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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA TUCSON DIVISION**

<p>In re:</p> <p>MAJED KATBAH AND OLA BAKIR, DEBTOR AND PLAINTIFF</p> <p>vs.</p> <p>US BANK NATIONAL ASSOCIATION, AS TRUSTEE OF CITIGROUP MORTGAGE LOAN TRUST INC., ASSET BACKED PASS THROUGH CERTIFICATES, SERIES 2006-AMC1 UNDER THE POOLING AND SERVICING AGREEMENT DATED SEPTEMBER 1, 2006, WITHOUT RECOURSE</p> <p>CREDITOR, CLAIMANT AND DEFENDANT</p>	<p>Adversary No: 4:09-ap-00109-JMM</p> <p>Case No: 08-9997-TUC-JMM</p> <p>RESPONSE TO MOTION TO DISMISS ADVERSARY AND MOTION TO TOLL ACTION PENDING RESPONSE TO DISCOVERY AND REPORT FROM MORTGAGE LOAN AUDIT, DOCUMENT REVIEW AND CLAIMS EVALUATION</p> <p>Chapter 13</p>
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COMES NOW, MAJED KATBAH and OLA BAKIR, Debtor, and files this Response to Motion to Dismiss Adversary and Motion to Toll Action Pending Response to Discovery and Report from Mortgage Loan Audit, Document Review and Claims Evaluation, responding to the Motion filed by US BANK NATIONAL ASSOCIATION, AS TRUSTEE OF CITIGROUP MORTGAGE LOAN TRUST INC., ASSET BACKED PASS THROUGH CERTIFICATES, SERIES 2006-AMC1 UNDER THE POOLING AND

SERVICING AGREEMENT DATED SEPTEMBER 1, 2006, WITHOUT RECOURSE ("USNB"), Creditor, Claimant and Defendant, and present unto the Court as follows:

1. This chapter 13 case was commenced by the filing of a petition on 8/5/2008. The Plan in this case has not yet been confirmed, but the Order Confirming has been submitted to USNB, and can be entered without affecting the issues involved in the adversary and the motion for relief from stay. This Court has previously ordered that the issues in this Motion for Relief from Stay be combined into the Adversary filed against Movant by Debtor. In Debtor's Amended Response to Motion for Relief from Stay, Debtor informed the Court that it had retained the services of experts to perform a Mortgage Loan Audit, Document Review and Claims Evaluation, Neil Garfield, M.B.A., J.D., and Associates, Mortgage Compliance Research and Analysis Forensic Expert, Foreclosure Defense Group ("FDG"). that is currently underway. In that response Debtor asked for leave to Amend the Complaint pending the results of the investigation. The scope of that investigation is set forth in Debtor's Amended Response to Motion for Relief from Stay. Causes of action that are not atypical to transactions, such as that involved in this case include: Failure to Join Indispensable Parties; Standing; Reconveyance; Payment; Offset; Failure to Record --- Condition Precedent; Fraud in the Inducement; Fraud in the Execution; Rescission; Reconveyance; Slander of Title; Breach of Fiduciary Duty; Fraud in the Inducement; Fraud in the Execution; Negligence; Negligent Supervision; Appraisal Error or Fraud; Unconscionable Predatory Lending Practices; Unjust Enrichment; Identification Theft; Deceptive Practices; False Advertising; Securities Fraud; Constructive Trust on Profits; Breach of Privacy, as well as statutory causes of action under the following federal statutes, HOEPA; RESPA; TILA; RICO. Additionally, Debtor intends to serve a shortened expedited discovery

request upon USNB within days that focuses directly on the matters that are essential before USNB can prove it has the right to enforce the note, even though the burden of proof is upon USNB. The responses to the the expedited discovery requests may provide enough information to enable Plaintiff to amend the Complaint to add causes of action in the interim while waiting upon the response to the Qualified Written Request ("QWR"). The QWR is a right guaranteed mortgage consumer pursuant to the federal RESPA statute, whenever there is cause for suspicion, and the statute allows lenders 20 days to acknowledge receipt of the request and 60 days to respond. After obtaining a complete response to the QWR, it will take some additional period of time for FDG to complete its Sworn Affidavit Report.

2. In the meantime, Plaintiff has been making adequate protection payments, in a reduced yet reasonable amount, as ordered by the Court. Defendant has not produced an endorsed copy of the note, nor filed a proof of claim. As discussed below, without the note, USNB has nothing. Other facts specific to the Pool Trust case that are known at present are set forth in ¶ 15 below. The significance of these facts will be clearer after reading the intermediary paragraphs. Though discovery and investigation are needed to properly prepare the amended complaint, based on the preliminary report that Plaintiff has already received, Plaintiff can state there will be an amendment to adversary complaint for damages and other relief. It is expected that a plethora of causes of action will be found in addition to the following: The note written in this case provides for an adjustable rate of interest that is double digit. But as written, the rate can only go up and never down. Though Arizona does not have a usury law, this type of provision raises a red flag of improprieties, primarily pertaining to predatory lending practices, an area potentially replete with potential causes of action.

Additionally, the Corporate assignment by Argent Mortgage was executed after having gone out of business. See ¶ 12 below. Plaintiffs purchased the home from builder KB Homes, with an appraisal performed by Landsafe Appraisals, which was a subsidiary of Countrywide. There exists at present a class action suit with Countrywide showing collusion between KB Homes and Landsafe Appraisals, to artificially raise appraisal values to increase profits. Appraisal Error or Fraud is a ripe area for damage claims.

