

Chris Mertens OSB 092230  
Jeffrey A. Long OSB 862350  
Marc Dann Ohio Admission 0039425 Pro Haec Admission Pending  
Oregon Consumer Law Center  
4040 SW Douglas Way  
Lake Oswego, OR 97035  
Phone: (503) 635-7773  
Fax: (503) 822-6727  
Email: Chris@OregonConsumerLawCenter.com  
Of Attorneys for Plaintiff Anna Nguyen

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**ANNA NGUYEN,**  
Plaintiff,

Case No.: 3:16-cv-00263-BR

v.

**MADISON MANAGEMENT  
SERVICES, LLC**  
Defendant.

**FIRST AMENDED  
COMPLAINT**

TILA and RESPA violations (12 U.S.C. § 2601  
and 15 U.S.C. § 1601);  
FDCPA violations (15 U.S.C. § 1962); and  
supplemental state law contract, tort, and statutory  
consumer claims

**DEMAND FOR JURY TRIAL**

**PRELIMINARY STATEMENT**

1. This is an action for actual and statutory damages filed by the Plaintiff for violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010) (“DFA”) and specifically of the Regulations enacted pursuant thereto by the Consumer Financial Protection Bureau (“CFPB”). This is also an action for actual

and statutory damages filed by the Plaintiff for violations of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 *et seq.* (“RESPA”), and the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* (“TILA”).

2. This action is filed to enforce the Regulations published in 12 CFR §§ 1024 and 1026 including, as applicable, amendments that became effective on January 10, 2014. Specifically, 12 CFR §§ 1024.21, 1024.35, 1024.36, 1026.20, and 1026.41.
3. The regulations as they existed prior to the January 10, 2014 amendments apply to the claim under 12 CFR § 1024.21 for failure to properly and timely notice transfer of servicing rights.
4. This is also an action brought by the consumer Plaintiff for money damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, which prohibits abusive, deceptive and unfair debt collection practices and other tort claims.
5. This is also an action brought by the Plaintiff to recover damages for breach of contract and the implied covenant of good faith and fair dealing in the trust deed and promissory note, as well as an action for tortious violation of the covenant of good faith and fair dealing.

#### **JURISDICTION & VENUE**

6. Jurisdiction is conferred on this Court pursuant to RESPA, 12 U.S.C. § 2614, TILA, 15 U.S.C. § 1640(e), FDCPA 15 U.S.C. § 1692k(d), and generally pursuant to 28 U.S.C. § 1331.

7. This court has supplemental jurisdiction to hear state law claims pursuant to 28 U.S.C. § 1367.
8. Personal jurisdiction over Defendant Madison Management Services, LLC (“Defendant”) is proper pursuant to Fed. R. Civ. P. 4(k).
9. Venue is proper before this court pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

10. Plaintiff Anna Nguyen is a natural person, a widow, a first-generation American, and is the owner and resident of real property commonly known as and located at 2933 NE 132nd Avenue, Multnomah County, Portland, Oregon 97230 (the “Property”).
11. Plaintiff is the borrower with an obligation to repay on a note (the “Note”) and deed of trust (the “Deed of Trust”) that secures the Note against the Property (collectively referred to as the “Loan”).
12. Plaintiff was and is at all times pertinent to the allegations made herein a person, natural person, and consumer within the meaning of RESPA, 12 U.S.C. § 2602(5), TILA 15 U.S.C. § 1602(i), FDCPA 15 U.S.C. § 1692a(3), and ORS § 646.605(4).
13. Defendant Madison Management Services, LLC (“Madison”) is a limited liability company organized under Nevada law, with principal place of business located at 400 Morris Avenue, Suite 222, Denville, New Jersey 07834.

14. Defendant Madison does business in Oregon, is duly registered with the Secretary of State as a foreign LLC, and is registered with the Oregon Division of Financial Regulation as a Collection Agency with license number 49774.
15. Defendant Madison uses the instrumentality of interstate commerce—such as using an interstate phone system to make long distance calls and the mails in a business—the principal purpose of which is the collection of debt.
16. Defendant Madison uses the instrumentality of interstate commerce to regularly collect or attempt to collect, directly or indirectly, debts owed to or due—or asserted to be owed to or due—others.
17. On information and belief, Defendant Madison is and was a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6) at all times relevant to the allegations set forth herein.
18. Defendant Madison was and is a person within the meaning of RESPA, 12 U.S.C. § 2602(5) at all times relevant to the allegations set forth herein.
19. Upon information and belief, Defendant Madison became the servicer of the Loan, as of August or September of 2013, and was and is a mortgage loan servicer pursuant to RESPA, 12 U.S.C. § 2602(5), TILA 15 U.S.C. § 1602(cc)(7), and OAR 137-020-0800 (3).
20. At the time Defendant Madison became the servicer of the Loan, the loan was in default.
21. The Loan is a “federally related mortgage loan” as such term is defined by RESPA 12 U.S.C. § 2602(1) and through 12 C.F.R. § 1024.2(b).

**FACTUAL ALLEGATIONS**

22. Plaintiff restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
23. Plaintiff and her late husband came to the United States from Vietnam in the 1970's raised a family and worked hard as contributing members of American Society.
24. In or around December 2005, Plaintiff was able to achieve the goal of property ownership when she purchased the Property to be her principal residence.
25. The Note is an adjustable-rate mortgage ("ARM") where the annual percentage rate may increase after consummation and is a closed-end consumer credit transaction secured by plaintiff's principal dwelling.

26. The Note contains the terms:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of January, 2008, and on that day every 6th month thereafter.

[...]

(F) Notice of Changes

The Note Holder will deliver or mail me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

A copy of the Note is attached hereto as Exhibit 1.

27. In or around 2006, plaintiff's husband passed away, and plaintiff worked multiple jobs in order to stay current on her mortgage.

28. Eventually plaintiff was unable to remain current and started falling behind on her payments.
29. Despite her pro-active efforts to seek assistance to get back on track with her payments on the Note, Plaintiff was unable to obtain assistance to resolve her default despite her efforts and requests.
30. Plaintiff grew increasingly frustrated and worried that she would lose her home with the lack of assistance and uncertainty as to what entity owned and serviced the Note.
31. Because she was worried she might lose her home, plaintiff stopped paying her property taxes, which accrue interest at a rate of 16%.
32. The property taxes are presently due for tax years 2012, 2013, 2014, and 2015 with at least \$3,551.65 in accrued interest outstanding as a result of the plaintiff's uncertainty and frustration.
33. In August of 2015 plaintiff paid the 2011 property taxes consisting of \$3,685.73 in principal and an additional \$638.86 in accrued interest as a result of her confusion and frustration with the mortgage servicer's actions.
34. On or about September 26, 2012 a non-party Kondaur Capital Corporation ("Kondaur") filed a foreclosure action against the plaintiff and the property (the "First Foreclosure Action").
35. Upon information and belief, sometime in August or September 2013 Kondaur transferred servicing rights to defendant Madison.

36. Plaintiff did not receive a notice of transfer of servicing from Kondaur.
37. By and through request from plaintiff's counsel, on or about April 25, 2014, Kondaur produced a copy of a document that purported to be a letter dated August 16, 2013 from Kondaur entitled "Notice of Assignment, Sale, or Transfer of Servicing Rights" (the "Kondaur Transfer Letter"). A copy of the letter is attached hereto as Exhibit 2.

