

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

DANITA S. COUCH
508 E. Woods
Smithville, MO 64089

JACK T. CHASTAIN, SR.
Route 70
Roach, MO 65787

DAVID R. AND NANCY J. BEEBE
132 N. Ash
Independence, MO 64053

SHIRLEY D. MORROW
10905 Bales Ave.
Kansas City, MO 64137

Plaintiffs,

vs.

SMC LENDING, INC.,
**[CURRENT DEFENDANT; DO NOT
SERVE]**

U.S. BANK NATIONAL ASSOCIATION,
a national bank
**[CURRENT DEFENDANT; DO NOT
SERVE]**

WILMINGTON TRUST COMPANY,
a Delaware bank
**[CURRENT DEFENDANT; DO NOT
SERVE]**

FIRSTPLUS HOME LOAN OWNER
TRUST 1997-3,
a Delaware business trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

FIRSTPLUS HOME LOAN OWNER
TRUST 1997-4,
a Delaware business trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

Case No. CV100-4332 CC

FILED

APR 19 2005

Division 3

AES
Clay County Circuit Court

4/19/05

FIRSTPLUS HOME LOAN OWNER
TRUST 1998-1,
a Delaware business trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

FIRSTPLUS HOME LOAN OWNER
TRUST 1998-2,
a Delaware business trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

FIRSTPLUS HOME LOAN OWNER
TRUST 1998-4,
a Delaware business trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

FIRSTPLUS HOME LOAN OWNER
TRUST 1998-5,
a Delaware business trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

U.S. BANK, NA ND
a national bank
**[CURRENT DEFENDANT; DO NOT
SERVE]**

COUNTRYWIDE HOME LOANS, INC.
a New York corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOMECOMINGS FINANCIAL,
a Delaware corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

GMAC-RESIDENTIAL FUNDING
CORPORATION,
**[CURRENT DEFENDANT; DO NOT
SERVE]**

GMAC MORTGAGE CORP.
a Pennsylvania business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

RESIDENTIAL FUNDING MORTGAGE
SECURITIES II

a Minnesota corporation

**[CURRENT DEFENDANT; DO NOT
SERVE]**

JP MORGAN CHASE BANK f/k/a The
Chase Manhattan Bank,

a national bank

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1998-HI2,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1998-HI4,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1998-KS1,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1999-HI1,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1999-HI4,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1999-HI6,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 1999-HI8,

a Delaware business

**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 2000-HI1,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 2000-HI2,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 2000-HI3,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 2000-HI4,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

HOME LOAN TRUST 2000-HI5,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

PSB LENDING CORPORATION,
a Nevada corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

PSB LENDING HOME LOAN TRUST
1997-3,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

PSB LENDING HOME LOAN TRUST
1997-4,
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

ACE SECURITIES CORPORATION
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

ACE SECURITIES CORPORATION
HOME LOAN TRUST 1999-A
a Delaware Business Trust
**[CURRENT DEFENDANT; DO NOT
SERVE]**

WELLS FARGO BANK MINNESOTA
NATIONAL ASSOCIATION,
a national bank
**[CURRENT DEFENDANT; DO NOT
SERVE]**

OCWEN FEDERAL BANK, FSB,
a federal bank
**[CURRENT DEFENDANT; DO NOT
SERVE]**

COASTAL CAPITAL CORPORATION
a New York corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

SOVEREIGN BANK, FSB,
a federal bank
**[CURRENT DEFENDANT; DO NOT
SERVE]**

WESTERN INTERSTATE BANCORP,
a California corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

REAL TIME RESOLUTIONS, INC.
a Texas Corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

GERMAN AMERICAN CAPITAL
CORPORATION,
a Maryland corporation
**[CURRENT DEFENDANT; DO NOT
SERVE]**

BEAR STEARNS ASSET BACK
SECURITIES, INC.
a Delaware business
**[CURRENT DEFENDANT; DO NOT
SERVE]**

NATIONWIDE MORTGAGE
PLAN & TRUST
a business association
SERVE: Officer/Manager
7119 E. Shea Blvd., Suite 109
Scottsdale, AZ 85254

UMLIC VP, LLC
a North Carolina company
SERVE: Renee S. Alexander
6701 Carmel Road, Suite 400
Charlotte, NC 28226

and

DOES 1 THROUGH 25,

Defendants

EIGHTH AMENDED PETITION

Plaintiffs Danita S. Couch, Jack T. Chastain, Sr., David R. and Nancy J. Beebe and Shirley D. Morrow, individually, and on behalf of all other persons similarly situated (hereinafter, "PLAINTIFFS"), state and allege the following for their Eighth Amended Petition in this case:

Introduction

1. This action is brought as a plaintiffs' class action against SMC LENDING, INC. ("SMC LENDING") and a number of other entities, banks, trusts and mortgage pools (including the defendant class as hereinafter defined) as: (a) the holders or previous holders of certain Second Mortgage Loans made by SMC LENDING (as hereinafter defined) (b) the trustees and/or agents of those persons or entities that have purchased or have been assigned and now hold or previously held such Second Mortgage Loans and/or (c) the trustees, agents and/or holders of the Second Mortgage Loans.

2. This action seeks redress on behalf of the plaintiffs and the plaintiff class against SMC LENDING and the other Defendants (including a defendant class) for violations of

Missouri's Second Mortgage Loans Act (§§408.231 Mo. Rev. Stat. et seq.), including claims for injunctive relief.

