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15 Attorneys for Plaintiffs,
16 KENNETH L. KRAL, individually,
17 FERNANDO A. MILLER, individually,
18 and all others similarly situated

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 KENNETH L. KRAL, on behalf
22 himself and all others similarly situated,

23 Plaintiffs,

24 vs.

25 GMAC MORTGAGE, LLC;
26 and DOES 1 through 10, inclusive,
27 Defendants.

28 CASE NO.

Assigned to the Honorable:

CLASS ACTION COMPLAINT

1. 15 USC 1641g Violation
2. Unlawful/Unfair Acts §17200

[DEMAND FOR JURY TRIAL]

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2
3
4 Plaintiff KENNETH L. KRAL (referred to as “Plaintiff” or “Plaintiffs”), by and
5 through his attorneys of record, bring this action against defendants GMAC
6 MORTGAGE, LLC (“GMAC”) and DOES 1 through 10, inclusive, inclusive
7 (“Defendants”) and alleges the following on information and belief, except as to those
8 allegations which pertain to the Plaintiffs:
9
10

11 **I. VENUE**

12 1. The Court has subject matter jurisdiction over this action under 28 USC §
13 1331 wherein the action arises under the Constitution, laws or treaties of the United
14 States and/or under 28 USC § 1332 wherein this is a class action over \$10,000,000.00
15 where at least one plaintiff is diverse from one defendant.
16
17

18 2. The Court has personal jurisdiction over the defendants in this action by the
19 fact that the Defendants are conducting business in the state of California.
20

21 3. Venue is proper in this Court pursuant to 28 USC § 1392 because the action
22 involves real property located in the Central District of California; and pursuant to 28
23 USC § 1391(b) and a substantial part of the events or omissions on which the claims are
24 based occurred in this District.
25
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1 **II. PARTIES**

2 4. Plaintiff, KENNETH L. KRAL, at all times mentioned herein relevant to
3 the complaint was the owner of real property commonly known as 13260 SOLOMAN
4 PEAK DRIVE, RIVERSIDE CA 92503.
5

6 5. Defendant, GMAC MORTGAGE, LLC (“GMAC”), has its principal
7 place of business in Fort Washington, PA and regularly conducts business in the State
8 of California as a Foreign Limited Liability Company, created under the laws of the
9 State of Delaware.
10

11 6. Plaintiffs do not know the true names and capacities of the defendants
12 DOES 1 through 10, inclusive, and, as such, names said defendants by such fictitious
13 names. Plaintiffs will amend the complaint to state the true name and capacity of the
14 DOE defendant(s) when such information is ascertained.
15

16 7. Plaintiffs are informed and believe, and allege thereon, that each
17 defendant is responsible in some manner for the occurrences alleged in the complaint,
18 and that plaintiffs’ damages were proximately caused by the defendants at all times
19 mentioned in the complaint.
20

21 8. Plaintiffs are further informed and believe, and allege thereon, that each
22 defendant was the agent, servant, representative, and/or employee of their co-
23 defendants, and in doing the things hereinafter alleged were acting in the scope of
24

1 their authority as agents, servants, representatives, family members and/or employees,
2 and with the permission and consent of their co-defendants.
3

4 9. Additionally, plaintiffs are informed and believe, and allege thereon, that
5 each defendant assisted, aided and abetted, adopted, ratified, approved, or condoned
6 the actions of every other defendant and that each corporate defendant, if any, was
7 acting as the alter ego of the other in the acts alleged herein.
8

9
10 **III. General Factual Allegations**

11 10. Truth in Lending Act 131 (“TILA”) codified at 15 USC §1641g requires a
12 new creditor to notify the borrower in writing of a transfer in their Note and Deed of
13 Trust (mortgage).
14

15 11. The (hereinafter, the “Transfer Notice”) notification must include:

- 16 a. The identity, address, telephone number of the new creditor;
17
18 b. The date of transfer;
19
20 c. How to reach an agent or party having authority to act on behalf of the
21 new creditor;
22
23 d. The location of the place where transfer of ownership of the debt is
24 recorded; and
25
26 e. Any other relevant information regarding the new creditor within 30 days
27 of the transfer.
28

1 12. 15 USC §1641g was enacted to “ensure [citizens] can actually renegotiate
2 their mortgages if they are in trouble” and to provide “transparency and give
3 borrowers an additional tool to fight illegitimate foreclosure or to negotiate loan
4 modifications that would keep them in their homes.” Sen. Barbara Boxer comments
5 made in the Congressional Record – Senate S5098-99 (May 5, 2009).
6

7
8 13. These combined legislative purposes are referred to in this complaint as
9 “due process” rights.
10

11 14. That each Plaintiff is informed and believes and alleges thereon that
12 defendant GMAC is a creditor systemically violating 15 USC §1641g.
13

14 15. That GMAC has failed to provide tens of thousands of Transfer Notices to
15 class members after executing and recording Assignments of Deeds of Trust that
16 purport to represent GMAC as the new creditor.
17

18 16. That each of the Assignments filed in thousands of consumer
19 bankruptcies purport to prove that an individual debtor’s Mortgage loan note and deed
20 of trust was granted, assigned and transferred to GMAC on the date and in the manner
21 represented (“Transfers”).
22

23 17. That each of the Assignments, offered as evidence in thousands of
24 Motions for Relief from the Automatic Stay, is supported by a tailored affidavit
25 executed under penalty of perjury by a GMAC agent. Each affidavit attests to
26 GMAC’s standing and status as creditor.
27
28

1 18. That GMAC is estopped from denying the truth of representations made
2 in each Assignment and supporting affidavit filed in county records and/or filed with
3 U.S. Bankruptcy Courts.
4

5 19. That the Assignments and affidavits are used as evidence to prove that
6 GMAC has standing as a “party in interest” to seek remedies and receive
7 disbursements in thousands of consumer bankruptcy cases.
8

9 20. That based on those GMAC Assignments and affidavits it is almost
10 invariably determined by U.S. Bankruptcy Court Judges that GMAC is a creditor with
11 standing to seek remedies and receive disbursements in thousands of consumer
12 bankruptcy cases.
13
14

15 21. That, GMAC, as a creditor, obtains orders, receives remedies, receives
16 cash distributions and attorney fee awards from U.S. Bankruptcy Judges and Trustees
17 in tens of thousands of consumer bankruptcy cases.
18

19 22. **Alternatively**, where in response to this Class Action Lawsuit, GMAC
20 denies that it is a new creditor as defined under 15 USC §1641g , each Plaintiff is
21 informed and believes and alleges thereon that defendant GMAC is engaged in the
22 business practice of deceiving bankruptcy judges, Chapter 7 trustees, Chapter 11
23 Trustees, the Office of the United States Trustee, creditors, creditor attorneys, debtors
24 in possession, debtors and debtors attorneys (“bankruptcy players”) as to GMAC ’s
25 status a secured creditor in tens of thousands of bankruptcy cases filed nationwide.
26
27
28

1 23. Through the use of fabricated assignments, endorsements and affidavits
2 that purport to transfer Deeds of Trust and rights to all monies due under the terms of
3 tens of thousands of non-negotiable promissory notes (the “MLNs”), GMAC has
4 demonstrated a pattern and practice of playing “hide-and-seek” with debtors, judges
5 and other bankruptcy players.
6

7
8 24. GMAC intentionally conceals the identity of the true parties in interest
9 entitled to enforce the terms of tens of thousands of residential non-negotiable
10 promissory notes (the “MLNs”) for its own financial benefit, at the expense of the
11 class and to the detriment of the integrity of the bankruptcy system.
12

13
14 25. That GMAC owns and/or services tens of thousands of residential home
15 loans many of which have been pledged to Mortgage backed security trusts.
16

17 26. That these MLNs are non-negotiable instruments.

18 27. That after a defaulted borrower files for relief under a chapter of the U.S.
19 Bankruptcy Code, GMAC retains local attorneys (“network attorneys”) to appear in
20 each case in which GMAC claims an interest as a creditor or agent of a creditor.
21

22 28. Within each case, the network attorneys are charged with various
23 functions depending on the chapter filed and the facts of each case.
24

25 29. On behalf of GMAC , the network attorneys file proofs of claims,
26 objections to confirmation of proposed plans, other services and most commonly,
27 Motions for Relief from the Automatic Stay (hereinafter, the “bankruptcy matters”).
28

1 30. Since 15 USC §1641g was enacted in 2009, GMAC has filed no less than
2
3 3,000 Motions for Relief of Stay and several hundred of Proofs of Claims with in the
4 Central District of California wherein GMAC claims to be the party entitled to
5 monies due under the terms of MLNs.

6
7 31. Said network attorneys are financially rewarded by GMAC based on the
8 speed in which the network attorneys obtain Orders from Relief of Stay and complete
9 other bankruptcy matters. Said network attorneys incur a financial penalty based on
10 the amount of correspondence with GMAC and the amount of evidence the
11 attorney’s require “prove-up” and complete bankruptcy matters.
12

13
14 32. That DOE 1, unidentified agent of GMAC , imposes “technology fees “on
15 GMAC and its network attorneys for correspondence, access and copies of the
16 documentary evidence required to “prove up” and complete bankruptcy matters.
17

18 33. The Pooling and Servicing Agreement of each and every Mortgage
19 Backed Security Trust (hereinafter, “MBST”) serviced by GMAC , contemplates no
20 less than THREE true sales of each MLN from originator, to sponsor, to depositor and
21 finally to the designated Trustee of the MBST (the “chain of title”).
22

23
24 34. As such, any valid “prove up” that establishes that a MBST is the current
25 beneficiary of a MLN requires evidence of each of the THREE true sales transactions
26 contemplated in the Pooling and Servicing Agreement of the MBST.
27
28

1 35. GMAC and its network attorneys are charged for access to each and
2 every document needed to “prove up” the element of standing in the bankruptcy
3 arena. Said documents include, but are not limited to: Assignments of Deed of Trust,
4 Corporate Assignments, Promissory Notes, Endorsements, Allonges,
5 Acknowledgements and employee affidavits (hereinafter, the “inducing documents”)
6 executed under penalty of perjury.
7

8 36. That the existence of these “technology fees” makes representing the truth
9 of each class loan’s “chain of title” cost prohibitive given the scale of GMAC ’s
10 national foreclosure and bankruptcy practice.
11

12 37. That in many cases, NO evidence exists that class loans were EVER
13 legally transferred from loan originator through the contemplated chain of title and to
14 Mortgage Backed Security Trusts serviced by GMAC .
15

16 38. Rather than incur the cost of “proving up” its own standing or the
17 standing of its principal Mortgage Backed Security Trust, GMAC systemically
18 misrepresents that itself to be a “creditor “by proffering inducing documents in tens of
19 thousands of bankruptcy cases.
20

21 39. That said documents are fabrications intended to create the illusion of a
22 valid transfer of rights to enforce the terms of tens of thousands of non-negotiable
23 promissory notes (the “MLNs”), including the money due.
24

1 40. That GMAC does not transfer MLNs from the MBST to itself for
2 administrative convenience as contemplated in 15 USC §1641; instead, GMAC
3 inducing documents and assignments claim that MLNs are transferred from originator
4 directly to GMAC, bypassing any mention of a MBST.
5