3. Even if USNB did have the original endorsed note, as further evidenced by published materials, and as is otherwise known to all involved financial institutions, and among experts and other knowledgeable persons in Mortgage Backed Securities ("MBS"), it is the rule rather than the exception that the simple facial endorsement on a note to a particular entity does not even begin to tell the whole story as to whom is/are the true party in interest, the owner of the equitable interest in the note nor right to payment. At best it may provide a superficial or colorable claim to legal title, as opposed to equitable title to the right to payment. And even if they actually have possession of a note that appears to be facially endorsed to them, thus giving them a colorable claim based on apparent legal title, whether that noteholder is a mere holder, or is a holder in due course, is another question. A mere holder would have only an unsecured claim. A holder in due course may even have less in the final analysis, because when the liabilities reasonably known to it, or as are not exempted from claims and defenses due to the consumer nature of the transaction, are weighed against the value of the note and security, the net result could easily be in the negative.

4. The note in this case was securitized at some point. That much has been admitted. There are a number of threshold issues that USNB must prove to enforce the note. And even if these are satisfied, that is only the beginning of the

issues that will be involved. First, it must show that it has standing to enforce the note in this action by having actual possession of the original note (it has been estimated that over 40% of all original MBS notes have been intentionally destroyed).

The reason the note is gone in most cases (destroyed in 40% of all cases) and lost in most other cases is that the terms of the note do not match up with the description that went up line in the securitization process.

Foreclosure Defense Handbook, p. 37, Neil F. Garfield, M.B.A., J.D., Brad Keiser, BA, MBA, Garfield Continuum, Copyright 2009. Other reasons notes have disappeared are because the note that was assigned was not really the original note, but a forged substitution. Another reason is because they were oversold. A note is an instrument and is like holding money, but if one had represented a note to be a \$100 bill, when it was actually a \$10 bill, the note might not be available when one of those persons wrongfully informed asked to see it. Generally speaking, the notes were often destroyed because they were evidence of criminal and civil fraud. *Id.* at p. 375. Third party mortgage loan fraud is generally not covered in standard fidelity bond insurance. *Id.* at p. 50. Second, USNB must show that it is the true party in interest, or has sufficient actual authority from the true party in interest to qualify for standing. Third, it must eventually show that it holds not only legal title in the note, but that it is also the beneficial owner of the right to payment. See for example, *In re Kang Jin Hwang* 396 B.R. 757 (Bankr.C.D.Cal.2008); *In re Vargas*, 396 B.R. 511 (Bankr.C.D.Cal., 2008). The right to enforce a note on the noteholder's behalf does not convert the noteholder's agent into a real party in interest. *Id.* at 396 B.R. at 767, quoting 6A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 1553; *In re Jacobson*, 402 B.R. 359, 366 (Bankr. W.D.Wash., 2009). The holder of the note and not the servicer or the

collecting agent, must be the moving party, and the party to whom relief is granted, and must be so named in the pleadings. *Id*; *Kang Jin Hwang, supra*; *Vargas, supra*. Pursuant to FRCP 17(a) and 19(a), applicable via Rules 9014, 7017 and 7019, the true party in interest is the only party that can proceed in this action on behalf of the beneficiary of the note in question and their joinder is required. A federal court's jurisdiction is dependant upon the standing of the litigant, which includes both constitutional standing and prudential standing. *Valley Forge Christian Coll. v. Am. United for Separation of Church and State*, 454 U.S. 464, 472 (1982); *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision.

Id; *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551 (1996); *Jacobson, supra* at p. 11. Constitutional standing is a requirement of Article III of the Constitution, is a threshold jurisdictional requirement, and cannot be waived. *Pershing Park Villas Homeowners Ass'n v. United Pacific Ins. Co.*, 219 F.3d 895, 899-900 (9th Cir. 2000); *Jacobson, supra* at p. 12. Prudential standing is also required.

A litigant must also have "prudential standing," which stems from rules of practice limiting the exercise of federal jurisdiction to further considerations such as orderly management of the judicial system. *Pershing Park*, 219 F.3d at 899-900; *In re Godon*, 275 B.R. 555, 564-565 (Bankr. E.D. Cal. 2002) (citing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541-42 (1986)).

Id. Prudential standing requires that a plaintiff must assert "his own legal interests as

the real party in interest,” *Dunmore v. United States*, 358 F.3d 1107, 1112 (9 Cir. 2004), as found in FED. R. CIV. P. 17, which provides “[a]n action must be prosecuted in the name of the real party in interest. Furthermore, FED. R. CIV. P. 19 requires mandatory joinder of every person with an interest in the note if not doing so could lead to inconsistent results in different proceedings affecting the same subject matter. *Kang Jin Hwang, supra* at 7.

The exclusion of these unidentified parties is particularly important in this proceeding. It is highly unlikely that FHM has kept the promissory note: most likely, it sold the note into the market for mortgage securitization. In consequence, it is quite unlikely that MERS is an authorized agent of the holder of the note here at issue. By adding these unidentified movants, MERS is trying to obtain relief from the automatic stay for the current note holders without disclosing to the court their existence, identities or the source of MERS's authority to act on their behalf. This is improper.

