

## PARTIES

1. X, (“Plaintiffs”). Plaintiffs are a married couple residing in .
2. X Inc., (“Lender”).
3. X Servicing, (“Servicer”).
4. X, (“Sellers”) .
5. X Title, (“Title and Escrow”) a corporation located in .
6. X , (“Loan Originator”) loan originator who originated the loan at X Mortgage.
7. X Mortgage, (“Broker”) a X Corporation.
8. X, (“Appraiser”) a appraiser with state certification number X.
9. X, appraisal company of Appraiser at the time of these events. (“Appraisal Company”).
10. X, (“Real Estate Agent”) at the time of these events. Mortgage loan originator from to X to X.
11. X Inc., hereinafter known as “Contractor,” a Corporation with state license number X.
12. Property known commonly as X with legal description. X (“Property”).
13. X, a real estate agent with X Real Estate.
14. X Real Estate, a X real estate corporation.

## GENERAL ALLEGATIONS

16. In July of 2003 Sellers purchased Property from X, LLC and were granted ownership by Warranty Deed. See Exhibit A.

17. On 10/6/X The X Homeowners Association, Inc., filed a lien notice on Property including it into the Association.
18. In January of 2006, Sellers agreed to sell Property to Plaintiffs.
19. In January of 2006, Plaintiffs applied to X Financial, Inc. for financing to purchase Property.
20. On January 13, 2006, Appraiser appraised property for \$263,000. See Exhibit B.
21. In February of 2006, Plaintiffs entered into a contract to purchase Property from Sellers and were granted a Warranty Deed for Property. See Exhibit C.
22. From February 2006 through May 2006 Plaintiffs were unable to obtain financing to purchase Property. Plaintiffs granted ownership in Property back to Sellers on May 25, 2006 by Warranty Deed. See Exhibit D.
23. Plaintiffs were referred to X for a mortgage.
24. Plaintiffs met with X who said he had a friend X who could get a loan closed for Plaintiffs. X said he would collect their information and submit it to X for closing.
25. Plaintiffs met with X several times and provided him with income documentation and filled out a loan application with him.
26. X submitted their application to X at X Mortgage.
27. X Mortgage performed or obtained an appraisal on Property for an appraised value of \$285,000.
28. X submitted their application to Lender.
29. On September 28, 2006 Lender approved and Plaintiffs signed an 80% loan to value mortgage based on the appraised value of X Mortgage with a loan amount of 228,000.
30. The copy of the Deed of Trust signed by Plaintiffs and copied after closing is in

- Exhibit E.
31. The HUD-1 Settlement Statement signed by Plaintiffs and copied after closing is in Exhibit F.
  32. The Note for Lender's loan signed by Plaintiffs and copied after closing is included in Exhibit G.
  33. The Advance Fee Agreement signed by Loan Originator and Plaintiffs and copied for Plaintiffs after closing is included in Exhibit H.
  34. The Specific Closing Instructions signed by Plaintiffs and copied after closing is included in Exhibit I. Conditions remained to be satisfied including but not limited to conditions on an Addendum to Closing Instructions that was not provided to Plaintiffs by Title and Escrow that will be discovered.
  35. The Uniform Residential Loan Application signed by Plaintiffs and copied after closing is included in Exhibit J.
  36. The Deed of Trust, Addendums to Deed of Trust, Note, Advanced Fee Agreement, and Specific Closing Instructions were all generated by 'DocMagic' with website and logo in the bottom right corner. These documents were signed Thursday, September X, 2006 (See Exhibit N, Page 22 - Notary Seal).
  37. On Saturday, September X, 2006, Lender's license to lend in the state of X expired. See Exhibit O.
  38. On Tuesday, October X, 2006, Title and Escrow recorded and funded loan. See Exhibit N – Recorders Stamp – All Pages. For a calendar of these events see Exhibit P.
  39. Plaintiffs are self-employed in the window washing business. Plaintiffs' income was

- reduced in 2007 and Plaintiffs fell behind on mortgage payments in 2007.
40. In 2007, Plaintiffs applied for alternative methods to cure their defaulted mortgage including but not limited to a loan modification.
  41. Servicer denied Plaintiffs request October 24, 2007 due to “Borrower does not meet investor guidelines.”
  42. Plaintiffs applied again for a modification and was offered a repayment plan in March X, 2008.
  43. Plaintiffs and Servicer entered into a Repayment Plan Agreement in March 2008. See Exhibit R.
  44. Plaintiffs made Repayment Plan Agreement payments as agreed to Servicer from March 2008 through October 2008.
  45. On August 12, 2008 Plaintiffs contacted Servicer about a permanent loan modification and spoke with X and X. X and X represented that X was a manager at Servicer.
  46. Plaintiffs were told by X that Plaintiffs were required to cancel the Repayment Plan Agreement in order to qualify for a permanent loan modification. X suggested they cancel their Repayment Plan Agreement at the end of August and resubmit Plaintiffs financial information.
  47. At the end of August Plaintiffs canceled their Repayment Plan Agreement and Plaintiffs provided servicer with a hardship letter, bank statements, and other requested documents to apply for a loan modification again in from the end of August through beginning of September, 2008.
  48. At the end of October, 2008, Plaintiffs were informed by Servicer that their

- application for a loan modification was denied because their Repayment Plan Agreement was not cancelled. Plaintiffs were informed that they did otherwise fit the guidelines for a loan modification. Plaintiffs were informed to cancel the Repayment Plan Agreement and re-apply for a loan modification.
49. Plaintiffs again requested a cancellation of the Repayment Plan Agreement at the end of October, 2008 and reapplied for a loan modification.
  50. Plaintiffs were again denied a loan modification by Servicer on or around January of 2009. Plaintiffs were not informed the reason for the denial.
  51. On April 14 of 2009, Plaintiffs requested a modification or repayment plan again from Servicer. Plaintiffs outlined in plain text the reason for their delinquency was that they were told by Servicer to cancel the Repayment Plan Agreement with specific dates and persons who told them to cancel the agreement. See Exhibit S.
  52. Servicer denied modification request, and would not agree to restart the Repayment Plan Agreement. Servicer did not provide a denial notice or reason for denial.
  53. In August through January 2010, Plaintiffs again applied for a loan modification and Making Home Affordable loan modification.
  54. On February 3, 2010 Servicer formally denied Plaintiffs a modification for a final time stating “Unfortunately, your loan does not meet the guidelines provided by the investor. We are unable to offer you an alternative workout solution at this time.”
  55. On April X, 2010, X, P.C. foreclosed on Property via Trustee’s Deed in Exhibit Q on behalf of Lender.
  56. On April X, 2010 X of X Real Estate entered Property and provided a business card and letter to Plaintiffs. X orally informed Plaintiffs they had to leave within three

weeks. The letter provided by Xto Plaintiffs states:

The bank that has foreclosed on this property has asked us to make contact with you to arrange for you to vacate the premises in the next two weeks. Please call so we can discuss your schedule...Eviction proceedings will begin immediately if we cannot agree on a plan for you to leave the home. See Exhibit V.

### CAUSE OF ACTIONS AGAINST LENDER

#### #1 NEGLIGENCE

57. All allegations above are hereby realleged.
58. Lender negligently misrepresented to borrower via loan originator that business bank statement deposit amounts was income and the average bank statement deposit amount should be imputed into the Uniform Residential Loan Application income section to determine in application and to use in determining the ability to repay the mortgage. This is commonly known as a 'business bank statement loan'.
59. This representation was false. Bank statements are not income. Business expenses must be removed prior to calculation of income from bank statements.
60. Lender failed to use reasonable care to determine whether the representation was true. Specifically, Lender's loans originated between August and November 2006 had a default rate of roughly 63.6% by April, 2009 in areas studied by mortgage data professionals. This is over sixty times the default rate of less than 1% for loans originated in the same time by Citibank and Bank of America. Lender subsequently has declared bankruptcy due to this failure to use reasonable care. See Exhibit K.

61. On the Uniform Residential Loan Application in Exhibit J Plaintiffs used Lenders instruction to state they had an income of \$6,xxx based on business bank statements in Section V.
62. The total mortgage payment on the application was \$1xxx in Section V.
63. The payment shock on the application is \$1xxx in Section V.
64. The total non-mortgage monthly payment was \$1503 in Section VI.
65. This results in a debt to income of 4x % which is above the FHA and industry standard of 43% DTI. The actual DTI is in far excess of this after business expenses reduce the bank statement deposits.
66. At the end of two years, the contractual payment calculated by Lender at closing would increase by an additional \$5xx per month for a DTI at the end of two years of 5X%. See Exhibit L.
67. The Plaintiffs belonged to a class that Lender should have used extra caution on. Specifically, Plaintiffs were insolvent with a Net Worth of --\$-7,xxx in, went through prior bankruptcy, and were 'first time mortgagors'. See Exhibit V, Section VI and Section VIII.

Damages: this extension of credit should not have been granted. This house should have remained in the ownership and obligation of parents. Foreclosure/loss of equity/mental anguish/loss of improvements to house (roughly 20k since purchase finishing basement and garages), loss of family residence.

Cause of Action #2 vs. Lender

Predatory Lending Practices/Deceptive business practices/Negligent Misrepresentation

68. Duty: Contract law: Not to interfere in prospective benefit of other party
69. FDIC Policy: duty of care imposed to avoid damaging borrowers by predatory lending (avoidance of criminal act duty of care).
70. FDIC's Supervisory Policy on Predatory Lending is included as Exhibit M. Within this policy FDIC states:

‘predatory lending involves at least one, and perhaps all three, of the following elements:

- Making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation;
- Inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced ("loan flipping"); or
- Engaging in fraud or deception to conceal the true nature of the loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.’

71. Lender was in the mortgage industry, and therefore knew, or should have known, that granting credit with an excessive DTI above industry standards, to an insolvent couple, with prior bankruptcy, on a business bank statement loan, to first time mortgagors, with \$1xxx payment shock, on a 2 year arm, balloon, prepayment penalty loan, with a jump in DTI to 55% at the end of two years, with a real DTI far higher than the DTI calculated above from bank statements, was the very definition of making unaffordable loans based on the assets (appraisal) of the borrower rather than on the borrower's ability to repay an obligation.
72. Lender also employed deception to conceal how large an obligation the mortgage

payment was by utilization of business bank statements without subtracting business expenses to make the obligation seem smaller. Plaintiffs are unsuspecting and unsophisticated in matters of finance as demonstrated by their lack of financial strength, insolvency, first time mortgagor status, and bankruptcy.

73. Misrepresentation may be made either by affirmative statement or by material omission, where there exists a duty to speak.”); *DeBry v. Valley Mortgage Co.*, 835 P.2d 1000, 1008 (X Ct.App.1992). Lender had a duty to clearly and concisely disclose the terms of the mortgage established by TILA, which is to be construed broadly to favor the borrower. Specifically, the purpose of TILA “is to promote the informed use of consumer credit by requiring disclosures about its terms and costs” 12 C.F.R. § 226.1(b).

### Cause of action #3 vs. Title and Escrow

#### Fraud

74. Plaintiffs signed the Deed of Trust created with ‘DocMagic’ in Exhibit E.

75. Plaintiffs did not believe they were granting a security interest in any described legal property as no Exhibit “A” of any form was attached to the copy of the Deed of Trust received by Plaintiffs subsequent to closing.

76. Subsequent to closing and prior to recording, Title and Escrow added two different Exhibit “A” to the mortgage contract.

77. One such Exhibit “A” is page 15 of 22 in Exhibit N and is not a DocMagic form.

78. The second added Exhibit “A” is on page 16 of 22 in Exhibit N and is a DocMagic

form.

79. Plaintiffs warrant that the Deed of Trust they signed was both lacking any Exhibit “A” as well as not acknowledged in closing.

80. Lender was not licensed to lend on real property in the State of X. Lender knew it was not licensed to lend on real property in the State of X and therefore had no legal description for Property on Lender’s documentation.

81. Title and Escrow added a legal description without disclosure or knowledge of Plaintiffs.

Cause of Action #3 vs. Lender

Injunctive Relief / Unlicensed Activity-Unjust Enrichment / Breach of the Covenant of Good Faith and Fair Dealing / Deceit / Unfair Trade Practices

Plaintiffs would not have agreed to contract with Lender if they knew Lender was not a licensed lender in the State of X. Plaintiffs reasonably relied on Lender’s representation of legal license.

The legal license was important as borrowers relied on this representation to evaluate Lender’s ability to deal with borrowers for unforeseen events, Lender’s ability to maintain bonds and insurances to be sued in event of Lender’s inappropriate actions, and Lender’s character as a trustworthy lender.

This representation was false, and Lender knew of its falsity.

CAUSE OF ACTION AGAINST X, P.C.

Negligence

82. Fraud is evident on the face of the recorded Deed of Trust. Specifically, it is evident

- that the Lender prepared Exhibit "A" that does not include Property within its legal description. It is also evident that Title and Escrow added a new Exhibit "A" from a title policy that was not a part of the original loan documents. See Exhibit N.
83. A Trustee has a duty to " 'to act with reasonable diligence and good faith on [the trustor's] behalf consistent with [the trustee's] primary obligation to assure payment of the secured debt.' " This is from:  
[http://ut.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CFDCT%5CDUT%5C2009%5C20091026\\_0000592.DUT.htm/qx](http://ut.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CFDCT%5CDUT%5C2009%5C20091026_0000592.DUT.htm/qx) quoting  
Five F, L.L.C. v. Heritage Sav. Bank, 2003 UT App 373, ¶ 14, 81 P.3d 105  
(alterations in original) (quoting Blodgett, 590 P.2d 298, 303 (X 1978).
84. Acting with reasonable diligence and good faith on the trustor's behalf to assure payment of the secured debt requires reasonable diligence that a secured debt exists. Specifically, a reasonably diligent review of the recorded Deed of Trust.
85. X, P.C. represented to Plaintiffs that they examined the Trust Deed, Plaintiffs were in default on the Trust Deed, and that the Trust Deed was attached to Property. See Exhibit T.
86. Reasonable diligence would have revealed that Lender did not provide a legal description on Lender's drafted and recorded Exhibit "A". Obvious solutions are A) the originating lender is not legally licensed (as a lender) and therefore cannot legally add a legal description and did not intend to Lien Property, or B) error. See Exhibit N.
87. Specifically, the recorded Deed of Trust states "SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
88. The Exhibit "A" attached by Lender and made a part hereof is titled

## **Exhibit “A”**

### **Legal Description**

89. Lender’s Exhibit “A” is verified by the DocMagic seal in the down right corner matching the rest of the document.

90. In contrast, the added document by Title and Escrow given by:

## **Exhibit “A”**

is not referenced in the Deed of Trust. See Exhibit N, pages 3, 15, and 16.

91. Reasonable diligence would also reveal that the originating lender was not licensed as a lender at the time of loan funding in the state of X. This information is publicly available, free of charge, on X’s Division of Real Estate’s website. Reasonable diligence would have revealed a secured debt does not exist, or that its existence was in doubt. See Exhibit O.

92. It is also publicly known knowledge that Lender was one of the first major subprime lenders to collapse in 2006.

93. Damages: title slander, credit destruction, mental anguish, etc...

94.

## LENDER AND SERVICER

Disgorgement / Void of Foreclosure Sale Due to (Lack of Standing(?)) and

### Unconsionability

95. Lender was not licensed to originate a mortgage on property. It is evident on the face of the mortgage documents and publicly available X Division of Real Estate website.

96. Lender was not licensed as a lender within the State of X from the funding and recording of the loan through the foreclosure date.
97. The lender's origination, Title and Escrow's fraud, and Servicer's servicing of this loan was predatory and unconscionable. "Third, to insure the integrity of public trustee foreclosures, which are statutory procedure, courts can void any foreclosure sale tainted by an 'unconscionable condition.'" No. 08CA2009 Amos v. Aspen Alps 123, LLC quoting Tekai Corp. v. Transamerica Title Ins. Co., 39 Colo. App. 528, 532, 571 P.2d 321, 324 (1977).
98. In addition, fraud is evident on the face of the recorded Deed of Trust. Specifically, it is evident that the Lender prepared Exhibit "A" does not include Property within its legal description. It is also evident that Title and Escrow added a new Exhibit "A" from a title policy that was not a part of the original loan documents.
99. In addition, Lender's Deed of Trust does not give Lender the right to foreclose on Property as it is not a Lien against Property.
100. Due to predatory lending practices employed, it is also unconscionable to allow Lender to strip Plaintiffs equity in property. Specifically, lender failed to use due diligence in underwriting resulting in an excessive DTI based on bank statements before expenses and predatory underwriting practices that resulted in default rates over sixty times other financial institutions.

#### SERVICER

Breach of Duty of Good Faith and Fair Dealing, Negligent Misrepresentation, and

Failure to Mitigate Losses

101. Servicer negligently misrepresented that Plaintiffs qualified and would obtain a loan modification if Plaintiffs cancelled their Repayment Plan Agreement.

102. This representation was false.

103. Defendant either knew it was false or made the statement recklessly without knowledge of its falsity.

104. See Richter vs. Bank of America (1991).

105. Plaintiffs had agreed and were making payments on the Repayment Plan Agreement.

106. Plaintiffs were damaged by removal of the Repayment Plan Agreement under false pretenses.

107. Exhibit U shows the factual reason for the denial. Plaintiffs were not eligible for a HAMP modification because “an investor or group of investors that has not given us the contractual authority to modify your loan under the Home Affordable Modification Program. Plaintiffs were ineligible for a modification because “your loan does not meet the guidelines provided by the investor.” Plaintiffs economic situation, income, hardship, and other circumstances were irrelevant. Plaintiffs repayment plan was irrelevant. Plaintiff’s mortgage itself was not part of a mortgage backed securities pool eligible for modification.

108. Servicer failed to mitigate losses and properly and timely inform Plaintiffs to maintain payments on the Repayment Plan Agreement as the mortgage itself was ineligible for modification.

109. Servicer was in the position to have such knowledge.

