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A-1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WENDY B. ADELSON,

Plaintiff - Appellant,

v.

OPINION

OCWEN LOAN SERVICING, LLC,
nka PHH Mortgage Corporation, successor by
merger, and HSBC BANK USA, NA,
individually and as Trustee on behalf of
Ace Securities Home Equity Loan Trust Series
2007-HE1, asset backed pass through
certificates (20-2204 & 21-2972); TROTT
LAW, P.C., MICHAEL MCDERMOTT, and
HEIDI MYSAZK

Defendants - Appellees.

**ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF MICHIGAN**

Before: MOORE, CLAY, and NALBANDIAN, Circuit
Judges.

This case is another—and we think the final—chapter of a 15-years-long property dispute. Wendy Adelson stopped paying the mortgage on her house in 2007. In 2019, HSBC foreclosed on the house. Adelson challenged this foreclosure in district court. But the

district court found that she failed to state a claim for relief. We agree and affirm.

I.

In September 2006, Adelson accepted a \$178,500 loan from Sebring Capital Partners, LP ("Sebring") to help finance her purchase of a home in Lake Orion, Michigan. The loan was secured by a mortgage. Under the original agreement, Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Sebring, was the mortgagee. And MERS later assigned the mortgage to HSBC Bank USA N.A. ("HSBC").

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In December 2006, Adelson received a notice from Ocwen Loan Servicing, LLC ("Ocwen"). This notice informed her that, as most financial institutions do from one time to another, Sebring transferred its right to collect payments to Ocwen. The notice said that Adelson should direct her monthly mortgage payments to Ocwen. Around that same time, Sebring closed its doors. While Adelson initially made several monthly mortgage payments, she began to question both the amount she owed and Ocwen's authority to collect. So she stopped making her monthly mortgage payments to Ocwen in April 2007. She alleges that, rather than paying her monthly mortgage payments to Ocwen, she deposited them into an escrow account that she established.

Because Adelson stopped making her payments, Ocwen sent Adelson a notice of default and ultimately referred the loan to foreclosure. HSBC published a foreclosure notice and scheduled a sheriff's sale. Adelson contacted Ocwen's attorneys, informed them

that she was not in default, faxed copies of her payment receipts and escrow account, and “demanded” that her property be removed from the foreclosure sale. (Compl., ECF No. 1-1, PageID 20–21.) Ocwen did not remove her property from the sale.

Then came years of litigation. First, in June 2007, Adelson filed a complaint in state court to fight against the upcoming foreclosure proceedings. Through a series of maneuvers, the case was removed to the Eastern District of Michigan and then consolidated for pretrial purposes with pending multi-district litigation in the Northern District of Illinois. This litigation centered on Ocwen’s debt collection practices. The MDL settled in 2010, with Adelson as a member of the class. The settlement agreement released Ocwen from certain forms of liability, including future claims related to Ocwen’s “mortgage servicing activities” and “debt collection activities,” but not “statutory or common law rights against foreclosure....” (MDL Settlement, ECF No. 1-1, Page ID 174.)

Adelson moved to vacate the MDL judgment in 2014. The district court denied that motion, and the Seventh Circuit dismissed Adelson’s appeal for lack of appellate jurisdiction. See *Adelson v. Ocwen Fin. Corp.*, 621 F. App’x 348, 352 (7th Cir. 2015) (order).

In 2015, Adelson’s individual case was sent back to the Eastern District of Michigan. See *id.* There, Adelson challenged HSBC’s legal authority to foreclose on her property and Ocwen’s servicing and debt-collection practices. The district court dismissed the complaint, and, in 2018, we affirmed. *Adelson v. Ocwen Fin. Corp.*, No. 17-1917, 2018 WL 7226966 (6th

Cir. Aug. 20, 2018) (order). We note two findings from this part of the saga. First, because Adelson released certain claims related to the servicing and debt-collection practices of Ocwen (and HSBC and other Ocwen affiliates by extension), many of her claims were barred by *res judicata*. *Id.* at *4–5. Second, we found that the assignment between MERS and HSBC was valid, so HSBC was a proper party to initiate foreclosure proceedings. *Id.* at *6–8.

Following the resolution of that appeal, Ocwen again initiated foreclosure proceedings. Ocwen, through its lawyers at Trott Law P.C. (“Trott”), sent Adelson a letter. This November 2018 letter stated that “[t]his matter was referred to [Trott] to foreclose the mortgage.” (Trott Letter, ECF No. 1-1, PageID 224.) The foreclosure sale was later set for February 26, 2019. But on February 22, 2019, Adelson filed for bankruptcy “to stop the sale.” (Compl. ¶ 46, ECF No. 1-1, PageID 25.) The bankruptcy petition was dismissed 41 days later because Adelson failed to file required documents.

Throughout the bankruptcy proceedings, the foreclosure sale was adjourned. Finally, on May 7, 2019, HSBC purchased the property for \$457,190.68 at a Sheriff’s sale. Adelson alleges that she did not receive notice of the Sheriff’s sale until June 15, 2019. Nearly six months after the Sheriff’s sale, Adelson filed a complaint against HSBC, Ocwen, Trott, and two of Trott’s attorneys challenging the validity of the 2019 sale. The district court dismissed all claims. Adelson timely appealed.

II.

We review a ruling on a motion to dismiss *de novo*. *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 435 (6th Cir. 2012). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). We “accept[] all well-pled factual allegations as true” but “need not accept as true . . . unwarranted factual inferences[] and conclusory allegations . . .” *Phila. Indem. Ins. Co. v. Youth Alive, Inc.*, 732 F.3d 645, 649 (6th Cir. 2013) (quoting *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 276 (6th Cir. 2010)).¹

¹ We decline to review a claim that Adelson didn’t properly preserve for our review. She claims that HSBC needed to file a counterclaim for judicial foreclosure when she brought her original wrongful foreclosure claim in 2007. She asserted this for the first time in her response to a motion to dismiss. The magistrate judge recommended rejecting this new claim on several grounds, including that Michigan law entitled HSBC to foreclose by advertisement rather than through the judicial process, Adelson had not cited any authority in support of her argument, and relevant authority cut against her position. In Adelson’s objections to the magistrate’s report and recommendation, she simply disputed the correctness of the recommendation by asserting that HSBC’s foreclosure claim was “logically related” to her earlier wrongful foreclosure claim. So she failed to preserve this claim for our review. See *Miller v. Curie*, 50 F.3d 373, 380 (6th Cir. 1995) (Objections that “dispute[] the correctness of the magistrate’s recommendations but fail[] to specify the findings [] believed [to be] in error” amount to “general objections.”); *Smith v. Detroit Fed’n of Teachers Loc.*, 231, 829 F.2d 1370, 1373 (6th Cir. 1987) (“[O]nly those specific objections

III.

A. Foreclosure by Advertisement, Quiet Title, and Fraudulent Conveyance

Adelson brings three claims challenging the mechanics of the 2019 foreclosure proceedings. First, she argues that HSBC (via Ocwen) did not comply with the statutory requirements necessary to carry out foreclosure by advertisement. Second, she claims that HSBC fraudulently conveyed her property. And lastly, she claims that, because the foreclosure sale was invalid, she should be granted quiet title to the property.

We begin with her argument that HSBC and Ocwen didn't comply with certain statutory requirements to foreclose by advertisement. Michigan's foreclosure-by-advertisement rules detail certain steps that the mortgagee—HSBC in this case—must go through to validly foreclose. See Mich. Comp. Laws §§ 600.3201, 600.3204. They also provide for certain rights once the sale is completed. For example, the mortgagor—here, Adelson—may redeem the property during the six-month period after the sale. See Mich. Comp. Laws § 600.3240(8); *Conlin v. Mortg. Elec. Registration Sys., Inc.*, 714 F.3d 355, 359 (6th Cir. 2013). When the six months is up, the mortgagor's “right, title, and interest in and to the property” are extinguished.” *Conlin*, 714 F.3d at 359 (quoting *Piotrowski v. State Land Off. Bd.*, 4 N.W.2d

to the magistrate's report made to the district court will be preserved for appellate

514, 517 (Mich. 1942)); see Mich. Comp. Laws § 600.3236. So then, what can a mortgagor do besides redeem the property Because the scheme was intended to “impose order” and “giv[e] security and finality to the purchasers of foreclosed properties,” the mortgagor’s ability to challenge the foreclosure is limited. See Conlin, 714 F.3d at 359. After the statutory redemption period lapses, courts can entertain setting aside a foreclosure sale only if the mortgagor makes a “clear showing of fraud[] or irregularity.” review; making some objections but failing to raise others will not preserve all the objections a party may have.”). Id. (quoting *Schulthies v. Barron*, 167 N.W.2d 784, 785 (Mich. Ct. App. 1969)); *Sweet Air Inv., Inc. v. Kenney*, 739 N.W.2d 656, 659 (Mich. Ct. App. 2007). And the alleged misconduct must relate to the foreclosure procedure itself. Conlin, 714 F.3d at 360.

In Michigan, “defects or irregularities in a foreclosure proceeding result in a foreclosure that is voidable, not void ab initio.” *Kim v. JPMorgan Chase Bank, N.A.*, 825 N.W.2d 329, 337 (Mich. 2012). So for us to set a foreclosure aside, mortgagors must also show that “they were prejudiced by” a failure to comply with the foreclosure-by-advertisement rules. Id. A mortgagor is prejudiced when “they would have been in a better position to preserve their interest in the property absent [the mortgagee’s] noncompliance with the statute.” Id. Factors Michigan courts have considered in evaluating prejudice include: (1) whether mortgagors “acted promptly after they became aware of the facts on which they based their complaint,” and (2) whether mortgagors “made an

effort to redeem the property during the redemption period” *Diem v. Sallie Mae Home Loans, Inc.*, 859 N.W. 2d 238, 242–43 (Mich. App. 2014) (cleaned up) (citations omitted).

Under this framework, the record shows that Adelson has not stated a claim for wrongful foreclosure by advertisement. The sheriff’s sale occurred on May 7, 2019. So Adelson had until November 7, 2019, or six months, to redeem the property. See Mich. Comp. Laws § 600.3240(8). She does not allege that she redeemed—or tried to redeem—the property, and instead filed suit a few weeks before the November redemption deadline. Because the statutory redemption period lapsed, and because “the filing of a lawsuit is insufficient to toll the redemption period,” she must make a “clear showing of fraud or irregularity” and that she was prejudiced by those irregularities. *Conlin*, 714 F.3d at 360–61 (quotation marks and citations omitted)².

² Adelson argues that the redemption period should have been one year instead of six months because the property qualifies as an agricultural property under Michigan Compiled Laws § 600.3240(11). She alleges that she uses the property as a “self-funded animal rescue.” (Compl. ¶ 127, ECF No. 1-1, PageID 39.) Michigan Compiled Laws § 600.3240(16) explains that “there is a presumption that the property is not used for agricultural purposes” if, before the foreclosure sale, the mortgagor doesn’t provide “proof [of a] . . . a schedule F to the mortgagor’s federal income tax form 1040 for the year preceding the year in which the proceedings to foreclose the mortgage were commenced and records an affidavit . . . stating that the proof has been delivered [to the foreclosing party].” Signaling some awareness of this presumption, she alleges that Defendants “had full and complete knowledge that the property falls under the (schedule F)

Adelson makes two main arguments. Neither persuade us. First, she questions HSBC's adherence to Michigan's adjournment notice procedures. Recall that the foreclosure sale was noticed for February 26, 2019 but was adjourned pending bankruptcy procedures and subsequently took place on May 7, 2019. Citing a Michigan statute for notice of foreclosure, Adelson argues that HSBC did not comply with Michigan's adjournment notice procedures because it did not post notices of adjournment for the weeks between February 26 and May 7. See Mich. Comp. Laws § 600.3220 (requiring weekly publication of notices of adjournment in newspaper containing the original notice of sale for any adjournment longer than one week).

