

**COMMONWEALTH OF KENTUCKY  
PULASKI CIRCUIT COURT  
DIVISION IV  
CIVIL ACTION NO. 10-CI-XXXX**

BIG BAD BANK AS TRUSTEE

PLAINTIFF

VS.                   **DEFENDANT CONNIE CLIENT’S FIRST DISCOVERY**

CONNIE CLIENT, et. al.

DEFENDANT

\* \* \* \* \*

Defendant, Connie Client, serves the following First Discovery on Plaintiff, consisting of Requests for Production, Requests for Admission, and Interrogatories:

Pursuant to the Civil Rule 34 and applicable law, Defendant request that Plaintiff produce at the office of the undersigned counsel within the time period prescribed by the Civil Rules, the documents listed below. In the alternative, within the time period provided by the Civil Rules, Plaintiff may provide Defendant by mail legible copies of both sides of the requested documents.

The term “documents” is to be construed in its broadest form within the meaning of CR 34 and means the original and any non-identical copy, regardless of origin or location. It includes, without limitation, all written or printed material including material stored electronically on computer or otherwise, drawings, graphs, charts, photographs, phono records, books, and other data compilations from which information can be translated through detection devices into reasonably usable form.

Pursuant to CR 34(2) you are required to designate and label each document produced to correspond with each numbered request for production. If the same document corresponds with one or more requests, please designate the response to which it already has been produced or

re-produce that same document each time it is requested.

With respect to any information or document which Plaintiff withholds on the ground of privilege, please identify the subject matter of the information, identify the subject matter of each document, identify the author and addressee of each document, identify each other person who received or saw copies of the document or to whom the content of the document was communicated, and state the basis of the claim of privilege and identify each natural person having personal knowledge of the facts upon which the claim for privilege is based. To the extent that any request calls for the production of documents which, while known to the Plaintiff, are not within the Plaintiff's possession, custody, or control; Plaintiff shall so state in response to such request and shall further state all information known to Plaintiff by which such documents may be identified and shall state the name and present or last known address of the present or last known custodian of such documents.

If you are unable to produce a document requested because it has been lost or destroyed you are to expressly state that this is the case and explain the facts and circumstances of how such document became lost or destroyed.

These requests are deemed continuing, requiring supplemental responses in the event requested documents become available, or become known to you.

### **REQUESTS TO PRODUCE**

1. Please make available for inspection and copying the original Note.
2. Without waiving Request Number 1, please produce a color copy (color photograph, color scan, or other color copy) of the original Note and all attachments, clearly showing the color of ink of each signature and indorsement thereon. To distinguish this copy from the original, you may stamp "copy" on each page.
3. Please produce all other documents that you rely upon to show ownership of the

Note and negotiation of the Note sufficient to enable you to enforce the Note, including without limitation, indorsements, allonges, powers of attorney, assignments etc.

4. Please produce each document that any Affiant relies upon as basis for any Affidavit in which the Affiant swears under penalty of perjury or otherwise that you own or hold the Note and Mortgage. Please note that this request like all Requests to Produce herein is continuing and applies to any future Affidavits.

5. Please produce all documents relating or prepared pursuant to the loan transaction at issue in the Complaint, including, without limitation; all documents prepared or furnished pertaining to the loan's closing; all credit applications, credit reports; all contracts; all mortgages; all disclosure statements; all notices of right to cancel or rescind; all notes or memoranda; all documentation of Defendant' income; all documents signed by you, your assignor, any loan broker, and/or Defendant; and all correspondence with any person or entity including Defendant and any loan broker.

6. Please produce all account ledgers showing the application of the Defendant' payments to principal, interest, late charges, escrow charges, insurance charges and other fees and charges, including any reconciliation ledger that may show application of payments to interest, principal, late charges, escrow charges, insurance charges and any other fees and charges all on one ledger.

7. If there exist separate ledgers for fees due and insurance charges, please produce all such ledgers.

8. Please produce all appraisals and brokers price opinions (BPO's) conducted on the property described in the mortgage.

9. Please produce all correspondence in your possession, regardless of whether the correspondence was originated by you, by Defendant, or by a third party, pertaining to efforts or

requests to modify the loan pursuant to the Federal Government's Home Affordable Modification Program ("HAMP"), or any other modification program.

10. Please produce all telephone logs of communications between Plaintiff and Defendant from September 2009 to the present.

11. Please produce a color copy of each document in the Mortgage File in the possession or custody of the trustee or trust pursuant to the Pooling and Servicing Agreement. Please note the Trustee's Mortgage files not the same as the loan closing file, and the documents produced in response to this request should be only those in the trustee's Mortgage File.

12. Please produce all correspondence or agreements pursuant to which you or any other entity assigned the Note and/or Mortgage to any third party and all correspondence or agreements pursuant to which you contend the Note and/or Mortgage have been assigned back to you.

13. Please provide a link to the Pooling and Servicing Agreement applicable to your claim to ownership of the Note as trustee at Edgar or other Security and Exchange Commission website.

### **REQUESTS FOR ADMISSION**

Pursuant to Civil Rule 36, and applicable law, Defendant serve the following Requests for Admission which Plaintiff must admit or deny or otherwise respond to or answer in accordance with the Civil Rules. Please note that Civil Rule 36 applies both to facts and "application of law to fact". Please remember that CR 37.03 provides that if the party requesting admission later proves the truth of a matter denied, the party may apply for an order granting the party "reasonable expenses incurred in making the proof, including reasonable attorney fees".

1. Plaintiff did not append a copy of the Note to the Complaint because the original Note was unavailable for photocopying.

2. Defendant's Note was sold on the secondary market to a securitization trust.

3. Plaintiff does not have physical possession of the original Note with all necessary indorsements

4. Plaintiff cannot locate the original Note.

5. Plaintiff has conducted no search to determine the whereabouts of the original Note. 6. Plaintiff can name no person, agent, or employee of Plaintiff who has undertaken a systematic search to locate the original Note with indorsement to Plaintiff or indorsement in blank.

7. With respect to any search for the original Note with any necessary indorsement, Plaintiff cannot describe the circumstances of the search, including time; date; locations searched; and persons, agents or employees of Plaintiff conducting the search.

8. Plaintiff can name no person who has seen the original Note since March of 2009.

9. It is not possible for Plaintiff to produce a color copy (color photograph, color scan, or other color copy) of the original Note and all attachments, clearly showing the color of ink of each signature and indorsement thereon.

10. It is not possible for Plaintiff to exhibit the original note to Defendant as Defendant has demanded, pursuant to KRS 355.3-501(b)(2), in paragraph six of her Answer.

11. Lender Business Process Services ("LBPS") is servicing Defendant's account, and LBPS has volunteered for inclusion in the Federal Government's Home Affordable Modification Program ("HAMP").

12. Homeowners such as Defendant are primary beneficiaries of the Making Home

Affordable Modification Program.

13. Defendant has applied for a loan modification pursuant to HAMP.

14. If LBPS has denied Defendant's application, LBPS has sent Defendant no written notice specifying what she must do to cure any defective HAMP application.

15. Pursuant to various rules and contracts implementing HAMP, including HAMP's prohibition on referral and sale,<sup>1</sup> Plaintiff cannot refer Defendant's loan for foreclosure or proceed with a foreclosure sale until LBPS has in good faith considered and reached a decision on Defendant's application for a loan modification pursuant to HAMP.

### **INTERROGATORIES**

*Pursuant to CR 33 and applicable law, please answer the following Interrogatories within the time period provided by the Civil Rules.*

1. Please provide the chain of title, including the dates of transfer and the name and address of every holder of the Note and Mortgage upon which you have based this lawsuit.

2. Please provide the name, title, address, phone number, and business organization of the person or persons who have provided the documentation described in Request to Produce Numbers 1 through 4.

3. Please provide the name, title, address, phone number, and business organization of the person or persons who have provided the documentation described in Request to Produce Number 11.

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<sup>1</sup> See pages 4,5, and 6 of HAMP Supplemental Directive 10-2 available at [https://www.hmpadmin.com/portal/docs/hamp\\_servicer/sd1002.pdf](https://www.hmpadmin.com/portal/docs/hamp_servicer/sd1002.pdf)

4. Please provide the name, title, address and phone number, and business organization of each person participating in the answering of this Discovery.

5. If you have not produced the original Note with all necessary indorsements, please provide the factual details of each search that you or anyone on your behalf has conducted to locate the original Note. In your answer, please state the date of the search; the locations searched; the name, title, address and phone number of each person conducting the search; the approximate time taken to conduct the search; and provide any conclusions reached by each such person conducting the search as to how the Note became lost.

7. If it is your contention that you received the Note by transfer and delivery from another entity, including an originator, sponsor, depositor or securitization trust, or presently have possession of the original Note with indorsement to you or indorsement in blank, please provide the factual basis for that contention and designate all documents upon which you rely to support purported ownership of the indorsed Note.

8. For each location that you believe the original Note has been stored, please provide the name, address and phone number of the location.

9. With respect to each Request for Admission that you deny, please designate the Request for Admission and state the entire factual basis for your denial of the request.

10. Please provide a key with which to identify all codes, letters, numerals, initials of persons who are identified by initial or user identification code, and other symbols used in recording information within your account system for accounting ledgers and any other accounting documentation produced in response to Requests to Produce.

11. With regard to the debt at issue in the Complaint, itemize the amount of each portion of the debt, identifying the amount claimed for principal, interest, late fees, foreclosure costs and other charges; with respect to foreclosure costs, please itemize the amount, including

the date and entity to which the payment was made.

12. With regard to sums paid by Defendants, please itemize and provide the amounts applied thus far to principal, interest, late fees, foreclosure costs, and other charges, plus any sums remaining in suspense.

13. Please state the color of the ink used for each separate signature of each person signing or indorsing the original note using the following format: name of signor or indorsor \_\_\_\_\_; color of ink used for signature \_\_\_\_\_.

14. Please provide the name, address, phone number, business organization, and position of each person who viewed original note to enable you to answer Interrogatory No. 10.

15. Please provide the name, address, phone number, business organization, and position of each person who made any color copy of the Note that you produced pursuant to Request For Production No. 2.

16. If you were unable to answer Interrogatory No. 11, please state why you were unable.

17. If you were unable to produce the Color Copy requested in Request For Production No 2, please state why you were unable.

18. Please provide the date you acquired possession of the original note, with all endorsements currently on it, including on any attached allonge.

19. If you acquired any allonge subsequent to the original note, please state the date of acquisition of the allonge and the circumstances pursuant to which you acquired the allonge.

Respectfully Submitted,

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ADDISON PARKER

DEBRA SPRING  
Appalachian Research & Defense Fund  
Of Kentucky, Inc.  
P.O. Box 567  
Richmond, KY 40476-0567  
Telephone: (859) 624-1394  
Fax: (859) 624-1396

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a true and accurate copy of the foregoing was this 13 day of September, 2010 served by mailing a copy via first-class mail to:

Melissa J. Whalen  
Crystal L. Saresky  
Manley Deas Kochalski PLLC  
P.O. Box 42728  
Cincinnati, OH 45242-0728

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ADDISON PARKER