In re Vargas, 396 B.R. 511, 516 (Bankr. C.D. Cal. 2008). And an attorney-in-fact that merely has agency relationship for the purpose of bringing suit is only a nominal party and not the true party in interest. 6A *Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* §1553 (2d ed. 1990). An entity seeking to enforce a note must prove they have actual authority to act for a party that has standing. *In re Scott*, 376 B.R. 285 290 (Bankr. D. Idaho 2007); *Kang Jin Hwang*, 396 B.R. at 767; *Jacobson, supra* at 12. This cannot be assumed even if granted it in the original deed of trust. See *In re Mitchell*, Memorandum Opinion, p.8, BK-S-07-16226-LBR, (Bky. D.NV. 2008). *Mitchell* was designated as the lead case for Motions to Lift Stay filed by MERS in 28 cases, The mere fact that a party, such as MERS, is named as the beneficiary in a deed of trust is insufficient to enforce the obligation. It must truly be the beneficiary or join the true beneficiary in the action. Under Arizona law, the person that holds a note is the one that may enforce the note, absent one of two exceptions not pertinent here.

ARS § 47-3301. In Arizona a deed of trust may be used to secure performance of an obligation, and the “beneficiary” is the person for whose benefit the deed of trust is given or their assignee. ARS § 47-33-801(1), (8). The requirements for being a “holder in due course,” are found at ARS § 47-3302.

5. In this case, USNB has produced a Corporate Assignment Deed of Trust, executed after the corporation that executed it had gone out of business, but it has not produced the note endorsed to it. Without the note properly endorsed it has nothing. Even if it did have the note, it would still be faced with all of the issues outlined herein, plus a plethora of liabilities yet to be uncovered in investigation.

6. An entity named as the beneficiary on a deed of trust or who has been assigned the deed of trust may not enforce it if not the holder of the note.

When the note is split from the deed of trust, “the note becomes, as a practical matter, unsecured.” *RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES)* § 5.4 cmt. a (1997). A person holding only a note lacks the power to foreclose because it lacks the security, and a person holding only a deed of trust suffers no default because only the holder of the note is entitled to payment on it. See *RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES)* § 5.4 cmt. e (1997). “Where the mortgagee has ‘transferred’ only the mortgage, the transaction is a nullity and his ‘assignee,’ having received no interest in the underlying debt or obligation, has a worthless piece of paper.” 4 RICHARD R. POWELL, *POWELL ON REAL PROPERTY*, § 37.27[2] (2000).

In re Mitchell, supra at 8. Though the Court in *Kang Jin Hwang* recognized that the trustee of a securitized pooling trust could enforce the note, the development of the argument in that case had not reached the level in which that Court would have been presented with issues that go deeper.

If a note has been securitized into a pooling trust, the trustee may enforce the note. “If a loan has been securitized, the real party in interest is the trustee of the securitization trust, not the servicing agent. See *LaSalle Bank N.A. v. Nomura Asset Capital Corp.*, 180 F.Supp.2d 465, 469-71

(S.D.N.Y.2001) (“ *LaSalle-Nomura* ”); accord, *LaSalle Bank N.A. v. Lehman Bros. Holdings, Inc.*, 237 F.Supp.2d 618, 631-34 (D.Md.2002) (“*LaSalle-Lehman*”).

Kang Jin Hwang, supra at 766. On the surface, and assuming that the document giving the Trustee power to act on behalf of the Trust unequivocally granted the Trustee full and complete actual authority to act on its behalf, as though it were the pool itself, caution should be used here because it is important to see the document that created the Trustee relationship to the pooling trust, because often there is explicit language in said documents that limits the powers of the Trustee and thus the Trustee does not have such powers. Additionally, the Court needs a properly offered copy of the pooling and servicing agreement to verify that the Trustee has such powers, because lenders, servicers and the like hold all the evidence and have trustors at a great advantage, particularly in the context of the unbelievable complications brought into the system by securitization. And because the identity of the actual funder of the loan, actual holder of the note, and proof of the link between them, not only in chain of legal title, but in chain of monetary consideration is kept confidential from borrowers, even though all of this is contrary to consumer protection statutes, proof of this unbroken link must be presented in admissible form.

Additionally, if a power of attorney is presented to this Court and it refers to pooling and servicing agreements, the Court needs a properly offered copy of the pooling and servicing agreements, to determine if the servicing agent may proceed on behalf of plaintiff. (*EMC Mortg. Corp. v. Batista*, 15 Misc.3d 1143(A) [Sup Ct, Kings County 2007]; *Deutsche Bank Nat. Trust Co. v. Lewis*, 14 Misc.3d 1201(A) [Sup Ct, Suffolk County 2006]).

HSBC Bank USA, N.A. v Valentin, 1/30/2008, 18 Misc 3d 1123(A), 2008 NYSlipOp 50164(U), ¶ 3. Again, as the facts of these transactions are coming to light, there need to be provided to the Court an admissible copy of: the pooling and servicing

agreement; the document that establishes the powers of the Trustee to act on behalf of the pool, as though it were the pool itself, generally or as to the particular matter being litigated; proof that the particular note and deed of trust involved are in fact a part of the precise pooling trust involved at the time it is sought to be enforced; that they have never been separated in ownership between differing entities; proof of the identity of the source of the funds that originally funded the loan, which generally came from bonds sold to individual or pooled bond investors in advance of the loans ever being written; a copy of the precise Bond Indenture; and proof of the chain of consideration from the original funding investor that purchased the Bond, to the current holder of the note and deed of trust.