6
7 41. Eventually, GMAC is named a “foreclosure beneficiary” on Trustee
8 Deed’s upon Sale following non-judicial foreclosure and grantee if no other bids are
9 received.
10

11 42. That class members remain indebted to the true beneficiary after non-
12 judicial foreclosure sale and receive no credit for the loss of the collateral to GMAC .
13

14 43. That the aforementioned fabricated evidence is **HIGHLY PERSUASIVE**
15 and authentic in appearance; over 95% of GMAC’s Motions for Relief of Stay are
16 granted without objection. GMAC’s Proofs of Claim are objected to only 5% of the
17 time.
18

19 44. That the use of the fabricated evidence has a chilling effect on class
20 debtors and their attorneys. Said business practice discourages bankruptcy players
21 from offering objections or from questioning the validity of GMAC’s false claims
22 based on standing.
23

24
25 45. In addition to cost savings of its practice, GMAC receives trustee payouts
26 from confirmed plans based on submitted Proofs of Claim supported by fabricated
27 evidence. Said payouts are at the expense of unsecured creditors and debtors alike.
28

1 46. That after a non-judicial foreclosure sale, class members remain indebted
2 to the true beneficiary for the unsecured note but without credit for the loss of the
3 collateral to GMAC .
4

5 47. Most egregiously, the network attorneys utilize the inducing documents to
6 obtain attorney fees awards from by the bankruptcy judges ranging from \$600-1000
7 for each successful motion for relief of stay.
8

9 48. That said motions are granted and the hundreds of thousands in attorney
10 fees are awarded under false pretenses.
11

12 49. That GMAC then charges bankruptcy attorney fees to members of the
13 class thereby increasing total balances and arrearage claims.
14

15 50. Where a MLN is transferred after origination, Homeowners have a
16 statutory right to know who the identity of the beneficiary of their MLNs pursuant to
17 15 USC §1641.
18

19 51. In the alternative, class members and bankruptcy players have a right to
20 court system that is free of deceit and false evidence.
21

22 52. That the degradation of the integrity of our bankruptcy court system
23 cannot be justified in the name of GMAC 's cost savings.
24

25 53. That Attorney fees awards and remedies granted by bankruptcy judges
26 and based on GMAC 's misrepresentations of MLN transactions are subject to mass
27 disgorgement and reversal.
28

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3 **IV. Mr. KRAL's Facts**

4 54. Plaintiffs incorporate these allegations into the claim below as though fully set
5 forth herein.

6
7 55. On or about February November 5, 2009, KENNETH L. KRAL, became
8 indebted to FIRST AMERIGROUP MORTGAGE CORPORATION ("FIRST
9 AMERIGROUP").

10
11 56. KENNETH L. KRAL promised to pay FIRST AMERIGROUP \$537, 850.00
12 plus interest for a residential home loan. This promise was placed in the Note
13 and secured by a Deed of Trust on the real property located at 13260
14 SOLOMAN PEAK DRIVE, RIVERSIDE CA 92503.

15
16
17 57. Soon after origination, GMAC began claiming that it was the authorized
18 servicer of his loan. In reliance, KRAL began sending payments to GMAC .

19
20 58. On August 21, 2008, FIRST MAGNUS filed for protection under Chapter 11.

21 59. On April 2, 2009, FIRST MAGNUS was dissolved as a corporation by the
22 Arizona Secretary of State.

23
24 60. Although FIRST MAGNUS had ceased to exist, GMAC continued to extract
25 mortgage payments from KRAL and represent it was the authorized servicer of
26 the subject MLN.
27
28

1 61.The FIRST MAGNUS bankruptcy docket is void of any indication that any
2 agency relationship existed between GMAC or MERS and the FIRST
3 MAGNUS bankruptcy estate or how the estate disposed of the loan prior to the
4 dissolution of the corporation.
5

6
7 62.KRAL began experiencing financial difficulties, defaulted on the MLN and filed
8 for chapter 7 bankruptcy protections on or about June 17, 2010.
9

10 63.KRAL has never received any notice that GMAC or any other entity became a
11 new creditor until he received a Motion for Relief from Bankruptcy Stay in the
12 US mail.
13

14 64.Notwithstanding that dissolution, on September 10, 2010, GMAC recorded a
15 “Corporate Assignment of Deed of Trust” (“Assignment”) that purports to
16 transfer the MLN from MERS on behalf of FIRST MAGNUS directly to
17 GMAC .
18

19 65.At the time of the alleged Assignment, FIRST MAGNUS did not exist.
20

21 66.That on same day as it recorded its Assignment, September 10, 2010, GMAC
22 moved the US Bankruptcy court for relief from the automatic stay wherein it
23 claimed to be the party in interest in KRAL’s case [EXHIBIT A: KRAL-
24 MOTION FOR RELIEF OF STAY with GMAC ’S SUPPORTING
25 EXHIBITS].
26
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1 67. That GMAC, by and through its network attorneys, McCarthy and Holthus LLP
2 went to great lengths to create the illusion that GMAC was the party entitled to
3 enforce the terms to the subject note and deed of trust; that it was entitled to
4 money due under the note; that it was a secured creditor and that it had the right
5 to pursue non-bankruptcy remedies including a non-judicial foreclosure sale.
6

7
8 68. That the exhibits utilized by GMAC in the motion for relief of stay in the
9 KRAL bankruptcy case demonstrate a text book example of GMAC's deceptive
10 business practice.
11

12 69. Here, GMAC manufactured official looking title documents in the KRAL case
13 so as to deceive bankruptcy players in accepting GMAC's version of the chain
14 of title of this MLN.
15

16 70. That the use of these fabricated documents allowed GMAC to obtain relief of
17 stay without the need to reveal the true beneficiary of the MLN, to prove up a
18 complex chain of title, to save on its own attorney fees and to receive an
19 attorney fee award.
20

21 71. So as to chill any opposition to the motion and to induce the Court to grant the
22 motion, GMAC relies on the following misrepresentations and attached
23 exhibits:
24

25 72. That GMAC creates the illusion that the subject MLN was transferred from
26 FIRST MAGNUS by relying upon the assertions contained in the "Corporate
27
28

1 Assignment of Deed of Trust” which claims that “for value received (“MERS”)
2 as nominee for First Magnus Financial Corporation, an Arizona Corporation, its
3 successors or assigns hereby grants, assigns and transfers to GMAC Loan
4 Services LLC...all beneficial interest under that certain Deed of Trust dated
5 2/06/2007...therein described or referred to, in said Deed of Trust, the money
6 due and to become due thereon with interest and all rights accrued and to accrue
7 under said Deed of Trust.”
8
9
10

11 73. That the Corporate Assignment of Deed of Trust further indicates that the
12 document was prepared by GMAC employee THEA CHESNEY and executed
13 by another GMAC employee and MERS “vice president”, THEODORE
14 SCHULTZ.
15

16 74. That the Corporate Assignment of Deed of Trust is notarized by Linda D. Parks.
17

18 75. That the Assignment represents that FIRST MAGNUS is still an Arizona
19 corporation at the time of the alleged transfer.
20

21 76. The KRAL relief of stay motion is also supported by a false declaration of an
22 GMAC Assistant Vice President, NEVA HALL who claims under penalty of
23 perjury that “Movant holds a Trust Deed” and that a true and correct copy of the
24 assignment transferring the beneficial interest under the note and deed of trust to
25 Movant (GMAC) is attached as Exhibit 2. That
26
27
28

1 77. That GMAC 's Exhibit 2, referred to by HALL, is the aforementioned Corporate
2 Assignment of Deed of Trust. GMAC 's Exhibit 3, referred to by HALL, is a
3 copy of the original unendorsed Note payable to FIRST MAGNUS.
4

5 78. That the HALL declaration and the Corporate Assignment of Deed of Trust
6 executed by SCHULTZ each contain false statements regarding the chain of title
7 transfers of the KRAL MLN.
8

9 79. That each of these documents is a fabrication created and offered to the
10 bankruptcy players so as to induce the granting of relief of stay where no
11 standing exists, reduce GMAC 's cost of doing business, obtain attorney fee
12 awards under false pretenses and pass the cost on to debtors through increased
13 loan charges.
14
15

16 80. That based on this falsified evidence, the bankruptcy court entered an order
17 granting relief from the automatic stay and awarding attorney fees to GMAC 's
18 attorneys which were added to KRAL 's loan balance [EXHIBIT B: KRAL-
19 ORDER ON MOTION FOR RELIEF OF STAY].
20
21

22 81. Based on this falsified evidence, the Chapter 7 trustee did not oppose the
23 Motion.
24

25 82. That the claims before the Court are vested in the Plaintiffs and not any
26 Bankruptcy Trustee. That these claims arose "post-petition" and are not the
27 property of any bankruptcy estate. That in each case, GMAC does not
28

1 manufacture and produce Assignments, endorsements or false declarations until
2 after a bankruptcy petition is filed. That GMAC engages in TILA violations
3 and/or deceptive business practices in REACTION to the filing of a bankruptcy
4 petition by consumer debtors. Therefore, those Plaintiffs have exclusive
5 standing to pursue these claims.
6

7
8 83. That a foreclosure sale of the subject property was conducted on July 15, 2011
9 and Deed upon Trustee Sale was granted to GMAC as the “foreclosure
10 beneficiary [EXHIBIT C: KRAL-DEED upon TRUSTEE SALE].
11

12 84. That GMAC filed an Unlawful Detainer action against KRAL and seeking
13 possession of the property.
14

15 85. KRAL has countered with a Superior Court Complaint to recover his property
16 which is pending.
17

18 86. That KRAL remains indebted to the true beneficiary.
19

20 87. That GMAC currently holds title to the property.
21

22 **V. Mr. Miller’s Facts**

23 88. Plaintiffs incorporate these allegations into the claim below as though fully set
24 forth herein.

25 89. On or about August 28, 2006, FERNANDO A. MILLER became indebted to
26 SCME MORTGAGE BANKERS, INC. (Hereinafter, “SCME”).
27
28

1 90.FERNANDO A. MILLER promised to pay SCME \$640,250.00 plus interest for
2 the residential 4-plex loan. This promise was placed in the Note and secured by
3 a Deed of Trust on the real property located at 1329 N. Fashion Lane, Anaheim
4 CA 92806.

5
6
7 91.Soon after origination, GMAC began claiming that it was the authorized
8 servicer of his loan. In reliance, MILLER began sending payments to GMAC .

9
10 92.MILLER began experiencing financial difficulties, defaulted on the MLN and
11 filed for chapter 7 bankruptcy protections on or about August 24, 2010.

12
13 93.MILLER has never received any notice that GMAC or any other entity became
14 a new creditor until he received a Motion for Relief from Bankruptcy Stay in the
15 US mail.

16
17 94.On September 22, 2010, GMAC recorded a “Corporate Assignment of Deed of
18 Trust” (“Assignment “) that purports to transfer the MLN from MERS on behalf
19 of SCME directly to GMAC .

