a copy of:

1. The last communication from your corporation, which has the correct payment amount,
2. The minimum amount accepted with your on-line service on this date, which has the incorrect payment amount, and
3. My notes from conversation with Martha today at extension 8064 who both refused to accept a principal and interest payment and refused to provide me an officer of the corporation with which to communicate.

It would be most beneficial if your corporation would correct this matter without any undue further issue.

I look forward to a return communication from your office within 10 business day receipt of this letter.

Sincerely yours,

Richard A. Haase

Attachments

# COUNTRYWIDE HOME LOANS

## MONTHLY HOME LOAN STATEMENT



0008865 01 MB 0.326 \*\*AUTO TB 0 0381 77459-2963  
MSR CC AG 0000-0-2-M17811 IN 4 P08873  
RICHARD HAASE  
AUDREY HAASE  
4402 Ringrose Dr  
Missouri City TX 77459-2963



### CUSTOMER BULLETIN



## Enroll in one of Countrywide's Electronic Payment Services

Wouldn't it be nice to save time when paying bills? Or, even better, wouldn't it be nice to not have to remember to send in a check at all? When you enroll in one of Countrywide's PayPlan services, your monthly mortgage payment will be drafted from your financial institution automatically.\* That means you'll enjoy the freedom and convenience of having your home loan bill paid on time, every time, without having to remember!

- 1) Log on to [customers.countrywide.com](http://customers.countrywide.com)
- 2) Access your account or, to set up your account, create a User Name & Password
- 3) Click "Payment Services"
- 4) Select one of the available PayPlan options

\* Terms and conditions apply. A service fee may be assessed. Please read website for enrollment details.

### HOME LOAN SUMMARY

#### Home loan overview as of 03/20/2007

Principal balance	\$172,597.30
Late Charge if payment received after 04/16/2007	\$62.19
Date	Payments received
03/02/2007	\$1,243.70
03/20/2007	1,243.70

#### Amount due on 04/01/2007 as of 03/20/2007

Home loan payment due 04/01/2007	\$1,492.46
(see next page for account details)	

### NOTICES

#### Your account... HOW YOU WANT IT, WHEN YOU WANT IT

Next time you want to confirm a payment (or even make a payment), log-in to [customers.countrywide.com](http://customers.countrywide.com). Manage your account on-line with powerful tools. Log-in today! Restrictions apply.

It's valued customers like you who've made Countrywide® one of the nation's leading home loan lenders. We take pride in using our resources and experience to make the dream of homeownership a reality for more and more people.

Calls may be monitored or recorded to ensure quality service.  
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

### HOW TO MAKE A PAYMENT

1. Please
  - don't send cash
  - don't staple the check to the payment coupon
  - don't include correspondence
2. Write the account number on the check or money order.
3. Make the check payable to Countrywide Home Loans  
Attn: Remittance Processing  
PO BOX 650070  
DALLAS, TX 75265-0070

Account number 073295735 (2)  
Richard Haase  
Audrey Haase  
4402 Ringrose Dr.  
Missouri City, TX 77459

Payment due Apr 1, 2007 **\*\$1,492.46**  
After Apr 16, 2007 late payment **\*\$1,554.65**

\* Payment amount includes late charges. See Home Loan Details for breakdown.

SEE OTHER SIDE FOR IMPORTANT INFORMATION



**Countrywide**  
PO BOX 650070  
DALLAS, TX 75265-0070



Additional Principal

Additional Escrow

Other

Check total

073295735200000149246000155465

### Can You Make A Promise To Schedule a Payment Now?

FAQs

You have indicated that the following payment has not been made yet. Please answer the following questions.

073295735 - 4402 Ringrose Dr - Home Loan

Date Last Payment Received: 07/17/2007

Payment Due Date: 08/01/2007

Minimum Amount Accepted: \$1,493.56

Reason payment not received by due date: \*\* -- Please Select Reason --

I would like to make this payment now.

I would like to make this payment before 09/29/2007. \*

When will you be able to make your payment? \*\* MM/DD/YYYY

Method of delivery? \*\* -- Please Select --


I cannot make a payment commitment at this time.

\* If the date you select is more than 30 days from your account due date, please be advised that your credit rating could be negatively impacted, and you may receive a 'Notice of Intent to Foreclose' if your loan is delinquent for more than 30 days.