7. There have been many reported instances that have brought the veracity and authenticity of documents in securitized mortgage foreclosure cases into doubt, ranging from everything between failed attempts to create the appearance that the Rules of Evidence had been satisfied, such as the business records hearsay exception and the requirements for authentication of documents, that consisted of inadequate to falsified statements, to cases in which signatures were forged by corporate personnel, and much worse. There are generally gapping holes in proof of the history of ownership and assignments of the notes and in the proof of their chain of custody. Accordingly, of the documents necessary to present proof on these matters must be made in strict compliance with the formal Rules of Evidence, such as those for competency of witness, personal knowledge, hearsay and authenticity, not to mention matters such as relevance of factual assertions contained in documents, and sufficiency of proof. Many of the cases cited herein strictly enforced the evidentiary rules, because various facts in the cases placed the veracity of the documentary

evidence in doubt. For example, *In re Mitchell, supra* at 13-14; *In re Vargas*, 396 B.R. 511, 517 (Bankr. C.D. Cal. 2008).

At a minimum, there must be an unambiguous representation or declaration setting forth the servicer's authority from the present holder of the note to collect on the note and enforce the deed of trust. If questioned, the servicer must be able to produce and authenticate that authority.

Jacobson at 18. The reason the credit markets went into paralysis is not really because of excessive mortgage defaults nor because home values have excessively declined, it is because trust was destroyed in the financial system. MBS derivatives represent only \$13 trillion in out of a total derivative nominal value in the credit markets of \$600 trillion. Even a 40% drop in home values would not account for 1% of the total credit market. Garfield and Keiser, p. 105.

8. A further development has come to light that makes even these requirements insufficient. It is now becoming known that entities seeking to enforce notes and deeds of trust, including notes purportedly held by pool trusts, as is in this case, have no real connection to the the person or entity that provided the actual funding for the mortgage loans. Many of the loans sought to be enforced at this time have already been paid off by alternative sources, as further discussed below. This is only one of the ways that the note becomes split from the deed of trust. As explained above in *In re Mitchell, supra*, splitting the note and deed of trust renders the obligation unsecured. To establish a right to enforce the note, under the very unusual state of affairs that prevail today, the Trustee of the Pooling Trust must establish not only a colorable claim to enforce the note and deed of trust based on apparent facial legal title to seemingly pertinent documents, but they must also prove that whatever funds the Pool used to purchase the note and deed of trust, if any funds were ever paid by it, or

any certificate holder in it, have a chain of consideration leading to the initial investor that funded the loan. Therefore, at a minimum, it is necessary not only to obtain pooling and servicing agreements, the document that gave the Trustee of a pool whatever powers it has to act on behalf of the pool, but also a copy of the Bond Indenture specific to the loan being sought to be enforced, and most importantly, proof of the unbroken chain of ownership of the bond rights and of the consideration for the purchase of those interests from the original investor to the Pool Certificate holders, represented by the Pool Trustee, or other person or entity seeking to enforce the note and deed of trust in a Motion for Relief from stay, or other litigation involving the note. Since the original investors that funded the mortgages through bond purchases are not likely to be the same persons or entities that own interests in the trust pools, and because the financial institutions are well aware of this, the creators of the Trust Pools and the Trustees thereof, which are themselves financial institutions, are not holders in due course, because they did not obtain their interest by paying real value to the initial investor, or through a chain of such purchases without knowledge that there was any impropriety at any time that would place enforcement of the note in jeopardy of potential causes of action prior to purchaser by the trust pools. The interrelation between the various entities involved in this transaction are discussed in ¶ 12 below. The recent District Court case, on appeal from Bankruptcy Court, *Nosek v Ameriquest et al* (Fed D Mass 2009)(Case 4:08-cv-40095-WGY), marks the beginning of a greater insistence that Pool Trustees, Servicers, other purported noteholders, and their attorneys have an increased duty to investigate the facts they represent to the Courts, rather than merely relying on the face of documents presented to them.

9. Some history will help show why reference to the superficial face of

documents will not suffice in today's extremely unusual environment. Securitized mortgage loans began as a brain child of Wall Street. Bonds were sold to persons and entities to obtain ownership of shares in mortgage backed debt obligations before the first applicable mortgage debt ever came into existence. The persons purchasing the bonds were the true investors. The obvious question is why bondholders would leave the notes and deeds of trust to be collected and enforced without demanding repayment. The reason for this is that the bond indentures provided for servicers to handle this aspect. They were completely unconcerned about whether the mortgagor made their payments, but only that they were paid. Payment was guaranteed in advance by way of credit default swaps and other insurance products from companies such as AIG and AMBAC. These insurance companies had no doubt that selling credit default swaps was a profit making enterprise. The MBS derivatives were rated as AAA investments. They did not foresee the fall of the financial institutions. Initially, AIG and others did not even have to place much or any capital in the bond pool accounts. This is because these insurance companies were also AAA rated. Pursuant to their terms, no capital was required to be deposited unless payment on the bonds became uncertain. When uncertainty arose, funds were paid into the accounts and it was with this money that the bondholders were paid. Accordingly, the true noteholders have already been paid. The next set of circumstances was that servicing companies realized they had their hands on notes and deeds of trust that on their face appeared collectable, and that there was no party expecting payment from the funds they collected. There is a strong possibility that the pool in this case does not include the original investor, and that it never paid any consideration to the investor, and that the original investor has already been paid. One scenario is that there are persons that

purchased interests in these pools after the fact, and that none of that money was actually used to fund the loans, and that little or none of the funds that were tendered to purchase interests in pools ever made their way to the bondholders, or initial investors. The creators of at least some of these pools were selling phantom products. These creators realized that on paper they had a colorable right to enforce the notes based on legal title through chain of possession, but not equitable title to those rights. Additionally, there are likely cases in which the pool shareholders did not even purchase their pool interest, but are simply comprised in large part of those persons and entities that realized they had a colorable right to enforce or collect on the notes. For example, X Bank Mortgage LLC, as Trustee for Y Mortgage Loan Trust Inc, Asset Back Pass Through Certificates, Series 2006-ZMC Under the Pooling and Servicing Agreement Dated [date], without recourse, its successors and/or assigns, would be a "Trust" that Y Mortgage Loan created to provide a vehicle for holding notes and for receiving funds that would end up going into the coffers of Y Mortgage Loan, but Y Mortgage Loan was never a bond purchaser, nor a purchaser of a bondholder's interest, nor a purchaser of an interest in the pool. For example, the Trustee of the Pool in this case is USNB. The Trustee is permitted to own certificates. See Section 8.04 of the U.S. Bank National Association, as Trustee of Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2006-AMC1, Pooling and Servicing Agreement ("PSA"), which is 318 pages, and can be found on the Securities and Exchange Commission's ("SEC") website at: http://www.sec.gov/Archives/edgar/data/1375282/000088237706003569/d569570_ex4-1.htm ("USNB Series 2006-AMC1 PSA"). In either case where such a situation exists, whether it be persons or entities that purchased fictitious interests or in the case of

persons or entities that never purchased these fictitious interests, but seek to enforce them for their own benefit, they do not have the equitable right to do so. In other cases in which the Pool had a real interest because it provided the proceeds that funded the loan originally, or because it paid actual consideration to the original funding source to obtain said interest, insurance was purchased from proceeds of this transaction, credit default swaps were purchased from proceeds of this transaction, the investors investments were “oversold” to create a reserve pool from which the Special Purpose Vehicle (“SPV”) could pay deficiencies in payments, and the SPV created cross-collateralization agreements and overcollateralization of the pool assets to assure payments to the investors, thus creating co-obligors on the payment stream due from the Plaintiff on the subject “loan transaction.” The USNB Pooling Trust in the definitions section alone contains at least 16 separate definitions pertaining to Overcollateralization, Article I, Definitions. The pool assets, including the Plaintiff’s subject “loan transaction “ were pledged completely to the owners of the “asset-backed securities.” All the certificates were then transferred to a Seller who in turn sold the certificates in varying denominations, each of which had slightly different terms depending upon which segment of the pool (tranche) secured the investment. Reference If the Pool in this case has a holder in due course of the Plaintiff’s note arising from the subject “loan transaction” it is the investor or investors that purchased said securities (certificates). Some of said securities are held by the original purchaser thereof, others were sold at weekly auction markets, others were paid by re-sales of property that was “secured”, others were paid from prepayments, others were paid by sale at full or partial price to the investment bank that originated the entire transaction,

some of which might be held by the Federal Reserve as non-recourse collateral, and others might have been paid by one or more of the insurance, credit default swaps, cross guarantees or cross collateralization of the segment of the pool that secured the relevant investor who owned certificates backed by a pool of assets that included the subject “loan transaction.” We won’t know the exact state of affairs for the loan in this case until discovery is completed.

10. *Nosek v Ameriquest et al*, supra, is a District Court decision in its second trip up the appellate ladder from a Bankruptcy Court adversary proceeding. This questions raises extremely serious matters to which every mortgage company, servicer, master servicer, Trustee to a Pool, and all attorneys involved ought to pay real attention. It is not doubtful that Attorneys involved in enforcing mortgages have not been aware of the true nature of the facts pertaining to the securitized loans they been enforcing. If the nature of the transactions had been obvious, then many of the most sophisticated persons in the world economy would not have failed to see what was occurring, and the world economy would not have been nearly destroyed by these practices. But *Nosek* ought to mark the beginning of the end for servicers, trustees of pooling trusts, and other purported holders of notes, and their attorneys simply acting on information provided them without investigating to a reasonable degree the true facts in the underlying transaction before seeing relief in Court, particularly when pertinent question are raised by opposing counsel. In *Nosek* Ameriquest and their attorneys were sanctioned severely for not investigating and revealing to the Court the real nature of the interests in the notes, or their real authority to enforce them. A copy of the case is attached as it has not yet been published. Ironically, but not surprising, is that the express terms of the USNB Pooling Trust discourage the Trustee from making

any investigation.

. . . neither the Trustee nor the Trust Administrator shall be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by the Holders of Certificates entitled to at least 25% of the Voting Rights. . .

Article VIII, Section 8.02(a)(v), p. 107. Even if USNB will not voluntarily find the answers needed without service of discovery, at least it ought not act in obstructionist ways, such as attempting to have cases dismissed before discovery is complete, unless it is very sure that it is presenting its case after a good faith investigation, or it runs the risks implied in *Nosek*.

11. We don't even have proof that the note and deed of trust in this case are part of the USNB Series 2006-AMC1 PSA at this time. It is not listed therein. Upon first request, USNB provided to Plaintiff the wrong PSA, which was 1,933 pages, took many hours of Plaintiff's counsel's work to review. But in that PSA, the loans were at least listed, though the listing thereof in a PSA would not begin to answer the questions raised in the above paragraphs. Additionally, we do not have proof that the Trustee has actual authority to act on behalf of the trust, because pursuant to the PSA, a written request signed by 25% of the certificateholders is necessary for the Trustee to perform certain actions, including litigation. Moreover, the Trustee of a Pooling Trust, is generally not permitted to enter into a settlement agreement compromising a mortgage obligation, and there is no proof that it is in this case. Without settlement authority how can one be said to have actual authority to act on behalf of a Trust? The home is worth much less than is owed and the interest rate ought to be brought to a reasonable rate. This can be done voluntarily by the true party in interest at this time. Debtor has had

the property professionally appraised and the value according thereto is \$225,000.00. If Movant or any other party that held the beneficial interest in the note were discoverable, why would such a party not agree to a proposition that would certainly give them more return than if they were to foreclose? That is certainly a better result than complaining that they hold a "toxic asset." The fact that they admit to not being in a position to compromise is further evidence that they do not have the authority to do so, and not having this authority is synonymous to an admission that they are not the true party in interest. We do know that the USNB Pooling Trust was not the source of the original funding for the Plaintiff's loan. The loan was made May 30, 2006, and this Trust came into existence on September 1, 2006. But the Corporate Assignment of Deed of Trust was not executed until July 16, 2008. The USNB Pooling Trust provides,

The Depositor intends to sell pass-through certificates to be issued hereunder in multiple classes, which in the aggregate will evidence the entire beneficial ownership interest in each REMIC (as defined herein) created hereunder. The Trust Fund will consist of a pool of assets comprised of the Mortgage Loans and certain other related assets subject to this Agreement.

See Preliminary Statement at page 6 thereof.

12. This paragraph deals with the relationship between the Trust Pool and the financial institutions purported involved in the transactions pertaining to Plaintiff's loan, and facts demonstrating lack of trustworthiness. The USNB Pooling Trust provides that the "Depositor" is Citigroup Mortgage Loan Trust Inc., a Delaware corporation, or its successor in interest. Article I, Definitions, page 21. The "Lender" in the original Deed of Trust was Argent Mortgage Company. The of "Originator" in the USNB Pooling Trust is stated to be "Ameriquet Mortgage Company." Id. page 33. ACC Capital Holdings (ACCCH) was a national mortgage lender based in Orange,

California. The company was the largest privately held retail mortgage lender in the United States and the largest subprime lender by volume. ACCCH was owned by Roland Arnall prior to his death in March 2008. ACCCH owed Ameriquest Mortgage, and Argent Mortgage, the latter of which made wholesale loans through mortgage brokers, and AMC Mortgage Services which carried out customer services activities for all ACCCH mortgages. On May 2, 2006, ACCCH announced the closure of all of its Ameriquest Mortgage branch offices as part of a plan to consolidate its retail mortgage lending operations into four regional call centers. On February 28, 2007 ACCCH announced that Citigroup was providing working capital and access to credit. Citigroup gained the option to purchase Argent and AMC. On September 9, 2007, Argent Mortgage was sold to Citi for an undisclosed amount. Argent was renamed Citi Residential Lending, which operated for several months before it was shut down. On September 10, 2007, Ameriquest stopped accepting loan applications. On August 31, 2007, Citigroup completed its acquisition of its wholesale origination lending unit Argent Mortgage, its servicing unit AMC Mortgage Services and shut down its retail lending unit Ameriquest Mortgage. Ameriquest was one of the United States's leading wholesale lenders. Ameriquest was founded in 1979, in Orange County, California, as a bank, Long Beach Savings & Loan. The bank moved to Orange County in 1991 and was converted to a pure mortgage lender in 1994, renamed Long Beach Mortgage Co. In 1997, the wholesale part of the business (funding loans made by independent brokers) was spun off as a publicly traded company. Originally founded as a subsidiary corporation under the name Ameriquest Mortgage, it was renamed Long Beach Mortgage, while the retail part of the business was renamed Ameriquest Capital and

remained private. (In 1999, Washington Mutual purchased Long Beach Mortgage.) Ameriquest Mortgage was a private company held by ACCCH, which was owned by Roland Arnall.

13. This paragraph demonstrates lack of trustworthiness and worse on the part of the entities involved herein. In 1996, Ameriquest agreed to pay \$3 million into an "educational fund" to settle a Justice Department lawsuit accusing it of gouging and predatory lending practices against older, female, and minority borrowers. Prosecutors accused it of allowing mortgage brokers and its employees to charge these customers an additional fee of as much as 12% of the loan amount. As part of the settlement, Ameriquest (then still known as Long Beach Mortgage) agreed to use the educational fund to train its employees in proper mortgage techniques (training which most observers agree never actually occurred to any substantial degree), and to refrain from utilizing predatory lending techniques (such as "bicycling"), but only within the State of California. Shortly after entering into this settlement agreement, the company "switched" names with its subsidiary, and began aggressively seeking refinance mortgage business throughout the United States. In 2001, after being investigated by the Federal Trade Commission, the company settled a dispute with ACORN, a national organization of community groups, promising to offer \$360 million in low-cost loans. In January, 2006, ACCCH and its subsidiaries, including Ameriquest finalized a settlement in which it agreed to pay \$295 million to consumers and make sweeping reforms of practices that states alleged amounted to predatory lending. Ameriquest also agreed to pay \$30 million to 49 states and the District of Columbia for costs of the investigation or consumer education and enforcement. In at least five of those states, California,

Connecticut, Georgia, Massachusetts, and Florida, Ameriquest had already settled multimillion-dollar suits. Brian Montgomery, the Federal Housing Administration commissioner said that the Ameriquest settlement reinforced his concern that the industry was exploiting borrowers, and that he "was shocked to find those customers had been lured away by the "fool's gold" of subprime loans". In May 2006, Ameriquest Mortgage announced it was closing all of its retail offices, and in the future would make its loans through mortgage brokers, a channel that is not covered by the predatory-lending settlement with the Attorneys General. Former employees from Ameriquest, which was United States's leading wholesale lender, described a system in which they were pushed to falsify documents on bad Ameriquest mortgages and then sell them to Wall Street banks eager to make fast profits. There is growing evidence that such mortgage fraud may be at the heart of the Financial crisis of 2007–2009. References for this and the above paragraph: LA Times article on ACCCH and Citigroup, retrieved 3/11/2007; San Francisco East Bay Business Times, 5/3/2006; Los Angeles Times, 53 Recent Articles on Ameriquest Mortgage, <http://articles.latimes.com/keyword/ameriquest-mortgage-co>; Road to Ruin: Mortgage Fraud Scandal Brewing May 13, 2009, by American News Project, hosted by The Real News.

14. There is an ongoing securities class action suit on behalf of all persons or entities who acquired the Mortgage Pass-Through Certificates and Asset-Backed Pass-Through Certificates (collectively, the "Certificates") of Citigroup Mortgage Loan Trust Inc. ("Citigroup Mortgage" or the "Depositor") pursuant and/or traceable to the false and misleading Registration Statement and Prospectus Supplements issued during 2007 (collectively, the "Registration Statement"). According to the complaint originally filed on

March 19, 2008, in the Supreme Court of the State of New York, this action involves solely strict liability and negligence claims brought pursuant to the Securities Act of 1933 ("1933 Act"). Citigroup Mortgage is a Delaware corporation formed for the purpose of acquiring, owning and transferring mortgage loan assets and selling interests in them. Citigroup Mortgage is an affiliate of Citigroup Global Markets Inc. ("Citigroup Global"). The issuers of the various offerings (the "Defendant Issuers") are 18 Citigroup Mortgage Loan Trusts, just like that in this case, including the following series numbers: 2007-2; 2007-WFHE4; 2007-6; 2007-AHL1; 2007-AHL2; 2007-AHL3; 2007-AMC1; 2007-AMC2; 2007-AMC3; 2007-AMC4; 2007-AR1; 2007-AR4; 2007-AR5; 2007-AR7; 2007-OPX1; 2007-WFHE1; 2007-WFHE2; 2007-WFHE3. These were established by Citigroup Mortgage to issue billions of dollars worth of Certificates in 2007. On December 12, 2006, Citigroup Mortgage and the Defendant Issuers caused a Registration Statement to be filed with the Securities and Exchange Commission ("SEC") in connection with and for the purpose of issuing billions of dollars of Certificates. The Certificates were issued pursuant to Prospectus Supplements, each of which was incorporated into the Registration Statement. The Certificates were supported by pools of mortgage loans. The Registration Statement represented that the mortgage pools would primarily consist of loans generally secured by liens on residential properties, including conventional and adjustable-rate mortgage loans. Investors purchased the Certificates based upon three primary factors: return (in the form of interest payments), timing of principal and interest payments, and safety (risk of default of the underlying mortgage loan assets). The Registration Statement included false statements and/or omissions about: (i) the underwriting standards purportedly

used in connection with the origination of the underlying mortgage loans; (ii) the maximum loan-to-value ratios used to qualify borrowers; (iii) the appraisals of properties underlying the mortgage loans; and (iv) the debt-to-income ratios permitted on the loans. As a result, the Certificates sold to plaintiff and the Class were secured by assets that had a much greater risk profile than represented in the Registration Statement. In this way, defendants were able to obtain superior ratings on the tranches or classes of Certificates, when in fact these tranches or classes were not equivalent to other investments with the same credit ratings. By the Fall of 2007, the truth about the performance of the mortgage loans that secured the Certificates began to be revealed to the public, increasing the risk of the Certificates receiving less absolute cash flow in the future and the likelihood that investors would not receive it on a timely basis. The credit rating agencies also began to put negative watch labels on the Certificate tranches or classes, ultimately downgrading many. As an additional result, the Certificates are no longer marketable at prices anywhere near the price paid by plaintiff and the Class and the holders of the Certificates are exposed to much more risk with respect to both the timing and absolute cash flow to be received than the Registration Statement/Prospectus Supplements represented. On April 06, 2009, a 92 page amended complaint was filed with the court by the Lead Plaintiffs, City Of Ann Arbor Employees' Retirement System, which can be downloaded at http://securities.stanford.edu/1039/CMLTI_01/200946_r01c_081418. On April 7, 2008, the case was transferred from the Supreme Court of the State of New York to the U.S. District Court for the Eastern District of New York. References: Notice to potential plaintiffs, republished www.ShareholdersFoundation.com at [23](http://www.pr-</p></div><div data-bbox=)

inside.com/print891201.htm; Stanford Law School Securities Class Action Clearing House at http://securities.stanford.edu/1039/CMLTI_01/.

15. USNB claims that the loan in question is a simple case of said Lender, Argent Mortgage Company LLC, by Citi Residential Lending Inc, as Attorney in Fact, assigning the Note and Deed of Trust to USNB Pooling Trust on July 16, 2008. But neither Argent nor Citi Residential, provided the funds that were loaned to Plaintiff. There is no evidence of this, and all of the known evidence is that securitized loans were all funded from pre-sold bond investment funds that merely passed through the "Lender." And we know that USNB was not the source of the loan funds because the Assignment of Deed of Trust states that for "value received," Argent assigned the Deed of Trust to USNB on July 16, 2008, which is more than 2 years after the loan was funded. In addition to the insurance that may have compensated the Bond purchaser, other types of insurance funds can also be used to pay off a loan within the USNB Pooling Trust, such as private mortgage insurance. The PSA provides,

"Insurance Proceeds": Proceeds of any title policy, hazard policy or other insurance policy covering a Mortgage Loan, to the extent such proceeds are not to be applied to the restoration of the related Mortgaged Property or released to the Mortgagor in accordance with the procedures that the Servicer would follow in servicing mortgage loans held for its own account, subject to the terms and conditions of the related Mortgage Note and Mortgage.