The Plaintiffs

3. Plaintiff Danita S. Couch is an individual who resides at 508 East Woods, Smithville, Clay County, Missouri.

4. Plaintiff Jack T. Chastain Sr., Danita Couch's father, is an individual who resides at Rt. 70, Roach, Camden County, Missouri.

5. Plaintiffs David R. Beebe and Nancy J. Beebe are lawfully married individuals who reside at 132 N. Ash, Independence, Jackson County, Missouri.

6. Plaintiff Shirley D. Morrow is an individual who resides at 10905 Bales Ave., Kansas City, Jackson County, Missouri.

Defendant SMC Lending

7. Defendant SMC LENDING is a Delaware corporation that has been served with process in this action.

8. SMC LENDING is a "moneyed corporation" within the meaning of § 516.420 Mo. Rev. Stat. At all relevant times, SMC Lending was engaged principally if not exclusively in the business of originating, funding and selling residential mortgage loans in a number of different states, including Missouri, and was subject to regulation by the Missouri Division of Finance with regard to its lending activities within Missouri. In particular, SMC LENDING, as a "mortgage banker" as defined by the Missouri Division of Finance, lent money secured by residential real estate to Missouri consumers and then sold the residential mortgage loans it made for money to entities like the "Investor Defendants" identified below. SMC LENDING, upon information and belief, then used the money it received for the loans to make and fund still other loans.

9. As a lender of money secured by people's homes, SMC LENDING exercised "banking powers" and was at all relevant times subject to regulation by the Missouri Division of Finance. In addition, Plaintiffs allege upon information and belief that SMC Lending was also licensed and regulated (or was exempted from certain state licensing requirements) at all relevant times by the banking and/or finance divisions/departments of a number of different states, including the Missouri Division of Finance, as a "mortgage banker," "mortgage lender," and/or "money broker."

The Investor Defendants

10. Defendant U.S. BANK NATIONAL ASSOCIATION ("US BANK") is a national bank that has been served with process in this action.

11. Defendant WILMINGTON TRUST COMPANY ("WTC") is a Delaware bank that has been served with process in this action.

12. Defendant FIRSTPLUS HOME LOAN OWNER TRUST 1997-3 is a Delaware business trust that has been served with process in this action.

13. Defendant FIRSTPLUS HOME LOAN OWNER TRUST 1997-4 is a Delaware business trust that has been served with process in this action.

14. Defendant FIRSTPLUS HOME LOAN OWNER TRUST 1998-1 is a Delaware business trust that has been served with process in this action.

15. Defendant FIRSTPLUS HOME LOAN OWNER TRUST 1998-2 is a Delaware business trust that has been served with process in this action.

16. Defendant FIRSTPLUS HOME LOAN OWNER TRUST 1998-4 is a Delaware business trust that has been served with process in this action.

17. Defendant FIRSTPLUS HOME LOAN OWNER TRUST 1998-5 is a Delaware business trust that has been served with process in this action.

18. Defendant U.S. BANK, NA ND is a national bank that has been served with process in this action.
19. Defendant COUNTRYWIDE HOME LOANS, INC. is a New York corporation that has been served with process in this action.
20. Defendant HOMECOMINGS FINANCIAL (“HOMECOMINGS”) is a Delaware corporation that has been served with process in this action.
21. Defendant GMAC-RESIDENTIAL FUNDING CORPORATION (“GMAC-RFC”) is a _____ that has been served with process in this action.
22. Defendant GMAC MORTGAGE CORP. (“GMACMC”) is a Pennsylvania corporation that has been served with process in this action.
23. Defendant RESIDENTIAL FUNDING MORTGAGE SECURITIES II (“RESIDENTIAL FUNDING”) is a Minnesota corporation that has been served with process in this action.
24. Defendant JP MORGAN CHASE BANK (“CHASE”) is a bank that has been served with process in this action.
25. Defendant HOME LOAN TRUST 1998-HI2 is a Delaware business trust that has been served with process in this action.
26. Defendant HOME LOAN TRUST 1998-HI4 is a Delaware business trust that has been served with process in this action.
27. Defendant HOME LOAN TRUST 1998-KS1 is a Delaware business trust that has been served with process in this action.
28. Defendant HOME LOAN TRUST 1999-HI1 is a Delaware business trust that has been served with process in this action.
29. Defendant HOME LOAN TRUST 1999-HI4 is a Delaware business trust that has

been served with process in this action.

30. Defendant HOME LOAN TRUST 1999-HI6 is a Delaware business trust that has been served with process in this action.

31. Defendant HOME LOAN TRUST 1999-HI8 is a Delaware business trust that has been served with process in this action.

32. Defendant HOME LOAN TRUST 2000-HI1 is a Delaware business trust that has been served with process in this action.

33. Defendant HOME LOAN TRUST 2000-HI2 is a Delaware business trust that has been served with process in this action.

34. Defendant HOME LOAN TRUST 2000-HI3 is a Delaware business trust that has been served with process in this action.

35. Defendant HOME LOAN TRUST 2000-HI4 is a Delaware business trust that has been served with process in this action.

36. Defendant HOME LOAN TRUST 2000-HI5 is a Delaware business trust that has been served with process in this action.

37. Defendant PSB LENDING CORPORATION ("PSB LENDING") is a Nevada corporation that has been served with process in this action.

38. Defendant PSB LENDING HOME LOAN TRUST 1997-3 is a Delaware business trust that has been served with process in this action.

39. Defendant PSB LENDING HOME LOAN TRUST 1997-4 is a Delaware business trust that has been served with process in this action.

40. Defendant ACE SECURITIES CORPORATION is a Delaware corporation that has been served with process in this action.

41. Defendant ACE SECURITIES CORPORATION HOME LOAN TRUST 1999-A

is a Delaware business trust that has been served with process in this action.