38. The Kondaur Transfer Letter was addressed as follows:

Anna Nguyen  
13105 NE Till  
Portland, OR 97230

39. The address in the Kondaur Transfer Letter does not exist.
40. The Kondaur Transfer Letter identified August 31, 2013 as the effective date of transfer of the servicing rights to Defendant Madison.
41. Plaintiff did not receive a notice of transfer of servicing from Madison.
42. By and through request from plaintiff's counsel, on or about September 4, 2015, Madison produced a copy of a document that purported to be a letter dated September 26, 2013 from Madison entitled "Notice of Assignment, Sale, or Transfer of Servicing Rights" (the "Madison Transfer Letter"). A copy of the letter is attached hereto as Exhibit 3.

43. The Madison Transfer Letter was addressed as follows:

Anna Nguyen  
13105 NE Till  
Portland, OR 97230

44. The address in the Madison Transfer Letter does not exist.

45. The Madison Transfer Letter identified the new owner as non-party Bridgestar Capital, Inc. and the new servicer was identified as Madison Management Services, LLC.
46. The Madison Transfer Letter did not list an effective date for the transfer of servicing.
47. The Madison Transfer Letter did not list hours of availability for Madison Management, but stated "If you have any questions concerning the transfer of servicing to your new servicer, call [phone number] between."
48. At the time of transfer, Plaintiff was in default under the Loan.
49. On or about October 21, 2013 plaintiff retained Oregon Consumer Law Center ("OCLC") to assist her with her foreclosure defense and pursue her loss mitigation options.
50. On or about October 24, 2013, OCLC appeared on behalf of plaintiff in the First Foreclosure Action.
51. On or about December 20, 2013 a judgment dismissing the First Foreclosure Action against the Nguyen was entered by Multnomah County Circuit Court. A copy of the Notice of Entry of Judgment is attached hereto as Exhibit 4.
52. Plaintiff did not receive any periodic billing statements from Defendant Madison, and upon information and belief that is likely to be supported by further investigation, Defendant Madison did not send any periodic billing statements to the Plaintiff from the time it became the servicer in 2013 to present.
53. Madison did not give plaintiff the benefit of any of the disclosures and information required to be in a periodic billing statement pursuant to 12 CFR § 1026.41.

54. Plaintiff did not receive any notice of payment change based on the adjustable interest rate under the Note and attendant notices required by the Note and 12 C.F.R. § 1026.20(c) that were due to be received prior to January 1, 2014, July 1, 2014, January 1, 2015, July 1, 2015, January 1, 2016.
55. On or about April 29, 2014, Bridgestar Capital Corporation filed a complaint seeking judgment for foreclosure on the Property (the "Second Foreclosure Action").
56. On or About December 17, 2014, Plaintiff was given a letter from Madison dated December 2, 2014 entitled "Payoff Statement." (the "December 2014 Payoff Letter"). A copy of the December 2014 Payoff Statement is attached hereto as Exhibit 5.
57. The December 2014 Payoff Statement identified the Plaintiff, the Property, and also stated that the "Note Rate" was 9.25, that the "Principal" amounted to \$200,991.69; "Interest Calculated to but not including 12/2/2014" was \$130,904.21; "Late Charges Outstanding" amounted to \$9,865.52; that "Advances" amounted to \$309.63; and the "Total Due" was \$342,071.05.
58. On or about July 15, 2015, a judgment dismissing the Second Foreclosure Proceeding on Ms. Nguyen's motion was entered by the Multnomah County Circuit Court. A copy of the Notice of Entry of Judgment in the Second Foreclosure Proceeding is attached hereto as Exhibit 6.
59. On or about July 16, 2015 a supplemental judgment was entered by the Multnomah County Circuit Court in favor of plaintiff awarding her attorney fees and costs in total amount of

\$20,548.98. A copy of the Supplemental Judgment and Money Award is attached hereto as Exhibit 7.

60. Non-party Bridgestar Capital Corporation appealed the judgment award of attorney fees and costs whereby the matter is currently pending on appeal.
61. On or about August 13, 2015 non-party Bridgestar Capital Corporation filed another complaint seeking judgment for foreclosure on the Property (the "Third Foreclosure Action"). The action is presently pending with trial set for July 22, 2016.
62. Madison's website provides that any notice of error or request for information must be sent to Madison at a specific address (the "Address").
63. On or about August 4, 2014, Plaintiff, by and through The Dann Law Firm Co., L.P.A. ("DLF"), a sister firm of the Oregon Consumer Law Center ("OCLC"), sent correspondence captioned "Request for Information Pursuant to 12 C.F.R. § 1024.35(b)(5) and 15 U.S.C. § 1641(f)(2)" ("RFI #1) to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7013 0600 0001 0746 4221]. A copy of RFI #1 is attached hereto as Exhibit 8.
64. Madison received RFI #1 on August 7, 2014. A copy of the Tracking information for RFI #1, obtained from the website for the United States Postal Service (USPS) ([www.usps.com](http://www.usps.com)) on March 12, 2015, is attached as Exhibit 9.
65. On or about August 4, 2014, Plaintiff, by and through DLF, sent correspondence captioned "Request for Information Pursuant to 12 C.F.R. § 1024.36" ("RFI #2) to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7013 0600 0001 0746 4177]. A copy of RFI #2 is attached hereto as Exhibit 10.

66. Madison received RFI #2 on August 7, 2014. A copy of the Tracking information for RFI #2, obtained from the USPS's website ([www.usps.com](http://www.usps.com)) on March 12, 2015, is attached as Exhibit 11.
67. As of January 27, 2016, neither Plaintiff, DLF, nor OCLC, had received any written correspondence in relation to RFI #1 or RFI #2.
68. On or about April 15, 2015, Plaintiff, by and through OCLC, sent correspondence captioned "Notice of Error under 12 C.F.R. § 1024.35(b)(11) for failure to send written acknowledgment required by 12 C.F.R. § 1024.36(c); Notice of Error under 12 C.F.R. § 1024.35(b)(11) for failing to respond to borrower's request for information pursuant to 12 C.F.R. §1024.36 and 15 U.S.C.§1641(f)(2)" ("NOE #1") to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 1200 0001 1702 0400]. A copy of NOE #1 is attached hereto as Exhibit 12.
69. Madison received NOE #1 on April 20, 2015. A copy of the Tracking information for NOE #1, obtained from the USPS's website ([www.usps.com](http://www.usps.com)) on April 23, 2015, is attached as Exhibit 13.
70. On or about April 15, 2015, Plaintiff, by and through OCLC, sent correspondence captioned "Notice of Error under 12 C.F.R. § 1024.35(b)(11) for failure to send written acknowledgment required by 12 C.F.R. § 1024.36(c); Notice of Error under 12 C.F.R. § 1024.35(b)(11) for failing to respond to borrower's request for information pursuant to 12 C.F.R. § 1024.36(d)" ("NOE #2") to Madison at the Address via Certified U.S. Mail [Return

Receipt No. 7014 2870 0002 3244 1012]. A copy of NOE #2 is attached hereto as Exhibit 14.