Article I, Definitions, page 25. In the first 50 pages of the 318 pages thereof, there are 14 paragraphs that mention insurance proceeds. The section in the USNB Pooling Trust that pertains to "Conveyance of Mortgage Loans; Original Issuance of Certificates," pertains only to mortgage notes and deeds of trust. Article II, beginning at page 47. But nowhere 318 pages can Plaintiff find any discussion of the bonds from whence the interest in the notes and deeds of trust would have come from if they had

obtained them by paying value to obtain them as a true holder in due course would have. All of the banks, other financial institutions and servicing companies, entities that have been involved in mortgage backed securites had absolute knowledge that the funding for the underlying mortgage loans came from pre-sold mortgage bonds and not from the "Lender," cited on the notes and deed of trust. Therefore, they could not claim to have taken the instrument for value, in good faith and without notice that there were or could be competing claims against the borrows for payment on the same note, as well as known causes of action and defenses by the borrowers in the underlying transactions.

WHEREFORE, PREMISES CONSIDERED, Debtor and Plaintiff asks that this Court not dismiss this adversary proceeding, but toll the same until the complete and satisfactory responses to the Qualified Written Request, and other discovery have been obtained, and then additional time to amend the complaint to set forth their causes of action, and for such other and further relief as is just.

Dated, June 21, 2009.

Respectfully submitted,
/S/ Ronald Ryan
Ronald Ryan, Debtor's Counsel

CERTIFICATE OF SERVICE

I certify that on June 21, 2009, a true copy of the forgoing was emailed to: Attorneys for US BANK NATIONAL ASSOCIATION, AS TRUSTEE OF CITIGROUP MORTGAGE LOAN TRUST INC., ASSET BACKED PASS THROUGH CERTIFICATES, SERIES 2006-AMC1 UNDER THE POOLING AND SERVICING AGREEMENT DATED SEPTEMBER 1, 2006, WITHOUT RECOURSE, David E. McAllister Pite Duncan, LLP 4375 Jutland Drive, Suite 200 P.O. Box 17933 San Diego, CA 92177-0933 dmcallister@piteduncan.com; Chapter 13 Trustee; and Debtor.

/s/ Ronald Ryan
Ronald Ryan

File an Answer/Response/Objection to a Motion:

[4:09-ap-00109-JMM KATBAH et al v. CITI RESIDENTIAL LENDING, INC., AS SERVICING AGENT](#)

Type: ap

Office: 4 (Tucson)

Judge: JMM

Lead Case: 4-08-bk-9997

U.S. Bankruptcy Court**District of Arizona**

Notice of Electronic Filing

The following transaction was received from RONALD RYAN entered on 6/21/2009 at 11:47 PM AZ and filed on 6/21/2009

Case Name: KATBAH et al v. CITI RESIDENTIAL LENDING, INC., AS SERVICING AGENT

Case Number: [4:09-ap-00109-JMM](#)

Document Number: [33](#)

Docket Text:

Response to Motion/Application *TO DISMISS ADVERSARY AND MOTION TO TOLL ACTION PENDING RESPONSE TO DISCOVERY AND REPORT FROM MORTGAGE LOAN AUDIT, DOCUMENT REVIEW AND CLAIMS EVALUATION* (related to motions(s)[28]) filed by RONALD RYAN of RONALD RYAN, P.C. on behalf of OLA BAKIR, MAJED KATBAH (Attachments: # (1) Exhibit NOSEK V AMERIQUEST ET AL CASE). (RYAN, RONALD)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\RESPONSE TO MOTION TO DISMISS ADVERSARY.PDF

Electronic document Stamp:

[STAMP bkecfStamp_ID=875559564 [Date=6/21/2009] [FileNumber=14327600-0] [676466b97e8a1cd002e8c33ec220804f0c5422e7c1e941463d80a792e2d41e6d8e11831b87497919475ae4a47037112c0b50175e4b59394daf3180162423ca16]]

Document description:Exhibit NOSEK V AMERIQUEST ET AL CASE

Original filename:C:\fakepath\NOSEK V AMERIQUEST ET AL (FED D MASS 2009) W HIGHLIGHTS.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=875559564 [Date=6/21/2009] [FileNumber=14327600-1] [382805fa2da91ba27c69c85a415375828ccb400beeb4a1db199d2033d6c2f3a883ee3852dde240f4d04a66f4f3686ceea5b4763099a8dd11e293dafa985ffa5b]]

4:09-ap-00109-JMM Notice will be electronically mailed to:

DAVID E. MCALLISTER on behalf of Defendant CITI RESIDENTIAL LENDING, INC., AS

SERVICING AGENT FOR US BANK NATIONAL ASSOCIATION, AS TRUSTEE OF CITIGROUP MORTGAGE LOAN TRUST INC, ASSET BACKED PASS THROUGH CERTIFICATES, SERIES 2006-AMC1 UNDER THE
ecfazb@piteduncan.com

JOSEPHINE 1 PIRANIO on behalf of Defendant CITI RESIDENTIAL LENDING, INC., AS SERVICING AGENT FOR US BANK NATIONAL ASSOCIATION, AS TRUSTEE OF CITIGROUP MORTGAGE LOAN TRUST INC, ASSET BACKED PASS THROUGH CERTIFICATES, SERIES 2006-AMC1 UNDER THE
ecfazb@piteduncan.com

RONALD RYAN on behalf of Plaintiff MAJED KATBAH
ronryanlaw@cox.net