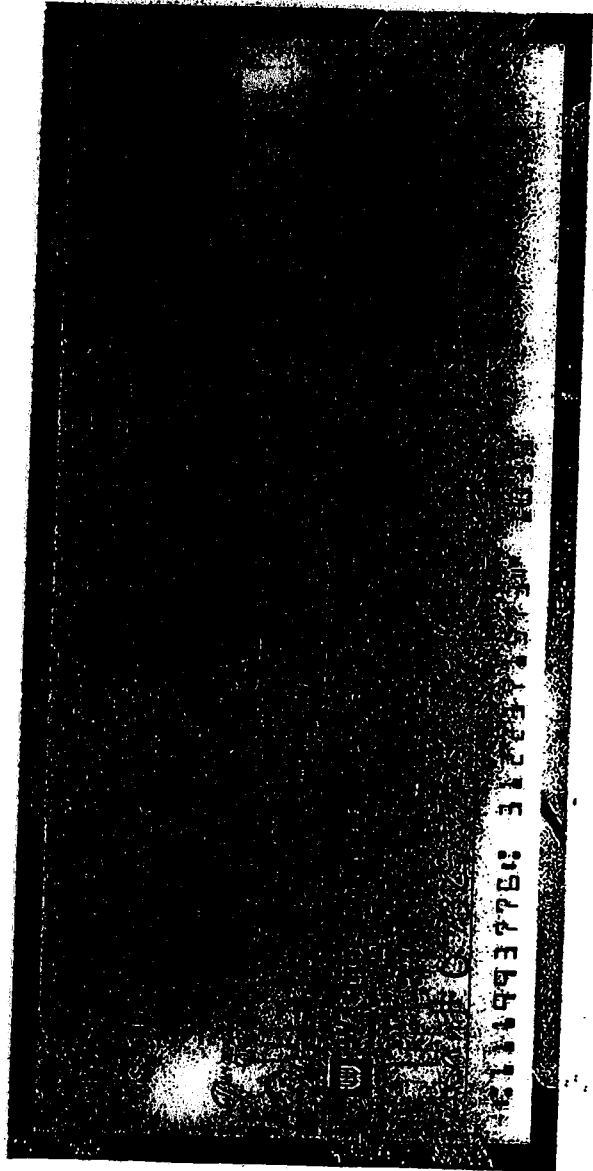
\*\* Required Field

Continue

Back

 Countrywide Bank, FSB and Countrywide Home Loans, Inc. are Equal Housing Lenders. © 2007 Countrywide Financial Corp. Trade/service marks are the property of Countrywide Financial Corp., and/or its subsidiaries. Some products may not be available in all states. All rights reserved. If you use a pop-up blocker, you should disable it while using our sites. \* Countrywide Financial offers these products through our family of companies. Home Loans provided by Countrywide Home Loans; Banking services provided by Countrywide Bank, FSB, member FDIC; Insurance services provided by Countrywide Insurance Services, Investment Services provided by Countrywide Investment Services. Minnesota loans will be made by Countrywide Bank, FSB through its home loan financial centers. Countrywide is required by law to inform you that this communication is from a debt collector [Licenses & Registrations](#) [Privacy & Security](#) [Terms and Conditions](#)

\*



\*



**EXPRESS MAIL**



UNITED STATES POSTAL SERVICE® Post Office To Addressee



EB 408013401 US

Mailing Label  
Label 11-B, March 2004

**ORIGIN (POSTAL SERVICE USE ONLY)**

PO ZIP Code: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

Mo. Day Year: \_\_\_\_\_

Time Accepted:  AM  PM

Flat Rate  or Weight: \_\_\_\_\_

Ins. cost: \_\_\_\_\_

Day of Delivery:  Next  2nd  3rd Out Day

Scheduled Date of Delivery: \_\_\_\_\_

Month: \_\_\_\_\_ Day: \_\_\_\_\_

Scheduled Time of Delivery:  Noon  3 PM

Military:  2nd Day  3rd Day

INTL Alpha Country Code: \_\_\_\_\_

Postage: \$ \_\_\_\_\_

Return Receipt Fee: \$ \_\_\_\_\_

Insurance Fee: \$ \_\_\_\_\_

COO Fee: \$ \_\_\_\_\_

Total Postage & Fees: \$ \_\_\_\_\_

Acceptance Emp. Initials: \_\_\_\_\_

FROM: (PLEASE PRINT) PHONE: 291-261-7710

Richard Haase  
4402 Ringrose Drive  
Missouri City, TX 77459

**FOR PICKUP OR TRACKING**  
 Visit [www.usps.com](http://www.usps.com)  
 Call 1-800-222-1811

**DELIVERY (POSTAL SERVICE USE ONLY)**

Delivery Attempt: \_\_\_\_\_ Time:  AM  PM Employee Signature: \_\_\_\_\_

Mo. Day: \_\_\_\_\_ Time:  AM  PM Employee Signature: \_\_\_\_\_

Mo. Day: \_\_\_\_\_ Time:  AM  PM Employee Signature: \_\_\_\_\_

No. Day: \_\_\_\_\_ Time:  AM  PM Employee Signature: \_\_\_\_\_

**CUSTOMER USE ONLY**

PAYMENT BY ACCOUNT  
 Express Mail Corporate Acct. No. \_\_\_\_\_

Federal Agency Acct. No. or Postal Service Acct. No. \_\_\_\_\_

TO: (PLEASE PRINT) PHONE: \_\_\_\_\_

Mr. Angelo Mojilo  
Office of the Chairman  
Countrywide Financial Corp.  
4500 Park Granada  
Calabasas, CA

ZIP+4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)  
 9 1 3 0 2 + \_\_\_\_\_

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

PRESS HARD FOR THE MAKING 3 COPIES



Home | Help | Sign In

Track & Confirm [FAQs](#)

## Track & Confirm

### Search Results

Label/Receipt Number: EB40 0011 401U S  
Status: Delivered



Your item was delivered at 11:34 am on August 31, 2007 in CALABASAS, CA 91302. The item was signed for by H VENTURA.