42. Defendant WELLS FARGO BANK MINNESOTA NATIONAL ASSOCIATION (f/k/a/ NORWEST BANK MINNESOTA NATIONAL ASSOCIATION) is a national bank that has been served with process in this action.

43. Defendant OCWEN FEDERAL BANK, FSB is a federal bank that has been served with process in this action.

44. Defendant COASTAL CAPITAL CORPORATION is a New York corporation that has been served with process in this action.

45. Defendant SOVEREIGN BANK, FSB is a federal bank that has been served with process in this action.

46. Defendant WESTERN INTERSTATE BANCORP is a California corporation that has been served with process in this action.

47. Defendant REAL TIME RESOLUTIONS, INC., is a Texas corporation that has been served with process in this action.

48. Defendant GERMAN AMERICAN CAPITAL CORPORATION is a Maryland corporation that has been served with process in this action.

49. Defendant BEAR STEARNS ASSET BACK SECURITIES, INC. is a Delaware corporation that has been served with process in this action.

50. Defendant NATIONWIDE MORTGAGE PLAN & TRUST is a business association and can be served with process by serving an officer or person in charge at 7119 E. Shea Blvd., Suite 109, Scottsdale, AZ 85254.

51. Defendant UMLIC VP, LLC is a North Carolina limited liability company and can be served with process by serving Renee S. Alexander, 6701 Carmel Road, Suite 400, Charlotte, NC 28226.

52. Each of the business associations named in paragraphs 10 through 51 above (the "INVESTOR DEFENDANTS") purchased and/or is or was an owner, assignee (holder) of, and/or the trustee and/or agent of an entity, trust, fund or pool owning and/or holding the Second Mortgage Loans made to PLAINTIFFS and the members of the Plaintiff Class, which Second Mortgage Loans were originated and/or made by SMC LENDING (or a finder or broker on its behalf), all as is more particularly set forth below.

The Doe Defendants

53. Defendants DOE 1 through 25 ("DOES 1-25") are the remaining owners, assignees (holders) and trusts, funds and/or pools, and the trustees and/or agents thereof, organized under various state laws, if any, that are yet to be named and whose identity will become known through discovery and/or by requests made by Plaintiffs or the members of the plaintiff class of their second mortgage servicers, after which such remaining assignees (holders) and trusts, funds and pools, and the trustees and/or agents thereof, to the extent that they can be identified, will be added as individual defendants.

The Assignee Defendants

54. Each of the INVESTOR DEFENDANTS and DOES 1 through 25 (collectively, the "ASSIGNEE DEFENDANTS") is named as a Defendant both individually, in its capacity as an owner and/or assignee (holder) of, and/or the trustee and/or agent (including agent servicer) of an entity, trust, fund or pool owning or holding, the Second Mortgage Loans, and as a member and representative of every other member of the Defendant Class (as hereinafter defined), which includes the remaining owners and assignees (holders) of, and trustees and/or agents (including agent servicers) of the entities, trusts, funds and pools owning and/or holding, said Second Mortgage Loans.

55. The ASSIGNEE DEFENDANTS, individually and/or through their bank trustees

or other trustees and/or agents, purchased the Second Mortgage Loans that SMC LENDING made to PLAINTIFFS and the Plaintiff Class pursuant to one or more standing agreements and/or a course of business dealing with SMC LENDING and/or on a “secondary market” comprised of businesses like said ASSIGNEE DEFENDANTS and used the Second Mortgage Loans and the money streams they generated as for purposes of investment, including use of the loans and money streams as collateral for notes that certain ASSIGNEE DEFENDANTS and their trustees and agents sold to the public.

56. The existence of these agreements, course of dealing and “secondary market,” and the capital that the ASSIGNEE DEFENDANTS provided to SMC LENDING by agreeing to repurchase the loans that it originated and made, enabled SMC LENDING to make the second mortgage home loans it was making in the first place, including the Missouri Second Mortgage Loans at issue.

57. Each of the ASSIGNEE DEFENDANTS is a “moneyed corporation” within the meaning of § 516.420 Mo. Rev. Stat. in that the ASSIGNEE DEFENDANTS, and each of them, at all relevant times: (a) purchased and/or acquired the subject Second Mortgage Loans made by SMC LENDING, which originated and funded the loans in violation of Missouri law; (b) was so closely-connected to SMC LENDING, directly or through an affiliated entity, by virtue of certain business arrangements, that they should be deemed “moneyed corporations” too; (c) were engaged principally if not exclusively in the business of purchasing and/or acquiring residential mortgage loans and the money streams such loans generated in competition with banks, and used the loans to collateralize evidences of indebtedness that the ASSIGNEE DEFENDANTS sold to the public; and/or (d) are business enterprises engaged in the business of using money to make money, as is shown by the above.

Jurisdiction and Venue

58. The Circuit Court has jurisdiction over SMC LENDING and the ASSIGNEE DEFENDANTS since each transacted business, made a contract, committed a tort and/or are or were assignees, trustees and/or agents of such entities and/or of the Second Mortgage Loans, and/or used or possessed an interest in real estate located within the state of Missouri, all as is herein alleged.

59. SMC LENDING is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous systematic presence in or contacts within the state of Missouri, and/or pursuant to § 506.500 Mo. Rev. Stat. having further:

(a) Transacted business within this state by virtue of its making numerous Second Mortgage Loans (as hereinafter defined) in this state;

(b) Made contracts within this state by virtue of its making numerous Second Mortgage Loans in this state and the contracts made in conjunction with such Second Mortgage Loans;

(c) Committed tortious acts within this state by virtue of its violations of the Missouri Second Mortgage Loan Act and its unlawful collection and conversion of monies in violation of such Act (including without limitation, continuing to collect illegal interest from the class members as more specifically set forth below); and

(d) Used real estate situated in this state to unlawfully secure the Second Mortgage Loans that are the subject of this action.

60. Each of the ASSIGNEE DEFENDANTS is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and/or pursuant to the provisions of § 506.500 Mo. Rev. Stat., having further, individually and/or through one or more trustees and/or agents:

(a) Transacted business within this state individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of the Second Mortgage Loans (as hereinafter defined) of SMC LENDING, and/or by virtue of it being a holder of and/or a trustee and/or agent of a holder of said Second Mortgage Loans and collecting and/or attempting to collect the benefits of and amounts due under said Second Mortgage Loans from and/or within this state;

(b) Made contracts within this state individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of SMC LENDING and/or said Second Mortgage Loans;

(c) Committed tortious acts within this state individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of SMC LENDING and/or the Second Mortgage Loans, and/or by virtue of its continuing to charge and receive illegal costs and fees in violation of Missouri law and in their receipt of illegal interest from PLAINTIFFS and the Plaintiff Class, all as is more specifically set forth below; and

(d) Used real estate situated in this state to secure the Second Mortgage Loans individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of SMC LENDING and/or the Second Mortgage Loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee and/or agent for such beneficiaries, that secure the Second Mortgage Loans.

61. Venue is proper in this Court pursuant to the terms of § 408.562 Mo. Rev. Stat. because plaintiffs reside in this county and because the transactions complained of occurred in this county and pursuant to § 407.025 Mo. Rev. Stat. and because plaintiffs reside in this county and pursuant to § 508.010 Mo. Rev. Stat. because the subject causes of action accrued in this county.

General Allegations

62. PLAINTIFFS bring this action individually, and as a class action on behalf of the statewide class of Missouri residential real estate owners or borrowers who obtained Second Mortgage Loans from SMC LENDING. “Second Mortgage Loans” are defined at § 408.231 et seq. Mo. Rev. Stat. to mean “... a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document . . . which residential real estate is subject to one or more prior mortgage loans.”

63. “Residential real estate” is defined at § 408.231.3 Mo. Rev. Stat., to mean “. . . any real estate used or intended to be used as a residence by not more than four families” Finally, § 408.234.2 Mo. Rev. Stat. makes it illegal for a lender to take a security interest in any collateral other than residential real estate in connection with a Second Mortgage Loan.

64. From and after six years prior to the original filing of this action and through the present time, SMC LENDING made Second Mortgage Loans to PLAINTIFFS and the other members of the Plaintiff Class.

65. In each of the of the Second Mortgage Loans at issue, SMC LENDING received a promissory note from PLAINTIFFS and from the members of the Plaintiff Class and was named as the “Beneficiary” in a second mortgage deed of trust to secure said Missouri Second Mortgage Loans.

66. In connection with these Second Mortgage Loans, the rate of interest was unlawful, except for the lawful rate of interest permitted by Missouri’s Second Mortgage Loans Act, and in particular § 408.233.1 Mo. Rev. Stat.

67. In connection with these Second Mortgage Loans SMC LENDING contracted for, charged and received, and the INVESTOR and ASSIGNEE DEFENDANTS charged and

received fees and costs that violated Missouri's Second Mortgage Loans Act. In particular, SMC LENDING contracted for, and SMC LENDING and the INVESTOR and ASSIGNEE DEFENDANTS charged and received, Origination Fees (or finder's fees or broker's fees) that were either wholly prohibited by or in excess of that allowed by Missouri's Second Mortgage Loans Act, § 408.233.1(5) Mo. Rev. Stat. In addition, SMC LENDING contracted for and SMC LENDING and INVESTOR and ASSIGNEE DEFENDANTS, charged and received other closing costs that were either not paid to third parties of the lender or were not permitted by or were in excess of those permitted by Missouri's Second Mortgage Loans Act, § 408.233.1(3) Mo. Rev. Stat.

68. These unlawful closing costs and other fees were payable at the time that the loans were funded and were added to the principal balance of the Second Mortgage Loan notes and on which amounts interest was charged, as it was charged on the entire principal balance of the notes.

69. Since acquiring the loans, the ASSIGNEE DEFENDANTS, individually and/or through their bank trustees or other trustees and/or agents, have and "charged" and/or "received" (and continue to collect, "charge" and "receive") payments of interest on the loans, as well as a portion of the pre-paid origination fees and closing costs that were financed as a part of the loan amounts.

The Couch Second Mortgage Loan

70. On or about September 10, 1997, SMC LENDING loaned Danita S. Couch \$30,000.00 to be repaid with interest at the yearly rate of 15.99% in consecutive monthly installments over a period of 25 years. SMC LENDING required Jack T. Chastain to co-sign the note as an additional obligor.

71. The 15.99% rate charged was a lawful rate permitted in § 408.232.1, but it was

otherwise “unlawful” without regard to the rate permitted in § 408.232.1. The Annual Percentage Rate (APR) for the loan was 17.895%.

72. To secure repayment of their note, Ms. Couch was required to and did execute a deed of trust for the benefit of SMC LENDING. The deed of trust granted SMC LENDING a security lien in residential real estate as defined at §408.231 et seq. Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

73. In connection with this Second Mortgage Loan, SMC LENDING charged the following fees and costs payable at closing and each of which was an illegal settlement charge, in violation of Missouri’s Second Mortgage Loans Act (§408.231. et seq. Mo. Rev. Stat.):

Origination Fee to SMC LENDING	\$3,000.00
Document Signing Fees to SMC LENDING	125.00
Document Preparation Fee to SMC LENDING	75.00

74. Couch incurred these Origination Fees and closing costs and fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

75. Any or all of the above fees and costs that SMC LENDING and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from Ms. Couch was an illegal settlement charge, in violation of Missouri’s Second Mortgage Loans Act (§ 408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which SMC LENDING could lawfully contract for, charge, and/or receive; and/or (b) SMC LENDING was prohibited by § 408.233.1 from charging, contracting for, and/or receiving from Ms. Couch any document signing fees.

76. Since September 1997, Ms. Couch has made all of the monthly payments due under her second mortgage loan, paying the same to SMC LENDING and/or to the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the

loan as an agent on behalf of others, including DEFENDANT FIRSTPLUS HOME LOAN OWNER TRUST 1998-1, DEFENDANTS US BANK and WTC, its co-trustees, and/or COUNTRYWIDE HOME LOANS, INC.

77. Ms. Couch continues to make monthly payments on her loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

The Beebe Second Mortgage Loan

78. On or about November 14, 1997, SMC LENDING loaned the Beebes \$33,750.00 to be repaid with interest at the yearly rate of 12.5% in consecutive monthly installments over a period of 25 years.

79. The 12.5% rate charged was a lawful rate permitted in § 408.232.1, but it was otherwise “unlawful” without regard to the rate permitted in § 408.232.1. The Annual Percentage Rate (APR) for the loan was 14.101%.

86. To secure repayment of their note, the Beebes were required to and did execute a deed of trust for the benefit of SMC LENDING. The deed of trust granted SMC LENDING a security lien in residential real estate as defined at §408.231 et seq. Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

87. In connection with this Second Mortgage Loan, SMC LENDING charged the following fees and costs payable at closing, each of which was an illegal settlement charge, in violation of Missouri’s Second Mortgage Loans Act (§408.231. et seq. Mo. Rev. Stat.):

Origination Fee	\$3,375.00
Document Signing Fee	125.00
Document Preparation Fee	85.00

88. The Beebes incurred these Origination Fees and closing costs and fees when the

loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

89. Any or all of the above fees and costs that SMC LENDING and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the Beebes was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which SMC LENDING could lawfully contract for, charge, and/or receive; and/or (b) SMC LENDING was prohibited by § 408.233.1 from charging, contracting for, and/or receiving from the Beebes any document signing fees.

90. Since November 1997, the Beebes have made all of the monthly payments due under their second mortgage loan, paying the same to SMC LENDING and/or to any one or more of the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including DEFENDANT FIRSTPLUS HOME LOAN OWNER TRUST 1998-2, DEFENDANTS US BANK and WTC, its co-trustees, and/or COUNTRYWIDE HOME LOANS, INC.

91. The Beebes continue to make monthly payments on their loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

The Morrow Second Mortgage Loan

92. On or about January 14, 2000, SMC LENDING loaned Shirley Morrow \$35,000.00 to be repaid with interest at the yearly rate of 12.99% in consecutive monthly installments over a period of 25 years.

93. The 12.99% rate charged was a lawful rate permitted in § 408.232.1, but it was

otherwise “unlawful” without regard to the rate permitted in § 408.232.1. The Annual Percentage Rate (APR) for the loan was 14.78%.

94. To secure repayment of their note, Ms. Morrow was required to and did execute a deed of trust for the benefit of SMC LENDING. The deed of trust granted SMC LENDING a security lien in residential real estate as defined at §408.231 et seq. Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

95. In connection with this Second Mortgage Loan, SMC LENDING charged the following fees and costs payable at closing, each of which was an illegal settlement charge, in violation of Missouri’s Second Mortgage Loans Act (§408.231. et seq. Mo. Rev. Stat.):

Loan Origination Fee	\$3,500.00
Document Preparation Fee	85.00
Signing Fee	125.00
Funding Fee to FirstPlus Bank	200.00

96. Ms. Morrow incurred these Origination Fees and closing costs and fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

97. Any or all of the above fees and costs that SMC LENDING and/or any ASSIGNEE DEFENDANT charged, contracted for and/or received from Ms. Morrow was an illegal settlement charge, in violation of Missouri’s Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which SMC LENDING could lawfully contract for, charge, and/or receive; and/or (b) SMC LENDING was prohibited by § 408.233.1 from charging, contracting for, and/or receiving from Ms. Morrow any document signing and/or funding fees.

98. Since January 2000, Ms. Morrow has made all of the monthly payments due under her second mortgage loan, paying the same to SMC LENDING and/or to any one or more of the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced

and handled the loan as an agent on behalf of others DEFENDANTS GMAC-RFC, GMACMC, RESIDENTIAL FUNDING, HOMECOMINGS, and/or DEFENDANT HOME LOAN TRUST 2000-HI2, and CHASE and WTC, its co-trustees.

99. Ms. Morrow continues to make payments on her loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge receive the monthly payments.

**Class Action for Violations of Missouri Second Mortgage Loans Act
Plaintiff Class Action Allegations**

100. This action is properly brought as a plaintiff class action under Mo. Rule 52.08. The Class (“SECOND MORTGAGE CLASS”) consists of all persons who satisfy the following criteria:

(a) That obtained Second Mortgage Loans on Residential Real Estate from SMC LENDING within the meaning of Missouri’s Second Mortgage Loans Act, §§408.231 et seq.; and

(b) That as part of that Second Mortgage Loan paid either an Origination Fee (sometimes called a finder’s fee or a mortgage broker or broker fee) or paid closing costs that were either not bona fide or were not paid to third parties but were paid to the lender SMC LENDING or were not closing costs expressly set forth in § 408.233.1(3) Mo. Rev. Stat., and all in violation of Missouri’s Second Mortgage Loans Act.

101. The SECOND MORTGAGE CLASS includes persons who entered into such loans within six years next before the original filing of this action.

102. The particular members of the SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of the SECOND MORTGAGE CLASS are readily identifiable from the information and records in the

possession or control of SMC LENDING and/or the ASSIGNEE DEFENDANTS and/or the representatives or servicing agents of each.

103. The SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that SMC LENDING made extensive Second Mortgage Loans in Missouri throughout this period.

104. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual members of THE SECOND MORTGAGE CLASS and, in fact, the wrongs suffered and remedies sought by PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS are identical, the only difference being the exact monetary amount to which each member of THE SECOND MORTGAGE CLASS is entitled. The principal common issues are:

(a) Whether SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a Defendant class as defined below) violated §408.231 et seq. Mo. Rev. Stat. by charging and/or receiving from PLAINTIFFS and the SECOND MORTGAGE CLASS the fees and charges described above;

(b) Whether SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class as defined below) are barred under the provisions of §408.236 Mo. Rev. Stat. from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest;

(c) Whether SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class) are liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorneys fees pursuant to §408.562 Mo. Rev. Stat.

105. PLAINTIFFS' claims are typical of those of the members of the SECOND

MORTGAGE CLASS and are based on the same legal and factual theories.

106. PLAINTIFFS will fairly and adequately represent and protect the interests of the Class. They have suffered substantial economic injury in their own capacity from the practices complained of. They have retained counsel experienced in handling class actions and actions involving unlawful commercial practices. Neither PLAINTIFFS nor their counsel have any conflicting interests which might cause them not to vigorously pursue this action.

107. Certification of a plaintiff class under Mo. Rule 52.08(b)(2) is appropriate as to SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class), in that these defendants have (directly or as assignees or the trustees of such assignees) illegally collected closing costs, fees and interest on these Second Mortgage Loans and pursuant to §408.236 Mo. Rev. Stat. those defendants and each of them (and especially the holders of these Second Mortgage Notes and their trustees) should be enjoined from continuing to collect any interest from these Second Mortgage Notes, and ordered to return any interest previously collected.

108. Certification of a plaintiff class under Mo. Rule 52.08(b)(3) is also appropriate as to SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class), in that common questions predominate over any questions pertaining to individual member of the SECOND MORTGAGE CLASS and a plaintiff class action is superior to other available methods for the fair and efficient adjudication of this controversy. A plaintiff class action will cause an orderly and expeditious administration of THE SECOND MORTGAGE CLASS claims and economies of time, effort and expense will be fostered and uniformity of decisions will be insured. Moreover, the individual class members are likely to be unaware of their rights and not in a position (either through experience or financially) to commence individual litigation against SMC LENDING and the ASSIGNEE DEFENDANTS.

Defendants' Liability Under Missouri's Second Mortgage Loans Act

109. Each of the loans that SMC LENDING made to PLAINTIFFS and to the members of THE SECOND MORTGAGE CLASS constituted a "Second Mortgage Loan" within the meaning of §408.231 et seq. Mo. Rev. Stat.

110. § 408.233 Mo. Rev. Stat. provides in pertinent part as follows:

1. No charge other than that permitted by section 408.232 shall be directly or indirectly charged, contracted for or received in connection with any Second Mortgage Loan, except as provided in this section:

* *

(3) Bona Fide closing costs paid to third parties, which shall include:

(a) Fees or premiums for title examination, title insurance, or similar purposes including survey;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports

* *

(5) A nonrefundable origination fee not to exceed two percent of the principal... (increased to five percent by the 1998 amendment to the statute).

111. SMC LENDING and the ASSIGNEE DEFENDANTS violated §408.233 Mo. Rev. Stat. by engaging in the following acts, methods or practices:

(a) Charging, contracting for, and/or receiving, either directly or indirectly, nonrefundable origination fees not allowed by and in excess of what fees were allowed by 408.233.1(5);

(b) Charging, contracting for, and/or receiving, either directly or indirectly, closing fees and costs that were (i) not allowed by the statute; or (ii) in excess of those allowed by the statute, including costs and fees not paid to third parties or costs and fees in excess of those otherwise permitted by the statute.

112. Mo. Rev. Stat. § 408.236 provides as follows:

Any person violating the provisions of sections 408.231 to 408.237 shall be barred from recovery of any interest on the contract, except where such violation occurred either:

- (1) As a result of an accidental and bona fide error of computations; or
- (2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.240 by the division of finance.

113. The conduct of SMC LENDING and the ASSIGNEE DEFENDANTS and the resulting statutory violations described above did not occur as a result of an accidental and bona fide error of computation or as a result of any acts done or omitted in reliance on any governmental interpretation; said conduct was, instead, intentional, willful, wanton and malicious, or otherwise showed a complete indifference to and/or a conscious disregard of Missouri law and the rights of PLAINTIFFS and each member of THE SECOND MORTGAGE CLASS.

114. As the purchasers and/or assignees and holders or as the trustees and/or agents for the assignees and holders of the notes and deeds of trust given under the Second Mortgage Loans by PLAINTIFFS and the members of the SECOND MORTGAGE CLASS, the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to PLAINTIFFS and the SECOND MORTGAGE CLASS, just as SMC LENDING is liable to PLAINTIFFS and the SECOND MORTGAGE CLASS in that (a) the ASSIGNEE DEFENDANTS are the assignees, directly or indirectly of SMC LENDING, and stand in the shoes of SMC LENDING; (b) the ASSIGNEE DEFENDANTS charged and received (and continue to charge and receive) illegal fees and costs on the loans, together with the resulting illegal interest charges; and (c) the points and fees and/or Annual Percentage Rates (APRs) for the loans is such that the ASSIGNEE DEFENDANTS (individually, and as a defendant class) are liable to PLAINTIFFS and the SECOND MORTGAGE CLASS, just as SMC LENDING is

liable.

115. SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are derivatively and/or jointly and severally liable to PLAINTIFFS and the SECOND MORTGAGE CLASS for all of the unlawful closing costs and fees and interest they have charged and/or received (or hereinafter charge or receive) under the Second Mortgage Loans, and any such costs, fees and interest collected after the date of the filing of this action shall be additional evidence of the willful and malicious nature of and conscious disregard of the acts of SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined).

116. SMC LENDING and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) and each of them should be forever barred and enjoined, under §408.236 Mo. Rev. Stat. from collecting or recovering any costs, fees and interest on the Second Mortgage Loans of PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS for the reasons set out above.

117. Mo. Rev. Stat. § 408.562 provides as follows:

In addition to any other remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

118. As a result of the statutory violations described above, PLAINTIFFS and other members of the SECOND MORTGAGE CLASS suffered a loss of money or property in that they were charged and paid and/or became obligated to pay loan closing costs and fees in

amounts greater than those allowed by Missouri law and were charged interest in violation of Missouri law.

119. The conduct of SMC LENDING (and the ASSIGNEE DEFENDANTS by virtue of their status as assignees or trustees for the assignees) and the resulting violations of Missouri law, were intentional, willful, wanton and malicious, or otherwise showed a complete indifference to or a conscious disregard of the rights of each PLAINTIFF and the other members of the SECOND MORTGAGE CLASS, including, without limitation, the fact that defendant, U.S. BANK as trustee over certain trusts holding loans originated by SMC LENDING, continued to collect interest after it knew of the violations of Missouri law, therefore entitling PLAINTIFFS and the SECOND MORTGAGE CLASS to punitive damages against the defendants and each of them in such amount as is fair and reasonable to punish defendants and to deter defendants and others from like conduct.

Defendant Class Action Allegations

120. This action is properly brought as a defendant class action under Mo. Rule 52.08. The defendant class (“THE DEFENDANT SECOND MORTGAGE CLASS”) consists of all persons who satisfy the following criteria:

(a) Those persons or entities or their trustees that received any interest from the Second Mortgage Loans of PLAINTIFFS or the SECOND MORTGAGE CLASS as a result of an assignment or transfer of such Second Mortgage Loans to the recipient of such interest or the trustee of such a recipient; or

(b) Those persons or entities or their trustees that have held or now hold, by virtue of transfer or assignment or otherwise (including acting as trustee of such holder or assignee), the Second Mortgage Loans of PLAINTIFFS or the SECOND MORTGAGE CLASS.

121. The particular members of THE DEFENDANT SECOND MORTGAGE CLASS

are capable of being described without difficult managerial or administrative problems. The members of THE DEFENDANT SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of SMC LENDING and/or the representatives or servicing agents of the Second Mortgage Loans or the assignees or holders (or their trustee(s)) of such Second Mortgage Loans.

122. Upon information and belief, THE DEFENDANT SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that SMC LENDING made extensive Second Mortgage Loans in Missouri throughout this period and those loans have since been assigned to a number of mortgage trusts or pools and may thereafter have been reassigned.

123. There are questions of law and fact common to THE DEFENDANT SECOND MORTGAGE CLASS which questions predominate over any questions affecting only individual members of THE DEFENDANT SECOND MORTGAGE CLASS and, in fact, the wrongs alleged against THE DEFENDANT SECOND MORTGAGE CLASS and remedies sought by PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS against the ASSIGNEE DEFENDANTS are identical, the only difference being the exact monetary amount to which each ASSIGNEE DEFENDANT is liable to the respective members of the SECOND MORTGAGE CLASS and the amount of interest that should be barred, enjoined and returned. The principal common issues are:

(a) Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable as a result of the violations by SMC LENDING of Missouri's Second Mortgage Loans Act and/or whether THE DEFENDANT SECOND MORTGAGE CLASS is entitled to assert any defenses to such violations notwithstanding their status as an assignee of these notes;

(b) Whether THE DEFENDANT SECOND MORTGAGE CLASS is barred under

the provisions of §408.236 Mo. Rev. Stat. from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

(c) Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorney's fees pursuant to §408.562 Mo. Rev. Stat. .

124. The ASSIGNEE DEFENDANTS' defenses of THE SECOND MORTGAGE CLASS claims (which defenses are denied) are typical of those of the individual members of the DEFENDANT SECOND MORTGAGE CLASS and will be based on the same legal and factual theories.

125. The ASSIGNEE DEFENDANTS (including U.S. BANK as the representative trustee of a number of the assignees and holders of these Second Mortgages) will fairly and adequately represent and protect the interests of THE DEFENDANT SECOND MORTGAGE CLASS, who will undoubtedly retain counsel experienced in defending class actions and actions involving unlawful commercial practices. Said defendants do not, based upon information and belief, have any interests which might cause them not to vigorously defend this action.

126. Certification of a defendant class under Mo. Rule 52.08(b)(2) is appropriate as to the ASSIGNEE DEFENDANTS, in that these defendants, as assignees and/or holders (or their trustees) of the Second Mortgage Loans from SMC LENDING have illegally collected closing costs, fees and interest on these Second Mortgage Loans and as holders (or their trustees) of the said notes will continue to collect interest, contrary to §408.236 Mo. Rev. Stat., and those defendants and each of them (and especially the holders of these Second Mortgage Notes) should be enjoined from collecting any interest from those Second Mortgage Notes and ordered to return any interest previously collected.

127. Certification of a defendant class under Mo. Rule 52.08(b)(3) is also appropriate as to the ASSIGNEE DEFENDANTS in that common questions predominate over any questions pertaining to individual members of the DEFENDANT SECOND MORTGAGE CLASS and a defendant class action is superior to other available methods for the fair and efficient adjudication of this controversy. A defendant class action will cause an orderly and expeditious administration of THE DEFENDANT SECOND MORTGAGE CLASS defenses, if any, and economies of time, effort and expenses will be fostered and uniformity of decisions will be insured.

Prayer for Relief

WHEREFORE, PLAINTIFFS, individually and on behalf of themselves and all members of THE SECOND MORTGAGE CLASS, pray for judgment against defendants SMC LENDING and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS and each of them, as follows:

(a) For the continued order of certification allowing that this action may be maintained as class action under Mo. Rule 52.08, appointing PLAINTIFFS and their counsel to represent the SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of the SECOND MORTGAGE CLASS;

(b) For an order certifying that this action may be maintained as a defendant class under Mo. Rule 52.08, appointing US BANK and any other named ASSIGNEE DEFENDANTS to represent THE DEFENDANT SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE DEFENDANT SECOND MORTGAGE CLASS;

(c) For a permanent injunction enjoining defendants SMC LENDING and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS,

together with their officers, directors, employees, agents, partners or representatives, successors and any and all persons acting in concert from directly or indirectly engaging in the wrongful acts and practices described above for the benefit of PLAINTIFFS and the SECOND MORTGAGE CLASS;

(d) For an order directing disgorgement or restitution of all improperly collected charges and the imposition of an equitable constructive trust over such amounts for the benefit of PLAINTIFFS and other members of the SECOND MORTGAGE CLASS;

(e) For a declaration that PLAINTIFFS and other members of the SECOND MORTGAGE CLASS have a right to rescind their loan transactions, and/or a right to offset any illegal closing costs and interest paid against the principal amounts due on the loans, and an order directing SMC LENDING and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS to inform PLAINTIFFS and other members of the SECOND MORTGAGE CLASS of these rights;

(f) For actual damages to be proven at the time of trial, including a repayment of all interest paid on these Second Mortgage Loans and all unlawful closing costs and fees;

(g) For punitive damages in a sum that is fair and reasonable;

(h) For reasonable attorneys' fees as provided by law and statute;


(i) For pre-and post-judgment interest as provided by law;

(j) For an award of costs and expenses incurred in this action; and

(k) For such other and further relief as the Court may deem necessary and proper.

Respectfully submitted,

WALTERS BENDER STROHBEHN
&.VAUGHAN, P.C.

By 

J. Michael Vaughan - Mo. Bar 24989

Kip D. Richards - Mo. Bar 39743

David M. Skeens -Mo. Bar 35728

2500 City Center Square

1100 Main Street

P.O. Box 26188

Kansas City, MO 64196

(816) 421-6620

(816) 421-4747 (Facsimile)

and

LAWSON FIELDS McCUE LEE
& CAMPBELL, P.C.

Gary Lawson

Eric Calhoun

14135 Midway, Ste. 250

Addison, Texas 75001

(972) 490-0808

(972) 490-9545 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above and foregoing was transmitted by fax at approximately 3:50 p.m. and sent by United States mail, first-class postage paid, this 19th day of April 2005 to:

Kenneth E. Siemens
Murphy Taylor Siemens & Elliott
3007 Frederick Ave.
P.O. Box 6157
St. Joseph, Missouri 64506
1.816.364.9677 (fax)
Attorneys for Defendant SMC Lending

Daniel McClain
Randolph Willis
Rasmussen Wills Dickey & Moore, LLC
9200 Ward Parkway, #310
Kansas City, MO 64114
816.960.1669 (fax)
Attorneys for Defendants Homecomings Financial Network, Inc., GMAC-Residential Funding Corporation, Home Loan Trust 2000-HI2, Wilmington Trust Company, JPMorgan Chase Bank, and Sovereign Bank, PSB Lending Home Loan Trusts 1997-1, 1997-2, 1997-3 and 1997-4, on PSB Lending Corporation

Mark A. Olthoff
Shughart Thomson
& Kilroy, P.C.
Twelve Wyandotte Plaza
120 W. 12th Street
Kansas City, Missouri 64105
816.374.0509 (fax)
Attorneys for Defendants U.S. Bank National Association, Wilmington Trust Company, the FirstPlus Home Loan Owner Trusts 1997-3, 1997-4, 1998-1, 1998-2, 1998-4, and 1998-5, the Countrywide Home Loan Owner Trust 2001-HLV1, Empire Home Loan Owner Trust 1998-3, Wells Fargo Bank Minnesota National Association, Real Time Resolutions, Inc., and Ocwen Federal Bank, FSB

Leslie A. Greathouse
Kutak Rock LLP
444 W. 47th Street, Ste. 200
Kansas City, MO 64112
816.960.0041 (fax)
Attorneys for German American Capital Corporation