71. Madison received NOE #2 on April 20, 2015. A copy of the Tracking information for NOE #2, obtained from the USPS's website ([www.usps.com](http://www.usps.com)) on April 23, 2015, is attached as Exhibit 15.
72. On or about April 23, 2015, Madison sent correspondence to Plaintiff by and through DLF captioned "RE: Your letter received on 4/23/2015" ("Acknowledgment #1"). A copy of Acknowledgment #1 is attached as Exhibit 16.
73. Acknowledgment #1 stated "[t]his is to confirm receipt of your letter and our response will be forthcoming within the next 30 to 45 days after we have completed our research." See Exhibit 16.
74. As Acknowledgment #1 made specific, explicit references to "[y]our **letter** received on 4/23/2015" and "receipt of your **letter**" (emphasis added), referring only to one (1) letter that Madison received on or around April 23, 2015, when two (2) letters were received by Madison at or around that time. See Exhibits 16, 13, and 15, respectively.
75. Due to the vagueness of Acknowledgment #1, it is indiscernible as to whether Acknowledgment #1 acknowledged NOE #1 or NOE #2.
76. On or about May 14, 2015, Plaintiff, by and through OCLC, received undated correspondence with no cover letter consisting of a series of portions of other correspondence and documents, potentially in an attempt as an omnibus response to NOE

- #1 and NOE #2 (“Response #1”). A copy of Response #1, as received by OCLC, is attached as Exhibit 17.
77. On or about July 6, 2015, Plaintiff, by and through OCLC, sent correspondence captioned “Notice of error pursuant to 12 C.F.R. §1024.35(b)(11) for failure to properly respond to a notice of error in compliance with 12 C.F.R. §1024.35(e)” (“NOE #3”) to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 3490 0001 2874 2259]. A copy of NOE #3 is attached hereto as Exhibit 18.
78. Defendant Madison Management received NOE #3 on July 10, 2015. A copy of the Tracking information for NOE #3, obtained from the USPS’s website ([www.usps.com](http://www.usps.com)) on July 20, 2015, is attached as Exhibit 19.
79. On or about July 28, 2015, Defendant Madison Management sent correspondence to Plaintiff captioned “RE: Your letter received 7/10/2015” in response to NOE #3 (“Response #2”). A copy of Response #2 is attached as Exhibit 20.
80. Neither Plaintiff, DLF, nor OCLC received any correspondence other than Response #2 in relation to NOE #3.
81. On or about August 26, 2015, Plaintiff, by and through OCLC, sent correspondence captioned “Notice of Error under 12 C.F.R. §1024.35(b)(11) for failing to properly investigate and respond to a borrower’s Notice of Error pursuant to 12 C.F.R. §1024.35(e)” (“NOE #4”) to Defendant Madison Management at the Address via Certified U.S. Mail [Return Receipt No. 7014 3490 0001 2874 4727]. A copy of NOE #4 is attached hereto as Exhibit 21.

82. Defendant Madison Management received NOE #4 on August 31, 2015. A copy of the Tracking information for NOE #4, obtained from the USPS's website ([www.usps.com](http://www.usps.com)) on July 20, 2015, is attached as Exhibit 22.
83. On or about September 4, 2015, Defendant Madison Management sent correspondence to Plaintiff captioned "2833 NE 132nd Ave, Portland, OR 97230" in response to NOE #4 ("Response #3"). A copy of Response #3 is attached as Exhibit 23.
84. Response #3 acknowledged receipt of NOE #4, stated there is no transaction history with Madison to provide, indicated that the loan was "boarded with us in September 2013," provided an alleged copy of the Note, as well as a printout of a screenshot purporting to show the account history for the Loan, which was largely blank. See Exhibit 23.
85. Plaintiff suffered and continues to suffer harm in the measure of measurable economic damages and emotional distress instigated and/or exacerbated by Madison's inexplicable ongoing failure to perform its servicing obligations under the Loan and applicable law.
86. Plaintiff has suffered economic harm as a result of Madison's actions and failures as measured by additional interest and late fees that have accrued on the loan since Madison took over servicing duties.
87. Plaintiff has suffered economic harm as a result of Madison's actions and failures in the form of additional interest accrued and accruing on unpaid property taxes.
88. Plaintiff has suffered economic harm in the tens of thousands of dollars in attorneys fees she has incurred in defending multiple erroneous foreclosure suits, at least a portion of which plaintiff has actually paid for.

89. Plaintiff has suffered economic harm in the thousands of dollars in attorneys fees and costs, including costs for certified mailing notices of error, and for seeking the information through requests for information and subsequent notices of error necessary due to the lack of information provided by Madison and Madison's failure to properly acknowledge and respond to requests for information.
90. Plaintiff has suffered emotional distress in the form of continued and exacerbated mental anguish, nervousness, sleeplessness, and anxiety that has manifested itself physically and necessitated the ongoing medical care and treatment.
91. Plaintiff has potentially suffered damages in the form of costs and fees from counsel for the purported owner of the note that may be charged to the Loan balance.
92. Plaintiff has suffered damages in the form of lost opportunity to potentially sell the Property for a profit because she did not have any information as to the actual balance of the loan or what resources were available to her to find out her options.

**FIRST CLAIM FOR RELIEF: VIOLATIONS 12 C.F.R. § 1024.21 (as regulation existed prior to removal effective January 10, 2014)—Failure to provide proper and timely notices related to transfer of servicing .**

93. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.
94. Defendant Madison failed to comply with the required disclosures in 12 CFR § 1024.1(d)(3) in its correspondence to the plaintiff dated September 26, 2013 by failing to disclose the effective date of the servicing transfer, failing to identify a person or department to contact

associated with the phone number provided, and failing to accurately identify the hours available to contact the new servicer.

95. Madison, upon information and belief, failed to timely provide plaintiff of the servicing transfer as required by 12 CFR § 1024.1(d)(3)(B) when it failed to provide notice within 15 days of the effective date of the servicing transfer.
96. Correspondence from the transferor servicer dated August 16, 2013 identified the effective date of the transfer as August 31, 2013. See Exhibit 2.
97. Upon information and belief, Madison did not send the Madison Transfer Letter, or if it did, sent it to a nonexistent address.
98. In any event, the Madison Transfer Letter containing faulty notice of servicing transfer to the Plaintiff was provided to plaintiff's counsel on or about September 4, 2015.
99. Defendant Madison's multiple failures to comply with the required notice, together with failure to timely provide notice, and together with the other requirements under TILA and RESPA demonstrate a pattern and practice of failing to comply with these statutes and the regulations promulgated thereunder.
100. 12 C.F.R. § 1024.21(f)(1)(i) states in relevant part that:

Whoever fails to comply with any provision of this section shall be liable to the borrower *for each failure* in the following amounts: **(i)** Individuals. In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed \$1,000 [emphasis added].

101. Madison committed no less than five failures and violations in connection with the servicing transfer letter, including the failure to send it in a timely manner, demonstrating a pattern and practice of violations, and should be liable for \$1,000 per violation and failure in connection with the servicing transfer letter.
102. Upon information and belief, defendant Madison tried to hide the lack of timely notice of servicing transfer by omitting the effective date of the servicing transfer.
103. As a result of Defendant Madison's violations, plaintiff's confusion as to the Loan status, ownership, and payment requirement was compounded, causing her to suffer stress, emotional disturbance, as well as economic expense, including but not limited to attorney fees in reviewing the notice of transfer for deficiency and asserting plaintiff's rights thereunder, accrued interest and late-fees on the Loan and on outstanding property taxes, costs of mailing related to notices of error, and costs of mileage to see the attorney, go to court, and attend a deposition.

**SECOND CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.36(c)—Failure to send written acknowledgment of a servicer's receipt of a request for information issued pursuant to 12 C.F.R. § 1024.36**

104. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
105. 12 C.F.R. § 1024.36(c) provides that “[w]ithin five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving an information request from a borrower, the

servicer shall provide to the borrower a written response acknowledging receipt of the information request.”

106. 12 C.F.R. § 1024.36(a) provides, in relevant part, that a request for information may consist of “any written request for information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting with respect to the borrower's mortgage loan.”

107. Comment 1 of the Official Interpretations of the CFPB to 12 C.F.R. § 1024.36(a) provides that “[a]n information request is submitted by a borrower if the information request is submitted by an agent of the borrower.”

108. On or about August 4, 2014, Nguyen, by and through DLF, sent RFI #1 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7013 0600 0001 0746 4221]. See Exhibit 8.

109. RFI #1 constituted a request for information pursuant to 12 C.F.R. § 1024.36. See Exhibit 8.

110. Madison received RFI #1 on August 7, 2014. See Exhibit 9.

111. Pursuant to 12 C.F.R. § 1024.36(c), Madison was required to provide a written response to Nguyen acknowledging receipt of RFI #1 on or before August 14, 2014.

112. Neither Nguyen, DLF, nor OCLC, received any written response from Madison acknowledging receipt of RFI #1 on or before August 14, 2014.

113. Madison did not provide a written response to Nguyen acknowledging receipt of RFI #1 on or before August 14, 2014.
114. Madison's actions in failing to provide a written response to Nguyen acknowledging receipt of RFI #1 on or before August 14, 2014, constitute a willful violation of 12 C.F.R. § 1024.36(c).
115. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.
116. As a result of Madison's actions, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**THIRD CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.36(d)—Failure to respond to a request for information issued pursuant to 12 C.F.R. § 1024.36**

117. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
118. 12 C.F.R. § 1024.36(d)(1) provides, in relevant part, that:

[A] servicer must respond to an information request by either:

- (i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or
- (ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer's determination, and

provides contact information, including a telephone number,  
for further assistance

119. Furthermore, 12 C.F.R. § 1024.36(d)(2)(i) provides that:

A servicer must comply with the requirements of paragraph (d)(1)  
of this section:

(A) Not later than 10 days (excluding legal public holidays,  
Saturdays, and Sundays) after the servicer receives an  
information request for the identity of, and address or other  
relevant contact information for, the owner or assignee of a  
mortgage loan; and

(B) For all other requests for information, not later than 30 days  
(excluding legal public holidays, Saturdays, and Sundays) after  
the servicer receives the information request.

120. 12 C.F.R. § 1024.36(d)(2)(i) provides that “[a] servicer may not extend the time period for  
requests for information governed by paragraph (d)(2)(i)(A) of this section.

121. 12 C.F.R. § 1024.36(a) provides, in relevant part, that a request for information may consist  
of “any written request for information from a borrower that includes the name of the  
borrower, information that enables the servicer to identify the borrower's mortgage loan  
account, and states the information the borrower is requesting with respect to the borrower's  
mortgage loan.”

122. Comment 1 of the Official Interpretations of the CFPB to 12 C.F.R. § 1024.36(a) provides  
that “[a]n information request is submitted by a borrower if the information request is  
submitted by an agent of the borrower.”

123. On or about August 4, 2014, Nguyen, by and through DLF, sent RFI #1 to Madison at the  
Address via Certified U.S. Mail [Return Receipt No. 7013 0600 0001 0746 4221]. See  
Exhibit 8.

124. RFI #1 constituted a request for information pursuant to 12 C.F.R. § 1024.36. See Exhibit 8.
125. RFI #1 constituted a request for information pursuant to 12 C.F.R. § 1024.36(d)(2)(i)(A) as RFI #1 requested information as to “the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan.” See Exhibit 8.
126. Madison received RFI #1 on August 7, 2014. See Exhibit 9.
127. Pursuant to 12 C.F.R. § 1024.36(c), Madison was required to provide written correspondence to Nguyen responding to RFI #1 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before September 19, 2014.
128. Neither Nguyen, DLF, nor OCLC, received any written correspondence from Madison responding to RFI #1 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before August 21, 2014.
129. Madison did not provide any written correspondence to Nguyen responding to RFI #1 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before August 21, 2014
130. Madison’s actions in failing to provide written correspondence to Nguyen responding to RFI #1 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before August 21, 2014, constitute a willful violation of 12 C.F.R. § 1024.36(c).
131. Madison’s actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff’s rights under RESPA.

132. As a result of Madison's actions, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**FOURTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.36(c)—Failure to send written acknowledgment of a servicer's receipt of a request for information issued pursuant to 12 C.F.R. § 1024.36**

133. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

134. On or about August 4, 2014, Nguyen, by and through DLF, sent RFI #2 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7013 0600 0001 0746 4177]. See Exhibit 10.

135. RFI #2 constituted a request for information pursuant to 12 C.F.R. § 1024.36. See Exhibit 10.

136. Madison received RFI #2 on August 7, 2014. See Exhibit 11.

137. Pursuant to 12 C.F.R. § 1024.36(c), Madison was required to provide a written response to Nguyen acknowledging receipt of RFI #2 on or before August 14, 2014.

138. Neither Nguyen, DLF, nor OCLC, received any written response from Madison acknowledging receipt of RFI #1 on or before August 14, 2014.

139. Madison did not provide any written response to Nguyen acknowledging receipt of RFI #2 on or before August 14, 2014.

140. Madison's actions in failing to provide a written response to Nguyen acknowledging receipt of RFI #1 on or before August 14, 2014, constitute a willful violation of 12 C.F.R. § 1024.36(c).

141. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.

142. As a result of Madison's actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.

143. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**FIFTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.36(d)—Failure to respond to a request for information issued pursuant to 12 C.F.R. § 1024.36**

144. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

145. 12 C.F.R. § 1024.36(d)(1) provides, in relevant part, that:

[A] servicer must respond to an information request by either:

- (i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or
- (ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that

the requested information is not available to the servicer, provides the basis for the servicer's determination, and provides contact information, including a telephone number, for further assistance

146. On or about August 4, 2014, Nguyen, by and through DLF, sent RFI #2 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7013 0600 0001 0746 4177]. See Exhibit 10.
147. RFI #1 constituted a request for information pursuant to 12 C.F.R. § 1024.36. See Exhibit 10.
148. RFI #2 constituted a request for information pursuant to 12 C.F.R. § 1024.36(d)(2)(i)(B) as RFI #2 did not request information as to “the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan.” See Exhibit 11.
149. Madison received RFI #2 on August 7, 2014. See Exhibit 11.
150. Pursuant to 12 C.F.R. § 1024.36(c), Madison was required to provide written correspondence to Nguyen responding to RFI #2 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before September 19, 2014.
151. Neither Nguyen, DLF, nor OCLC, received any written correspondence from Madison responding to RFI #1 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before September 19, 2014.
152. Madison did not provide any written correspondence to Nguyen responding to RFI #2 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before September 19, 2014.

153. Madison's actions in failing to provide written correspondence to Nguyen responding to RFI #2 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before September 19, 2014, constitute a willful violation of 12 C.F.R. § 1024.36(c).
154. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.
155. As a result of Madison's actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.
156. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**SIXTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.35(d)—Failure to send written acknowledgment of a servicer's receipt of a notice of error issued pursuant to 12 C.F.R. § 1024.35**

157. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
158. On or about April 15, 2015, Nguyen, by and through OCLC, sent NOE #1 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 1200 0001 1702 0400]. See Exhibit 12.

159. NOE #1 constituted a notice of error pursuant to 12 C.F.R. § 1024.35 as it alleged that Madison had committed two (2) separate and distinct errors in the servicing of the Loan. See Exhibit 12.
160. Madison received NOE #1 on April 20, 2015. See Exhibit 13.
161. On or about April 15, 2015, Nguyen, by and through OCLC, sent NOE #2 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 2870 0002 3244 1012]. See Exhibit 14.
162. NOE #2 constituted a notice of error pursuant to 12 C.F.R. § 1024.35 as it alleged that Madison had committed two (2) separate and distinct errors in the servicing of the Loan. See Exhibit 14.
163. Madison received NOE #2 on April 20, 2015. See Exhibit 15.
164. Pursuant to 12 C.F.R. § 1024.35(d), Madison was required to provide a written response to Nguyen acknowledging receipt of NOE #1 on or before April 27, 2015.
165. Pursuant to 12 C.F.R. § 1024.35(d), Madison was required to provide a written response to Nguyen acknowledging receipt of NOE #2 on or before April 27, 2015.
166. On or about April 23, 2015, Madison sent Acknowledgment #1 to Nguyen by and through DLF. See Exhibit 16.
167. Acknowledgment #1 stated “[t]his is to confirm receipt of your letter and our response will be forthcoming within the next 30 to 45 days after we have completed our research.” See Exhibit 16.

168. As Acknowledgment #1 made specific, explicit references to “[y]our *letter* received on 4/23/2015” and “receipt of your *letter*” (emphasis added), it is clear that Acknowledgment #1 was sent only in reference to one (1) letter that Madison received on or around April 23, 2015, when two (2) letters, specifically NOE #1 and NOE #2, were received by Madison at or around that time. See Exhibits 16, 13, and 15, respectively.
169. Madison did not provide, nor did Nguyen, DLF, nor OCLC receive, any other written response to Nguyen acknowledging receipt of either NOE #1 or NOE #2 on or before April 27, 2015.
170. Due to the vagueness of Acknowledgment #1, it is indiscernible as to whether Acknowledgment #1 is in relation to NOE #1 or NOE #2. See Exhibit 16.
171. Regardless as to whether Madison sent Acknowledgment #1 in relation to NOE #1 or NOE #2, it is clear that Madison failed to send written acknowledgment of either NOE #1 or NOE #2. See Exhibits 16, 13, and 15, respectively.
172. Madison’s actions in failing to provide a written response to Nguyen acknowledging receipt of either NOE #1 or NOE #2 on or before April 27, 2015, constitute a willful violation of 12 C.F.R. § 1024.35(d).
173. Madison’s actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff’s rights under RESPA.

174. As a result of Madison's actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.

175. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**SEVENTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.35(e)—Failure to properly respond to a notice of error issued pursuant to 12 C.F.R. § 1024.35**

176. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

177. 12 C.F.R. § 1024.35(a) provides, in relevant part that “[a] servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred.”

178. Comment 1 of the Official Interpretations of the CFPB to 12 C.F.R. § 1024.35(a) provides that “[a] notice of error is submitted by a borrower if the notice of error is submitted by an agent of the borrower.”

179. 12 C.F.R. § 1024.35(b) provides, in relevant part:

For purposes of this section, the term "error" refers to the following categories of covered error:

[...]

(11) Any other error relating to the servicing of a borrower's mortgage loan.

180. 12 C.F.R. § 1024.35(e)(1)(i) provides:

Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:

- (A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or
- (B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

181. 12 C.F.R. § 1024.35(e)(3)(i) provides:

A servicer must comply with the requirements of paragraph (e)(1) of this section:

- (A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.
- (B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.
- (C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

182. On or about April 15, 2015, Nguyen, by and through OCLC, sent NOE #1 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 1200 0001 1702 0400]. See Exhibit 12.

183. NOE #1 constituted a notice of error pursuant to 12 C.F.R. § 1024.35 as it alleged that Madison had committed two (2) separate and distinct errors in the servicing of the Loan. See Exhibit 12.
184. Madison received NOE #1 on April 20, 2015. See Exhibit 13.
185. NOE #1 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to provide a written response to Nguyen acknowledging receipt of RFI #1 on or before August 14, 2014, in violation of 12 C.F.R. § 1024.36(c). See Exhibit 12.
186. NOE #1 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to provide written correspondence to Nguyen responding to RFI #1 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before August 21, 2014, which constituted a willful violation of 12 C.F.R. § 1024.36(c). See Exhibit 12.
187. As NOE #1 alleged errors in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11), pursuant to 12 C.F.R. § 1024.35(e)(3)(i)(C), Madison was required to respond to NOE #1, pursuant to the requirements of 12 C.F.R. § 1024.35, on or before June 2, 2015.
188. On or about May 14, 2015, Nguyen, by and through OCLC, received Response #1. See Exhibit 17.
189. Response #1 consisted of undated correspondence, with no cover letter, and appeared to be merely a collection of portions of other correspondence and documents. See Exhibit 17.

190. Upon information and belief, Madison intended Response #1 to serve as a response to both NOE #1 and NOE #2.
191. Madison did not send, nor did Nguyen, DLF, or OCLC receive, any other correspondence consisting of a substantive response to NOE #1 other than Response #1.
192. Madison did not send, nor did Nguyen, DLF, or OCLC receive, any other correspondence requesting an extension of time to respond to NOE #1 pursuant to 12 C.F.R. § 1024.35(e)(3)(ii).
193. Response #1 did not contain “a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance” as required by 12 C.F.R. § 1024.35(e)(1)(A). See Exhibit 17.
194. Response #1 was insufficient in form and substance in responding to NOE #1 so as to comply with 12 C.F.R. § 1024.35(e)(1)(A).
195. Response #1 did not contain a statement that “the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.” See Exhibit 17.
196. Response #1 was insufficient in form and substance in responding to NOE #1 so as to comply with 12 C.F.R. § 1024.35(e)(1)(B).

197. Madison's actions in failing to provide a response to NOE #1 in compliance with either 12 C.F.R. § 1024.35(e)(1)(A) or 12 C.F.R. § 1024.35(e)(1)(B), on or before June 2, 2015, constitutes a willful violation of 12 C.F.R. § 1024.35(d).
198. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.
199. As a result of Madison's actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.
200. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**EIGHTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.35(e)—Failure to properly respond to a notice of error issued pursuant to 12 C.F.R. § 1024.35**

201. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
202. On or about April 15, 2015, Nguyen, by and through OCLC, sent NOE #2 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 2870 0002 3244 1012]. See Exhibit 14.
203. NOE #2 constituted a notice of error pursuant to 12 C.F.R. § 1024.35 as it alleged that Madison had committed two (2) separate and distinct errors in the servicing of the Loan. See Exhibit 14.

204. Madison received NOE #2 on April 20, 2015. See Exhibit 15.
205. NOE #2 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to provide a written response to Nguyen acknowledging receipt of RFI #2 on or before August 14, 2014, in violation of 12 C.F.R. § 1024.36(c). See Exhibit 14.
206. NOE #2 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to provide written correspondence to Nguyen responding to RFI #2 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before August 21, 2014, which constituted a willful violation of 12 C.F.R. § 1024.36(c). See Exhibit 14.
207. As NOE #2 alleged errors in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11), pursuant to 12 C.F.R. § 1024.35(e)(3)(i)(C), Madison was required to respond to NOE #2, pursuant to the requirements of 12 C.F.R. § 1024.35, on or before June 2, 2015.
208. On or about May 14, 2015, Nguyen, by and through OCLC, received Response #1. See Exhibit 17.
209. Response #1 consisted of undated correspondence, with no cover letter, and was essentially a series of portions of other correspondence and documents. See Exhibit 17.
210. Upon information and belief, Response #1 may have been intended to serve as a response to both NOE #1 and NOE #2.

211. Madison did not send, nor did Nguyen, DLF, or OCLC receive, any other correspondence consisting of a substantive response to NOE #2 other than Response #1.
212. Madison did not send, nor did Nguyen, DLF, or OCLC receive, any other correspondence requesting an extension of time to respond to NOE #2 pursuant to 12 C.F.R. § 1024.35(e)(3)(ii).
213. Response #1 did not contain “a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance” as required by 12 C.F.R. § 1024.35(e)(1)(A). See Exhibit 17.
214. Response #1 was insufficient in form and substance in responding to NOE #2 so as to comply with 12 C.F.R. § 1024.35(e)(1)(A).
215. Response #1 did not contain a statement that “the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.” See *Exhibit* \_\_\_\_.
216. Response #1 was insufficient in form and substance in responding to NOE #2 so as to comply with 12 C.F.R. § 1024.35(e)(1)(B).
217. Madison’s actions in failing to provide a response to NOE #2 in compliance with either 12 C.F.R. § 1024.35(e)(1)(A) or 12 C.F.R. § 1024.35(e)(1)(B), on or before June 2, 2015, constitutes a willful violation of 12 C.F.R. § 1024.35.

218. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.

219. As a result of Madison's actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.

220. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**NINTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.35(d)—Failure to send written acknowledgment of a servicer's receipt of a notice of error issued pursuant to 12 C.F.R. § 1024.35**

221. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

222. On or about July 6, 2015, Nguyen, by and through OCLC, sent NOE #3 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 3490 0001 2874 2259]. See Exhibit 18.

223. Madison received NOE #3 on July 20, 2015. See Exhibit 19.

224. NOE #3 constituted a notice of error pursuant to 12 C.F.R. § 1024.35 as it alleged that Madison had committed one (1) separate and distinct error in the servicing of the Loan. See Exhibit 18.

225. Pursuant to 12 C.F.R. § 1024.35(d), Madison was required to provide a written response to Nguyen acknowledging receipt of NOE #3 on or before July 27, 2015.
226. Neither Nguyen, DLF, nor OCLC received any written response to Nguyen acknowledging receipt of NOE #3 on or before July 27, 2015.
227. Madison did not sent any written response to Nguyen acknowledging receipt of NOE #3 on or before July 27, 2015.
228. Madison's actions in failing to provide a written response to Nguyen acknowledging receipt of NOE #3 on or before July 27, 2015, constitute a willful violation of 12 C.F.R. § 1024.35(d).
229. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.
230. As a result of Madison's actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.
231. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**TENTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.35(e)—Failure to properly respond to a notice of error issued pursuant to 12 C.F.R. § 1024.35**

232. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
233. On or about July 6, 2015, Nguyen, by and through OCLC, sent NOE #3 to Madison at the Address via Certified U.S. Mail [Return Receipt No. 7014 3490 0001 2874 2259]. A copy of NOE #3 is attached hereto as Exhibit 18.
234. Madison received NOE #3 on July 10, 2015. See Exhibit 19.
235. NOE #3 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to fully respond to NOE #2 by correcting their error of failing to provide all of the information requested by and through RFI#2, in violation of 12 C.F.R. § 1024.35(e). See Exhibit 18.
236. As NOE #3 alleged an error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11), pursuant to 12 C.F.R. § 1024.35(e)(3)(i)(C), Madison was required to respond to NOE #3, pursuant to the requirements of 12 C.F.R. § 1024.35, on or before June 2, 2015.
237. On or about July 28, 2015, Madison sent Response #2 to Nguyen. See Exhibit 20.
238. Neither Nguyen, DLF, nor OCLC received any correspondence other than Response #2 in relation to NOE #3.

239. Response #2 did not provide any of the documentation that NOE #3 alleged Madison wrongfully failed to provide pursuant to the requests and demands Nguyen made by and through RFI #2 and NOE #2, respectively. See Exhibits 20, 18, 14, and 10.
240. Madison, by and through Response #2, attempted to circumvent their obligations to properly respond to NOE #3 in two (2) specific manners: (1) By mischaracterizing NOE #2 as a request for information pursuant to 12 C.F.R. § 1024.36, and claiming that Madison was excused from responding to such pursuant to 12 C.F.R. § 1024.36(f)(1)(i) as it was duplicative to RFI #2; and, (2) that NOE #3 was duplicative of another notice of error (presumably NOE #2) and that, as such, Madison was excused from responding to NOE #3 pursuant to 12 C.F.R. § 1024.35(g)(1)(i). See Exhibit 20.
241. NOE #3 was not a request for information issued pursuant to 12 C.F.R. 1024.36 and NOE #3 contained clear language explicitly stating that it was in fact a notice of error. See Exhibit 18.
242. As NOE #3 was not a request for information issued pursuant to 12 C.F.R. § 1024.36, Madison did not claim a valid justification that would excuse Madison from their obligation to respond to NOE #3 pursuant to the requirements to 12 C.F.R. § 1024.35.
243. NOE #3 was not a duplicative notice of error to NOE #2 as they each alleged separate and distinct errors in Madison's servicing of the Loan. See Exhibits 14 and 18.
244. NOE #2 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to provide a written response to

- Nguyen acknowledging receipt of RFI #2 on or before August 14, 2014, in violation of 12 C.F.R. § 1024.36(c). See Exhibit 14.
245. NOE #2 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by failing to provide written correspondence to Nguyen responding to RFI #2 in compliance with the requirements of 12 C.F.R. § 1024.36(d)(1) on or before September 19, 2014, which constituted a willful violation of 12 C.F.R. § 1024.36(c). See Exhibit 14.
246. NOE #3 alleged that Madison committed a separate and distinct error in the servicing of the Loan pursuant to 12 C.F.R. § 1024.35(b)(11) by providing an insufficient and/or partial response to NOE #2 on or before June 2, 2015, in violation of the requirements of 12 C.F.R. § 1024.35(e). See Exhibit 18.
247. As NOE #2 and NOE #3 each alleged separate and distinct errors from each other, NOE #3 was not a duplicative notice of error to NOE #2. See Exhibits 14 and 18.
248. Madison, by and through Response #2, did not claim a valid justification pursuant to 12 C.F.R. § 1024.35(g) that would excuse Madison from their obligation to respond to NOE #3 in compliance with 12 C.F.R. § 1024.35. See Exhibit 20.
249. Response #2 did not contain “a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance” as required by 12 C.F.R. § 1024.35(e)(1)(i)(A). See Exhibit 20.
250. Response #2 was insufficient in form and substance in responding to NOE #2 so as to comply with 12 C.F.R. § 1024.35(e)(1)(i)(A).

251. Response #2 did not contain a statement that “the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.” See Exhibit 20.
252. Response #2 was insufficient in form and substance in responding to NOE #2 so as to comply with 12 C.F.R. § 1024.35(e)(1)(i)(B).
253. Madison’s actions in failing to provide a response to NOE #3 in compliance with either 12 C.F.R. § 1024.35(e)(1)(i)(A) or 12 C.F.R. § 1024.35(e)(1)(i)(B), on or before August 21, 2015, constitutes a willful violation of 12 C.F.R. § 1024.35.
254. Madison’s actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.
255. As a result of Madison’s actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.
256. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys’ fees.

**ELEVENTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1024.35(e)—Failure to properly respond to a notice of error issued pursuant to 12 C.F.R. § 1024.35**

257. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
258. On or about August 26, 2015, Plaintiff, by and through OCLC, sent correspondence captioned “Notice of Error under 12 C.F.R. §1024.35(b)(11) for failing to properly investigate and respond to a borrower’s Notice of Error pursuant to 12 C.F.R. § 1024.35(e)” (“NOE #4”) to Defendant Madison Management at the Address via Certified U.S. Mail. See Exhibit 21.
259. Defendant Madison Management received NOE #4 on August 31, 2015. See Exhibit 22.
260. On or about September 4, 2015, Defendant Madison Management sent correspondence to Plaintiff captioned “2833 NE 132nd Ave, Portland, OR 97230” in response to NOE #4 (“Response #3”). A copy of Response #3 is attached as Exhibit 23.
261. Response #3 acknowledged receipt of NOE #4.
262. Response #3 stated Madison was “unable to provide the transactional history that you have requested.” and that the loan was “boarded with us in September 2013.”
263. Response #3 also included an alleged copy of the Note as well as a screenshot purporting to show the account history for the Loan. See Exhibit 23.
264. Madison, by and through Response #3, did not claim a valid justification pursuant to 12 C.F.R. § 1024.35(g) that would excuse Madison from their obligation to respond to NOE #3 in compliance with 12 C.F.R. § 1024.35. See Exhibit 23.

265. Response #3 did not contain “a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance” as required by 12 C.F.R. § 1024.35(e)(1)(i)(A). See Exhibit 23.
266. Response #3 was insufficient in form and substance in responding to NOE #4 so as to comply with 12 C.F.R. § 1024.35(e)(1)(i)(A).
267. Response #3 did not contain a statement that “the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.” See Exhibit 23.
268. Response #3 was insufficient in form and substance in responding to NOE #4 so as to comply with 12 C.F.R. § 1024.35(e)(1)(i)(B).
269. Madison’s actions in failing to provide a response to NOE #4 in compliance with either 12 C.F.R. § 1024.35(e)(1)(i)(A) or 12 C.F.R. § 1024.35(e)(1)(i)(B), on or before September 30, 2015, constitutes a willful violation of 12 C.F.R. § 1024.35.
270. Madison’s actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under RESPA.
271. As a result of Madison’s actions and failures, Nguyen incurred actual damages in increased attorney fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.

272. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**TWELFTH CLAIM FOR RELIEF: VIOLATION OF 12 C.F.R. § 1026.20(c)—Failure to send notice of adjustment of interest rate pursuant to 12 C.F.R. § 1026.20(c)**

273. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

274. The Note contains provisions that the interest rate is adjustable and changes every six months, on January 1st and July 1st of each year. See Exhibit 1, para. 4.

275. The Note provides that notice of changes in interest rate and monthly payment is to be mailed to the borrower as required by applicable law. See Exhibit 1, para 4.

276. 12 C.F.R. § 1026.20(c) provides in relevant part the nature and timing of notices that are required to be sent to the borrower prior to each interest rate adjustment.

277. Madison did not send, nor did Nguyen ever receive, any notice regarding the adjusted interest rates between the time that Madison took over servicing of the Loan in August or September of 2013 to present.

278. Pursuant to the Note and 12 C.F.R. § 1026.20(c) Madison should have sent at least five notices of interest rate changes to Nguyen prior to the filing of this complaint.

279. Madison's failure to send any notices of interest rate and payment changes to Ms. Nguyen constitutes a willful and ongoing violation of Ms. Nguyen's rights pursuant to 12 C.F.R. §

1026.20(c), constituting a pattern and practice of ongoing and willful violation of the rules and requirements under the statute.

280. As a result of not receiving the required notices, Ms. Nguyen was denied receiving disclosures and information that would advise her of her payment amounts and loan status, and allow her to seek clarification, ask questions, and understand what was owed under her loan.

281. As a result of Madison's failure to disclose information required by the statute, Ms. Nguyen's confusion as to the Loan status and payment requirement was compounded and her rights under the Note were interfered with, causing her to suffer stress, emotional distress, as well as economic expense, including but not limited to attorney fees in attempting to obtain the information of the loan terms and account history, and researching and asserting plaintiff's rights to receive the information, accrued interest and late-fees on the Loan and on outstanding property taxes, costs of mailing related to notices of error, costs of mileage to see the attorney, and lost profits from lost opportunity to sell the house.

**THIRTEENTH CLAIM FOR RELIEF: VIOLATIONS OF 12 C.F.R. § 1026.41—Failure to provide periodic mortgage statements in violation of 12 C.F.R. § 1026.41**

282. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

283. 12 C.F.R. § 1026.41(a)(2) provides:

*Periodic statements.* A servicer of a transaction subject to this section shall provide the consumer, for each billing cycle, a periodic statement meeting the requirements of paragraphs (b), (c), and (d) of this section. If a mortgage loan has a billing cycle shorter

---

than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. For the purposes of this section, servicer includes the creditor, assignee, or servicer, as applicable.

284. 12 C.F.R. § 1026.41(b) provides:

*Timing of the periodic statement.* The periodic statement must be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle.

285. Madison has owned the servicing rights of the Loan since approximately August or September, 2013, when the Madison notified Nguyen via correspondence that the servicing rights of the Loan transferred from non-party Kondaur Capital Corporation to Madison. See Exhibits 2 and 3.

286. Nguyen has not received any period mortgage statements from Madison at any time on or since August 2013.

287. Upon information and belief, Madison has never sent a period mortgage statement to Nguyen at any time on or since August 2013.

288. Nguyen has not opted out of her right to receive periodic statements for the Loan from Madison.

289. The Loan is not a reverse mortgage as described in 12 C.F.R. § 1024.41(e)(1).

290. The Loan does not secure an interest in a timeshare plan as described in 12 C.F.R. § 1024.41(e)(2).

291. Madison has not provided Nguyen with a coupon book that meets the requirements of 12 C.F.R. § 1024.41(e)(3).

292. Madison is not a small servicer as that term is defined in 12 C.F.R. § 1024.41(e)(4).
293. Nguyen has not been in a debtor in bankruptcy under Title 11 of the United States Code at any time since September 26, 2014.
294. Nguyen did not receive a periodic mortgage statement for the Loan for the billing cycle encompassing or otherwise consisting of the month encompassing or otherwise consisting of the any month from September 2014 to February 2016.
295. For each month that Madison failed to provide a periodic mortgage statement to Nguyen, Madison committed a clear, separate, distinct, and willful violation of 12 C.F.R. § 1026.41.
296. Madison's actions and failures, together with the failures and actions noted herein, constitute a pattern and practice of behavior in conscious disregard for plaintiff's rights under TILA, and specifically 12 C.F.R. § 1026.41.
297. Nguyen was denied the information in the periodic billing statements regarding her loan.
298. As a result, Nguyen was denied the ability to understand the terms, amounts owing, and balances under her Note and was thus prohibited by Madison's actions and failures from having information sufficient to perform her obligations under the Note.
299. As a result of Madison's actions and failures, Nguyen was unable to adequately be informed of her delinquency information related to her obligations under the note, was denied the ability to review her loss mitigation options regarding the Loan, and denied her right to speak to a certified HUD counselor to assist her, whose information is required to be listed on every periodic billing statement.