Additional information for this item is stored in files offline.

### Track & Confirm

Enter Label/Receipt Number:

[Go >](#)



[Restore Offline Details >](#)



[Return to USPS.com Home >](#)

### Notification Options

Proof of Delivery

Verify who signed for your item by email, fax, or mail. [Go >](#)

[Site Map](#) [Contact Us](#) [Forms](#) [Gov't Services](#) [Jobs](#) [Privacy Policy](#) [Terms of Use](#) [National & Premier Accounts](#)

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No FEAR Act EEO Data

FOIA



USPS is an Equal Opportunity Employer. Minorities and women are encouraged to apply.



Indicate a change in your mailing address to the post office.

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISCTRICT OF TEXAS  
 HOUSTON DIVISION**

**RICHARD A. HAASE and** §  
**AUDREY LOIS HAASE,** §  
*Plaintiffs* §

*vs.* §

**COUNTRYWIDE HOME LOANS, INC,** §  
**BANK OF AMERICA CORPORATION,** §  
**BANK OF AMERICA, N.A.,** §  
**MORGAN STANLEY ABS CAPITAL I, INC.,** §  
**DEUTSCHE BANK, AG,** §  
**BARRETT DAFLIN FRAPPIER,** §  
**TURNER AND ENGEL, L.L.P., and** §  
**ANGELO MOZILO** §  
*Defendants* §  
**DEUTSCHE BANK TRUST COMPANY** §  
*Defendant and Counter-claimant* §

**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT G**



**HOME LOANS**

OFFICE OF THE PRESIDENT  
400 COUNTRYWIDE WAY, MS SV-314  
SIMI VALLEY, CA 93065-6296

(800) 669-6093  
(800) 658-9364 FAX

\*  
September 11, 2007

Richard Haase  
Audrey Haase  
4402 Ringrose Dr.  
Missouri City, TX 77459

Subject: Countrywide Home Loan Number 73295735

Dear Mr. Haase,

This letter is pursuant to your correspondence dated August 30, 2007, addressed to Mr. Angelo Mozilo, Chief Executive Officer and Chairman of the Board for Countrywide Financial Corporation. Your concerns were forwarded to my attention for review and response. Regrettably, my attempts to contact you to further discuss your concerns have been unsuccessful.

In your letter, you expressed dissatisfaction with the service you received from Countrywide as we are no longer accepting your monthly payment of \$1,243.70. You requested for our office to research this matter and to accept the payment you remitted in the amount of \$1,243.70.

My research of your concerns revealed that Countrywide reviewed the above loan on the date the preferred homeowners insurance policy expired, on April 6, 2007. Upon review, Countrywide determined that a renewal notification was never received from Texas Fair Plan and Associates. As such, Countrywide mailed notification letters to you on April 22, 2007, and May 6, 2007, to inform you of Countrywide's intent to purchase an insurance policy on your behalf if evidence of sufficient coverage is not provided. Consequently, as Countrywide did not receive a reply, a Lender Placed Policy ("LPP") for homeowners coverage was ordered on your loan, resulting in a premium payment of \$1,241.00 being disbursed and an escrow account being established to maintain coverage. As a result, effective August 2007, your monthly payment increase to \$1,493.56. I have enclosed a *Loan Transaction History Statement* for your review and confirmation.

Please note that it was recently confirmed during a telephone conversation with Texas Fair Plan and Associates that they no longer hold a homeowners insurance policy for your property. In order to cancel the LPP and receive a full credit for the recent premium paid, please fax evidence of sufficient coverage from your insurance company effective April 6, 2007, through April 6, 2008, to the attention of our Insurance Department at (800) 293-8158.

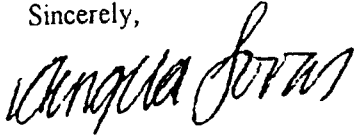
This will confirm that your payment of \$1,243.70 was applied to your account on September 6, 2007, as the August 2007 installment. However, all future payments are required to be in the amount of \$1,493.56 or until evidence of sufficient insurance coverage has been received.

\*

Letter to Richard Haase and Audrey Haase  
September 11, 2007  
Page Two (2)

If you have any additional questions, please feel free to contact me at (800) 669-2443, extension 5509. As always, for other questions about your loan, you may contact our Customer Service Department directly at (800) 669-6607. Thank you for this opportunity to be of service.