20
21 95.That on January 11, 2011 GMAC moved the US Bankruptcy court for relief
22 from the automatic stay wherein it claimed to be the party in interest in
23 MILLER’s case [EXHIBIT D: MILLER-MOTION FOR RELIEF OF STAY
24 with GMAC ’S SUPPORTING EXHIBITS].

25
26
27 96.That GMAC , by an through its network attorneys, McCarthy and Holthus LLP
28 went to great lengths to create the illusion that GMAC was the party entitled to

1 enforce the terms to the MILLER note and deed of trust; that it was entitled to
2 money due under the note; that it was a secured creditor and that it had the right
3 to pursue non-bankruptcy remedies including a non-judicial foreclosure sale.

4 That the exhibits utilized by GMAC in the motion for relief of stay in the
5 MILLER bankruptcy case demonstrate another text book example of GMAC's
6 deceptive business practice.
7

8
9
10 97. Here, GMAC manufactured official looking title documents in the MILLER
11 case so as to deceive bankruptcy players in accepting GMAC's version of the
12 chain of title of this MLN.
13

14 98. That the use of these fabricated documents allowed GMAC to obtain relief of
15 stay without the need to reveal the true beneficiary of the MLN, to prove up a
16 complex chain of title, to save on its own attorney fees and to receive an
17 attorney fee award.
18

19 99. So as to chill any opposition to the motion and to induce the Court to grant the
20 motion, GMAC relies on the following misrepresentations and attached
21 exhibits:
22

23
24 100. That GMAC creates the illusion that the subject MLN was transferred
25 from SCME by relying upon the assertions contained in the "Corporate
26 Assignment of Deed of Trust" which claims that "for value received ("MERS")
27 as nominee for SCME MORTGAGE BANKERS, INC., a California
28

1 corporation., its successors or assigns hereby grants, assigns and transfers to
2 GMAC Loan Services LLC...all beneficial interest under that certain Deed of
3 Trust dated 9/06/2006...therein described or referred to, in said Deed of Trust,
4 the money due and to become due thereon with interest and all rights accrued
5 and to accrue under said Deed of Trust.”
6
7

8 101. That the MILLER Corporate Assignment of Deed of Trust further
9 indicates that the document was prepared by GMAC employee TRACI
10 SCHNEIDER and also executed by GMAC employee and MERS “vice
11 president”, THEODORE SCHULTZ.
12

13
14 102. That the MILLER Corporate Assignment of Deed of Trust is also
15 notarized by Linda D. Parks.
16

17 103. The MILLER relief of stay motion is also supported by a false declaration
18 of an GMAC “Bankruptcy Specialist III” EVANGILINE TILLMAN who
19 claims under penalty of perjury that “Movant holds a Trust Deed” and that a true
20 and correct copy of the assignment transferring the beneficial interest under the
21 note and deed of trust to Movant (GMAC) is attached as Exhibit 2.
22

23
24 104. That Exhibit 2 referred to by TILLMAN is the aforementioned Corporate
25 Assignment of Deed of Trust.
26
27
28

1 105. That Exhibit 3 referred to by TILLMAN is a copy of the original Note
2 payable to SCME. The signature page of the Note contains no endorsements
3 although sufficient space for one exists.
4

5 106. Instead, GMAC attaches an unattached piece of paper that purports to
6 include two endorsements to parties other than GMAC in contradiction to the
7 MILLER Corporate Assignment of Deed of Trust.
8

9 107. The first unattached endorsement states: "Pay to the Order of
10 Residential Funding Company LLC without Recourse SCME Mortgage Bankers
11 Inc, a California Corporation and executed by "IAN HETZLER, funder".
12

13 108. The first unattached endorsement further states: "Pay to the Order of
14 Deutsche Bank Trust Company Americas as Trustee without recourse
15 Residential Funding Company LLC SCME Mortgage Bankers Inc, a California
16 Corporation and of Residential Funding Company LLC by "JUDY FABER,
17 VICE PRESIDENT". The endorsement contains no indication as to the identity
18 of the trust for which Deutsche Bank Trust Company Americas is purportedly
19 acting as Trustee.
20
21
22

23 109. Thereafter, GMAC attaches a second unattached piece of paper that
24 purports to include one endorsement to GMAC in contradiction to the MILLER
25 Corporate Assignment of Deed of Trust.
26
27
28

1 110. The second unattached endorsement is labeled as a “Note Allonge” and
2 further states: Without Recourse, Pay to the Order of GMAC Loan Services
3 LLC and is signed by “JUDY DELTS, LIMITED SIGNING OFFICER,
4 COMPANY: Deutsche Bank Trust Company Americas as Trustee (for an
5 unnamed Trust) FKA Bankers Trust Company, as Trustee by Residential
6 Funding Company, LLC FKA Residential Funding Corporation, its Attorney in
7 Fact”
8
9
10

11 111. That each of these endorsements are nonsensical and without legal effect.

12 112. That each of these endorsements are unauthorized fabrications that
13 directly contradict the Chain of the Title “story” told by GMAC within its
14 Corporate Assignment of Deed of Trust.
15

16 113. That the TILLMAN declaration, the Corporate Assignment of Deed of
17 Trust executed by SCHULTZ and each of the fabricated endorsements each
18 contain false statements regarding the chain of title transfers of the MILLER
19 MLN.
20
21

22 114. That each of these documents is a fabrication created and offered to the
23 bankruptcy players so as to induce the granting of relief of stay where no
24 standing exists, reduce GMAC ’s cost of doing business, obtain attorney fee
25 awards under false pretenses and pass the cost on to debtors through increased
26 loan charges.
27
28

1 115. That based on this falsified evidence, the bankruptcy court entered an
2 order granting relief from the automatic stay and awarding attorney fees to
3 GMAC 's attorneys which were added to MILLER's loan balance [EXHIBIT
4 E: MILLER-ORDER ON MOTION FOR RELIEF OF STAY].

5
6
7 116. The Chapter 7 Trustee did not oppose the motion and thereafter entered a
8 No-Asset report.

9
10
11 117. That a foreclosure sale of the subject property was conducted on May 31,
12 2011 and Deed upon Trustee Sale was granted to GMAC as the "foreclosure
13 beneficiary"[EXHIBIT F: MILLER-DEED upon TRUSTEE SALE].

14
15 118. That GMAC filed an Unlawful Detainer action against MILLER and is
16 seeking possession of the property.

17
18 119. That the claims before the Court are vested in the Plaintiffs and not any
19 Bankruptcy Trustee. That these claims arose "post-petition" and are not the
20 property of any bankruptcy estate. That in each case, GMAC does not
21 manufacture and produce Assignments, endorsements or false declarations until
22 after a bankruptcy petition is filed. That GMAC engages in TILA violations
23 and/or deceptive business practices in REACTION to the filing of a bankruptcy
24 petition by consumer debtors. Therefore, those Plaintiffs have exclusive
25 standing to pursue these claims.
26
27
28

1 120. That MILLER filed a Superior Court Complaint seeking to void the non-
2 judicial foreclosure sale naming GMAC and other parties.
3

4 121. Although not specifically named in the MILLER Superior Court
5 Complaint, Deutsche Bank Trust Company Americas, solely in its capacity as
6 Trustee for RESIDENTIAL ACCREDIT LOANS INC. MORTGAGE ASSET-
7 BACKED PASS-THOUGH CERTIFICATES, SERIES 2006-QHI appeared in
8 the case and claimed to be the true beneficiary of the MILLER MLN in defense
9 pleadings.
10
11

12 122. That in the Superior Court pleadings, GMAC admits that the true
13 beneficiary of the MILLER MLN is the RESIDENTIAL ACCREDIT LOANS
14 INC. MORTGAGE ASSET-BACKED PASS-THOUGH CERTIFICATES,
15 SERIES 2006-QHI.
16
17

18 123. That MILLER remains indebted to the true beneficiary for the full amount
19 of the debt notwithstanding the taking of the collateral by GMAC .
20

21 124. That GMAC currently holds title to the property.
22
23

24 VI. Class Action Allegations

25 125. Plaintiff incorporates the allegations above in this claim as though fully
26 set forth herein.
27
28

1 126. Either GMAC is systemically failing to provide the TILA transfer Notice
2 to borrowers under the requirements of Section 1641(g) or, more likely, GMAC
3 is engaged in systemic fraud upon the Bankruptcy Courts, class members and its
4 other bankruptcy players for financial gain.
5

6
7 127. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil
8 Procedure, on behalf of the themselves and on the following Classes:

9
10 (1) All California borrowers who did not receive a timely Transfer
11 Notice from GMAC with 30 days after defendant became the creditor
12 of a MLN, pursuant to 15 USC § 1641, and/or

13 (2) All California debtors, as defined under the U.S. Bankruptcy, in
14 whose cases GMAC appeared and asserted standing as a creditor in
15 any bankruptcy matter premised on false, inaccurate, misleading or
16 deceptive documents and/or written representations and where another
17 entity other than GMAC is the actual creditor of a MLN.

18 128. Excluded from the Class are defendants, and their affiliates, subsidiaries,
19 current or former employees, officers, directors, agents, representatives, and
20 their family members.

21
22 129. Plaintiffs do not know the exact size or identities of the members of the
23 proposed class, since such information is in the exclusive control of the
24 Defendants. Plaintiff is informed and believes and alleges thereon the class (1)
25 TWO size consists of anywhere from 15,000 to 30,000 California borrowers.
26 Plaintiff is informed and believes and alleges thereon the class (2) Two size
27
28

1 consists of anywhere from 5,000 to 15,000 California debtors. Therefore, the
2 proposed Class is so numerous that joinder of all members is impracticable.
3

4 130. A class action is superior to other methods for the fast and efficient
5 adjudication of this controversy and to avoid the risk of disparate and
6 inconsistent rulings in different courts. A class action regarding the issues in
7 this case does not create any problems of manageability.
8

9 131. A pattern and practice of conduct by defendants exist in this case wherein
10 common questions of fact and law predominate over any questions affecting
11 only individual members including, but not limited to the following:
12

- 13 a. Whether defendant's actions or failure to act constituted a violation of 15
14 USC §1641g;
- 15 b. Whether GMAC became a creditor as defined 15 USC §1641g;
- 16 c. Whether the aforementioned inducing documents are false, misleading
17 anti-competitive or deceptive;
- 18 d. Whether GMAC is stopped from denying the truth of the matters asserted
19 in various title and other documents filed in bankruptcy matters;
- 20 e. Whether defendant's actions, failure to act, representations and assertions
21 in bankruptcy matters constitute a violation of California Business &
22 Professions Code §17200;
23
24
25
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28

- 1 f. Whether defendant's actions are systemic and constitute a business
2 pattern or practice;
3
4 g. The affect of defendant's business practice on competition with other loan
5 servicers and lenders engaging in a bankruptcy and foreclosure practices;
6
7 h. The amount of damages appropriate for violation of 15 §1641g and\or Cal
8 B&P §17200 in this context;
9
10 i. The amount of court sanctions and punitive damages appropriate for
11 violation of 15 §1641g and\or Cal B&P §17200 in this context;
12
13 j. The amount of restitution and disgorgement appropriate for violation of
14 15 §1641g and\or Cal B&P §17200 in this context;
15
16 k. The amount of cost savings benefiting GMAC from the deceptive
17 practices violating 15 §1641g and\or Cal B&P §17200 in this context;
18
19 l. The effect of vacating Bankruptcy Orders, claims and awards granted
20 based on the alleged deceptive business practice;
21
22 m. The degree, scope and cost of implementing remedial processes and
23 oversight of GMAC 's future bankruptcy and foreclosure practices;
24
25 n. Whether injunctive relief is appropriate.

