

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

DAVID COLLINS AND YVETTE HERRERA,

Plaintiffs,

vs.

PAUL FINANCIAL, LLC; BARRY MATTHEWS SILVER; GMAC MORTGAGE, LLC; QUALITY LOAN SERVICE CORPORATION; and DOES 1 TO 35,

Defendants.

Case No.: EC062680

**DECLARATION AND  
TESTIMONY OF MARIE  
MCDONNELL, CFE IN SUPPORT  
OF PLAINTIFFS' DAMAGES**

**DECLARATION AND TESTIMONY OF MARIE MCDONNELL, CFE**

Being duly sworn, Marie McDonnell hereby deposes and says on oath as follows:

1. I am a natural born citizen and resident of the Commonwealth of Massachusetts, USA. I am over the age of eighteen and believe in the obligations of an oath.

2. I am a Mortgage Fraud and Forensic Analyst, and a credentialed Certified Fraud Examiner ("CFE") with over twenty-nine (29) years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation. (*See* Curriculum Vitae of Marie McDonnell on file with the Court)

3. I am the President and Chief Executive Officer of McDonnell Analytics, Inc. d/b/a McDonnell Property Analytics (the "Firm"), a litigation support and research firm having a principal place of business at 15 Cape Lane, Brewster, Massachusetts 02631. The Firm, among

other services, provides mortgage-backed securities research and foreclosure forensics to attorneys nationwide.

4. McDonnell Property Analytics also advises and performs services for county registers of deeds, attorneys general, courts and other governmental agencies as they continue to deal with the aftermath of unsafe and unsound mortgage lending practices responsible for the financial crisis of 2008.

5. I am the same Marie McDonnell who provided amicus briefs to the Massachusetts Land Court (4/17/2009 & 6/29/2009) and to the Massachusetts Supreme Judicial Court (10/1/2010) in the landmark cases *U.S. Bank National Association v. Ibanez*; and *Wells Fargo Bank N.A. v. LaRice*, 941 N.E.2d 40 (Mass. 2010). The Land Court allowed me to intervene when plaintiffs' attorneys filed post-trial motions to reconsider the Land Court's decision to vacate two foreclosures based on the fact that neither plaintiff had received an assignment of the mortgage prior to noticing the sale and conducting the foreclosure. My seminal contribution was to shift the focus to defects in the securitization process that proved plaintiffs were not the present holders of the mortgage at the time they published notice and conducted the sale. The *Ibanez* decision rendered by the Massachusetts Supreme Judicial Court was the first in the nation to address the complexities of securitization within the context of residential mortgage foreclosures and it is cited widely by courts in many other jurisdictions.

6. In 2011, John L. O'Brien, Register of the Essex Southern District Registry of Deeds in Salem, Massachusetts, commissioned the Firm to conduct an audit to test the integrity of his Registry due to the mortgage industry's ubiquitous use of Mortgage Electronic Registration Systems, Inc. ("MERS"). Mr. O'Brien was troubled by MERS's contention that its members can avoid recording assignments of mortgage in the public land records if they register them in the MERS® System instead. As a result of this practice, Mr. O'Brien complained that he could no longer look his constituents in the eye and tell them who owned their property.

7. I submitted my findings to Register O'Brien on June 28, 2011, and reported widespread, systemic patterns of practice employed by several of the nation's largest banks that had eroded the transparency and corrupted the chain of title to real property records maintained by the Essex Southern District Registry of Deeds.

8. A true and correct copy of the Firm's report entitled *Forensic Examination Of Assignments Of Mortgage Recorded During 2010 In The Essex Southern District Registry Of Deeds* is available on Register O'Brien's website at: <http://salemdeeds.com/salemdeeds/DownloadFile.aspx?newsid=87>.

9. In 2013, I was engaged as an expert in the matter of *Montgomery County, Pennsylvania, v. MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc.*<sup>1</sup> In that

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<sup>1</sup> See *Montgomery County, Pennsylvania, Recorder of Deeds, by and through Nancy J. Becker v. MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc.*, Case No. 2:11-cv-06968, Document 96.

capacity, I had the opportunity to examine a significant sampling of MERS MIN Summaries and MERS Milestones Reports and compare those with assignments of mortgage recorded in the Montgomery County Recorder's Office. My preliminary findings were filed (with redactions of what MERS claimed was privileged information) in support of the Plaintiff's Cross-Motion for Partial Summary Judgment on November 5, 2013.

10. On September 8, 2015, I completed an intensive examination commissioned by the City of Seattle, which involved a review of mortgage assignments filed of record with the King County Recorder's Office during the first half of 2013. The objective of this project was to determine whether residential real estate property assignments impacting properties within the Seattle city limits involving Mortgage Electronic Registration Systems, Inc. (MERS) were valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012). My report was presented to the Seattle City Council and released to the public on September 23, 2015. It is relevant here because it covers many of the same issues in greater depth.

11. McDonnell Property Analytics collaborated with Real Estate Services and Technology on the Seattle project and, in the process, developed a scalable *Registry of Deeds Audit Facility* that can accurately, efficiently, and systematically audit thousands of land records based on rules written according to specifications designed to fulfill the audit objectives. A true and correct copy of the Firm's report entitled *City of Seattle Review of Mortgage Documents* is available at: <http://www.registryaudit.us/seattle/>.

12. In April 2015, I was retained by Plaintiffs' counsel in the matter of *In Re Mortgage Electronic Registration Systems (MERS) Litigation*, filed in the U.S. District Court for the District of Arizona Case No. 2:09-02119. The essence of Plaintiffs case is that Mortgage Electronic Registration Systems, Inc. has been executing and recording assignments of deeds of trust that purport to transfer beneficial interests in mortgage notes and deeds of trust when, in fact, MERS has no beneficial rights in these instruments to assign. Plaintiffs contend that these assignments contain misstatements of material fact that render them false, groundless, and invalid in violation of A.R.S. § 33-420(A) which subjects MERS and other Defendants responsible for the recording to statutory damages. In June and July of 2015, I submitted an expert report as well as individual reports detailing the specific facts involved in six (6) of the class Plaintiffs cases. My affidavit and reports were filed with the Court on August 17, 2015 in support of Plaintiffs' motions for class certification.

13. By virtue of my experience, I have become familiar with the MERS® System including, but not limited to: how MERS Members register loans in the MERS® System; the events that trigger deactivation in the MERS® System, e.g., when a loan is about to be paid off or is subject to foreclosure; what happens to the data contained in the MERS® System when a MERS Member goes out of business; the two reports that contain historical information on any loan that has been registered in the MERS® System, i.e., the MERS MIN Summary and MERS Milestones Report; and policy changes implemented by MERS as a result of contested litigation in states such as Florida, Washington, Oregon, and Montana.

14. The scope of my services, as they relate to the analysis of mortgage loans, covers the entire life cycle over three principal periods: 1) from application to closing; 2) the loan servicing history from consummation to payoff; and 3) in the case of a default, through collections, loss mitigation, bankruptcy and foreclosure.

15. I have devised a three-tiered analytical process, which begins with laying the mathematical foundation for the credit obligation described in the mortgage contract. The second level requires that I precisely reconstruct the lender's loan servicing history. While doing so, I replicate the interest rate formulae and other mathematical operations performed in the administration of the loan. In this way, I create an active matrix, which allows me to track the lender's accounting to the penny. At the third level, I correlate data obtained from the borrower and other primary sources to investigate whether conflicts, errors or omissions exist. This three-dimensional structure, when synchronized, reveals the exact transactional events that constitute breach of contract or consumer rights violations.

16. The above-described process requires the ability to translate contractual finance language into its mathematical form and effect. Beyond that, it is of utmost importance, in the detection of consumer rights violations, to have a working knowledge of the mortgage lending process itself, and attendant regulations governing the industry such as the Truth in Lending Act and the Real Estate Settlement Procedures Act.

### **EXPERT ENGAGEMENT**

17. David Collins and Yvette Herrera ("Plaintiffs") engaged the Firm to conduct the following investigation:

- A. Analyze a certain residential mortgage transaction that allegedly took place on November 21, 2006 by and between David Collins and Yvette Herrera as Borrowers and Paul Financial, LLC as Lender.
- B. Examine the Borrowers' federal income tax returns for the years 2003, 2004 and 2005 which they submitted on or before 10/31/2006 to Barry Mathews Silver ("Silver"), the mortgage broker; then compare those to the Uniform Residential Loan Application Silver prepared on 11/09/2006.
- C. Analyze the Preliminary Truth In Lending Disclosure Statement prepared by Silver on 10/31/2006 and compare that to the terms of the Adjustable Rate Note from Paul Financial, LLC which the Borrowers were asked to sign on 11/21/2006.
- D. Describe the nature, characteristics, and pricing structure of the complex, negative amortization, interest-only Adjustable Rate Note ("Note"); and then, opine on whether it was suitable and sustainable given the Borrowers' financial capacity.

- E. Express an opinion as to whether as a matter of fact the essential elements of contract formation existed on November 21, 2006 when the Borrowers executed the Note, Deed of Trust, material disclosures, and attendant mortgage loan documents in favor of the Lender, i.e.:
1. Was there an offer and acceptance of that offer among the parties?
  2. Were the parties legally capable of entering into the contract?
  3. Did the contract have a legal purpose?
  4. Were the contract terms clear enough that the parties could understand what each was required to do?
  5. Was there consideration, i.e., did the parties agree to give each other something of value [a promise to do something or not to do something may have value]?
  6. Was there mutuality of assent; did the parties agree to the terms of the contract?
- F. Express an opinion as to whether the Borrowers validly rescinded the transaction pursuant to the Truth in Lending Act.

### **PURPOSE OF THIS AFFIDAVIT**

18. The purpose of this affidavit is to reiterate my expert testimony on behalf of Plaintiffs at the Prove-Up Hearing on October 25, 2016 before the Honorable William D. Stewart, and to provide additional information to the Court with respect to the fraud and truth-in-lending claims that belie the subject transaction.

19. The documents referenced herein and attached as exhibits have already been entered into evidence, or if new, will be of assistance to the Court in assessing damages against the Defendant(s).

20. I acknowledge that this contested matter involves mixed questions of fact and law that are inextricably intertwined. The documents that memorialize the mortgage transaction, i.e., the debt instrument that describes the terms of the alleged "loan" and the security instrument that binds the obligation to a plot of real property, are legal contracts that are heavily regulated by federal, state, and local laws, and governmental authorities.

21. My role here is to be of assistance to the Court by ferreting out material facts that require the specialized knowledge of a subject matter expert. I am fully aware that it is the exclusive jurisdiction of the Court to apply the law to those facts in rendering its decision. I ask the Court's indulgence if certain logical deductions and syllogistic conclusions I report herein sound like conclusions of law, which they are not intended to be.

## DOCUMENTARY EVIDENCE AND RELEVANT FACTS

22. The subject of this analysis is a consumer mortgage transaction that took place on November 21, 2006 (“Settlement Date”),<sup>2</sup> by and between David Collins and Yvette Herrera as Borrowers and Paul Financial, LLC as Lender.

23. On the Settlement Date, the Borrowers executed an Adjustable Rate Note (“Note”) in favor of Paul Financial, LLC and granted a Deed of Trust to obtain a “credit advance”<sup>3</sup> in the amount of \$635,000.00 (described in the Note as “Principal”). (See Exhibit A. – Note, 11/16/2006)

24. A Prepayment Penalty Addendum to Note imposed a penalty for paying down the Principal by 20% or more in a 12-month period for the first thirty-six (36) months after the execution of the Note. (See Exhibit B. – Prepayment Penalty Addendum to Note, 11/16/2006)

25. To ensure repayment of the debt, the Borrowers executed a Deed of Trust pledging residential property located at 420 South Sunset Canyon Drive, Burbank, Los Angeles County, California 91501 (“Property”) as security in the event of a default. The Deed of Trust was recorded in the Los Angeles County Recorder’s Office (“Recorder’s Office”) on November 30, 2006 as Instrument # 20062648087. (See Exhibit C. – Deed of Trust, 11/16/2006)

26. The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

“**Lender**” is Paul Financial, LLC. Lender is a Limited Liability Company organized and existing under the laws of The State of Delaware.

27. Definition (D) of the Deed of Trust identifies Foundation Conveyancing, LLC as Trustee (no address was provided).

28. Mortgage Electronic Registration Systems, Inc. (“MERS”) is defined in Definition (E) as “...a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the beneficiary under this Security Instrument.**” (emphasis in original). The Deed of Trust was registered in the MERS System under MIN #1002706-0000596189-9.

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<sup>2</sup> The Mortgage Loan documents are dated November 16, 2006; however, the documents were executed on November 21, 2006.

<sup>3</sup> I purposely use the term “credit advance” here because the transaction at issue involves a funding mechanism whereby the Borrowers’ Note was monetized, i.e., it was commoditized, pooled together with similar contracts, and sold to investors who purchased fixed income securities (derivatives) that provided the ultimate source of funds for the transaction. The Principal represents the present value of the future cash flow based on the terms of the Note.

29. Appended to the Deed of Trust is an Adjustable Rate Rider which reiterates the terms of the Note and is incorporated into and shall be deemed to amend and supplement the Deed of Trust. (See Exhibit D. – Adjustable Rate Rider, 11/16/2006)

30. A Prepayment Penalty Rider, which reiterates the terms of the Prepayment Penalty Addendum to Note was also incorporated into and shall be deemed to amend and supplement the Deed of Trust. (See Exhibit E. – Prepayment Penalty Rider, 11/16/2006)

## **ANALYSIS**

### **Truth In Lending Analysis**

31. In October 2006, the Borrowers applied to refinance their existing mortgage debt through Barry Mathews Silver, a mortgage broker employed by Multicorp Inc. (“Silver”) who had a correspondent relationship with Paul Financial, LLC, the alleged Lender.

32. As required by the Truth in Lending Act, the Real Estate Settlement Procedures Act, and California law, Silver provided the Borrowers with a Good Faith Estimate of Settlement Costs which contains Additional Required California Disclosures and a Truth In Lending Disclosure Statement both dated October 31, 2006.

33. The Additional Required California Disclosures indicate that the Borrowers applied for a loan in the amount of \$635,000.00 which was to be financed initially at a variable interest rate of 0.250%. The proposed loan term was “360/360” which is shorthand for a loan that would be fully amortized over a 30-year period. Installment payments of \$132.29 were to be made monthly for 360 months except that “If proposed loan is a variable interest rate loan, this payment will vary (see loan documents for details).” (See Exhibit F. – Good Faith Estimate, 10/31/2006)

34. The Preliminary Truth In Lending Disclosure Statement (“P-TILDS”) dated October 31, 2006 that accompanied the Good Faith Estimate reflects the terms of a fixed rate obligation<sup>4</sup> in the amount of \$635,000.00 financed at an interest rate of 0.250% over a thirty-year (30) period. The first 60 installments of \$132.29 were to adjust up to \$2,183.72 for the next 299 payments with a final payment of \$2,184.26 due at maturity. (See Exhibit G. – P-TILDS, 10/31/2006)

35. Thus, the Additional Required California Disclosures and the Preliminary Truth In Lending Disclosure Statement dated October 31, 2006 are in conflict.

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<sup>4</sup> The “Variable Rate Feature” box was not checked off which indicates that a Fixed Rate Mortgage was the subject of this disclosure.

36. In preparation for the Prove-Up Hearing, I analyzed the P-TILDS and found that disclosure reflects the terms of a Fixed Rate Note financed at a yearly interest rate of 0.250% over a thirty (30) year term to maturity. The first 60 payments of \$132.29 reflect interest-only payments. Thereafter, the monthly payment was to adjust up to \$2,183.72 for 299 months followed by a final payment of \$2,184.26 on the maturity date. (*See* Exhibit H. – TILDS ANALYSIS (1))

37. I also compared the Preliminary Truth In Lending Disclosure Statement to the terms of the Adjustable Rate Note the Borrowers executed at settlement and found that the terms and cost of the Mortgage Loan reflected in the Note are so different from the P-TILDS that there can be no reasonable comparison or reconciliation between the two.

38. To illustrate the economic impact of the Note versus the P-TILDS, I have updated<sup>5</sup> the mathematically based Truth In Lending Disclosure Statement Analysis that was submitted into evidence at the Prove-Up Hearing and summarize the material disclosures in Table 1 below. (*See* Exhibit I. – TILDS ANALYSIS – 11/9/2016)

**Table 1 – Preliminary Truth In Lending Disclosure Statement vs. Adjustable Rate Note**

Description	APR	Finance Charge	Amount Financed <sup>6</sup>	Total of Payments
P-TILDS	0.3110%	\$34,829.63	\$628,224.31	\$663,053.94
Note	7.8400%	\$1,501,146.93	\$628,224.31	\$2,129,371.24
<b>Understatements</b>	<b>-7.529% </b>	<b>(\$1,466,317.30) </b>	<b>\$ 0.00</b>	<b>(\$1,466,317.30) </b>

39. To put things into perspective, the tolerance for an understatement in an Annual Percentage Rate (“APR”) pursuant to Reg. Z § 226.22(a)(3) in a closed-end irregular (variable rate) transaction is 0.250%. Accordingly, an understatement in the amount of 7.529% is 30 times the allowable tolerance.

40. An understatement in the Finance Charge of 0.50% of the principal amount of the loan or \$3,175.00 triggers an affirmative right to rescind the transaction for up to three (3) years after the consummation of the transaction pursuant to Reg. Z § 226.23(g)(1)(i). In this instance, the understatement in the Finance Charge exceeds the allowable tolerance by 461 times.

41. In short, the terms of the Adjustable Rate Note exceed the Preliminary Truth In Lending Disclosure Statement by an order of magnitude that would lead any reasonable person

<sup>5</sup> At the Prove-Up Hearing I noted that I had transposed two digits in the Fully Indexed Interest Rate per the terms of the Note. I used 8.215% when it should have been 8.125% and have adjusted my calculations accordingly.

<sup>6</sup> The Amount Financed in the P-TILDS reflects a loan amount of \$635,000.00 minus prepaid finance charges of \$6,775.69. To compare “apples to apples” I used the same Amount Financed when computing the total Finance Charge due under the Note.

to conclude that there was a “bait and switch” in the loan terms at closing. In other words, the Borrowers were fraudulently induced to enter into the transaction based on the promise that their monthly payments would be \$132.29 for five (5) years after which they would adjust to a fully amortizing, affordable payment of \$2,183.72 for the remaining twenty-five (25) year term to maturity.

### Loan Mechanics

42. The terms of repayment are set forth in a highly complex Adjustable Rate Note<sup>7</sup> which provides for asynchronous changes to the interest rate and monthly payments whereby the rate changes each month (12 times/year) while the payments are adjusted annually (1 time/year). Although Paragraph 2 of the Note states that interest will be charge on the full amount of Principal (\$635,000.00) at a yearly rate of 7.125% until the end of the 60<sup>th</sup> month of the loan, the monthly payment of \$132.29 in Paragraph 3(B) of the Note was established using a payment rate of 0.250%. This mismatch between the *interest rate* and the *payment rate* caused a substantial amount of negative amortization (i.e., the capitalization of earned but unpaid interest) which increased the principal balance from month-to-month and rapidly eroded the Borrowers’ equity in the Property.

43. It is important to note here that there is no way the Borrowers could have understood the impact of this negative amortization feature by simply reading the Note or reviewing the Preliminary or Final Truth In Lending Disclosure Statement because it is imperceptible. To understand the hidden dynamics of this non-traditional mortgage product, I prepared a Truth in Lending Analysis that illustrates how unpaid deferred interest accrues and is capitalized into the principal balance from month-to-month until the loan is forced to amortize. (See Exhibit I. – TILDS ANALYSIS – 11/9/2016)

44. I find the structure of this particular loan to be extremely deceptive and predatory in nature because —among other risk layers— it was made without regard to the Borrowers’ ability to pay, which is a hallmark of predatory lending.

45. Whereas the initial monthly payment of \$132.29 was suitable and sustainable, as the monthly payment ratcheted up to its fully indexed amount (projected to be \$5,081.74 as of 5/1/2011 and rising up to \$7,225.59 by 1/1/2017) it exceeded any reasonable level of affordability and became impossible for the Borrowers to maintain.

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<sup>7</sup> It is worthy of note that by mid-2008, virtually every major banking institution who heavily promoted these negative amortization and Pay-Option ARM loans discontinued the program and was either merged out of existence or taken into receivership by the FDIC. To name just a few: Countrywide Home Loans, Inc. merged into Bank of America; World Savings Bank merged into Wachovia before Wachovia was acquired by Wells Fargo Bank; Washington Mutual Bank failed and was placed into receivership with the FDIC as was IndyMac Bank, Bank United, etc.

46. A mathematical exercise using the standard underwriting ratio of allowing 28% of gross monthly income to cover principal, interest, real estate taxes and insurance (“PITI”) illustrates the affordability problem.

47. Table 2 below shows that starting out, the Borrowers needed to earn \$2,357.11 per month for their initial PITI<sup>8</sup> to consume only 28% of their gross monthly income. In contrast, the Borrowers would need to increase their monthly income to \$20,033.71 to handle the interest-only payment at the same level of affordability once the negative amortization ceiling was reached on May 1, 2011—which is when the Borrowers stopped making their mortgage payments. The Note calls for the monthly payment to adjust on January 1, 2017 to a fully-indexed amortizing payment which is clearly “off the charts.”

**Table 2 – Affordability Analysis**

Description	Initial Payment	Interest-Only Payment	Fully-Indexed Payment
Monthly Payment	\$132.29	\$5,081.74	\$7,225.59
Homeowners Insurance	\$185.21	\$185.21	\$185.21
Real Estate Taxes	\$342.49	\$342.49	\$342.49
<b>Total PITI:</b>	<b>\$ 659.99</b>	<b>\$5,609.44</b>	<b>\$7,753.29</b>
Monthly Income @ 28%	\$2,357.11	\$20,033.71	\$27,690.32
Annual Income @ 28%	\$28,285.32	\$240,404.52	\$332,283.84

48. Given the prevailing interest rates at the time, Paul Financial, LLC knew or should have known that it had structured and priced the terms of the Borrowers’ Note in such a way that monthly payments would soon become unsustainable causing them to default, and ultimately, lose their home through foreclosure.

### **The Right of Rescission Under TILA**

49. The Truth in Lending Act (15 U.S.C.A. § 1635 (Right of rescission as to certain transactions)) (“the Act”) provides that in a consumer mortgage transaction (a refinance) secured by the consumer’s principal residence, the right of rescission shall expire three (3) years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first.

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<sup>8</sup> References to the cost for Homeowners Insurance and Real Estate Taxes were obtained from the Buyer’s Payment Information Letter provided to the Borrowers at closing.

50. I found that the Borrowers never received the material disclosures required pursuant to the Act and, therefore, they had an extended right to rescind the transaction for up to three years from the date they consummated the transaction.

51. Although the Borrowers signed the Adjustable Rate Note, Deed of Trust, and ancillary documents provided to them by Paul Financial, LLC on November 21, 2006, the mere execution of these documents does not legally obligate or bind them to what is an unconscionable adhesion contract. In other words, the transaction was never consummated.

52. More importantly, I found that the transaction was void *ab initio* because the essential elements of contract formation never existed in the first place, i.e.:

- i. There was no valid offer and acceptance of that offer among the parties.
- ii. The contract did not have a legal purpose.
- iii. The contract terms were not clear enough that the parties could understand what each was required to do.
- iv. There was no mutuality of assent; no meeting of the minds; no contract.

53. I found that the Borrowers validly rescinded their transaction on April 25, 2013 when they sent Ocwen Loan Services, LLC (“Ocwen”) a “Demand & Notice of Rescission.” Ocwen failed to perform its duties within twenty (20) days as required by the Truth in Lending Act. Therefore, the Borrowers’ duty to tender the proceeds of the transaction never arose, and the proceeds are now vested in the Borrowers. (*See* Exhibit J. – 15 U.S.C.A. § 1635)

54. Because Paul Financial, LLC sold the Borrowers’ Note which was subsequently securitized, the only way to protect the Borrowers at this point is for the Court to declare that the subject Note is void *ab initio* and is, therefore, unenforceable. Once the Note is declared void *ab initio*, the Deed of Trust becomes a nullity and it should be cancelled by order of the Court.

### **Certification**

The factual and expert opinions stated above are based on my research, review of and reliance upon the documents and information supplied to date. I reserve the right to amend and supplement my opinion based on documents, information and data supplied to me in the future.

Therefore, based on my education, specialized knowledge and professional expertise as a Mortgage Fraud and Forensic Analyst and a Certified Fraud Examiner and the documents

before me now, I find within a reasonable degree of certainty, that the opinions expressed herein are true and accurate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Subscribed and signed voluntarily, under penalty of perjury, pursuant to the provisions of 18 U.S.C. § 1621, this 9th day of November, 2016 in Brewster, Massachusetts.

Respectfully submitted,



Marie McDonnell, President & CEO  
*Mortgage Fraud and Forensic Analyst*  
*Certified Fraud Examiner*



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Date: November 9, 2016

**AFFIDAVIT EXHIBITS:**

- A. Note, 11/16/2006
- B. Prepayment Penalty Addendum to Note, 11/16/2006
- C. Deed of Trust, 11/16/2006
- D. Adjustable Rate Rider, 11/16/2006
- E. Prepayment Penalty Rider, 11/16/2006
- F. Good Faith Estimate, 10/31/2006
- G. P-TILDS, 10/31/2006
- H. TILDS Analysis (1)
- I. TILDS Analysis, 11/9/2016
- J. 15 U.S.C.A. § 1635