Sincerely,



Angela Tovar  
Executive Research Specialist  
Office of the President

Enclosure





CYPRESS TEXAS LLOYDS  
 P.O. BOX 50909  
 SARASOTA, FL 34232-0307  
 1-866-805-5800

HOMEOWNERS DECLARATION		
POLICY NUMBER	POLICY PERIOD	
CLA 6265809 00 85	From 09/19/2007	To 09/19/2008
12:01 A.M. Standard Time at the described location		

NEW DECLARATION	Effective: 09/19/2007	Date Issued: 09/25/2007
-----------------	-----------------------	-------------------------

INSURED:	AGENT:
RICHARD A HAASE AND AUDREY L HAASE 4402 RINGROSE DR MISSOURI CITY TX 77459-2963 Telephone: 281-261-9543	STEVEN V LENARD DIVERSIFIED INSURANCE PRODUCTS 13313 SOUTHWEST FWY STE 255 SUGAR LAND TX 77478-3660 Telephone: 281-242-1717

The residence premises covered by this policy is located at the above insured address unless otherwise stated below:  
 4402 RINGROSE DR MISSOURI CITY TX 77459-2963

Coverage is provided where premium and limit of liability is shown.  
 Flood coverage is not provided by Cypress Texas Lloyds  
 and is not a part of this policy.

SECTION I COVERAGE	LIMIT OF LIABILITY	PREMIUMS
A. DWELLING	\$ 195,000.00	\$ 1,384.00
OTHER STRUCTURES	\$ 19,500.00	INCLUDED
B. PERSONAL PROPERTY	\$ 78,000.00	INCLUDED
PERSONAL PROPERTY OFF PREMISES	\$ 7,800.00	INCLUDED
LOSS OF USE	\$ 39,000.00	INCLUDED
SECTION II COVERAGE		
C. PERSONAL LIABILITY	\$ 500,000.00	\$ 79.00
D. MEDICAL PAYMENTS	\$ 3,000.00	INCLUDED
OPTIONAL COVERAGES		
LTD FUNGI, OTHER MICROBES OR ROT REMEDIATION	\$ 5,000.00	INCLUDED
BURGLAR ALARM CREDIT		\$ 42.00
FIRE ALARM CREDIT		\$ 42.00
YR OF CONSTR ADJUSTMENT		\$ 7.00
REPLCMNT COST ON CNT COVG		INCLUDED
ADD'L EXTENDED COVERAGE		INCLUDED
REPLCMNT COST ON DWL COVG		\$ 166.00
NEW PURCHASE DISC		

TOTAL POLICY PREMIUM INCLUDING ASSESSMENTS AND ALL SURCHARGES: \$ 1,280.00  
 PLEASE CONTACT YOUR AGENT IF THERE ARE ANY QUESTIONS PERTAINING TO YOUR POLICY.

FORMS AND ENDORSEMENTS	
* CTL-200 (03/06) * CTL-202 (03/06) * HO-A (01/02)	* CTL-201 (03/06) * H 984B (04/05) * HO-401T (02/02)
COUNTERSIGNED DATE: 09/25/2007	
BY:	
ADDITIONAL INTERESTS	
MORTGAGEE 073295735  COUNTRYWIDE HOME LOANS INC ISAOA/ATIMA FTWX-22 PO BOX 961206 FORT WORTH TX 76161-0206	

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISCTRICT OF TEXAS  
 HOUSTON DIVISION**

<b>RICHARD A. HAASE and</b>	§
<b>AUDREY LOIS HAASE,</b>	§
<i>Plaintiffs</i>	§
 	§
<b>vs.</b>	§
 	§
<b>COUNTRYWIDE HOME LOANS, INC,</b>	§
<b>BANK OF AMERICA CORPORATION,</b>	§
<b>BANK OF AMERICA, N.A.,</b>	§
<b>MORGAN STANLEY ABS CAPITAL I, INC.,</b>	§
<b>DEUTSCHE BANK, AG,</b>	§
<b>BARRETT DAFLIN FRAPPIER,</b>	§
<b>TURNER AND ENGEL, L.L.P., and</b>	§
<b>ANGELO MOZILO</b>	§
<i>Defendants</i>	§
<b>DEUTSCHE BANK TRUST COMPANY</b>	§
<i>Defendant and Counter-claimant</i>	§

**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT I**





Escrow Analysis Department, SV3-23  
450 American Street  
Simi Valley, CA 93065-6298

Notice Date: November 8, 2007

Account No.: 073295735

Property Address:  
4402 RINGROSE DR  
MISSOURI CITY, TX 77459

CGS28100312377  
RICHARD HAASE  
AUDREY HAASE  
4402 Ringrose Dr  
Missouri City TX 77459

**IMPORTANT MESSAGE ABOUT YOUR LOAN**

Thank you for being a valued Countrywide Home Loans customer. We appreciate your business and want to do everything possible to help you make the best financial decisions.

**WHAT THIS MEANS**

We have received your payment in the amount of \$1,243.70. This amount is less than your current monthly payment of \$1,290.62. We have applied this payment to your account. However, future payments that are less than the total amount due each month will be returned to you.

Full payments are due by the date specified on your original loan documents. Late charges are assessed if payments are not received by the due date. In addition to incurring late fees, your credit history may be affected if full payments are not received before the due date.

**WHAT YOU NEED TO DO**

Please send the total amount due in order to avoid any further collection activity and negative payment records on your account.

If you have further questions, please call our Customer Service Department at 1-800-669-6607.

\*

HAA-CHL 090108 0320

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,**  
*Plaintiffs*

*vs.*

**COUNTRYWIDE HOME LOANS, INC,  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, N.A.,  
MORGAN STANLEY ABS CAPITAL I, INC.,  
DEUTSCHE BANK, AG,  
BARRETT DAFLIN FRAPPIER,  
TURNER AND ENGEL, L.L.P., and  
ANGELO MOZILO**  
*Defendants*  
**DEUTSCHE BANK TRUST COMPANY**  
*Defendant and Counter-claimant*

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT J**



P.O. Box 650070  
 Dallas, TX 75265-0070

Send Correspondence to:  
 P.O. Box 6170, MS 6V314B  
 Simi Valley, CA 93065

Send Payments to:  
 PO Box 650070  
 Dallas, TX 75265-0070

November 2, 2007  
 Account No.: 73295735

Richard Haase & Audrey Haase  
 4402 RINGROSE DR  
 MISSOURI CITY, TX 77459-2963

Property Address:  
 4402 Ringrose Dr  
 Missouri City, TX 77459-2963

Dear Richard Haase & Audrey Haase:

Countrywide Home Loans Servicing LP (hereinafter "Countrywide") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this letter is as follows:

<b>Monthly Charges:</b>	10/01/2007	\$2,581.24
<b>Late Charges:</b>	10/01/2007	\$62.19
<b>Other Charges:</b>	Uncollected Late Charges:	\$621.90
	Uncollected Costs:	\$0.00
	Partial Payment Balance:	(\$0.00)
<b>TOTAL DUE:</b>		<b>\$3,265.33</b>

You have the right to cure the default. To cure the default, on or before December 2, 2007, Countrywide must receive the amount of \$3,265.33 plus any additional regular monthly payment or payments, late charges, fees and charges which become due on or before December 2, 2007.

The default will not be considered cured unless Countrywide receives "good funds" in the amount of \$3,265.33 on or before December 2, 2007. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. Countrywide reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before December 2, 2007, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, Countrywide and the Noteholder shall be entitled to collect all fees and costs incurred by Countrywide and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, Countrywide may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument.

If you are unable to cure the default on or before December 2, 2007, Countrywide wants you to be aware of various options that may be available to you through Countrywide to prevent a foreclosure sale of your property. For example:

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through Countrywide. Our basic plan requires that Countrywide receive, up front, at least 1/3 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This

Please write your account number on all checks and correspondence.  
 We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

- Make your check payable to Countrywide Home Loans
- Write your account number on your check or money order
- Write in any additional amounts you are including (if total is more than \$500), please send certified check)
- Don't attach your check to the payment coupon
- Don't include correspondence
- Don't send cash

Account Number: 73295735-2  
 Richard Haase & Audrey Haase  
 4402 Ringrose Dr

Balance Due for charges listed above: \$3,265.33 as of 11/02/2007.

Please update e-mail information on the reverse side of this coupon.

MLGX

Add'l  
 Principal

Add'l  
 Interest

Other

Check  
 Total

Countrywide  
 PO BOX 650070  
 Dallas, TX 75265-0070  
 |||||

073295735200000326533000326533

foreclosure alternative, however, is limited to certain loan types.

- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through Countrywide even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with Countrywide, you must contact us immediately. If you request assistance, Countrywide will need to evaluate whether that assistance will be extended to you. In the meantime, Countrywide will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by December 2, 2007 as outlined above will result in the acceleration of your debt.

Countrywide is acting as the Mortgage Servicer for Deutsche Bank (msac 2006-Hs6), which is the Owner and/or Mortgagee of the Note and Deed of Trust associated with your real estate loan. Countrywide, as Mortgage Loan Servicer, is representing Deutsche Bank (msac 2006-Hs6) whose address is: Loan Servicing, P.O. Box 7532, Van Nuys, CA, 91406-9998. The Mortgage Loan Servicer is authorized to represent Deutsche Bank (msac 2006-Hs6) by virtue of a servicing agreement. Pursuant to the servicing agreement and Texas Property Code §51.0028, the Mortgage Servicer is authorized to collect the debt and to administer any resulting foreclosure of the property securing the above-referenced loan. All notices, payments, correspondence, and other communications regarding the real estate loan should continue to be directed to Countrywide.

Time is of the essence. If you have any questions concerning this notice, please contact the Loan Counseling Center immediately at 1-800-669-0102.

Sincerely,

Loan Counseling Center

E-mail user: Providing your e-mail address below will allow us to send you information on your account.  
Account Number: 7456735  
Richard Heese & Audrey Heese E-mail address

How we post your payments: All accepted payments of principal and interest will be applied to the largest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (a) to outstanding monthly payments of principal and interest, (b) toward delinquency, (c) late charges and other amounts you owe in connection with your loan and (d) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Prohibited checks: Countrywide's policy is to not accept prohibited checks, unless specifically agreed to by a loan covenant or restriction.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,  
*Plaintiffs***

vs.

**COUNTRYWIDE HOME LOANS, INC,  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, N.A.,  
MORGAN STANLEY ABS CAPITAL I, INC.,  
DEUTSCHE BANK, AG,  
BARRETT DAFLIN FRAPPIER,  
TURNER AND ENGEL, L.L.P., and  
ANGELO MOZILO  
*Defendants*  
DEUTSCHE BANK TRUST COMPANY  
*Defendant and Counter-claimant***

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS’ FIRST AMENDED COMPLAINT**

**EXHIBIT K**

13

**ASSIGNMENT OF NOTE  
AND DEED OF TRUST**

**BDFTE No.: 20080031402623  
Investor/Loan Type: EQUITY**

**Date of Assignment:** Effective April 23, 2008  
**Assignor:** NEW CENTURY MORTGAGE CORPORATION

**Assignee:** DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE ON BEHALF  
OF MORGAN STANLEY ABS CAPITAL I INC. TRUST 2006-HE6, MORTGAGE  
PASS-THROUGH CERTIFICATES, SERIES 2006-HE6

**Assignee's Mailing Address:** 1762 EAST ST. ANDREW PLACE  
(including county) SANTA ANA, CA 94705

**NOTE and DEED OF TRUST--**

**Maker/Grantor:** RICHARD HAASE  
AUDREY HAASE  
**Date:** June 05, 2006  
**Original Amount:** \$ 173,600.00  
**Payee:** NEW CENTURY MORTGAGE CORPORATION

**Trustee:** ELDON L. YOUNGBLOOD  
**Recording Information:** CLERK'S FILE NO. 2006070606  
(including county) (FORT BEND)

**Property (including any improvements) Subject to Deed of Trust:**  
LOT 1, IN BLOCK 1, OF FINAL PLAT OF PLANTATION CREEK, SECTION 2-A, A SUBDIVISION IN FORT  
BEND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED UNDER SLIDES(S)  
1140/B OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**After Recording Return To:**  
Barrett Daffin Frappier Turner and Engel, LLP.  
15000 Surveyor Blvd., Suite 100  
Addison, TX 75001  
Attn: NDEX Title Services, L.L.O.

ASQNDOT.rpt - (04/24/08) / Ver-05

**\*ASSG20080031402**

ASSG20080031402623

Page 1 of 2

ASSIGNMENT OF NOTE  
AND DEED OF TRUST

BDFTE No.: 20080031402623  
Investor/Loan Type: BQUITY

WHEREAS, on the date of assignment indicated above, for value received, Holder of the Note and Deed of Trust transferred and assigned each to Assignee, and warranted that the lien was valid against the property in the priority indicated; and

WHEREAS, the Holder of the Note and Deed of Trust and the Assignee desire to evidence and memorialize such transfer and assignment and warranty by this document;

NOW THEREFORE, for value received Holder of the Note and Deed of Trust does hereby evidence and memorialize its transfer and assignment of the Note and Deed of Trust to Assignee on the date of assignment indicated above.

When the context requires, singular nouns and pronouns include the plural.

NEW CENTURY MORTGAGE CORPORATION

BY: *Mark Bishop*  
ITS: MARK BISHOP, 1ST VICE PRESIDENT

CORPORATE ACKNOWLEDGMENT

State of TEXAS §  
County of COLLIN §

Before me, the undersigned Notary Public, on this day personally appeared MARK BISHOP, who is the 1ST VICE PRESIDENT of NEW CENTURY MORTGAGE CORPORATION, a corporation, on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this JUN - 4 2008 day of JUN - 4 2008, 2008.

My Commission Expires:

*Teresa L. Beese*  
Notary Public Signature

Teresa Beese

Printed Name of Notary Public



PREPARED BY AND AFTER RECORDING RETURN TO: BDFTE, L.L.P.  
15000 Surveyor Boulevard, Suite 100, Addison, Texas 75001

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,  
*Plaintiffs***

vs.

**COUNTRYWIDE HOME LOANS, INC,  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, N.A.,  
MORGAN STANLEY ABS CAPITAL I, INC.,  
DEUTSCHE BANK, AG,  
BARRETT DAFLIN FRAPPIER,  
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ANGELO MOZILO  
*Defendants*  
DEUTSCHE BANK TRUST COMPANY  
*Defendant and Counter-claimant***

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS’ FIRST AMENDED COMPLAINT**

**EXHIBIT L**





Filed  
11 August 15 A10:59  
Annie Rebecca Elliott  
District Clerk  
Fort Bend District

CAUSE NO. 07-CV-161177

RICHARD A. HAASE AND AUDREY L. HAASE,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
vs.	§	FORT BEND COUNTY, TEXAS
	§	
COUNTRYWIDE HOME LOANS, INC. et al.,	§	400th JUDICIAL DISTRICT
	§	
Defendants.	§	

Defendant's Notice of Acquisition and Merger

To all parties and attorneys of record:

Please take notice that on or about July 21, 2008, Bank of America, N.A. acquired Countrywide Home Loans, Inc.

In addition, please take notice that effective July 1, 2011, Bank of America, N.A., is the successor by merger to BAC Home Loans Servicing, LP, and is the successor by merger to Home Loan Services, Inc.