26 132. This is a matter of important public policy because the fair treatment of
27 distressed borrowers is state and national policy priorities.
28

1 133. The claims of the individual named Plaintiffs are typical of the claims of
2 the Class and do not conflict with the interests of any other members of the
3 Class.
4

5 134. The individually named Plaintiffs will fairly and adequately protect the
6 interests of the Class. They are committed to the vigorous prosecution of the
7 Class' claims and have retained attorneys who are qualified to pursue this
8 litigation.
9

10 135. The putative class action meets the requirements of Federal Rules of Civil
11 Procedure 23(a), 23(b) and/or 23(c).
12

13 136. The nature of notice to the proposed class required and/or contemplated is
14 the best practicable method possible and contemplated the defendant's list when
15 disclosed would most likely be media outlets, mailing to the property addresses
16 affected by the filed foreclosures and internet and other general notices are
17 contemplated to ensure notice.
18
19
20

21 137. Defendants have acted or refused to act on grounds that apply generally to
22 the Class so that final injunctive relief or corresponding declaratory relief is
23 appropriate respecting the Class as a whole.
24

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27 **VII. CLAIMS**

28 **FIRST CLAIM**

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**Unfair and Unlawful Practices
(Against All defendants and Does 1 through 10)**

138. Plaintiffs incorporate in this claim all of the allegations above as though set forth in full herein.

139. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

140. California's Unfair Competition Law (UCL) defines unfair competition to include any "unlawful, unfair, or fraudulent" business act or practice. Cal Bus & Prof Code §17200 et seq.

141. As stated above, defendant engage in unlawful, deceptive, misleading and anti-competitive business practices under the UCL based on deceit upon the bankruptcy court, perjury, fraud, intentional misrepresentation, negligent misrepresentation, contractual interference and conversion as alleged above.

142. As stated above, that GMAC is in the business of manufacturing chain of title transfer evidence on demand so as to support its position in thousands of bankruptcy matters.

143. As stated above, that through use of manufactured evidence, that defendant has systemically deceived the bankruptcy court and other bankruptcy players as to the identity of the true beneficiary or creditor of the KRAL, MILLER and other class members' MLNs.

1 144. As stated above, that GMAC created documents and affidavits that were
2 false so as to create the illusion that the rights to enforce the terms of the KRAL,
3 MILLER and other class members' MLNs had transferred to GMAC on a date
4 certain and in the manner represented to the bankruptcy players.
5

6
7 145. GMAC violated federal perjury statute, 18 U.S.C. 1621.

8 146. Under 18 U.S.C. 1621

9 Whoever—

10 (1) having taken an oath before a competent tribunal, officer, or person, in
11 any case in which a law of the United States authorizes an oath to be
12 administered, that he will testify, declare, depose, or certify truly, or that any
13 written testimony, declaration, deposition, or certificate by him subscribed,
14 is true, willfully and contrary to such oath states or subscribes any material
15 matter which he does not believe to be true; or

16 (2) in any declaration, certificate, verification, or statement under penalty of
17 perjury as permitted under section 1746 of title 28, United States Code,
18 **willfully subscribes as true any material matter which he does not**
19 **believe to be true;**

20 is guilty of perjury and shall, except as otherwise expressly provided by law,
21 be fined under this title or imprisoned not more than five years, or both. This
22 section is applicable whether the statement or subscription is made within or
23 without the United States.

24 147. On September 10, 2010, GMAC filed a declaration under penalty of
25 perjury in the U.S. Bankruptcy Court representing that GMAC was the party
26 entitled to enforce the terms of the KRAL's MLN in order to induce the court to
27 relieve GMAC from the automatic stay. It was signed by GMAC Assistant
28 Vice President, NEVA HALL an employee, representative or authorized agent

1 of GMAC and incorporated the attached Corporate Assignment of Deed of
2 Trust, the Note and the original Deed of Trust by reference.
3

4 148. The “Corporate Assignment of Deed of Trust” filed with the Orange
5 County Recorders September 10, 2010 was attached to GMAC’s motion for relief
6 from stay in the KRAL bankruptcy case represented “for value received
7 (“MERS”) as nominee for First Magnus Financial Corporation, an Arizona
8 Corporation, its successors or assigns hereby grants, assigns and transfers to
9 GMAC Loan Services LLC...all beneficial interest under that certain Deed of
10 Trust dated 2/06/2007...therein described or referred to, in said Deed of Trust, the
11 money due and to become due thereon with interest and all rights accrued and to
12 accrue under said Deed of Trust.”

13 149. It was purportedly drafted by GMAC employee THEA CHESNEY and
14 executed on August 31, 2010 date by THEODORE SCHULTZ, an GMAC
15 employee an Vice President of MERS and notarized on that date by LINDA
16 PARK. The “Corporate Assignment of Deed of Trust” filed with the Orange
17 County Recorders on September 10, 2010 was attached to GMAC’s motion for
18 relief from stay in the MILLER bankruptcy as evidence.
19

20 150. On January 11, 2011, GMAC filed a declaration under penalty of perjury
21 in the U.S. Bankruptcy Court representing was the party entitled to enforce the
22 terms of the MILLER’s MLN in order to induce the court to relieve GMAC
23 from the automatic stay. It was signed by Bankruptcy Specialist III”
24
25 EVANGILINE TILLMAN an employee, representative or authorized agent of
26
27
28

1 GMAC and incorporated the attached Corporate Assignment of Deed of Trust,
2 the Note and the original Deed of Trust by reference.
3

4 151. The “Corporate Assignment of Deed of Trust” filed with the Orange
5 County Recorders September 10, 2010 was attached to GMAC’s motion for
6 relief from stay in the KRAL bankruptcy case represented “for value received
7 (“MERS”) as nominee for SCME MORTGAGE BANKERS, INC., a California
8 corporation,, its successors or assigns hereby grants, assigns and transfers to
9 GMAC Loan Services LLC...all beneficial interest under that certain Deed of
10 Trust dated 9/06/2006...therein described or referred to, in said Deed of Trust,
11 the money due and to become due thereon with interest and all rights accrued
12 and to accrue under said Deed of Trust.”

13 152. It was purportedly drafted by GMAC employee TRACI SCHNEIDER
14 and executed on September 10, 2010 date by THEODORE SCHULTZ, an
15 GMAC employee a Vice President of MERS and notarized on that date by
16 LINDA PARK. The “Corporate Assignment of Deed of Trust” filed with the
17 Orange County Recorders on September 22, 2010 was attached to GMAC’s
18 motion for relief from stay in the MILLER bankruptcy as evidence.
19

20 21 153. The first unattached endorsement to the Note states: “Pay to the Order of
22 Residential Funding Company LLC without Recourse SCME Mortgage Bankers
23 Inc, a California Corporation and executed by “IAN HETZLER, funder” with
24 no date.
25

26 27 154. The first unattached endorsement further states: “Pay to the Order of
28 Deutsche Bank Trust Company Americas as Trustee without recourse

1 Residential Funding Company LLC SCME Mortgage Bankers Inc, a California
2 Corporation and executed by “JUDY FABER, VICE PRESIDENT” with no
3
4 daye. The endorsement contains no indication as to the identity of the trust for
5 which Deutsche Bank Trust Company Americas is purportedly acting as
6
7 Trustee.

8 155. Thereafter, GMAC attaches a second unattached piece of paper that
9
10 purports to include one endorsement to GMAC in contradiction to the MILLER
11 Corporate Assignment of Deed of Trust.

12 156. The second unattached endorsement is labeled as a “Note Allonge” and
13
14 further states: Without Recourse, Pay to the Order of GMAC Loan Services
15
16 LLC and is signed by “JUDY DELTS, LIMITED SIGNING OFFICER,
17
18 COMPANY: Deutsche Bank Trust Company Americas as Trustee (for an
19
20 unnamed Trust) FKA Bankers Trust Company, as Trustee by Residential
21
22 Funding Company, LLC FKA Residential Funding Corporation, its Attorney in
23
24 Fact” without date.

25 157. That each of these endorsements are forgeries created by GMAC and its
26
27 agents for the purpose of creating the illusion of a valid MLN transfers when
28
29 none exist.

1 158. That each of the aforementioned representations in the KRAL and
2 MILLER cases are material in establishing standing and obtaining relief from
3 the automatic stay.
4

5
6 159. Plaintiff is informed and believes and alleges thereon that GMAC did not
7 believe any of these facts when it represented to the court under penalty of
8 perjury.
9

10 160. The box designating GMAC was acting as an “agent” for another creditor
11 was available and left unmarked.
12

13 161. In no uncertain terms, GMAC represented to bankruptcy players that all
14 rights to the KRAL, MILLER and other class members’ MLNs, including all
15 rights to collect the money due under said Notes, had passed to GMAC in the
16 time and manner represented.
17

18 162. That the examples set forth in the KRAL and MILLER cases are typical
19 examples of the deceptive business practice being utilized by GMAC in
20 thousands of bankruptcy cases.
21

22
23 163. That these same deceptive business practices have been employed in each
24 and every bankruptcy matter wherein GMAC appears as a secured creditor.
25

26 164. That these described deceptive business practices are not limited to the
27 KRAL and MILLER bankruptcy matters.
28

1 165. That additional bankruptcy cases filed before the MILLER court, (the
2 Honorable U.S. Bankruptcy Judge Theodore Albert, Central District Santa Ana,
3 CA) reveals the identical deceptive business practice evident in the public
4 record in EACH of the ninety-eight (98) Motions for Relief of Stay from the
5 Automatic Stay reviewed.
6

7
8 166. That GMAC does not represent itself to the bankruptcy players to be a
9 loan servicer or agent of the true creditor in bankruptcy matters but the actual
10 creditor entitled to the monies due under the MLN.
11

12 167. That GMAC did not assert in the KRAL, MILLER and other class
13 members' bankruptcy matters that it takes title to MLNs directly from the true
14 creditor solely for administrative convenience.
15

16 168. That GMAC did not assert in the KRAL, MILLER and other class
17 member bankruptcy matters that it takes title to MLNs jointly, partially or on
18 behalf of the true creditor.
19

20 21 169. That the fabricated evidence created to support the illusionary chain of
22 title transfer asserted by GMAC does not include any transfers to the true
23 creditor of the KRAL, MILLER and other class members MLNs. Instead, each
24 fabricated assignments purports to transfer the MLNs from originator directly to
25 GMAC .
26
27
28

1 170. That after a non-judicial foreclosure sale of the real property of KRAL,
2 MILLER and other class members; GMAC is named as the sole foreclosure
3 beneficiary on each Trustee Deed upon Sale.
4

5 171. That after a non-judicial foreclosure sale of the real property of KRAL,
6 MILLER and other class member, GMAC was named as the GRANTEE and
7 took sole title to the real property after a credit bid pursuant to each Trustee
8 Deed upon Sale.
9

10 172. As stated above, that GMAC created the illusion of a chain of title
11 transfer as to each of the KRAL, MILLER and other class member MLNs that
12 was false and inaccurate and manufactured for the sole purpose of deceiving the
13 bankruptcy players into accepting GMAC's version of the chain of title
14 transfers without regard to the truth.
15
16
17

18 173. A debt collector violates 15 USC 1692f by
19
20 (6) Taking or threatening to take any nonjudicial action to effect
21 dispossession or disablement of property if—
22 (A) there is no present right to possession of the property claimed as
23 collateral through an enforceable security interest;
24 (B) there is no present intention to take possession of the property; or
25 (C) the property is exempt by law from such dispossession or disablement.