But HSBC complied with Michigan's adjournment notice procedures by publishing notices of adjournment each week in the Detroit Legal News. (Mot. to Dismiss, ECF No. 10-2, PageID 370-387; see Sheriff's Deed, ECF No. 1-1 PageID 270 (sheriff's deed noting that the "sale [was] adjourned from February 26, 2019 to May 7, 2019").) Contrary to what Adelson asserts, Michigan Compiled Laws § 600.3220 does not require HSBC to serve other kinds of foreclosure notices. See *Mayer v. Wells Fargo Bank, N.A.*, No. 16-

provision" (Compl. ¶ 127, ECF No. 1-1, Page ID 39.) But she doesn't allege that she provided HSBC with proof of a schedule F and affidavit before the sale, so there is a presumption that the property is not used for agricultural purposes. Mich. Comp. Laws § 600.3240(16); see *Hebler v. Wells Fargo Bank N.A.*, 380 F. Supp. 3d 684, 690 (W.D. Mich. 2019). And she fails to plead facts to rebut the presumption that the property is not used for agricultural purposes. So this argument fails.

2217, 2017 WL 7806616, at *2 (6th Cir. Nov. 1, 2017) (order) (“Although [mortgagor] claims he did not receive notice of the adjournment of the sheriff’s sale, the record establishes that [mortgagee] complied with Michigan’s adjournment notice procedures by publishing notices of adjournment each week.”). So HSBC followed Michigan’s adjournment notice procedures.^{3, 4}

³ Adelson alleges that Defendants violated 11 U.S.C. § 362(a). We have held that under that provision, “filing a petition for bankruptcy operates as a ‘stay’ of actions that could have been filed against the [person] to recover claims . . . and the debtor’s property cannot be repossessed or foreclosed on . . .” *In re Global Technovations Inc.*, 694 F.3d 705, 711 (6th Cir. 2012). Her argument is confusing, but she seems to allege that the adjournment notices were attempts to collect a debt in violation of the bankruptcy stay, as opposed to efforts to respect the stay (by postponing the foreclosure sale). But the adjournment of a foreclosure sale does not violate a bankruptcy stay, and, in fact, shows that the party looking to foreclose is respecting the stay. See *Worthy v. World Wide Fin. Servs., Inc.*, 347 F. Supp. 2d 502, 508–09 (E.D. Mich. 2004), *aff’d*, 192 F. App’x 369 (6th Cir. 2006); *Stein v. U.S. Bancorp*, No. 10-14026, 2011 WL 740537, at *6–7 (E.D. Mich. Feb. 24, 2011). So this argument fails.

⁴ Adelson also claims that HSBC did not follow certain notice procedures outlined in the mortgage contract that she signed in 2006. Recall that HSBC, via Ocwen, sent Adelson a notice of default in April 2007, and HSBC, via Ocwen and Trott, sent Adelson a notice of acceleration in November 2018 after her last round of litigation with HSBC and Ocwen concluded. She argues that she had a right to receive a renewed notice of default before receiving the 2018 notice of acceleration. But a plain reading of the mortgage contract provision that she invokes doesn’t suggest a renewed notice of default is necessary. (Mortgage Contract ¶ 22, ECF No. 1-1, PageID 82) (“Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant

Second, Adelson alleges that the deputy sheriff who conducted the foreclosure proceedings “wasn’t deputy sheriff” at the time of the foreclosure sale because his oath of office wasn’t filed and recorded at the Oakland County Clerk’s office before the foreclosure sale. (Pet. Br. at 34–36.) Appointments of deputy sheriffs in Michigan “shall be in writing . . . and shall be filed and recorded in the office of the clerk of the county; and every such . . . deputy shall, before he enters upon the duties of his office, take the oath prescribed by [the Michigan Constitution].” Mich. Comp. Laws § 51.73. Adelson points to Exhibit 29 of her complaint, which looks to be a copy of the deputy sheriff’s oath, taken on December 21, 2016, and stamped with “received for filing” by the Oakland County Clerk on September 11, 2019. (Sheriff’s Oath, ECF No. 1-1, PageID 296.) At least one Michigan court has held that a violation of a similar appointments clause “would not amount to a defect or irregularity in the foreclosure proceeding itself.” *New Jerusalem Deliverance Church v. Evangelical Christian Credit Union*, No. 309571, 2014 WL 238474, at *2 (Mich. Ct. App. Jan. 21, 2014) (per curiam).

or agreement in this Security Instrument . . . If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law.”) (emphases added)).) So this argument also fails.

But even if it did, and assuming there was a defect in the sheriff's appointment or with posting the notices of adjournment, Adelson hasn't plausibly alleged that she was prejudiced. Or, put another way, she can't show that she "would have been in a better position to preserve [her] interest in the property absent defendant's noncompliance with the statute." Kim, 825 N.W.2d at 337. Adelson's claim of prejudice focuses on circumstances that preceded the sale. She claims that she was prejudiced by "being unaware of the foreclosure sale" and was "deprived [of] any opportunity to respond to the foreclosure proceedings prior to any sale" (Compl. ¶ 152, ECF No. 1-1, PageID 44; Pet. Br. at 18.)

These conclusory statements are belied by other evidence in the complaint. To start, she has been litigating over the property for 15 years. More specifically, she alleges that in November 2018 she responded to a letter from Trott (the law firm acting on behalf of Ocwen) that told her that Ocwen sought to foreclose the mortgage. She admits that, a few months later, she filed for bankruptcy protection to "stop the sale." (Compl. ¶ 46, ECF No. 1-1, PageID 25.) And even assuming that, as she alleges, she did not have notice of the May 7 sale until June 15 and was under the impression that the sale was cancelled (and not just adjourned pending the bankruptcy proceedings), a June 15 notice date still gave her more than four months to redeem the property. She doesn't allege that she made any effort to redeem the property. See Sweet Air Inv., 739 N.W.2d at 662 (finding no prejudice when plaintiff didn't try to redeem the property during the redemption period); Nafso v. Wells Fargo Bank, NA,

No. 11-10478, 2011 WL 1575372, at *3 (E.D. Mich. Apr. 26, 2011) (explaining that a mortgagor cannot “show prejudice resulting from [] alleged defect[s] where he did not attempt to redeem the property and waited until the day before the redemption period expired to challenge the sheriff’s sale”). Because Adelson cannot show that she would have been in a better position to preserve her interest in the property without the alleged defects, her prejudice argument fails.^{5,6}

⁵ Adelson makes two more arguments for prejudice. First, she argues that, but for Ocwen’s “accounting errors” when servicing the loan, she would have paid the loan, and HSBC wouldn’t have foreclosed. (Pet. Br. at 17.) This is unrelated to the procedural aspects of the 2019 foreclosure proceedings and therefore cannot constitute prejudice. Conlin, 714 F.3d at 360 (“The misconduct must relate to the foreclosure procedure itself.” (cleaned up) (citation omitted)). Second, she alleges that HSBC “overbid” for the property, and that prejudiced her. (Pet. Br. at 38–40.) But the exhibits in her complaint do not support this allegation. The November 2018 acceleration letter from Trott Law contains the total debt as inclusive of the principal balance, unpaid interest, late charges, and other fees under the mortgage, for a total of \$445,627.80. The Sheriff’s deed for the May 2019 mortgage sale says that the property sold for \$457,190.68. Any argument that HSBC (or any bidder) should have only paid an amount equal to the principal balance in 2006, or an amount equal to what was due in 2007, ignores the fact that Adelson had not paid her mortgage in over a decade, and other charges and unpaid interest accrued as a result. And she does not allege facts in her complaint to support an allegation that HSBC applied an impermissible prepayment penalty. So these arguments for prejudice also fail.

⁶ Adelson also argues that the foreclosure proceeding is barred by various statutes of limitations, and that the district court erred when determining that the proper statute governing foreclosure proceedings is Michigan Compiled Laws § 600.5803. But the

Next we turn to Adelson's fraudulent conveyance claim. It's confusing. She makes conclusory statements about Defendants' "scheme" to foreclose. At bottom, it seems that she's challenging HSBC's authority to foreclose. But this Court previously found that HSBC had authority to foreclose. Adelson, 2018 WL 7226966, at *6–8 (holding that MERS validly assigned its interest in the property to HSBC and HSBC had authority to foreclose). And as we discussed, there's no statute of limitations problem.⁷

Finding that the foreclosure proceedings didn't prejudice her and acknowledging that HSBC had authority to foreclose, her fraudulent conveyance and quiet title claims must fail.

B. FDCPA Violation

district court is right. Michigan Compiled Laws § 600.5803 says: Foreclosure proceedings must "commence[] . . . 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage." Adelson admits that she made her last payment on the Mortgage in April 2007. HSBC completed its foreclosure in May 2019, well before the 15-year limit.

⁷ Adelson has argued that she "misabeled [this count] as fraudulent conveyance" and what she is really alleging is slander of title. (ECF No. 19, PageID 473; see also Pet. Br. at 67–68.) The distinction doesn't matter here because she has not alleged facts that establish that the Defendants' actions were improper, let alone malicious. See *Derbabian v. Bank of Am. N.A.*, 587 F. App'x 949, 958 (6th Cir. 2014) (discussing the elements of slander of title under Michigan law). lender back [lender can collect a debt], while a mortgage gives the lender the ability to take your house if you fail to meet that obligation [lender can enforce a security interest]." *Keen v. Helson*, 930 F.3d 799, 801 (6th Cir. 2019).

Adelson alleges that Ocwen and Trott, the law firm representing Ocwen during the foreclosure proceedings, violated the Fair Debt Collection Practices Act (“FDCPA”).

The FDCPA was created to “eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e). “Debt” is defined as “any obligation . . . to pay money arising out of a transaction . . . for personal, family, or household purposes.” Id. § 1692a(5) (emphasis added). And a “debt collector” is “any person” or business whose “principal purpose” “is the collection of any debts” Id. § 1692a(6). But “any business [whose] principal purpose is . . . the enforcement of security interests” is not regulated by the FDCPA’s general terms, and is obligated only, when taking nonjudicial action, to ensure that there’s a “present right to possession of the property,” an intent to take possession, and no applicable property exemption by law. Id. §§ 1692a(6), f(6); *Obduskey v. McCarthy & Holthus LLP*, 139 S. Ct. 1029, 1036–38 (2019).

Collecting a debt and enforcing a security interest are not the same thing. When you buy a house, you typically need a loan and a mortgage. “Put simply, a loan obligates you to pay the Bottom line, Trott must comply only with § 1692f(6) if its principal purpose was to enforce a security interest—in this case, Adelson’s house. Adelson’s pleading suggests that enforcing a security interest was Trott’s principal purpose. The November 2018 letter Trott sent to Adelson reads: “Dear Borrower(s): This office represents Ocwen Loan Servicing, LLC. This matter was referred to this office

to foreclose the mortgage.” (Trott Letter, ECF 1-1, PageID 224.) Adelson did not plead facts that suggest Trott acts as anything but a security-interest enforcer. And Adelson has not alleged any “other conduct” that would “potentially transform [Trott] into [a] general debt collector” See *Bates v. Green Farms Condo. Ass’n*, 958 F. 3d 470, 476–77, (2020) So Trott must comply only with §1692f(6). See *Obduskey*, 139 S. Ct. at 1036–38.

Under the §1692f(6) framework, we ask whether HSBC had a right to possession of the house, intended to take possession, and was allowed to do so. We say yes to all three. As discussed above, HSBC had the right to foreclose and timely did so. So Adelson’s FDCPA claim against Trott must fail.

Finally, we turn to Adelson’s FDCPA claim against Ocwen. A mortgage servicer can be a “debt collector” if it “acquired a debt in default or has treated the debt as if it were in default at the time of the acquisition.” *Bridge v. Ocwen Fed. Bank*, 681 F.3d 355, 362 (6th Cir. 2012); see also *Willison v. Nelnet, Inc.*, 850 F. App’x 389, 390 (6th Cir. 2021) (debtor not in default when loan servicer acquired her loans, so loan servicer is not a debt collector under the FDCPA)⁸

⁸ In *Willison* we noted that *Bridge*’s holding “has been limited in whole or in part by the Supreme Court’s decision in *Santander*.” *Id.* at 392 n.1; see *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1720–22 (2017) (holding that “individuals and entities who regularly purchase debts originated by someone else and then seek to collect those debts for their own account” are not debt collectors under the FDCPA even if the purchased debt was already in default). “However, *Santander* did not discuss what impact, if any, its ruling had on a loan servicer who services a

already in default). “However, Santander did not discuss what impact, if any, its ruling had on a loan servicer who services a defaulted debt purchased by a non-originating debt holder.”

Ocwen began servicing the loan in December 2006. And from “January 2007 through April 2007, [Adelson] made payments to Ocwen.” (Compl. ¶ 16, ECF No. 1-1, PageID 20.) In April 2007, Adelson stopped making mortgage payments and Ocwen sent Adelson a notice of default. Because Ocwen did not “acquire[] a debt in default” and did not “treat[] the debt as if it were in default” until months after it acquired the debt, Ocwen is not a “debt collector” within the meaning of the FDCPA. *Bridge*, 681 F.3d at 362. So Adelson’s FDCPA claim against Ocwen must also fail.⁹

C. Intentional Infliction of Emotional Distress

Adelson claims intentional infliction of emotional distress (“IIED”) from the foreclosure proceedings. Among other things, to make an IIED claim, Adelson must have alleged that Defendants engaged in “extreme and outrageous” conduct or conduct that is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds

defaulted debt purchased by a non-originating debt holder.” Willison, 850 F. App’x at 392 n.1. And of course it’s irrelevant in a situation where, as we explain, Ocwen began servicing the debt prior to default. “Thus, it does not affect the resolution of this case.” *Id.*

⁹ Adelson raises the argument that Ocwen violated 12 U.S.C. § 2605(e)(3) for the first time to this Court, so we will decline to consider it. (Pet. Br. at 61.)

of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.” *Walsh v. Taylor*, 689 N.W.2d 506, 517 (Mich. Ct. App. 2004) (quotation marks and citation omitted).

In Michigan, “this standard is not satisfied when the plaintiff essentially claims that the defendant breached contracts with [her] in various ways and foreclosed on [her] property.” *Chungag v. Wells Fargo Bank, N.A.*, 489 F. App’x 820, 825 (6th Cir. 2012) (per curiam) (quotation marks and citation omitted); see *Brown v. Bank of N.Y. Mellon*, No. 1:10-CV-550, 2011 WL 206124, at *6 (W.D. Mich. Jan. 21, 2011). This is because “[i]n a contractual setting, a tort claim must be based instead on the breach of a duty distinct from the contract.” *Chungag*, 489 F. App’x at 825 (quotation marks and citation omitted); see also *Hajciar v. Crawford & Co.*, 369 N.W.2d 860, 862–63 (Mich. Ct. App. 1985).

Adelson did not make any specific allegations of extreme and outrageous conduct in the complaint. And if we were to consider the more specific allegations she sets forth in her briefing to this Court, her claim would fail. Compare *Chungag*, 489 F. App’x at 825 (finding actions were not “sufficiently outrageous” when plaintiff alleged that Wells Fargo “intentionally reported false information on their credit,” “put daily notes on the house,” “[took] pictures of the house,” and “continue[d] to send [its] agents to the house . . .” (cleaned up)), with (Pet. Br. at 66 (alleging Defendants “fabricated false records” and “instructed its home inspectors to drive by her home every week and take pictures”).) And HSBC was within its rights to pursue

foreclosure on the house. See *Chungag*, 489 F. App'x at 825. So she did not state a claim for IIED.

C. Conspiracy

Finally, Adelson alleges that Defendants engaged in a conspiracy to defraud her of her property. Conspiracy, by itself, is not a cause of action. See *Cousineau v. Ford Motor Co.*, 363 N.W.2d 721, 730 (Mich. Ct. App. 1985). Adelson must allege that Defendants were conspiring to engage in some behavior that violates another law. See *Early Detection Ctr., P.C. v. N.Y. Life Ins. Co.*, 403 N.W.2d 830, 836 (Mich. Ct. App. 1986). As we've explained, Adelson did not adequately allege that Defendants' behavior violated any laws. So her conspiracy claim "must also fail." *Id.*

IV.

For these reasons, we affirm.

A-20

Nos. 20-2204/21-2972

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

Filed Apr 10, 2023
Deborah S. Hunt, Clerk

WENDY B. ADELSON, O R D E R
Plaintiff-Appellant,

v.

OCWEN LOAN SERVICING, LLC, NKA PHH
MORTGAGE CORPORATION, SUCCESSOR BY
MERGER, AND HSBC BANK USA, NA,
INDIVIDUALLY AND AS TRUSTEE ON BEHALF
OF ACE SECURITIES HOME EQUITY LOAN
TRUST SERIES 2007-HE1, ASSET BACKED
PASS-THROUGH CERTIFICATES TROTT LAW,
P.C., MICHAEL MCDERMOTT, AND HEIDI
MYSAZK

Defendants-Appellees.

BEFORE: MOORE, CLAY, and NALBANDIAN,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. The petition then was circulated to the full court.* No judge has

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requested a vote on the suggestion for rehearing en banc. Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

*Judge Davis recused herself from participation in this ruling.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WENDY B. ADELSON,
Plaintiff

v.

OCWEN LOAN SERVICING, LLC,
nka PHH Mortgage Corporation, successor by
merger, and HSBC BANK USA, NA, individually
and as Trustee on behalf of Ace Securities Home
Equity Loan Trust Series 2007-HE1, asset backed
passthrough certificates (20-2204 & 21-2972);
TROTT LAW, P.C., MICHAEL MCDERMOTT,
and HEIDI MYSAZK
Defendants - Appellees.

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**ORDER ADOPTING REPORT AND
RECOMMENDATION OCWEN LOAN
SERVICING, (ECF NO. 46), GRANTING
DEFENDANTS' MOTION TO DISMISS
(ECF NO. 10) AND DENYING
PLAINTIFF'S MOTIONS TO STRIKE AND
TO "CORRECT DOCKET" (ECF NOS. 32,
37)**

Plaintiff Wendy Adelson filed the present action to set aside foreclosure and quiet title to real property. Thereafter, Defendants filed a Motion to Dismiss the Complaint. In addition to filing a response to Defendants' motion, Plaintiff filed a Motion to Strike

Defendant's Motion to Dismiss (ECF No. 32) and a Motion to Correct Docket (ECF No. 37). This Court referred all pretrial matters to Magistrate Judge Grand, who filed a report on August 20, 2020, recommending that Defendants' Motion to Dismiss be granted, and Plaintiff's Motion to Strike and to "Correct Docket" be denied.

Plaintiff filed timely objections, and Defendant filed a response. The Court has reviewed Magistrate Judge Grand's Report and Recommendation, Plaintiff's objections thereto, and Defendants' responses to Plaintiff's objections. For the reasons set forth below, Plaintiff's objections are **OVERRULED**, and the Report and Recommendation is **ACCEPTED** and **ADOPTED** as the opinion of the Court.

I. Background

Plaintiff accepted a \$178,500 loan from Sebring Capital Partners ("Sebring"), which was secured by a mortgage, on real property located in Michigan in September of 2006. ECF No. 1-1, PageID.19. In December of 2006, Ocwen became the servicer of the loan. Ocwen mailed a "Notice of Assignment, Sale, or Transfer of Servicing Rights" to Plaintiff that advised her that the servicing of the loan was transferred, noted the terms of her mortgage were unchanged, and directed her to make her monthly mortgage payments to her new servicers. *Id.* at PageID.92. Subsequently, Mortgage Electronic Registration Systems, Inc. ("MERS") assigned its mortgage interest to HSBC Bank USA, NA ("HSBC") as Trustee on behalf of Ace

Securities Corporation Home Equity Loan Trust ("ACE"). *Id.* at PageID.150.

Beginning in early 2007, Plaintiff stopped making payments to Ocwen. ECF No. 1-1, PageID.20. Following Plaintiff's default on her payments, the loan was referred to foreclosure. HSBC published a foreclosure notice on June 5, 2007 and scheduled a sheriff's sale for July 3, 2007. Plaintiff then filed a complaint challenging the initiation of foreclosure proceedings against Ocwen and Trustee in Oakland County Circuit Court on July 27, 2007. The complaint was then moved to this Court and assigned Case No. 07-13142.

On December 14, 2007, the case was transferred to the U.S. District Court for Northern District of Illinois, where it was consolidated for pretrial purposes with multi-district litigation pending in that court. Case No. 07-07208, ECF No. 1. In 2010, the parties in the MDL reached a class settlement and a year later, the Northern District of Illinois entered a Final Approval Order and Judgment with respect to the settlement. Case No. 04-02174, ECF No. 476.

Over three years later, Plaintiff filed a Rule 60(b) motion for relief from the MDL final judgment. Case No. 07-07208, ECF No. 23. The Northern District of Illinois denied the motion, but Plaintiff appealed. *Id.* at ECF No. 38. The Court of Appeals for the Seventh Circuit dismissed the appeal for lack of jurisdiction, holding that the MDL settlement did not fully resolve Plaintiff's claims. *Id.* at ECF No. 68. However, the Seventh Circuit also found that Plaintiff appeared to have abandoned portions of her claims against Ocwen by failing to timely opt out of the

settlement. The case was then transferred back to this Court.

Plaintiff filed a First Amended complaint on February 23, 2016. Case No. 07-13142, ECF No. 25. After this Court granted Defendants' Motion to Strike and for a More Definite Statement, Plaintiff filed a Corrected Second Amended Complaint. *Id.* at ECF No. 55. In her Second Amended Complaint, Plaintiff argued that Defendants sought to conduct a foreclosure sale without any legal authority or standing to do so, and they had sent notices of default when she was not in default of her mortgage. ECF No. 55, PageID.1406.

Defendants moved to dismiss Plaintiff's claim for failure to state a claim. Case No. 07-13142, ECF No. 61. Magistrate Judge Mona K. Majzoub issued a Report and Recommendation recommending the dismissal of Plaintiff's claims. Despite objections from Plaintiff, this Court adopted Magistrate Judge Majzoub's Report and Recommendation and dismissed Plaintiff's claim in March of 2017. *Id.* at ECF No. 93.

After Plaintiff's Motion for Reconsideration was denied, Plaintiff filed a Notice of Appeal. Case No. 0713142, ECF No. 99. On August 28, 2018, the Sixth Circuit Court of Appeals affirmed the District Court's judgment. *Id.* at ECF No. 106. Plaintiff's Petition for rehearing was denied. *Id.* at ECF No. 107.

Once Plaintiff's appeal was resolved, Ocwen sent notice to Plaintiff that the loan remained in default and would be foreclosed upon unless the debt was repaid. ECF No. 1-1, PageID.224. After Plaintiff did not repay the loan, the Trustee noticed the foreclosure sale for February 26, 2019. *Id.* at

PageID.272-73. On February 22, 2019, Plaintiff filed for bankruptcy to stop the sale, but her bankruptcy case was dismissed because she failed to file the required documents. During the pendency of Plaintiff's bankruptcy proceedings, the foreclosure sale was adjourned. ECF No. 1-1, PageID.270; ECF No. 10-2, PageID.370-387. Following the dismissal of the bankruptcy case, the Trustee purchased the property for \$457,190.68 on May 7, 2019 at the sheriff's sale. ECF No. 1-1, PageID.270.

Six months after the sheriff's sale, Plaintiff filed a complaint against Ocwen, the Trustee, Trott, and two Trott attorneys in Oakland County Circuit Court. ECF No. 1-1, PageID.16. Plaintiff also filed an ex parte motion to extend the redemption period, which was set to expire on November 7, 2019. The State Court denied Plaintiff's ex parte motion, finding that Plaintiff failed to demonstrate that she was entitled to an equitable extension because she did not make "a clear showing of fraud or irregularity." ECF No. 10-3, PageID.389.

On October 31, 2019, two days after the State Court denied her motion, Plaintiff attempted to remove the proceedings to this Court. Case No. 1913208. The Court remanded the proceedings to State Court because "a plaintiff who chooses to file an action in state court cannot later remove to federal court," and the case was subsequently closed on November 8, 2019. Case No. 19-13208, ECF No. 11, PageID.598.

Defendant Trustee and PHH, the successor by merger to Ocwen, filed a Notice of Removal on December 4, 2019. ECF No. 1. Defendants then filed the Motion to Dismiss Plaintiff's complaint.

In the Motion to Dismiss, Defendants argue, first, that Plaintiff “failed to state a claim upon which relief can be granted” because Plaintiff did not allege any error in the foreclosure proceedings. ECF No. 10, PageID.350. Defendants argue that the foreclosure was not time-barred because the proper limitations period is fifteen years. Defendants also discuss the proper notice of the sale that Plaintiff received, Plaintiff’s failure to extend the redemption period, and, as opposed to the allegations in the complaint, how the sheriff’s sale did not require an individual bond to be proper. *Id.* at PageID.354-56, 359. Additionally, Defendants assert that even if there were the above defects in the foreclosure proceedings, Plaintiff failed to allege any actual prejudice that resulted from the irregularities. *Id.* at PageID.360.

Second, Defendants argue that Plaintiff failed to plead a violation of the Fair Debt Collection Practices Act (“FDCPA”) because Plaintiff did not prove that Ocwen was a debt collector as required by the statute. ECF No. 10, PageID.362. Next, Defendants assert that Plaintiff’s intentional infliction of emotional distress claim fails since, as a general rule in Michigan, contractual relationships and mortgage foreclosures do not give rise to claims for emotional distress. *Id.* at PageID.364. Fourth, Defendants claim that Plaintiff’s conspiracy claim fails because conspiracy, by itself, is not a cause of action. *Id.* at PageID.365. Finally, since the identities of the parties holding the mortgage are known, Defendants assert that interpleader is not required. *Id.* at PageID.366.

Magistrate Judge Grand agreed with Defendants' first argument, finding that Plaintiff failed to identify any actual error in the foreclosure proceedings. ECF. No 46, PageID.1794. The magistrate judge also found that the proper limitations period was fifteen years under M.C.L. § 600.5803, Defendants were not required to provide new notice after the sale was adjourned due to the bankruptcy proceedings, and the sheriff was not required to file an individual bond. *Id.* at PageID.1794-1802. In addition to the lack of defect, the Report and Recommendation asserted that Plaintiff failed to follow the statutory requirements to lengthen the redemption period and as such the redemption period expired without Plaintiff redeeming the property. *Id.* at PageID.1801. Even if Plaintiff did properly allege a defect, Magistrate Judge Grand noted Plaintiff failed to show prejudice as required by Michigan law because the adjournment of the sheriff's sale in fact provided Plaintiff more time in the property. *Id.* at PageID.1803. See *Kim v. JP Morgan Chase Bank, NA*, 825 N.W.2d 329, 337 (Mich. 2012).

As to Defendants' second claim, Magistrate Judge Grand referred to Plaintiff's own complaint, noting that Ocwen began servicing the loan before Plaintiff was in default. The Sixth Circuit held that a mortgage servicer is not a debt collector under the FDCPA unless it "acquired a debt in default or has treated the debt as if it were in default at the time of the acquisition." *Bridge v. Ocwen Fed. Bank, FSB*, 681 F.3d 355, 362 (6th Cir. 2012). Since Plaintiff did not

establish that Ocwen was a debt collector, as required by the FDCPA, Magistrate Judge Grand agreed with Defendants that the FDCPA claim should be dismissed.

Magistrate Judge Grand also asserted that Plaintiff's third claim of emotional distress should be dismissed. A claim of intentional infliction of emotional distress is not generally cognizable under Michigan law where the relationship at issue arises from a contract. ECF No. 46, PageID.1806. Further, Plaintiff's claim is based on an alleged breach of a mortgage contract and other courts in the Eastern District of Michigan have held that actions related to mortgage foreclosure do not give rise to claims for emotional distress. *See Roche v. CitiMortgage, Inc.* No. 14-11424, 2016 WL 5661580, at *9 (E.D. Mich. Sept. 30, 2016).

The Magistrate Judge addressed Defendants' fourth argument by examining the record and case law, finding that conspiracy by itself is not a cause of action and Plaintiff failed "to prove a separate, actionable tort." *Early Detection Ctr., P.C. v. N.Y. Life Ins. Co.*, 403 N.W.2d 830, 836 (Mich. 1986). Finally, Magistrate Judge Grand agreed with Defendants that interpleader was not appropriate because the record has established the identities of the relevant parties. ECF No. 46, PageID.1807.

II. Standard of Review

a. De Novo Review

Plaintiff filed ten objections¹⁰ to the Magistrate Judge's Report and Recommendation. ECF No. 50. A district court must conduct a de novo review of the parts of a Report and Recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.* "The Sixth Circuit's decision to require the filing of objections is supported by sound considerations of judicial economy," and "enables the district judge to focus attention on those

issues—factual and legal—that are at the heart of the parties' dispute." *Thomas v. Arns*, 474 U.S. 140, 147 (1985). As such, "[o]nly those specific objections to the magistrate's report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have." *McClanahan v. Comm'r of Soc. Sec.*, 474 F.3d 830, 837 (6th Cir. 2006) (quoting *Smith v. Detroit Fed'n of Teachers Loc. 231*, 829 F.2d 1370, 1373 (6th Cir. 1987)).

¹⁰ There appears to be a discrepancy in the number of objections listed in the index and body of the Plaintiff's objections to the Report and Recommendation. While nine objections are listed in the index, it appears there are ten objections in the body.

The Sixth Circuit has concluded that “[o]verly general objections do not satisfy the objection requirement.” *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006) (abrogated on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)). “The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). An objection is too general if it merely restates the arguments previously presented or disputes the recommendation without specifying the findings the party believes to be in error. *Id.* See also *VanDiver v. Martin*, 304 F.Supp.2d 934 (E.D. Mich. 2004). Where a party fails to make specific objections, “[t]he functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks.” *Howard v. Sec’y of Health and Hum. Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). See also *Smith v. Detroit Fed’n of Teachers Loc. 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). “[F]ailure to file specific objections to a magistrate’s report constitutes waiver of those objections,” and the Court is not required to conduct a de novo review of the issues addressed by the magistrate. *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004). See *Thomas*, 474 U.S. at 149.

III. Analysis

Plaintiff raises ten objections to the Report and Recommendation. Each objection will be addressed in turn.

a. First Objection: The Complaint Adequately Stated a Claim for which Relief can be Granted

In her first objection, Plaintiff argues that there were several errors in the foreclosure proceedings including failure to post notice of adjournments of the sheriff's sale, fraudulent misrepresentations about the amount of debt Plaintiff owed, and alteration of loan payment records. ECF No. 50, PageID.18981900. Plaintiff further notes that Defendants have not "denied or offered any evidence" that her loan was not sold off when HSBC Holdings was forced to liquidate billions of dollars in assets. *Id.* at PageID.1899.

To begin, while Plaintiff's first objection appears to disagree with the recommendation of the magistrate judge's report, the objection fails to specify the findings Plaintiff believes to be in error. Instead, the objection restates Plaintiff's arguments and provides a factual overview of what she claims to be irregularities in the proceeding. For example, Plaintiff seems to argue that the Trustee could not foreclose because her loan was liquidated when HSBC was forced to liquidate "billions of dollars in assets" and Defendants have failed to offer evidence that Plaintiff's loan was not sold or charged off in that liquidation. ECF No. 50, PageID.1899. Despite the restatement of her argument, Plaintiff fails to address how the liquidation of a HSBC Euro High Yield Bond Fund is in any way related to the foreclosure of a mortgage assigned to HSBC Bank USA N.A.—a different entity. Plaintiff also fails to specify how the Trustee was not entitled to foreclose where both this

period does not divest the Court of its authority to adjudicate the claim. Plaintiff further argues the redemption period may be extended as a matter of equity, and her ex parte emergency motion to extend the redemption period is still pending.

First, Plaintiff claims that her emergency ex parte temporary restraining order to extend the redemption period is still pending in this Court because this Court remanded her case back to state court without issuing an order on the motion. ECF No. 50, PageID.1903. On October 22, 2019, Plaintiff filed her complaint in state court as well as an ex parte motion to extend the redemption period which was set to expire on November 7, 2019. The court denied the motion noting that Plaintiff did not show she was “entitled to an equitable extension of the redemption

period on an ex-parte basis” as she failed to make a “clear showing of fraud or irregularity.” ECF No. 103, PageID.389. After the state court denied the motion, Plaintiff removed the case to this court and filed an ex parte emergency motion for equitable extension of the redemption period. Case No. 1913208, ECF No. 2. However, this Court remanded the case back to the Oakland County Circuit Court as there was no legal basis for the removal of Plaintiff’s case to federal court. Case No. 19-13208, ECF No. 11, PageID.597. That

CHL Mortg. Tr. 2006-J1, 628 Fed. App’x 919, 920-21 (6th Cir. 2015). Here, the standing as discussed by Magistrate Judge Grand implicates a merits issue: does Plaintiff have “standing” to challenge the foreclosure sale after the redemption period has lapsed? *Id.* at 921.

case, Case No. 1913208, was closed on November 8, 2019.

On December 4, 2019, this action, Case No. 1913569, commenced when Defendants removed the instant case to federal court. ECF No. 1. For whatever reason, Plaintiff did not refile her ex parte motion for extension of the redemption period in the newly removed case. Therefore, the ex parte motion is not pending as the previous, Case No. 19-13208, was closed in November of 2019 and the motion was never refiled. Plaintiff also chose not to file a motion for consolidation with the prior case, but such a motion would not have been granted in any event because it is not appropriate to consolidate the instant action with the closed case. *Northington v. Abdellatif*, 2020 WL 1808538, at *3 (E.D. Mich. Apr. 9, 2020).

Next, Plaintiff argues that a “mortgagor may hold over after foreclosure by advertisement and test the validity of the sale in the summary proceeding.” *Mfr. Hanover Mortg. Corp. v. Snell*, 370 N.W.2d 401, 404 (Mich. 1985); ECF No. 50, PageID.1901. However, Plaintiff’s reliance on *Snell* is misplaced, because any challenge to the validity of the foreclosure sale must occur before the redemption period lapses. *Derbabian v. Bank of Am., N.A.*, 587 Fed. App’x 949, 957 (6th Cir. 2014) (finding that the district court properly dismissed a claim despite the plaintiff’s hold-over right because the redemption period had passed). Here, Plaintiff does not dispute that the redemption period expired on November 7, 2019 and at that point Plaintiff’s rights in and to the property were extinguished. See *Bryan v. JPMorgan Chase Bank*, 848 N.W.2d 482, 485 (Mich. Ct. App. Apr. 10, 2014).

Because Plaintiff failed to challenge the foreclosure before the redemption period expired, Plaintiff's interest in the property has been extinguished. *Houston v. U.S. Bank Home Mortg. Wis. Servicing*, 505 Fed. App'x 543, 549 (6th Cir. 2012); *Piotrowski v. State Land Off. Bd.*, 4 N.W.2d 514, 517 (Mich. 1942). As Plaintiff did not redeem the property within the statutory redemption period, in order to have the foreclosure set aside, she must show that there was fraud or irregularity in the foreclosure proceedings. *El-Seblani v. IndyMac Mortg. Services*, 510 Fed. App'x 425, 428 (6th Cir. 2013) (quoting *Schulthies v. Barron*, 167 N.W.2d 784, 785 (Mich. 1969)). However, Plaintiff's remaining argument that the Court should extend the redemption period is also without merit because—as explored in the preceding section—Plaintiff failed to present sufficient evidence of fraud or irregularity. In addition to this Court's review of the record and Magistrate Judge Grand's recommendation, the state court also found that Plaintiff had failed to make a clear showing of fraud or irregularity when they denied her ex parte motion to extend the redemption period. ECF No. 51, PageID.1927 (referencing Ex. B to Motion to Dismiss). Even if Plaintiff had established fraud or irregularity, the foreclosure would not be immediately void but only voidable. *Kim v. JPMorgan Chase Bank, N.A.*, 825 N.W.2d 329, 337 (Mich. 2012).

In order to nullify the foreclosure, Plaintiff must show that she was prejudiced by Defendants' failure to comply with the requirements for foreclosure. *Id.* The complaint and objections do not show that Plaintiff would have been in a better

position to preserve her interest in the property had Defendants complied with the statute. *Id.* at 337. Instead, Plaintiff merely restates the alleged irregularities and contends that Defendants' "concealment" prevented her from being able to attend and bid or file a lawsuit to stop the sale. This claim is not supported by the record. If anything, Plaintiff's filing for bankruptcy to "stop the sale," demonstrates her awareness that the sale was going to occur and, as Magistrate Judge Grand noted, "simply afforded her more time in the Property." ECF No. 46, PageID.1804. *See Diem v. Sallie Mae Home Loans, Inc.*, 859 N.W.2d 238, 242-43 (Mich. Ct. App. Oct. 16, 2014). Given Plaintiff's conclusory allegations of prejudice and failure to demonstrate fraud or irregularity, Plaintiff is not entitled to an extension of the redemption period or rescission of the foreclosure sale. For the reasons stated above, the second objection will be overruled.

c. Third Objection: Foreclosure Barred by Statute of Limitations

Plaintiff argues Defendants' attempt to foreclose the property is time-barred as the statute of limitations is ten years and has already run. She claims the period of limitation for an "action premised upon covenant in a mortgage of real estate" is ten years under M.C.L. § 600.5807(4).¹² According to Plaintiff, since the ten-year statute of limitations

¹² In the updated code, M.C.L. § 600.5807(5) is the subsection governing the period of limitations for "an action founded on a covenant in a deed or mortgage of real estate."

began to run on June 5, 2007, Defendants' attempt to foreclose the mortgage on November 18, 2019 is barred.

In her objections, Plaintiff relies on *Visioneering Inc. Profits Sharing Tr. v. Belle River Joint Venture*, for the proposition that the proper period of limitations for Defendants' foreclosure action was ten years. 386 N.W.2d 185 (Mich. 1986). The reliance on *Visioneering* is misplaced as the defendant was appealing from the trial court's award of damages following the plaintiff's claim for a breach of a mortgage. *Id.* at 186. Here, unlike *Visioneering*, none of the defendants are seeking or have sought damages. Instead, Defendant Trustee brought an action to begin foreclosure proceedings.

The statute of limitations for foreclosure by advertisement is governed by M.C.L. § 600.5803.

Actions to foreclose a mortgage on real property must be commenced "within 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage." M.C.L. § 600.5803. *See Wishhart v. Fed. Nat. Mortg. Ass'n*, 2016 WL 3087703, at *4 (E.D. Mich. June 2, 2016). According to Plaintiff's own admission, she made her last payment in April of 2007. ECF No. 1, PageID.20. Therefore, the limitations period would not expire until April of 2022. As Defendants completed the foreclosure in May of 2019, within the applicable limitations period, the foreclosure is not time-barred. The third objection will be overruled.

d. Fourth Objection: Violation of Automatic Stay

In her fourth objection, Plaintiff contends that Defendants violated the automatic stay, triggered by the filing of the bankruptcy petition, when they failed to cancel or post an adjournment notice of the sheriff's sale.

At the outset, this Court notes that Plaintiff's argument is difficult to follow and again fails to specify what findings by Magistrate Judge Grand she believes to be in error. *Miller*, 50 F.3d at 380. It appears, as Magistrate Judge Grand explains, that Plaintiff is arguing Defendants' adjournments "were actually attempts to collect a debt (in violation of the bankruptcy stay), as opposed to efforts by Defendants to respect the stay (by postponing the foreclosure sale)." ECF No. 46, PageID.1799. This argument is both illogical and not supported by case law.

Nevertheless, this Court outlines below why Defendants complied with all necessary statutory requirements for notice and adjournment during and after the automatic stay.

Plaintiff received notice on November 7, 2018 that her loan was in default and would be foreclosed unless she repaid the debt owed. ECF No. 1-1, PageID.224. Defendants posted notice of the foreclosure sale, as required by Michigan law. M.C.L. § 600.3220. After receiving notice of the foreclosure sale, Plaintiff filed for bankruptcy "to stop the sale." ECF No. 1-1, PageID. 25. Defendants provided proper notice of adjournment of the mortgage foreclosure sale while the bankruptcy claims were pending. ECF No.

10-2, PageID.378; M.C.L. 600.3220; *In re Glob. Technovations, Inc.*, 694 F.3d 705, 711 (6th Cir. 2012). Specifically, Trustee posted and published notices of the adjourned sheriff's sale each week from February 26, 2019 to May 7, 2019. ECF No. 1-1, PageID.258, ECF No. 102, PageID.370-87; *Worthy v. World Wide Fin. Servs., Inc.*, 347 F.Supp.2d 502, 511 (E.D. Mich. 2004) ("Under the law, a party who publishes an initial notice of adjournment may continue to adjourn a foreclosure sale from week to week without having to republish a notice of adjournment every week."). Contrary to Plaintiff's arguments, Defendants did not violate the automatic stay by postponing the foreclosure sale until after the dismissal of the bankruptcy case. *Worthy*, 347 F.Supp.2d at 508 (holding "that a postponement of a sheriff's sale in accordance with state law does not violate 11 U.S.C. § 362."). In fact, the adjournment of the sheriff's sale is evidence of Defendants' compliance with the automatic stay as it afforded Plaintiff "a breathing spell" as she was given more time in the property. *Id.* (quoting *In re Fine*, 285 B.R. 700, 702 (Bankr. D. Minn. 2002)). Plaintiff does not show that any judgments were enforced, property repossessed, or liens perfected present any against her while the bankruptcy claims were pending, nor does she offer any other evidence that Defendants violated the automatic stay. *In re Glob. Technovations*, 694 F.3d at 711.

Defendants were also not required to publish new notice of the foreclosure sale after the period of adjournment was over. *Drew v. Kemp-Brooks*, 802 F.Supp.2d 889, 895-96 (E.D. Mich. 2011) (quoting *Worthy*, 347 F.Supp.2d at 511 (E.D. Mich. 2004)).

Nevertheless, even if Defendants had been required to republish notice, Plaintiff does not allege any prejudice that resulted from the alleged failure to republish. *Spadafore v. Aurora Loan Services, LLC*, 564 Fed. App'x 168, 172 (6th Cir. 2014) (finding the foreclosure sale could not be set aside based on allegations that the defendant adjourned the sale without republishing notice because the plaintiff had timely notice of the proceedings and sale yet failed to block the sale or redeem the property). Again, based on Plaintiff's pleadings and the fact that she filed for bankruptcy, it appears Plaintiff was aware of the foreclosure sale and the adjournment only afforded her more time with the property. As Plaintiff is unable to establish any defects or actionable prejudice during or after the pendency of her bankruptcy proceedings, she has not presented enough to set aside the foreclosure. The fourth objection will be overruled.

e. Fifth Objection: Failure to Comply Due to Concealment

Plaintiff next argues that Defendants concealed the May 7 sheriff's sale from her. As a result of this alleged concealment, Plaintiff claims she was denied her last chance to file the proper documents to extend the redemption period.

As discussed in the preceding section, Defendants complied with all notice requirements. Plaintiff received another notice on November 7, 2018 that her loan was in default. ECF No. 1-1, PageID.224. Trustee also noticed the foreclosure sale. ECF No. 11, PageID.270. By Plaintiff's own admission, she was

aware of the foreclosure sale as she filed bankruptcy “to stop the sale.” ECF No. 1-1, PageID.25. Additionally, Defendants posted in the Detroit Legal News a notice that stated the adjournment period was to end on May 7, 2019. ECF No. 10-2, PageID.387. The record does not support Plaintiff’s claim that Defendants concealed the May 7 sale because Defendants posted the required notices, including one that noted the end date of the adjournment period.

Plaintiff’s assertion that Defendants concealed the May 7 sale is unsupported. As such, Plaintiff’s fifth objection will be overruled.

f. Sixth Objection: Roger St. Jean Not Properly Appointed

Plaintiff contends Roger St. Jean was not properly appointed as a deputy sheriff, as required by Michigan’s foreclosure statute, and therefore was not authorized to conduct a foreclosure sale.

In her objection, Plaintiff fails explain what was improper about the appointment of St. Jean. While Plaintiff quotes two statutes, she does not present any evidence or support for the idea that the appointment was improper. Neither M.C.L. § 600.3216 nor M.C.L. § 51.70 require the appointment of sheriffs to be filed with the county clerk’s office. As Plaintiff fails to properly explain how St. Jean’s appointment was illegitimate, her objection should be overruled.

Even if Roger St. Jean was not properly appointed to conduct the sheriff’s sale, Plaintiff once again fails to demonstrate how she was prejudiced by

the improper appointment. *Kim*, 825 N.W.2d at 337. Plaintiff does not even address prejudice in her objection regarding St. Jean, much less show that she would have been in a better position to preserve her interest in the property had St. Jean been “properly” appointed. *Id.* As Plaintiff has made no showing of the prejudice she experienced as the result of the alleged improper appointment of St. Jean as a deputy sheriff, the foreclosure may not be set aside. The sixth objection will be overruled.

g. Seventh Objection: Prejudice

While Plaintiff concedes that prejudice is a requirement to set aside a foreclosure sale, she argues she was prejudiced by the errors in the proceeding because they prevented her from challenging the sale. Plaintiff further argues Defendants’ concealment prevented her from attending or bidding on her property during the foreclosure sale. After Defendants sold the property, Plaintiff asserts she was prejudiced by the triggering “emotional event” and was unable to concentrate at her job. Finally, in her objection Plaintiff asserts the Magistrate Judge failed to evaluate whether Defendants created a prepayment penalty when they claimed the amount owed on the property was \$457,190.68. According to Plaintiff, this was a \$276,307.20 surplus, but Defendants did not have a right to collect future interest in the foreclosure bid as “amounts due” when they accelerated the note. Under Michigan law, a mortgagor may file suit to “set aside the sale based on defects or irregularities in the foreclosure process.” *Spadafore*, 564 Fed. App’x at 171

(referencing *Kim*, 825 N.W.2d at 337). However, defects or irregularities in the proceedings only render the sale voidable as opposed to void. *Id.* “[T]o set aside the foreclosure sale, plaintiffs must show that they were prejudiced by defendant’s failure to comply with [Mich. Comp. Laws § 600.3204]. To demonstrate such prejudice, they must show that they would have been in a better position to preserve their interest in the property absent defendant’s noncompliance with the statute.” *Id.* (quoting *Kim*, 825 N.W.2d at 337).

As discussed in each of the proceeding sections, Plaintiff has failed to establish any defect or irregularity in the foreclosure proceedings. However, even if Plaintiff could establish a defect or irregularity, she has not demonstrated that any of the purported errors would have put her in a better position to preserve the property. *Kim*, 825 N.W.2d at 337. Plaintiff had timely notice of both the foreclosure proceedings, adjournment, and the sheriff’s sale, but did not make any effort to block the sale or redeem the property. *Spadafore*, 564 Fed. App’x at 172.

Further, Plaintiff fails to demonstrate what she would have done differently had the defects or irregularities she alleges occurred. Plaintiff claims that the lack of notice of the May 7 sale rendered “challenging the sale impossible” and that the sale “triggered an emotional event” which prevented her from being able to perform her work as a paralegal. ECF No. 50, PageID.1913,1915. However, neither of these explanations show that Plaintiff would have been in any better position to keep the property had the alleged defects not occurred. *Conlin v. Mortg. Elec. Registration Sys., Inc.*, 714 F.3d 355, 362 (6th Cir.

2013). In fact, Plaintiff was given the opportunity to redeem the property after the sheriff's sale and failed to do so. *Rush v. Mac*, 792 F.3d 600, 604 (6th Cir. 2015) ("They received an opportunity for six months to become current on the loan and avoid foreclosure."). Plaintiff has failed to demonstrate how she lost a potential opportunity to preserve her interest in the property because of any alleged defects or irregularities.

Plaintiff also argues the credit bid included a surplus of \$276,307.20, which constitutes an "impermissible prepayment penalty," because she only borrowed \$178,500 in 2006. ECF No. 50, PageID.1916. The facts in the record do not support Plaintiff's argument as there is no indication the "surplus" is the result of anything other than the loan balance growing because Plaintiff failed to pay both the principal and interest on the loan for 13 years. ECF No. 1-1, PageID.224 (A notice provided to Adelson in November of 2018 noting that the unpaid interest on the loan was \$210,669.86).

The case law Plaintiff cites also does not support the proposition that the Trustee's bid included a surplus amount Defendants were not entitled to. To take just one example, *Bank of Three Oaks v. Lakefront Properties* only stands for the proposition that a mortgagee is not liable for "interest, taxes, and insurance premiums accruing between the date of the sale and the date the redemption period expired." 444 N.W.2d 217, 219 (Mich. Ct. App. July 18, 1989).

Here, Plaintiff is only contesting the amount bid—not any amount that accrued between the May 7 sale and the expiration of the redemption period. In

fact, in *Bank of Three Oaks* the debt was satisfied because the property was purchased at the foreclosure sale for “an amount equal to the amount due on the mortgage.” *Id.* at 219. The successful bid included “the amount of principal and interest owing to the Bank on the Note and Mortgage as of that date, plus the costs of foreclosure and statutory attorney fees related to the foreclosure.” *Id.* at 218. The same is true in the present case as the Trustee’s bid was inclusive of unpaid interest and other charges that accrued while Plaintiff failed to make any payments. Plaintiff has presented no evidence to the contrary. For the reasons stated above, Plaintiff’s seventh objection will be overruled.

h. Eighth Objection: Defendants Violated FDCPA

Plaintiff next contends that Ocwen is a debt collector because it has treated Plaintiff’s loan as if it was in default from the time it began servicing the loan. According to Plaintiff, as a debt collector, Ocwen was subject to the FDCPA.

Liability for violations of the FDCPA can only attach to those who meet the statutory definition of a “debt collector.” *Montgomery v. Huntington Bank*, 346 F.3d 693, 698 (6th Cir. 2003). A debt collector is defined as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6).

However, the Act exempts one that is “collecting or attempting to collect any debt owed” which “originated by such person” or “was not in default at the time it was obtained by such person.” 15 U.S.C. § 1692a(6)(F)(ii), (iii). Further, the Sixth Circuit has determined that Congress did not intend for the statutory definition of debt collector to cover “mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing[.]” *Bridge v. Ocwen Fed. Bank, FSB*, 681 F.3d 355 (6th Cir. 2012) (quoting S. Rep. 95–382, 95th Cong. 1st Session 4, reprinted in 1977 U.S.C.C.A.N. 1695, 1698 (1977)).

Plaintiff has failed to present any evidence to support the claim that Ocwen treated Plaintiff’s loan as if it was in default from the time it began servicing the loan. In fact, the record shows the opposite: According to Plaintiff’s own complaint, Ocwen sent her “notification it had been assigned Sebring mortgage servicing rights” and that future payments should be directed to them on December 19, 2006. ECF No. 1-1, PageID.20. Plaintiff also admits that “from January 2007 through April 2007 she made payments to Ocwen.” *Id.* The Notice of Default attached to Plaintiff’s complaint is dated April 4, 2007, which is months after Plaintiff received notice that Ocwen would be servicing the loan. Therefore, based on the facts as alleged in Plaintiff’s own complaint, the loan was not in default when Ocwen began servicing it. As Plaintiff has presented no other evidence to dispute this assertion, Ocwen cannot be found to be a debt collector under the FDCPA. The eighth objection will be overruled.

h. Ninth Objection: Emotional Distress

Plaintiff argues she suffered emotional distress when Defendants conducted an improper foreclosure that resulted in the selling of her property.

To begin, Plaintiff's objection fails to dispute the recommendation with any specific findings she believes to be in error. *Miller*, 50 F.3d at 380. Plaintiff fails to address Magistrate Judge Grand's discussion of Michigan law, finding that claims of intentional infliction of emotional distress are generally not cognizable where the relationship at issue is contractual. The Report and Recommendation also notes that other courts in this district have found "actions associated with mortgage foreclosure do not give rise to a claim for intentional infliction of emotional distress," which Plaintiff fails to dispute. ECF No. 46, PageID.1806 (referencing *Hajciar v. Crawford and Co.*, 369 N.W.2d 860 (Mich. Ct. App. Feb. 22, 1985); *Roche v. CitiMortgage, Inc.*, No. 1411424, 2016 WL 5661580, at *9 (E.D. Mich. Sept. 30, 2016)). Instead, Plaintiff merely restates that the "sale of her home caused her to experience anger, anxiety, and depression." ECF No. 50, PageID.1920. Because Plaintiff failed to identify any errors in the Magistrate Judge's Report and Recommendation, this Court is not required to conduct a de novo review of the issue. *Cowherd*, 380 F.3d at 912. Despite Plaintiff's failure to submit specific objections, the Court finds that with regard to Plaintiff's emotional distress claim Magistrate Judge Grand's Report and

Recommendation is well-reasoned and correct. Plaintiff's ninth objection will be overruled.

i. Tenth Objection: Conspiracy

Finally, Plaintiff contends Defendants defrauded her of the property at issue by falsifying records as part of a scheme to conduct a wrongful foreclosure. As such, Plaintiff asserts that she has adequately pled a civil conspiracy claim. "Under Michigan law, 'a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate actionable tort.'" *Petroleum Enhancer, LLC v. Woodward*, 558 Fed. App'x 569, 580 (6th Cir. 2014) (quoting *Early Detection Ctr., P.C. v. N.Y. Life Ins. Co.*, 403 N.W.2d 830, 836 (Mich. 1986)). While Plaintiff discusses a "fraudulently inflated sale price," "false information," "a scheme," "falsified records," and "false affidavits," her objection fails to identify the underlying tort in her civil conspiracy claim. *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 670 N.W.3d 569, 580 (Mich. Ct. App. July 3, 2003) ("[P]laintiff simply failed to establish the underlying tort because they failed to establish any unlawful purpose or unlawful means in defendants' actions.").

Plaintiff cites to *Aetna Cas. Sur. Co. v. P&B Autobody* to support her assertion that she has properly alleged a conspiracy claim. 43 F.3d 1546, 1564 (1st Cir. 1994). However, the First Circuit in *Aetna* was discussing civil conspiracy causes of action under Massachusetts law—not Michigan. *Id.* at 1563. Because *Aetna* is inapplicable to the current case and Plaintiff has not articulated the tort underlying her

claim of civil conspiracy, the claim should be dismissed. Given the above, the tenth objection will be overruled.

IV. Conclusion

After a *de novo* review of the record and the materials submitted by the parties, the Court concludes Magistrate Judge Grand properly reviewed the record and applied the correct law in reaching his conclusion. For the reasons set forth above, Plaintiff's objections are **OVERULED**, and the Report and Recommendation is **ACCEPTED** and **ADOPTED** as the opinion of the Court. Accordingly, Defendants' Motion to Dismiss (ECF No. 10), is **GRANTED**. Plaintiff's Motions to Strike and "Correct Docket" are **DENIED** (ECF Nos. 32, 37).

This matter is therefore **DISMISSED WITH PREJUDICE. SO ORDERED.**

Dated: November 10, 2020 /s/Terrence G.Berg

TERRENCE G. BERG
UNITED STATES
DISTRICT JUDGE

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-59

451703F05 – FC H
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Notice of Foreclosure by Advertisement

**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, March 05, 2019, at 10:00 AM to Tuesday March 12, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-60

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-61

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Publication Service anywhere in Michigan
Notice of Foreclosure by Advertisement

**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, **March 12, 2019, at 10:00 AM to Tuesday March 19, 2019, at 10:00 AM**, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-62

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-63

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**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, March 19, 2019, at 10:00 AM to Tuesday March 26, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-64

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-65

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**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, March 26, 2019, at 10:00 AM to Tuesday April 02, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-66

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-67

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**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, April 02, 2019, at 10:00 AM to Tuesday April 09, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-68

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-69

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Notice of Foreclosure by Advertisement

**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, April 16, 2019, at 10:00 AM to Tuesday April 23, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-70

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court within Oakland County at 10:00 AM on February 26, 2019:

B-71

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-72

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Notice of Foreclosure by Advertisement

**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, April 23, 2019, at 10:00 AM to Tuesday April 30, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-73

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

B-74

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**NOTICE OF ADJOURNMENT OF MORTGAGE
FORECLOSURE SALE**

State of Michigan
County of Oakland

I THOMAS P. RABETTE, a Deputy Sheriff of Oakland County, Michigan being the officer appointed to make the sale as stated in the notice attached hereto, at the request of the party in whose name said notice was published do hereby ADJOURN said sale from Tuesday, April 30, 2019, at 10:00 AM to Tuesday May 07, 2019, at 10:00 AM, at the same place stated herein.

I make an oath that the Notice of Adjournment was posted before or at the time of the sale and at the place of the sale.

**Thomas P. Rabette
Deputy Sheriff**

NOTICE is hereby given pursuant to MCL 600.3212 that the following will be foreclosed by a sale of the mortgage premises or some part of them at public auction at the place of holding the circuit court

B-75

within Oakland County at 10:00 AM on February 26, 2019:

Name(s) of the mortgagor(s)

Adelson, a single person

Original-Mortgagee Mortgage Electronic Registration Systems, Inc.

Foreclosing Assignee (if any): HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates

Date of Mortgage September 26, 2006

Date of Mortgage Recording November 3, 2006

**Amount claimed due on date of notice
\$450,940.25.**

Description of the mortgaged premises: Situated in Village of Lake Orion, Oakland County, Michigan and described as: Lot 13, Fay Morse's Baldwin-Waldon Acres Subdivision as recorded in Liber 63 Page 7 of Plats, Oakland County Records.

RETURN OF SERVICE

State of Florida County of SARASOTA Circuit Court
Case Number 2019 CA 000280 NC

Plaintiff

RICARDO J. LOPEZ

vs

Defendant,

THOMAS P. RABETTE

For: Stephen M. Fernandez

SHAPIRO, GOLDMAN, BABBONI,

FERNANDEZ & WALSH

308 Cocoanut Avenue, Sarasota, FL 34236

Received by Sarasota Process Servers, Inc. on the 22nd day of January 2019 at 8:55 am to be served on THOMAS P. RABETTE, 5304 ASHTON OAKS CT., SARASTOA FL 34233.

I, Raymond Feliciano, do hereby affirm that on the 23rd day of January 2019 at 11:29 am

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Summons; Complaint For Damages, First Request For Admissions To Defendant; Plaintiff First Request To Produce To Defendant And Plaintiff's First Notice Of Serving Interrogatories To Defendant with the date and hour of service endorsed thereon by me to: THOMAS P. RABETTE at the address of 5304 ASHTON OAKS CT., SARASOTA, FL 34233, and informed said person

B-77

of the contents therein, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Marital Status: Based upon inquiry of party served, Defendant is married.

I am over the age of 18 and have no interest in the above action. I am certified in good standing in the judicial circuit in which the process was served. No notary required pursuant to FS92.525.2 and under the penalty of perjury, I declare that the facts set forth are true and correct.

Raymond Feliciano
#0209
Sarasota Process Servers, Inc.
P.O. Box 18776
Sarasota, FL 34276
(941) 346-7900

Our Job Serial Number SPS-2019000333

B-78

Filed 01/29/2019 02:27 PM-Karen E. Rushing, Clerk
of the Circuit Court, Sarasota County, FL.
Filing #83501833 E-Filed 01/17/2019 11:59:31 AM
IN THE CIRCUIT COURT OF THE TWELFTH
JUDICIAL CIRCUIT IN AND FOR SARASOTA
COUNTY, FLORIDA

RICARDO J. LOPEZ,

Plaintiff,

vs

CASE NO.
DIVISION.

THOMAS P. RABETTE,

Defendant,

COMPLAINT FOR DAMAGES

Plaintiff, RICARDO J. LOPEZ by and through
the undersigned attorneys, sues Defendant, THOMAS
P. RABETTE, and alleges the following:

1. This is an action for damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.
2. Venue for this action is appropriate in Sarasota County, Florida because the accident giving rise to this action occurred in Sarasota, Florida.
3. At all times material and relevant, Plaintiff is and was a resident of Sarasota County, Florida.

4. **At all times material and relevant, Defendant is and was a resident of Sarasota County Florida.**
5. All Conditions precedent to bringing this action have occurred or have been waived.

COUNT I: Negligence of Defendant

6. Plaintiff re-alleges paragraphs 1 through 5.
7. On or around March 5, 2018, Defendant operated a motor vehicle such that it wrongfully collided with a vehicle being occupied by the Plaintiff.
8. On or around the same date, Defendant owed a duty to other drivers, including the Plaintiff, to use reasonable and ordinary care in the operation of his vehicle.
9. On or around the same date, Defendant breached that duty of care of the Plaintiff. Such breaches include, but are not limited to the following:
 - a. Attempting to make a left turn in front of Plaintiff's vehicle in violation of his right-of-way;
 - b. Driving too fast for conditions as they existed immediately prior to the accident'
 - c. Failing to pay adequate attention to road conditions as they existed immediately prior to the accident;
 - d. Otherwise failing to use reasonable and ordinary care in the operation of his vehicle.

10. Defendant knew, or reasonably should have known, that failure to use ordinary care in the operation of his vehicle could cause the type of accident which caused injury to the Plaintiff.
11. As a direct and proximate result, Plaintiff suffered bodily injury and resulting pain and suffering disability, disfigurement, mental anguish, loss of capacity for enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition. These losses are permanent within a reasonable degree of medical certainty and will continue into the future.

WHEREFORE, Plaintiff, RICARDO J. LOPEZ, demands judgment for damages against Defendant, THOMAS P. RABETTE, for all just and proper relief to which he may be entitled under Florida law and demands a trial by jury.

SHAPIRO, GOLDMAN, BABBONI
FERNANDEZ & WALSH
308 Cocoanut Avenue
Sarasota, FL 34236
(941) 954-1234
Sfernandezpleadings@justicepays.com
Attorneys for Plaintiff
STEPHEN M. FERNANDEZ, ESQ.
Florida Bar No. 0723673

B-81

Received Oakland County Register of Deeds
2019 May 14 AM10:36

LIBER 52824 PAGE 714 0074336
\$21.00 DEED – COUNTY
\$4.00 REMONUMENTATION
\$5.00 AUTOMATION
503.25 TRANSFER TAX COUNTY
05/15/2019 08:41:50 AM RECEIPT #50098
PAID RECORDED/Oakland County, MI
Lisa Brown Clerk/Register of Deed
State of Michigan Real Estate Transfer Tax

451703F05 Adelson – FC-H

SHERIFF'S DEED ON MORTGAGE SALE

This indenture Made this 7th day of May A.D. 2019, between ROGER A ST. JEAN, a Deputy Sheriff in and for Oakland County, Michigan, whose address is 1200 N. Telegraph Rd Pontiac Michigan 48341-1032 party of the first part, and 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 2007HE1 Asset Backed Pass-Through Certificates whose address is 1 Mortgage Way, Mount Laurel, NJ 080544637, party of the second part (hereinafter called the grantee)

WITNESSETH, that Whereas a certain mortgage was granted by Wendy Adelson, a single

person mortgagor(s), to Mortgage Electronic Registration Systems, Inc., Mortgage dated September 26, 2006, and recorded on November 3, 2006 in Liber 38341 on Page 483, and assigned by said Mortgagee to HSBC Bank USA NA 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 2007-HE1 Asset Backed Pass-Through Certificates as assignee as documented by an assignment dated June 5, 2007 recorded on June 27, 2007 in Liber 39291 on Page 703, in Oakland County Records, Michigan, and

WHEREAS no suit or proceeding at law or in equity have been instituted to recover the debt secured by said mortgage or any part thereof, and

WHEREAS, said mortgage contained a power of sale which has become operative by reason of default in the condition of said mortgage and

WHEREAS, BY VIRTUE OF SAID POWER OF SALE, AND PURSUANT TO THE STATUTE OF THE State of Michigan in such case made and provided a notice was duly published and a copy thereof was duly posted in a conspicuous place upon the premises described in said mortgage that the said premises, or some part of them, would be sold at 10:00AM on the 26th day of February, A.D. 2019 (sale adjourned from February 26, 2019 to May 7, 2019) at public vendue that being the place of holding the Circuit Court for Oakland County where the premises are situated and WHEREAS pursuant to said notice I did at on the date last aforesaid, expose for sale at public vendue the said

lands and tenements hereinafter described and on such sale did strike off and sell the said lands and tenements to the grantee for the sum of Four Hundred Fifty-Seven Thousand One Hundred Ninety and 68/100 Dollars (\$457,190.68) that being the highest bid therefore and the grantee being the highest bidder, and

WHEREAS, said lands and tenements are situated in the Village of Lake Orion, Oakland County, Michigan more particularly described in Exhibit A, attached and commonly known as

3630 Waldon Rd
Property Tax Parcel ID O-09-19-400-014

This property may be located within the vicinity of farmland or a farm operation. Generally, accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan right to farm act.

Now this Indenture Witnesseth that I the Deputy Sheriff aforesaid by virtue of and pursuant to the statute in such case made and provided and in consideration of the sum of money so paid as aforesaid, have granted, conveyed, bargained and sold and by this deed do grant convey, bargain and sell unto the grantee its successors and assigns forever all the estate, right, title and interest which the said Mortgagor(s) had in said land and tenements and every part thereof, on the 26th day of September A.D.

2006 that being the date of said mortgage, or at any time thereafter, to and to hold the said lands and tenements and every part thereof to the said grantee its successors and assigns forever, to their sole and only use, benefit and behoof forever, as fully and absolutely as I, the Deputy Sheriff aforesaid, under the authority of aforesaid might could or ought to sell the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the date and year first above written.

ROGER A. St. JEAN Deputy Sheriff in and for the County of Oakland

STATE OF MICHIGAN
COUNTY OF OAKLAND

On 5-7-2019 before me, a Notary Public in and for said County of Oakland came ROGER A. St. JEAN, a Deputy Sheriff of said County, known to me to be the individual described in and who executed the above conveyance and who acknowledged that she/he executed the same to be his/her free act and deed as such Deputy Sheriff.

NATHAN COOK
Notary Public, Oakland County, MI
My commission expires 3-16-2024
Acting in county of Oakland

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April 04, 2007

Via First Class Mail
VIA Certified Mail
(Return Receipt Requested)

Certified Number 71069017515115498116
Reference Code 0704

Wendy Adelson
3630 Waldon
Lake Orion, MI 48360-0000

Lone Number: 80331044
Property Address 3630 Waldon, Lake Orion, MI
48360-0000

NOTICE OF DEFAULT

Dear Borrower(s)

**AVISO IMPORTANTE PARAPERSONA
SDEHAB LAHISPANA:**

Esta notificacion es de suma importancia.
Puede afectar su derecho a continuar viviendo en su
casa. Si no entiende su contenido, obtenga una
traduccion inmediatamente o contactenos ya que
temenos representantes que hablan espanol y estan
disponibles para asistir.

**SPECIAL NOTICE IN THE EVENT YOU HAVE
FILED BANKRUPTCY**

If you have received a Chapter 7 discharge under the Bankruptcy Code of the United States or if your mortgage is the type which has been discharged pursuant to a completed Chapter 13 plan, this notice is not intended and does not constitute an attempt to collect a debt against you personally. If the foregoing applies to you, this notice is sent to you only as a preliminary step to a foreclosure on the mortgage against the above-referenced property. Provisions may be contained within your mortgage /deed of trust that require notice prior to foreclosure. As such, this is not an attempt to assert that you have any personal liability for this debt.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because OCWEN has not been notified of your bankruptcy case. If the foregoing applies to you, it is **IMPORTANT** that you or your bankruptcy attorney contact us Immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the bankruptcy chapter Number under which you have filed. If you have not recently filed bankruptcy or received a bankruptcy discharge, you are hereby notified that this letter is an attempt to collect a debt. All information obtained will be used for that purpose. The debt is owed to OCWEN as the owner or servicer of your home loan and mortgage.

Unless you dispute the validity of the debt, or any portion thereof, within thirty (30) days after receipt of this letter, the debt will be assumed to be valid by OCWEN. If you notify OCWEN in writing within thirty (30) days that the debtor a portion of the debt is disputed, OCWEN will send you verification of the debt. If you would like to obtain such verification, direct your request in writing to the Loan Resolution Consultant within thirty (30) days. The failure to dispute the validity of the debt may not be construed by any court as an admission of Liability by you.

Your mortgage payments are past due, which puts you in default of your loan agreement. As of April 04, 2007, you owe the following:

Principal and Interest	\$4,458.03
Interest Arrearage	0.00
Escrow	0.00
Late Charges	\$74.30
Insufficient Funds Charge	0.00
Fees/Expenses	\$114.67
Suspense Balance (CREDIT)	\$1,454.67
Interest Reserve Balance (CREDIT)	0.00
TOTAL DUE	\$3,192.01

This communication is from a debt collector attempting to collect a debt: any information obtained will be used for that purpose.

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PAYMENTS TO SEBRING

FIRST MERIT

Statement Period

Sept 16, 2006 to

Oct 14, 2006

Primary Account

WENDY B. ADELSON
3630 WALDON ROAD
LAKE ORION MI 48360

Summary of Accounts

Deposit Accounts

CHECKING

Total Deposit Accounts

REALITY CHECKING WENDY B ADELSON

ACCOUNT SUMMARY

Beginning Balance as of Sept 16, 2006

7 Deposits and Credits

11 Withdrawals and Debits

Total Account Fees

Ending Balance as of Oct 14, 2006

Checks

Date Number Amount

Total Number of Checks

Other Transactions

Date	Description	Withdrawals	Deposits
------	-------------	-------------	----------

Sept 27	SEBRING CAPITA	1486.01	
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For Deaf and Hearing Impaired (TTY/TDD) Call

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FIRST MERIT

Statement Period

Oct 16, 2006 to

Nov 14, 2006

Primary Account

WENDY B. ADELSON
3630 WALDON ROAD
LAKE ORION MI 48360

Summary of Accounts

Deposit Accounts

CHECKING

Total Deposit Accounts

REALITY CHECKING WENDY B ADELSON

ACCOUNT SUMMARY

Beginning Balance as of Oct 16, 2006

4 Deposits and Credits

1 Withdrawals and Debits

Total Account Fees

Ending Balance as of Nov 14, 2006

Checks

Date Number Amount

Total Number of Checks

Other Transactions

Date	Description	Withdrawals	Deposits
------	-------------	-------------	----------

Oct 16	SEBRING CAPITA	1486.01	
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For Deaf and Hearing Impaired (TTY/TDD) Call

B-90

FIRST MERIT

Statement Period

Nov 16, 2006 to

Dec 14, 2006

Primary Account

WENDY B. ADELSON
3630 WALDON ROAD
LAKE ORION MI 48360

Summary of Accounts

Deposit Accounts

CHECKING

Total Deposit Accounts

REALITY CHECKING WENDY B ADELSON

ACCOUNT SUMMARY

Beginning Balance as of Nov 16, 2006

7 Deposits and Credits

11 Withdrawals and Debits

Total Account Fees

Ending Balance as of Dec 14, 2006

Checks

Date Number Amount

Total Number of Checks

Other Transactions

Date	Description	Withdrawals	Deposits
------	-------------	-------------	----------

Nov 30	SEBRING CAPITA	1486.01	
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For Deaf and Hearing Impaired (TTY/TDD) Call

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PAYMENTS TO OCWEN

Flagstar
Bank

SASHABAW RD DEP 907
5720 SASHABAW RD
CLARKSTON, MI 48341

WENDY ADELSON
3630 WALDON RD
LAKE ORION, MI 48360

Date 06/12/2007
Account:
Product: home
From: 12/15/2006
To: 06/12/2007

Account Statement

Post Date	Effective Date	Check#	Description	Balance
01/02/2007	01/02			
01/02/2007	01/02		Ocwen Fed BA MTG PMT	1.000.00
01/03/2007	01/03			
01/06/2007	01/06			
02/05/2007	02/04			
02/05/2007	02/05		Ocwen Fed BA-MTG PMT	-900.00
01/03/2007	01/03			
01/06/2007	01/06			
03/12/2007	03/11			
03/12/2007	03/12		Ocwen Fed BA-MTG PMT	-1000.00
03/12/2007	03/12			

Account Information Available 24 Hours A Day
1.888.248.6423

Chase.com Contact Us Privacy Notice

CHASE

06/13/2007

Account Activity

Print

Pay Bills

Wendy Adelson

See Account

3630 Waldon Rd

Activate Pers

Lake Orion, MI 48360

See more

Transactions 65 - 89 for Chase Basic Checking (...0013)

Present Balance

Available Balance

Transactions

Date	Description	Credit	Debit	Balance
04/09/07				
04/06/07				
04/05/07	Ocwen Fed BA MTG PMT:		\$105.32	
04/03/07				
04/03/07	CHECK #9993 (VIEW)		\$1,527.01	

<http://banking.chase.comAccountActivity/AccountDetails.aspx?AI-&PageIndex=3> 6/13/2007

My Accounts > Account Activity » Check Details

Check Details

Check Number: 9993 Post Bate: 04/03/2007

Amount of Check: \$1,527.01

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Front Enlarge/Reduce Check Image

Wendy Adelson
3630 Waldon Rd
Lake Orion, MI 48360

180 9993

Date 3/30/07

Ocwen Financial **\$1,527.01**
One Thousand Five Hundred Twenty-Seven 01/100

CHASE
JP Morgan Chase Bank, N.A.
Detroit, Michigan 48226
www.Chase.com

MEMO Loan # 080331044

072000326:

Need help printing or saving this check?

<https://banking.chase.com/Statements/CheckImage.aspx?Src-AA&RequestCode=ibzMXZ> 6/13/2007

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MONEYGRAM EXPRESS

Send a payment via
MoneyGram Express

Receive Code (Required): 2355 3-5-2007

Make Sure Your Receive Code Is Correct It Ultimately
Routes Your Payment If You Provide The Wrong
Company Name Or Address Below.

Company: OCWEN FINANCIAL
ORLANDO FL

City State

Account Number To Which Payment Should Be
Applied Or Designated Recipient:

0080331044

DOLLAR AMOUNT: \$ 1,000.00

Agent must complete the reverse side of this form for
transactions of \$900.00 or more.

SENDER'S NAME: WENDY B. ADELSON
First Middle initial Last Name

3630 Waldon Rd

Street

Lake Orion MI 48360

City State Zip Home Phone

Wendy Adelson 248-872-3892

Sender's Signature

This Transaction Is Subject To The Terms And
Conditions On The Reverse Side. Those Terms And
Conditions Limit The Sender's Legal Rights And
Should Be Reviewed Prior To Signing.

ESCROW ACCOUNTS**CHASE**

Activity for Transactions 1-10

Present Balance \$14,880.10

Available Balance \$14,860.10

Search Transactions

<u>Date</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
02/06/08 (view)		\$1,486.01		\$14,860.10
01/04/08 (view)		\$1,486.01		\$13,374.09
12/04/07 (view)		\$1,486.01		\$11,888.08
11/04/07 (view)		\$1,486.01		\$10,402.07
10/01/07 (view)		\$1,486.01		\$ 8,916.06
09/01/07 (view)		\$1,486.01		\$ 7,430.05
08/31/07 (view)		\$1,486.01		\$ 5,994.03
07/31/07 (view)		\$1,486.01		\$ 4,458.03
06/03/07 (view)		\$1,486.01		\$ 2,972.02
05/20/07 (view)		\$1,486.01		\$ 1,486.01

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Your BofA Core Checking
For Apr 17, 2018 to May 16, 2018

WENDY B. ADELSON
ACCOUNT SUMMARY

Beginning balance on Apr 17, 2018	\$216,187.16
Deposits and other additions	1,481.01
ATM and debit card subtractions	-0.00
Other subtractions	-0.00
Checks	-0.00
Service Fees	-0.00
Ending balance on May 16, 2018	\$217,673.17

NOTE – This entire escrow account consisting of 122 statements are available upon request.

OCWEN PAYMENT RECORDS

June 03, 2007 Payment History

12/29/06	Begin Bal	\$178,500.00
12/29/06	Suspense Pmt	1,000.00
01/02/07	Pmt	900.00
02/22/07	Suspense Pmt	1,000.00
03/05/07	Pmt	1,000.00
03/19/07	Suspense Pmt	1,000.00
04/02/07	Pmt	1,527.01
04/03/07	Pmt	105.52

(ACCURATE PAYMENTS REMITTED)

June 13, 2007 Payment History

10/8/06	Loan Disbmt	\$178,500.00
2/21/07	Lgl/Coll Exp	4.67
3/05/07	Pmt Rev	1,000.00
3/22/07	Prop Eval	110.00
3/10/07	L/C	74.30
4/04/07	Lgl Coll Exp	4.67
4/01/07	L/Ch Asmt	74.30
4/17/07	Lgl Coll Ex	4.67
4/02/07	Loan Pmt	1,527.01
5/08/07	Prop Asmt	10.50
5/01/07	L/C Assmt	74.30

May 11, 2015 Payment History

10/08/06	NLD Loan Disbmt	\$178,500.00
12/29/06	PAP Prtl/Susp Pay	1,000.00

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01/29/07 RSP Reg Spread	900.00
01/31/07 IVT Investor Pool T O	
01/31/07 IVT Investor Pool	178,500.00
02/27/07 PAP Prtl/Susp Pay	1,000.00
03/05/07 PAP Prtl/Susp Pay	1,000.00
03/05/07 PAP Prtl/Susp Pay Ret	1,000.00
03/19/07 PAP Prtl / Susp Pay	1,000.00
04/02/07 PAP Prtl / Susp Pay	1,527.01
04/03/07 Reg Pmt	105.52

ORIGINAL ACCELERATION

FORECLOSURE NOTICE This firm is a debt collector attempting to collect a debt. Any information obtained will be used for this purpose. If you are in the Military, please contact our office at the number listed below. **MORTGAGE SALE-** Default has been made in the conditions of a certain mortgage made by: Wendy Adelson, a Single Person to Mortgage Electronic Registration Systems solely as nominee for Sebring Capital Partnership, Mortgagee, dated September 26, 2006 and recorded November 3, 2006 in Liber 38341 Page 483 Oakland County Records, Michigan. Said mortgage was subsequently assigned to: HSBC Bank USA N.A as Trustee on behalf of ACE Securities Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust and for 2007-HE1 Asset Backed Pass-Through Certificates, on **which mortgage there is claimed to be due at the date hereof the sum of One Hundred and Eighty Six Thousand Six-Hundred Seven Dollars and 68/100 (\$186,607.68)** including interest 9.99% per annum. Under the power of sale contained in said mortgage and the statute in such case made and provided, notice is hereby given that said mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, at public vendue, on the 1st floor Main entrance to the Court House in Pontiac at **10:00AM on Tuesday, July 3, 2007.** Said premises are situated in Village of Lake Orion, Oakland County, Michigan, and are described as: Lot 13, FAY MORSE'SBALDWINWALDON ACRES 3 DIVISION,

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as recorded in Liber 63, Page 7 of Oakland County Records Commonly known as 3630 Waldon, Lake Orion MI 48360 The redemption period shall be 6 months from the date of such sale, unless determined abandoned in accordance with MCL 600.3241 or MCL 600.3241a, in which case the redemption period shall be 30 days from the date of such sale, or upon the expiration of the notice required by MCL 600.3241a(c), whichever is later. Dated: JUNE 4, 2007 HSBC Bank USA N.A. on behalf of ACE Securities Co Home Equity Loan Trust and the registered holders of ACE Securities Corp. Home Equity Trust 2007-HEI. Asset Backed Pass-Through Certificates, Assignee of Mortgagee Attorneys Potestivo P.C. 811 South Blvd. suite 100 Rochester Hills, MI 48307 (248) 84+5123 Our file No: 07-71746

ASAP# 860840 06/05/2007, 06/12/2007, 06/19/2007,
06/26/2007

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TROTT LAW

A PROFESSIONAL CORPORATION

HEADQUARTERS:

31440 Northwestern Hwy., Suite 145 Farmington
Hills, Michigan 48334 (248) 642-2515

GRAND RAPIDS:

4024 Park East Court, Suite B Grand Rapids,
Michigan 49546 (616) 942-0893 / fax (616) 942-0921

THIS FIRM IS A DEBT COLLECTOR ATTEMPTING
TO COLLECT A DEBT. ANY INFORMATION WE
OBTAIN WILL BE USED FOR THAT PURPOSE.

November 07, 2018

Wendy Adelson
3630 Waldon Rd
Lake Orion, MI 48360

RE: Adelson, Wendy
3630 Waldon Rd
Lake Orion, MI 48360

Trott# 451703F05
Loan# 80331044

Dear Rcirmworl^V

This office represents Ocwen Loan
Servicing, LLC. This matter was referred to this

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office to foreclose the mortgage. Under the terms of the mortgage, **our client has elected to accelerate the total indebtedness.** Because of interest, fees, and other charges, the total amount you owe may increase depending on the day of payment.

As of the date on this letter the total indebtedness is:

Principal Balance	\$178,500.00
Unpaid Interest	\$210,669.86
Late Charges	\$4,740.47
Allowable advances	\$4,269.62
pursuant to the terms of the mortgage	
Escrow Advance	\$46,865.85
Inspection Fees	\$582.00
Total:	\$445,627.80

Identification of Creditor: The mortgage debt is owed to Ocwen Loan Servicing, LLC. Ocwen Loan Servicing, LLC is the servicer of the debt. The mortgage loan payments are made to the servicer.

Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty (30) days after receiving this notice that you dispute the validity of this debt, this office will obtain verification of the debt or a copy of the judgment, if applicable, and mail a copy of such

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verification or judgment to you. If you request, in writing, within thirty (30) days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Please contact this office if you are on active military duty. To the extent the debt has been discharged or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and/or is notice of the creditor's intent to enforce a lien against the property and does not constitute a demand for payment or an attempt to impose personal liability for such obligation.

An attorney has reviewed information supplied by our client in preparation of this letter. Trott Law P.C.

Regular business hours: 8:30 a.m. - 5:00 p.m.

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269797
LIBER 3841 PAGE 483
\$64.00 MORTGAGE
\$4.00 REMOUMENTATION
11/03/2006 11:45:21 A.M.

RECEIPT: 12482
PAID RECORDED
OAKLAND COUNTY
RUTH JOHNSON,
CLERK/REGISTEROFDEEDS

MORTGAGE

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 SEPTEMBER 26, 2006, together with all Riders to this document.

(B) **"Borrower"** is **WENDY ADELSON, A SINGLE PERSON**, Borrower s address is **3630 WALDON, LAKE ORION, MICHIGAN 48360**. Borrower is the mortgagor under this Security Instrument.

(C) **"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 mortgagee 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.

(D) **"Lender"** is **SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP**. Lender is a **PARTNERSHIP** organized and existing under the laws of **THE STATE OF DELAWARE**. Lender's address is **4000 INTERNATIONAL PKWY, #3000, CARROLLTON, TEXAS 75007**.

Lender is the mortgagee under this Security Instrument.

(E) **"Note"** means the promissory note signed by Borrower and dated **SEPTEMBER 26, 2006**.

The Note states that Borrower owes Lender **ONE HUNDRED SEVENTY-EIGHT THOUSAND FIVE HUNDRED AND 00/100ths** Dollars (U.S. \$178,500.00) plus interest.

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

(F) **"Property"** means the property that is described below under the heading Transfer of Rights in the Property.

(G) **"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.

(H) **"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]:

X Adjustable Rate Rider ___ Condominium Rider

___Second Home Rider
___Balloon Rider___Planned Unit Development Rider
___2-4 Family Rider ___Biweekly Payment Rider

(I) **“Applicable Law”** 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.

(J) **“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.

(K) **“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.

(L) **“Escrow Items”** means those items that are described in Section 3.

(M) **“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.

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

(O) **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.

(P) **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.

(Q) **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

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

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purpose, Borrower does hereby mortgage, warrant, grant and convey to MERS (solely as nominee for Lender and Lender's (successors and assigns) of MERS, with power of sale, the following described property located in the County of OAKLAND

LOT 13, FAY MORSE'S BALDWIN-WALDON ACRES SUBDIVISION, AS RECORDED IN LIBER 63 PAGE 7 OF PLATS, OAKLAND COUNTY RECORDS

09-19-400-014 63007

which currently has the address of 3630 WALDON , LAKE ORION , Michigan 48360

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 COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, 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 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 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 remapping 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.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim

and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the

Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to,

representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any

duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 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.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated

payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed captive reinsurance. Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreement will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners