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

DEPUTY

BY:

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9 TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 LIWAYWAY DELINO,
13
14 Plaintiff,

15 vs.

16 PLATINUM COMMUNITY BANK; MINT
17 FINANCIAL; TAYLOR BEAN &
18 WHITAKER MORTGAGE CORP; and all
19 other claimants of whatsoever kind and
20 character against real property commonly
21 known as 1846 E. 8th St., National City, CA
22 91950; APN 557-200-10-00 and DOES 1
23 through 100 INCLUSIVE,

24 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
)
)

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

27 Pursuant to 28 U.S.C. §§ 1441, 1446, 1331 and 1336 Defendant Taylor, Bean &
28 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:

///
///

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STATEMENT OF THE CASE

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

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

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

15 4. The RESPA cause of action asserts a statutory violation of 12 U.S.C. §
16 2605(d).

17 5. The TILA cause of action asserts a statutory violation 15 U.S.C. §
18 1635(a).

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

21 (a) 15 U.S.C. §1640; and

22 (b) 15 U.S.C. §1635(g).

23 **JURISDICTION**

24 **FEDERAL QUESTION AND SUPPLEMENTAL JURISDICTION**

25 7. This Court has jurisdiction over this matter under 28 U.S.C. § 1331
26 because Plaintiffs’ claims arise under the laws of the United States. The Supreme
27 Court has held that “a case ‘arose under’ federal law where the vindication of a right
28 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

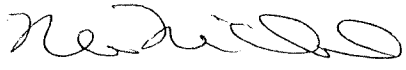
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1 motions and/or pleas. Defendant prays that the Action be removed to this Court, that
2 all further proceedings in state court be stayed, and that Defendant receives all
3 additional relief to which it is entitled.

4
5 Dated: February 17, 2009

Respectfully submitted,

6 LOCKE LORD BISSELL & LIDDELL LLP

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8 By: 
9

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