26 174. As stated above, GMAC, individually and through its authorized
27 representatives, has caused thousands of false and fabricated declarations,
28 assignments, endorsements, proofs of claim and motions made under penalty of

1 perjury to be filed with the United States Bankruptcy Court in each of the
2
3 bankruptcy cases of KRAL, MILLER and other class members.

4 **175. California Penal Code §532 states:**

5 532. (a) Every person who knowingly and designedly, by any false or
6 fraudulent representation or pretense, defrauds any other person of
7 money, labor, or property, whether real or personal, or who causes or
8 procures others to report falsely of his or her wealth or mercantile
9 character, and by thus imposing upon any person obtains credit, and
10 thereby fraudulently gets possession of money or property, or obtains
11 the labor or service of another, is punishable in the same manner
12 and to the same extent as for larceny of the money or property so
13 obtained.

14 (b) Upon a trial for having, with an intent to cheat or defraud
15 another designedly, by any false pretense, obtained the signature of
16 any person to a written instrument, or having obtained from any
17 person any labor, money, or property, whether real or personal, or
18 valuable thing, the defendant cannot be convicted if the false
19 pretense was expressed in language unaccompanied by a false token or
20 writing, unless the pretense, or some note or memorandum thereof is
21 in writing, subscribed by or in the handwriting of the defendant, or
22 unless the pretense is proven by the testimony of two witnesses, or
23 that of one witness and corroborating circumstances. This section
24 does not apply to a prosecution for falsely representing or
25 personating another, and, in that assumed character, marrying, or
26 receiving any money or property.

27 Penal Code §532f states:

28 532f. (a) A person commits mortgage fraud if, with the intent to
defraud, the person does any of the following:

(1) Deliberately makes any misstatement, misrepresentation, or
omission during the mortgage lending process with the intention that
it be relied on by a mortgage lender, borrower, or any other party to
the mortgage lending process.

(2) Deliberately uses or facilitates the use of any misstatement,
misrepresentation, or omission, knowing the same to contain a
misstatement, misrepresentation, or omission, during the mortgage
lending process with the intention that it be relied on by a mortgage
lender, borrower, or any other party to the mortgage lending
process.

(3) Receives any proceeds or any other funds in connection with a
mortgage loan closing that the person knew resulted from a violation
of paragraph (1) or (2) of this subdivision.

(4) Files or causes to be filed with the recorder of any county in
connection with a mortgage loan transaction any document the person
knows to contain a deliberate misstatement, misrepresentation, or
omission.

(b) An offense involving mortgage fraud shall not be based solely
on information lawfully disclosed pursuant to federal disclosure
laws, regulations, or interpretations related to the mortgage lending
process.

1 (c) (1) Notwithstanding any other provision of law, an order for
2 the production of any or all relevant records possessed by a real
3 estate recordholder in whatever form and however stored may be issued
4 by a judge upon a written ex parte application made under penalty of
perjury by a peace officer stating that there are reasonable grounds
to believe that the records sought are relevant and material to an
ongoing investigation of a felony fraud violation.

5 (2) The ex parte application shall specify with particularity the
6 records to be produced, which shall relate to a party or parties in
7 the criminal investigation.

8 (3) Relevant records may include, but are not limited to, purchase
9 contracts, loan applications, settlement statements, closing
10 statements, escrow instructions, payoff demands, disbursement
11 reports, or checks.

12 (4) The ex parte application and any subsequent judicial order may
13 be ordered sealed by the court upon a sufficient showing that it is
14 necessary for the effective continuation of the investigation.

15 (5) The records ordered to be produced shall be provided to the
16 peace officer applicant or his or her designee within a reasonable
17 time period after service of the order upon the real estate
18 recordholder.

19 (d) (1) Nothing in this section shall preclude the real estate
20 recordholder from notifying a customer of the receipt of the order
21 for production of records, unless a court orders the real estate
22 recordholder to withhold notification to the customer upon a finding
23 that this notice would impede the investigation.

24 (2) If a court has made an order to withhold notification to the
25 customer under this subdivision, the peace officer who or law
26 enforcement agency that obtained the records shall notify the
27 customer by delivering a copy of the ex parte order to the customer
28 within 10 days of the termination of the investigation.

(e) (1) Nothing in this section shall preclude the real estate
recordholder from voluntarily disclosing information or providing
records to law enforcement upon request.

(2) This section shall not preclude a real estate recordholder, in
its discretion, from initiating contact with, and thereafter
communicating with and disclosing records to, appropriate state or
local agencies concerning a suspected violation of any law.

(f) No real estate recordholder, or any officer, employee, or
agent of the real estate recordholder, shall be liable to any person
for either of the following:

(1) Disclosing information in response to an order pursuant to
this section.

(2) Complying with an order under this section not to disclose to
the customer the order, or the dissemination of information pursuant
to the order.

(g) Any records required to be produced pursuant to this section
shall be accompanied by an affidavit of a custodian of records of the
real estate recordholder or other qualified witness which states, or
includes in substance, all of the following:

(1) The affiant is the duly authorized custodian of the records or
other qualified witness and has authority to certify the records.

(2) The identity of the records.

(3) A description of the mode of preparation of the records.

(4) The records were prepared by the personnel of the business in

1 the regular course of business at or near the time of an act,
2 condition, or event.

3 (5) Any copies of records described in the order are true copies.

4 (h) A person who violates this section is guilty of a public
5 offense punishable by imprisonment in a county jail for not more than
6 one year or by imprisonment pursuant to subdivision (h) of Section
7 1170.

8 (i) For the purposes of this section, the following terms shall
9 have the following meanings:

10 (1) "Person" means any individual, partnership, firm, association,
11 corporation, limited liability company, or other legal entity.

12 (2) "Mortgage lending process" means the process through which a
13 person seeks or obtains a mortgage loan, including, but not limited
14 to, solicitation, application, origination, negotiation of terms,
15 third-party provider services, underwriting, signing and closing, and
16 funding of the loan.

17 (3) "Mortgage loan" means a loan or agreement to extend credit to
18 a person that is secured by a deed of trust or other document
19 representing a security interest or lien upon any interest in real
20 property, including the renewal or refinancing of the loan.

21 (4) "Real estate recordholder" means any person, licensed or
22 unlicensed, that meets any of the following conditions:

23 (A) Is a title insurer that engages in the "business of title
24 insurance" as defined by Section 12340.3 of the Insurance Code, an
25 underwritten title company, or an escrow company.

26 (B) Functions as a broker or salesperson by engaging in any of the
27 type of acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3,
28 10131.4, and 10131.6 of the Business and Professions Code.

(C) Engages in the making or servicing of loans secured by real
property.

(j) Fraud involving a mortgage loan may only be prosecuted under
this section when the value of the alleged fraud meets the threshold
for grand theft as set out in subdivision (a) of Section 487.

19 **1692e. False or misleading representations**

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

23 **(1)** The false representation or implication that the debt collector is vouched for, bonded by, or
24 affiliated with the United States or any State, including the use of any badge, uniform, or
25 facsimile thereof.

26 **(2)** The false representation of—

27 **(A)** the character, amount, or legal status of any debt; or

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

3 (3) The false representation or implication that any individual is an attorney or that any
4 communication is from an attorney.

5 (4) The representation or implication that nonpayment of any debt will result in the arrest or
6 imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or
7 wages of any person unless such action is lawful and the debt collector or creditor intends to
8 take such action.

9 (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

10 (6) The false representation or implication that a sale, referral, or other transfer of any interest in
11 a debt shall cause the consumer to—

12 (A) lose any claim or defense to payment of the debt; or

13 (B) become subject to any practice prohibited by this subchapter.

14 (7) The false representation or implication that the consumer committed any crime or other
15 conduct in order to disgrace the consumer.

16
17 176. Alternatively, if this systemic conduct does not rise to the level of
18 “unlawful” under the perjury statute, it rises to level of being an “unfair” or
19 “fraudulent” business practice.
20

21 177. That GMAC continues this deceptive business practice of manufacturing
22 evidence to support its advocacy in bankruptcy matters in violation of existing
23 “Consent Orders” to refrain from wrongful and deceptive foreclosure practices.
24

25 178. That GMAC continues to present evidence and assertions as to the chain
26 of title transfers of MLNs in consumer bankruptcy cases, that GMAC either
27
28

1 knows to be false or where GMAC has no reason to believe that these
2 assertions contained in these documents are true.
3

4 179. That GMAC engages in this deceptive business practice for its own
5 financial benefit, at the expense of class members and with complete disdain for
6 the bankruptcy court system.
7

8 180. GMAC is motivated by cost savings relative to its competitors and
9 therein gains an unfair competitive advantage over its legitimate industry rivals.
10

11 181. That GMAC views the requirement of standing in the bankruptcy system
12 as a costly barrier to getting what it wants: the quick and inexpensive resolution
13 to thousands of bankruptcy matters with minimal opposition.
14

15 182. Rather than satisfy its burden of proof to establish standing, GMAC has
16 determined that manufacturing evidence to accomplish its goals and chill
17 opposition is a more cost effective business practice.
18

19 183. As stated, the process of proving up standing for a Mortgage Backed
20 Security Trust typically involves proving three true sales of a given MLN (From
21 Originator to Sponsor to Depositor to the Trust). GMAC utilizes this deceptive
22 business practice to avoid the costs associated with this prove up.
23
24

25 184. To GMAC, the ends justify the means: Whether there is a lack of ANY
26 evidence of a MBSTs standing or where GMAC views the cost of proving up
27
28

1 THREE MLNs transfers is too high, GMAC efficiently avoids the challenge
2 utilizing the business practice of manufacturing evidence.
3

4 185. The cost savings benefits to GMAC are estimated to be in the tens of
5 millions in saved legal fees, technology costs and increased time to foreclosure.
6

7 186. Through the utilization of this practice, GMAC receives additional
8 financial benefits including trustee payouts from confirmed plans based on
9 submitted Proofs of Claim supported by fabricated evidence. Said payouts are
10 at the expense of unsecured creditors and debtors alike.
11