Respectfully submitted,  
McGlinchey Stafford, PLLC

By: /s/ Cody P. Peterson  
S. DAVID SMITH  
Texas Bar No. 18682550  
CODY P. PETERSON  
Texas Bar No. 24051188  
1001 McKinney, Suite 1500  
Houston, Texas 77002  
Telephone: (713) 520-1900  
Facsimile: (713) 520-1025

ATTORNEYS FOR COUNTRYWIDE  
HOME LOANS, INC.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and** §  
**AUDREY LOIS HAASE,** §  
*Plaintiffs* §

*vs.* §

**COUNTRYWIDE HOME LOANS, INC,** §  
**BANK OF AMERICA CORPORATION,** §  
**BANK OF AMERICA, N.A.,** §  
**MORGAN STANLEY ABS CAPITAL I, INC.,** §  
**DEUTSCHE BANK, AG,** §  
**BARRETT DAFLIN FRAPPIER,** §  
**TURNER AND ENGEL, L.L.P., and** §  
**ANGELO MOZILO** §  
*Defendants* §  
**DEUTSCHE BANK TRUST COMPANY** §  
*Defendant and Counter-claimant* §

**CIVIL ACTION NO. 4:12-cv-01538**

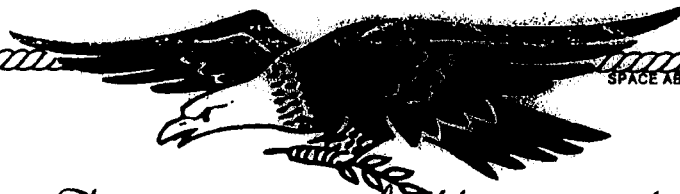
**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT M**

**HOMESTEAD RECORDING SERVICE**

Commercial Mall Drop #559  
815-A Brazos  
Austin, Texas 78701  
(800) 400-1693  
(512) 479-7960

Return to:  
Audrey L Haase, Richard A Haase  
4402 RINGROSE DR  
Missouri City, TX. 77459



SPACE ABOVE RESERVED FOR COUNTY  
RECORDER'S USE ONLY

*Designation of Homestead  
Fort Bend County*

I / We, Audrey L Haase, Richard A Haase  
the person / persons entitled to present possession of the subject property, being first duly  
sworn upon oath, deposes and says that:

1. I / We hereby designate as homestead the house and land, together with all  
improvements thereon and appurtenances thereto, commonly described as:

4402 RINGROSE DR MISSOURI CITY, TX. 77459

- The property is an urban homestead of not more than 1 acre.
- The property is an urban homestead situated within a tract of more than one acre. A designation of not more than one acre is attached as addendum "A."
- The property is a rural homestead containing acreage of: N/A
- The property is a rural homestead situated within a tract of more than one/two hundred acres.

A designation of not more than one/two hundred acres, is attached as addendum "A."

If located in more than one survey, see the attached addendum "B," designating acreage in each survey.

2. I / We hereby designate the property described above as my/our legal homestead, exempt from forced sale under the constitution and laws of the state of Texas.

3. I am/ We are resident(s) of the State of Texas, the above property is designated as the family homestead or as the homestead of a single adult not otherwise entitled to a homestead. The current record title holder of the property is:

Audrey L Haase, Richard A Haase

Dated: 9/18 <sup>20</sup>/<sub>18</sub> 00

Audrey L Haase  
AUDREY L HAASE  
Richard A Haase  
RICHARD A HAASE

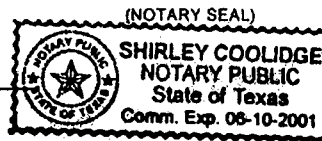
45 PER ORIGINAL

State of Texas, County of Fort Bend  
On this 18 day of September, in the year 2000, before me,  
the undersigned, a Notary Public in and for said State of Texas, personally appeared:  
Audrey L Haase, Richard A Haase  
personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) are subscribed to the within instrument,  
and acknowledged to me that he/she/they executed it.



WITNESS my hand and official seal:

Shirley Coolidge  
Notary Public in and for said State.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,  
*Plaintiffs***

**vs.**

**COUNTRYWIDE HOME LOANS, INC,  
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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT N**



**HOME LOANS**

OFFICE OF THE PRESIDENT  
400 COUNTRYWIDE WAY, MS SV-314  
SIMI VALLEY, CA 93065

(800) 669-6093  
(800) 658-9364 FAX

November 28, 2007



Richard Haase  
Audrey Haase  
4402 Ringrose Dr.  
Missouri City, TX 77459

Subject: Countrywide Home Loan # 73295735

Dear Mr. Haase,

Thank you for contacting our office with your correspondence dated November 9 and 19, 2007, addressed to Mr. Angelo Mozilo, Chief Executive Officer and Chairman of the Board for Countrywide Financial Corporation. Your concerns were forwarded to my attention for review and response.

In your letter, you expressed dissatisfaction with the service you received from Countrywide as we are no longer accepting your monthly payment of \$1,243.70. You stated that you received correspondence from Countrywide dated November 2, 2007, which reflected that your loan was in default. You stated that the information provided in the correspondence dated November 2, 2007, was inaccurate and your loan had never been in default. You provided a copy of the United States Postal Service delivery confirmation which reflected delivery of your October 2007 payment to Countrywide on October 30, 2007

My research of your concerns revealed that your preferred homeowners insurance policy with Texas Fair Plan and Associates expired, on April 6, 2007. As evidence of renewal was never received, Countrywide purchased a Lender Placed Policy ("LPP") for homeowners coverage on your behalf, resulting in a premium payment of \$1,241.00 being disbursed and an escrow account being established to maintain coverage on the property. This will confirm that Countrywide cancelled the policy we purchased on your behalf upon receipt of evidence of you preferred insurance with Cypress Texas Lloyds Insurance Company effective September 19, 2007, the date of you new policy. Further, Countrywide credited a pro-rated refund of \$678.00 to your escrow account on October 5, 2007, for the unused portion of the LPP premium. The October 5, 2007, credit resulted in a remaining negative escrow deficiency of \$563.00 which was spread over 12 months and added to you monthly payment, increasing it to \$1290.62 effective October 2007.

The amount received for the October 2007 payment was \$1,243.70 which was less than the new monthly payment amount. As such, Countrywide has updated your account to a status such that future payments for less than the amount due will not be accepted. Please note that in order to request a refund for the balance of the LPP premium, Countrywide will need to receive evidence of your preferred coverage for April 6, 2007, through September 19, 2007.



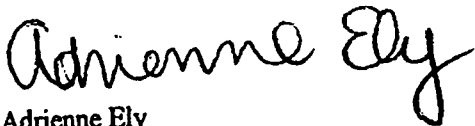
Letter to Richard Haase and Audrey Haase  
November 28, 2007  
Page Two (2)

Our records indicate that the statement dated November 2, 2007, was accurate at the time it was issued as your October 2007 payment was not applied to your account until November 5, 2007. This will confirm that on November 28, 2007, your October 2007 payment of \$1,243.70 which was received on October 30, 2007, was reversed and re-applied to your account effective the date of receipt. Further, your account is presently due for the November 2007 payment. Additionally, the December 2006 through October 2007 monthly payments were received outside the 15 day grace period resulting in a late charge in the amount of \$62.91 each month and a late charge balance of \$684.09 presently due on your account. I have enclosed a *Loan Transaction History Statement* for your review and confirmation.

Lastly, this will confirm that your monthly payments have been reported as current to the credit bureaus through October 2007. However, if the November 2007 payment is not received on or before the last business day of this month, it will reported as 30 days past due.

In the event you require further assistance, please feel free to contact me at (800) 601-2522, extension 8026. As always, for other questions about your loan, you may contact our Customer Service Department directly at (800) 669-6607. Thank you for this opportunity to be of service.

Sincerely,



Adrienne Ely  
Executive Research Specialist  
Office of the President

Enclosure

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISCTRICT OF TEXAS  
HOUSTON DIVISION**

**RICHARD A. HAASE and  
AUDREY LOIS HAASE,**  
*Plaintiffs*

vs.

**COUNTRYWIDE HOME LOANS, INC,  
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BANK OF AMERICA, N.A.,  
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*Defendant and Counter-claimant*

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**CIVIL ACTION NO. 4:12-cv-01538**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**EXHIBIT O**

**Texas Constitution**  
**Article XVI**  
**Section 50**

Sec. 50. HOMESTEAD; PROTECTION FROM FORCED SALE; MORTGAGES,  
TRUST DEEDS, AND LIENS.



(a) The homestead of a family, or of a single adult person,  
shall be, and is hereby protected from forced sale, for the  
payment of all debts except for:

- (6) an extension of credit that:
  - (A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;
  - (B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;
  - (C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;
  - (D) is secured by a lien that may be foreclosed upon only by a court order;
  - (E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;
  - (F) is not a form of open-end account that may be debited from time to time or under which credit



- may be extended from time to time unless the open-end account is a home equity line of credit;
- (G) is payable in advance without penalty or other charge;
  - (H) is not secured by any additional real or personal property other than the homestead;
  - (I) is not secured by homestead property that on the date of closing is designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;
  - (J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;
  - (K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;
  - (L) is scheduled to be repaid:
    - (i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or
    - (ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;
  - (M) is closed not before:

- (i) the 12th day after the later of the date that the owner of the homestead submits a loan application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;
  - (ii) one business day after the date that the owner of the homestead receives a copy of the loan application if not previously provided and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and
  - (iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:
    - (a) has been declared by the president of the United States or the governor as provided by law; and
    - (b) applies to the area where the homestead is located;
- (N) is closed only at the office of the lender, an attorney at law, or a title company;

- (O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;
- (P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:
  - (i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;
  - (ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;
  - (iii) a person licensed to make regulated loans, as provided by statute of this state;
  - (iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;
  - (v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or
  - (vi) a person regulated by this state as a mortgage broker; and
- (Q) is made on the condition that:
  - (i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;
  - (ii) the owner of the homestead not assign wages as security for the extension of credit;

- (iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;
- (iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;
- (v) at the time the extension of credit is made, the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;
- (vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;
- (vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;
- (viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;
- (ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

- (a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;
- (b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) or (I) of this subdivision, if applicable;
- (c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not

- subject to any other term or provision prohibited by this section;
- (d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;
  - (e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or
  - (f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and
- (xi) the lender or any holder of the note for the extension of credit shall forfeit all

principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;