

Ad

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT, IN AND
FOR MANATEE COUNTY, FLORIDA
CASE NO: 41-2008-CA-000462

HSBC BANK USA, N.A., AS TRUSTEE
ON BEHALF OF ACE SECURITIES CORP.
HOME EQUITY LOAN TRUST AND FOR
THE REGISTERED HOLDERS OF ACE
SECURITIES CORP. HOME EQUITY LOAN
TRUST, SERIES 2005-HE6, ASSET BACKED
PASS-THROUGH CERTIFICATES,
Plaintiff,

vs.

DONNA M. PINKSTON,
Defendant,

2008 JL 22 PM 3:45

FILED FOR RECORD
CLERK OF THE CIRCUIT COURT
MANATEE COUNTY, FLORIDA

**VERIFIED ANSWER, AFFIRMATIVE DEFENSES, MOTION TO DISMISS COUNT I,
COUNTERCLAIMS, THIRD PARTY COMPLAINT, AND DEMAND FOR A JURY
TRIAL**

COMES NOW Defendant, DONNA M. PINKSTON, through the undersigned attorney,
files her Answer, Affirmative Defenses, Motion to Dismiss Lost Note Count, Counterclaims,
and Third Party Complaint against third party defendants, OCWEN LOAN SERVICING, LLC,
ACE MORTGAGE FUNDING, LLC aka ACE MORTGAGE FUNDING, INC., and JASON
VARELA, individually, and states as follows:

ANSWER

1. Without knowledge whether Plaintiff needs to establish a promissory note, and therefore paragraph 1 is denied.
2. Admitted that Defendant executed a promissory note on June 22, 2005.
3. Without knowledge and therefore paragraph 3 is denied .
4. Without knowledge and therefore paragraph 4 is denied.
5. Without knowledge and therefore paragraph 5 is denied.

6. Admitted that Plaintiff is demanding in paragraph 6, that the court re-establish the attached exhibit.
7. Paragraph 7 admitted for jurisdictional purposes only.
8. Paragraph 8 denied.
9. Paragraph 9, admitted that Defendant executed a promissory note and Mortgage on June 22, 2005. Defendant is without knowledge as to the authenticity of the attached note and mortgage and therefore it is denied. Without knowledge regarding the recording of the attached documents, and therefore denied.
10. Paragraph 10 is denied.
11. Paragraph 11 is admitted.
12. Paragraph 12 is denied.
13. Paragraph 13 is admitted that Plaintiff is making a declaration, however, Defendant denies the amount payable under the note is now due to Plaintiff.
14. Paragraph 14 is denied.
15. Paragraph 15 is denied.
16. Paragraph 16 is unknown and therefore denied.
17. Paragraph 17 is unknown and therefore denied.
18. Paragraph 18 is unknown and therefore denied.
19. Paragraph 19 is unknown and therefore denied.
20. Paragraph 20 is unknown and therefore denied.

Defendant, DONNA M. PINKSTON, denies all other allegations not specifically admitted.

AFFIRMATIVE DEFENSES

21. The mortgage and note which are the subject to this action have been rescinded and therefore the mortgage(s) and note(s) are void.
22. Plaintiff has unclean hands due to its actions described below and therefore is prohibited from obtaining equitable relief of foreclosure. As a matter of equity, this Court should refuse to foreclose this mortgage because acceleration of this note would be inequitable, unjust, and unconscionable. Plaintiff has waived the right to acceleration due to intentionally misleading and reckless conduct for which it is liable.
23. This court lacks jurisdiction over the subject matter. It appears on the face of the complaint that a person other than the Plaintiff was the true owner of the claim sued upon at the time this action was filed and that the Plaintiff is not the real party in interest and is not shown to be authorized to bring this foreclosure action.
24. Plaintiff brought this action without providing notice to Defendant of Defendant's right to dispute the debt, pursuant to the Fair Debt Collection Practices Act. As indicated in the Notice attached to the Complaint, filed January 14, 2008, but not served upon Defendant until July 2, 2008, Plaintiff is required to notify Defendant, pursuant to 15 U.S.C. §§ 1601, et seq., that Defendant may dispute the debt and Plaintiff is required to provide verification of the debt. **Defendant hereby disputes the debt and demands that Plaintiff verify the debt in accordance with the Fair Debt Collection Practices Act.**
Plaintiff is required to suspend litigation until verification of the debt at issue.
25. Fraud in the inducement.
 - i. Plaintiff alleges ownership of the note and mortgage in question.
 - ii. Plaintiff is liable for actions of Ace Mortgage and/or its agents.

- iii. Ace Mortgage and/or its agents made false statements and/or omissions regarding a material fact;
- iv. Ace Mortgage and/or its agents knew or should have known the representation was false;
- v. Ace Mortgage and/or its agents intended that the representation induce plaintiff to act on it;
- vi. Ms. Pinkston suffered damages in justifiable reliance on the representation.

26. Duress

- i. Plaintiff alleges ownership of the note and mortgage in question.
- ii. Plaintiff is liable for actions of Ace Mortgage and/or its agents.
- iii. Ace Mortgage and/or its agent used unjustified pressure to make Ms. Pinkston sign the mortgage, including telling her that she would be liable closing costs if she did not go through with closing.
- iv. Ms. Pinkston was harmed by Ace Mortgage's actions.

27. Failure to state a claim for which relief may be granted.

- i. Plaintiff filed a claim to re-establish a lost note.
- ii. Plaintiff claims the right to re-establish such note under Fla. Stat. §673.3091.
- iii. Fla. Stat. §673.3091 provides only for re-establishment of negotiable instruments as defined under Fla. Stat. §673.1041.
- iv. The note at issue is not a negotiable instrument as defined under §673.1041 because it does not contain an unconditional promise to pay and/or other requirements to qualify as a negotiable instrument.

- v. Therefore Fla. Stat. §673.3091 does not apply to transfer or enforce the promissory note at issue in this foreclosure action.
 - vi. Therefore, Plaintiff has failed to state a claim for which relief may be granted.
28. Failure to timely serve complaint.
- i. Complaint was filed on January 14, 2008.
 - ii. However, Defendant was served on July 2, 2008.
 - iii. Pursuant to Fl. R. Civ. Pro. 1.070(j), Defendant is required to be served within 120 days after filing of the initial pleading.
 - iv. Plaintiff served Defendant approximately 170 days after filing the initial pleading.

MOTION TO DISMISS COUNT I

Defendant moves to dismiss count I of Plaintiff's complaint to re-establish a lost promissory note for failure to state a cause of action.

- 29. Florida Statutes Chapter 673 "applies to negotiable instruments."
- 30. F.S. 673.1041(1) (c) defines the term "negotiable instrument" as an unconditional promise or order to pay a fixed amount of money, if the instrument does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money. (emphasis added)
- 31. F.S. 673.1041(2) provides that "instrument" means a "negotiable instrument."
- 32. The official comment to F.S. 673.1041 states that the definition of "negotiable instrument" delineates the scope of Article 3 of the Uniform Commercial Code.
- 33. The promissory note that the plaintiff seeks to foreclose is not a negotiable instrument under Florida law because the note is not just a promise to pay as it requires additional undertakings by the owner and holder of the note imposed pursuant to the special default loan servicing obligations that apply to this loan. These special and highly detailed loan servicing requirements are incorporated into the subject note and serve to create

uncertainty in the amount due. As a result, the promissory note is not a negotiable instrument and not subject to reestablishment under the Uniform Commercial Code.