12 187. Most egregiously, the network attorneys utilize the business practice to
13 obtain attorney fees awards from by the bankruptcy judges ranging from \$600-
14 \$1000 for each successful motion for relief of stay and allowed proofs of claim.
15 Said awards allow GMAC to pad its claims and add fees to the loan balances
16 arrearage claims of class members.
17

18 188. That GMAC's manufactured evidence is so persuasive that 95% of
19 motions for relief of stay are granted without opposition and over 95% of
20 GMAC's Proofs of Claims are allowed.
21

22 189. That the systemic use of the fabricated evidence has a chilling effect on
23 class debtors and their attorneys. Said business practice discourages bankruptcy
24 players from offering objections or from questioning the validity of GMAC's
25 false claims based on standing.
26
27
28

1 190. That the systemic use of the fabricated evidence provides GMAC with an
2 unfair competitive advantage over other loan servicers and lenders who must
3 bear the cost of proving up bankruptcy matters without the benefit of utilizing
4 fabricated evidence to fit the desired outcome.
5

6
7 191. That the systemic use of the fabricated evidence has a chilling effect on
8 class debtors and their attorneys. Said business practice discourages bankruptcy
9 players from offering objections or from questioning the validity of GMAC's
10 false claims based on standing.
11

12 192. That the fabricated title documents and affidavits used by GMAC, while
13 persuasive, are blatant misrepresents the chain of title transfer of class member's
14 MLN and affront to the integrity of the legal system.
15

16
17 193. That after a non-judicial foreclosure sale, class members remain indebted
18 to the true beneficiary for the unsecured note but without credit for the loss of
19 the collateral to GMAC. Said business practice also harms the true creditors.
20

21 194. As stated, GMAC has engaged in the aforementioned fraudulent, unfair,
22 deceptive and misleading business practices under the UCL by manufacturing
23 evidence to obtain its desired outcome in thousands of bankruptcy matters.
24

25 195. Plaintiffs are further informed and believe and allege thereon that each of
26 these defendants' business practices are likely to continue to deceive the public
27 and are likely to continue to induce bankruptcy players including other class
28

1 members into relying to their detriment on false representations made in title
2 documents and affidavits offered in bankruptcy matters.

3
4 196. Defendants' acts, and each of them, violate the unfair competition laws of
5 the state of California and specifically California Business and Professions Code
6 §§ 17200, et seq. as indicated above.

7
8 197. As a proximate result of defendants' conduct, plaintiffs, each of them,
9 was injured financially and/or to her property rights. Said conduct as set forth
10 herein resulted in statutory, general and special damages.

11
12 198. Plaintiffs are further entitled to injunctive relief and any other equitable
13 relief that the court deems appropriate.

14
15 Wherefore plaintiff demands judgment against defendants as set forth below.

16
17
18 **SECOND CLAIM**
19 **15 USC §1641g Violation**
20 **(Against GMAC)**

21 199. Plaintiff incorporates the allegations above in this claim as though fully
22 set forth herein.

23
24 200. Alternatively, Plaintiff is informed and believes and alleges thereon that
25 GMAC has a pattern and practice of violating 15 USC §1641g by failing to
26 provide the required Transfer Notice with 30 days of becoming the creditor of
27 thousands of class member MLNs.
28

1 201. Plaintiffs bring this claim on their own behalf and on behalf of each
2 member of the Class described above.

3
4 202. That defendant GMAC is a “creditor” as defined under TILA.

5 203. That GMAC was required to notify the plaintiffs in writing of the transfer
6 of the MLN from an original lender, such as FIRST MAGNUS in the KRAL
7 case or SCME in the MILLER case, to GMAC within 30 days of said transfer.
8

9 204. The notification needed to include:

- 10
11 o. The identity, address, telephone number of the new creditor;
12 p. The date of transfer;
13 q. How to reach an agent or party having authority to act on behalf of the
14 new creditor;
15 r. The location of the place where transfer of ownership of the debt is
16 recorded; and
17 s. Any other relevant information regarding the new creditor within 30 days
18 of the transfer.
19
20
21

22 205. GMAC has failed to notify KRAL or MILLER and those similarly
23 situated within 30 days of the purported transfer of the subject MLNs in
24 thousands of cases.
25

26 206. The CORPORATE ASSIGNMENTS of DEED of TRUST, each recorded
27 at the County Recorder’s office and each subsequently presented to the US
28

1 Bankruptcy court along with supporting declarations executed under penalty of
2 perjury, purport to prove that a transfer of the subject MLNs, including all rights
3 to the monies due under the promissory notes, occurred as stated.
4

5 207. That GMAC is estopped from denying that it is the creditor of the KRAL
6 MLN effective September 10, 2010, when as claimed in the CORPORATE
7 ASSIGNMENTS of DEED of TRUST and supporting bankruptcy declarations,
8 FIRST MAGNUS granted the rights to enforce the terms of the MLN along with
9 all monies due,
10
11

12 208. That GMAC is estopped from denying that it is the creditor of the
13 MILLER MLN effective September 22, 2010, when as claimed in the
14 CORPORATE ASSIGNMENTS of DEED of TRUST and supporting
15 bankruptcy declarations, SCME granted the rights to enforce the terms of the
16 MLN along with all monies due,
17
18

19 209. That as a result of defendants' violation of 15 USC §1641g, KRAL,
20 MILLER and other similarly situated class members due process rights for
21 notice and opportunity to be heard were violated; each of them has incurred
22 attorney's fees and expenses in attempting discover the identity of the true
23 creditor, the validity of GMAC's status as a creditor and/or loan servicer.
24
25
26
27
28

1 210. Plaintiff is informed and believes and alleges thereon that GMAC 's
2 conduct was part of a pattern and practice resulting in the same injury to a
3 multitude of similarly situated (former) homeowners.
4

5 211. That each of these class members is facing imminent foreclosure and
6 desires to negotiate in good faith and receive fair consideration under various
7 government loan modification programs, including the Home Affordable
8 Mortgage Program.
9

10 212. That the withholding of the Transfer Notice has caused additional actual
11 damages in the form of emotional suffering for class members already under
12 extreme stress.
13
14

15 213. Furthermore, that the knowledge as to the true identity and contact
16 information of the true creditor of a class member's MLN is elusive in the
17 current environment of mortgage securitization. As such, this information is has
18 tangible and provable financial value to a homeowner facing financial distress.
19 A loan modification has measurable real financial value. Therefore, the
20 CHANCE to successfully negotiate a loan modification has value.
21
22

23 214. That by withholding information required by TILA regarding the identity
24 of the new MLN creditor, GMAC has exasperated the hardships of class
25 members and caused actual financial damages.
26
27
28

1 215. That notwithstanding a showing of actual damages, TILA allows for
2 statutory damages for GMAC 's violations.
3

4 216. That notwithstanding a showing of actual damages, TILA allows for
5 attorney fees for GMAC 's violations.
6

7
8 217. That plaintiffs have been damaged in an amount to be proven at trial,
9 including but not limited to actual damages resulting from said violation,
10 statutory damages of \$4,000.00 per homeowner, attorney fees and costs.
11

12 Wherefore plaintiff demands judgment against defendants as set forth below.
13

14
15
16
17 **VIII. PRAYER FOR RELIEF**

18 **WHEREFORE, Plaintiffs pray for judgment** against defendants, and each of
19 them, as follows:
20

- 21 a. A determination whether and when GMAC became a creditor as defined 15 USC
22 §1641g.
23
24 b. A determination whether GMAC violated the Notice requirements of 15 USC
25 §1641g;
26
27 c. A determination whether GMAC is estopped from denying the truth of the matters
28 asserted in various title and other documents offered in bankruptcy matters;

- 1 d. An order certifying the plaintiff TILA class, appointing named plaintiffs as the
2 representatives of the class and appointing the law firm(s) representing the named
3 plaintiffs as counsel for the TILA class;
4
- 5 e. A determination whether defendant's business practices, actions, failures to act,
6 representations and assertions in bankruptcy matters constitute violations of
7 California Business & Professions Code §17200;
8
- 9 f. In the alternative, an order certifying the plaintiff §17200 class, appointing named
10 plaintiffs as the representatives of the class and appointing the law firm(s)
11 representing the named plaintiffs as counsel for the §17200 class;
12
- 13 g. Pursuant to Business and Professions Code § 17203, an order that all Defendants,
14 their successors, agents, representatives, employees, and all persons who act in
15 concert with them be permanently enjoined from committing any acts of unfair
16 competition in violation of § 17200, including, but not limited to, the violations
17 alleged herein.
18
- 19 h. A determination of the amount of actual, special and general damages appropriate
20 for violation of 15 §1641g and/or Cal B&P §17200 in this context;
21
- 22 i. A determination of the amount of statutory damages and civil penalties appropriate
23 for violation of 15 §1641g and/or Cal B&P §17200 in this context;
24
- 25 j. A determination of the amount of court sanctions and punitive damages appropriate
26 for violation of 15 §1641g and/or Cal B&P §17200 in this context;
27
28

- 1 k. A determination of the amount of restitution and disgorgement appropriate for
2 violation of 15 §1641g and/or Cal B&P §17200 in this context;
3
4 l. A determination of the amount of cost savings benefiting GMAC from the
5 deceptive practices violating 15 §1641g and/or Cal B&P §17200 in this context;
6
7 m. An Order vacating all Bankruptcy orders, claims and awards granted based on
8 GMAC 's misrepresentations and deceptive business practices;
9
10 n. An Order directing GMAC to implement remedial processes and oversight of
11 GMAC 's future bankruptcy and foreclosure practices;
12
13 o. Costs
14
15 p. Attorney fess
16
17 q. Prejudgment interest at the statutory rate;
18
19 r. Post-judgment interest;
20
21 s. Such other and further relief as the Court finds necessary and proper.

22 **IX. DEMAND FOR JURY TRIAL**

23 Plaintiffs hereby demand a jury trial.
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Dated: December 23, 2011

LAW OFFICES OF J.ARTHUR ROBERTS

/s/ Joseph Arthur Roberts

JOSEPH ARTHUR ROBERTS, ESQ.
Attorney for Plaintiffs KRAL, MILLER
And all others similarly situated

COPIES

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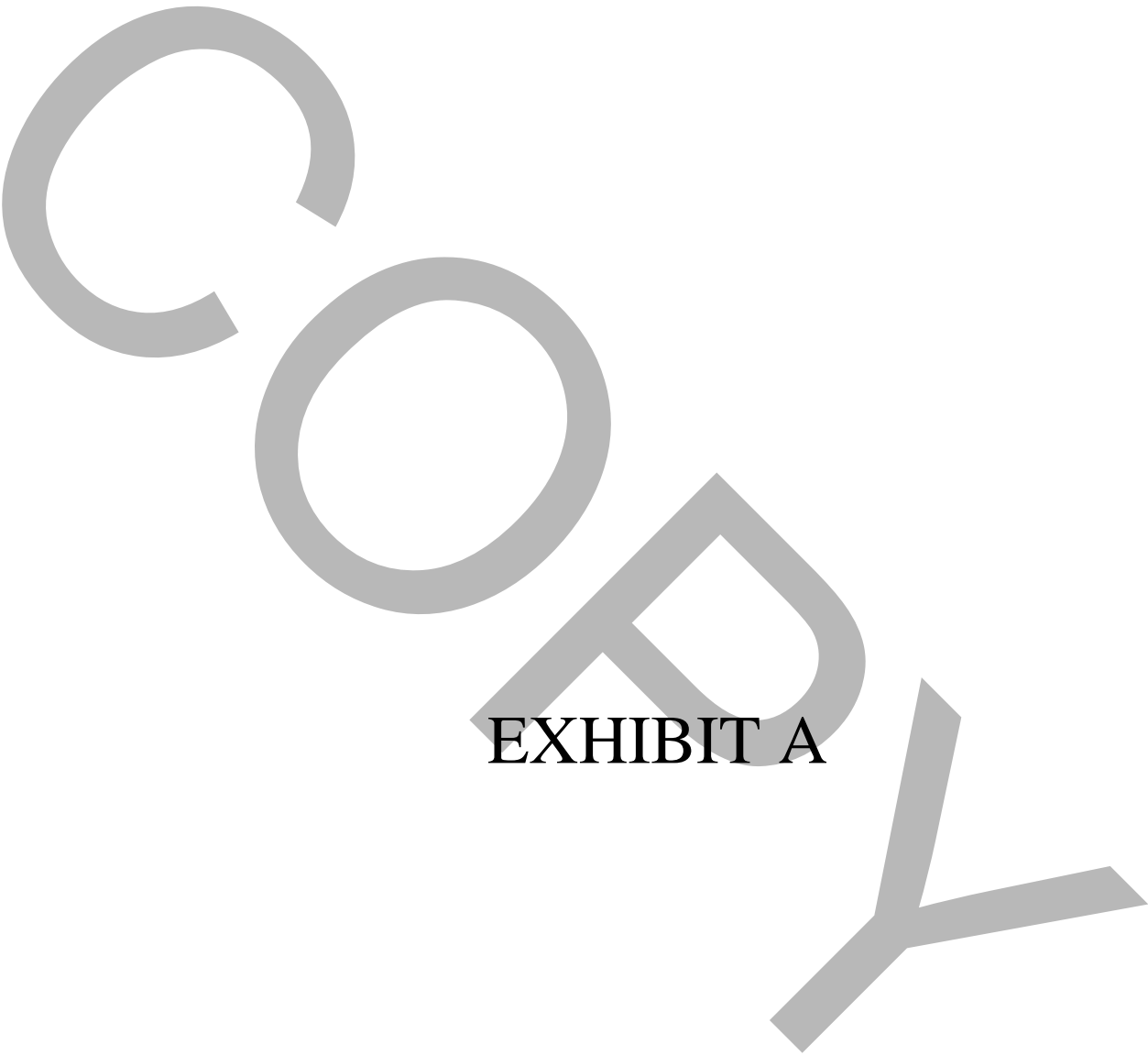


EXHIBIT A

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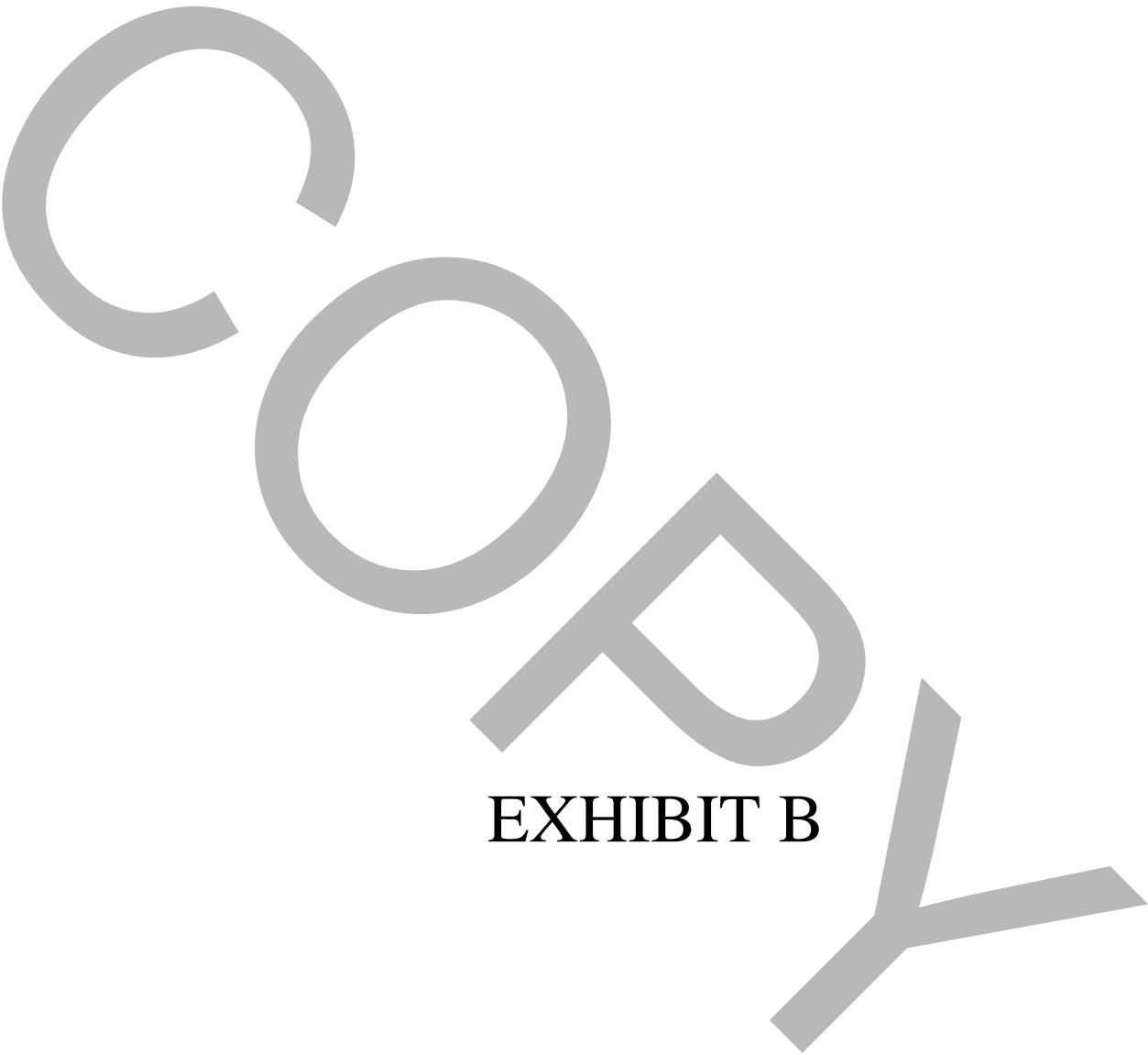


EXHIBIT B

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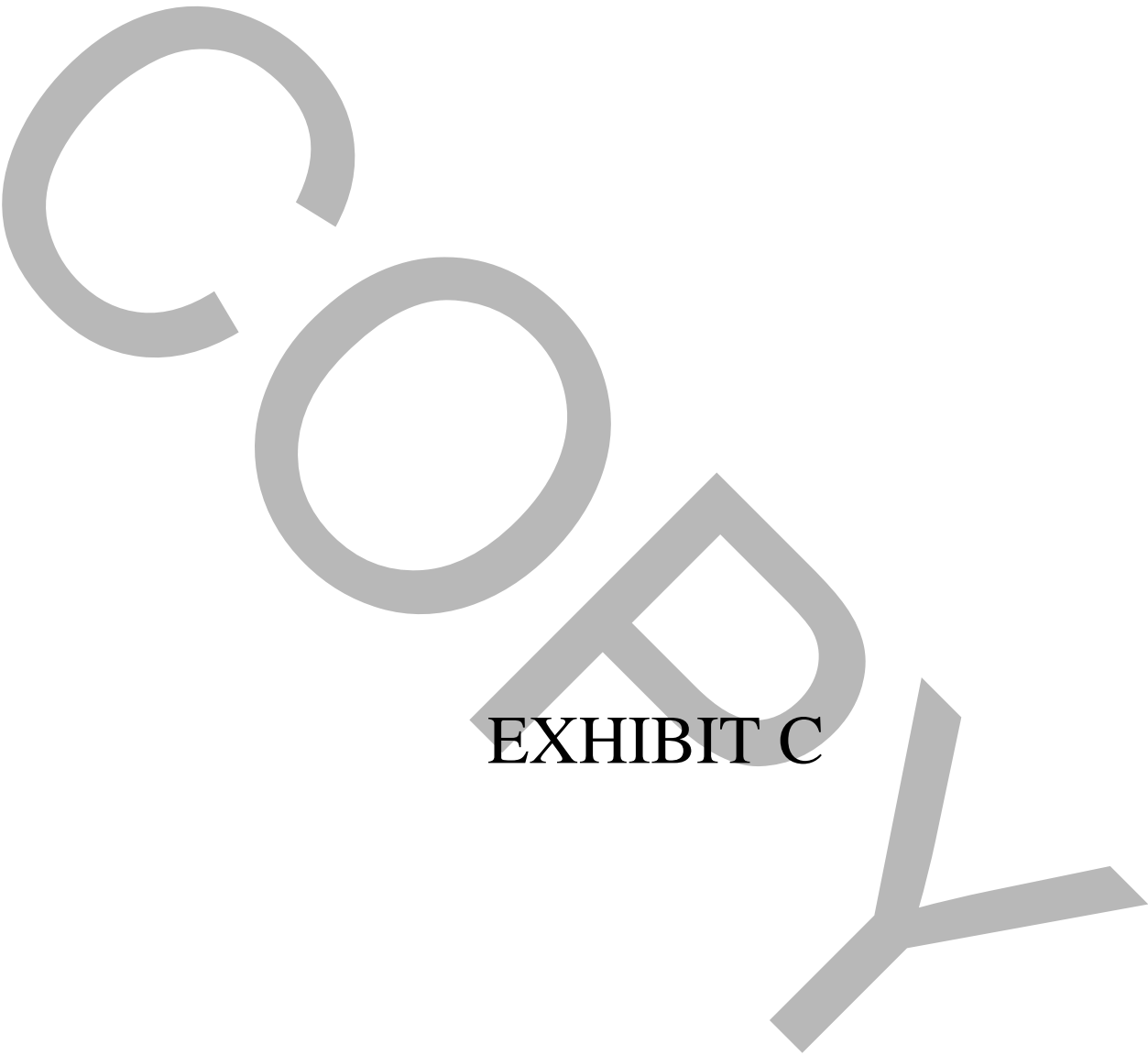


