UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: _____

MARIE CEDRE, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

RUSHMORE LOAN MANAGEMENT
SERVICES LLC, JAMES E. ALBERTELLI, P.A.
d/b/a ALAW, and CARLSBAD FUNDING
MORTGAGE TRUST,

Defendants.

_____/

CLASS ACTION COMPLAINT

Plaintiff, Marie Cedre, on behalf of herself and all others similarly situated, alleges violations of the Florida Consumer Collection Practices Act § 559.55 *et seq*. ("FCCPA") and the Fair Debt Collection Practices Act 15 U.S.C. 1692 *et seq*. ("FDCPA") against Defendants James E. Albertelli, P.A. ("Albertelli Law"), Rushmore Loan Management Services LLC ("Rushmore"), and Carlsbad Funding Mortgage Trust ("Carlsbad") (collectively "Defendants"). Plaintiff and the putative class also allege violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq*. ("RESPA") solely against Rushmore.

1. Rushmore is a mortgage loan servicer and Albertelli Law is a law firm who collects debts. Rushmore and Albertelli Law both charge and collect mortgage loans and fees for third party lenders, like Carlsbad. Albertelli Law, on behalf of Rushmore and Carlsbad, charged Plaintiff over $3,000 for mortgage fees and costs, "Estimates" necessary to reinstate her loan to

avoid foreclosure. “Estimated” fees are fees companies expect to incur in the event that certain conditions occur, but have *not* actually incurred. The Eleventh Circuit has denounced “estimated” fees associated with reinstatement of loans to be a violation of the FCCPA and FDCPA.

2. Albertelli Law conceals the true nature of the amount owed, by including ambiguous fees and costs in the amount homeowners must pay to reinstate their loan. Additionally, Albertelli Law routinely charges borrowers $100.00 for asking for a reinstatement quote, a plain violation of RESPA.

3. Carlsbad, Rushmore and Albertelli Law know that the “estimated” charges are illegal amounts that cannot be collected in a borrower’s loan reinstatement because each maintains records of the actual costs and fees associated with each borrower’s loan. Additionally, Carlsbad, Rushmore and Albertelli Law are sophisticated entities that know that the standard mortgage only allows them to recover fees and costs actually incurred. Further, the reinstatement quote received by Plaintiff in this action was communicated in a form letter that Albertelli Law sends routinely to mortgage borrowers on Rushmore’s and Carlsbad’s behalf.

4. Despite numerous trade publications, and an Eleventh Circuit decision forbidding lenders and loan servicers from collecting estimated fees, Carlsbad and Rushmore continue to collect estimated amounts based on Albertelli Law’s demands to their borrowers. Albertelli Law, Rushmore and Carlsbad profit from these illegal charges because the longer a loan remains in default, the more they can charge in default-related fees that must be paid by the borrower to reinstate the loan or are added to any subsequent modification principal.

5. By the conduct described herein, Defendants knowingly violated RESPA, FDCPA, and FCCPA, which caused Ms. Cedre and the putative class members' actual, concrete, and particularized injuries. Ms. Cedre's injuries, in particular, are detailed *infra*.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises out of RESPA and the FDCPA, federal statutes.

7. The Court has supplemental jurisdiction over the FCCPA claims under 28 U.S.C. § 1367 because the basis of the RESPA and FDCPA federal claims involve the same debt collection practices that form the basis of the FCCPA claims.

8. The Court has personal jurisdiction because Defendants conduct business throughout the United States, including Miami, Florida. Further, their voluntary contact with Plaintiff to charge and collect debts in Florida made it foreseeable that Defendants would be haled into a Florida court. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) because Defendants are deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced and because their contacts with this District are sufficient to subject them to personal jurisdiction.

PARTIES

10. Plaintiff Marie Cedre is a natural person who currently resides in Florida.

11. Defendant Rushmore is a foreign limited liability company with its principal place of business at 15480 Laguna Canyon Road, Suite 100, Irvine CA 92618. Rushmore is one of the nation's leading specialty loan servicing companies for mortgage lenders, like Carlsbad.

12. Defendant Albertelli Law is a professional association with a principal place of business at 208 North Laura Street, Suite 900, Jacksonville, Florida 32202 and is headquartered at 5404 Cypress Center Dr., Suite 300, Tampa, Florida 33609. Albertelli Law acts as a third party debt collector for financial institutions and servicers, like Carlsbad and Rushmore.

13. Defendant Carlsbad is a trust that acts as a mortgage lender for homeowners, like Ms. Cedre. Wilmington Savings Fund Society, d/b/a Christiana Trust is the current owner of Plaintiff's mortgage loan, not individually but as trustee for the Carlsbad Funding Mortgage Trust. Carlsbad has a registered address of c/o Wilmington Saving Fund Society, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

APPLICABLE LAW

RESPA

14. Rulemaking authority for RESPA was assigned to the Consumer Financial Protection Bureau ("CFPB") under the Dodd-Frank Act. Pub. L. No. 111-203, 124 Stat. 1376, §§ 1061, 1098 (July 21, 2010); 12 C.F.R. pt. 1024 (formerly 24 C.F.R. pt. 3500).

15. In 2013, the CFPB enacted new regulations implementing specific provisions under the Dodd-Frank Act for mortgage loan servicers including, but not limited to, requirements for responding to a borrower's written request for information concerning his or her mortgage loan. See 12 CFR § 1024.36 et seq.; Public Law 111-203, 124 Stat. 1376 (2010).

16. RESPA imposes certain obligations on mortgage servicers to provide information to borrowers regarding their mortgage loans. 12 U.S.C. § 2605. In 2013, the CFPB enacted new regulations implementing specific provisions under RESPA and the Dodd-Frank Act concerning mortgage loan servicers including, but not limited to, certain requirements for responding to a

written request for information concerning a borrower's mortgage loan. *See* 12 C.F.R. § 1024.36 *et seq.*; Public Law 111-203, 124 Stat. 1376 (2010).

17. RESPA provides a private cause of action against a mortgage servicer for violations of the provisions of § 2605, if brought within three (3) years of the violation. 12 U.S.C. § 2614.

18. RESPA defines "servicer" as the "person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan)." 12 U.S.C. § 2605(i)(3).

19. RESPA defines "servicing" as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." 12 U.S.C. § 2605(i)(3).

20. Pursuant to RESPA, a servicer of a federally related mortgage loan "shall not … fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter." 12 U.S.C. § 2605(k)(1)(E).

21. RESPA's mortgage servicing regulations require a servicer to provide borrowers with required disclosures that are in writing and "clear and conspicuous." 12 C.F.R. § 1024.32(a)(1).

22. RESPA also requires a servicer to maintain policies and procedures that are reasonable designed to ensure that the servicer can provide a borrower with "accurate and timely disclosures . . . as required by this subpart or other applicable law" and "[p]rovide a borrower

with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

23. Additionally, RESPA provides that "a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request." 12 C.F.R. § 1024.36(g).

24. RESPA and its implementing regulations should be broadly construed to effectuate their remedial purpose. *Friedman v. Maspeth Federal Loan and Sav. Ass'n*, 30 F. Supp. 3d 183, 187 (E.D.N.Y. 2014) ("The Act was designed to throw the federal judiciary's protective cloak over residential-occupant owners of real property and their kin to protect against abuse by banks during loan closings and subsequent related events. The Act should be broadly applied to accomplish its prophylactic purposes by exercising federal subject matter jurisdiction.").

FDCPA

25. The purpose of the FDCPA is "to eliminate abusive debt collection practices . . . and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692.

26. The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," which includes the false representation of "the character, amount, or legal status of any debt." *Id.* § 1692e.

27. The FDCPA also prohibits debt collectors from "unfair or unconscionable means to collect or attempt to collect any debt," including "the collection of any amount unless such

amount is expressly authorized by the agreement creating the debt or permitted by law." *Id.* § 1692f.

28. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

29. The FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 1692a(3).

30. The FDCPA defines "debt collector" as "any person who uses . . . any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debt owed . . . or asserted to be owed or due another." *Id.* § 1692a(6).

31. The FDCPA defines communication as "conveying of information regarding a debt directly or indirectly to any person through any medium." *Id.* § 1692a(2).

32. The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that] are primarily for personal, family, or household purposes." *Id.* § 1692a(5).

FCCPA

33. The FCCPA prohibits debt collectors from engaging in certain abusive practices in the collection of consumer debts. *See* generally Fla. Stat. § 559.72.

34. The FCCPA's goal is to "provide the consumer with the most protection possible." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing Fla. Stat. § 559.552).

35. Specifically, the FCCPA states that no person shall "claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

36. The FCCPA creates a private right of action under Fla. Stat. § 559.77.

37. The FCCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 559.55(8).

38. The FCCPA mandates that "no person" shall engage in certain practices in collecting consumer debt. *Id.* § 559.72. This language includes all allegedly unlawful attempts at collecting consumer claims. *Williams v. Streeps Music Co.*, 333 So. 2d 65, 67 (Fla. Dist. Ct. App. 1976).

39. The FCCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." *Id.* § 559.55(6).

FACTUAL ALLEGATIONS

40. On or around May 28, 2004, Ms. Cedre purchased a home in Lake Mary, Florida through a loan from Coldwell Banker Mortgage, secured by a mortgage on the property. Copies of Plaintiff's Mortgage Agreement and Mortgage Note are attached as Exhibit "A" and Exhibit "B" respectively.

41. On or about April 24, 2008, Coldwell Banker Mortgage assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to JPMorgan Chase Bank, N.A.

42. On or around December 1, 2010, Ms. Cedre allegedly defaulted on her loan after previously making continuous payments.

43. On or around December 15, 2014, JPMorgan Chase Bank, N.A. assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to Federal National Mortgage Association. *See* Exhibit "C."

44. Sometime in or around April 2016, Federal National Mortgage Association assigned the Mortgage Agreement and Mortgage Note to Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust. *See* Exhibit "D."

45. Effective May, 1, 2016, Seterus, Inc. assigned its rights as the servicer of Ms. Cedre's loan to Rushmore Loan Management Services LLC. *See* Exhibit "E."

46. Therefore, Rushmore became the servicer of the loan while Ms. Cedre's loan was already alleged to be in default. Carlsbad also became the owner of the loan while it was already alleged to be in default.

47. On or about November 18, 2015, Albertelli Law, on behalf of Federal National Mortgage Association and Seterus, filed a complaint in the Eighteenth Judicial Circuit for Seminole County to initiate foreclosure.

48. Plaintiff hired Smothers Law Firm ("Smothers") to defend her in the foreclosure.

49. On or about May 24, 2016, Rushmore, on behalf of Carlsbad and Wilmington, sent a "Notice of Assignment, Sale or Transfer of Servicing" letter to Ms. Cedre through Smothers. *See* Exhibit "F."

50. The letter advised:

> Pursuant to the Federal Fair Debt Collections Practices Act, if you do not notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume the debt is valid.
>
> If you notify us in writing within 30 days that the debt or any portion thereof is disputed, or if you request the name and address of the original creditor, we will obtain verification of the debt or judgment against you and mail a copy to you and provide you with the name and address of the original creditor.
>
> You should consider this letter as coming from a Debt Collector as we sometimes act as a Debt Collector and any information received will be used for that purpose. However, if you are in Bankruptcy or received a

> Bankruptcy Discharge of this debt, this letter is not an attempt to collect a debt and does not constitute a notice of personal liability with respect to the debt.

Id.

51. The letter identified the current creditor as Wilmington Savings Fund Society ("Wilmington") as trustee for Carlsbad and provided an itemization of the total amount due and owing on the mortgage as $153,796.65. *Id.*

52. The total amount included a "Summary of Total Debt Composition" breakdown that included the current principal balance of $105,883.13; current unpaid accrued interest of $35,191.85; late charges of $156.56; and "Other Charges" of 12,565.11. *Id.*

53. Because Rushmore provided no explanation or itemization concerning the $12,565.11 in "Other Charges," Smothers sent a written request for information, including sufficient information to identify Plaintiff's mortgage loan, to Rushmore in a letter dated June 6, 2016, asking for a specific breakdown of charges. *See* Exhibit "G."

54. On or about June 13, 2016, Rushmore responded and confirmed it received Smothers' written request and advised it would respond within (30) days. *See* Exhibit "H."

55. On or about June 16, 2016, Albertelli Law, on behalf of Rushmore and Carlsbad, sent Smothers a "Reinstatement Letter," to be received on behalf of Ms. Cedre. See Exhibit "I."

56. Immediately below the heading, the letter advised:

> **WE MAY BE CONSIDERED A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE.**

Id. (emphasis in original).

57. The letter stated: "This letter responds to your request for a Reinstatement of the above referenced loan. As of the date of this letter the amount required to cure your delinquency is $66,464.21**." *Id.*

58. The letter advised that if Ms. Cedre was not prepared to pay the full reinstatement amount that day, "then the amount owed may increase between the date of this letter and the date you reinstate the loan … because of additional interest and late charges as well as legal fees and costs that are incurred as additional steps in the foreclosure proceed." *Id.*

59. In the letter, the total amount Defendants required Ms. Cedre to pay to reinstate her loan was $66,464.21. *Id.*

60. This amount included $3,100 in estimated costs and fees labeled "Attorney Fees Co. Hearing Dismiss." for $250.00, "Attorney Fees & Costs Estimate" for $2,825.00," and "Co. Clerk LP Release Estimate" for $25.00.

61. These "estimated" amounts were based on projected amounts due in the event Ms. Cedre did not actually pay before a certain future date and certain events relating to foreclosure occurred.

62. This amount also included other ambiguous amounts that appeared to be estimates and not actually incurred, including an "Acquired Corporate Advance" charge of $7,548.30 and a "Dismissal Prep Fee" of $125.00.

63. The total amount due also included a charge of $100.00 for "Reinstatement letter good through 6.20.16."

64. Nowhere in either letter do any of the Defendants state that they will return any of the estimated amounts if paid by Ms. Cedre but not incurred by Rushmore, Albertelli Law, or Carlsbad.

65. None of the Defendants provided any information or explanation concerning the $7,548.30 charge ambiguously labeled "Acquired Corporate Advance."

66. Rushmore, as the loan servicer, acted as a debt collector by attempting to collect amounts on behalf of the principal, Carlsbad through its trustee, Wilmington.

67. Albertelli Law acted as a third party debt collector for Rushmore by attempting to collect amounts on behalf of Rushmore and Rushmore's principal, Carlsbad through its trustee, Wilmington.

68. Rushmore is a sophisticated mortgage loan servicer, Albertelli Law is a sophisticated law firm specializing in the mortgage and loan industry, and Carlsbad and Wilmington are sophisticated lenders. In a highly publicized and remarkably similar case issued by the Eleventh Circuit over half of a year prior to the date of Defendants' reinstatement of loan letter at issue, the Eleventh Circuit reversed the district court's grant of summary judgment on the FDCPA and FCCPA claims, opining, among other things, that the defendants were not permitted to charge "estimated" fees that had not yet incurred in their reinstatement of loan letter. *See Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015) ("[The defendants] violated the FDCPA and FCCPA by charging [the plaintiffs] estimated attorney's fees that they had not agreed to pay in the security agreement.").

69. Over those six months, the media and trade publications consistently warned the industry against including estimated fees in reinstatement of loan letters, particularly those in the Eleventh Circuit where the *Prescott* case is binding precedent. Some of those industry warnings are attached as Exhibit "J" and include:

a. *11th Circuit Finds Lender Violated FDCPA And Florida Law, Reverses Ruling*, Lexis Legal News (Dec. 7, 2015) ("The appeals court found that Seterus violated the FDCPA and the FCCPA by charging Prescott estimated attorney fees and refused to affirm the District Court's decision.").

b. *Eleventh Circuit Issues Stern Warning Against Inclusion of Estimated Fees and Costs in Reinstatement Quotes*, USFN (Jan. 4, 2016) ("The Prescott decision should cause any lender, loan servicer, or law firm that provides reinstatement quotes and/or figures to borrowers to examine its practices and procedures in order to determine whether or not information being provided to borrowers in reinstatement situations could potentially constitute a FDCPA violation (or a violation of state consumer protection law, such as the FCCPA). The Eleventh Circuit has sent a clear message to the financial services industry . . . .").

c. *Recent Eleventh Circuit Reversal Sparks Upward Trend in Estimated-Fee FDCPA Litigation*, Lenderlaw Watch (Feb. 9, 2016) ("Concluding that the payoff quote was a demand for payment, [the Eleventh Circuit] held that the inclusion of fees that had not yet been incurred (even if expressly designated as such) was a demand for compensation not permitted by the plaintiff's mortgage agreement. . . . [L]oan servicers should consider the impact of *Prescott* on their communications with borrowers.").

d. *News Alert: FDCPA Violations for Estimated Fees and Costs in Reinstatement and Payoff Quotes*, Potestivo & Associates (April 15, 2016) ("The recent Appellate Court decision in Prescott, v. Seterus, Inc. . . . has gained nationwide notice. Although the decision is only binding on the Eleventh Circuit, it has opened the door and neatly laid the ground work for other jurisdictions to give similar rulings in the future. Consequently, it is important for servicers and attorneys to be informed and proactive regarding their decisions when it comes to estimated fees and costs in reinstatement and payoff quotes.").

e. *A Violation of the FDCPA – Estimating Attorney's Fees in Reinstatement Figures*, Legal League 100 Quarterly (Q2 2016) ("The federal courts have recently held that lenders may only charge for fees and expenses already incurred.").

70. Additionally, these demands were a direct breach of each of the following contractual provisions permitting only recovery of amounts actually incurred: (1) Paragraph 9 of the Mortgage Agreement permitted Defendants to recover "amounts disbursed" in protecting Carlsbad's and Wilmington's interest and rights in the Mortgage Agreement; (2) Paragraph 14 of the Mortgage Agreement prohibited Defendants from charging estimated fees, stating "[l]ender may not charge fees that are expressly prohibited in this Security Instrument or by Applicable Law"; (3) Paragraph 22 of the Mortgage Agreement permitted Defendants to collect "expenses incurred in pursuing" certain actions under the Paragraph which governed default, notice of

default, actions to cure default, and reinstatement of loans; and (4) Paragraph 7 of the Mortgage Note permitted Defendants the "right to be paid back . . . for all of its costs and expenses in enforcing" the Note, which included "reasonable attorneys' fees."

71. Therefore, Carlsbad, and its agents, also knew demanding payment of fees not yet incurred was not permitted because it violated Carlsbad's very mortgage agreement and note.

72. Additionally, the CFPB has received over 600 complaints concerning Rushmore's improper loan servicing practices, many involving similar complaints regarding requests for debt not actually owed. https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp. Rushmore's knowledge can be imputed to Carlsbad through agency theory. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624 (Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

73. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information. Ms. Cedre's injuries, in particular, are detailed *infra*.

74. Additionally, Rushmore violated RESPA by charging a $100.00 fee to respond to a written request for information.

75. Rushmore, Albertelli Law, and Carlsbad have a pattern and practice of demanding illegal fees because Ms. Cedre received a form letter from Albertelli Law that contains routinely generated line-items that included unlawful estimated amounts.

76. On or about August 29, 2016 the Plaintiff, through counsel, sent cure letters to Rushmore, Albertelli Law, and Carlsbad. *See* Exhibit "K."

77. After a reasonable amount of time, Plaintiff filed this lawsuit because Rushmore, Albertelli Law, and Carlsbad failed to cure its violations of state and federal law.

ADDITIONAL FACTUAL ALLEGATIONS REGARDING MS. CEDRE'S INJURY CAUSED BY DEFENDANTS' FCCPA, FDUTPA, AND RESPA VIOLATIONS

78. Shortly after Albertelli Law was hired to initiate Ms. Cedre's foreclosure in November 2015, Ms. Cedre entered into a fee agreement with Scott Smothers of Smothers Law Firm, P.A.

79. Under this agreement, Ms. Cedre agreed to pay $300 per hour for Mr. Smothers's legal representation in connection with her mortgage loan payments and avoiding foreclosure.

80. During the course of this representation, Ms. Cedre has incurred attorney's fees directly flowing from the illegal charges demanded in Defendants' reinstatement of loan letter to her, including, *inter alia*, an aggregate of approximately two hours of consultation between Ms. Cedre and Mr. Smothers concerning the reinstatement letter and confusion over the "estimated" amounts and ambiguous charges contained in the June 16, 2016 letter.

81. Since receiving the June 2016 reinstatement of loan letter, Ms. Cedre has also incurred other expenses including, *inter alia*, missing approximately 8 hours of work at $14 per hour at her job to personally investigate the reinstatement of loan letter and to meet with her attorney in connection with the foreclosure action, including discussing the reinstatement of loan charges at the heart of this action.

82. Demanding the full reinstatement of loan amount containing the illegal charges also damaged her credit score and stymied her ability to refinance her loan after she unsuccessfully attempted to obtain a loan at the inflated amount.

83. Ms. Cedre now seeks to recover these additional damages she would not have incurred but for Defendants's FCCPA, FDUTPA and RESPA violations stemming from the gross "estimated" and ambiguous fees she could not pay and did not understand.

CLASS ACTION ALLEGATIONS

Florida Class 1

84. Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Rushmore's RESPA violations (the "Florida Class 1"), subject to modification after discovery and case development:

> All Florida residents to whom Rushmore responded to a written request for information that included inaccurate, unclear or inconspicuous fees, including but not limited to "Acquired Corporate Advance," "Dismissal Prep Fee," "Other Charges," or any fee or cost labelled "Estimate," during the applicable statute of limitations.

Florida Class 2

85. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Rushmore's RESPA violations (the "Florida Class 2"), subject to modification after discovery and case development:

> All Florida residents to whom Rushmore, or a third party acting on Rushmore's behalf, responded to a written request for information and charged, collected, or attempted to collect a fee as a charge for responding to the written request for information.

Florida Class 3

86. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by the Defendants' FCCPA violations ("Florida Class 3"), subject to modification after discovery and case development:

> All Florida residents to whom Defendants charged, collected, or attempted to collect an "Estimate" reinstatement of loan amount during the applicable statute of limitations.

Florida Class 4

87. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Defendants' FDCPA violations ("Florida Class 4"), subject to modification after discovery and case development:

> All persons in Florida to whom Defendants, charged, collected, or attempted to collect estimated reinstatement of loan amounts during the applicable statute of limitations.

88. Class members are identifiable through Defendants' records and payment databases.

89. Excluded from the Class are Defendants; any entities in which it has a controlling interest; its agents and employees; and any Judge to whom this action is assigned and any member of such Judge's staff and immediate family.

90. Plaintiff proposes that she serve as class representative for the Class.

91. Plaintiff and the Class have all been harmed by the actions of Defendants

92. Numerosity is satisfied. There are likely thousands of class members. Individual joinder of these persons is impracticable.

93. There are questions of law and fact common to Plaintiff and to the Class, including, but not limited to:

a. Whether Rushmore violated RESPA by failing to provide accurate, clear, and conspicuous information in response to a written request for information;

b. Whether Rushmore violated RESPA by charging, collecting, or attempting to collect a fee for responding to a written request for information;

c. Whether Defendants violated the FCCPA by charging monies not due;

d. Whether Defendants violated the FDCPA by charging monies not due;

e. Whether Plaintiff and class members are entitled to actual or statutory damages as a result of Defendants' actions;

f. Whether Plaintiff and class members are entitled to attorney's fees and costs; and

g. Whether Defendants should be enjoined from engaging in such conduct in the future.

89. Plaintiff's claims are typical of the claims of the Classes.

90. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Classes, she will fairly and adequately protect the interests of the Classes, and she is represented by counsel skilled and experienced in class actions.

91. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of this controversy.

92. The prosecution of separate claims by individual class members would create a risk of inconsistent or varying adjudications concerning individual class members.

COUNT I AS TO RUSHMORE'S VIOLATION OF THE
REAL ESTATE SETTLEMENT PROCEDURES ACT 12 U.S.C. § 2605(k)
(Florida Class 1)

93. Rushmore is a "servicer" because it was responsible for "servicing" Plaintiff's mortgage loan and was scheduled to receive periodic payments from Plaintiff pursuant to the

terms of her mortgage loan and make payments of principal and interest from those amounts under the terms of the loan. 12 U.S.C. § 2605(i)(2)–(3).

94. Plaintiff's loan is a "federally related mortgage loan" because it is secured by a first or subordinate lien, a residential real property designed for the occupancy of one to four families, and was made in whole or in part by Codwell Banker Mortgage, then JPMorgan Chase Bank, then Federal National Mortgage Association, and now Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust—lenders with deposits or accounts which were insured by the FDIC.

95. As a servicer of a federally related mortgage loan, Rushmore must comply with any regulation implementing the provisions of RESPA. *See* 12 U.S.C. § 2605(k)(1)(E).

96. Rushmore is required to maintain policies and procedures that are reasonably designed to ensure that it can "[p]rovide accurate and timely disclosures to a borrower as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 CFR 1024.38(a)(b)(1)(i),(iii)

97. On June 6, 2016, Ms. Cedre, through counsel, sent a written "request for information" to Rushmore concerning her mortgage loan and the amount necessary for reinstatement of her loan. 12 C.F.R. § 1024.36.

98. Rushmore, through Albertelli, responded to Plaintiff's written request with information that contained "Estimates," "Acquired Corporate Advance" fees, and "Other Fees" without identifying why and for what services the fees were charged. *See* 12 C.F.R. § 1024.36(d)(1)(i); *see* 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

99. Rushmore violated § 2605(k)(1)(E) when it failed to provide information to Plaintiff in an accurate, clear and conspicuous manner, by charging fees not yet incurred and demanding Plaintiff pay these fees to reinstate her loan. 12 C.F.R. § 1024.32(a)(1); 12 U.S.C. § 2605(k)(1)(E). Rushmore has a pattern and practice of using form letters, like the letter at issue, that contain these inaccurate, unclear, and inconspicuous responses.

100. Rushmore's violation of RESPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees and costs in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information.

101. As a result of Rushmore's pattern and practice of violating 12 C.F.R. § 1024.36(d)(1)(i); 12 CFR 1024.38(a), (b)(1)(i), and (b)(1)(iii), Plaintiff and class members are entitled to actual damages, plus statutory damages under 12 U.S.C. § 2605(f), together with reasonable attorney's fees and costs.

COUNT II AS TO RUSHMORE'S VIOLATION OF
THE REAL ESTATE SETTLEMENT PROCEDURES ACT 12 U.S.C. § 2605(k)
(Florida Class 2)

102. Rushmore is a "servicer" because it was responsible for "servicing" Plaintiff's mortgage loan and was scheduled to receive periodic payments from Plaintiff pursuant to the terms of her mortgage loan and make payments of principal and interest from those amounts under the terms of the loan. 12 U.S.C. § 2605(i)(2)–(3).

103. Plaintiff's loan is a "federally related mortgage loan" because it is secured by a first or subordinate lien, a residential real property designed for the occupancy of one to four families, and was made in whole or in part by Codwell Banker Mortgage, then JPMorgan Chase Bank, then Federal National Mortgage Association, and now Wilmington Savings Fund Society

as trustee for Carlsbad Funding Mortgage Trust—lenders with deposits or accounts which were insured by the FDIC.

104. As a servicer of a federally related mortgage loan, Rushmore must comply with any regulation implementing the provisions of RESPA. *See* 12 U.S.C. § 2605(k)(1)(E).

105. Rushmore is prohibited from charging borrowers a fee "as a condition of responding to an information request." 12 C.F.R. 1024.36(g).

106. Rushmore violated § 2605(k)(1)(E), through Albertelli, when it charged and attempted to collect a $100.00 fee from Plaintiff for responding to her written request for information.

107. Rushmore has a pattern and practice of charging a fee to borrowers, like Plaintiff, for responding to a written request for information.

108. Rushmore's violation of RESPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees and costs in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information. She also suffered the imminent risk of having to pay an illegal amount.

109. As a result of Rushmore's pattern and practice of violating 12 C.F.R. § 1024.36(g), Plaintiff and class members are entitled to actual damages, plus statutory damages under 12 U.S.C. § 2605(f), together with reasonable attorney's fees and costs.

COUNT III AS TO RUSHMORE'S VIOLATION OF
THE FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72(9)
(Florida Class 3)

110. Plaintiff is a "consumer" as defined by Fla. Stat. § 559.55(8) when she purchased her home by mortgage.

111. Rushmore is a "person" as defined under the FCCPA.

112. Rushmore directly, and indirectly through Albertelli, attempted to collect an illegitimate debt and enforced, claimed, and asserted a known non-existent legal right to a debt as defined by Fla. Stat. § 559.55(6) when Albertelli Law, on behalf of Rushmore, attempted to collect fees not owed. *Id.* § 559.72(9).

113. Rushmore, as a sophisticated defendant mortgage loan servicer regularly engaged in the mortgage loan servicing industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Rushmore, through Albertelli Law, sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

114. Rushmore also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit J.

115. Rushmore was also put on notice of its requirements to only charge fees incurred through the many complaints to the CFPB by consumers that Rushmore charged fees not owed, discussed *supra*.

116. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Rushmore frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in

connection with defending the foreclosure action and responding to the inaccurate and unclear information. She also suffered the imminent risk of having to pay an illegal amount not owed.

117. As a result of Rushmore's violation of the FCCPA, Plaintiff and class members are entitled to actual damages, plus statutory damages under § 559.77(2) of the FCCPA, together with reasonable attorney's fees and costs.

COUNT IV AS TO ALBERTELLI LAW'S VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72(9)

118. Plaintiff is a "consumer" as defined by Fla. Stat. § 559.55(8) when she purchased her home by mortgage.

119. Albertelli Law is a "person" as defined under the FCCPA.

120. Albertelli Law, as a sophisticated defendant law firm regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

121. Albertelli Law also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit J. Albertelli Law is primarily based in Florida.

122. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Albertelli Law frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in

connection with defending the foreclosure action and responding to the inaccurate and unclear information. She also suffered the imminent risk of having to pay an illegal amount not owed.

123. As a result of Albertelli Law's violation of the FCCPA, Plaintiff and class members are entitled to actual damages, plus statutory damages under § 559.77(2) of the FCCPA, together with reasonable attorney's fees and costs.

COUNT V AS TO CARLSBAD'S VIOLATION OF
THE FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72(9)

124. Plaintiff is a "consumer" as defined by Fla. Stat. § 559.55(8) when she purchased her home by mortgage.

125. Carlsbad is a "person" as defined under the FCCPA.

126. Carlsbad, through its trustee Wilmington, as a sophisticated mortgage lender regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letters are even more egregious than in *Prescott*.

127. Carlsbad, through its trustee Wilmington, also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit J.

128. Rushmore's and Albertelli Law's knowledge can also be imputed to Carlsbad through principles of agency. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624

(Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

129. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Carlsbad frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information. She also suffered the imminent risk of having to pay an illegal amount not owed.

130. As a result of Carlsbad's' violation of the FCCPA, Plaintiff and class members are entitled to actual damages, plus statutory damages under § 559.77(2) of the FCCPA, together with reasonable attorney's fees and costs.

COUNT VI AS TO RUSHMORE'S VIOLATION OF
THE FAIR DEBT COLLECTION PRACTICES ACT §§ 1692e, 1692f
(Florida Class 4)

131. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) when she purchased a home in Florida by mortgage.

132. Rushmore is a "debt collector" as defined by 15 U.S.C. § 1692a(6) because it regularly attempts to collect, and collects, amounts owed or asserted to be owed or due another. Rushmore's May 24, 2016 letter on behalf of Carlsbad to Ms. Cedre stated: "You should consider this letter as coming from a Debt Collector . . . and any information received will be used for that purpose." The mortgage loan exception to the definition of "debt collector" does not apply because Plaintiff defaulted on her loan on or around December 1, 2010 and the loan was assigned to Wilmington as trustee for Carlsbad sometime in or around April 2016, and because the servicing rights to Ms. Cedre's loan was assigned to Rushmore, effective May 1, 2016.

133. Rushmore engaged in indirect "communications" with Plaintiff as defined by 15 U.S.C. § 1692a(2) when Albertelli Law sent the May 24, 2016 and June 16, 2016 debt collection letter to Plaintiff demanding money purportedly due for reinstatement of her loan to avoid foreclosure.

134. Rushmore violated 15 U.S.C. § 1692f when it charged estimated fees not owed and not expressly authorized by the agreement creating the debt.

135. Rushmore violated 15 U.S.C. § 1692e(2)(A) when it misrepresented the amount, character, and status of the amount to reinstate Plaintiff's mortgage.

136. Rushmore's violation of the FDCPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees, costs, and other incidental costs, in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information. She also suffered the imminent risk of having to pay an illegal amount.

137. As a result of Rushmore's violation of 15 U.S.C. § 1692e and15 U.S.C. § 1692f, Plaintiff and class members are entitled to actual damages, plus statutory damages under 15 U.S.C. § 1692(k), together with reasonable attorney's fees and costs.

COUNT VII AS TO ALBERTELLI LAW'S VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §§ 1692f, 1692e

138. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) when she purchased a home in Florida by mortgage.

139. Albertelli Law is a "debt collector" as defined by 15 U.S.C. § 1692a(6) because it regularly attempts to collect, and collects, amounts owed or asserted to be owed or due another.

140. Albertelli Law's June 16, 2016 letter on behalf of Rushmore and Carlsbad to Ms. Cedre stated: "We may be considered a debt collector. This is an attempt to collect a debt. Any information will be used for that purpose."

141. Albertelli Law engaged in direct "communications" with Plaintiff as defined by 15 U.S.C. § 1692a(2) when it sent the May 24, 2016 and June 16, 2016 debt collection letter to Plaintiff demanding money purportedly due for reinstatement of her loan to avoid foreclosure.

142. Albertelli Law violated 15 U.S.C. § 1692f when it charged estimated fees not owed and not expressly authorized by the agreement creating the debt.

143. Albertelli Law violated 15 U.S.C. § 1692e(2)(A) when it misrepresented the amount, character, and status of the amount to reinstate Plaintiff's mortgage.

144. Albertelli Law's violation of the FDCPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees, costs, and other incidental costs, in having to follow up on Albertelli Law's letter, which contained unclear, inaccurate, and inconspicuous information. She also suffered the imminent risk of having to pay an illegal amount.

145. As a result of Albertelli Law's violation of 15 U.S.C. § 1692e and15 U.S.C. § 1692f, Plaintiff and class members are entitled to actual damages, plus statutory damages under 15 U.S.C. § 1692(k), together with reasonable attorney's fees and costs.

JURY DEMAND AND RESERVATION OF PUNITIVE DAMAGES

146. Plaintiff is entitled to and respectfully demands a trial by jury on all issues so triable.

147. Plaintiff reserves the right to amend his Complaint and add a claim for punitive damages.

RELIEF REQUESTED

WHEREFORE. Plaintiff, himself and on behalf of the Classes, respectfully requests this Court to enter judgment against Defendants for all of the following:

a. That Plaintiff and all class members be awarded actual damages, including but not limited to forgiveness of all amounts not owed;

b. That Plaintiff and all class members be awarded statutory damages for each of Plaintiff's claims;

c. That Plaintiff and all class members be awarded costs and attorney's fees;

d. That the Court enter a judgment permanently enjoining Defendants from charging and/or collecting debt in violation of the FDCPA, FCCPA, and RESPA;

e. That, should the Court permit Defendants to continue charging and/or collecting debt, it enter a judgment requiring them to adopt measures to ensure FDCPA, RESPA, and FCCPA compliance, and that the Court retain jurisdiction for a period of six months to ensure that Defendants comply with those measures;

f. That the Court enter a judgment awarding any other injunctive relief necessary to ensure Defendants' compliance with the FDCPA, RESPA, and the FCCPA;

g. That the Court enter an order that Defendants and their agents, or anyone acting on their behalf, are immediately restrained from altering, deleting or destroying any documents or records that could be used to identify class members;

h. That the Court certify Plaintiff's claims and all other persons similarly situated as class action claims under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure; and

i. Such other and further relief as the Court may deem just and proper.

Dated: December 16, 2016

Respectfully Submitted,

/s/ *James L. Kauffman*

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North Palm Beach, Florida 33408
Telephone: (561) 692-6013
Facsimile: (305) 574-0132

Counsel for Plaintiff and the Putative Class

EXHIBIT A

Return To:

Coldwell Banker Mortgage
2001 Bishops Gate Blvd.
Mount Laurel, NJ 08054

This document was prepared by:
Sherry Ammons, Coldwell Banker Mortgage
3000 Leadenhall Road Mount Laurel, NJ 08054

DOCUMENT REDACTED

FIRST AMERICAN TITLE INSURANCE CO.
870 SUN DRIVE # 1072
LAKE MARY, FLORIDA 32746

[Space Above This Line For Recording Data]

[redacted]

MORTGAGE

Loan #: [redacted]

DEFINITIONS

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

(A) **"Security Instrument"** means this document, which is dated May 28, 2004 together with all Riders to this document.
(B) **"Borrower"** is Marie T Cedre, AN UNMARRIED WOMAN

MARYANNE MORSE, CLERK OF CIRCUIT COURT
SEMINOLE COUNTY
BK 05336 PGS 0394-0416
CLERK'S # 2004088149
RECORDED 06/07/2004 08:00:58 AM.
MTG DOC TAX 455.00
INTANG TAX 260.00
RECORDING FEES 197.00
RECORDED BY S O'Kelley

Borrower is the mortgagor under this Security Instrument.
(C) **"Lender"** is Coldwell Banker Mortgage

Lender is a Corporation
organized and existing under the laws of New Jersey

11-01293

Original

Lender's address is 3000 Leadenhall Road Mount Laurel, NJ 08054

Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated May 28, 2004
The Note states that Borrower owes Lender One Hundred Thirty Thousand Dollars and Zero Cents Dollars
(U.S. $130,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than June 1st, 2034
(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(G) "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]:

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

(H) "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.
(I) "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.
(J) "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.
(K) "Escrow Items" means those items that are described in Section 3.
(L) "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.
(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(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.

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, the following described property located in the COUNTY [Type of Recording Jurisdiction] of SEMINOLE [Name of Recording Jurisdiction]:

Lot 73, of Greenwood Lakes Unit 8, according to the plat thereof as Recorded in Plat Book 25, Pages 46 to 48, of the Public Records of Seminole County, Florida.

Parcel ID Number: 113 HERON BAY LAKE MARY ("Property Address"): which currently has the address of [Street] [City], Florida 32746 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment

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can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest

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shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initials:

any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

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

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the

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purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

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

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

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

Holly L. Allison

Marie T Cedre (Seal) -Borrower

113 HERON BAY LAKE MARY, FL 32746 (Address)

Rebe A. Rockaert

(Seal) -Borrower

(Address)

(Seal) -Borrower

(Seal) -Borrower

(Address)

(Address)

(Seal) -Borrower

(Seal) -Borrower

(Address)

(Address)

(Seal) -Borrower

(Seal) -Borrower

(Address)

(Address)

STATE OF FLORIDA, SEMINOLE County ss:

The foregoing instrument was acknowledged before me this May 28th, 2004 by , Marie T Cedre

who is personally known to me or who has produced a driver licnese as identification.

Notary Public Holly L. Allison

HOLLY L. ALLISON
Notary Public, State of Florida
My Comm. Exp. Aug. 28, 2007
No. DD241946

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 28th day of May, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Coldwell Banker Mortgage (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

113 HERON BAY LAKE MARY, FL 32746

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in the COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"). The Property is a part of a planned unit development known as HERON COVE (the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

[Name of Planned Unit Development]

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Initials:

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Marie T Cedre (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

ADJUSTABLE RATE RIDER

(1 Year Treasury Index - Rate Caps)

Loan #: [redacted]

THIS ADJUSTABLE RATE RIDER is made this 28th day of May, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Coldwell Banker Mortgage

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

113 HERON BAY LAKE MARY, FL 32746

[Property Address]

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

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.043%. The Note provides for changes in the interest rate and the monthly payments as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of June, 2014, and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and Seventy-Five / Hundredths percentage points (2.7500%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.043% or less than 2.750%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than two percentage points (2.0%) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.043%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest In Borrower. During the initial fixed rate period: If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed 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.

After the first interest rate change date: If all or any part of the property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

If Lender exercises 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 delivered or mailed 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.

By SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Marie T Cedre (Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

(Seal) - Borrower

DDF [redacted]

(sln)
Cendant [redacted]

DOCUMENT REDACTED

AFFIDAVIT OF LOST NOTE

I, Tracy Peters being duly sworn, do hereby state under oath that:

1. I, as Assistant Vice President of Cendant Mortgage Corporation formerly known as PHH Mortgage Services Corporation (the Lender) , am authorized to make this Affidavit on behalf of the Lender.

2. The Lender is the owner of the following described mortgage note (the "Note"):

   Date: 05/28/2004
   Loan Number: [redacted]
   Borrower (s): MARIE T CEDRE
   Original Payee: Cendant Mortgage Corporation
   Original Amount: $130000
   Rate of Interest (Initial Rate if ARM): 6.04300000000000001%

   Address of Mtgd Property: 113 Heron Bay LAKE MARY FL 32746

3. The Lender is the lawful owner of the Note, and the Lender has not canceled, altered, assigned or hypothecated the Note.

4. The Note was not located after a thorough and diligent search which consisted of checking with Asset Securitization Department (which holds the Original Notes for Cendant)., reviewing both the documentation file and the closing files , searching our Payoff area, and calling the Closing Attorney.

5. A copy of the signed note is attached hereto.

6. This Affidavit is intended to be relied on by Federal National Mortgage Association, its successors and assigns. Executed this 07/22/2004 on behalf of the Lender by:

Cendant Mortgage Corporation
*formerly doing business as PHH Mortgage Services Corporation

BY: Tracy Peters
Tracy Peters
Asst. Vice President

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss:

On the 07/22/2004 before me appeared Tracy Peters to me personally known, who being duly sworn did say that he/she is the Assistant Vice President of Cendant Mortgage Corporation and that said Affidavit of Lost Note was signed and sealed in behalf of such Corporation and said Tract Peters acknowledged this instrument to be the free act and deed of such Corporation.
Witness my hand and Notarial Seal this 07/22/2004.

My commission expires: 02/01/2005

CENDANT #[redacted]

Notary: Katherine Rainey

KATHERINE RAINEY
NOTARY PUBLIC STATE OF NEW JERSEY
My Commission Exptres February 1, 2006

11-01293

Loan Number: [redacted]

DOCUMENT REDACTED

ADJUSTABLE RATE NOTE
(1 Year Treasury Index - Rate Caps)

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

May 28, 2004	LAKE MARY	Florida
(Date)	(City)	(State)

113 HERON BAY LAKE MARY, FL 32746
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 130,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Coldwell Banker Mortgage . I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 6.043 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on first day of each month beginning on July 1st, 2004 . 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. My monthly payments will be applied to interest before principal. If, on June 1st, 2034 , 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 3000 Leadenhall Road Mount Laurel, NJ 08054 or at a different place if required by the Note Holder.

(B) Amount of Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $783.02 . This amount may change.

(C) Monthly Payment Changes

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

(D) Withholding

If I am a nonresident client, I understand that all payments due hereunder shall be paid without reduction for taxes, deductions or withholding of any nature. If such tax, deduction or withholding is required by any law to be made from any payment to the Note Holder, I shall continue to pay this Note in accordance with the terms hereof, such that the Note Holder will receive such amount as it would have received had no such tax, deduction or withholding been required.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of June, 2014 and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index".

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

Loan Number: [redacted]

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and Seventy-Five / Hundredths percentage points (2.7500 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.043 % or less than 2.750 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than Two percentage points (2.000 %) from the rate of interest I have been paying for the preceding twelve months. My interest rate will never be greater than 11.043 %, which is called the maximum rate.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so.

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

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay the 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 delivered or mailed to me.

(D) No Waiver By Note Holder

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

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

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

8. GIVING OF NOTICES

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

Loan Numbe[redacted]

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, and a Self Pledge Agreement for Securities Account, if applicable, 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:

Transfer of the Property or a Beneficial Interest in Borrower. During the initial fixed rate period: If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed 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.

After the first interest rate change date: If all or any part of the property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

If Lender exercises 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 delivered or mailed 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.

12. OUR COPY. We/I acknowledge receipt of a signed copy of this Note.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS NOTE BEFORE SIGNING

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

Marie T Cedre [Seal] - Borrower

WITNESS

WITNESS

[Seal] - Borrower

[Seal] - Borrower

[Seal] - Borrower

(Sign Original Only)

Original

SIGNATURE/NAME AFFIDAVIT

DATE: May 28, 2004

LOAN #: [redacted]

BORROWER: Marie T Cedre

THIS IS TO CERTIFY THAT MY LEGAL SIGNATURE IS AS WRITTEN AND TYPED BELOW.
(This signature must exactly match signatures on the Note and Mortgage or Deed of Trust.)

Marie T Cedre _____
(Print or Type Name)

_____
Signature

(If applicable, complete the following.)

I AM ALSO KNOWN AS:

Marie Cedre _____ X _____
(Print or Type Name) Signature

_____ _____
(Print or Type Name) Signature

_____ _____
(Print or Type Name) Signature

_____ _____
(Print or Type Name) Signature

and that She are one

and the same person.

State/Commonwealth of FL
County/Parish of SEMINOLE

Subscribed and sworn (affirmed) before me
this 28th day of May , 2004

_____
Notary Public in and for
the State/Commonwealth of FL
County/Parish of SEMINOLE
My Commission Expires:

Debra A Brookover
My Commission DD150083
Expires September 15, 2006

VMP-304 (9103).01 VMP Mortgage Solutions (800)521-7291 3/01

5/28/2004 11:09 AM

[redacted]

[redacted]

MARYANNE MORSE, CLERK OF CIRCUIT COURT
SEMINOLE COUNTY
BK 07027 Pg 1271; (1pg)
CLERK'S # 2008079533
RECORDED 07/18/2008 02:38:35 PM
RECORDING FEES 10.00
RECORDED BY B Harford

Prepared by: Stewart Lender Services

Recording Requested By/After Recording Return To:

Ursula LeBlanc

P O Box 35369

Houston, TX 77235-5903

Job Number: 2322007001

Pool:

Project: a

Loan Number: [redacted]

Other Loan #:

sb #:

ASSIGNMENT OF MORTGAGE

STATE OF Florida
COUNTY OF Seminole

KNOW ALL MEN BY THESE PRESENTS:

That Coldwell Banker Mortgage (ASSIGNOR), acting herein by and through a duly authorized officer, the owner and holder of one certain promissory note executed by MARIE T CEDRE (Borrower(s)) secured by a MORTGAGE of even date therewith from Borrower(s) for the benefit of the holder of the said note, which was recorded on the lot(s), or parcel(s) of land described therein situated in the County of Seminole, State of Florida:

Recording Ref: Recorded on 08/07/2004, Instrument/Document No. 2004088149, Book 05338, Page No. 0394Date of Mortgage 06/28/2004

For and in consideration of the sum of Ten and No/100 dollars ($10.00), and other good valuable and sufficient consideration paid, the receipt of which is hereby acknowledged, does hereby transfer and assign, set over and deliver unto J.P. MORGAN CHASE BANK, NA (ASSIGNEE) all beneficial interest in and to title to said MORTGAGE, together with the note and all other liens against said property securing the payment thereof, and all title held by the undersigned in and to said land:

TO HAVE AND TO HOLD unto said (ASSIGNEE) said above described MORTGAGE and note, together with all and singular the liens, rights, equities, title and estate in said real estate therein described securing the payment thereof, or otherwise.

Executed this the 24th day of April, 2008.

Coldwell Banker Mortgage

By: _____
James Kucherka
Vice President

THE STATE OF Texas

COUNTY OF Harris

On this the 24th day of April, 2008, before me, Gayle Craine, a Notary Public, appeared James Kucherka to me personally known, who being by me duly sworn, did say that (s)he is the Vice President of Coldwell Banker Mortgage, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said James Kucherka acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

GAYLE CRAINE
NOTARY PUBLIC
STATE OF TEXAS
COMM. EXPIRES 03-31-2010

_____
Gayle Craine

Assignee's Address:
194 Wood Avenue South
Iselin, NJ 08830

Assignor's Address:
Mail Stop LGL
Attention: General Counsel
3000 Leadenhall Road
Mt. Laurel, NJ 08054

[redacted]

[redacted]

EXHIBIT B

DDF [redacted]

(sln)
Cendant [redacted]

DOCUMENT REDACTED

AFFIDAVIT OF LOST NOTE

I, Tracy Peters being duly sworn, do hereby state under oath that:

1. I, as Assistant Vice President of Cendant Mortgage Corporation formerly known as PHH Mortgage Services Corporation (the Lender) , am authorized to make this Affidavit on behalf of the Lender.

2. The Lender is the owner of the following described mortgage note (the "Note"):

   Date: 05/28/2004
   Loan Number: [redacted]
   Borrower (s): MARIE T CEDRE
   Original Payee: Cendant Mortgage Corporation
   Original Amount: $130000
   Rate of Interest (Initial Rate if ARM): 6.043000000000001%

   Address of Mtgd Property: 113 Heron Bay LAKE MARY FL 32746

3. The Lender is the lawful owner of the Note, and the Lender has not canceled, altered, assigned or hypothecated the Note.

4. The Note was not located after a thorough and diligent search which consisted of checking with Asset Securitization Department (which holds the Original Notes for Cendant)., reviewing both the documentation file and the closing files , searching our Payoff area, and calling the Closing Attorney.

5. A copy of the signed note is attached hereto.

6. This Affidavit is intended to be relied on by Federal National Mortgage Association, its successors and assigns. Executed this 07/22/2004 on behalf of the Lender by:

Cendant Mortgage Corporation
*formerly doing business as PHH Mortgage Services Corporation

BY: Tracy Peters
Tracy Peters
Asst. Vice President

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss:

On the 07/22/2004 before me appeared Tracy Peters to me personally known, who being duly sworn did say that he/she is the Assistant Vice President of Cendant Mortgage Corporation and that said Affidavit of Lost Note was signed and sealed in behalf of such Corporation and said Tract Peters acknowledged this instrument to be the free act and deed of such Corporation.
Witness my hand and Notarial Seal this 07/22/2004.

My commission expires: 02/01/2005

CENDANT #[redacted]

Notary:
Katherine Rainey

KATHERINE RAINEY
NOTARY PUBLIC STATE OF NEW JERSEY
My Commission Expires February 1, 2005

11-01293

SIGNATURE/NAME AFFIDAVIT

DATE: May 28, 2004

LOAN #: [redacted]

BORROWER: Marie T Cedre

THIS IS TO CERTIFY THAT MY LEGAL SIGNATURE IS AS WRITTEN AND TYPED BELOW.
(This signature must exactly match signatures on the Note and Mortgage or Deed of Trust.)

Marie T Cedre _____
(Print or Type Name) Signature

(If applicable, complete the following.)

I AM ALSO KNOWN AS:

Marie Cedre _____ X _____
(Print or Type Name) Signature

_____ _____
(Print or Type Name) Signature

_____ _____
(Print or Type Name) Signature

_____ _____
(Print or Type Name) Signature

and that She are one and the same person.

State/Commonwealth of FL
County/Parish of SEMINOLE

Subscribed and sworn (affirmed) before me this 28th day of May, 2004

_____
Notary Public in and for
the State/Commonwealth of FL
County/Parish of SEMINOLE
My Commission Expires:

Debra A Brockover
My Commission DD150083
Expires September 15, 2005

VMP Mortgage Solutions (800)521-7291

VMP-304 (9103).01 3/01

[redacted]

Loan Number [redacted]

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, and a Self Pledge Agreement for Securities Account, if applicable, 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:

> **Transfer of the Property or a Beneficial Interest in Borrower.** During the initial fixed rate period: If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.
>
> 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 delivered or mailed 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.
>
> After the first interest rate change date: If all or any part of the property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.
>
> To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.
>
> If Lender exercises 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 delivered or mailed 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.

12. OUR COPY. We/I acknowledge receipt of a signed copy of this Note.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS NOTE BEFORE SIGNING

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

____________________ WITNESS	____________________ (Seal) Marie T Cadre - Borrower
____________________ WITNESS	____________________ (Seal) - Borrower
	____________________ (Seal) - Borrower
	____________________ (Seal) - Borrower

(Sign Original Only)

Original

[illegible]
[illegible]

Loan Number [redacted]

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and Seventy-Five / Hundredths percentage points (2.7500 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.043 % or less than 2.750 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than Two percentage points (2.000 %) from the rate of interest I have been paying for the preceding twelve months. My interest rate will never be greater than 11.043 %, which is called the maximum rate.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so.

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

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay the 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 delivered or mailed to me.

(D) No Waiver By Note Holder

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

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

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

8. GIVING OF NOTICES

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

Original

Loan Number: [redacted]

DOCUMENT REDACTED

ADJUSTABLE RATE NOTE
(1 Year Treasury Index - Rate Caps)

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

May 28, 2004	LAKE MARY	Florida
(Date)	(City)	(State)

113 HERON BAY LAKE MARY, FL 32746
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 130,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Coldwell Banker Mortgage . I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 6.043 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on first day of each month beginning on July 1st, 2004 . 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. My monthly payments will be applied to interest before principal. If, on June 1st, 2034 , 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 3000 Leadenhall Road Mount Laurel, NJ 08054 or at a different place if required by the Note Holder.

(B) Amount of Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $783.02 . This amount may change.

(C) Monthly Payment Changes

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

(D) Withholding

If I am a nonresident client, I understand that all payments due hereunder shall be paid without reduction for taxes, deductions or withholding of any nature. If such tax, deduction or withholding is required by any law to be made from any payment to the Note Holder, I shall continue to pay this Note in accordance with the terms hereof, such that the Note Holder will receive such amount as it would have received had no such tax, deduction or withholding been required.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of June, 2014 and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index".

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

EXHIBIT C

MARYANNE MORSE, SEMINOLE COUNTY
CLERK OF CIRCUIT COURT & COMPTROLLER
BK 08401 Pgs 0504 - 505; (2pgs)
CLERK'S # 2015007088
RECORDED 01/23/2015 10:21:53 AM
RECORDING FEES 18.50
RECORDED BY T Smith

After recording please return to:
PEIRSONPATTERSON, LLP
ATTN: RECORDING DEPT.
13750 OMEGA ROAD
DALLAS, TX 75244-4505

This document prepared by:
PEIRSONPATTERSON, LLP
WILLIAM H. PEIRSON
13750 OMEGA ROAD
DALLAS, TX 75244-4505

Tax Parcel ID No.: N/A

[Space Above This Line For Recording Data]

Loan No.: [redacted]
FNMA Loan No [redacted]

FLORIDA ASSIGNMENT OF MORTGAGE

For Value Received, JPMorgan Chase Bank, National Association, the undersigned holder of a Mortgage (herein "Assignor") does hereby grant, sell, assign, transfer and convey, unto FEDERAL NATIONAL MORTGAGE ASSOCIATION, ITS SUCCESSORS OR ASSIGNS, (herein "Assignee"), whose address is 14221 Dallas Parkway, Suite 100, Dallas, TX 75254, a certain Mortgage dated May 28, 2004 and recorded on June 7, 2004, made and executed by MARIE T CEDRE to and in favor of COLDWELL BANKER MORTGAGE, upon the following described property situated in SEMINOLE County, State of Florida:
Property Address: 113 HERON BAY, LAKE MARY, FL 32746

LOT 73, OF GREENWOOD LAKES UNIT 8, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 25, PAGES 46 TO 48, OF THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA.

such Mortgage having been given to secure payment of One Hundred Thirty Thousand and 00/100ths ($130,000.00), which Mortgage is of record in Book, Volume or Liber No. 05336, at Page 0394-0416 (or as No. 2004 88149), in the Recorder's Office of SEMINOLE County, State of Florida.

TO HAVE AND TO HOLD, the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.

Contact Federal National Mortgage Association for this instrument c/o Seterus, Inc., 14523 SW Millikan Way, #200, Beaverton, OR 97005, telephone #1-866-570-5277, which is responsible for receiving payments.

[redacted]

EXHIBIT D

Rushmore Loan Management Services
15480 Laguna Canyon Drive, Suite 100
Irvine, CA 92618

April 22, 2016

1129

MARIE T CEDRE
. . .
.
175 E MAIN ST STE 111
APOPKA, FL 32703-3213

NOTICE OF SALE OF OWNERSHIP OF MORTGAGE LOAN

Under federal law, borrowers are required to be notified in writing whenever ownership of a mortgage loan secured by their principal dwelling is sold, transferred or assigned (collectively, "sold") to a new creditor. This Notice is to inform you that your prior creditor has sold your loan (described below) to us, the new creditor identified below.

****NOTE: The new creditor identified below is not the servicer of your loan. The servicer (identified below) acts on behalf of the new creditor to handle the ongoing administration of your loan, including the collection of mortgage payments. Please continue to send your mortgage payments as directed by the servicer, and NOT to the new creditor. Payments sent to the new creditor instead of the servicer may result in late charges on your loan and your account becoming past due. Neither the new creditor nor the servicer is responsible for late charges or other consequences of any misdirected payment.**

SHOULD YOU HAVE ANY QUESTIONS REGARDING YOUR LOAN, PLEASE CONTACT THE SERVICER USING THE CONTACT INFORMATION SET FORTH BELOW. The servicer is authorized to handle routine inquiries and requests regarding your loan and, if necessary, to inform the new creditor of your request and communicate to you any decision with respect to such request. **

Please note that the sale of your loan to us may also result in a change of servicer. If this occurs, you will receive a separate notice, required under federal law, providing information regarding the new servicer.

LOAN INFORMATION

Date of Loan: 05/28/2004
Original Amount of Loan: $130,000.00
Date Your Loan was Sold to the New Creditor: 3/30/2016
Loan Number: 7600349599
Address of Mortgaged Property: 113 HERON BAY CIR
LAKE MARY, FL 32746

SERVICER INFORMATION

Name: **Rushmore Loan Management Services LLC**
Mailing Address: **15480 Laguna Canyon Road, Suite 100**
Irvine, CA 92618
Telephone Number (Toll free): **(888) 504-6700**
Website: **rushmorelm.com**

Scope of responsibilities: The servicer is responsible for all ongoing administration of your loan, including receipt and processing of payments, resolution of payment related issues, and response to any other inquiries you may have regarding your loan.

NEW CREDITOR INFORMATION

Please be advised that all questions involving the administration of your loan (including questions related to payments, deferrals, modifications or foreclosures) should be directed to the servicer at the number above and/or the agent (if any) of the new creditor identified below, and not to the new creditor. The new creditor does not have access to information relating to the administration of your loan, and will not be able to answer most loan-related questions.

Name:	WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING MORTGAGE TRUST
Mailing Address **(not for payments):**	500 Delaware Ave. 11th Floor Wilmington, DE 19801
Telephone Number:	302-888-7448

Scope of responsibilities: As new creditor, the above-named company holds legal title to your loan. The company is authorized to receive legal notices and to exercise (or cause an agent on its behalf to exercise) certain rights of ownership with respect to your loan.

AGENT INFORMATION (If the new creditor has granted an agent other than the servicer authority to act on its behalf, contact information for such agent will appear below):

Name:
Mailing Address:

Telephone Number:

Scope of responsibilities: Acts as agent for new creditor.

Partial Payments

Your lender

_____ May accept payments that are less than the full amount due (partial payments) and apply them to your loan

__X__ May hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan

_____ Does not accept any partial payments

If this loan is sold, your new lender may have a different policy.

The transfer of the lien associated with your loan is currently recorded, or in the future may be recorded, in the public records of the local County Recorder's office for the county where your property is located. Ownership of your loan may also be recorded on the registry of the Mortgage Electronic Registrations System at 1818 Library Street, Suite 300, Reston, VA 20190.

Our rights and obligations as new creditor, and consequently our authority to respond favorably to your requests or inquiries may be limited by the terms of one or more contracts related to the servicing of your loan.

EXHIBIT E

seterus™
PO Box 1077; Hartford, CT 06143-1077

Business Hours (Pacific Time)
Monday-Thursday 5 a.m. to 8 p.m.
Friday 5 a.m. to 6 p.m.

Physical Address
14523 SW Millikan Way; Suite 200; Beaverton, OR 97005

Payments
PO Box 11790; Newark, NJ 07101-4790

Correspondence
PO Box 1077; Hartford, CT 06143-1077

Phone: 866.570.5277
Fax: 866.578.5277
www.seterus.com

L026N

CEDRE, MARIE T
c/o SCOTT SMOTHERS, SMOTHERS LAW FIRM PA
175 E MAIN ST STE 111
APOPKA, FL 32703

April 12, 2016
Loan number: 28253623
Serviced by Seterus, Inc.

NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective May 1, 2016. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

We, Seterus, Inc., are now collecting your payments. Seterus will stop accepting payments received from you on May 1, 2016.

Rushmore Loan Management Services LLC (Rushmore) will collect your payments going forward. Your new servicer will start accepting payments received from you on May 1, 2016. **Send all payments due on or after May 1, 2016 to Rushmore at this address: Attn: Cashiering P.O. Box 514707, Los Angeles, CA 90051-4707.**

Partial Payments
Your lender (including your current servicer, Seterus)

- ☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☒ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- ☐ does not accept any partial payments.

If this loan is sold, your new lender/new servicer may have a different policy.

If you have any questions for either your present servicer, Seterus, Inc. or your new servicer Rushmore, about your mortgage loan or this transfer, please contact them using the information below between 6:00 am to 7:00 pm, (PT), Monday through Thursday, or 6:00 am and 6:00 pm (PT) Friday:

Current Servicer:	New Servicer:
Seterus, Inc.	Rushmore
Customer Service	Customer Service
866.570.5277	888.616.5400

CEDRE, MARIE T
April 12, 2016
Loan number: 28253623

PO Box 1077; Hartford, CT 06143-1077 1755 Wittington Place, Ste. 400, Dallas, TX 75234

Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way: The optional insurance will be cancelled as of the effective date of the transfer of the loan servicing. Please note that this cancellation of optional insurance does not impact your existing hazard or homeowner's insurance coverage.

Please contact the insurance carrier directly to continue coverage.

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

If you are currently participating in or being considered for a loss mitigation solution (including the Home Affordable Modification Program, forbearance agreement, short sale, refinance, or deed-in-lieu of foreclosure), we will forward your documentation to your new servicer. As of the effective date of the transfer of the loan servicing, you should send your payments to your new servicer (e.g., trial period plan payments under the Home Affordable Modification Program) until such time as the new servicer provides you with additional direction. Your new servicer should notify you of its decision regarding qualification. Please be advised that this transfer may extend the time needed for a final decision.

Sincerely,

Seterus, Inc.

EXHIBIT F

RUSHMORE LOAN MANAGEMENT SERVICES
P.O. Box 55004
Irvine, CA 92619-2708
888.669.5600 toll free
949.341.0777 local
949.341.2200 fax
www.rushmorelm.com

Marie T Cedre 1979
. . .
.
175 E Main St Ste 111
Apopka, FL 32703-3213

Your New Loan Number: **7600349599**
Property Address: 113 HERON BAY CIR
LAKE MARY, FL 32746

Dear Mortgagor:

Welcome to Rushmore Loan Management Services. Our intention is to meet your loan servicing requirements with efficient, prompt and courteous service. Below you will find important information regarding how to contact us, make payments and set-up your online account. We encourage you to visit our website at www.rushmorelm.com and create a log-in after receiving this letter.

Rushmore will be your new servicer. The business addresses for your new servicer are as follows:

Correspondence Address
Rushmore Loan Management Services LLC
15480 Laguna Canyon Rd., Suite 100
Irvine, CA 92618

Payment Address
Rushmore Loan Management Services LLC
P.O. Box 514707
Los Angeles, CA 90051-4707

If you have any questions related to the transfer of servicing to Rushmore, call our Customer Service Department at 888-504-6700, Monday through Thursday, 6 a.m. to 7 p.m., Friday 6 a.m. to 6 p.m. Pacific. Please have your new loan number shown above available when calling.

Rushmore offers several convenient ways to make your monthly payment. You can make your payment by phone at 888-504-6700 or through our website at www.rushmorelm.com. Click on the upper banner called **ACCOUNT LOGIN** and you can make a Payment or sign-up for **Auto Draft Payments.** Rushmore highly recommends this option, as it helps prevent you being late on any of your very important mortgage payments. For a small fee you can also utilize Western Union Quick Collect **(Code City: Rushmore Code State: CA).**

Rushmore Loan Management Services LLC requests that you make every effort to remit your monthly payments on the contractual due date shown on the note and your payment coupon. Late charges may be assessed on payments not made on time.

If you wish to speak with a Housing Counseling Agency certified by the U.S. Department of Housing and Urban Development (HUD), please call the following toll-free number: (800) 569-4287.

Please review the attached statement of your debt. Please keep this letter with your records as an informational reference. If we can be of assistance in any way, please don't hesitate to contact us.

Sincerely,
Rushmore Loan Management Services LLC
Loan Servicing Department

LEGAL NOTIFICATION: *Rushmore Loan Management Services LLC may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.*

RUSHMORE LOAN MANAGEMENT SERVICES
P.O. Box 55004
Irvine, CA 92619-2708
888.669.5600 toll free
949.341.0777 local
949.341.2200 fax
www.rushmorelm.com

Marie T Cedre 1979
. . .
.
175 E Main St Ste 111
Apopka, FL 32703-3213

Your New Loan Number: **7600349599**
Property Address: 113 HERON BAY CIR
LAKE MARY, FL 32746

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING

Dear Mortgagor(s):

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, has been assigned, sold or transferred from Seterus, Inc. to Rushmore Loan Management Services LLC (Rushmore), effective 05/01/2016. The transfer of the servicing of your mortgage 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 previous servicer send you this notice at least 15 days before the effective date of transfer. As your new servicer, we must also send you this notice no later than 15 days after this effective date or at closing.

Your previous servicer was Seterus, Inc.. If you have any questions regarding the transfer of servicing from your previous servicer, call Seterus, Inc. Customer Service at 866-570-5277 between Monday ☐ Thursday, 5:00 am to 8:00 pm PT, Friday, 5:00 am to 6:00 pm PT This is a toll free number.

Rushmore will be your new servicer. The business addresses for your new servicer are as follows:

Correspondence Address
Rushmore Loan Management Services LLC
15480 Laguna Canyon Rd., Suite 100
Irvine, CA 92618

Payment Address
Rushmore Loan Management Services LLC
P.O. Box 514707
Los Angeles, CA 90051-4707

If you have any questions related to the transfer of servicing to Rushmore, call our Customer Service Department at 888-504-6700 between Monday through Thursday, 6 a.m. to 7 p.m., Friday 6 a.m. to 6 p.m. Pacific. Please have your new loan number shown above available when calling.

Rushmore offers several convenient ways to make your monthly payment. You can make your payment by phone at 888-504-6700 or through our website at **www.rushmorelm.com**. Click on the upper banner called **ACCOUNT LOGIN** and you can make a Payment or sign-up for **Auto Draft Payments**. Rushmore highly recommends this option, as it helps prevent you being late on any of your very important mortgage payments.

The date that your present servicer Seterus, Inc. will stop accepting your payments is 04/30/2016. The date that Rushmore will begin accepting payments from you is 05/01/2016. Send all payments due on or after that due date to your new servicer. A billing statement from Rushmore will be mailed to you within 15 to 30 days.

If you are currently making your mortgage payment through a third- party entity (e.g., government allotment, biweekly, or bill service), please take the necessary steps to advise them of your new loan number shown above and change the payee to your new servicer. In the event of a payment change, it is your responsibility to notify the third-party of the new payment amount and new address to send the payments.

Important note: If you entered into an approved loss mitigation plan with you prior loan servicer, or if you had a loss mitigation application in process with your prior servicer, please call Rushmore immediately, toll-free, at 888-504-7300, to confirm that the loss mitigation plan information, or application and documentation, were properly transferred to Rushmore.

You should also be aware of the following information, which is referred to in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 USC §2605).

During the 60-day period following the effective date of transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new servicer as late, and a late charge fee may not be assessed.

Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

Rushmore does not collect and remit any type of optional insurance to your insurance company. Any premiums for any such optional policy that was being collected and remitted by your prior servicer will be discontinued by Rushmore as of the effective date of the transfer of servicing. If you wish to retain such optional insurance, you should contact your optional product service provider about your ability to continue such insurance and how to make premium payments.

Notice of Error Resolution & Information Request Procedures
The following outlines the Error Resolution and Information Request Procedures for your mortgage account at Rushmore Loan Management Services LLC. (RLMS). Please keep this document for your records.

If you think an error has occurred on your mortgage account or if you need specific information about the servicing of your loan, please write us at:

Rushmore Loan Management Services LLC
Compliance Department
P.O. Box 52262
Irvine, California 92619

All written requests for information or notices of error should contain the following information:
1. Your name
2. Account number
3. Property Address
4. Description of the error and explanation as to why you believe it is an error OR a request for specific information regarding the servicing of your loan
5. Current contact information so we may follow up with you

All written requests for specific information will be handled within 30 days of receipt. We will determine whether an error occurred within 30 days after receiving your notice of error and will correct any error promptly (Notices of error on payoff statements will be handled within 7 days). If additional time is needed to investigate your complaint or request, we may take up to 45 days but we will notify you of the extension within the original 30 days. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

Please keep this document for your records.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

Should you have any questions, please contact our Customer Service Department at toll-free 888-504-6700, Monday through Thursday, 6 a.m. to 7 p.m., Friday 6 a.m. to 6 p.m. Pacific.

Sincerely,

Rushmore Loan Management Services LLC

RUSHMORE LOAN MANAGEMENT SERVICES
P.O. Box 55004
Irvine, CA 92619-2708
888.669.5600 toll free
949.341.0777 local
949.341.2200 fax
www.rushmorelm.com

May 24, 2016

Marie T Cedre
. . .
.
175 E Main St Ste 111
Apopka, FL 32703-3213

Subject: 7600349599

Dear Borrower(s)

According to Rushmore Loan Management Services LLC records, including information that we have received from your prior servicer, the amount of your debt as of 05/01/2016 is provided below.

Current Creditor: WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING MORTGAGE TRUST
Current Monthly Payment Amount: $917.37
Payment Due Date: 12/01/2010

Summary of Total Debt Composition:

Loan Balance, Interest, Escrow and Other Debt:

Current Principal Balance:	$105,883.13
Current Unpaid Accrued Interest	$35191.85
Escrow Balance:	$0.00
Late Charges:	$156.56
NSF Charges:	$0.00
Other Charges:	$12,565.11
Partial Payments Not Yet Applied:	$0.00
Total Amount of Your Debt:	**$153,796.65**

The Total Amount of Your Debt is subject to change as a result of interest and other accruing charges (such as Late Charges, Legal Fees and Costs, and Other Charges). Please call Rushmore Loan Management Services LLC at 888-504-6700 for a current payoff at the time of any payment.

Pursuant to the Federal Fair Debt Collections Practices Act, if you do not notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume the debt is valid.

If you notify us in writing within 30 days that the debt or any portion thereof is disputed, or if you request the name and address of the original creditor, we will obtain verification of the debt or judgment against you and mail a copy to you and provide you with the name and address of the original creditor.

You should consider this letter as coming from a Debt Collector as we sometimes act as a Debt Collector and any information received will be used for that purpose. However, if you are in Bankruptcy or received a Bankruptcy Discharge of this debt, this letter is not an attempt to collect a debt and does not constitute a notice of personal liability with respect to the debt.

