

Entered on Docket

December 27, 2011

GLORIA L. FRANKLIN, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA



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9 Telephone: (858) 750-7600

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IT IS SO ORDERED.

Signed December 27, 2011

*Arthur S. Weissbrodt*

Arthur S. Weissbrodt

U.S. Bankruptcy Judge

11 Attorneys for Defendants CITIMORTGAGE, INC.  
12 and FEDERAL HOME LOAN MORTGAGE CORPORATION

13 Attorneys for MORTGAGE ELECTRONIC REGISTRATION  
14 SYSTEMS, INC.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In re

DAVID RANDALL SMITH,

Debtor(s).

DAVID RANDALL SMITH,

Plaintiff,

v.

CITIMORTGAGE, INC.; FEDERAL HOME  
LOAN MORTGAGE CORPORATION; and  
all persons claiming by, through, or under  
such person, all persons unknown, claiming  
any legal or equitable right, title, lien, or  
interest in the property described in the  
complaint adverse to Plaintiff's title thereto;  
and DOES 1-150, Inclusive,

Defendants.

Bankruptcy Case No.: 10-52330

Chapter 11

Adversary Case No.: 11-05107

**ORDER QUASHING SUBPOENA  
DUCES TECUM**

**HEARING:**

DATE: December 15, 2011

TIME: 3:00 PM

CTRM: 3035

JUDGE: Hon. Arthur S. Weissbrodt

The above-captioned matter came on for hearing on December 15, 2011, in Courtroom 3035 of the United States Bankruptcy Court for the Northern District of California – San Jose Division, located at 280 South 1<sup>st</sup> Street, San Jose California 95133-3099, upon the Motion to Quash Subpoena Duces Tecum ("Motion to Quash") of Mortgage Electronic Registration Systems, Inc.

1 ("MERS").

2       Appearances as noted on the record.

3       Based upon the arguments of counsel, pleadings, filing and record before the court and good  
4 cause appearing therefor,

5       **IT IS HEREBY ORDERED:**

6       1.       The Motion to Quash is GRANTED.

7       2.       MERS is discharged from any further obligations under the Subpoena Duces Tecum.

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**\*\* END OF ORDER \*\***

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7 Attorneys for Defendants CITIMORTGAGE, INC.  
and FEDERAL HOME LOAN MORTGAGE CORPORATION

8 Attorneys for MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.  
9

10 UNITED STATES BANKRUPTCY COURT

11 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

12 In re

13 DAVID RANDALL SMITH,

14 Debtor(s).

15  
16 DAVID RANDALL SMITH,

17 Plaintiff,

18 v.

19 CITIMORTGAGE, INC.; FEDERAL HOME  
LOAN MORTGAGE CORPORATION; and  
20 all persons claiming by, through, or under  
such person, all persons unknown, claiming  
21 any legal or equitable right, title, lien, or  
interest in the property described in the  
22 complaint adverse to Plaintiff's title thereto;  
and DOES 1-150, Inclusive,

23 Defendants  
24  
25

Bankruptcy Case No.: 10-52330

Chapter 11

Adversary Case No.: 11-05107

**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
OBJECTIONS AND MOTION TO  
QUASH SUBPOENA DUCES TECUM**

**HEARING:**

DATE: December 15, 2011

TIME: 3:00 PM

CTRM: 3035

JUDGE: Hon. Arthur S. Weissbrodt

26 Mortgage Electronic Registration Systems, Inc. ("MERS") hereby submits its Memorandum  
27 of Points and Authorities in support of its Objections and Motion to Quash Subpoena in Adversary  
28 pursuant to Federal Rule of Civil Procedure 45(c), made applicable to bankruptcy proceedings by  
Federal Rule of Bankruptcy Procedure 9016.

I.