EXHIBIT C

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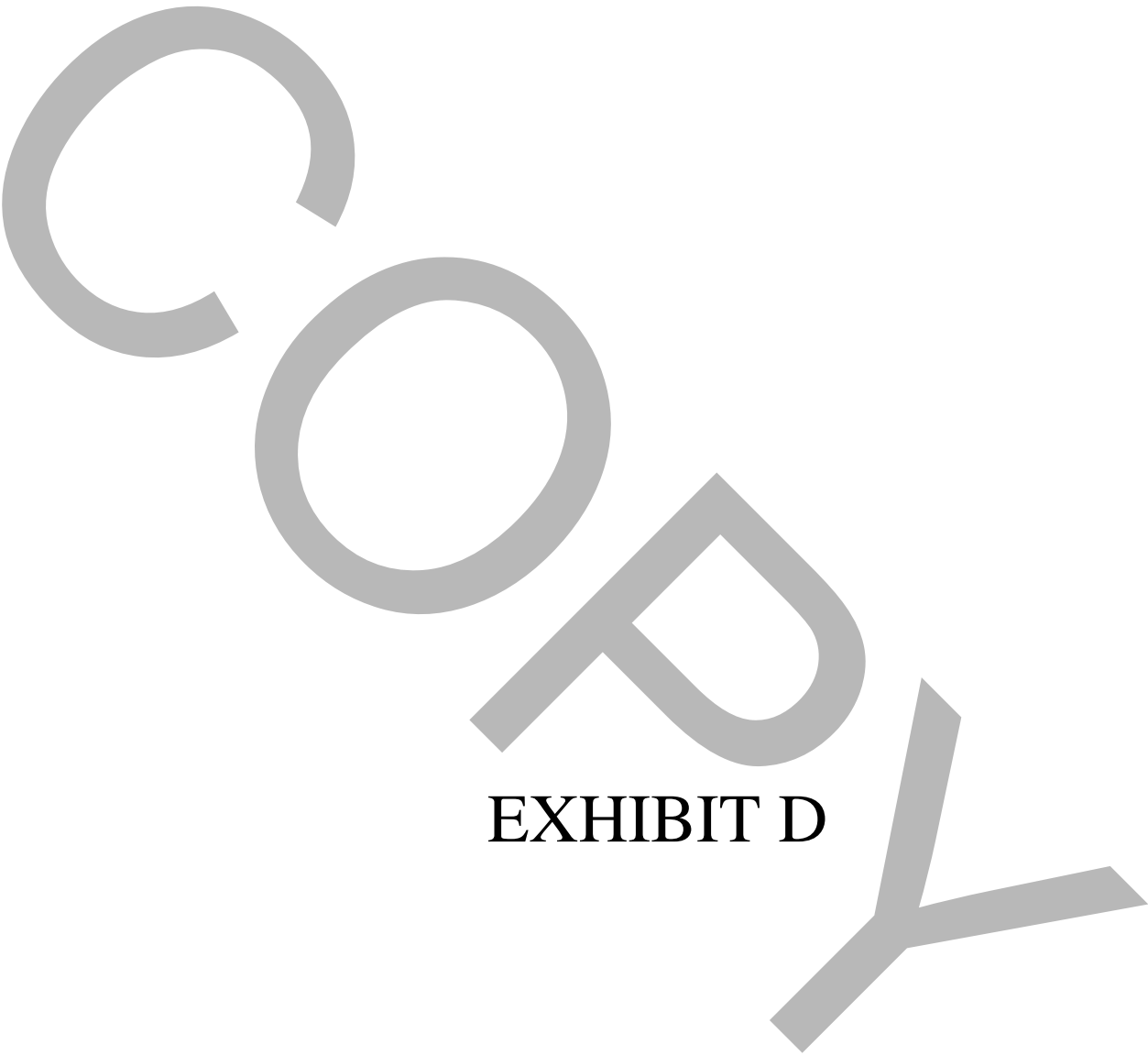
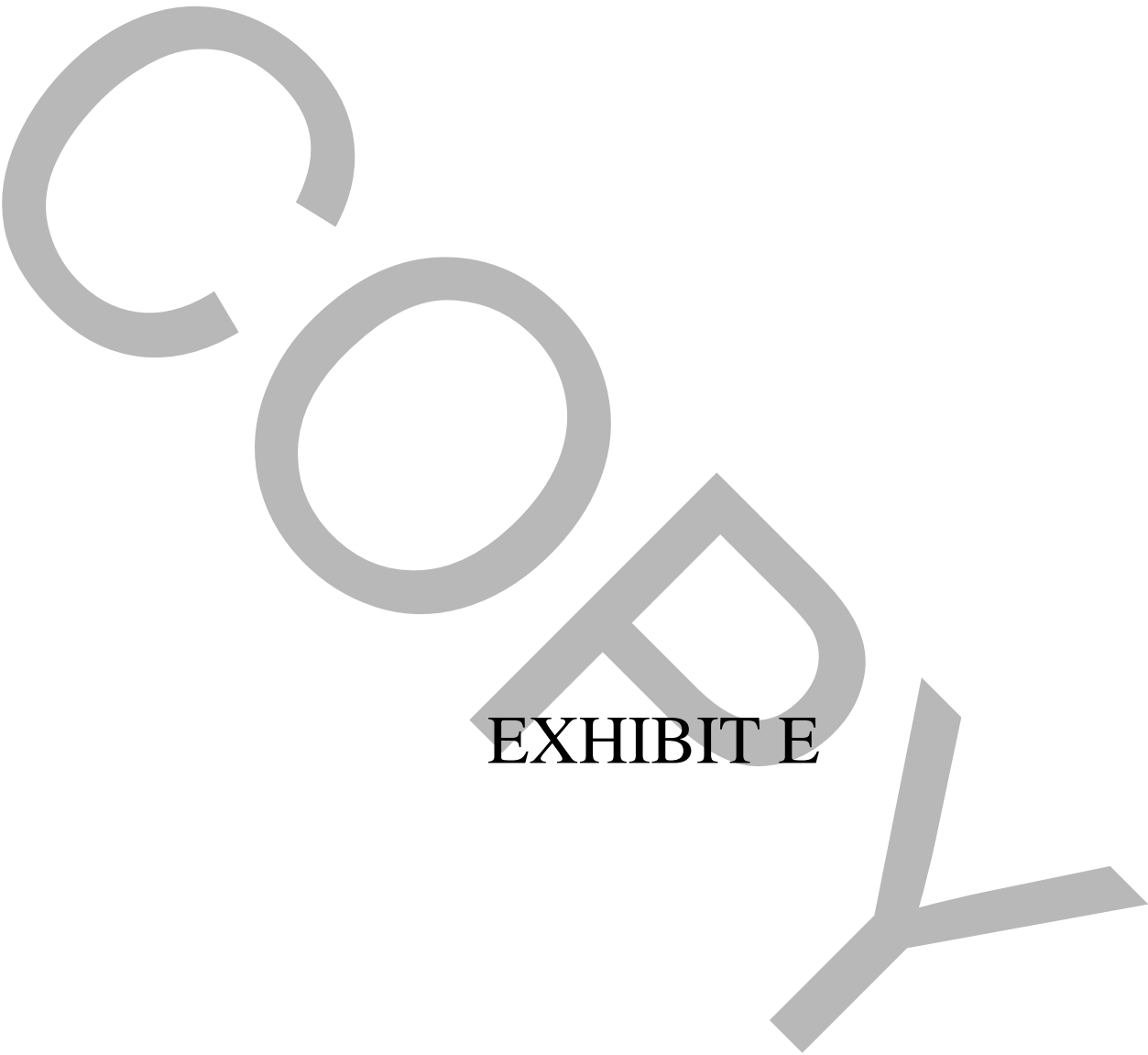


EXHIBIT D

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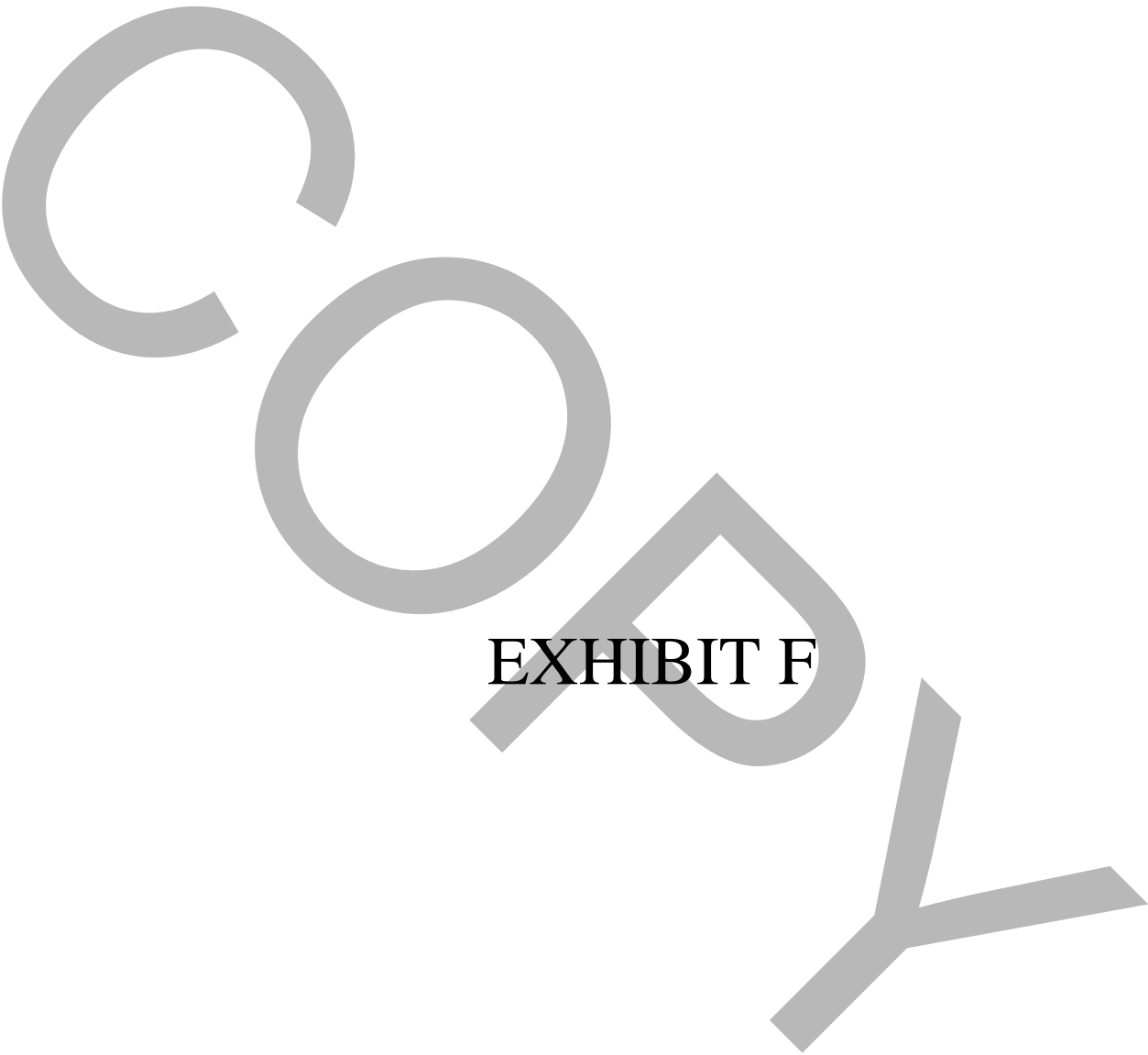


EXHIBIT F