34. A promissory note, to be negotiable, must contain an unconditional promise and there must be a specific ascertainable sum. The uncertainty presented by the terms of the note at issue in this foreclosure defeat negotiability of the note and eliminates the possibility of the application of F.S. Chapter 673 in an action to enforce the note. *Nagel v. Cronebaugh*, 782 So. 2d 436 (Fla. 5th DCA 2001), citing *United Nat'l Bank of Miami v. Airport Plaza Ltd. P'ship*, 537 So. 2d 608,609 (Fla. 3d DCA 1988); *Thompson v. First Union*, 643 So. 2d 1179 (Fla. 5th DCA 1994); See also, *Bankers Trust v. 236 Beltway Investment*, 865 F. Supp. 1186 (E.D. Va. 1994).

COUNTERCLAIMS

GENERAL ALLEGATIONS

35. Paragraphs 1 through 28 are hereby re-alleged and reasserted as if fully re-written herein.
36. This is an action in support of a single consumer victim of predatory lending who was fraudulently induced into mortgage loan refinancing transactions less than a year after purchase of her home, for which she did not bargain, that were not in her interest, that were misrepresented and coerced, that incorporated falsified documents, that violated state laws, that violated federal laws, that violated common laws, and for which plaintiff-counter-defendant, and third party defendants have profited or are attempting to profit to the consumer's detriment.

UNDERLYING FACTS

37. Defendant, Donna M. Pinkston ("Ms. Pinkston") is a single female and natural person living at all times relevant to this action, at 5907 Second Street West, Bradenton, Manatee County, FL 34207.
38. Ms. Pinkston purchased her home at the above stated address on or about August 31, 2004.

39. Ms. Pinkston financed the purchase of her home with a note ("2004 Note") in the amount of one hundred ten thousand seven hundred thirty six and 0/100 dollars (\$110,736.00), at a fixed rate of six and 35/100 percent (6.35%) over thirty (30) years.
40. The 2004 Note and mortgage obligated Ms. Pinkston to make monthly payments of \$689.04, as well as monthly escrow payments of \$158.19, for a total obligation of \$847.23.
41. Jason Varela ("Mr. Varela"), an agent of Ace Mortgage Funding, LLC, aka Ace Mortgage Funding, Inc. ("Ace Mortgage"), contacted Ms. Pinkston via oral or written solicitation.
42. Mr. Varela was at all times relevant to this action, "Act[ing] as a mortgage broker" as defined under Fla. Stat. § 494.01.
43. Mr Varela made verbal representations to Ms. Pinkston that he could lower her monthly payments and provide her with a "better financing deal".
44. Mr. Varela was, at all times relevant to this action, experienced in the processing of mortgage loan documents.
45. Mr. Varela had, at all times relevant to this action, a duty to provide accurate information to Ms. Pinkston.
46. Mr. Varela had, at all times relevant to this action, a duty to draft documents that honestly reflect the information provided by Ms. Pinkston.
47. Mr. Varela had, at all times relevant to this action, a duty to explain each document that he was requesting Ms. Pinkston to sign.
48. Mr. Varela had, at all times relevant to this action a duty to explain any terms contained in any documents which varied from Ms. Pinkston's directions.

49. Mr. Varela had, at all times relevant to this action, a duty to provide a good faith estimate prior to closing.
50. Mr. Varela had at all times relevant to this action, a duty to take into consideration the ability of Ms. Pinkston to repay the obligations created by the loan(s) he was brokering.
51. Mr. Varela had, at all times relevant to this action, a fiduciary relationship with Ms. Pinkston.
52. Mr. Varela had, at all times relevant to this action, a duty to carefully review with Ms. Pinkston any documents which exempted him from any fiduciary duty.
53. Ms. Pinkston relied on Mr. Varela's verbal representations and proceeded with a refinancing of her home.
54. Ms. Pinkston provided Mr. Varela proof of income of \$14.00 per hour.
55. Ms. Pinkston provided Mr. Varela accurate information regarding the original purchase of her home.
56. Ms. Pinkston met with Mr. Varela on or about June 7, 2005, in his office.
57. Mr. Varela directed Ms. Pinkston to sign several documents during their meeting.
58. Mr. Varela met with Ms. Pinkston in person on June 7, 2005, for less than 40 minutes.
59. Ms. Pinkston expressed to Mr. Varela on June 7, 2005 that she wished to have lower monthly house payments, and a lower rate of interest.
60. Mr. Varela suggested to Ms. Pinkston that she include paying off her unsecured credit as part of a refinancing deal.
61. Mr. Varela did not review any documents with Ms. Pinkston on June 7, 2005.
62. About or prior to June 7, 2005, Mr. Varela or Ace Mortgage drafted financing commitment to obtain a loan in the amount of \$144,000.00 at a 6.5% interest rate.

63. About or prior to June 7, 2005, Mr. Varela or Ace Mortgage drafted a "rate and points lock form" that stated he would use his best efforts to obtain a \$144,000.00 loan at 6.5%.
64. About or prior to June 7, 2005, Mr. Varela or Ace Mortgage draft a "uniform residential loan application" to obtain a \$144,000.00 loan at 6.5%. The loan application stated that the property had previously been purchased in 2004 for for \$135,000.00 and had existing debt of \$110,000.00.
65. The actual purchase price of the property in 2004 had been \$112,600.00.
66. Ms. Pinkston told Mr. Varela that she had paid \$112,600.00 for the property.
67. Mr. Varela did not explain to Ms. Pinkston that the information related to the purchase price that he had placed on the loan application was false.
68. Mr. Varela did not explain to Ms. Pinkston that the information related to present market value of the real estate assets owned that he had placed on the loan application was false.
69. On or about June 7, 2005, Mr. Varela signed and directed Ms. Pinkston to sign a "Certified True and Original Affidavit" which states, "We certify that the following documents are true and original to the best of our knowledge. Ace Mortgage Funding, Inc. maintains strict quality control standards to avoid any misleading information."
70. The Affidavit was not dated, nor did it state which documents to which it was referring.
71. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled "Audit Notice"
72. The Audit Notice stated that "Ace Mortgage Funding, Inc., as the Lender or Broker, will rely on the Residential Loan Application and other documents submitted by you, to process, and or, approve you loan."

73. Mr. Varela did not rely on the documents or statements of Ms. Pinkston in processing the loan application.
74. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
75. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Borrower(s) Certificate of Reasonable Tangible Benefit".
76. The certificate stated that Ms. Pinkston had fully advised Jason Varela of her financial circumstances and that she agreed the new loan was a tangible benefit, and that the benefit obtained was to be "Payment Savings- Cash Out."
77. The certificate was based on information verbally represented to Ms. Pinkston by Mr. Varela on or prior to June 7, 2005, including that the loan would be a fixed rate loan as expressed in the above stated loan application.
78. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
79. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Broker Retention Agreement."
80. The Broker Retention Agreement stated that Ace Mortgage Funding, Inc. was acting as a mortgage broker "to negotiate a loan in the amount of \$144,000, or such other amount as might be mutually satisfactory."
81. The Broker Retention Agreement further stated that Ace Mortgage would "earn 4% of the amount financed if an approval or commitment for a loan is successfully negotiated."
82. Ms. Pinkston did not authorize a variable rate loan, interest only loan, or multiple loans pursuant to this agreement.
83. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.

84. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Conflict of Interest Disclosure," which included paragraphs listing possible conflicts of interest between Ace Mortgage and other parties and a check box next to each.
85. At the time Ms. Pinkston signed the Conflict of Interest Disclosure document, none of the check boxes were marked, indicating that there were no conflicts of interest.
86. At a later date, Ms. Pinkston received a copy of the disclosure, but a mark had been placed next to the paragraph stating, "A holding company, either directly or indirectly, owns, controls, or holds the power to vote, or holds proxies representing, 10% or more of any class or equity securities or other beneficial interest in both the licensee and the person offering or providing the additional products or services."
87. Upon information and belief, this document was altered after Ms. Pinkston signed it.
88. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
89. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Explanation to Borrower."
90. The Explanation to Borrower document stated that the loan amount was to be \$144,000, and that Ace Mortgage Funding, Inc. was the lender., and that the loan is made under the Florida Consumer Finance Act, (Fla. Stat. § 516.001 et. seq.) and the interest and charges are provided for pursuant to that act.
91. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
92. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Good Faith Estimate."
93. The Good Faith Estimate stated that the loan amount was to be \$144,000, at a fixed rate of 6.5% over 30 years.

94. The Good Faith Estimate stated that there would be no loan origination or loan discount fees.
95. The Good Faith Estimate stated there would be mortgage broker fee of 4% or \$5760.00, a processing fee of \$495.00, an administrative fee to "Franklin American Mortgage" of \$485.00, a "Closing or Escrow Fee" of \$220.00, a title insurance fee of \$800.00, a recording fee of \$175.00, charges for taxes and interest, a payout to Ms. Pinkston of \$21,411.00, and monthly payments estimated at \$910.18.
96. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
97. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Good Faith Estimate Provider Relationship Disclosure Statement".
98. The Disclosure Statement stated that no providers had been selected for the Appraisal, Document Preparation, Credit Bureau, and Flood Certificate services, and listed estimated ranges for such charges.
99. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
100. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Notice to Borrower."
101. The above notice states "If you obtain this high-cost home loan, the lender will have a mortgage on your home." and explains consequences of a loan.
Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
102. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Homeowners Change Authorization."
103. The Homeowners Change Authorization document stated that "I/We authorize Ace Mortgage Funding, Inc. to increase our dwelling amount to reflect the amount needed to

meet the lender requirements to qualify for our loan. I/We also authorize Ace Mortgage Funding, Inc. to request a change in the current mortgagee clause to read as desired.

104. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.

105. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Mortgage Brokerage Business Contract."

106. The Mortgage Brokerage Business Contract document stated that the "Borrower's estimates of fair market value" was \$180,000.00.

107. The Mortgage Brokerage Business Contract document was prepared by Mr. Varela or Ace Mortgage.

108. The Mortgage Brokerage Business Contract document stated that the contract was for a single first mortgage loan in the amount of \$144,000.00 at 6.5% fixed for 30 years with payments of \$910.18.

109. The Mortgage Brokerage Business Contract document obligated Ms. Pinkston to pay a mortgage brokerage fee of \$10,575.00 for obtaining a loan commitment.

110. The Mortgage Brokerage Business Contract document obligated Ms. Pinkston to pay a additional fees of 0% to 5% of the total loan amount.

111. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.

112. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Mortgage Loan Origination Agreement."

113. The Mortgage Loan Origination Agreement document states that Ace Mortgage is an independent contractor and is not Ms. Pinkston's agent.

114. The Mortgage Loan Origination Agreement document states that Ace Mortgage may be paid by the lender based on the value of the mortgage, or related servicing rights, or for other services, goods, or facilities performed or provided by Ace Mortgage to the lender.
115. These services and fees are not explained in the document.
116. The Mortgage Loan Origination Agreement states that Ace Mortgage receives its loans at a discount and charge a higher interest rate than what was obtained.
117. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
118. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Notice of Intent to Apply for Joint Credit."
119. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
120. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Truth-in-lending Disclosure (for Section 32 Mortgages)".
121. The Truth-in-Lending Disclosure document stated that Ace Mortgage Funding, Inc. was the Lender, and that the terms of the loan were \$144,000.00 borrowed, and APR of 7.077%.
122. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
123. On or about June 7, 2005, Mr. Varela directed Ms. Pinkston to sign a document titled, "Truth-in-Lending Disclosure Statement."
124. The Truth in Lending (TIL) statement stated the APR as 7.077%, the Finance Charge as \$192,312.19, the Amount Financed as \$135,350.00, the Total of Payments as \$327,662.19.
125. The TIL statement also stated that the payments would be \$910.18 for 30 years with a final payment of \$907.57.

126. Mr. Varela did not explain this document to Ms. Pinkston, nor provide her a copy of it.
127. On or about June 16, 2005, the property was appraised.
128. The appraisal report indicated that the value of the property was \$134,000.00.
129. Mr. Varela contacted Ms. Pinkston on June 22, 2005 by phone, prior to closing,
130. During their conversation, Ms. Pinkston expressed regret and stated that she did not want to refinance her home.
131. Mr. Varela responded to Ms. Pinkston in a loud voice and angry tone that could be construed as yelling or screaming.
132. Mr. Varela stated to Ms. Pinkston that if she didn't go through with closing, she would be responsible for closing costs of twelve thousand dollars (\$12,000.00).
133. Ms. Pinkston began crying in response to Mr. Varela's tone and threatening tone, and agreed to complete the refinancing.
134. Mr. Varela told her that he got her a 5.95% loan and that her payments would go down.
135. Mr. Varela told Ms. Pinkston to, "Just sign the documents and I will explain them later."
136. Relying on the representations and omissions and threats of Mr. Varela, Ms. Pinkston signed closing documents at her house on the evening of June 22, 2005 at approximately 7:45 PM.
137. Mr. Varela was not present at the closing.
138. The meeting to sign all of the documents lasted less than half an hour.
139. Mr. Varela said "trust me" more than ten times to Ms. Pinkston between June 7, 2005 and their conversation after closing on June 22, 2005.
140. The documents presented to Ms. Pinkston to sign were given to her by a person identifying himself as Christopher Bryant, a notary, and another person, neither of whom

explained the content of any of the documents, but only instructed her to sign where indicated.

141. Based on the prior documents she signed on June 7, 2005, and the representations and omissions of Mr. Varela, Ms. Pinkston signed what she thought were documents for a single fixed rate loan.
142. Ms. Pinkston was never given signed copies of the documents she signed on either June 7, 2005, or June 22, 2005, from Ace Mortgage.
143. While signing the June 22, 2005 loan documents, Ms. Pinkston noticed that there were two loans instead of one.
144. The documents Ms. Pinkston was directed to sign, and which she was only given a few seconds to glance at, obligated her to two loans, although she did not have time to view the terms of the two loans: a loan of approximately \$26, 800; and a loan of approximately \$107,200.
145. Based on the threatening behavior of Mr. Varela, Ms. Pinkston believed she was obligated to finish signing the documents, but was aware that the loans did not represent the bargain that she had negotiated with Mr. Varela.
146. Ms. Pinkston spoke to Mr. Varela by phone after she had signed the documents.
147. When she asked him about the two loans, Mr. Varela told Ms. Pinkston during this call that he would refinance her loan again in 3 to 6 months with an even better rate.
148. Mr. Varela further stated to Ms. Pinkston that he had an agreement with the bank in which the bank would waive any prepayment penalties and there would be no closing costs to the next refinancing. Although unsatisfied with the loans, Ms. Pinkston did not

attempt to contact Mr. Varela in the three days following the closing in order to rescind her loans, because Mr. Varela had never explained her three day right to cancel.

149. Ms. Pinkston attempted to contact Ace Mortgage on June 29, July 1, and July 5, 2005 to have Mr. Varela explain the documents to her.
150. Mr. Varela did not return her calls from these dates.
151. Ms. Pinkston subsequently began making payments on her new loans to Novastar Mortgage Inc. ("Novastar").
152. On or about September of 2005, Novastar notified Ms. Pinkston that here loan servicing had been transferred to OCWEN Loan Servicing, LLC ("OCWEN").
153. On or about, September, 2005, Ms. Pinkston received notice that her tax assessment was due. It was at this time she learned that the savings promised by Mr. Varela were illusory because she was now responsible for both taxes and insurance as separate payments in addition to the mortgage loan obligation.
154. At no time relevant to this action, did Mr. Varela explain that Ms. Pinkston would be responsible for taxes and insurance outside of her loan obligation.
155. Ms. Pinkston subsequently contacted OCWEN regarding her escrow.
156. OCWEN responded by sending Ms. Pinkston a form to have escrow payments made.
157. On or about October, 2005, OCWEN notified Ms. Pinkston that she was now OCWEN's customer regarding her loan servicing.
158. Ms. Pinkston has not received any notice of transfer of any loan obligation to Plaintiff.
159. On or about May 2007, Ms. Pinkston called OCWEN, and requested a copy of her loan documents.

160. On or about May 2007, Ms. Pinkston called Ace Mortgage, and requested a copy of her loan documents.
161. Ace Mortgage never provided requested documents.
162. After Ms. Pinkston paid a fee, OCWEN provided signed copies of some but not all of her closing documents. Missing documents included Truth in Lending documents and the Good Faith Estimate regarding the smaller loan.
163. On or about May 2007, Ms. Pinkston called Novastar, and requested a copy of her loan documents.
164. Novastar responded to Ms. Pinkston that they had 30 days. However, they did not provide her documents as requested.
165. After 30 days, Ms. Pinkston attempted again to get her loan documents from Novastar, by phone and by a faxed request for documents.
166. Novastar finally sent some of her loan documents in 2008.
167. Ms. Pinkston contacted state Senator Bennett. She spoke to the Senator's assistant, Margaret, in December of 2007.
168. Ms. Pinkston faxed a letter to Margaret, describing the issues with her loans, and the Senator's office forwarded the letter to the Office of Financial Regulation.
Ms. Pinkston received many more documents regarding the loans from the Office of Financial Regulation. Ms. Pinkston received documents that were alleged to have been signed by her, but were never signed by her, and upon information and belief, contain false signatures. Included among these documents is:

- i. A Truth in Lending Statement dated June 22, 2005, for a \$23,306.23 amount financed at 18.477% interest rate at a variable rate that adjusts every six months, that provides for \$120,616.09 in finance charges over 30 years.
 - ii. A Good Faith Estimate dated June 22, 2005, for a loan in the amount of \$26,800.00 at an 11.9% interest rate, and containing \$1190.00 in Processing and Underwriting fees to Novastar and Ace Mortgage.
 - iii. A Mortgage Broker Business Contract dated June 22, 2005, between Ms. Pinkston and Ace Mortgage regarding the \$26,800.00 loan.
 - iv. An Addendum to a Mortgage Broker Business Contract dated June 22, 2005.
 - v. A Standards and Disclosures document, dated June 22, 2005.
 - vi. A Uniform Residential Loan Application, dated June 22, 2005.
 - vii. A Truth in Lending Statement dated June 22, 2005, for an amount financed of \$99,784.33, at an 11.710% interest rate, with a finance charge of \$298,365.04, and Total of Payments of \$398,149.37. This TIL statement Contrasted to the statement actually signed by Ms. Pinkston on June 22, 2005, for an amount financed of \$101,213.13, at a 9.095% interest rate, with a finance charge of 213,441.81, and an Total of Payments of \$314,654.94.
169. Plaintiff filed a claim against Ms. Pinkston in January 16, 2008.
 170. Ms. Pinkston was served a summons and copy of the complaint on July 2, 2008.
 171. Ms. Pinkston, through counsel, rescinded the Mortgage and Loan transaction based on violations of the Truth and Lending Act, pursuant to 15 U.S.C. §§ 1635 and 1639, and Regulation Z, 12 C.F.R. § 226.23, by sending notice to Novastar Mortgage, Inc., OCWEN Loan Servicing, LLC, and Plaintiff on June 12, 2008, and demanding that the

responsible party return all consideration paid by Ms. Pinkston and cancel any security interest in her property within 20 days.

172. OCWEN received the Rescission Letter on June 16, 2008.
173. Novastar received the Rescission Letter on or about June 16, 2008 (registered agent).
174. Plaintiff received the Rescission Letter on June 16, 2008.
175. OCWEN responded on July 1, 2008 by stating that it still maintains the loans and will not rescind.
176. Novastar responded on June 25, 2008, that it had sold its interest in the loan at issue and that Novastar presumes that OCWEN is servicing the loan and OCWEN is the proper rescission recipient.
177. Plaintiff did not respond to the Rescission Letter.
178. Ms. Pinkston has retained the undersigned to represent her in this matter and has agreed to pay a reasonable fee.

COUNT I (FRAUD)

179. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
180. HSBC BANK USA, N.A., AS TRUSTEE ON BEHALF OF ACE SECURITIES CORP. HOME EQUITY LOAN TRUST AND FOR THE REGISTERED HOLDERS OF ACE SECURITIES CORP. HOME EQUITY LOAN TRUST, SERIES 2005-HE6, ASSET BACKEDPASS-THROUGH CERTIFICATES ("HSBC") claims an ownership interest in the property at issue.
181. HSBC is liable for the actions of Ace Mortgage and its agent, Mr. Varela.

182. Mr. Varela and/or Ace Mortgage made false statements or omissions and/or drafted false documents.
183. The false statements and/or omissions and/or documents were regarding material facts.
184. Mr. Varela knew or should have known that the statements and/or omissions and/or documents were false.
185. Mr. Varela intended that the statements or omissions and/or documents would induce Ms. Pinkston to act upon them.
186. Ms. Pinkston suffered damages as a result of justifiable reliance on such.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against HSBC actual damages, reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue, and such other relief as the court deems just and equitable. Ms. Pinkston reserves the right to request punitive damages.

COUNT II (TRUTH IN LENDING RESCISSION)

187. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
188. This is an action under the Truth in Lending Act, 15 U.S.C. § 1601, et. seq. to enforce Ms. Pinkston's right to rescind a consumer credit transaction, to void Plaintiff's security interest, to the extent it exists, in Ms. Pinkston's home, and to recover statutory damages, reasonable attorney's fees and costs by reason of Plaintiff's violations of the Act and Regulation Z, 12 C.F.R. § 226 (hereafter called "Regulation Z").
189. HSBC claims to be an assignee of the original creditor.
190. The consumer transaction at issue was subject to a finance charge.

191. As part of a consumer credit transaction, Plaintiff claims a security interest in Ms. Pinkston's home, which is the subject property at issue.
192. The security interest was not created to finance the acquisition or initial construction of Ms. Pinkston's home.
193. Plaintiff as assignee of the obligation in question is subject to rescission pursuant to 15 U.S.C. § 1641(c).
194. The consumer credit transaction at issue is subject to Ms. Pinkston's right to rescission as described in 15 U.S.C. § 1635 and Regulation Z, § 226.23(b).
195. In the course of this consumer transaction, the original broker and/or lender violated 15 U.S.C. §§ 1601 et. seq. and Regulation Z §§ 226 et. seq. by, among other aspects:
 - i. Failing to accurately disclose the amount financed, the finance charge, the annual percentage rate, and/or the total of payments; and
 - ii. Stating finance charges and APR that are in variance by more than the tolerance levels set forth in 15 U.S.C. § 1635(i)(2).
 - iii. Failing to provide disclosures as required under 15 U.S.C. §§ 1601 et. seq. not less than three business days prior to the consummation of the transaction, as required under 15 U.S.C. § 1639.
196. By reason of these material violations of the Truth in Lending Act, Ms. Pinkston has a right of rescission for three years from the date of consummation of the loan, pursuant to 15 U.S.C. § 1635(f).
197. On or about June 12, 2008, Ms. Pinkston notified Plaintiff, as well as the original lender, Novastar, and the assignee, OCWEN, that the Mortgage(s) and Note(s) related to the subject transaction at issue have been rescinded, via US Mail, postage prepaid, certified

mail, return receipt requested. A true and accurate copy of the Rescission notice is attached hereto as **Defendant's Exhibit "A"** and by reference is incorporated herein.

198. Plaintiff, Novastar, and OCWEN received copies of Defendant's notice of rescission on June 16th or June 17th.
199. Plaintiff had twenty days after receipt of notice to take action necessary to terminate its security interest and return all monies paid by Ms. Pinkston.
200. Ms. Pinkston included in the notice to Plaintiff that she would make arrangements to tender the balance owed upon Plaintiff's compliance with Regulation Z.
201. More than 20 calender days have passed since Plaintiff received notice of rescission.
202. Plaintiff failed to take any action necessary or appropriate to reflect the termination of any security interest created under the transaction, as required by 15 U.S.C. § 1635(b) and Regulation Z, § 226.23(d)(2).
203. Plaintiff failed to return to Ms. Pinkston any money or property given by Ms. Pinkston to anyone, including parties to this action, as required by 15 U.S.C. § 1635(b) and Regulation Z, § 226.23(d)(2).
204. As a result of the aforesaid violations of the Act and Regulation Z, pursuant to 15 U.S.C. §§ 1635(a), 1640(a), and 1641(c), Plaintiff is liable for:
 - i. Rescission of this transaction.
 - ii. Termination of any security interest in Defendant's property created under the transaction.
 - iii. Return of any money or property given by the Defendant to anyone, including parties to this action, in connection with this transaction.
 - iv. Statutory damages of \$2000 for the disclosure violations.

- v. Statutory damages of \$2000 for failure of Plaintiff to respond properly to Defendant's rescission notice.
- vi. Forfeiture of return of loan proceeds.
- vii. Actual damages in an amount to be determined at trial.
- viii. A reasonable attorney's fee.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against HSBC the relief as described herein, as well as other such relief as the court deems just and equitable.

COUNT III (BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)

- 205. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
- 206. HSBC is liable for the actions of Ace Mortgage and its agent, Mr. Varela.
- 207. Mr. Varela owed Defendant a duty and obligation to, among other things, act in good faith by negotiating a loan that was not beneficial to the lender while detrimental to Ms. Pinkston.
- 208. Mr. Varela owed Defendant a duty to act in good faith to negotiate a loan in accordance with Ms. Pinkston's wishes.
- 209. Mr. Varela had a duty to deal fairly with Ms. Pinkston regarding the refinancing of her home.
- 210. Mr. Varela failed, refused and/or neglected to carry out his duty owed to Ms. Pinkston in connection with the servicing of the subject loans by among other things:
 - i. Directing Ms. Pinkston to sign documents that were not in her best interest;
 - ii. By not explaining the documents to Ms. Pinkston;

- iii. By not providing copies of the documents signed;
 - iv. By providing false information to lenders regarding the value of Ms. Pinkston's home;
 - v. By arranging loans without consideration of Ms. Pinkston's ability to repay them.
211. As a result of the Mr. Varela's breach of duty of good faith and fair dealing, Defendant has sustained monetary damage which includes having to defend this foreclosure and being charged illegal and predatory servicing charges, court costs and related fees and attorney's fees, having her credit slandered and negatively affected.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against HSBC and dismiss the Plaintiff's complaint with prejudice and award Ms. Pinkston judgment against the Plaintiff for her damages, for an award of reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue and for all other relief as the Court deems proper.

COUNT IV (UNJUST ENRICHMENT)

212. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
213. HSBC is liable for the actions of Ace Mortgage and its agent, Mr. Varela.
214. Ms. Pinkston has conferred a benefit upon Ace Mortgage and its agent, Mr. Varela.
215. Ace Mortgage and its agent, Mr. Varela accepted and retained the benefit conferred.
216. The circumstances render the retention of the benefit inequitable.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against HSBC the following relief:

- i. Return of all fees and costs paid in relation to the transaction(s) at issue.

- ii. Such other relief as the court deems just and equitable.
- iii. Reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue.

THIRD PARTY COMPLAINT

Defendant, DONNA M. PINKSTON, sues third party defendants, OCWEN LOAN SERVICING, LLC ("OCWEN"), ACE MORTGAGE FUNDING, LLC aka ACE MORTGAGE FUNDING, INC. ("ACE MORTGAGE"), and JASON VARELA ("Mr. Varela"), individually, and alleges:

- 217. This is an action for damages in excess of \$15,000.
- 218. The causes of action asserted herein arise out of the transactions which are at issue in the above styled case.

OCWEN

COUNT V (TRUTH IN LENDING RESCISSION)

- 219. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
- 220. This is an action under the Truth in Lending Act, 15 U.S.C. § 1601 and following to enforce Ms. Pinkston's right to rescind a consumer credit transaction, to void OCWEN's security interest, to the extent it exists, in Ms. Pinkston's home, and to recover statutory damages, reasonable attorney's fees and costs by reason of OCWEN's violations of the Act and Regulation Z, 12 C.F.R. § 226 (hereafter called "Regulation Z").
- 221. OCWEN is an assignee of the original creditor.
- 222. The consumer transaction(s) at issue was subject to a finance charge.

223. As part of consumer credit transaction(s), OCWEN claims a security interest in Ms. Pinkston's home, which is the subject property at issue.
224. The security interest was not created to finance the acquisition or initial construction of Ms. Pinkston's home.
225. Plaintiff as assignee of the obligation in question is subject to rescission pursuant to 15 U.S.C. § 1641(c).
226. The consumer credit transaction(s) at issue are subject to Ms. Pinkston's right to rescission as described in 15 U.S.C. § 1635 and Regulation Z, § 226.23(b).
227. In the course of this consumer transaction, the original broker and/or lender violated 15 U.S.C. §§ 1601 et. seq. and Regulation Z §§ 226 et. seq. by, among other aspects:
- i. Failing to accurately disclose the amount financed, the finance charge, the annual percentage rate, and/or the total of payments; and
 - ii. Stating finance charges and APR that are in variance by more than the tolerance levels set forth in 15 U.S.C. § 1635(i)(2).
 - iii. Failing to provide disclosures as required under 15 U.S.C. §§ 1601 et. seq. not less than three business days prior to the consummation of the transaction, as required under 15 U.S.C. § 1639.
228. By reason of these material violations of the Truth in Lending Act, Ms. Pinkston has a right of rescission for three years from the date of consummation of the loan, pursuant to 15 U.S.C. § 1635(f).
229. On or about June 12, 2008, Ms. Pinkston notified Plaintiff, as well as the original lender, Novastar, and the assignee, OCWEN, that the Mortgage(s) and Note(s) related to the subject transaction at issue have been rescinded, via US Mail, postage prepaid, certified

mail, return receipt requested. *See Defendant's Exhibit "A"* which by reference is incorporated herein.

230. Plaintiff, Novastar, and OCWEN received copies of Defendant's notice of rescission on June 16th or June 17th.
231. OCWEN had twenty days after receipt of notice to take action necessary to terminate its security interest and return all monies paid by Ms. Pinkston.
232. Ms. Pinkston notified OCWEN that she would make arrangements to tender the balance owed upon OCWEN's compliance with Regulation Z.
233. More than 20 calender days have passed since OCWEN received notice of rescission.
234. OCWEN failed to take any action necessary or appropriate to reflect the termination of any security interest created under the transaction, as required by 15 U.S.C. § 1635(b) and Regulation Z, § 226.23(d)(2).
235. OCWEN failed to return to Ms. Pinkston any money or property given by Ms. Pinkston to anyone, including parties to this action, as required by 15 U.S.C. § 1635(b) and Regulation Z, § 226.23(d)(2).
236. As a result of the aforesaid violations of the Act and Regulation Z, pursuant to 15 U.S.C. §§ 1635(a), 1640(a), and 1641(c), OCWEN is liable for:
 - i. Rescission of this transaction, as well as any other interest OCWEN claims in Ms. Pinkston's home.
 - ii. Termination of any security interest in OCWEN's property created under the transaction(s).
 - iii. Return of any money or property given by the Ms. Pinkston to anyone, including parties to this action, in connection with this transaction.

- iv. Statutory damages of \$2000 for the disclosure violations.
- v. Statutory damages of \$2000 for failure of OCWEN to respond properly to Ms. Pinkston's rescission notice.
- vi. Forfeiture of return of loan proceeds.
- vii. Actual damages in an amount to be determined at trial.
- viii. A reasonable attorney's fee.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against OCWEN the relief as described herein, as well as other such relief as the court deems just and equitable.

ACE MORTGAGE

COUNT VI (TRUTH IN LENDING ACT)

- 237. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
- 238. This is a cause of action against Ace Mortgage for Truth in Lending Act violations.
- 239. Ace Mortgage is liable for the actions of its agent, Mr. Varela.
- 240. In the course of this consumer credit transaction, Mr. Varela violated 15 U.S.C. §§ 1601 et. seq. and Regulation Z §§ 226 et. seq. by, among other aspects:
 - i. Failing to accurately disclose the amount financed, the finance charge, the annual percentage rate, and/or the total of payments; and
 - ii. Stating finance charges and APR that are in variance by more than the tolerance levels set forth in 15 U.S.C. § 1635(i)(2); and

iii. Failing to provide disclosures as required under 15 U.S.C. §§ 1601 et. seq. not less than three business days prior to the consummation of the transaction, as required under 15 U.S.C. § 1639.

241. As a result of Mr. Varela's Truth in Lending violations, the Ms. Pinkston is entitled to an award of twice the finance charge in connection with this transaction, but not less than \$200 or more than \$2,000, together with reasonable attorney fees, as provided under 15 U.S.C. § 1640(a).

242. **WHEREFORE**, it is respectfully requested that this Court award for Ms. Pinkston and against Ace Mortgage, for \$2,000, as well as actual damages, together with costs and reasonable attorney's fees, as provided under 15 U.S.C. § 1640(a), and such other and further relief as the Court deems just and proper.

COUNT VII (UNFAIR AND DECEPTIVE TRADE PRACTICES)

243. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.

244. This is an action against Ace Mortgage for unfair and deceptive trade practices.

245. The purpose of this loan transaction was so the Ms. Pinkston could lower her monthly payments.

246. Ace Mortgage is liable for the actions of its agent, Mr. Varela.

247. Ms. Pinkston was, at all times relevant to this cause of action, inexperienced at refinancing her home.

248. Ms. Pinkston had purchased her home less than a year prior to the transactions at issue.

249. Upon information and belief, at all times relevant to this cause of action, Mr. Varela was an experienced loan broker or agent who had extensive knowledge in loan transactions and refinancing.
250. Mr. Varela assured Ms. Pinkston that she would receive a fixed rate loan that would provide a lower payment.
251. Mr. Varela told Ms. Pinkston on more than one occasion between June 7, 2005 and June 22, 2005, that she could trust him to provide a loan in her best interest.
252. Mr. Varela drafted or directed the drafting of documents which contained information regarding the value of Ms. Pinkston's home which did not reflect the information provided to him by Ms. Pinkston.
253. Mr. Varela directed Ms. Pinkston to sign documents on June 7, 2005, that he did not explain to her.
254. Mr. Varela did not provide Ms. Pinkston with copies of the documents she signed on June 7, 2005.
255. Mr. Varela directed Ms. Pinkston to sign documents which limited her rights and/or limited his liability, without explaining such documents to Ms. Pinkston.
256. Mr. Varela drafted or directed the drafting of and directed Ms. Pinkston to sign documents that created more than one loan, when he was not authored by Ms. Pinkston to do so.
257. Mr. Varela drafted or directed the drafting of, and directed Ms. Pinkston to sign, documents that created variable rate loans, when he was not authored by Ms. Pinkston to do so.

258. Mr. Varela failed to provide accurate and timely Truth in Lending disclosures to Ms. Pinkston.
259. Mr. Varela drafted or directed the drafting of fraudulent documents.
260. Mr. Varela was not present at the consummation of the loans in question on June 22, 2005.
261. Mr. Varela used coercion to force Ms. Pinkston to complete the consummation of the loans prior to closing, and after she expressed a desire not to complete the loans.
262. Mr. Varela drafted or directed the drafting of, and directed Ms. Pinkston to sign, loans that excluded escrow payments, and obligated her to pay them on her own, without allowing Ms. Pinkston time to review such documents, and without explaining them to her, even though the loan documents represented a variance from his promised obligation to her regarding the purpose of her refinancing.
263. The savings in monthly payments Mr. Varela promised was illusory, because it did not account for her increased payments over the life of the loan(s), and did not account for her newly independent obligation to pay her own taxes and insurance costs.
264. Mr. Varela drafted or directed the drafting of, and directed Ms. Pinkston to sign, documents that created loans with pre-payment penalties, when he was not authorized by Ms. Pinkston to do so.
265. As a result of the loan(s) created by Mr. Varela, Ms. Pinkston:
 - i. Paid at least \$8000.00 in fees and charges to take out \$11,850.52 and pay off less than \$3000 in unsecured debt.
 - ii. Lost the equity in her home, and was now obligated to payments on principle totaling at least \$132,979.00 when her prior obligation had been \$111,090.95.

- iii. Became obligated to two variable rate loans which included an interest only provision, and prepayment penalties, resulting in an interest rate at least 3% higher than her previous fixed rate loan.
 - iv. Became unable to pay her mortgage loans when the variable payments increased and she was restricted from refinancing due to the pre-payment provisions of her loan.
266. Ms. Pinkston has been damaged in that they have lost all of the equity in their home and had to pay costs and attorneys fees as a result of the loans at issue.
267. Based on Mr. Varela's actions, as agent for Ace Mortgage in brokering this loan, are unfair and deceptive and the Ms. Pinkston has been damaged.

WHEREFORE, the Ms. Pinkston requests this Court enter an order in their favor and against Ace Mortgage for damages, reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue, and for such other relief as this Court deems proper.

COUNT VIII (FRAUD IN THE INDUCEMENT)

268. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
269. Ace Mortgage is liable for the actions of its agent, Mr. Varela.
270. Mr. Varela and/or Ace Mortgage made false statements or omissions and/or drafted false documents.
271. The false statements or omissions and/or documents were regarding material facts.
272. Mr. Varela knew or should have known that the statements or omissions and/or documents were false.

273. Mr. Varela intended that the statements or omissions and/or documents would induce Ms. Pinkston to act upon them.

274. Ms. Pinkston suffered damages as a result of justifiable reliance on such.

WHEREFORE, the Ms. Pinkston requests this Court enter an order in their favor and against Ace Mortgage for actual damages, reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue, and such other relief as the court deems just and equitable.

COUNT IX (FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

275. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 274 as if fully re-written herein.

276. This is an action against Ace Mortgage for violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et. seq..

277. Ace Mortgage is liable for the actions of its agent, Mr. Varela.

278. Ms. Pinkston is a "consumer" as defined under Fla. Stat. § 501.203(7).

279. Ace Mortgage took part in "trade or commerce" as defined under Fla. Stat. § 501.203(8).

280. Ace Mortgage violated Fla. Stat. § 501.204 through its actions as described herein.

WHEREFORE, the Ms. Pinkston requests this Court enter an order in her favor and against Ace Mortgage for a declaration that Ace Mortgage has violated the Florida Deceptive and Unfair Trade Practices Act and is therefore subject to penalties as may be imposed by the enforcing authority therein, as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.2105, and such other relief as the court deems just and equitable.

JASON VARELA

COUNT X (TRUTH IN LENDING ACT)

281. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.
282. This is a cause of action against Jason Varela for Truth in Lending Act violations.
283. In the course of this consumer credit transaction, Mr. Varela violated 15 U.S.C. §§ 1601 et. seq. and Regulation Z §§ 226 et. seq. by, among other aspects:
- i. Failing to accurately disclose the amount financed, the finance charge, the annual percentage rate, and/or the total of payments; and
 - ii. Stating finance charges and APR that are in variance by more than the tolerance levels set forth in 15 U.S.C. § 1635(i)(2); and
 - iii. Making false and/or misleading material disclosures to Ms. Pinkston.
 - iv. Failing to provide disclosures as required under 15 U.S.C. §§ 1601 et. seq. not less than three business days prior to the consummation of the transaction, as required under 15 U.S.C. § 1639.
284. As a result of Mr. Varela's Truth in Lending violations, the Ms. Pinkston is entitled to an award of twice the finance charge in connection with this transaction, but not less than \$200 or more than \$2,000, together with reasonable attorney fees, as provided under 15 U.S.C. § 1640(a).
285. **WHEREFORE**, it is respectfully requested that this Court award for Ms. Pinkston and against Mr. Varela, for \$2,000, as well as actual damages, together with costs and reasonable attorney's fees, as provided under 15 U.S.C. § 1640(a), and such other and further relief as the Court deems just and proper.

COUNT XI (FRAUD)

286. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 178 as if fully re-written herein.

287. Mr. Varela made false statements or omissions and/or drafted false documents.

288. The false statements or omissions and/or documents were regarding material facts.

289. Mr. Varela knew or should have known that the statements or omissions and/or documents were false.

290. Mr. Varela intended that the statements or omissions and/or documents would induce Ms. Pinkston to act upon them.

291. Ms. Pinkston suffered damages as a result of justifiable reliance on such.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against Mr. Varela for actual damages, reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue, and such other relief as the court deems just and equitable.

COUNT XII (BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)

292. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 291 as if fully re-written herein.

293. Mr. Varela owed Ms. Pinkston a duty and obligation to, among other things, act in good faith by negotiating a loan that was not beneficial to the lender while detrimental to Ms. Pinkston.

294. Mr. Varela failed, refused and/or neglected to carry out his duty owed to Ms. Pinkston in connection with the servicing of the subject loans by among other things:

- i. Directing Ms. Pinkston to sign documents that were not in her best interest;
- ii. By not explaining the documents to Ms. Pinkston;

- iii. By not providing to Ms. Pinkston a copy of the documents Ms. Pinkston signed.
- iv. By providing false information to lenders regarding the value of Ms. Pinkston's home;
- v. By arranging loans without consideration of Ms. Pinkston's ability to repay them.

295. As a result of the Mr. Varela's breach of duty, Ms. Pinkston has sustained monetary damage which includes having to defend this foreclosure and being charged illegal and predatory servicing charges, court costs and related fees and attorney's fees, having her credit slandered and negatively affected.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against Mr. Varela for her damages, reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue, and for all other relief as the Court deems proper.

COUNT XIII (UNJUST ENRICHMENT)

- 296. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 295 as if fully re-written herein.
- 297. Ms. Pinkston has conferred a benefit upon Mr. Varela in the form of fees collected.
- 298. Mr. Varela accepted and retained the benefit conferred.
- 299. The circumstances render the retention of the benefit inequitable.

WHEREFORE, it is respectfully requested that this Court award for Ms. Pinkston and against Mr. Varela the following relief:

- i. Return of all fees and costs paid in relation to the transaction(s) at issue.
- ii. Such other relief as the court deems just and equitable.

- iii. Reasonable attorney's fees and costs to the extent that they are authorized pursuant to any contract at issue.

COUNT XIV (UNFAIR AND DECEPTIVE TRADE PRACTICES)

300. Ms. Pinkston hereby re-alleges and asserts Paragraphs 1 through 299 as if fully re-written herein.
301. This is an action against Mr. Varela for unfair and deceptive trade practices.
302. The purpose of this loan transaction was so the Ms. Pinkston could lower her monthly payments.
303. Ms. Pinkston was, at all times relevant to this cause of action, inexperienced at refinancing her home.
304. Ms. Pinkston had purchased her home less than a year prior to the transactions at issue.
305. Upon information and belief, at all times relevant to this cause of action, Mr. Varela was an experienced loan broker or agent who had extensive knowledge in loan transactions and refinancing.
306. Mr. Varela assured Ms. Pinkston that she would receive a fixed rate loan that would provide a lower payment.
307. Mr. Varela told Ms. Pinkston on more than one occasion between June 7, 2005 and June 22, 2005, that she could trust him to provide a loan in her best interest.
308. Mr. Varela drafted or directed the drafting of documents which contained information regarding the value of Ms. Pinkston's home which did not reflect the information provided to him by Ms. Pinkston.
309. Mr. Varela directed Ms. Pinkston to sign documents on June 7, 2005, that he did not explain to her.

310. Mr. Varela did not provide Ms. Pinkston with copies of the documents she signed on June 7, 2005.
311. Mr. Varela directed Ms. Pinkston to sign documents which limited her rights and/or limited his liability, without explaining such documents to Ms. Pinkston.
312. Mr. Varela drafted or directed the drafting of and directed Ms. Pinkston to sign documents that created more than one loan, when he was not authored by Ms. Pinkston to do so.
313. Mr. Varela drafted or directed the drafting of, and directed Ms. Pinkston to sign, documents that created variable rate loans, when he was not authored by Ms. Pinkston to do so.
314. Mr. Varela failed to provided accurate and timely Truth in Lending disclosures to Ms. Pinkston.
315. Mr. Varela drafted or directed the drafting of fraudulent documents.
316. Mr. Varela was not present at the consummation of the loans in question on June 22, 2005.
317. Mr. Varela used coercion to force Ms. Pinkston to complete the consummation of the loans, prior to closing, and after she expressed a desire not to complete the loans.
318. Mr. Varela drafted or directed the drafting of, and directed Ms. Pinkston to sign, loans that excluded escrow payments, and obligated her to pay them on her own, without allowing Ms. Pinkston time to review such documents, and without explaining them to her, even though the loan documents represented a variance from his promised obligation to her regarding the purpose of her refinancing.

319. The savings in monthly payments Mr. Varela promised was illusory, because it did not account for her increased payments over the life of the loan(s), and did not account for her newly independent obligation to pay her own taxes and insurance costs.
320. Mr. Varela drafted or directed the drafting of, and directed Ms. Pinkston to sign, documents that created loans with pre-payment penalties, when he was not authorized by Ms. Pinkston to do so.
321. As a result of the loan(s) created by Mr. Varela, Ms. Pinkston:
- i. Paid at least \$8000.00 in fees and charges to take out \$11,850.52 and pay off less than \$3000 in unsecured debt.
 - ii. Lost the equity in her home, and was now obligated to payments on principle totaling at least \$132,979.00 when her prior obligation had been \$111,090.95.
 - iii. Became obligated to two variable rate loans which included an interest only provision, and prepayment penalties, and resulting in an interest rate at least 3% higher than her previous fixed rate loan.
 - iv. Became unable to pay her mortgage loans when the variable payments increased and was restricted from refinancing due to the pre-payment provisions of her loan.
322. Ms. Pinkston has been damaged in that she has lost all of the equity in their home and had to pay costs and attorneys fees as a result of the loans at issue.
323. Based on Mr. Varela's, unfair and deceptive actions, Ms. Pinkston has been damaged. WHEREFORE, the Ms. Pinkston requests this Court enter an order in their favor and against Ace Mortgage for damages, reasonable attorney's fees and costs to the extent that

they are authorized pursuant to any contract at issue., and for such other relief as this Court deems proper.

DEFENDANT'S DEMAND FOR A JURY TRIAL

Defendant demands a jury trial in this action.

Verification Page

Under penalties of perjury, I declare that I have read the foregoing VERIFIED ANSWER, AFFIRMATIVE DEFENSES, MOTION TO DISMISS COUNT I, COUNTERCLAIMS, AND THIRD PARTY COMPLAINT and the facts stated in it are true to the best of my information and belief.

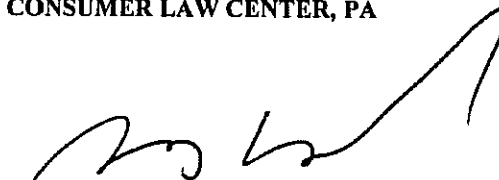


Donna M. Pinkston

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail and facsimile to Mark C. Elia, Esq, Van Ness Law Firm, P.A. 1239 E. Newport Center Drive, Suite #110, Deerfield Beach, FL 33442, this 22 day of July, 2008 and via service of process upon third party defendants.

CONSUMER LAW CENTER, PA



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FORECLOSUREPROSE.COM

This is a "qualified written request" as defined in 12 U.S.C. 2605(e) and is provided to Plaintiff's counsel as Plaintiff's agent.

In part, the basis of this demand is Defendant's belief that the owner and/or servicer of this loan violated RESPA.

Failure of the Plaintiff to acknowledge this demand and to provide the disclosures within the times provided by law gives rise to a civil action in favor of the mortgagor against the mortgagee. The mortgagor will seek any and all remedies available against the mortgagee in this case for failure to provide the required disclosures in the time provided for by law, including statutory and actual damages, attorney's fees and all costs of litigation.

Dated this _____ day of July, 2008.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail to Mark C. Elia, Esq, Van Ness Law Firm, P.A. 1239 E. Newport Center Drive, Suite #110, Deerfield Beach, FL 33442, this 22 day of July, 2008, and upon Third Party Defendants via service of process.

CONSUMER LAW CENTER, P.A.

By: _____

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