Your dispute letter should be sent to:
Rushmore Loan Management Services LLC
15480 Laguna Canyon Road, Suite 100
Irvine, California 92618

If you have any questions regarding this letter, please call us at Toll Free 888-504-6700, Monday through Thursday, 6 a.m. to 7 p.m., Friday 6 a.m. to 6 p.m. Pacific.

Sincerely,
Rushmore Loan Management Service

EXHIBIT G

Smothers
LAW FIRM, P.A.

June 6, 2016

Via Facsimile – 949-341-2242 949-341-2200

Rushmore Loan Management Services LLC

Re: Request for Information
Borrower: Marie T. Cedre
Loan Number: 7600349599

Dear Sir/Madam:

My name is Scott A. Smothers. My firm represents your borrower, Marie T. Cedre, and I am helping her work out a solution regarding her home located at 113 Heron Bay Circle, Lake Mary, FL 32746. I have reviewed your welcome packet for my client, and I am requesting additional information regarding the Summary of Total Debt Composition in the letter dated May 24, 2016. **Please provide a specific breakdown of the $12,565.11 in Other Charges.** If you wish to discuss this matter I am generally available Monday through Friday, 9:00 A.M. to 5:00 P.M. by phone at 407-814-3900 and faxed at 407-331-9621.

Sincerely,

Scott A. Smothers
scott@smotherslawfirm.com

SAS.shs

EXHIBIT H

RUSHMORE LOAN MANAGEMENT SERVICES™

15480 Laguna Canyon Road
Suite 100
Irvine, CA 92618
888.699.5600 toll free
949.341.0777 local
949.341.2200 fax
www.rushmorelm.com

June 13, 2016 By FedEx

SLT Smothers Law Firm, P.A.
175 East Main Street, Suite 111
Apopka, FL 32703

RE: Mortgagor(s) – Marie T. Cedre
Property Address – 113 Heron Bay Circle, Lake Mary, FL 32746
Loan Number – 7600349599

Dear Attorney Scott Smothers:

Rushmore Loan Management Services LLC (Rushmore) is in receipt of your correspondence; dated June 6, 2016 received by our office June 6, 2016, regarding the mortgage loan account referenced above. We appreciate you bringing this matter to our attention, as we take all inquiries from our customers very seriously.

Your correspondence is currently under review. We realize the urgency of your inquiry and we appreciate your patience. We will have a response issued to you within 30 business days.

Furthermore, our records indicate Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Carlsbad Funding Mortgage Trust is the current owner of the loan. The address of the owner of the loan is as follows:

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for
Carlsbad Funding Mortgage Trust
500 Delaware Avenue, 11th Floor,
Wilmington, Delaware 19801

At Rushmore, customer concerns are important to us. Should you have any general questions other than those referenced in the correspondence, please contact:

Customer Service Department
Monday through Thursday, 6:00 a.m. to 7:00 p.m. Pacific / Friday, 6:00 a.m. to 6:00 p.m. Pacific
Toll-free number: 1.888.504.6700

Sincerely,

Mariah Henderson
Compliance
Rushmore Loan Management Services LLC

EQUAL HOUSING

EXHIBIT I

A | LAW

5404 Cypress Center Drive, Suite 300, Tampa, FL 30369
Phone: 813.221.4743 | Fax: 813.221.9171 | alaw.net

June 16, 2016
Reinstatement Letter

Recipient: **Stephanie Spears**

Property Address: **113 Heron Bay Cir, Lake Mary, FL 32746**

Mailing Address: **Legal Assistant to Scott A. Smothers, Esq.**
Smothers Law Firm, P.A.
175 East Main Street
Suite 111
Apopka, FL 32703

VIA FACSIMILE/EMAIL: **407-331-9621 /stephanie@smotherslawfirm.com**

WE MAY BE CONSIDERED A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

HOWEVER, IF YOU ARE IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY, THIS LETTER IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

Re: **Full Reinstatement**
Loan Number: 7600349599
Property Address: 113 Heron Bay Cir, Lake Mary, FL 32746
Our File: 15-174582
Date Last Payment Due: December 1, 2010

Dear Stephanie Spears:

This letter responds to your request for a Reinstatement of the above referenced loan.

As of the date of this letter the amount required to cure your loan delinquency is **$66,464.21**.** However, if you are not prepared to tender the full reinstatement amount today, then the amount owed may increase between the date of this letter and the date you reinstate the loan. The reinstatement amount may increase because of additional interest and late charges as well as legal fees and costs that are incurred as additional steps in the foreclosure proceed.

This reinstatement quote is good thru 06/20/2016. If you reinstate this loan in full by the good through date, we estimate the reinstatement amount to be itemized as listed on the next page.

PLEASE CAREFULLY READ THE FOLLOWING INFORMATION CONCERNING THE FORECLOSURE. ***Please be advised that we may not be able to cancel the foreclosure sale or other pending hearing due to time constraints, county specific requirements, or other factors. We do not warrant or guarantee our ability to cancel the aforementioned even though we receive funds. In the event we are unable to cancel an event for any reason, the tendered funds will be refunded to you in the most expedient manner possible.***

PLEASE NOTE: If there is a foreclosure date scheduled for the property, this letter DOES NOT extend or change that foreclosure sale date. Therefore, if the Good Through Date for the payment stated in this letter continues past the scheduled foreclosure sale date, the foreclosure sale will nonetheless occur unless the loan is reinstated or paid off PRIOR TO the foreclosure sale as required by applicable law.

PLEASE NOTE: If there is a foreclosure date scheduled for the property, this letter DOES NOT extend or change that foreclosure sale date. Therefore, if the Good Through Date for the payment stated in this letter continues past the scheduled foreclosure sale date, the foreclosure sale will nonetheless occur unless the loan is reinstated or paid off PRIOR TO the foreclosure sale as required by applicable law. The right of redemption shall expire upon the issuance of the certificate of sale in accordance with Florida Statues.

Re: Full Reinstatement
Loan Number: 7600349599
Property Address: 113 Heron Bay Cir, Lake Mary, FL 32746
Our File: 15-174582

Total Payments – 67	$55,099.35
Late Charges	$156.56
Acquired Corporate Advance	$7,548.30
Property Inspections	$35.00
Outstanding Attorney Fees and Costs	
Attorney Fees Co. Hearing Dismiss Estimate	$250.00
Attorney Fees & Costs Estimate	$2,825.00
Attorney Fees Discovery	$300.00
Co. Clerk LP Release Estimate	$25.00
Reinstatement letter good through 6.20.16	$100.00
Dismissal Prep Fee	$125.00
TOTAL Good Through 06/20/2016	**$66,464.21****

***There is important information at the end of this letter regarding estimates of escrow advances, fees, and costs. Please read carefully.**

WE SUGGEST THAT YOU CONTACT **ALBERTELLI LAW** AT THE ADDRESS OR TELEPHONE NUMBER ON THIS LETTER TO VERIFY THE EXACT AMOUNT NECESSARY TO REINSTATE/PAYOFF YOUR LOAN **NO MORE THAN THREE BUSINESS DAYS** BEFORE YOU MAKE ANY PAYMENT.

If you purchased any option al product(s) that are billed with your mortgage, the amount quoted above does not include such product(s). Option products include but are not limited to items such as Mortgage Life Insurance, Accidental Death Insurance or Disability Insurance. If you have not made payments towards such product(s), this could result in cancellation of your coverage or service. Please contact the provider(s) of your option product(s) for information on the status of your account and any amounts that they may require you to maintain coverage or service.

The reinstatement figures listed above include items that have been paid by the lender or servicer or incurred by **ALBERTELLI LAW** that are currently due. Please understand that the above figures are subject to final verification upon receipt by the lender or servicer. All fees and costs incurred after the issuance of this reinstatement letter will continue to be assessed until the total amount is received.

***IMPORTANT:** If your reinstatement amount tendered is less than the total amount due on the date of your payment, the lender or servicer reserves the right to reject your payment and continue with the legal process.

Albertelli Law does not have a Cashier's Department, do not bring funds directly to our office. Funds are only accepted via wire, certified mail, Fed Ex or UPS. PAYMENT INSTRUCTIONS. Payment must be submitted in the form of a certified cashier's check(s) and must be made payable to "Rushmore Loan Management Services".

Funds must be sent to the attorney/trustee's office listed on this letter at: ALAW, ATTN: Accounting Department, 5404 Cypress Center Drive, Suite 300, Tampa, FL 33609. The reinstatement funds will be returned if any portion of the funds is in the form of a personal check. Please be advised that the action will continue until the total reinstatement amount is received, in compliance with the terms in this letter. After reinstatement amount, you may be required to sign appropriate documents and take other requested action to assist in obtaining a withdrawal of the foreclosure. If you are wiring funds, **please add an additional $12.00 (estimate)** to the above quote. Send the wire to: Albertelli Law IOLTA, c/o US AMERIBANK, 4790 140th Avenue North, Clearwater, FL 33762; Routing/ABA#063116177; Account#500110747**. Please reference the File No., Case No., and Borrower's Last Name.**

You should verify the loan number, the name(s) of the Mortgagor(s), the property address and the amounts due and owing to ensure that these times are correct. Should you have any questions regarding the above, please do not hesitate to contact our office.

EXHIBIT J

11th Circuit Finds Lender Violated FDCPA And Florida Law, Reverses Ruling

(December 7, 2015, 10:55 AM ET) -- ATLANTA — The 11th Circuit U.S. Court of Appeals on Dec. 3 found that a lender violated the Fair Debt Collection Practices Act (FDCPA) and the Florida Consumer Collections Practice Act (FCCPA) when it charged him attorney fees that were not agreed on, reversing a decision that granted summary judgment on his claims in favor of the bank (Kevin Prescott v. Seterus Inc., No. 15-10038, 11th Cir.; 2015 U.S. App. LEXIS 20934).
(Opinion available. Document #85-151208-028Z.)

Default

Kevin Prescott purchased a property with a loan from Bank of America. Prescott defaulted on the loan

in August 2012. Seterus Inc. later took over servicing of the loan and prepared to initiate foreclosure against Prescott. Seterus hired Kahane and Associates to provide legal services associated with the foreclosure. Prescott requested that Seterus reinstate his mortgage pursuant to certain conditions under Section 19 of the security instrument.

Seterus sent Prescott a letter, which showed the amount he owed. The letter stated that "this communication is from a debt collector as we sometimes act as a debt collector. We are attempting to collect a debt and information obtained will be used for that purpose." Prescott paid the full reinstatement and the mortgage was reinstated. Seterus also refunded Prescott legal fees.

Fees

Prescott then sued Seterus in a Florida state court, asserting that the inclusion of estimated attorney fees in his reinstatement balance violated Sections 1692e(2) and 1692f(1) of the FDCPA and Section 559.72(9) of the FCCPA. Seterus removed the case to the U.S. District Court for the Southern District of Florida.

The parties moved for summary judgment. The District Court granted summary judgment for Seterus. Prescott appealed to the 11th Circuit, arguing that Seterus violated Sections 1692e(2) and 1692f(1) of the FDCPA by including estimated attorney fees in his reinstatement balance.

FDCPA

The appeals court found that Seterus violated the FDCPA and the FCCPA by charging Prescott estimated attorney fees and refused to affirm the District Court's decision.

"Seterus violated the FDCPA and FCCPA by charging Prescott estimated attorney's fees that he had not agreed to pay in the security agreement. That violation may have resulted from a 'mistaken interpretation of the legal requirements of the FDCPA' or from a mistaken interpretation of the agreement itself. See id. at 576, 130 S. Ct. at 1608 [Karen L. Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A., et al., No. 08-1200, U.S. Sup.]. Either way, the violation did not result from a factual or clerical error. Because under Jerman the bona fide error defense does not excuse Seterus' faulty legal reasoning, we cannot affirm the district court's grant of summary judgment to Seterus on that basis," the appeals court said.

The appeals court reversed the decision and remanded the case to the District Court.

The case was heard by Chief Circuit Judge Ed Carnes and Circuit Judges Charles R. Wilson and Julie E. Carnes.

Prescott is represented by J. Dennis Card Jr. of Consumer Law Organization in Hollywood, Fla.

Seterus is represented by Seric James Fallon of Groelle & Salmon in Miami; Ernest P. Wagner of McGinnis Wutscher in Chicago; Christopher Patrick Hahn of McGinnis Wutscher in Miami; and Hector Enrique Lora of the Law Office of Hector E. Lora in Miami.

Related Articles

- Borrower Seeks Extension After 11th Circuit Finds Lender Violated FDCPA

Eleventh Circuit Issues Stern Warning Against Inclusion of Estimated Fees and Costs in Reinstatement Quotes

*Posted By **USFN**, Monday, January 04, 2016*
Updated: Tuesday, January 19, 2016

January 4, 2016

by Steven J. Flynn
McCalla Raymer, LLC – USFN Member (Georgia)

The Eleventh Circuit Court of Appeals has held, in an unpublished decision, that a loar servicer violated the Fair Debt Collection Practices Act (FDCPA) by including the "estim future attorneys' fees of the law firm retained by the loan servicer to conduct foreclos proceedings in a letter to the borrower, setting forth the amounts necessary to reinst borrower's loan under the terms of his security instrument. [Prescott v. Seterus, Inc., N 10038 (11th Cir. Dec. 3, 2015)]. (The Eleventh Circuit is comprised of Alabama, Florida, Georgia.)

Factual Background
On August 1, 2012 the borrower Prescott defaulted on his residential mortgage loan. S began servicing the mortgage on October 1, 2012. Following the borrower's default, S prepared to initiate foreclosure proceedings against the borrower and retained a law provide legal services associated with the foreclosure." The borrower asked Seterus tc reinstate his mortgage in August 2013. Under the terms of the borrower's mortgage, t borrower could reinstate his mortgage under "certain conditions," including, in pertine part, by "pay[ing] all expenses incurred in enforcing [the borrower's] Security Instrum including, but not limited to, reasonable attorneys' fees, property inspection and valua fees, and other fees incurred for the purpose of protecting Lender's interest in the Pro and rights under this Security Instrument ...."

On September 4, 2013 Seterus sent the borrower a letter setting forth a reinstatemen balance of $15,569.64 (an amount stated to be good through September 27, 2013), wh included the amount of $15 in "estimated" property inspection fees and $3,175 in "est

attorneys' fees. The borrower paid the full reinstatement balance on September 26, 2 Seterus reinstated the borrower's loan. On November 14, 2013 Seterus refunded the in estimated legal fees "because those fees were not incurred before Seterus reinstat mortgage." Seterus did not refund the $15 in estimated property inspection fees beca those fees were incurred by Seterus before the borrower reinstated the mortgage.

CMBA Annual Western States Loan Servicing Conference - San Diego, CA

Procedural History

The borrower filed suit against Seterus in Florida state court about a week after his lo reinstated, alleging that the inclusion by Seterus of estimated attorneys' fees in the September 4, 2013 letter violated 15 U.S.C. § 1692e(2) and 15 U.S.C. § 1692f(1) of the F and § 559.72(9) of the Florida Consumer Collections Practices Act (FCCPA). Seterus rer the case to the U.S. District Court for the Southern District of Florida; the district court granted summary judgment to Seterus on each of the borrower's claims for relief.

Holdings

On appeal, the Eleventh Circuit held that the inclusion by Seterus of $3,175 in estimat attorneys' fees in the reinstatement balance provided to the borrower violated 15 U.S 1692f(1), which prohibits a debt collector from using "unfair or unconscionable means collect or attempt to collect any debt," including "[t]he collection of any amount (inclu any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by la appellate court further held that, under the "least sophisticated consumer" standard u to review claims under the FDCPA, the least sophisticated consumer would not have b that he was obligated to pay the estimated legal fees in order to reinstate the borrow mortgage under the terms of the borrower's security instrument.

The Eleventh Circuit also held that the inclusion of estimated attorneys' fees and costs reinstatement balance provided to the borrower constituted a violation of 15 U.S.C. § which provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt," including "[t]h representation of (A) the character, amount, or legal status of any debt; or (B) any ser rendered or compensation which may be lawfully received by any debt collector for th collection of a debt." The court reasoned that Seterus could not "lawfully receive" the estimated fees and costs from the borrower under the terms of the borrower's securi instrument because these costs had not yet actually been incurred. Further, the court that Seterus was not entitled to escape liability under the FDCPA based upon a "bona error" defense, as Seterus's inclusion of the estimated attorneys' fees in the reinstater balance was not the result of a factual or clerical error. (The Eleventh Circuit also reve the district court's grant of summary judgment to Seterus on the borrower's FCCPA cl

Implications

The Prescott decision should cause any lender, loan servicer, or law firm that provides reinstatement quotes and/or figures to borrowers to examine its practices and proce order to determine whether or not information being provided to borrowers in reinstatement situations could potentially constitute a FDCPA violation (or a violation state consumer protection law, such as the FCCPA). The Eleventh Circuit has sent a cle message to the financial services industry that only those fees and costs that are expr authorized under the terms of the applicable loan documents, and/or applicable law, be included in reinstatement quotations.

January e-Update
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RECENT ELEVENTH CIRCUIT REVERSAL SPARKS UPWARD TREND IN ESTIMATED-FEE FDCPA LITIGATION

February 9, 2016 • Posted by **John C. Raffetto**

Default Servicing • **FDCPA** • **Litigation** • **Uncategorized**

On December 3, 2015, the Eleventh Circuit issued an opinion that has carved a path for plaintiffs challenging their communications with loan servicers. The decision, ***Prescott v. Seterus, Inc.***, reversed a grant of summary judgment in favor of the defendant, Seterus, Inc. — Fed.Appx. —, 2015 WL 7769235 (S.D. Fla., Dec. 3, 2015). In reviving the plaintiff's Fair Debt Collection Practices Act ("FDCPA") and Florida Consumer Collections Practice Act ("FCCPA") claims, the Eleventh Circuit cleared a path for plaintiffs to bring similar claims against their loan servicers.

Prescott begins with a factual scenario not uncommon to mortgage servicers—a request for a payoff quote. *Id.* at *1. In response to this request, Seterus sent a quote that included incurred costs for property inspections and attorney's fees, but which also included costs that Seterus expected to incur in the ensuing four months. *Id.* at *2. The payoff quote expressly identified these yet-to-be incurred costs as "estimated" fees. *Id.* Relying on the clarity of this delineation, the Southern District granted summary judgment to Seterus. It found that even the "least sophisticated consumer" would have understood that the "estimated fees" had yet to be incurred, and therefore there was nothing misleading about the payoff quote. *Id.* at *4.

The Eleventh Circuit reversed, reasoning that Section 1692e(2)'s prohibition on misrepresentations regarding "compensation which may be lawfully received by any debt collector for the collection of a debt," (15 U.S.C. § 1692e(2)(B)) applied to Seterus' inclusion of estimated fees in its payoff quote. *Prescott*, 2015 WL 7769235 at *4. Concluding that the payoff quote was a demand for payment, it held that the inclusion of fees that had not yet been incurred (even if expressly designated as such) was a demand for compensation not permitted by the plaintiff's mortgage agreement. *Id.*

We are seeing an increase in complaints by borrowers based on *Prescott*. Given the frequency of requests for payoff quotes (and similar requests such as Regulation X Requests for Information), loan servicers should consider the impact of *Prescott* on their communications with borrowers.

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Sabrina Rose-Smith

News Alert: FDCPA Violations for Estimated Fees and Costs in Reinstatement and Payoff Quotes: Coming to a Court Near You?

April 15, 2016 *by admin* *in News* *Comments are*

FDCPA Violations for Estimated Fees and Costs in Reinstatement and Payoff Quotes: Coming to a Court Near You?

The recent Appellate Court decision in *Prescott v. Seterus, Inc.*, 2015 U.S. App. LEXIS 20934, has gained nationwide notice. Although the decision is only binding on the Eleventh Circuit, it has opened the door and neatly laid the ground work for other jurisdictions to give similar rulings in the future. Consequently, it is important for servicers and attorneys to be informed and proactive regarding their decisions when it comes to estimated fees and costs in reinstatement and payoff quotes.

In *Prescott*, the Plaintiff, Kevin Prescott, appealed the summary judgment ruling granted in favor of Defendant, Seterus, by the district court. He alleged that the Fair Debt Collection Practices Act (FDCPA) was violated by Seterus' inclusion of estimated attorney's fees in his reinstatement quote. *Prescott*, No.15-10038, 2015 U.S. Dist. LEXIS 20934, at *7 n.6 (11th Cir. Dec. 3, 2015). The FDCPA, states that "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt" 15 U.S.C. § 1692f (1996). It further specifies that a violation is considered to be, "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." Id. § 1692f(1). The Court of Appeals evaluated the question from the perspective of the least sophisticated consumer, and ultimately reversed the grant of summary judgment using the rationale that "the least sophisticated consumer would not have understood that the security agreement 'expressly authorized' Seterus to charge estimated fees for legal services not yet rendered." *Prescott*, 2015 U.S. Dist. LEXIS 20934, at *8.

The Court further ruled that by requiring payment of the estimated attorney's fees in order to reinstate the loan, Seterus violated section 1692e(2) of the FDCPA. Section 1692e(2) specifies that it is a violation of the FDCPA when there is "[a] false representation of- any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt" 15 U.S.C. § 1692e(2)(B). The court found that because Seterus charged estimated attorney's fees that were not provided for as part of the security agreement, this was done in violation of the FDCPA.

Although the Eleventh Circuit Court has made it quite clear that it views the inclusion of estimated fees and costs in a reinstatement quote as a violation of the FDCPA, in other jurisdictions it is still common practice to include estimated or projected fees and costs. In particular, this is the practice when a quote has a future good-through date.

When a reinstatement or payoff quote with a future good-through date is provided to a mortgagor, there is always the potential for additional fees and costs to accrue on the mortgagor's account from the time the quote is issued to the time the quote expires or payment is tendered. In order to account for this, many servicers and attorney firms have made it their practice to include estimated fees and costs in the quotes, and to clearly mark them as estimates. The estimates are used when charges are expected to accrue prior to the good-through date, but the work has not yet been performed.

In light of the decision in *Prescott*, it is a good idea for servicers to consider taking an alternative approach regarding the inclusion of estimated fees and costs in reinstatement and payoff quotes. Although the decision is currently only binding on the Eleventh Circuit, it has the potential to have a much farther reach. The only way for servicers and attorneys to ensure that they do not find themselves facing a future FDCPA violation, is to take a proactive approach and remove all estimated and projected fees and costs from reinstatement and payoff quotes.

In doing so, it is important to understand that it may be necessary to do some advance planning, which will likely require coordination and dialogue between servicers and their attorneys. When deciding the best way to precede it is important to consider the particulars and requirements of the foreclosure process in each specific jurisdiction. For instance, in some jurisdictions a foreclosure action may be able to be placed on a hold in order to stop additional fees and costs from accruing during the time period after the quote is issued, but before the quote expires or payment is tendered. However, in jurisdictions where the foreclosure process cannot be placed on a hold and it must be either

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cancelled or adjourned, it may be necessary to consider other alternatives to ensure that the servicer's potential for loss due to fees and costs, that may not be able to be recouped from the mortgagor, is minimal.

Many servicers are already reevaluating their current practices in an effort to avoid any potential for future FDCPA violations. However, for those servicers who have not yet considered the impact of the decision in *Prescott*, it is not too late to consider a new course of action. When reevaluating current practices and making these decisions, it is advantageous for servicers to remember that their attorneys are a knowledgeable and useful resource, with jurisdiction specific expertise. By working together and exercising a little proactive planning, servicers and attorneys can work to ensure that they are both protected from the threat of FDCPA violations.

As always, our firm is ready and willing to assist you with any questions or concerns. For more information, please contact Supervising Attorney, Summer Parker at (248) 853-4400 ext. 1198 / sparker@potestivolaw.com.

Summer E. Parker joined Potestivo & Associates, P.C. in September 2009 as a mediation specialist and law clerk before being hired on as an Associate Attorney in November 2009. Summer earned her B.A. at Miami University , where she double majored in Political Science and Women's Studies. Following her undergraduate studies, she attended Capital University Law School, where she earned her J.D. with concentrations in Alternative Dispute Resolution and Criminal Litigation.

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A Violation of the FDCPA – Estimating Attorney's Fees in Reinstatement Figures

By: Nicholas Cavallaro — Gilbert Garcia Group, P.A.

Reinstatement/payoff ("Reinstatement") letters to borrowers should no longer include estimated (i.e. future) attorney's fees. Fees are not "estimated" in that the lender is unsure of what the costs of the work will be (i.e. the costs of attending a trial), but instead are estimated in that the fees are not incurred before sending the reinstatement to the borrower. Reinstatement letters provide a certain amount of time for the borrower to pay a total amount due to bring their loan current. There is no limit to the number of reinstatement letters a borrower may request for their loan, and a lender cannot halt any foreclosure activity every time a reinstatement letter is requested.

This creates a problem of timing for a lender to try and recover all fees that will be incurred during the offer period for the reinstatement, in that it is not known when during this period the borrower may remit fees to reinstate. The borrower may remit fees on the first day of the offer. As a result, lenders may not include fees not yet incurred on the date the reinstatement amount is provided, but which will be due if the borrower were to pay on the last date of the offer for reinstatement.

Prescott v. Seterus, Inc.

The federal courts have recently held that lenders may only charge for fees and expenses already incurred. See Prescott v. Seterus, Inc., 15-10038 (11th Cir. 2015); Kaymark v. Bank of America, N.A., 783 F.3d 168, 175-176 (3d Cir. 2015) ("the most natural reading [of the mortgage] is that Udren was not authorized to collect fees for not-yet-performed legal services and expenses, forming a basis for a violation of §1692f(1)."). In Prescott, the U.S. Eleventh Circuit Court of Appeal held that including estimated attorney's fees, not yet incurred, in a reinstatement letter, was prohibited by the Federal Fair Debt Collection Practices Act (FDCPA).

Pursuant to U.S.C. §1692e(2)(B),

"A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) the false representation of –

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt."

In Prescott, the 11th Circuit found that even though the fees were separately identified as estimated fees, the borrower would still believe he needed to pay the full amount provided to reinstate the loan, including the estimated attorney's fees. See Prescott, 15-10038 ("because Congress enacted the statute (FDCPA) primarily to protect consumers, we evaluate the circumstance giving rise to an alleged FDCPA violation from the perspective of the least sophisticated consumer.") (emphasis added). Therefore, the Court held that the reinstatement amount was false in that it did not accurately reflect what was owed by the borrower, as the Court found the already incurred and estimated fees would instead be considered by the borrower as one total amount that must be paid to reinstate the loan. Although not part of the Prescott holding, the same rationale should apply to fees not yet incurred for payoff statements as well.

Best Practices

Lenders should be aware of the above holding in Prescott, and use this to determine procedures that comply with the holding (not charging estimated fees) while minimizing any loss for fees incurred. The bottom line is that only fees that have been incurred should be included in the reinstatement amount. For instance, rather than providing a reinstatement figure valid for a month, reinstatement letters should remain valid for one to two weeks, to minimize attorney's fees that may be expended, but potentially not recovered, during that time. Two weeks may be a practical compromise for both the borrower and lender. Two weeks would reduce the potential fees a lender may not be reimbursed for, but on the other hand, would still provide the borrower sufficient time to receive the reinstatement letter and arrange payment.

To ensure timely accounting for fees already incurred, and to avoid reliance on flat rate attorney's fees that may not be supported by proper documentation, it is imperative there is up-to-date communication between lenders and their law firms regarding fees incurred. Kaymark v. Bank of America, N.A., 11 F.Supp.3d 496, 505 (W.D. Penn. 2014). Even though a flat rate agreement may clearly be lower than itemizing the costs of the attorney's fees, the holding in Prescott should also serve as a reminder that an attempt to break down fees incurred should be made to avoid litigation over whether the fees were incurred prior to a reinstatement or not. See Boyette v. BAC Home Loans Servicing, LP, 164 So. 3d 9, 11 (Fla. 2d DCA 2015) ("the attorney's fees of $1,200 are not substantiated," and were not included with the "payment history delineating the principal amount, $115,697.24, hazard insurance premiums, late charges, and tax payments.").

Having established procedures to limit inclusion of estimated fees will also provide a "bona-fide error" defense if litigation arises pertaining to fees included with a reinstatement. The "bona-fide error" is the defense named from U.S.C. § 1692k(c), which states,

"A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona-fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error."

However, as noted in Prescott, the bona-fide error defense "does not encompass mistakes of law or misinterpretations the requirements of this Act (FDCPA)." Prescott, 15-10038; See Wise v. Zwicker & Assocs., P.C., 780 F.3d 710, 713 (6th Cir. 2015) ("the [U.S.] Supreme Court held that mistakes of law regarding the FDCPA itself constitute violations of the Act for which a debt-collector attorney may not invoke the Act's bona fide error defense."). Therefore, it is better to ensure there are proper channels and operating procedures in place to establish only fees incurred are included in the reinstatement. This way, if an error arises, the bona-fide error defense may be asserted to show it was a one-time instance where fees may have been mistakenly included, which were not yet incurred. See Arnold v. Bayview Loan Servicing, LLC, 14-0543-WS-C (S.D. Alabama Jan. 29, 2016) ("this defense forestalls FDCPA liability where a defendant's violation was unintentional and resulted from a bona fide error notwithstanding defendant's procedures reasonably adapted to avoid such errors.").

Until policies and procedures are developed and implemented for more precise compliance with the FDCPA and holding of Prescott, reinstatement figures should be for a shorter duration and should not include estimated fees.

Nicholas Cavallaro has been with the Gilbert Garcia Group, P.A., since December 2013. He is responsible for handling foreclosure litigation, alleged debt collection violations against lenders and servicers, and civil appeals.

EXHIBIT K-1

Smothers
LAW FIRM, P.A.

August 29, 2016

Via U.S. Certified Mail – 7015 1520 0002 9644 5315

James E. Albertelli
Albertelli Law
P.O. Box 23028
Tampa, FL 33623

Re: Marie Cedre
113 Heron Bay Cir
Lake Mary, Florida 32746-3476

To Whom It May Concern:

My law firm represents Marie Cedre. As stated in the enclosed Complaint, Albertelli Law has breached its contractual obligations and Florida law in its handling of my client's and other borrowers' loans in the putative Class.

Should you wish to make a cure offer, please contact me within twenty (20) days upon receipt of this letter.

Feel free to contact me at the below telephone number if you wish to discuss this matter.

Sincerely,

Scott A. Smothers
scott@smotherslawfirm.com

SAS.smh
Enclosure as stated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARIE CEDRE, on behalf of herself and all others similarly situated,

Case No.: _____

Plaintiff,

v.

RUSHMORE LOAN MANAGEMENT SERVICES LLC, JAMES E. ALBERTELLI, P.A. d/b/a ALAW, and CARLSBAD FUNDING MORTGAGE TRUST,

Defendants.

_____/

CLASS ACTION COMPLAINT

Plaintiff, Marie Cedre, on behalf of herself and all others similarly situated, alleges violations of the Florida Consumer Collection Practices Act § 559.55 *et seq.* ("FCCPA") and the Fair Debt Collection Practices Act 15 U.S.C. 1692 *et seq.* ("FDCPA") against Defendants James E. Albertelli, P.A. ("Albertelli Law"), Rushmore Loan Management Services LLC ("Rushmore"), and Carlsbad Funding Mortgage Trust ("Carlsbad") (collectively "Defendants"). Plaintiff and the putative class also allege violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* ("RESPA") solely against Rushmore.

1. Rushmore is a mortgage loan servicer. Rushmore and Albertelli Law both charge and collect mortgage loans and fees for third party lenders, like Carlsbad. Defendants charged Plaintiff over $3,000 for mortgage fees and costs "Estimates" necessary to reinstate her loan to avoid foreclosure. "Estimated" fees are fees companies expect to incur in the event that certain conditions occur, but have *not* actually incurred. The Eleventh Circuit has denounced

"estimated" fees associated with reinstatement of loans to be a violation of the FCCPA and FDCPA.

2. Hundreds of thousands of homes are in some stage of foreclosure in the United States every month. http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-january-2015.pdf. Most homeowners facing foreclosure are desperate to keep their homes and are willing to do close to anything to continue living in them with their families. Defendants exploit their desperation by placing them in danger of foreclosure if homeowners do not pay all of the fees that Defendants demand—including fabricated debt characterized as "estimated" fees and costs.

3. Defendants factor these estimated fees and costs into its total demand to homeowners and insists they are required to pay the full amount before they will reinstate the loans to avoid foreclosure.

4. Rushmore and Albertelli Law profit from these illegal charges because their compensation is based on the outstanding amount owed on the mortgage loan, and the longer it remains in default, the more they profit.

5. Defendants also conceal the true nature of the amount owed, by including ambiguous fees and costs in the amount homeowners must pay to reinstate their loan. They even appear to charge borrowers $100 for merely asking how much they owe.

6. These practices enrich Defendants at the expense of homeowners struggling to stay current on their mortgages, and by demanding payment of these fees, Defendants force homeowners into foreclosure and in some instances cause them to lose their homes.

7. By the conduct described above, Defendants knowingly violated RESPA, FDCPA, and the FCCPA.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises out of RESPA and the FDCPA, federal statutes.

9. The Court has supplemental jurisdiction over the FCCPA claims under 28 U.S.C. § 1367 because the basis of the RESPA and FDCPA federal claims involve the same debt collection practices that form the basis of the FCCPA claims.

10. The Court has personal jurisdiction because Defendants conduct business throughout the United States, including Miami, Florida. Further, their voluntary contact with Plaintiff to charge and collect debts in Florida made it foreseeable that Defendants would be haled into a Florida court. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) because Defendants are deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced and because their contacts with this District are sufficient to subject them to personal jurisdiction.

PARTIES

12. Plaintiff Marie Cedre is a natural person who currently resides in Florida.

13. Defendant Rushmore is a foreign limited liability company with its principal place of business at 15480 Laguna Canyon Road, Suite 100, Irvine CA 92618. Rushmore is one of the nation's leading specialty loan servicing companies for mortgage lenders, like Wilmington, not individually but as trustee for Carlsbad.

14. Defendant James E. Albertelli, P.A. is a professional association with a principal place of business at 208 North Laura Street, Suite 900, Jacksonville, Florida 32202 and is headquartered at 5404 Cypress Center Dr., Suite 300, Tampa, Florida 33609. It is a full service

real estate law firm representing the mortgage industry. Albertelli acts as a third party debt collector for financial institutions and servicers, like Carlsbad and Rushmore.

15. Defendant Carlsbad Funding Mortgage Trust is a trust that acts as a mortgage lender for homeowners, like Ms. Cedre. Wilmington Savings Fund Society, d/b/a Christiana Trust is the current owner of Plaintiff's mortgage loan, not individually but as trustee for Carlsbad Funding Mortgage Trust. Carlsbad has a registered address of c/o Wilmington Saving Fund Society, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

APPLICABLE LAW

RESPA

16. RESPA imposes certain obligations on mortgage servicers to provide information to borrowers regarding their mortgage loans. 12 U.S.C. § 2605. In 2013, the CFPB enacted new regulations implementing specific provisions under RESPA and the Dodd-Frank Act concerning mortgage loan servicers including, but not limited to, certain requirements for responding to a written request for information concerning a borrower's mortgage loan. *See* 12 C.F.R. § 1024.36 *et seq.*; Public Law 111-203, 124 Stat. 1376 (2010).

17. RESPA provides a private cause of action against a mortgage servicer for violations of the provisions of § 2605, if brought within three (3) years of the violation. 12 U.S.C. § 2614.

18. RESPA defines "servicer" as the "person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan)." 12 U.S.C. § 2605(i)(3).

19. RESPA defines "servicing" as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in

section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." 12 U.S.C. § 2605(i)(3).

20. Pursuant to RESPA, a servicer of a federally related mortgage loan "shall not … fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter." 12 U.S.C. § 2605(k)(1)(E).

21. RESPA's mortgage servicing regulations require a servicer to provide borrowers with required disclosures that are in writing and "clear and conspicuous." 12 C.F.R. § 1024.32(a)(1).

22. RESPA also requires a servicer to maintain policies and procedures that are reasonable designed to ensure that the servicer can provide a borrower with "accurate and timely disclosures . . . as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

23. Additionally, RESPA provides that "a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request." 12 C.F.R. § 1024.36(g).

24. RESPA and its implementing regulations should be broadly construed to effectuate their remedial purpose. *Friedman v. Maspeth Federal Loan and Sav. Ass'n*, 30 F. Supp. 3d 183, 187 (E.D.N.Y. 2014) ("The Act was designed to throw the federal judiciary's protective cloak over residential-occupant owners of real property and their kin to protect against abuse by banks during loan closings and subsequent related events. The Act should be broadly

applied to accomplish its prophylactic purposes by exercising federal subject matter jurisdiction.").

FDCPA

25. The purpose of the FDCPA is "to eliminate abusive debt collection practices . . . and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692.

26. The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," which includes the false representation of "the character, amount, or legal status of any debt." *Id.* § 1692e.

27. The FDCPA also prohibits debt collectors from "unfair or unconscionable means to collect or attempt to collect any debt," including "the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law." *Id.* § 1692f.

28. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

29. The FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 1692a(3).

30. The FDCPA defines "debt collector" as "any person who uses . . . any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debt owed . . . or asserted to be owed or due another." *Id.* § 1692a(6).

31. The FDCPA defines communication as "conveying of information regarding a debt directly or indirectly to any person through any medium." *Id.* § 1692a(2).

32. The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that] are primarily for personal, family, or household purposes." *Id.* § 1692a(5).

FCCPA

33. The FCCPA prohibits debt collectors from engaging in certain abusive practices in the collection of consumer debts. *See* generally Fla. Stat. § 559.72.

34. The FCCPA's goal is to "provide the consumer with the most protection possible." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing Fla. Stat. § 559.552).

35. Specifically, the FCCPA states that no person shall "claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

36. The FCCPA creates a private right of action under Fla. Stat. § 559.77.

37. The FCCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 559.55(8).

38. The FCCPA mandates that "no person" shall engage in certain practices in collecting consumer debt. *Id.* § 559.72. This language includes all allegedly unlawful attempts at collecting consumer claims. *Williams v. Streeps Music Co.*, 333 So. 2d 65, 67 (Fla. Dist. Ct. App. 1976).

39. The FCCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services

which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." *Id.* § 559.55(6).

FACTUAL ALLEGATIONS

40. On or around May 28, 2004, Ms. Cedre purchased a home in Lake Mary, Florida through a loan from Coldwell Banker Mortgage, secured by a mortgage on the property. Copies of Plaintiff's Mortgage Agreement and Mortgage Note are attached as Exhibit "A" and Exhibit "B" respectively.

41. On or about April 24, 2008, Coldwell Banker Mortgage assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to JPMorgan Chase Bank, N.A.

42. On or around December 1, 2010, Ms. Cedre defaulted on her loan after previously making continuous payments.

43. On or around December 15, 2014, JPMorgan Chase Bank, N.A. assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to Federal National Mortgage Association. *See* Exhibit "C."

44. Sometime in or around April 2016, Federal National Mortgage Association assigned the Mortgage Agreement and Mortgage Note to Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust. *See* Exhibit "D."

45. Effective May, 1, 2016, Seterus, Inc. assigned its rights as the servicer of Ms. Cedre's loan to Rushmore Loan Management Services LLC. *See* Exhibit "E."

46. Therefore, Rushmore became the servicer of the loan, and Carlsbad, through Wilmington, became the owner of Ms. Cedre's loan, while Ms. Cedre's loan was already in default.

47. On or about November 18, 2015, Albertelli Law, on behalf of Federal National Mortgage Association and Seterus, filed a complaint in the Eighteenth Judicial Circuit for Seminole County to initiate foreclosure with the court.

48. Plaintiff hired Smothers Law Firm ("Smothers") to defend her in the foreclosure.

49. On or about May 24, 2016, Rushmore, on behalf of Carlsbad and Wilmington, sent a "Notice of Assignment, Sale or Transfer of Servicing" letter to Ms. Cedre through Smothers. *See* Exhibit "D."

50. The letter advised:

> Pursuant to the Federal Fair Debt Collections Practices Act, if you do not notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume the debt is valid.
>
> If you notify us in writing within 30 days that the debt or any portion thereof is disputed, or if you request the name and address of the original creditor, we will obtain verification of the debt or judgment against you and mail a copy to you and provide you with the name and address of the original creditor.
>
> You should consider this letter as coming from a Debt Collector as we sometimes act as a Debt Collector and any information received will be used for that purpose. However, if you are in Bankruptcy or received a Bankruptcy Discharge of this debt, this letter is not an attempt to collect a debt and does not constitute a notice of personal liability with respect to the debt.

Id.

51. The letter identified the current creditor as Wilmington Savings Fund Society ("Wilmington") as trustee for Carlsbad and provided an itemization of the total amount due and owing on the mortgage as $153.796.65. *Id.*

52. The total amount included a "Summary of Total Debt Composition" breakdown that included the current principal balance of $105,883.13; current unpaid accrued interest of $35,191.85; late charges of $156.56; and "Other Charges" of 12,565.11. *Id.*

53. Because Rushmore provided no explanation or itemization concerning the $12,565.11 in "Other Charges," Smothers sent a written request for information to Rushmore in a letter dated June 6, 2016, asking for a specific breakdown of charges. *See* Exhibit "F."

54. On or about June 13, 2016, Rushmore responded and confirmed it received Smothers' written request and advised it would respond within (30) days. *See* Exhibit "G."

55. On or about June 16, 2016, Albertelli Law, on behalf of Rushmore and Carlsbad, sent Smothers a "Reinstatement Letter," to be received on behalf of Ms. Cedre. See Exhibit "H."

56. Immediately below the heading, the letter advised:

> **WE MAY BE CONSIDERED A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE.**

Id. (emphasis in original).

57. The letter stated: "This letter responds to your request for a Reinstatement of the above referenced loan. As of the date of this letter the amount required to cure your delinquency is $66,464.21**." *Id.*

58. The letter advised that if Ms. Cedre was not prepared to pay the full reinstatement amount that day, "then the amount owed may increase between the date of this letter and the date you reinstate the loan … because of additional interest and late charges as well as legal fees and costs that are incurred as additional steps in the foreclosure proceed." *Id.*

59. In the letter, the total amount Defendants required Ms. Cedre to pay to reinstate her loan was $66,464.21. *Id.*

60. This amount included $3,100 for an "Estimate" of "Outstanding Attorney Fees and Costs."

61. These "estimated" amounts were based on projected amounts due in the event Plaintiff did not actually pay before a certain future date and certain events relating to foreclosure occurred.

62. This amount also included other ambiguous amounts that appeared to be estimates and not actually incurred, including an "Acquired Corporate Advance" charge of $7,548.30 and a "Dismissal Prep Fee" of $125.00. *Id.*

63. The total amount due also included a charge of $100.00 for "Reinstatement letter good through 6.20.16." *Id.*

64. Nowhere in either letter do Defendants state that they will return any of the estimated amounts if paid by Ms. Cedre but not incurred by Rushmore, Albertelli Law, Wilmington, or Carlsbad.

65. Defendants also failed to provide any information or explanation concerning the $7,548.30 charge ambiguously labeled "Acquired Corporate Advance."

66. Rushmore, as the loan servicer, acted as a debt collector by attempting to collect amounts on behalf of the principal, Carlsbad through its trustee, Wilmington.

67. Albertelli Law acted as a third party debt collector for Rushmore by attempting to collect amounts on behalf of Rushmore and Rushmore's principal, Carlsbad through its trustee, Wilmington.

68. Defendants knew that they were not permitted by law to charge or even attempt to collect estimated fees, but they nonetheless demanded Ms. Cedre and the putative classes pay estimated fees to reinstate their loans. Rushmore is a sophisticated mortgage loan servicer,

Albertelli Law is a sophisticated law firm specializing in the mortgage and loan industry, and Carlsbad and Wilmington are sophisticated lenders. In a highly publicized and remarkably similar case issued by the Eleventh Circuit over half of a year prior to the date of Defendants' reinstatement of loan letter at issue, the Eleventh Circuit reversed the district court's grant of summary judgment on the FDCPA and FCCPA claims, opining, among other things, that the defendants were not permitted to charge "estimated" fees that had not yet incurred in their reinstatement of loan letter. *See Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015) ("[The defendants] violated the FDCPA and FCCPA by charging [the plaintiffs] estimated attorney's fees that they had not agreed to pay in the security agreement."). Defendants' reinstatement letter to Plaintiff contains even worse facts than in *Prescott*.

69. Over those six months, the media and trade publications consistently warned the industry against including estimated fees in reinstatement of loan letters, particularly those in the Eleventh Circuit where the *Prescott* case is binding precedent. Some of those industry warnings are attached as Exhibit I and include:

a. *11th Circuit Finds Lender Violated FDCPA And Florida Law, Reverses Ruling*, Lexis Legal News (Dec. 7, 2015) ("The appeals court found that Seterus violated the FDCPA and the FCCPA by charging Prescott estimated attorney fees and refused to affirm the District Court's decision.").

b. *Eleventh Circuit Issues Stern Warning Against Inclusion of Estimated Fees and Costs in Reinstatement Quotes*, USFN (Jan. 4, 2016) ("The Prescott decision should cause any lender, loan servicer, or law firm that provides reinstatement quotes and/or figures to borrowers to examine its practices and procedures in order to determine whether or not information being provided to borrowers in reinstatement situations could potentially constitute a FDCPA violation (or a violation of state consumer protection law, such as the FCCPA). The Eleventh Circuit has sent a clear message to the financial services industry . . . .").

c. *Recent Eleventh Circuit Reversal Sparks Upward Trend in Estimated-Fee FDCPA Litigation*, Lenderlaw Watch (Feb. 9, 2016) ("Concluding that the payoff quote

was a demand for payment, [the Eleventh Circuit] held that the inclusion of fees that had not yet been incurred (even if expressly designated as such) was a demand for compensation not permitted by the plaintiff's mortgage agreement. . . . [L]oan servicers should consider the impact of *Prescott* on their communications with borrowers.").

d. *News Alert: FDCPA Violations for Estimated Fees and Costs in Reinstatement and Payoff Quotes*, Potestivo & Associates (April 15, 2016) ("The recent Appellate Court decision in Prescott, v. Sterus, Inc. . . . has gained nationwide notice. Although the decision is only binding on the Eleventh Circuit, it has opened the door and neatly laid the ground work for other jurisdictions to give similar rulings in the future. Consequently, it is important for servicers and attorneys to be informed and proactive regarding their decisions when it comes to estimated fees and costs in reinstatement and payoff quotes.").

e. *A Violation of the FDCPA – Estimating Attorney's Fees in Reinstatement Figures*, Legal League 100 Quarterly (Q2 2016) ("The federal courts have recently held that lenders may only charge for fees and expenses already incurred.").

70. Yet Defendants ignored industry warnings and demanded payment not owed in violation of federal law.

71. Additionally, these demands were a direct breach of each of the following contractual provisions permitting only recovery of amounts actually incurred: (1) Paragraph 9 of the Mortgage Agreement permitted Defendants to recover "amounts disbursed" in protecting Carlsbad's and Wilmington's interest and rights in the Mortgage Agreement; (2) Paragraph 14 of the Mortgage Agreement prohibited Defendants from charging estimated fees, stating "[l]ender may not charge fees that are expressly prohibited in this Security Instrument or by Applicable Law"; (3) Paragraph 22 of the Mortgage Agreement permitted Defendants to collect "expenses incurred in pursuing" certain actions under the Paragraph which governed default, notice of default, actions to cure default, and reinstatement of loans; and (4) Paragraph 7 of the Mortgage Note permitted Defendants the "right to be paid back . . . for all of its costs and expenses in enforcing" the Note, which included "reasonable attorneys' fees."

72. Therefore, Carlsbad, and its agents, also knew demanding payment of fees not yet incurred was not permitted because it violated Carlsbad's very mortgage agreement and note.

73. Additionally, the CFPB has received over 600 complaints concerning Rushmore's improper loan servicing practices, many involving similar complaints regarding requests for debt not actually owed. https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp. Rushmore's knowledge can be imputed to Carlsbad through agency theory. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624 (Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

74. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information.

75. Additionally, Rushmore violated RESPA by charging a $100.00 fee to respond to a written request for information.

76. Upon information and belief, Rushmore, Albertelli Law, and Carlsbad/Wilmington have a pattern and practice of using these form letters containing the illegal fees complained of in this Complaint.

77. On or about [redacted] the Plaintiff, through counsel, sent a cure letter to Rushmore, Albertelli Law, and Carlsbad. See the letter attached as Exhibit "J."

78. After a reasonable amount of time, Plaintiff filed this lawsuit because Rushmore failed to cure its violations of state and federal law.

CLASS ACTION ALLEGATIONS

Florida Class 1

79. Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Rushmore's RESPA violations (the "Florida Class 1"), subject to modification after discovery and case development:

> All Florida residents to whom Rushmore responded to a written request for information that included inaccurate, unclear or inconspicuous fees, including but not limited to "Acquired Corporate Advance," "Dismissal Prep Fee," "Other Charges," or any fee or cost labelled "Estimate," during the applicable statute of limitations.

Florida Class 2

80. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by the Defendants' FCCPA violations ("Florida Class 3"), subject to modification after discovery and case development:

> All Florida residents to whom Defendants charged, collected, or attempted to collect an "Estimate" reinstatement of loan amount during the applicable statute of limitations.

Florida Class3

81. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Defendants' FDCPA violations ("Florida Class 4"), subject to modification after discovery and case development:

> All persons in Florida to whom Defendants, charged, collected, or attempted to collect estimated reinstatement of loan amounts during the applicable statute of limitations.

82. Class members are identifiable through Defendants' records and payment databases.

83. Excluded from the Class are Defendants; any entities in which it has a controlling interest; its agents and employees; and any Judge to whom this action is assigned and any member of such Judge's staff and immediate family.

84. Plaintiff proposes that she serve as class representative for the Class.

85. Plaintiff and the Class have all been harmed by the actions of Defendants

86. Numerosity is satisfied. There are likely thousands of class members. Individual joinder of these persons is impracticable.

87. There are questions of law and fact common to Plaintiff and to the Class, including, but not limited to:

a. Whether Rushmore violated RESPA by failing to provide accurate, clear, and conspicuous information in response to a written request for information;
b. Whether Rushmore violated RESPA by charging, collecting, or attempting to collect a fee for responding to a written request for information;
c. Whether Defendants violated the FCCPA by charging monies not due;
d. Whether Defendants violated the FDCPA by charging monies not due;
e. Whether Plaintiff and class members are entitled to actual or statutory damages as a result of Defendants' actions;
f. Whether Plaintiff and class members are entitled to attorney's fees and costs; and
g. Whether Defendants should be enjoined from engaging in such conduct in the future.

89. Plaintiff's claims are typical of the claims of the Classes.

90. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Classes, she will fairly and adequately protect the interests of the Classes, and she is represented by counsel skilled and experienced in class actions.

91. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of this controversy.

92. The prosecution of separate claims by individual class members would create a risk of inconsistent or varying adjudications concerning individual class members.

COUNT I AS TO RUSHMORE'S VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT 12 U.S.C. § 2605(k) (Florida Class 1)

93. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

94. Rushmore is a "servicer" because it was responsible for "servicing" Plaintiff's mortgage loan and was scheduled to receive periodic payments from Plaintiff pursuant to the terms of her mortgage loan and make payments of principal and interest from those amounts under the terms of the loan. 12 U.S.C. § 2605(i)(2)–(3).

95. Plaintiff's loan is a "federally related mortgage loan" because it is secured by a first or subordinate lien, a residential real property designed for the occupancy of one to four families, and was made in whole or in part by Codwell Banker Mortgage, then JPMorgan Chase Bank, then Federal National Mortgage Association, and now Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust—lenders with deposits or accounts which were insured by the FDIC.

96. As a servicer of a federally related mortgage loan, Rushmore must comply with any regulation implementing the provisions of RESPA. *See* 12 U.S.C. § 2605(k)(1)(E).

97. Rushmore is required to maintain policies and procedures that are reasonably designed to ensure that it can "[p]rovide accurate and timely disclosures to a borrower as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 CFR 1024.38(a)(b)(1)(i),(iii)

98. On June 6, 2016, Ms. Cedre, through counsel, sent a written "request for information" to Rushmore concerning her mortgage loan and the amount necessary for reinstatement of her loan. 12 C.F.R. § 1024.36.

99. Rushmore responded to Plaintiff's written request with information that contained "Estimates," "Acquired Corporate Advance" fees, and "Other Fees" without identifying why and for what services the fees were charged. *See* 12 C.F.R. § 1024.36(d)(1)(i); *see* 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

100. Rushmore violated § 2605(k)(1)(E) when it failed to provide information to Plaintiff in an accurate, clear and conspicuous manner, by charging fees not yet incurred and demanding Plaintiff pay these fees to reinstate her loan. 12 C.F.R. § 1024.32(a)(1); 12 U.S.C. § 2605(k)(1)(E). Rushmore has a pattern and practice of using form letters, like the letter at issue, that contain these inaccurate, unclear, and inconspicuous responses.

101. Rushmore's violation of RESPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees and costs in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information.

COUNT II AS TO DEFENDANTS' VIOLATION OF
THE FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72(9)
(Florida Class 2)

102. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

103. Plaintiff is a "consumer" as defined by Fla. Stat. § 559.55(8) when she purchased her home by mortgage.

104. Rushmore, Albertelli Law, and Carlsbad are "persons" as defined under the FCCPA.

105. Defendants attempted to enforce, claimed, and asserted a known non-existent legal right to a debt as defined by Fla. Stat. § 559.55(6) when Albertelli Law, on behalf of Rushmore and Carlsbad, attempted to collect fees not owed. *Id.* § 559.72(9).

106. Rushmore, as a sophisticated defendant mortgage loan servicer regularly engaged in the mortgage loan servicing industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Rushmore, through Albertelli Law, sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

107. Rushmore also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I.

108. Rushmore was also put on notice of its requirements to only charge fees incurred through the many complaints to the CFPB by consumers that Rushmore charged fees not owed, discussed *supra*.

109. Albertelli Law, as a sophisticated defendant law firm regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

110. Albertelli Law also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I. Albertelli Law is primarily based in Florida.

111. Carlsbad, through its trustee Wilmington, as a sophisticated mortgage lender regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letters are even more egregious than in *Prescott*.

112. Carlsbad, through its trustee Wilmington, also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I.

113. Rushmore's and Albertelli Law's knowledge can also be imputed to Carlsbad through principles of agency. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624

(Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

114. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information. She also suffered the imminent risk of having to pay an illegal amount not owed.

COUNT III AS TO DEFENDANTS' VIOLATION OF
THE FAIR DEBT COLLECTION PRACTICES ACT §§ 1692e, 1692f
(Florida Class 3)

115. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

116. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) when she purchased a home in Florida by mortgage.

117. Defendants are "debt collectors" as defined by 15 U.S.C. § 1692a(6) because they regularly attempt to collect, and collect, amounts owed or asserted to be owed or due another. Rushmore's May 24, 2016 letter on behalf of Carlsbad to Ms. Cedre stated: "You should consider this letter as coming from a Debt Collector . . . and any information received will be used for that purpose." Albertelli Law's June 16, 2016 letter on behalf of Rushmore and Carlsbad to Ms. Cedre stated: "We may be considered a debt collector. This is an attempt to collect a debt. Any information will be used for that purpose."

118. The mortgage loan exception to the definition of "debt collector" does not apply because Plaintiff defaulted on her loan on or around December 1, 2010 and the loan was assigned to Wilmington as trustee for Carlsbad sometime in or around April 2016, and because the servicing rights to Ms. Cedre's loan was assigned to Rushmore, effective May 1, 2016.

119. Defendants engaged in "communications" with Plaintiff as defined by 15 U.S.C. § 1692a(2) when they sent the May 24, 2016 and June 16, 2016 debt collection letter to Plaintiff demanding money purportedly due for reinstatement of her loan to avoid foreclosure.

120. Defendants violated 15 U.S.C. § 1692f when they charged estimated fees not owed and not expressly authorized by the agreement creating the debt.

121. Rushmore's violation of the FDCPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees, costs, and other incidental costs, in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information. She also suffered the imminent risk of having to pay an illegal amount.

JURY DEMAND AND RESERVATION OF PUNITIVE DAMAGES

122. Plaintiff is entitled to and respectfully demands a trial by jury on all issues so triable.

123. Plaintiff reserves the right to amend his Complaint and add a claim for punitive damages.

RELIEF REQUESTED

WHEREFORE. Plaintiff, himself and on behalf of the Classes, respectfully requests this Court to enter judgment against Defendants for all of the following:

a. That Plaintiff and all class members be awarded actual damages, including but not limited to forgiveness of all amounts not owed;

b. That Plaintiff and all class members be awarded statutory damages;

c. That Plaintiff and all class members be awarded costs and attorney's fees;

d. That the Court enter a judgment permanently enjoining Defendants from charging and/or collecting debt in violation of the FDCPA, FCCPA, and RESPA;

e. That, should the Court permit Defendants to continue charging and/or collecting debt, it enter a judgment requiring them to adopt measures to ensure FDCPA, RESPA, and FCCPA compliance, and that the Court retain jurisdiction for a period of six months to ensure that Defendants comply with those measures;

f. That the Court enter a judgment awarding any other injunctive relief necessary to ensure Defendants' compliance with the FDCPA, RESPA, and the FCCPA;

g. That the Court enter an order that Defendants and their agents, or anyone acting on their behalf, are immediately restrained from altering, deleting or destroying any documents or records that could be used to identify class members;

h. That the Court certify Plaintiff's claims and all other persons similarly situated as class action claims under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure; and

i. Such other and further relief as the Court may deem just and proper.

Dated: August [redacted], 2016

Respectfully Submitted,

/s/ James L. Kauffman

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North Palm Beach, Florida 33408
Telephone: (561) 692-6013
Facsimile: (305) 574-0132
Counsel for Plaintiff and the Putative Class

cv-2 FAM Document 1- a

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City, State, ZIP+4®: Tampa, FL 33623

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT K-2

Smothers
LAW FIRM, P.A.

August 29, 2016

Via U.S. Certified Mail -- 7015 1520 0002 9644 5308

Carlsbad Funding Mortgage Trust
C/O Wilmington Savings Fund Society, FSB
500 Delaware Avenue, 11th Floor
Wilmington, DE 19801

Re: Marie Cedre
113 Heron Bay Cir
Lake Mary, Florida 32746-3476

To Whom It May Concern:

My law firm represents Marie Cedre. As stated in the enclosed Complaint, Carlsbad Funding Mortgage Trust has breached its contractual obligations and Florida law in its handling of my client's and other borrowers' loans in the putative Class.

Should you wish to make a cure offer, please contact me within twenty (20) days upon receipt of this letter.

Feel free to contact me at the below telephone number if you wish to discuss this matter.

Sincerely,

Scott A. Smothers
scott@smotherslawfirm.com

SAS.shs
Enclosure as stated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARIE CEDRE, on behalf of herself and all others similarly situated,

Case No.: _____

Plaintiff,

v.

RUSHMORE LOAN MANAGEMENT SERVICES LLC, JAMES E. ALBERTELLI, P.A. d/b/a ALAW, and CARLSBAD FUNDING MORTGAGE TRUST,

Defendants.

_____/

CLASS ACTION COMPLAINT

Plaintiff, Marie Cedre, on behalf of herself and all others similarly situated, alleges violations of the Florida Consumer Collection Practices Act § 559.55 *et seq.* ("FCCPA") and the Fair Debt Collection Practices Act 15 U.S.C. 1692 *et seq.* ("FDCPA") against Defendants James E. Albertelli, P.A. ("Albertelli Law"), Rushmore Loan Management Services LLC ("Rushmore"), and Carlsbad Funding Mortgage Trust ("Carlsbad") (collectively "Defendants"). Plaintiff and the putative class also allege violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* ("RESPA") solely against Rushmore.

1. Rushmore is a mortgage loan servicer. Rushmore and Albertelli Law both charge and collect mortgage loans and fees for third party lenders, like Carlsbad. Defendants charged Plaintiff over $3,000 for mortgage fees and costs "Estimates" necessary to reinstate her loan to avoid foreclosure. "Estimated" fees are fees companies expect to incur in the event that certain conditions occur, but have *not* actually incurred. The Eleventh Circuit has denounced

"estimated" fees associated with reinstatement of loans to be a violation of the FCCPA and FDCPA.

2. Hundreds of thousands of homes are in some stage of foreclosure in the United States every month. http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-january-2015.pdf. Most homeowners facing foreclosure are desperate to keep their homes and are willing to do close to anything to continue living in them with their families. Defendants exploit their desperation by placing them in danger of foreclosure if homeowners do not pay all of the fees that Defendants demand—including fabricated debt characterized as "estimated" fees and costs.

3. Defendants factor these estimated fees and costs into its total demand to homeowners and insists they are required to pay the full amount before they will reinstate the loans to avoid foreclosure.

4. Rushmore and Albertelli Law profit from these illegal charges because their compensation is based on the outstanding amount owed on the mortgage loan, and the longer it remains in default, the more they profit.

5. Defendants also conceal the true nature of the amount owed, by including ambiguous fees and costs in the amount homeowners must pay to reinstate their loan. They even appear to charge borrowers $100 for merely asking how much they owe.

6. These practices enrich Defendants at the expense of homeowners struggling to stay current on their mortgages, and by demanding payment of these fees, Defendants force homeowners into foreclosure and in some instances cause them to lose their homes.

7. By the conduct described above, Defendants knowingly violated RESPA, FDCPA, and the FCCPA.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises out of RESPA and the FDCPA, federal statutes.

9. The Court has supplemental jurisdiction over the FCCPA claims under 28 U.S.C. § 1367 because the basis of the RESPA and FDCPA federal claims involve the same debt collection practices that form the basis of the FCCPA claims.

10. The Court has personal jurisdiction because Defendants conduct business throughout the United States, including Miami, Florida. Further, their voluntary contact with Plaintiff to charge and collect debts in Florida made it foreseeable that Defendants would be haled into a Florida court. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) because Defendants are deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced and because their contacts with this District are sufficient to subject them to personal jurisdiction.

PARTIES

12. Plaintiff Marie Cedre is a natural person who currently resides in Florida.

13. Defendant Rushmore is a foreign limited liability company with its principal place of business at 15480 Laguna Canyon Road, Suite 100, Irvine CA 92618. Rushmore is one of the nation's leading specialty loan servicing companies for mortgage lenders, like Wilmington, not individually but as trustee for Carlsbad.

14. Defendant James E. Albertelli, P.A. is a professional association with a principal place of business at 208 North Laura Street, Suite 900, Jacksonville, Florida 32202 and is headquartered at 5404 Cypress Center Dr., Suite 300, Tampa, Florida 33609. It is a full service

real estate law firm representing the mortgage industry. Albertelli acts as a third party debt collector for financial institutions and servicers, like Carlsbad and Rushmore.

15. Defendant Carlsbad Funding Mortgage Trust is a trust that acts as a mortgage lender for homeowners, like Ms. Cedre. Wilmington Savings Fund Society, d/b/a Christiana Trust is the current owner of Plaintiff's mortgage loan, not individually but as trustee for Carlsbad Funding Mortgage Trust. Carlsbad has a registered address of c/o Wilmington Saving Fund Society, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

APPLICABLE LAW

RESPA

16. RESPA imposes certain obligations on mortgage servicers to provide information to borrowers regarding their mortgage loans. 12 U.S.C. § 2605. In 2013, the CFPB enacted new regulations implementing specific provisions under RESPA and the Dodd-Frank Act concerning mortgage loan servicers including, but not limited to, certain requirements for responding to a written request for information concerning a borrower's mortgage loan. *See* 12 C.F.R. § 1024.36 *et seq.*; Public Law 111-203, 124 Stat. 1376 (2010).

17. RESPA provides a private cause of action against a mortgage servicer for violations of the provisions of § 2605, if brought within three (3) years of the violation. 12 U.S.C. § 2614.

18. RESPA defines "servicer" as the "person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan)." 12 U.S.C. § 2605(i)(3).

19. RESPA defines "servicing" as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in

section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." 12 U.S.C. § 2605(i)(3).

20. Pursuant to RESPA, a servicer of a federally related mortgage loan "shall not ... fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter." 12 U.S.C. § 2605(k)(1)(E).

21. RESPA's mortgage servicing regulations require a servicer to provide borrowers with required disclosures that are in writing and "clear and conspicuous." 12 C.F.R. § 1024.32(a)(1).

22. RESPA also requires a servicer to maintain policies and procedures that are reasonable designed to ensure that the servicer can provide a borrower with "accurate and timely disclosures . . . as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

23. Additionally, RESPA provides that "a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request." 12 C.F.R. § 1024.36(g).

24. RESPA and its implementing regulations should be broadly construed to effectuate their remedial purpose. *Friedman v. Maspeth Federal Loan and Sav. Ass'n*, 30 F. Supp. 3d 183, 187 (E.D.N.Y. 2014) ("The Act was designed to throw the federal judiciary's protective cloak over residential-occupant owners of real property and their kin to protect against abuse by banks during loan closings and subsequent related events. The Act should be broadly

applied to accomplish its prophylactic purposes by exercising federal subject matter jurisdiction.").

FDCPA

25. The purpose of the FDCPA is "to eliminate abusive debt collection practices . . . and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692.

26. The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," which includes the false representation of "the character, amount, or legal status of any debt." *Id.* § 1692e.

27. The FDCPA also prohibits debt collectors from "unfair or unconscionable means to collect or attempt to collect any debt," including "the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law." *Id.* § 1692f.

28. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

29. The FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 1692a(3).

30. The FDCPA defines "debt collector" as "any person who uses . . . any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debt owed . . . or asserted to be owed or due another." *Id.* § 1692a(6).

31. The FDCPA defines communication as "conveying of information regarding a debt directly or indirectly to any person through any medium." *Id.* § 1692a(2).

32. The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that] are primarily for personal, family, or household purposes." *Id.* § 1692a(5).

FCCPA

33. The FCCPA prohibits debt collectors from engaging in certain abusive practices in the collection of consumer debts. *See* generally Fla. Stat. § 559.72.

34. The FCCPA's goal is to "provide the consumer with the most protection possible." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing Fla. Stat. § 559.552).

35. Specifically, the FCCPA states that no person shall "claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

36. The FCCPA creates a private right of action under Fla. Stat. § 559.77.

37. The FCCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 559.55(8).

38. The FCCPA mandates that "no person" shall engage in certain practices in collecting consumer debt. *Id.* § 559.72. This language includes all allegedly unlawful attempts at collecting consumer claims. *Williams v. Streeps Music Co.*, 333 So. 2d 65, 67 (Fla. Dist. Ct. App. 1976).

39. The FCCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services

which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." *Id.* § 559.55(6).

FACTUAL ALLEGATIONS

40. On or around May 28, 2004, Ms. Cedre purchased a home in Lake Mary, Florida through a loan from Coldwell Banker Mortgage, secured by a mortgage on the property. Copies of Plaintiff's Mortgage Agreement and Mortgage Note are attached as Exhibit "A" and Exhibit "B" respectively.

41. On or about April 24, 2008, Coldwell Banker Mortgage assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to JPMorgan Chase Bank, N.A.

42. On or around December 1, 2010, Ms. Cedre defaulted on her loan after previously making continuous payments.

43. On or around December 15, 2014, JPMorgan Chase Bank, N.A. assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to Federal National Mortgage Association. *See* Exhibit "C."

44. Sometime in or around April 2016, Federal National Mortgage Association assigned the Mortgage Agreement and Mortgage Note to Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust. *See* Exhibit "D."

45. Effective May, 1, 2016, Seterus, Inc. assigned its rights as the servicer of Ms. Cedre's loan to Rushmore Loan Management Services LLC. *See* Exhibit "E."

46. Therefore, Rushmore became the servicer of the loan, and Carlsbad, through Wilmington, became the owner of Ms. Cedre's loan, while Ms. Cedre's loan was already in default.

47. On or about November 18, 2015, Albertelli Law, on behalf of Federal National Mortgage Association and Seterus, filed a complaint in the Eighteenth Judicial Circuit for Seminole County to initiate foreclosure with the court.

48. Plaintiff hired Smothers Law Firm ("Smothers") to defend her in the foreclosure.

49. On or about May 24, 2016, Rushmore, on behalf of Carlsbad and Wilmington, sent a "Notice of Assignment, Sale or Transfer of Servicing" letter to Ms. Cedre through Smothers. *See* Exhibit "D."

50. The letter advised:

> Pursuant to the Federal Fair Debt Collections Practices Act, if you do not notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume the debt is valid.
>
> If you notify us in writing within 30 days that the debt or any portion thereof is disputed, or if you request the name and address of the original creditor, we will obtain verification of the debt or judgment against you and mail a copy to you and provide you with the name and address of the original creditor.
>
> You should consider this letter as coming from a Debt Collector as we sometimes act as a Debt Collector and any information received will be used for that purpose. However, if you are in Bankruptcy or received a Bankruptcy Discharge of this debt, this letter is not an attempt to collect a debt and does not constitute a notice of personal liability with respect to the debt.

Id.

51. The letter identified the current creditor as Wilmington Savings Fund Society ("Wilmington") as trustee for Carlsbad and provided an itemization of the total amount due and owing on the mortgage as $153.796.65. *Id.*

52. The total amount included a "Summary of Total Debt Composition" breakdown that included the current principal balance of $105,883.13; current unpaid accrued interest of $35,191.85; late charges of $156.56; and "Other Charges" of 12,565.11. *Id.*

53. Because Rushmore provided no explanation or itemization concerning the $12,565.11 in "Other Charges," Smothers sent a written request for information to Rushmore in a letter dated June 6, 2016, asking for a specific breakdown of charges. *See* Exhibit "F."

54. On or about June 13, 2016, Rushmore responded and confirmed it received Smothers' written request and advised it would respond within (30) days. *See* Exhibit "G."

55. On or about June 16, 2016, Albertelli Law, on behalf of Rushmore and Carlsbad, sent Smothers a "Reinstatement Letter," to be received on behalf of Ms. Cedre. See Exhibit "H."

56. Immediately below the heading, the letter advised:

> **WE MAY BE CONSIDERED A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE.**

Id. (emphasis in original).

57. The letter stated: "This letter responds to your request for a Reinstatement of the above referenced loan. As of the date of this letter the amount required to cure your delinquency is $66,464.21**." *Id.*

58. The letter advised that if Ms. Cedre was not prepared to pay the full reinstatement amount that day, "then the amount owed may increase between the date of this letter and the date you reinstate the loan … because of additional interest and late charges as well as legal fees and costs that are incurred as additional steps in the foreclosure proceed." *Id.*

59. In the letter, the total amount Defendants required Ms. Cedre to pay to reinstate her loan was $66,464.21. *Id.*

60. This amount included $3,100 for an "Estimate" of "Outstanding Attorney Fees and Costs."

61. These "estimated" amounts were based on projected amounts due in the event Plaintiff did not actually pay before a certain future date and certain events relating to foreclosure occurred.

62. This amount also included other ambiguous amounts that appeared to be estimates and not actually incurred, including an "Acquired Corporate Advance" charge of $7,548.30 and a "Dismissal Prep Fee" of $125.00. *Id.*

63. The total amount due also included a charge of $100.00 for "Reinstatement letter good through 6.20.16." *Id.*

64. Nowhere in either letter do Defendants state that they will return any of the estimated amounts if paid by Ms. Cedre but not incurred by Rushmore, Albertelli Law, Wilmington, or Carlsbad.

65. Defendants also failed to provide any information or explanation concerning the $7,548.30 charge ambiguously labeled "Acquired Corporate Advance."

66. Rushmore, as the loan servicer, acted as a debt collector by attempting to collect amounts on behalf of the principal, Carlsbad through its trustee, Wilmington.

67. Albertelli Law acted as a third party debt collector for Rushmore by attempting to collect amounts on behalf of Rushmore and Rushmore's principal, Carlsbad through its trustee, Wilmington.

68. Defendants knew that they were not permitted by law to charge or even attempt to collect estimated fees, but they nonetheless demanded Ms. Cedre and the putative classes pay estimated fees to reinstate their loans. Rushmore is a sophisticated mortgage loan servicer,

Albertelli Law is a sophisticated law firm specializing in the mortgage and loan industry, and Carlsbad and Wilmington are sophisticated lenders. In a highly publicized and remarkably similar case issued by the Eleventh Circuit over half of a year prior to the date of Defendants' reinstatement of loan letter at issue, the Eleventh Circuit reversed the district court's grant of summary judgment on the FDCPA and FCCPA claims, opining, among other things, that the defendants were not permitted to charge "estimated" fees that had not yet incurred in their reinstatement of loan letter. *See Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015) ("[The defendants] violated the FDCPA and FCCPA by charging [the plaintiffs] estimated attorney's fees that they had not agreed to pay in the security agreement."). Defendants' reinstatement letter to Plaintiff contains even worse facts than in *Prescott*.

69. Over those six months, the media and trade publications consistently warned the industry against including estimated fees in reinstatement of loan letters, particularly those in the Eleventh Circuit where the *Prescott* case is binding precedent. Some of those industry warnings are attached as Exhibit I and include:

a. *11th Circuit Finds Lender Violated FDCPA And Florida Law, Reverses Ruling*, Lexis Legal News (Dec. 7, 2015) ("The appeals court found that Seterus violated the FDCPA and the FCCPA by charging Prescott estimated attorney fees and refused to affirm the District Court's decision.").

b. *Eleventh Circuit Issues Stern Warning Against Inclusion of Estimated Fees and Costs in Reinstatement Quotes*, USFN (Jan. 4, 2016) ("The Prescott decision should cause any lender, loan servicer, or law firm that provides reinstatement quotes and/or figures to borrowers to examine its practices and procedures in order to determine whether or not information being provided to borrowers in reinstatement situations could potentially constitute a FDCPA violation (or a violation of state consumer protection law, such as the FCCPA). The Eleventh Circuit has sent a clear message to the financial services industry . . . .").

c. *Recent Eleventh Circuit Reversal Sparks Upward Trend in Estimated-Fee FDCPA Litigation*, Lenderlaw Watch (Feb. 9, 2016) ("Concluding that the payoff quote

was a demand for payment, [the Eleventh Circuit] held that the inclusion of fees that had not yet been incurred (even if expressly designated as such) was a demand for compensation not permitted by the plaintiff's mortgage agreement. . . . [L]oan servicers should consider the impact of *Prescott* on their communications with borrowers.").

d. *News Alert: FDCPA Violations for Estimated Fees and Costs in Reinstatement and Payoff Quotes*, Potestivo & Associates (April 15, 2016) ("The recent Appellate Court decision in Prescott, v. Sterus, Inc. . . . has gained nationwide notice. Although the decision is only binding on the Eleventh Circuit, it has opened the door and neatly laid the ground work for other jurisdictions to give similar rulings in the future. Consequently, it is important for servicers and attorneys to be informed and proactive regarding their decisions when it comes to estimated fees and costs in reinstatement and payoff quotes.").

e. *A Violation of the FDCPA – Estimating Attorney's Fees in Reinstatement Figures*, Legal League 100 Quarterly (Q2 2016) ("The federal courts have recently held that lenders may only charge for fees and expenses already incurred.").

70. Yet Defendants ignored industry warnings and demanded payment not owed in violation of federal law.

71. Additionally, these demands were a direct breach of each of the following contractual provisions permitting only recovery of amounts actually incurred: (1) Paragraph 9 of the Mortgage Agreement permitted Defendants to recover "amounts disbursed" in protecting Carlsbad's and Wilmington's interest and rights in the Mortgage Agreement; (2) Paragraph 14 of the Mortgage Agreement prohibited Defendants from charging estimated fees, stating "[l]ender may not charge fees that are expressly prohibited in this Security Instrument or by Applicable Law"; (3) Paragraph 22 of the Mortgage Agreement permitted Defendants to collect "expenses incurred in pursuing" certain actions under the Paragraph which governed default, notice of default, actions to cure default, and reinstatement of loans; and (4) Paragraph 7 of the Mortgage Note permitted Defendants the "right to be paid back . . . for all of its costs and expenses in enforcing" the Note, which included "reasonable attorneys' fees."

72. Therefore, Carlsbad, and its agents, also knew demanding payment of fees not yet incurred was not permitted because it violated Carlsbad's very mortgage agreement and note.

73. Additionally, the CFPB has received over 600 complaints concerning Rushmore's improper loan servicing practices, many involving similar complaints regarding requests for debt not actually owed. https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp. Rushmore's knowledge can be imputed to Carlsbad through agency theory. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624 (Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

74. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information.

75. Additionally, Rushmore violated RESPA by charging a $100.00 fee to respond to a written request for information.

76. Upon information and belief, Rushmore, Albertelli Law, and Carlsbad/Wilmington have a pattern and practice of using these form letters containing the illegal fees complained of in this Complaint.

77. On or about _____ the Plaintiff, through counsel, sent a cure letter to Rushmore, Albertelli Law, and Carlsbad. See the letter attached as Exhibit "J."

78. After a reasonable amount of time, Plaintiff filed this lawsuit because Rushmore failed to cure its violations of state and federal law.

CLASS ACTION ALLEGATIONS

Florida Class 1

79. Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Rushmore's RESPA violations (the "Florida Class 1"), subject to modification after discovery and case development:

> All Florida residents to whom Rushmore responded to a written request for information that included inaccurate, unclear or inconspicuous fees, including but not limited to "Acquired Corporate Advance," "Dismissal Prep Fee," "Other Charges," or any fee or cost labelled "Estimate," during the applicable statute of limitations.

Florida Class 2

80. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by the Defendants' FCCPA violations ("Florida Class 3"), subject to modification after discovery and case development:

> All Florida residents to whom Defendants charged, collected, or attempted to collect an "Estimate" reinstatement of loan amount during the applicable statute of limitations.

Florida Class3

81. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Defendants' FDCPA violations ("Florida Class 4"), subject to modification after discovery and case development:

> All persons in Florida to whom Defendants, charged, collected, or attempted to collect estimated reinstatement of loan amounts during the applicable statute of limitations.

82. Class members are identifiable through Defendants' records and payment databases.

83. Excluded from the Class are Defendants; any entities in which it has a controlling interest; its agents and employees; and any Judge to whom this action is assigned and any member of such Judge's staff and immediate family.

84. Plaintiff proposes that she serve as class representative for the Class.

85. Plaintiff and the Class have all been harmed by the actions of Defendants

86. Numerosity is satisfied. There are likely thousands of class members. Individual joinder of these persons is impracticable.

87. There are questions of law and fact common to Plaintiff and to the Class, including, but not limited to:

a. Whether Rushmore violated RESPA by failing to provide accurate, clear, and conspicuous information in response to a written request for information;

b. Whether Rushmore violated RESPA by charging, collecting, or attempting to collect a fee for responding to a written request for information;

c. Whether Defendants violated the FCCPA by charging monies not due;

d. Whether Defendants violated the FDCPA by charging monies not due;

e. Whether Plaintiff and class members are entitled to actual or statutory damages as a result of Defendants' actions;

f. Whether Plaintiff and class members are entitled to attorney's fees and costs; and

g. Whether Defendants should be enjoined from engaging in such conduct in the future.

89. Plaintiff's claims are typical of the claims of the Classes.

90. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Classes, she will fairly and adequately protect the interests of the Classes, and she is represented by counsel skilled and experienced in class actions.

91. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of this controversy.

92. The prosecution of separate claims by individual class members would create a risk of inconsistent or varying adjudications concerning individual class members.

COUNT I AS TO RUSHMORE'S VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT 12 U.S.C. § 2605(k) (Florida Class 1)

93. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

94. Rushmore is a "servicer" because it was responsible for "servicing" Plaintiff's mortgage loan and was scheduled to receive periodic payments from Plaintiff pursuant to the terms of her mortgage loan and make payments of principal and interest from those amounts under the terms of the loan. 12 U.S.C. § 2605(i)(2)–(3).

95. Plaintiff's loan is a "federally related mortgage loan" because it is secured by a first or subordinate lien, a residential real property designed for the occupancy of one to four families, and was made in whole or in part by Codwell Banker Mortgage, then JPMorgan Chase Bank, then Federal National Mortgage Association, and now Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust—lenders with deposits or accounts which were insured by the FDIC.

96. As a servicer of a federally related mortgage loan, Rushmore must comply with any regulation implementing the provisions of RESPA. *See* 12 U.S.C. § 2605(k)(1)(E).

97. Rushmore is required to maintain policies and procedures that are reasonably designed to ensure that it can "[p]rovide accurate and timely disclosures to a borrower as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 CFR 1024.38(a)(b)(1)(i),(iii)

98. On June 6, 2016, Ms. Cedre, through counsel, sent a written "request for information" to Rushmore concerning her mortgage loan and the amount necessary for reinstatement of her loan. 12 C.F.R. § 1024.36.

99. Rushmore responded to Plaintiff's written request with information that contained "Estimates," "Acquired Corporate Advance" fees, and "Other Fees" without identifying why and for what services the fees were charged. *See* 12 C.F.R. § 1024.36(d)(1)(i); *see* 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

100. Rushmore violated § 2605(k)(1)(E) when it failed to provide information to Plaintiff in an accurate, clear and conspicuous manner, by charging fees not yet incurred and demanding Plaintiff pay these fees to reinstate her loan. 12 C.F.R. § 1024.32(a)(1); 12 U.S.C. § 2605(k)(1)(E). Rushmore has a pattern and practice of using form letters, like the letter at issue, that contain these inaccurate, unclear, and inconspicuous responses.

101. Rushmore's violation of RESPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees and costs in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information.

COUNT II AS TO DEFENDANTS' VIOLATION OF
THE FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72(9)
(Florida Class 2)

102. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

103. Plaintiff is a "consumer" as defined by Fla. Stat. § 559.55(8) when she purchased her home by mortgage.

104. Rushmore, Albertelli Law, and Carlsbad are "persons" as defined under the FCCPA.

105. Defendants attempted to enforce, claimed, and asserted a known non-existent legal right to a debt as defined by Fla. Stat. § 559.55(6) when Albertelli Law, on behalf of Rushmore and Carlsbad, attempted to collect fees not owed. *Id.* § 559.72(9).

106. Rushmore, as a sophisticated defendant mortgage loan servicer regularly engaged in the mortgage loan servicing industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Rushmore, through Albertelli Law, sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

107. Rushmore also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I.

108. Rushmore was also put on notice of its requirements to only charge fees incurred through the many complaints to the CFPB by consumers that Rushmore charged fees not owed, discussed *supra*.

109. Albertelli Law, as a sophisticated defendant law firm regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

110. Albertelli Law also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I. Albertelli Law is primarily based in Florida.

111. Carlsbad, through its trustee Wilmington, as a sophisticated mortgage lender regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letters are even more egregious than in *Prescott*.

112. Carlsbad, through its trustee Wilmington, also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I.

113. Rushmore's and Albertelli Law's knowledge can also be imputed to Carlsbad through principles of agency. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624

(Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

114. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information. She also suffered the imminent risk of having to pay an illegal amount not owed.

COUNT III AS TO DEFENDANTS' VIOLATION OF
THE FAIR DEBT COLLECTION PRACTICES ACT §§ 1692e, 1692f
(Florida Class 3)

115. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

116. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) when she purchased a home in Florida by mortgage.

117. Defendants are "debt collectors" as defined by 15 U.S.C. § 1692a(6) because they regularly attempt to collect, and collect, amounts owed or asserted to be owed or due another. Rushmore's May 24, 2016 letter on behalf of Carlsbad to Ms. Cedre stated: "You should consider this letter as coming from a Debt Collector . . . and any information received will be used for that purpose." Albertelli Law's June 16, 2016 letter on behalf of Rushmore and Carlsbad to Ms. Cedre stated: "We may be considered a debt collector. This is an attempt to collect a debt. Any information will be used for that purpose."

118. The mortgage loan exception to the definition of "debt collector" does not apply because Plaintiff defaulted on her loan on or around December 1, 2010 and the loan was assigned to Wilmington as trustee for Carlsbad sometime in or around April 2016, and because the servicing rights to Ms. Cedre's loan was assigned to Rushmore, effective May 1, 2016.

119. Defendants engaged in "communications" with Plaintiff as defined by 15 U.S.C. § 1692a(2) when they sent the May 24, 2016 and June 16, 2016 debt collection letter to Plaintiff demanding money purportedly due for reinstatement of her loan to avoid foreclosure.

120. Defendants violated 15 U.S.C. § 1692f when they charged estimated fees not owed and not expressly authorized by the agreement creating the debt.

121. Rushmore's violation of the FDCPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees, costs, and other incidental costs, in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information. She also suffered the imminent risk of having to pay an illegal amount.

JURY DEMAND AND RESERVATION OF PUNITIVE DAMAGES

122. Plaintiff is entitled to and respectfully demands a trial by jury on all issues so triable.

123. Plaintiff reserves the right to amend his Complaint and add a claim for punitive damages.

RELIEF REQUESTED

WHEREFORE. Plaintiff, himself and on behalf of the Classes, respectfully requests this Court to enter judgment against Defendants for all of the following:

a. That Plaintiff and all class members be awarded actual damages, including but not limited to forgiveness of all amounts not owed;

b. That Plaintiff and all class members be awarded statutory damages;

c. That Plaintiff and all class members be awarded costs and attorney's fees;

d. That the Court enter a judgment permanently enjoining Defendants from charging and/or collecting debt in violation of the FDCPA, FCCPA, and RESPA;

e. That, should the Court permit Defendants to continue charging and/or collecting debt, it enter a judgment requiring them to adopt measures to ensure FDCPA, RESPA, and FCCPA compliance, and that the Court retain jurisdiction for a period of six months to ensure that Defendants comply with those measures;

f. That the Court enter a judgment awarding any other injunctive relief necessary to ensure Defendants' compliance with the FDCPA, RESPA, and the FCCPA;

g. That the Court enter an order that Defendants and their agents, or anyone acting on their behalf, are immediately restrained from altering, deleting or destroying any documents or records that could be used to identify class members;

h. That the Court certify Plaintiff's claims and all other persons similarly situated as class action claims under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure; and

i. Such other and further relief as the Court may deem just and proper.

Dated: August __, 2016

Respectfully Submitted,

/s/ James L. Kauffman

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City, State, ZIP+4® Wilmington, DE 19801

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT K-3

Smothers
LAW FIRM, P.A.

August 29, 2016

Via U.S. Certified Mail – 7015 1520 0002 9644 5285

Rushmore Loan Management Services LLC
P.O. Box 55004
Irvine, CA 92618

Re: Marie Cedre
113 Heron Bay Cir
Lake Mary, Florida 32746-3476

To Whom It May Concern:

My law firm represents Marie Cedre. As stated in the enclosed Complaint, Rushmore Loan Management Services LLC has breached its contractual obligations and Florida law in its handling of my client's and other borrowers' loans in the putative Class.

Should you wish to make a cure offer, please contact me within twenty (20) days upon receipt of this letter.

Feel free to contact me at the below telephone number if you wish to discuss this matter.

Sincerely,

Scott A. Smothers
scott@smotherslawfirm.com

SAS.smh
Enclosure as stated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARIE CEDRE, on behalf of herself and all others similarly situated,

Case No.: _____

Plaintiff,

v.

RUSHMORE LOAN MANAGEMENT SERVICES LLC, JAMES E. ALBERTELLI, P.A. d/b/a ALAW, and CARLSBAD FUNDING MORTGAGE TRUST,

Defendants.

_____/

CLASS ACTION COMPLAINT

Plaintiff, Marie Cedre, on behalf of herself and all others similarly situated, alleges violations of the Florida Consumer Collection Practices Act § 559.55 *et seq.* ("FCCPA") and the Fair Debt Collection Practices Act 15 U.S.C. 1692 *et seq.* ("FDCPA") against Defendants James E. Albertelli, P.A. ("Albertelli Law"), Rushmore Loan Management Services LLC ("Rushmore"), and Carlsbad Funding Mortgage Trust ("Carlsbad") (collectively "Defendants"). Plaintiff and the putative class also allege violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* ("RESPA") solely against Rushmore.

1. Rushmore is a mortgage loan servicer. Rushmore and Albertelli Law both charge and collect mortgage loans and fees for third party lenders, like Carlsbad. Defendants charged Plaintiff over $3,000 for mortgage fees and costs "Estimates" necessary to reinstate her loan to avoid foreclosure. "Estimated" fees are fees companies expect to incur in the event that certain conditions occur, but have *not* actually incurred. The Eleventh Circuit has denounced

"estimated" fees associated with reinstatement of loans to be a violation of the FCCPA and FDCPA.

2. Hundreds of thousands of homes are in some stage of foreclosure in the United States every month. http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-january-2015.pdf. Most homeowners facing foreclosure are desperate to keep their homes and are willing to do close to anything to continue living in them with their families. Defendants exploit their desperation by placing them in danger of foreclosure if homeowners do not pay all of the fees that Defendants demand—including fabricated debt characterized as "estimated" fees and costs.

3. Defendants factor these estimated fees and costs into its total demand to homeowners and insists they are required to pay the full amount before they will reinstate the loans to avoid foreclosure.

4. Rushmore and Albertelli Law profit from these illegal charges because their compensation is based on the outstanding amount owed on the mortgage loan, and the longer it remains in default, the more they profit.

5. Defendants also conceal the true nature of the amount owed, by including ambiguous fees and costs in the amount homeowners must pay to reinstate their loan. They even appear to charge borrowers $100 for merely asking how much they owe.

6. These practices enrich Defendants at the expense of homeowners struggling to stay current on their mortgages, and by demanding payment of these fees, Defendants force homeowners into foreclosure and in some instances cause them to lose their homes.

7. By the conduct described above, Defendants knowingly violated RESPA, FDCPA, and the FCCPA.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises out of RESPA and the FDCPA, federal statutes.

9. The Court has supplemental jurisdiction over the FCCPA claims under 28 U.S.C. § 1367 because the basis of the RESPA and FDCPA federal claims involve the same debt collection practices that form the basis of the FCCPA claims.

10. The Court has personal jurisdiction because Defendants conduct business throughout the United States, including Miami, Florida. Further, their voluntary contact with Plaintiff to charge and collect debts in Florida made it foreseeable that Defendants would be haled into a Florida court. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) because Defendants are deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced and because their contacts with this District are sufficient to subject them to personal jurisdiction.

PARTIES

12. Plaintiff Marie Cedre is a natural person who currently resides in Florida.

13. Defendant Rushmore is a foreign limited liability company with its principal place of business at 15480 Laguna Canyon Road, Suite 100, Irvine CA 92618. Rushmore is one of the nation's leading specialty loan servicing companies for mortgage lenders, like Wilmington, not individually but as trustee for Carlsbad.

14. Defendant James E. Albertelli, P.A. is a professional association with a principal place of business at 208 North Laura Street, Suite 900, Jacksonville, Florida 32202 and is headquartered at 5404 Cypress Center Dr., Suite 300, Tampa, Florida 33609. It is a full service

real estate law firm representing the mortgage industry. Albertelli acts as a third party debt collector for financial institutions and servicers, like Carlsbad and Rushmore.

15. Defendant Carlsbad Funding Mortgage Trust is a trust that acts as a mortgage lender for homeowners, like Ms. Cedre. Wilmington Savings Fund Society, d/b/a Christiana Trust is the current owner of Plaintiff's mortgage loan, not individually but as trustee for Carlsbad Funding Mortgage Trust. Carlsbad has a registered address of c/o Wilmington Saving Fund Society, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

APPLICABLE LAW

RESPA

16. RESPA imposes certain obligations on mortgage servicers to provide information to borrowers regarding their mortgage loans. 12 U.S.C. § 2605. In 2013, the CFPB enacted new regulations implementing specific provisions under RESPA and the Dodd-Frank Act concerning mortgage loan servicers including, but not limited to, certain requirements for responding to a written request for information concerning a borrower's mortgage loan. *See* 12 C.F.R. § 1024.36 *et seq.*; Public Law 111-203, 124 Stat. 1376 (2010).

17. RESPA provides a private cause of action against a mortgage servicer for violations of the provisions of § 2605, if brought within three (3) years of the violation. 12 U.S.C. § 2614.

18. RESPA defines "servicer" as the "person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan)." 12 U.S.C. § 2605(i)(3).

19. RESPA defines "servicing" as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in

section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." 12 U.S.C. § 2605(i)(3).

20. Pursuant to RESPA, a servicer of a federally related mortgage loan "shall not … fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter." 12 U.S.C. § 2605(k)(1)(E).

21. RESPA's mortgage servicing regulations require a servicer to provide borrowers with required disclosures that are in writing and "clear and conspicuous." 12 C.F.R. § 1024.32(a)(1).

22. RESPA also requires a servicer to maintain policies and procedures that are reasonable designed to ensure that the servicer can provide a borrower with "accurate and timely disclosures . . . as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

23. Additionally, RESPA provides that "a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request." 12 C.F.R. § 1024.36(g).

24. RESPA and its implementing regulations should be broadly construed to effectuate their remedial purpose. *Friedman v. Maspeth Federal Loan and Sav. Ass'n*, 30 F. Supp. 3d 183, 187 (E.D.N.Y. 2014) ("The Act was designed to throw the federal judiciary's protective cloak over residential-occupant owners of real property and their kin to protect against abuse by banks during loan closings and subsequent related events. The Act should be broadly

applied to accomplish its prophylactic purposes by exercising federal subject matter jurisdiction.").

FDCPA

25. The purpose of the FDCPA is "to eliminate abusive debt collection practices . . . and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692.

26. The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," which includes the false representation of "the character, amount, or legal status of any debt." *Id.* § 1692e.

27. The FDCPA also prohibits debt collectors from "unfair or unconscionable means to collect or attempt to collect any debt," including "the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law." *Id.* § 1692f.

28. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

29. The FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 1692a(3).

30. The FDCPA defines "debt collector" as "any person who uses . . . any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debt owed . . . or asserted to be owed or due another." *Id.* § 1692a(6).

31. The FDCPA defines communication as "conveying of information regarding a debt directly or indirectly to any person through any medium." *Id.* § 1692a(2).

32. The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that] are primarily for personal, family, or household purposes." *Id.* § 1692a(5).

FCCPA

33. The FCCPA prohibits debt collectors from engaging in certain abusive practices in the collection of consumer debts. *See* generally Fla. Stat. § 559.72.

34. The FCCPA's goal is to "provide the consumer with the most protection possible." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing Fla. Stat. § 559.552).

35. Specifically, the FCCPA states that no person shall "claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

36. The FCCPA creates a private right of action under Fla. Stat. § 559.77.

37. The FCCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." *Id.* § 559.55(8).

38. The FCCPA mandates that "no person" shall engage in certain practices in collecting consumer debt. *Id.* § 559.72. This language includes all allegedly unlawful attempts at collecting consumer claims. *Williams v. Streeps Music Co.*, 333 So. 2d 65, 67 (Fla. Dist. Ct. App. 1976).

39. The FCCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services

which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." *Id.* § 559.55(6).

FACTUAL ALLEGATIONS

40. On or around May 28, 2004, Ms. Cedre purchased a home in Lake Mary, Florida through a loan from Coldwell Banker Mortgage, secured by a mortgage on the property. Copies of Plaintiff's Mortgage Agreement and Mortgage Note are attached as Exhibit "A" and Exhibit "B" respectively.

41. On or about April 24, 2008, Coldwell Banker Mortgage assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to JPMorgan Chase Bank, N.A.

42. On or around December 1, 2010, Ms. Cedre defaulted on her loan after previously making continuous payments.

43. On or around December 15, 2014, JPMorgan Chase Bank, N.A. assigned Ms. Cedre's Mortgage Agreement and Mortgage Note to Federal National Mortgage Association. *See* Exhibit "C."

44. Sometime in or around April 2016, Federal National Mortgage Association assigned the Mortgage Agreement and Mortgage Note to Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust. *See* Exhibit "D."

45. Effective May, 1, 2016, Seterus, Inc. assigned its rights as the servicer of Ms. Cedre's loan to Rushmore Loan Management Services LLC. *See* Exhibit "E."

46. Therefore, Rushmore became the servicer of the loan, and Carlsbad, through Wilmington, became the owner of Ms. Cedre's loan, while Ms. Cedre's loan was already in default.

47. On or about November 18, 2015, Albertelli Law, on behalf of Federal National Mortgage Association and Seterus, filed a complaint in the Eighteenth Judicial Circuit for Seminole County to initiate foreclosure with the court.

48. Plaintiff hired Smothers Law Firm ("Smothers") to defend her in the foreclosure.

49. On or about May 24, 2016, Rushmore, on behalf of Carlsbad and Wilmington, sent a "Notice of Assignment, Sale or Transfer of Servicing" letter to Ms. Cedre through Smothers. *See* Exhibit "D."

50. The letter advised:

> Pursuant to the Federal Fair Debt Collections Practices Act, if you do not notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume the debt is valid.
>
> If you notify us in writing within 30 days that the debt or any portion thereof is disputed, or if you request the name and address of the original creditor, we will obtain verification of the debt or judgment against you and mail a copy to you and provide you with the name and address of the original creditor.
>
> You should consider this letter as coming from a Debt Collector as we sometimes act as a Debt Collector and any information received will be used for that purpose. However, if you are in Bankruptcy or received a Bankruptcy Discharge of this debt, this letter is not an attempt to collect a debt and does not constitute a notice of personal liability with respect to the debt.

Id.

51. The letter identified the current creditor as Wilmington Savings Fund Society ("Wilmington") as trustee for Carlsbad and provided an itemization of the total amount due and owing on the mortgage as $153.796.65. *Id.*

52. The total amount included a "Summary of Total Debt Composition" breakdown that included the current principal balance of $105,883.13; current unpaid accrued interest of $35,191.85; late charges of $156.56; and "Other Charges" of 12,565.11. *Id.*

53. Because Rushmore provided no explanation or itemization concerning the $12,565.11 in "Other Charges," Smothers sent a written request for information to Rushmore in a letter dated June 6, 2016, asking for a specific breakdown of charges. *See* Exhibit "F."

54. On or about June 13, 2016, Rushmore responded and confirmed it received Smothers' written request and advised it would respond within (30) days. *See* Exhibit "G."

55. On or about June 16, 2016, Albertelli Law, on behalf of Rushmore and Carlsbad, sent Smothers a "Reinstatement Letter," to be received on behalf of Ms. Cedre. See Exhibit "H."

56. Immediately below the heading, the letter advised:

> **WE MAY BE CONSIDERED A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE.**

Id. (emphasis in original).

57. The letter stated: "This letter responds to your request for a Reinstatement of the above referenced loan. As of the date of this letter the amount required to cure your delinquency is $66,464.21**." *Id.*

58. The letter advised that if Ms. Cedre was not prepared to pay the full reinstatement amount that day, "then the amount owed may increase between the date of this letter and the date you reinstate the loan … because of additional interest and late charges as well as legal fees and costs that are incurred as additional steps in the foreclosure proceed." *Id.*

59. In the letter, the total amount Defendants required Ms. Cedre to pay to reinstate her loan was $66,464.21. *Id.*

60. This amount included $3,100 for an "Estimate" of "Outstanding Attorney Fees and Costs."

61. These "estimated" amounts were based on projected amounts due in the event Plaintiff did not actually pay before a certain future date and certain events relating to foreclosure occurred.

62. This amount also included other ambiguous amounts that appeared to be estimates and not actually incurred, including an "Acquired Corporate Advance" charge of $7,548.30 and a "Dismissal Prep Fee" of $125.00. *Id.*

63. The total amount due also included a charge of $100.00 for "Reinstatement letter good through 6.20.16." *Id.*

64. Nowhere in either letter do Defendants state that they will return any of the estimated amounts if paid by Ms. Cedre but not incurred by Rushmore, Albertelli Law, Wilmington, or Carlsbad.

65. Defendants also failed to provide any information or explanation concerning the $7,548.30 charge ambiguously labeled "Acquired Corporate Advance."

66. Rushmore, as the loan servicer, acted as a debt collector by attempting to collect amounts on behalf of the principal, Carlsbad through its trustee, Wilmington.

67. Albertelli Law acted as a third party debt collector for Rushmore by attempting to collect amounts on behalf of Rushmore and Rushmore's principal, Carlsbad through its trustee, Wilmington.

68. Defendants knew that they were not permitted by law to charge or even attempt to collect estimated fees, but they nonetheless demanded Ms. Cedre and the putative classes pay estimated fees to reinstate their loans. Rushmore is a sophisticated mortgage loan servicer,

Albertelli Law is a sophisticated law firm specializing in the mortgage and loan industry, and Carlsbad and Wilmington are sophisticated lenders. In a highly publicized and remarkably similar case issued by the Eleventh Circuit over half of a year prior to the date of Defendants' reinstatement of loan letter at issue, the Eleventh Circuit reversed the district court's grant of summary judgment on the FDCPA and FCCPA claims, opining, among other things, that the defendants were not permitted to charge "estimated" fees that had not yet incurred in their reinstatement of loan letter. *See Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015) ("[The defendants] violated the FDCPA and FCCPA by charging [the plaintiffs] estimated attorney's fees that they had not agreed to pay in the security agreement."). Defendants' reinstatement letter to Plaintiff contains even worse facts than in *Prescott*.

69. Over those six months, the media and trade publications consistently warned the industry against including estimated fees in reinstatement of loan letters, particularly those in the Eleventh Circuit where the *Prescott* case is binding precedent. Some of those industry warnings are attached as Exhibit I and include:

a. *11th Circuit Finds Lender Violated FDCPA And Florida Law, Reverses Ruling*, Lexis Legal News (Dec. 7, 2015) ("The appeals court found that Seterus violated the FDCPA and the FCCPA by charging Prescott estimated attorney fees and refused to affirm the District Court's decision.").

b. *Eleventh Circuit Issues Stern Warning Against Inclusion of Estimated Fees and Costs in Reinstatement Quotes*, USFN (Jan. 4, 2016) ("The Prescott decision should cause any lender, loan servicer, or law firm that provides reinstatement quotes and/or figures to borrowers to examine its practices and procedures in order to determine whether or not information being provided to borrowers in reinstatement situations could potentially constitute a FDCPA violation (or a violation of state consumer protection law, such as the FCCPA). The Eleventh Circuit has sent a clear message to the financial services industry . . . .").

c. *Recent Eleventh Circuit Reversal Sparks Upward Trend in Estimated-Fee FDCPA Litigation*, Lenderlaw Watch (Feb. 9, 2016) ("Concluding that the payoff quote

was a demand for payment, [the Eleventh Circuit] held that the inclusion of fees that had not yet been incurred (even if expressly designated as such) was a demand for compensation not permitted by the plaintiff's mortgage agreement. . . . [L]oan servicers should consider the impact of *Prescott* on their communications with borrowers.").

d. *News Alert: FDCPA Violations for Estimated Fees and Costs in Reinstatement and Payoff Quotes*, Potestivo & Associates (April 15, 2016) ("The recent Appellate Court decision in Prescott, v. Sterus, Inc. . . . has gained nationwide notice. Although the decision is only binding on the Eleventh Circuit, it has opened the door and neatly laid the ground work for other jurisdictions to give similar rulings in the future. Consequently, it is important for servicers and attorneys to be informed and proactive regarding their decisions when it comes to estimated fees and costs in reinstatement and payoff quotes.").

e. *A Violation of the FDCPA – Estimating Attorney's Fees in Reinstatement Figures*, Legal League 100 Quarterly (Q2 2016) ("The federal courts have recently held that lenders may only charge for fees and expenses already incurred.").

70. Yet Defendants ignored industry warnings and demanded payment not owed in violation of federal law.

71. Additionally, these demands were a direct breach of each of the following contractual provisions permitting only recovery of amounts actually incurred: (1) Paragraph 9 of the Mortgage Agreement permitted Defendants to recover "amounts disbursed" in protecting Carlsbad's and Wilmington's interest and rights in the Mortgage Agreement; (2) Paragraph 14 of the Mortgage Agreement prohibited Defendants from charging estimated fees, stating "[l]ender may not charge fees that are expressly prohibited in this Security Instrument or by Applicable Law"; (3) Paragraph 22 of the Mortgage Agreement permitted Defendants to collect "expenses incurred in pursuing" certain actions under the Paragraph which governed default, notice of default, actions to cure default, and reinstatement of loans; and (4) Paragraph 7 of the Mortgage Note permitted Defendants the "right to be paid back . . . for all of its costs and expenses in enforcing" the Note, which included "reasonable attorneys' fees."

72. Therefore, Carlsbad, and its agents, also knew demanding payment of fees not yet incurred was not permitted because it violated Carlsbad's very mortgage agreement and note.

73. Additionally, the CFPB has received over 600 complaints concerning Rushmore's improper loan servicing practices, many involving similar complaints regarding requests for debt not actually owed. https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp. Rushmore's knowledge can be imputed to Carlsbad through agency theory. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624 (Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

74. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information.

75. Additionally, Rushmore violated RESPA by charging a $100.00 fee to respond to a written request for information.

76. Upon information and belief, Rushmore, Albertelli Law, and Carlsbad/Wilmington have a pattern and practice of using these form letters containing the illegal fees complained of in this Complaint.

77. On or about _____ the Plaintiff, through counsel, sent a cure letter to Rushmore, Albertelli Law, and Carlsbad. See the letter attached as Exhibit "J."

78. After a reasonable amount of time, Plaintiff filed this lawsuit because Rushmore failed to cure its violations of state and federal law.

CLASS ACTION ALLEGATIONS

Florida Class 1

79. Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Rushmore's RESPA violations (the "Florida Class 1"), subject to modification after discovery and case development:

> All Florida residents to whom Rushmore responded to a written request for information that included inaccurate, unclear or inconspicuous fees, including but not limited to "Acquired Corporate Advance," "Dismissal Prep Fee," "Other Charges," or any fee or cost labelled "Estimate," during the applicable statute of limitations.

Florida Class 2

80. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by the Defendants' FCCPA violations ("Florida Class 3"), subject to modification after discovery and case development:

> All Florida residents to whom Defendants charged, collected, or attempted to collect an "Estimate" reinstatement of loan amount during the applicable statute of limitations.

Florida Class3

81. Additionally, Plaintiff brings this action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of persons aggrieved by Defendants' FDCPA violations ("Florida Class 4"), subject to modification after discovery and case development:

> All persons in Florida to whom Defendants, charged, collected, or attempted to collect estimated reinstatement of loan amounts during the applicable statute of limitations.

82. Class members are identifiable through Defendants' records and payment databases.

83. Excluded from the Class are Defendants; any entities in which it has a controlling interest; its agents and employees; and any Judge to whom this action is assigned and any member of such Judge's staff and immediate family.

84. Plaintiff proposes that she serve as class representative for the Class.

85. Plaintiff and the Class have all been harmed by the actions of Defendants

86. Numerosity is satisfied. There are likely thousands of class members. Individual joinder of these persons is impracticable.

87. There are questions of law and fact common to Plaintiff and to the Class, including, but not limited to:

a. Whether Rushmore violated RESPA by failing to provide accurate, clear, and conspicuous information in response to a written request for information;
b. Whether Rushmore violated RESPA by charging, collecting, or attempting to collect a fee for responding to a written request for information;
c. Whether Defendants violated the FCCPA by charging monies not due;
d. Whether Defendants violated the FDCPA by charging monies not due;
e. Whether Plaintiff and class members are entitled to actual or statutory damages as a result of Defendants' actions;
f. Whether Plaintiff and class members are entitled to attorney's fees and costs; and
g. Whether Defendants should be enjoined from engaging in such conduct in the future.

89. Plaintiff's claims are typical of the claims of the Classes.

90. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Classes, she will fairly and adequately protect the interests of the Classes, and she is represented by counsel skilled and experienced in class actions.

91. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of this controversy.

92. The prosecution of separate claims by individual class members would create a risk of inconsistent or varying adjudications concerning individual class members.

COUNT I AS TO RUSHMORE'S VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT 12 U.S.C. § 2605(k) (Florida Class 1)

93. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

94. Rushmore is a "servicer" because it was responsible for "servicing" Plaintiff's mortgage loan and was scheduled to receive periodic payments from Plaintiff pursuant to the terms of her mortgage loan and make payments of principal and interest from those amounts under the terms of the loan. 12 U.S.C. § 2605(i)(2)–(3).

95. Plaintiff's loan is a "federally related mortgage loan" because it is secured by a first or subordinate lien, a residential real property designed for the occupancy of one to four families, and was made in whole or in part by Codwell Banker Mortgage, then JPMorgan Chase Bank, then Federal National Mortgage Association, and now Wilmington Savings Fund Society as trustee for Carlsbad Funding Mortgage Trust—lenders with deposits or accounts which were insured by the FDIC.

96. As a servicer of a federally related mortgage loan, Rushmore must comply with any regulation implementing the provisions of RESPA. *See* 12 U.S.C. § 2605(k)(1)(E).

97. Rushmore is required to maintain policies and procedures that are reasonably designed to ensure that it can "[p]rovide accurate and timely disclosures to a borrower as required by this subpart or other applicable law" and "[p]rovide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." 12 CFR 1024.38(a)(b)(1)(i),(iii)

98. On June 6, 2016, Ms. Cedre, through counsel, sent a written "request for information" to Rushmore concerning her mortgage loan and the amount necessary for reinstatement of her loan. 12 C.F.R. § 1024.36.

99. Rushmore responded to Plaintiff's written request with information that contained "Estimates," "Acquired Corporate Advance" fees, and "Other Fees" without identifying why and for what services the fees were charged. *See* 12 C.F.R. § 1024.36(d)(1)(i); *see* 12 C.F.R. 1024.38(a)(b)(1)(i),(iii).

100. Rushmore violated § 2605(k)(1)(E) when it failed to provide information to Plaintiff in an accurate, clear and conspicuous manner, by charging fees not yet incurred and demanding Plaintiff pay these fees to reinstate her loan. 12 C.F.R. § 1024.32(a)(1); 12 U.S.C. § 2605(k)(1)(E). Rushmore has a pattern and practice of using form letters, like the letter at issue, that contain these inaccurate, unclear, and inconspicuous responses.

101. Rushmore's violation of RESPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees and costs in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information.

COUNT II AS TO DEFENDANTS' VIOLATION OF
THE FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72(9)
(Florida Class 2)

102. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

103. Plaintiff is a "consumer" as defined by Fla. Stat. § 559.55(8) when she purchased her home by mortgage.

104. Rushmore, Albertelli Law, and Carlsbad are "persons" as defined under the FCCPA.

105. Defendants attempted to enforce, claimed, and asserted a known non-existent legal right to a debt as defined by Fla. Stat. § 559.55(6) when Albertelli Law, on behalf of Rushmore and Carlsbad, attempted to collect fees not owed. *Id.* § 559.72(9).

106. Rushmore, as a sophisticated defendant mortgage loan servicer regularly engaged in the mortgage loan servicing industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Rushmore, through Albertelli Law, sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

107. Rushmore also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I.

108. Rushmore was also put on notice of its requirements to only charge fees incurred through the many complaints to the CFPB by consumers that Rushmore charged fees not owed, discussed *supra*.

109. Albertelli Law, as a sophisticated defendant law firm regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letter was even more egregious than in *Prescott*.

110. Albertelli Law also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I. Albertelli Law is primarily based in Florida.

111. Carlsbad, through its trustee Wilmington, as a sophisticated mortgage lender regularly engaged in the mortgage loan industry, knew it could only charge fees actually incurred, and not "estimated" fees, because the Eleventh Circuit, in *Prescott v. Seterus, Inc.*, No. 15-10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015), provided express guidance on the issue more than six months prior to the date Albertelli Law sent the reinstatement of loan letter to Ms. Cedre. The language and estimated fees in Ms. Cedre's reinstatement letters are even more egregious than in *Prescott*.

112. Carlsbad, through its trustee Wilmington, also knew it could only charge fees incurred because, following the *Prescott* decision, the media and trade publications issued voluminous warnings against using "estimated" fees not incurred in reinstatement of loan letters, especially in the Eleventh Circuit. *See, e.g.*, Exhibit I.

113. Rushmore's and Albertelli Law's knowledge can also be imputed to Carlsbad through principles of agency. *See, e.g.*, *Compass Bank v. Tania Lynn Vanpelt*, No. CA10-1624

(Fla. Cir. Ct. April 2, 2015) (finding knowledge under the FCCPA could be imputed from agents to the owner of the mortgage note and holder through principles of agency).

114. By charging estimated fees tacked on to the reinstatement amount, and failing to provide information in an accurate, clear and conspicuous manner, Defendants frustrated Ms. Cedre's ability to reinstate her loan and caused her to incur further attorney's fees and costs in connection with defending the foreclosure action and responding to the inaccurate and unclear information. She also suffered the imminent risk of having to pay an illegal amount not owed.

COUNT III AS TO DEFENDANTS' VIOLATION OF
THE FAIR DEBT COLLECTION PRACTICES ACT §§ 1692e, 1692f
(Florida Class 3)

115. Plaintiff incorporates by reference the prior paragraphs as if set forth fully herein.

116. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) when she purchased a home in Florida by mortgage.

117. Defendants are "debt collectors" as defined by 15 U.S.C. § 1692a(6) because they regularly attempt to collect, and collect, amounts owed or asserted to be owed or due another. Rushmore's May 24, 2016 letter on behalf of Carlsbad to Ms. Cedre stated: "You should consider this letter as coming from a Debt Collector . . . and any information received will be used for that purpose." Albertelli Law's June 16, 2016 letter on behalf of Rushmore and Carlsbad to Ms. Cedre stated: "We may be considered a debt collector. This is an attempt to collect a debt. Any information will be used for that purpose."

118. The mortgage loan exception to the definition of "debt collector" does not apply because Plaintiff defaulted on her loan on or around December 1, 2010 and the loan was assigned to Wilmington as trustee for Carlsbad sometime in or around April 2016, and because the servicing rights to Ms. Cedre's loan was assigned to Rushmore, effective May 1, 2016.

119. Defendants engaged in "communications" with Plaintiff as defined by 15 U.S.C. § 1692a(2) when they sent the May 24, 2016 and June 16, 2016 debt collection letter to Plaintiff demanding money purportedly due for reinstatement of her loan to avoid foreclosure.

120. Defendants violated 15 U.S.C. § 1692f when they charged estimated fees not owed and not expressly authorized by the agreement creating the debt.

121. Rushmore's violation of the FDCPA harmed Plaintiff by depriving her of the statutory right to accurate, clear, and conspicuous information concerning her mortgage loan. Additionally, Plaintiff incurred attorney's fees, costs, and other incidental costs, in having to follow up on Rushmore's letter, which contained unclear, inaccurate, and inconspicuous information. She also suffered the imminent risk of having to pay an illegal amount.

JURY DEMAND AND RESERVATION OF PUNITIVE DAMAGES

122. Plaintiff is entitled to and respectfully demands a trial by jury on all issues so triable.

123. Plaintiff reserves the right to amend his Complaint and add a claim for punitive damages.

RELIEF REQUESTED

WHEREFORE. Plaintiff, himself and on behalf of the Classes, respectfully requests this Court to enter judgment against Defendants for all of the following:

a. That Plaintiff and all class members be awarded actual damages, including but not limited to forgiveness of all amounts not owed;

b. That Plaintiff and all class members be awarded statutory damages;

c. That Plaintiff and all class members be awarded costs and attorney's fees;

d. That the Court enter a judgment permanently enjoining Defendants from charging and/or collecting debt in violation of the FDCPA, FCCPA, and RESPA;

e. That, should the Court permit Defendants to continue charging and/or collecting debt, it enter a judgment requiring them to adopt measures to ensure FDCPA, RESPA, and FCCPA compliance, and that the Court retain jurisdiction for a period of six months to ensure that Defendants comply with those measures;

f. That the Court enter a judgment awarding any other injunctive relief necessary to ensure Defendants' compliance with the FDCPA, RESPA, and the FCCPA;

g. That the Court enter an order that Defendants and their agents, or anyone acting on their behalf, are immediately restrained from altering, deleting or destroying any documents or records that could be used to identify class members;

h. That the Court certify Plaintiff's claims and all other persons similarly situated as class action claims under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure; and

i. Such other and further relief as the Court may deem just and proper.

Dated: August __, 2016

Respectfully Submitted,

/s/ James L. Kauffman

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169-3
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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Cedre, Marie

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
James L. Kauffman, Bailey & Glasser, LLP
1054 31st St., Suite 230, Washington, D.C. 20007

DEFENDANTS
Rushmore Loan Management Services, LLC; James E. Albertelli, P.A. d/b/a ALAW, and Carlsbad Funding Mortgage Trust

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. Sec. 1692 et seq. and 12 U.S.C Sec. 2601, et seq.

Brief description of cause:
Violations of the Fair Debt Collection Practices Act and the Real Estate Settlement Procedures Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND $** CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE
12/16/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

MARIE CEDRE

Plaintiff(s)

v.

RUSHMORE LOAN MANAGEMENT SERVICES, LLC, JAMES E. ALBERTELLI, P.A. d/b/a ALAW, and CARLSBAD FUNDING MORTGAGE TRUST

Defendant(s)

Civil Action No. 1:16-CV-25234

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Rushmore Loan Management Services, LLC
15480 Laguna Canyon Road, Suite 100
Irvine, CA 92618

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: James L. Kauffman, Esq.
Bailey & Glasser, LLP
1054 31st Street, Suite 230
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 1:16-CV-25234

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

MARIE CEDRE

Plaintiff(s)

v.

RUSHMORE LOAN MANAGEMENT SERVICES, LLC, JAMES E. ALBERTELLI, P.A. d/b/a ALAW, and CARLSBAD FUNDING MORTGAGE TRUST

Defendant(s)

Civil Action No. 1:16-CV-25234

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* James E. Albertelli, P.A. d/b/a ALAW
208 North Laura Street, Suite 900
Jacksonville, FL 32202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: James L. Kauffman, Esq.
Bailey & Glasser, LLP
1054 31st Street, Suite 230
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 1:16-CV-25234

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❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

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I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

MARIE CEDRE

Plaintiff(s)

v.

RUSHMORE LOAN MANAGEMENT SERVICES, LLC, JAMES E. ALBERTELLI, P.A. d/b/a ALAW, and CARLSBAD FUNDING MORTGAGE TRUST

Defendant(s)

Civil Action No. 1:16-CV-25234

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Carlsbad Funding Mortgage Trust
c/o Wilmington Saving Fund Society
500 Delaware Avenue, 11th Floor
Wilmington, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: James L. Kauffman, Esq.
Bailey & Glasser, LLP
1054 31st Street, Suite 230
Washington, D.C. 20007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 1:16-CV-25234

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❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

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_____
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Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset