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| UNITED STATES BANKRUPTCY COURT <u>Middle</u> DISTRICT OF <u>Florida</u> | | PROOF OF CLAIM |
| Name of Debtor TAYLOR, BEAN & WHITAKER | | Case Number 3:09-BK-07047-JAF |
| NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503. | | |
| Name of Creditor (The person or other entity to whom the debtor owes money or property): LIWAYWAY DELINO | | <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court. |
| Name and address where notices should be sent: Quintana McConnin & Sarte, LLP 450 B Street, Suite 1430 San Diego, CA 92101 | | |
| Telephone number: 619.231.6655 | | |
| Account or other number by which creditor identifies debtor: 38049 | | THIS SPACE IS FOR COURT USE ONLY |
| <div style="font-size: 2em; font-weight: bold; opacity: 0.5;">CLAIM FILED</div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> JACKSONVILLE, FLORIDA SEP 15 2009 CLERK, U.S. BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA </div> <div style="border: 1px solid black; padding: 5px;"> Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____ </div> </div> | | |
| 1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Violation of Federal Bankruptcy Laws</u> | | |
| 2. Date debt was incurred: <u>1/14/09</u> | | |
| 3. If court judgment, date obtained: _____ | | |
| 4. Total Amount of Claim at Time Case Filed: \$ <u>390,000.00</u> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> (unsecured) (secured) (priority) (Total) </div> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. | | |
| 5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____ | | 7. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small> |
| 6. Unsecured Nonpriority Claim s <u>390,000.00</u> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority. | | THIS SPACE IS FOR COURT USE ONLY |
| 8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. | | |
| 9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. | | |
| 10. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim | | |
| Date <u>9/11/09</u> | Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>L. Quintana, Esq. (Attorney for Liwayway Delino)</u> | |
| | | T, B & W Mortgage Corp.  00045 |

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14 Attorneys for Plaintiff
15 Liwayway Delino

16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO**

18 Liwayway Delino,

19 Plaintiff,

20 v.

21 Platinum Community Bank; Mint Financial;
22 Taylor, Bean & Whitaker Mortgage
23 Corporation; and all other claimants of
24 whatsoever kind and character against
25 real property commonly known as 1846 E
26 8th St., National City, CA 91950; APN 557-
27 200-10-00 and DOES 1 through 100
28 inclusive,

Defendants.

F I L E D
Clerk of the Superior Court

JAN 14 2009

By: L. McALISTER, Deputy

Case No.: 37-2009-00081293-CU-OR-CTL

COMPLAINT FOR

1. VIOLATION OF RESPA 12 U.S.C. §2605 *et seq.*;
2. VIOLATION OF TRUTH IN LENDING ACT 15 U.S.C. §1601 *et seq.*;
3. VIOLATION OF CALIFORNIA CIVIL CODE §1632 *et seq.*;
4. NEGLIGENT MISREPRESENTATION;
5. FRAUD;
6. RESCISSION;
7. UNJUST ENRICHMENT;
8. QUIET TITLE

DEMAND FOR JURY TRIAL

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THE PARTIES

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2 1. Plaintiff Liwayway Delino (hereinafter "Plaintiff" or "DELINO") is and at all times
3 mentioned herein was an individual, residing in the County of San Diego. Plaintiff is the
4 owner of certain real property commonly known as 1846 E 8th St., National City, CA 91950,
5 County of San Diego (hereinafter "Subject Property").

6 2. Defendant Platinum Community Bank (hereinafter "PLATINUM" or "Originating
7 Lender") is an entity, form unknown, with a principal place of business to be determined in
8 discovery. PLATINUM is, and at all times mentioned was, doing business in the State of
9 California and in the County of San Diego. PLATINUM is related to Dovenmuehle Mortgage
10 ("DOVEN") in some way unknown to Plaintiff, but which is suspected to have been an
11 affiliate, subsidiary, parent, alter ego, DBA, or AKA, because they share telephone access
12 lines and loan procedures and personnel. In this complaint, Plaintiff intends PLATINUM to
13 refer to both DOVEN and Platinum, but Plaintiff will seek leave to amend this complaint to
14 add DOVEN if and when discovery reveals the true relationship.

15 3. Defendant Mint Financial (hereinafter "MINT" or "Broker") is an entity, form
16 unknown, with a principal place of business to be determined in discovery. MINT is, and at
17 all times mentioned was, doing business in the State of California and in the County of San
18 Diego.

19 4. Defendant Taylor, Bean & Whitaker Mortgage Corporation (hereinafter "TBW"
20 or "Servicer" is an entity, form unknown, with a principal place of business to be determined
21 in discovery. TBW is, and at all times mentioned was, doing business in the State of
22 California and in the County of San Diego.

23 5. This action pertains to an alleged note, loan and security interest originated by
24 Broker and Platinum Community Bank known as loan # 101171 (hereinafter the "LOAN").

25 6. Plaintiff intends this action and this document to represent a formal complaint
26 and also act as a "qualified written request." This Complaint contains Plaintiff's Name,
27 PLATINUM account number, and demands in connection with the LOAN as to the
28 originating lender and each subsequent servicer:

- a. that each lender, servicer, creditor or owner justify any legal right to service, own, be named "creditor" and provide proof that Defendants, and each of them in fact has ownership or other authority regarding the LOAN;
- b. that each lender, servicer, creditor or owner provide Plaintiff an opportunity to inspect all the original Notes and Deeds relating to the LOAN;
- c. that each lender, servicer, creditor or owner state and prove that it did not violate RESPA regarding the LOAN, or admit that it violated RESPA;
- d. that each lender, servicer, creditor or owner identify each and every transfer or sale to others of any rights in the LOAN, the Subject Property or the Note, along with a copy of each notice provided to the borrower of such transfer or sale;
- e. that each lender, servicer, creditor or owner in possession of any truth-in-lending disclosure, settlement statement or HUD-1 provide a copy of the same to Plaintiff;
- f. that each lender, servicer, creditor or owner provide a copy of any notice of cancellation rights, notice of rescission rights, or correspondence or written document discussing cancellation rights or rescission rights to Plaintiff;
- g. that each lender, servicer, creditor or owner provide a complete list of all telephone logs, communications logs, and correspondence logs, as well as all recordings, documents and digital versions of the subject matter of these logs to Plaintiff;
- h. that each lender, servicer or creditor provide documentation and proof of ownership for all parties currently holding any ownership rights under the note relating to this loan, and provide an opportunity to inspect the original note and trust deed under which each lender, servicer or creditor claims any rights to receive payments.

7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these Defendants by such

1 fictitious names. DOES 1-100 at all times relevant herein were employees, agents of
2 Defendants and each of them. Plaintiff will designate each DOE Defendant and serve them
3 with this Complaint when their true names and capacities have been ascertained. Plaintiff
4 alleges that each of said Defendants designated as a DOE is legally responsible in some
5 manner for the events and happenings herein referred to and caused or is responsible in
6 some manner for the damages proximately caused hereby.

7 8. Plaintiff is informed and believes that at all times mentioned herein, that all of
8 the Defendants acted in concert with the other Defendants named in this Complaint in the
9 wrongful and improper activities alleged and, therefore, are responsible for the damages as
10 alleged by Plaintiff. Plaintiff is further informed and believes that at all times mentioned
11 herein each individual, employee and person named in this Complaint was the agent and/or
12 employee of each of the remaining Defendants and/or Defendant Employers, and acted in
13 concert for the purpose of injuring Plaintiff as alleged herein.

14 9. Plaintiff is further informed and believes that at all times mentioned herein
15 each Defendant and individual named in this Complaint was acting within the course and
16 scope of that relationship. Plaintiff is further informed and believes, and thereon alleges,
17 that each of the Defendants herein gave consent to, ratified, and authorized the acts alleged
18 herein to each of the remaining Defendants. Plaintiff is informed and believes that at all
19 times mentioned herein, that all Defendants are liable for the actions of each of the
20 individuals mentioned herein.

21 10. Plaintiff is informed and believes and thereon alleges that at all times
22 mentioned herein, the Defendants have pursued a common course of conduct, acted in
23 concert with, and conspired with, each other, and have aided and abetted one another to
24 accomplish the wrongs complained herein.

25 JURY TRIAL DEMANDED

26 Plaintiff complains against Defendants herein and demands a trial by jury on all issues.

27 JURISDICTION AND VENUE

28 11. The amounts at issue in this matter exceed the jurisdictional minimum of this

1 Court.

2 12. Plaintiff resides in this County, Defendants do business in this County, the
3 Subject Property is in this County, and all events in question took place in this County.

4 **FACTS COMMON TO ALL CAUSES OF ACTION**

5 13. At the request of Broker, PLATINUM and others, Plaintiff obtained loan
6 #101171 (the "LOAN") from PLATINUM on or about 3/16/2007.

7 14. Plaintiff is informed and believes that the wrongful acts of Defendants include
8 violations of federal and state law before the initiation of the LOAN as well as during the
9 servicing period of the LOAN.

10 a. Prior to the funding of the Loan, MINT and/or PLATINUM represented to
11 Plaintiff that very favorable loans, loan terms and interest rates were
12 available to him.

13 b. As a result, Broker, PLATINUM and others convinced Plaintiff to purchase
14 the Subject Property and to take out on a loan for that purpose with
15 PLATINUM, the LOAN.

16 c. Plaintiff is further informed and believes that MINT, PLATINUM and
17 Defendants knew or intended that Plaintiff receive a worse loan, and that
18 the worse loan produced a higher commission for them because it was at a
19 higher interest rate and subject to higher fees.

20 d. Plaintiff is further informed and believes that MINT, PLATINUM and
21 Defendants knew or should have known that in the event of Plaintiff's
22 inability to perform on the LOAN, prepayment penalties, commissions and
23 other foreseeable charges to Plaintiff would constitute an additional
24 payment stream to the benefit of Defendants.

25 15. Although MINT, PLATINUM, and other persons made certain representations
26 regarding the LOAN, in actuality, the LOAN was not as represented because among other
27 things:

28 a. It was at a higher interest rate than what was represented.

- b. The payments were higher than the payment as represented to and agreed upon by Plaintiff.
- c. There was less equity in the Subject Property than represented.
- d. There was less money available to Plaintiff than represented.
- e. The loan subsequently became unaffordable for Plaintiff.
- f. Plaintiff was accordingly put into a mortgage all without Plaintiff's informed consent.

16. Plaintiff is informed and believes that Defendants failed to provide Plaintiff with the proper disclosures required under federal and state law:

- a. Defendants did not provide to Plaintiff a proper notice of right to cancel at the time of the transaction;
- b. Defendants did not provide to Plaintiff accurate disclosures of the costs of financing, the APR, the payment obligations, or the type of loan at the time of the transaction;
- c. Defendants did not provide to Plaintiff accurate disclosures of the costs of financing, the APR, the payment obligations, or the type of loan subsequent to the time of the transaction.

17. Plaintiff is informed and believes that the LOAN and related contracts contain conflicting terms that are not reasonably amenable to understanding by a consumer, possibly including but not limited to the Note, Addenda, Trust Deed, Rider(s), TILA, Estimated Settlement Statement(s), Final Settlement Statement(s), Escrow Instruction(s), all containing complicated and in many cases contradictory terms.

18. Plaintiff relied on the representations of MINT, PLATINUM, Defendants and others as alleged herein because Plaintiff reasonably believed that Defendants are licensed banks, real estate agencies, brokers and/or mortgage companies, and are fiduciaries of Plaintiff, owing Plaintiff duties of utmost care, loyalty, professionalism and to conduct all real estate transactions herein without violating any of the fiduciary duties owed to Plaintiff.

19. MINT, PLATINUM, Defendants and other persons breached their fiduciary

obligations owed to Plaintiff, were negligent, made negligent misrepresentations, intentional misrepresentations, breached their contract with Plaintiff, were professionally negligent and caused Plaintiff damages.

20. When Plaintiff discovered the false, misleading and unlawful acts of Defendants, Plaintiff provided a Notice of Rescission and tendered performance by delivery of the deed conveying title to the Subject Premises to Platinum. Platinum failed to respond timely to Plaintiff's notice and tender, and Plaintiff is informed and believes that Platinum and Defendants have forfeited any right title or interest in the Subject Premises.

21. Plaintiff is informed and believes that TBW and Defendants knew or should have known of the Notice of Rescission, and the dispute between Plaintiff, Mint, Platinum and other defendants, and that TBW purported to acquire rights in the Subject Premises only subject to the claims, offsets, and liabilities owed by any and all Defendants to Plaintiff.

22. Plaintiff is informed and believes that Defendants TBW and other Defendants purchased or otherwise acquired unknown rights and/or responsibilities relating to Plaintiff's LOAN from PLATINUM at some date unknown to Plaintiff. All such rights and responsibilities depend on the rights of PLATINUM and are meaningless and unenforceable if the rights of PLATINUM are unenforceable.

23. As a proximate result of the conduct of Defendants as herein alleged, the Plaintiff sustained damages, including monetary loss, medical expenses, emotional distress, loss of employment, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Defendants' breach of duty and all other actions as alleged herein, Plaintiff has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Plaintiff damage in an amount to be established at trial.

24. Plaintiff is informed and believes that Defendants MINT, PLATINUM, TBW, other Defendants and anyone claiming rights in the Premises pursuant to the LOAN are responsible for the actions of the other Defendants to the extent they must rely on those actions in order to enforce any obligations they contend are owed by Plaintiff pursuant to the

1 LOAN.

2 25. Plaintiff is informed and believes that Defendants MINT, PLATINUM, TBW,
3 other Defendants knew or should have known that all the rights and title claimed under the
4 Loan and any related Note or Trust Deed were wrongfully obtained and were invalid, and
5 that any such rights and title or claims thereto were of no legal force.

6 26. Each Defendant herein is responsible for the acts of other Defendants and
7 their predecessors based on the doctrine of *respondeat superior*. Further, each Defendant
8 herein is responsible for the acts of other Defendants because each Defendant negligently
9 supervised the other Defendants and is therefore directly responsible for the acts of the
10 other Defendants.

11 27. All Defendants are agents, employees and other fiduciaries of each other as
12 set forth within. Each of the wrongful acts by Defendants against Plaintiff set forth within
13 were done within the scope of employment. Defendants were acting as agents and
14 employees and in the transaction of the business of the employment or agency when
15 performing their wrongful actions. Defendants are therefore directly, jointly and severally
16 liable to Plaintiff for the actions of MINT, PLATINUM, TBW, the employees of said parties,
17 and all other Defendants as set forth within.

18 28. The aforementioned conduct of Defendants was an intentional
19 misrepresentation, deceit, or concealment of a material fact known to the Defendants with
20 the intention on the part of the Defendants of thereby depriving the Plaintiff of property or
21 legal rights or otherwise causing injury, and was despicable conduct that subjected the
22 Plaintiff to a cruel and unjust hardship in conscious disregard of the Plaintiff's rights, so as to
23 justify an award of exemplary and punitive damages, as well as attorney fees and costs.

24 **CAUSE OF ACTION NUMBER 1**

25 **VIOLATION OF RESPA 12 U.S.C. §2605**

26 29. Plaintiff hereby incorporates by reference, repleads and realleges each and
27 every allegation contained in all the paragraphs of the General Allegations and Facts
28 Common to All Causes of Action as though the same were set forth at length herein.

30. Defendants MINT, PLATINUM, TBW and other Defendants failed to adequately respond to Plaintiff's requests for information regarding the loan and for an opportunity to work out the loan Qualified Written Requests in violation of RESPA.

31. Defendants MINT, PLATINUM, TBW and other Defendants failed to adequately respond to Plaintiff's Qualified Written Requests in violation of RESPA.

32. Defendants PLATINUM, their predecessors and other Defendants were required to give Plaintiff notice of transfer and the required sixty (60) days after the transfer period before assessing a late fee pursuant to 2605(d).

33. Defendants PLATINUM, TBW and other Defendants improperly imposed a late fee on Plaintiff within sixty (60) days of the LOAN transfer.

34. DELINO is informed and believes that Defendants PLATINUM, MINT and other Defendants violated RESPA at the origination of the LOAN in various ways including but not limited to:

a. There was no GFE provided at the times required under RESPA.

35. As a proximate result of the negligent conduct of Defendants and their failures as herein alleged, the Plaintiff sustained damages, including monetary loss, medical expenses, emotional distress, loss of employment, loss of credit, loss of opportunities, and other damages to be determined at trial. As a proximate result of Defendants' breach of duty and all other actions as alleged herein, Plaintiff has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Plaintiff's damage in an amount to be established at trial. Plaintiff seeks to recover all possible damages Plaintiff is entitled to recover pursuant to RESPA, including statutory and punitive damages if possible.

CAUSE OF ACTION NUMBER 2

VIOLATION OF TRUTH IN LENDING ACT 15 U.S.C. §1601 et seq

36. Plaintiff hereby incorporates by reference, repleads and realleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

37. This consumer credit transaction was subject to the requirements as described by 15 U.S.C. § 1635(a) and Regulation Z § 226.23 (12 C.F.R. § 226.23).

38. More particularly, the Defendants violated 15 U.S.C. § 1635(a) and Regulation Z § 226.23(b) with regards to the required notices and disclosures at the initiation of the loan by failing to provide required documentation and/or by providing incomplete or misleading documentation to Plaintiff which failed to:

- a. Correctly identify the transaction.
- b. Clearly and conspicuously disclose the Plaintiff's right to rescind the transaction three days after delivery of all required disclosures.
- c. Clearly and conspicuously disclose how to exercise the right to rescind the transaction, with a form for that purpose.
- d. Clearly and conspicuously disclose the effects of rescission.
- e. Clearly and conspicuously disclose the date the rescission period expired.

39. Furthermore, Plaintiff is informed and believes that MINT, PLATINUM and TBW violated TILA at the time of origination because, among other things:

- a. The TILA disclosures were inaccurate, misleading and incomprehensible.

40. Plaintiff is informed and believes that Defendant's violation of the provisions of law rendered the credit transaction null and void, invalidates Defendant's claimed interest in the Subject Property, and entitles Plaintiff to damages as proven at trial.

CAUSE OF ACTION NUMBER 3

VIOLATION OF CALIFORNIA CIVIL CODE §1632 *et seq.*

41. Plaintiff hereby incorporates by reference, repleads and realleges each and every allegation contained in each and every paragraph of the General Allegations and Facts Common to All Causes of Action and the First Cause of Action as though the same were set forth at length herein.

42. Plaintiff is a native Tagalog speaker and the negotiations and transaction were conducted primarily in Tagalog; however, no contract documents or disclosures were delivered to Plaintiff prior to the transaction in Tagalog, in violation of California Civil Code

1 §1632 *et seq.*

2 43. Furthermore, Plaintiff is informed and believes that MINT, PLATINUM and
3 TBW violated TILA and California Civil Code §1632 *et seq.* at the time of origination by,
4 among other things, failing to provide any disclosures, TILA information, or contract terms in
5 Tagalog.

6 44. As a proximate result of the breach, Plaintiff was not aware of the terms of the
7 contract and Plaintiff is entitled to recover proximately caused damages and rescind the
8 LOAN.

9 **CAUSE OF ACTION NUMBER 4**

10 **NEGLIGENT MISREPRESENTATION**

11 45. Plaintiff hereby incorporates by reference, repleads and realleges each and
12 every allegation contained in each and every paragraph of the General Allegations and
13 Facts Common to All Causes of Action and the First Cause of Action as though the same
14 were set forth at length herein.

15 46. If any of Defendants' misrepresentations made herein were not intentional,
16 said misrepresentations were negligent. When the Defendants made the representations
17 alleged herein, he/she/it had no reasonable ground for believing them to be true.

18 47. Defendants made these representations with the intention of inducing Plaintiff
19 to act in reliance on these representations in the manner hereafter alleged, or with the
20 expectation that Plaintiff would so act.

21 48. As a proximate result of the negligent misrepresentations of Defendants as
22 herein alleged, the Plaintiff sustained damages, including monetary loss, medical expenses,
23 emotional distress, loss of employment, loss of credit, loss of opportunities, attorney fees
24 and costs, and other damages to be determined at trial. As a proximate result of
25 Defendants' breach of duty and all other actions as alleged herein, Plaintiff has suffered
26 severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental
27 and physical pain and anguish, all to Plaintiff's damage in an amount to be established at
28 trial.

CAUSE OF ACTION NUMBER 5

FRAUD: INTENTIONAL MISREPRESENTATION

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3 1. Plaintiff hereby incorporates by reference, repleads and realleges each and
4 every allegation contained in all of the paragraphs of the General Allegations and Facts
5 Common to All Causes of Action as though the same were set forth herein.

6 2. MINT and PLATINUM made various false misrepresentations to Plaintiff
7 regarding the LOAN and induced Plaintiff to enter into the LOAN. TBW assumed the
8 responsibilities and duties owed to Plaintiff by purchasing/assuming the LOAN. Defendants
9 MINT, PLATINUM, TBW and other Defendants are responsible for the false
10 misrepresentations made by MINT, PLATINUM, their predecessors and other Defendants
11 herein. Defendants and each of them are successors in interest to MINT, PLATINUM,
12 TBW, to each other, and other responsible parties. All Defendants and each of them acted
13 in concert with respect to defrauding Plaintiff

14 3. Defendants made various misrepresentations of material fact with respect to
15 the LOAN, and induced Plaintiff to rely on said misrepresentations. These
16 misrepresentations were representations of material fact with respect to the period of the
17 mortgages, the interest rates and other terms of the mortgages. The representations made
18 to Plaintiff by Defendants were in fact false.

19 4. All Defendants herein intended to induce Plaintiff's reliance on the facts
20 misrepresented. MINT, PLATINUM, TBW variously misinformed Plaintiff regarding the
21 terms of the LOAN as alleged herein so that Plaintiff would refinance and so that they could
22 cause Plaintiff to agree to the LOAN. MINT, PLATINUM, TBW and other Defendants are
23 successors in interest to Plaintiff's LOAN as alleged herein. Defendants MINT, PLATINUM
24 and other Defendants also intended to induce Plaintiff to accept the LOAN and to continue
25 on with the fraudulent LOAN.

26 5. The Defendants knew or should have known that the representations made in
27 their correspondences were in violation of RESPA. Defendants knew or should have known
28 that the representations made by MINT, PLATINUM in an attempt to convince Plaintiff to

refinance the LOAN were false.

6. In justifiable reliance on Defendants' and each of their various misrepresentations, Plaintiff did refinance and take out the LOAN on the Subject Property, Plaintiff is burdened with a higher interest rate, Plaintiff is burdened with a mortgage that did not pay off the debts as Defendants promised they would do, the period of Plaintiff's mortgage is longer than it should be, Plaintiff is now burdened with the unlawful LOAN and Plaintiff has suffered damages as a result.

7. At the time Defendants and their predecessors herein made the promises and representations to Plaintiff, Defendants and their predecessors herein had no intention of performing the promises.

8. The promises were made by Defendants and their predecessors with the intent to induce the Plaintiff to take out the LOAN and take other actions so that Defendants and each of them could make their respective profits, commissions, yield spread premiums, sales quotas and gain other beneficial financial interests including but not limited to prepayment penalties, late payment penalties, surcharges and other fees.

9. The Plaintiff, at the time these promises were made and at the time the Plaintiff took the actions herein alleged, was ignorant of the Defendants' secret intentions not to perform, ignorant of Defendants' false representations stated herein, and Plaintiff could not, in the exercise of reasonable diligence, have discovered the Defendants' secret intentions and false representations. In reliance on the promises of Defendants and their predecessors, Plaintiff signed various documents and refinanced Plaintiff's mortgage on the Subject Property and ultimately ending up with the LOAN.

10. Defendants and their predecessors are reputable real estate companies doing business in California, and Plaintiff justifiably relied on their representations. Defendants and their predecessors are/were all brokers, real estate agents and other licensed professionals that worked for Defendants MINT, PLATINUM, TBW and other Defendants, and Plaintiff justifiably relied on their representations.

11. Plaintiff, at the time these representations were made by Defendants and their

predecessors, and at the time the Plaintiff took the actions herein alleged, was ignorant of the falsity of the misrepresentations and believed them to be true. In reliance on these representations, Plaintiff was induced to refinance the Subject Property, take out the LOAN, be burdened with a fraudulent LOAN, and other actions. Had Plaintiff known the actual facts, Plaintiff would not have taken such action.

12. As a proximate result of the fraudulent conduct of Defendants as herein alleged, the Plaintiff sustained damages, including monetary loss, medical expenses, emotional distress, loss of employment, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Defendants' breach of duty and all other actions as alleged herein, Plaintiff has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Plaintiff's damage in an amount to be established at trial.

13. The aforementioned conduct of Defendants was an intentional misrepresentation, deceit, or concealment of a material fact known to the Defendants with the intention on the part of the Defendants of thereby depriving Plaintiff of property or legal rights or otherwise causing injury, and was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages, as well as attorney fees and costs.

CAUSE OF ACTION NUMBER 6

RESCISSION

14. Plaintiff hereby incorporates by reference, repleads and realleges each and every allegation contained in each and every paragraph of the General Allegations and Facts Common to All Causes of Action and the First Cause of Action as though the same were set forth at length herein.

15. Plaintiff is informed and believes that Defendants do not have and cannot produce an original deed and an original note relating to the LOAN.

16. The Plaintiffs had a continuing right to rescind the transaction until the third

business day after receiving both a proper and accurate cancellation rights notice and all "material" disclosures described in the preceding paragraph, pursuant to 15 U.S.C. § 1635(a) and Regulation Z § 226.23(a)(3), up to three years after consummation of the transaction.

17. Based on the violations of the defendants of 15 U.S.C. § 1635, Plaintiff suffered actual damages in an amount exceeding the jurisdictional minimum of this Court and to be determined at trial in the form of prepaid interest and charges delivered to MINT and additional damages in the form of payments, interest, fees, and charges paid by Plaintiff on the LOAN. Plaintiff is entitled to additional relief under 15 U.S.C. § 1640 pursuant to 15 U.S.C. § 1635(g).

18. As a proximate result of the conduct of Defendants as herein alleged, the Plaintiff sustained damages, including monetary loss, medical expenses, emotional distress, loss of employment, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Defendants' breach of duty and all other actions as alleged herein, Plaintiff has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Plaintiff's damage in an amount to be established at trial.

CAUSE OF ACTION NUMBER 7

UNJUST ENRICHMENT

19. Plaintiff hereby incorporates by reference, repleads and realleges each and every allegation contained in each and every paragraph of the General Allegations and Facts Common to All Causes of Action and the First Cause of Action as though the same were set forth at length herein.

20. By their misrepresentations, omissions and other wrongful acts alleged heretofore, Defendants, and each of them, were unjustly enriched at the expense of Plaintiff, and Plaintiff was unjustly deprived, and is entitled to restitution.

CAUSE OF ACTION NUMBER 8

QUIET TITLE

21. Plaintiff hereby incorporates by reference, repleads and realleges each and every allegation contained in each and every paragraph of the General Allegations and Facts Common to All Causes of Action and the First Cause of Action as though the same were set forth at length herein.

22. Because of the wrongful acts alleged herein, Defendants, and each of them, have forfeited any and all interest in the Subject Premises.

23. Plaintiff is entitled to an order from this Court establishing that Plaintiff has ownership of the Subject Premises unencumbered by any claim or claims by Defendants or any of them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them in the alternative as follows:

A. IF THIS COURT determines that Defendants violated TILA at the inception, then Plaintiff requests that this Court find that the alleged Note and Lien are invalid and order as follows:

1. For immediate cease and desist order enjoining all Defendants, and each of them, their agents, servants, heirs, dba's, fka's, corporate affiliates, subsidiaries, employees, and all persons or entities acting under, in concert with, on their behalf in any capacity from selling or conveying or attempting to sell or convey any interest whatsoever that Plaintiff may have in the real property commonly known as 1846 E 8th St., National City, CA 91950 or relating to the LOAN.

2. For preliminary injunction and permanent injunction, enjoining all Defendants, and each of them, their agents, servants, heirs, dba's, fka's, corporate affiliates, subsidiaries, employees, and all persons or entities acting under, in concert with, on their behalf in any capacity from selling or conveying or attempting to sell or convey any interest whatsoever that Plaintiff may have in the real property commonly known as 1846 E 8th St., National City, CA 91950,

relating to the LOAN, which is presently unknown to Plaintiff;

3. That the deed of trust securing the Subject Property and securing the LOAN, be rescinded and Plaintiff's Deed of Trust immediately restored to Plaintiff;

4. That Plaintiff's credit standing be fully restored in relation to the LOAN;

5. That any and all Notice of Intent to Foreclose issued by any Defendants or agents of Defendants relating to 1846 E 8th St., National City, CA 91950 be rescinded;

6. That title to the property commonly known as 1846 E 8th St., National City, CA 91950, be restored to Plaintiff in the name of "Liwayway Delino";

7. That the LOAN be forgiven in its entirety;

B. IF THIS COURT determines that Plaintiff has properly rescinded this loan, then Plaintiff requests that this Court order:

8. That Plaintiff's credit standing be fully restored in relation to the LOAN;

9. That any and all Notice of Intent to Foreclose issued by any Defendants or agents of Defendants relating to 1846 E 8th St., National City, CA 91950 be rescinded;

10. That Defendants provides an accounting of all amounts charged to Plaintiff or paid by Plaintiff relating to the LOAN,

11. That Defendants promptly pay said amounts to Plaintiff;

12. That the LOAN and related note be forgiven in its entirety;

13. That Defendants receive and accept title to the Premises from Plaintiff.

C. IF THIS COURT determines that Plaintiff has properly rescinded this loan and tendered performance and Defendants have not timely responded, then Plaintiff requests that this Court order:

1. That title to the Premises shall henceforth be held quietly by Plaintiff, indicating that all Defendants nor any of them has any claim or interest in the Premises;

2. That the LOAN and related note be forgiven in its entirety;

3. That , the alleged security interest of Defendants in the Premises is null and

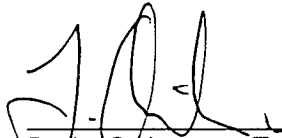
void.

D. Under all alternatives, Plaintiff prays:

4. That this Court grant judgment in favor of Plaintiff against all Defendants;
5. For all damages and remedies Plaintiff is entitled to recover under RESPA;
6. For all damages and remedies Plaintiff is entitled to recover under TILA;
7. For judgment that Plaintiff is entitled to compensation of the full value of the Subject Property;
8. For compensatory damages according to proof, including lost credit, lost earnings and other employee benefits, medical expenses, emotional distress, humiliation, mental anguish, and other compensatory damages;
9. For general damages according to proof;
10. For special damages according to proof;
11. For interest on damages according to proof;
12. For prejudgment interest on such damages as provided by law;
13. For attorney fees incurred by Plaintiff;
14. For costs of suit incurred by Plaintiff; and
15. For such other and further relief as the court deems proper.

Dated: January 14, 2009

Quintana McConnin & Sarte LLP


By L. Quintana, Esq.
Attorney for Plaintiff
Liwayway Delino



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EXHIBIT A

Property Address: 1846 E 8th St., National City, CA 91950
Property County: San Diego
APN: 557-200-10-00

1 L. Quintana, Esq. (SBN 157291)
2 Quintana McConnin & Sarte LLP
3 450 B Street Suite 1430
4 San Diego, CA 92101
5 Telephone: 619.231.6655
6 Facsimile: 619.243.0080

7 Todd C. Atkins (SBN 208879)
8 Atkins & Davidson, APC
9 450 B Street, Suite 1430
10 San Diego, CA 92101
11 Telephone: (619) 255-2380
12 Facsimile: (619) 231-4984

13 Attorneys for Plaintiff
14 Liwayway Delino

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO**

17 Liwayway Delino,

18 Plaintiff,

19 v.

20 Platinum Community Bank; Mint Financial;
21 Taylor, Bean & Whitaker Mortgage
22 Corporation; and all other claimants of
23 whatsoever kind and character against
24 real property commonly known as 1846 E
25 8th St., National City, CA 91950; APN 557-
26 200-10-00; and DOES 1 through 100
27 inclusive,

28 Defendants.

F I L E D

Clerk of the Superior Court

JAN 14 2009

By: L. McALISTER, Deputy

Case No.: 37-2009-00081293-CU-OR-CTL

NOTICE OF LIS PENDENS

29 Notice is hereby given that the above-entitled action was filed in the above-identified
30 court on 1/14/09 by Liwayway Delino against Platinum Community Bank,
31 Mint Financial, Taylor, Bean & Whitaker Mortgage Corporation and other as yet unnamed



defendants. The action affects the title to 1846 E 8th St., National City, CA 91950; APN 557-200-10-00 located in San Diego County, California.

The real property affected by the action is described as set forth in Exhibit A attached hereto.

Dated: 1/14/09

QUINTANA McCONNIN & SARTE

By L. Quintana, Esq.
Attorney for Plaintiff
Liwayway Delino

EXHIBIT A
(Property Description)

Common address:

1846 E 8th St., National City, CA 91950
San Diego

Assessor's Parcel No.: 557-200-10-00

Locke Lord Bissell & Liddell LLP
300 South Grand Avenue, Suite 2600
Los Angeles, CA, 90071-3119

COPY

LOCKE LORD BISSELL & LIDDELL LLP
Matthew B. McClendon (SBN 256031)
mmcclendon@lockelord.com
300 South Grand Avenue, Suite 2600
Los Angeles, CA 90071
Tel: (213) 485-1500
Fax: (213) 485-1200

Attorneys for Defendant
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LIWAYWAY DELINO,

Plaintiff,

vs.

PLATINUM COMMUNITY BANK; MINT
FINANCIAL; TAYLOR BEAN &
WHITAKER MORTGAGE CORP; and all
other claimants of whatsoever kind and
character against real property commonly
known as 1846 E. 8th St., National City, CA
91950; APN 557-200-10-00 and DOES 1
through 100 INCLUSIVE,

Defendants.

) Case No.

09 CV 0288 H

AJB

) DEFENDANT'S NOTICE OF
) REMOVAL

) 28 U.S.C. §§ 1441, 1446, 1331 &
) 1336

) [Superior Court of California, County
) of San Diego, Case No. 37-2009-
) 0081293-CU-OR-CTL]

) Complaint Filed: January 14, 2009

TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES,
AND TO THEIR ATTORNEYS OF RECORD:

Pursuant to 28 U.S.C. §§ 1441, 1446, 1331 and 1336 Defendant Taylor, Bean &
Whitaker Mortgage Corp. ("TB&W" or "Defendants") hereby removes this action
from the Superior Court of California, County of San Diego, to the United States
District Court for the Southern District of California, and state as follows:

///

///

FILED
09 FEB 17 PM 1:55

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

BY:

STATEMENT OF THE CASE

1. On January 14, 2009, an action was commenced in the Superior Court of California, County of San Diego – San Diego Branch, styled *Liwayway Delino v. Platinum Community Bank et al.*, Case No. 37-2009-00081293-CU-OR-CTL (the “State Court Action”).

2. Upon information and belief, TB&W has not yet been served in the State Court Action; accordingly, this Notice of Removal is being filed within 30 days of the date that TB&W could have become aware of the State Court Action. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

3. The Complaint purports to assert eight causes of action, identified and/or generally alleged against the Defendants as follows: (1) violation of RESPA 12 U.S.C. § 2605 et seq.; (2) violation of Truth in Lending Act (“TILA”) 15 U.S.C. § 1601 et seq.; (3) violation of California Civil Code § 1632; (4) negligent misrepresentation; (5) fraud; (6) rescission; (7) unjust enrichment; and (8) quiet title.

4. The RESPA cause of action asserts a statutory violation of 12 U.S.C. § 2605(d).

5. The TILA cause of action asserts a statutory violation 15 U.S.C. § 1635(a).

6. Finally, the rescission cause of action asserts a statutory violation of 15 U.S.C. § 1635(a) and seeks relief under the following statutes:

(a) 15 U.S.C. § 1640; and

(b) 15 U.S.C. § 1635(g).

JURISDICTION

FEDERAL QUESTION AND SUPPLEMENTAL JURISDICTION

7. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because Plaintiffs’ claims arise under the laws of the United States. The Supreme Court has held that “a case ‘arose under’ federal law where the vindication of a right under state law necessarily turned on some construction of federal law.” *Franchise*

1 *Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9 (1983). Here,
2 Plaintiffs allege direct violations of RESPA and TILA and seek remedies purportedly
3 pursuant to these federal statutes. (Compl. ¶¶ 28-40, Count 6 ¶¶ 16-17). Accordingly,
4 the matter turns upon federal questions, and this Court has jurisdiction. Pursuant to 28
5 U.S.C. § 1367(a) the Court has supplemental jurisdiction over the state law and
6 common law claims asserted by Plaintiffs because the state law and common law
7 claims asserted form part of the same case or controversy.

8 8. Upon information and belief, no other defendants have been served and
9 therefore additional consent is not required. *Emrich v. Touche Ross & Co.*, 846 F.2d
10 1190, 1193 n.1 (9th Cir. 1988) (the requirement for consent applies “only to
11 defendants properly joined and served in the action.”)

12 9. Accordingly, all properly served and joined defendants, excluding
13 nominal, unknown, and fraudulently joined parties, have consented to this Notice of
14 Removal.

15 11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a) and 1441(a)
16 because the United States District Court for the Southern District of California is the
17 federal judicial district embracing the Superior Court of California for the County of
18 San Diego where the State Court Action was originally filed.

19 12. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the
20 process, pleadings, and orders on file in the State Court Action or served on Defendant
21 are attached hereto as Exhibit 1.

22 CONCLUSION

23 By this Notice of Removal and the associated attachments, TB&W does not
24 waive any objections that it may have as to service, jurisdiction or venue, or any other
25 defenses or objections it may have to this action. Defendant intends no admission of
26 fact, law or liability by this Notice, and expressly reserve all defenses,
27
28

1 motions and/or pleas. Defendant prays that the Action be removed to this Court, that
2 all further proceedings in state court be stayed, and that Defendant receives all
3 additional relief to which it is entitled.

4
5 Dated: February 17, 2009

Respectfully submitted,

6 LOCKE LORD BISSELL & LIDDELL LLP

7
8 By: 

9
10 Matthew B. McClendon
11 Attorney for Defendant
12 TAYLOR, BEAN & WHITAKER
13 MORTGAGE CORP.
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