**STATEMENT OF FACTS**

**A. Loan Transaction**

On or about January 23, 2006, Plaintiff and Sandra K. Smith (collectively "Borrowers") executed a Note in favor of Reunion Mortgage, Inc. ("Lender") in the principal amount of \$227,000.00. (Complaint, p.4, ¶17, ll.8-10)

On or about January 23, 2006, Plaintiff and Sandra K. Smith executed a Deed of Trust encumbering the property located at 23 Pine Avenue, Mount Hermon, California 95041 ("Subject Property") and securing their obligations under the Note. (Complaint, p. 4, ¶19, ll.14-16; Req. for J.N., **Exhibit A**).<sup>1</sup>

Subsequently, Lender's interest in the Subject Loan was assigned and transferred to Citi as evidenced by the specially indorsed Note and Assignment of Deed of Trust. (RJN, **Exhibit B**).

As a result of Plaintiff's default under the Subject Loan, on or about November 17, 2009, a Notice of Default reflecting Plaintiff's obligations under the Subject Loan were delinquent in the amount of \$21,655.31 was recorded in the Official Records of Santa Cruz County, California. (RJN, **Exhibit C**).

**B. Plaintiff's Bankruptcy Case**

On March 10, 2010, Plaintiff filed a voluntary petition under Chapter 13 of the Bankruptcy Code and was assigned case number 10-52330. (Bankruptcy Docket ("Dkt."), 1).

On February 14, 2011, Plaintiff's Chapter 13 case was converted to a Chapter 11 case. (Dkt., 56). To date, Plaintiff has failed to file any proposed Disclosure Statement or Plan or Reorganization.

**C. Adversary Proceeding**

On April 13, 2011, Plaintiff commenced this instant adversary proceeding by filing a Complaint to Determine the Nature, Extent and Validity of Lien and to Disallow Secured Claim, TILA Violation, Fraud, Libel, Quiet Title, and Injunctive Relief naming CitiMortgage, Inc. ("Citi") and Federal Home Loan Mortgage Corporation ("FHLMC") as defendants (hereinafter collectively

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<sup>1</sup> The Note and Deed of Trust are referred to herein as "Subject Loan."

1 “Defendants”). (Adversary Docket, 1).

2 On May 26, 2011, Defendants filed a Motion to Dismiss Adversary Complaint (“Motion to  
3 Dismiss”). (Adversary Docket, 7). The Motion to Dismiss was opposed by Plaintiff. (Adversary  
4 Docket, 14). Defendants submitted a Reply in support of the motion. (Adversary Docket, 15).

5 On June 23, 2011, a hearing on the Motion to Dismiss was held at which time the court  
6 granted in part and denied in part the Motion to Dismiss. (Adversary Docket, 19). Specifically, the  
7 court granted the Motion to Dismiss and dismissed the third, fourth, and fifth causes of action, with  
8 leave to amend. Plaintiff had 40 days from the date of the hearing to file an amended complaint,  
9 which he did not do. (Adversary Docket, 19).

10 The court denied the Motion to Dismiss with respect to the first, second, and sixth causes of  
11 action. In support of its denial of the motion as to these three causes of action, the court found that  
12 the Complaint asserts that Plaintiff disputes the validity of the Note, although the Complaint does  
13 not allege that Citi does not hold the Note. The court also found that the allegations in the  
14 Complaint assert that defendants did not take their interest in the Note for value. Further, the court  
15 found that the Note is made payable to Lender, however, the Complaint alleges that the Lender did  
16 not fund the loan. Based on the foregoing allegations in the Complaint, the court found that any  
17 rights asserted by defendants in the Subject Loan were derivative of those of the Lender and that the  
18 allegations were sufficient to withstand a Rule 12(b)(6) motion as to the issue present in this  
19 litigation, which is a determination as to the nature, extent, and validity of Defendants’ interest in the  
20 Subject Loan. Accordingly, the court found that the allegations in the Complaint regarding the  
21 purported securitization of the Subject Loan and allegations regarding MERS were irrelevant to the  
22 claims in the action.<sup>2</sup>

23 On October 13, 2011, Plaintiff served a Subpoena in an Adversary Proceeding on nonparty  
24 Mortgage Electronic Registration Systems, Inc. (“MERS”). According to the Proof of Service the  
25 Subpoena was served on the Records Custodian for MERS by first class mail at the following  
26 address: 1818 Library Street, Suite 300, Reston, VA 20190. (**Exhibit 1**).

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<sup>2</sup> A transcript from the hearing on the Motion to Dismiss has been ordered and this Motion will be supplemented  
with excerpts from the transcript accordingly.

1 II.

2 LEGAL ARGUMENT

3 A. MOTION TO QUASH SUBPOENA PURSUANT TO FED. R. CIV. P. 45

4 1. Legal Standard

5 Fed. R. Civ. P. 45(c)(3)(A) sets forth the bases for a court to quash or modify a subpoena. It  
6 provides as follows:

7 (3) Quashing or Modifying a Subpoena.

8 (A) When Required: On timely motion, the issuing court must quash or modify a  
9 subpoena that:

10 (i) fails to allow a reasonable time to comply;

11 (ii) requires a person who is neither a party nor a party's officer to travel more than  
12 100 miles from where that person resides, is employed, or regularly transacts  
13 business in person-except that, subject to Rule 45(c)(3)(B)(iii), the person may be  
commanded to attend a trial by traveling from any such place within the state where  
the trial is held;

14 (iii) requires disclosure of privileged or other protected matter, if no exception or  
waiver applies; or

15 (iv) subjects a person to undue burden.

16 See Fed. R. Civ. P. 45(c)(3)(A). As an initial matter, the party who moves to quash a subpoena has  
17 the burden or persuasion under Rule 45(c)(3). *Travelers Indem. Co. v. Metropolitan Life Insur. Co.*,  
18 228 F.R.D. 111, 113 (D. Conn. 2005). Although the issue of relevance is not listed as consideration  
19 in Rule 45, courts have incorporated relevance as a factor when determining motions to quash a  
20 subpoena. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (quotations omitted); see  
21 also, *Kohler v. Flava Enterprises, Inc.*, 2011 WL 2600727 (S.D. Cal 2011); *Televisa, S.A. DE C.V.*  
22 *v. Univision Communications, Inc.*, 2008 WL 4951213 (C.D. Cal 2008) (relevance is the first factor  
23 the court considers in deciding whether a subpoena is unduly burdensome). Specifically, under Rule  
24 45(c)(3)(A), "[a]n evaluation of undue burden requires the court to weigh the burden to the  
25 subpoenaed party against the value of the information to the serving party." *Id.* (quoting *Travelers*  
26 *Indem. Co.*, 228 F.R.D. at 113. In order to do so, the court must consider such factors as relevance,  
27 the need of the party for the documents, the breadth of the document request, the time period  
28 covered by it, the particularity with which the documents are described and the burden imposed.

1 As explained more fully below, Plaintiff's Subpoena subjects MERS to undue burden.

2       **2. The Subpoena is unduly burdensome as it seeks irrelevant information**

3       The information requested in the Subpoena is irrelevant to the claims and defenses in the  
4 litigation and is not reasonably calculated to lead to the discovery of admissible evidence.  
5 Generally, Rule 26 determines the scope of permissible discovery.

6       Rule 26(b)(1) provides in relevant part:

7       (1) Scope in General. Unless otherwise limited by court order, the scope of  
8 discovery is as follows: Parties may obtain discovery regarding any nonprivileged  
9 matter that is *relevant to any party's claim or defense*-including the existence,  
10 description, nature, custody, condition, and location of any documents or other  
discoverable matter.

11       *See* Fed. R. Civ. P. 26(b)(1).

12       At the hearing on the Motion to Dismiss, the court determined that the allegations in the  
13 Complaint were sufficient to withstand a Rule 12(b)(6) motion as to the first and second causes of  
14 action for determination as to the nature, extent, validity of Defendants' interest in the Subject  
15 Property. Specifically, the court found that the Complaint alleged that the Lender did not fund the  
16 loan. The court also found that the Complaint alleged that the defendants did not take the Subject  
17 Loan for value. Accordingly, to the extent that the Defendants asserted any rights in the Subject  
18 Loan, the court stated that their rights were derivative of those of the Lender. In making such  
19 findings, the court further determined that the allegations in the Complaint regarding the purported  
20 securitization of the Subject Loan and allegations regarding MERS were irrelevant to the claims in  
the action.

21       Notwithstanding the court's prior ruling, Plaintiff seeks information pertaining to MERS's  
22 transfer of the security interest, Note, and/or Assignment of Deed of Trust. (Request No. 2).  
23 Plaintiff also seeks information regarding MERS's relationship with the Defendants. (Request Nos.  
24 8 and 9). Further, Plaintiff seeks information and documents which MERS purportedly relied upon  
25 to prepare the Assignment and Substitution of Trustee. (Request No. 6). However, the information  
26 Plaintiff is seeking fails to fall under the scope and purview of Rule 26(b)(1) based on the court's  
27 previous determination that the allegations in the Complaint regarding MERS were irrelevant to the  
28 claims in the action. Accordingly, the court must quash the Subpoena as the information sought is



1 irrelevant to the claims and defenses in the litigation.

2       **3. Plaintiff's claim for fraud was dismissed by the court**

3       In the Complaint, Plaintiff asserted a claim for fraud in conveyance as to Defendants.  
4 Specifically, the Complaint alleged that "MERS could not act as a nominee for the Reunion in  
5 receiving the assignment of Deed of Trust." (Compl., 14:17-19). The Complaint also alleged that  
6 "MERS had no interest in the Promissory Note and could not assign or enforce the Promissory  
7 Note." (Compl., 14:19-20). Further, the Complaint alleged that MERS fraudulently assigned the  
8 Deed of Trust to Citi (Compl., 5:3-5) for the purpose of unlawfully foreclosing on the Subject  
9 Property (Compl., 7:11-14). Based on the foregoing, the Complaint conclusorily alleged that the  
10 Defendants' actions constituted fraud. (Compl., 14:21-26). On the face of the Subpoena, it appears  
11 that Plaintiff seeks discovery of information which specifically pertains to the allegations asserted in  
12 support of his claim for fraud. However, as stated previously herein, the court determined that the  
13 allegations regarding MERS were irrelevant to the claims for a determination as the Defendants'  
14 interest in the Subject Loan. Furthermore, the information sought by Plaintiff in the Subpoena is  
15 clearly irrelevant as the court dismissed Plaintiff's claim for fraud. Although Plaintiff had an  
16 opportunity to file an amended complaint, he failed to do so. Accordingly, the court must quash the  
17 Subpoena to the extent that it seeks discovery of information to litigate a dismissed cause of action.

18       **4. Plaintiff lacks standing to challenge the validity of the Assignment**

19       Standing is a requirement grounded in Article III of the U.S. Constitution and a defect in  
20 standing cannot be waived by the parties. *In re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C. D.  
21 Cal. 2008). A litigant must have both constitutional standing and prudential standing for a federal  
22 court to have jurisdiction to hear the case. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S.C. 1, 11  
23 (2004). Constitutional standing requires an injury to be fairly traceable to the defendant's allegedly  
24 unlawful conduct and likely to be redressed by the requested relief. *United Food & Commercial*  
25 *Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551 (1996). Prudential standing is a  
26 set of principles that places limits on the class of persons who may invoke a federal court's powers.  
27 *Newdow*, 542 U.S. at 11. To comply with the requirement of prudential standing, the litigant must  
28 assert its own legal rights and interests. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (even when the

1 plaintiff generally has alleged injury sufficient to meet the ‘case or controversy’ requirement a  
2 plaintiff generally must assert asset his own legal right and interest, and cannot rest his claim to  
3 relief on the legal right or interest of third parties) (quotations omitted); *see also Oregon v. Legal*  
4 *Servs. Corp.*, 552 F.3d 965, 971 (9th Cir. 2008).

5 Courts have viewed a written assignment as a form of contract. Generally, the law limits the  
6 litigation of contracts to those that are a party to the contracts and intended beneficiaries. *See* 29  
7 Williston on Contracts 74:50 (4<sup>th</sup> Ed.) (debtor has no legal defense based on invalidity of the  
8 assignment...for it cannot be assumed that the assignee is desirous of avoiding the assignment).<sup>3</sup>  
9 Plaintiff has not and cannot establish that he is a party to the assignment. Plaintiff lacks standing to  
10 inquire into the facts underlying the MERS officer’s execution of the assignment and, therefore, the  
11 attempt to discovery such information is irrelevant to this action.

12 **5. Plaintiff’s allegations regarding MERS is not based on any cognizable legal**  
13 **theory**

14 To the extent discernable, Plaintiff contends that the Defendants’ interest in the Subject Loan  
15 is voidable on the grounds that MERS lacks any authority to transfer an interest in a note or deed of  
16 trust. Federal courts and California state courts have repeatedly rejected challenges similar to those  
17 raised by Plaintiff with respect to MERS’s purported lack of authority to transfer any interest in the  
18 Note and Deed of Trust. *See e.g., Cervantes v. Countrywide Home Loans, Inc.*, ---F.3d---, WL  
19 3911031 (9th Cir. September 7, 2011) (terms of deed indicated that MERS has the right to foreclose  
20 and sell the property; by signing the deeds of trust, plaintiffs agreed to the terms and were on notice  
21 of the contents); *Lane v. Vitek Real Estate Indus. Group*, 713 F.Supp.2d 1092, 1099 (E.D.Cal 2010)  
22 (MERS has standing to foreclosure as the nominee for the lender and beneficiary of the Deed of  
23 Trust and may assign its beneficial interest to another party); *Pantoja v. Countrywide Home Loans,*  
24 *Inc.*, 640 F.Supp.2d 1177 (N.D.Cal. 2009); *Gomes v. Countrywide Home Loans, Inc.*, 192  
25 Cal.App.4th 1149, 1158 (2011) (“MERS is the owner and holder of the note as nominee for the

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26 3 *See e.g. BAC Home Loans Servicing, LP v. Galan*, Case No. 2010CA3149 (Osceola Cty. Cir. Feb 22, 2011)  
27 (granting a protective order preventing the deposition by borrower of a MERS officer for inquiry into facts  
28 underlying officer's execution of MERS assignment on the grounds that there is no dispute between the assignor  
MERS and any parties to the assignment); *In re Almeida*, 417 B.R. 140 (Bankr. D. Mass. 2009) (debtor lacked  
standing to challenge validity of assignment since debtor was not a third party beneficiary based on assertion that  
assignment was invalid because it failed to comply with terms of pooling and servicing agreement)

1 lender, and thus MERS can enforce the note on the lender's behalf.") (*quoting Morgera v.*  
2 *Countrywide Home Loans, Inc.*, 2010 WL 160348, \*8 (E.D. Cal. 2010); *Dancy v. Aurora Loan*  
3 *Servs. LLC*, 2011 WL 8325787 (N.D. Cal. 2011) (rejecting the contention that MERS could not act  
4 as beneficiary under deed of trust); *Derakhshan v. Mortgage Elec. Registrations Systems, Inc.*, 2009  
5 WL 3346780 (C.D. Cal. 2009) (rejecting unwarranted deductions of facts and unreasonable  
6 inferences that MERS has no rights to exercise a legal interest in borrower's loan). Moreover, Cal.  
7 Civ. Code § 2936 provides that "[t]he assignment of a debt secured by a mortgage carries with it the  
8 security." It follows that "a mortgage may be enforced only by, or on behalf of, a person who is  
9 entitled to enforce the obligation that the mortgage secures." Restatement (Third) of Property  
10 (Mortgages) § 5.4 (*citing Carpenter v. Longan*, 83 U.S. 271, 275 (1873)). Indeed, a recorded  
11 assignment of mortgage is not legally required to enforce the obligations of a note and mortgage.  
12 Accordingly, Plaintiff seeks discovery of information from MERS in an attempt to substantiate  
13 claims that are not recognized under any legal theory. Weighing the burden to non-party MERS  
14 against the value of the information to Plaintiff, the court must find that the Subpoena imposes an  
15 undue burden on MERS.

16 **B. PLAINTIFF FAILED TO PROPERLY EFFECTUATE SERVICE OF THE**  
17 **SUBPOENA**

18 Fed. R. Civ. P. 45(b) states in relevant part:

19 (b) Service

20 (1) By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas. Any person  
21 who is at least 18 years old and not a party may serve a subpoena. Serving a  
22 subpoena requires delivering a copy to the named person...If the subpoena  
commands the production of documents, electronically stored information, or  
tangible things or the inspection of premises before trial, then before it is served, a  
notice must be served on each party.

23 *See* Fed. R. Civ. P. 45(b)(1). Rule 45 is made applicable to bankruptcy proceedings by Federal Rule  
24 Bankruptcy Procedure 9016. Although the requirement of personal service is not explicit in the rule,  
25 the longstanding interpretation of Rule 45 has been that personal service of subpoena is required.  
26 *See Chima v. U.S. Department of Defense*, 2001 WL 1480640, at \*2 (9th Cir. Dec. 14, 2001) (Ninth  
27 Circuit has applied the majority rule that service by mail rather than by personal service of subpoena  
28 duces tecum held improper). The reasoning behind requiring personal service is that service by

1 regular mail does not guarantee actual delivery. *See e.g. Firefighters' Inst. for Racial Equality v.*  
2 *City of St. Louis*, 220 F.3d 898, 903 (8th Cir. 2000) (fax or regular mail cannot satisfy Rule 45  
3 because discovery is not assured). According to the Proof of Service, Plaintiff served the subpoena  
4 by regular first class mail rather than personal service. (**Exhibit 1**). Moreover, the Proof of Service  
5 fails to reflect that notice was served on each party. (**Exhibit 1**). Based on the foregoing, the  
6 Subpoena should be quashed for failure to effectuate proper service.

7 **C. PLAINTIFF'S REQUESTS ARE OTHERWISE OBJECTIONABLE**

8 Even if the court were to determine that the Plaintiff is entitled seek discovery on MERS,  
9 good cause exists to limit the scope of the Subpoena. More specifically, MERS is entitled to an  
10 order limiting or modifying the scope of the Subpoena on the grounds that the requests are  
11 irrelevant, unduly burdensome, ambiguous, already known by Plaintiff or equally available to  
12 Plaintiff, and/or seek information not in MERS's possession. MERS's specific objections to each of  
13 the Plaintiff's requests are more fully set forth in the table attached hereto as **Exhibit 2**, which is  
14 incorporated herein by reference.

15 **III.**

16 **CONCLUSION**

17 The court must quash a subpoena that subjects a person to undue burden. First, Plaintiff  
18 seeks information that is irrelevant to any of the claims and defenses in the action and, therefore,  
19 fails to fall under the scope of permissible discovery pursuant to Rule 26. In addition, Plaintiff  
20 appears to seek discovery in order to litigate a dismissed cause of action. Moreover, Plaintiff lacks  
21 standing to challenge the validity of the assignment. Further, the allegations in the Complaint  
22 regarding MERS are not based on any cognizable legal theory and, therefore, requiring MERS to  
23 respond to the Subpoena would unnecessarily impose an undue burden on a nonparty. Alternatively,  
24 MERS is entitled to an order limiting or modifying the scope of Subpoena as more fully set forth in  
25 its Objections to Subpoena.

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WHEREFORE, MERS respectfully requests as follows:

1. The court grant the Motion to Quash Subpoena in its entirety;
2. The court discharge Mortgage Electronic Registration Systems, Inc. from any further obligations under the Subpoena;
3. Alternatively, for an order limiting or modifying the scope of the Subpoena;
4. For reasonably attorneys' fees and costs; and
5. For all other relief the court deems just and property.

Respectfully submitted,

Da: November 14, 2011

PITE DUNCAN, LLP

/s/ Ellen Cha (CA SBN 250243)  
ELLEN CHA  
Attorneys for Defendants CITIMORTGAGE, INC.  
and FEDERAL HOME LOAN MORTGAGE  
CORPORATION  
  
Attorneys for MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

BEST COPY AVAILABLE



B255 (Form 255 - Subpoena in an Adversary Proceeding) (12/07)

UNITED STATES BANKRUPTCY COURT

Northern

District

California

RECEIVED

In re Debtor DAVID RANDALL SMITH

Plaintiff DAVID RANDALL SMITH

v.

Defendant CITIMORTGAGE, INC.

SUBPOENA IN  
AN ADVERSARY PROCEEDING

Case No. \*

10-52330

Chapter

11

To: MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

Adv. Proc. No. \*

11-05107

☐ YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date, and time specified below to testify in the above adversary proceeding.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above adversary proceeding.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHED

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this adversary proceeding that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6), Federal Rules of Civil Procedure, made applicable in adversary proceedings by Rule 7030, Federal Rules of Bankruptcy Procedure.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

OCT 03 2011

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Christina P. Gallagher, Intake Clerk  
280 S First St, # 3035 SAN JOSE, CA 95113, (408) 278-7500

\* If the bankruptcy case or the adversary proceeding is pending in a district other than the district in which the subpoena is issued, state the district under the case number or adversary proceeding number.



BEST COPY AVAILABLE



B255 (Form 255 - Subpoena in an Adversary Proceeding) (12/07)

UNITED STATES BANKRUPTCY COURT

Northern

District

California

In re Debtor DAVID RANDALL SMITH

Plaintiff DAVID RANDALL SMITH

v.

Defendan CITIMORTGAGE, INC.

SUBPOENA IN  
AN ADVERSARY PROCEEDING

Case No. \* 10-52330

Chapter 11

To: MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

Adv. Proc. No. \* 11-05107

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PREMISES

DATE AND TIME

Any organization not a party to this adversary proceeding that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6), Federal Rules of Civil Procedure, made applicable in adversary proceedings by Rule 7030, Federal Rules of Bankruptcy Procedure.



ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

OCT 03 2011

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Christina Enellaga Intake Clerk  
280 S First St. #3035 SAN JOSE, CA 95113, (408) 278-7500

\* If the bankruptcy case for the adversary proceeding is pending in a district other than the district in which the subpoena is issued, state the district under the case number or adversary proceeding number.

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B255 (Form 255 - Subpoena in an Adversary Proceeding) (12/07)

PROOF OF SERVICE

SERVED	DATE OCT 13, 2011	PLACE MT. HERMON, CA. 95041
SERVED ON (PRINT NAME) MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.		MANNER OF SERVICE 1 <sup>ST</sup> CLASS POSTAL
SERVED BY (PRINT NAME) BRENT SMITH		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on OCT 13, 2011  
DATE

X Brent Smith  
SIGNATURE OF SERVER

P.O. Box 436 MT. HERMON, CA. 95041

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



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Recording Requested By:  
REUNION MORTGAGE, INC.

And After Recording Return To:  
REUNION MORTGAGE, INC.  
860 HILLVIEW COURT, SUITE 300  
MILPITAS, CALIFORNIA 95035  
Loan Number: 100504071

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN: 100068300111546025

### DEFINITIONS

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

- (A) "Security Instrument" means this document, which is dated JANUARY 23, 2006, together with all Riders to this document.
- (B) "Borrower" is DAVID R. SMITH AND SANDRA K. SMITH, HUSBAND AND WIFE AS COMMUNITY PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is REUNION MORTGAGE, INC.

Lender is a CALIFORNIA CORPORATION organized  
and existing under the laws of CALIFORNIA  
Lender's address is 860 HILLVIEW COURT, SUITE 300, MILPITAS, CALIFORNIA  
95035

(D) "Trustee" is SANTA CRUZ TITLE COMPANY  
108 WHISPERING PINES DRIVE #100, SCOTTS VALLEY, CALIFORNIA 95066

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JANUARY 23, 2006.  
The Note states that Borrower owes Lender TWO HUNDRED TWENTY-SEVEN THOUSAND AND  
00/100 Dollars (U.S. \$ 227,000.00) plus interest.

EXHIBIT C

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Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2036

- (G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."  
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.  
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Biweekly Payment Rider         |   |

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of SANTA CRUZ

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

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PLEASE SEE ATTACHED LEGAL DESCRIPTION TO OUR DEED OF TRUST AS SCHEDULE A  
A.P.N.: 066-151-04

which currently has the address of 23 PINE AVENUE

[Street]

MOUNT HERMON  
[City]

, California 95041  
[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not

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obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender

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shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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