300. As an actual and proximate result of Madison's failure to provide Nguyen with period billing statements and the information statutorily required to be provided therein, Nguyen incurred actual damages including economic damages measured by additional fees and interest accruing on the note, damages resulting from loss of pursuing loss-mitigation options, including possible lost profits from sale of the property when the loan balance was more reasonable, fees and advances incurred by the lender and charged or attempted to be charged to Nguyen under the terms of the Note, attorney fees for Nguyen's attorneys and costs related thereto, including but not limited to the defense of three separate lawsuits attempting to foreclose, communicating with lenders and servicers and attorneys for the same in an effort to get any information related to the Loan, and additional emotional stress and physical reactions to the stress.

**FOURTEENTH CLAIM FOR RELIEF: VIOLATIONS OF FDCPA—15 U.S.C. § 1962 et seq.**

301. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

302. Nguyen is a consumer as that term is defined by 15 U.S.C. § 1692a(3).

303. Madison utilizes the instrumentality of interstate commerce, such as using an interstate phone system to make long distance calls the mails, and systems if interstate travel in a business the principal purpose of which is the collection of debts.

304. Madison uses the instrumentality of interstate commerce to regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due others.

305. Madison is a debt collector as that term is defined by 15 U.S.C. § 1692a(6).

306. 15 U.S.C. § 1692d states in relevant part that “A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.”

307. Madison was engaged in the collection of a debt in connection with its servicing obligations under the Loan.

308. Madison intentionally, affirmatively, and continuously continued to withhold information that it was legally required to provide to Nguyen through monthly statements, interest rate adjustment notices, and responses to requests for information in Madison's role as collecting on the defaulted Loan. The only natural consequence of this willful and intentional behavior was to oppress Nguyen effectively preventing her from effectively understanding the Loan, her rights and options, and otherwise performing thereunder.

309. Upon information and belief, Madison's actions to withhold information were in an effort to facilitate foreclosure and judgment against Nguyen rather than service the Loan according to its obligations under the Note and the applicable laws and regulations under RESPA and TILA.

310. 15 U.S.C. § 1692e states in relevant part that “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

311. 15 U.S.C. § 1692e(11) requires that debt collectors disclose in their initial written communication with a consumer that they are a debt collector and that the debt collector is

attempting to collect a debt and that any information obtained will be used for that purpose; and all subsequent written communications require the debt collector to identify that the communication is from a debt collector.

312. Upon information and belief, Madison's initial correspondence to Nguyen was the servicing transfer letter dated September 26, 2013.
313. Madison did not identify itself as a debt collector and did not state that Madison was attempting to collect a debt and that any information obtained will be used for that purpose in that initial correspondence. See Exhibit 3.
314. Madison included false and misleading representations in the initial correspondence when it failed to accurately disclose the effective date of transfer, failed to provide the name of an individual department and hours available associated with the contact phone number for Madison, and falsely stated that the assignment of the Loan from the old owner to the new owner was recorded in California. See Exhibit 3.
315. Madison did not identify itself as a debt collector in Response #1, Response #2, nor in Response #3 thereby rendering the correspondence false and misleading. See Exhibits 17, 20, and 23.
316. Response #3, dated September 4, 2015, included a copy of the initial correspondence that included the false and misleading statements. See Exhibit 23.
317. Response #3 also included a one page document that identified itself as an account history and included some details about the Loan. There was no information about interest accrued, specific fees, or an ongoing balance by month. See Exhibit 23.

318. The document falsely identified the interest rate as 9.625%. See Exhibit 23.
319. The document falsely identifies a standard late fee of \$124.88 which is impossible as the late fee is determined as a percentage of the missed payment under the Note. See Exhibit 23.
320. The document identifies a Current Advance Balance of \$49,007.20 without explanation rendering it false and misleading. Exhibit 23.
321. A debt collector is prohibited from using unfair or unconscionable means to collect any debt pursuant to 11 U.S.C. § 1692f.
322. 11 U.S.C. § 1692f(1) identifies specific, but not inclusive violative behavior as “[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”
323. The interest rate and late fee identified in the September 4, 2015 correspondence is not calculated according to the Note or otherwise permitted by law.
324. Upon information and belief, the Current Advance Balance is inaccurate, includes amounts not permitted by contract or law, and Madison's effort to collect that amount are unfair and unconscionable.
325. As a result of Madison's violation of the FDCPA, Nguyen has statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A).

326. Also as a result of Madison's violation of the FDCPA, Nguyen has suffered actual damages and is entitled to recovery pursuant to 15 U.S.C. § 1692k(a)(1) for emotional distress, as well as economic damages measured by additional fees and interest accruing on the note, additional interest on property taxes, remaining unpaid due to Nguyen's uncertainty about the status of the property, damages resulting from loss of pursuing loss-mitigation options, including possible lost profits from sale of the property when the loan balance was more reasonable, fees and advances incurred by the lender and charged or attempted to be charged to Nguyen under the terms of the Note, attorney fees for Nguyen's attorneys and costs related thereto, including but not limited to the defense of three separate lawsuits attempting to foreclose, communicating with lenders and servicers and attorneys for the same in an effort to get any information related to the Loan.

327. Nguyen is entitled to reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Madison.

**FIFTEENTH CLAIM FOR RELIEF: BREACH OF IMPLIED CONTRACTUAL OBLIGATION OF GOOD FAITH AND FAIR DEALING**

328. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

329. Upon information and belief, Madison was at all times relevant hereto after August 2013, acting in its scope of agency as agent/servicer for alleged present owner/assignee of the Loan, non-party Bridgestar Capital Inc.

330. All contracts in Oregon contain an implied obligation of good faith and fair dealing to protect the objectively reasonable contractual expectations of the parties.
331. Madison's ongoing, willful, and intentional failure to perform the contractual obligations under the Note and Deed of Trust that were assigned to Madison, upon information and belief from owner/assignee Bridgestar Capital, Inc., are a blatant violation of Madison's obligation of good faith and fair dealing.
332. Madison's breach actually and approximately resulted in Nguyen suffering economic damages including, but not limited to additional fees and interest accruing on the Note, additional interest on property taxes, remaining unpaid due to Nguyen's uncertainty about the status of the property, damages resulting from loss of pursuing loss-mitigation options, including possible lost profits from sale of the property when the loan balance was more reasonable, fees and advances incurred by the lender and charged or attempted to be charged to Nguyen under the terms of the Note, attorney fees for Nguyen's attorneys and costs related thereto, including but not limited to the defense of three separate lawsuits attempting to foreclose, communicating with lenders and servicers and attorneys for the same in an effort to get any information related to the Loan.
333. Nguyen is entitled to reasonable attorney fees and costs due to the necessity of having to enforce the terms of the Note and Deed of Trust against Madison.

**SIXTEENTH CLAIM FOR RELIEF: TORTIOUS BREACH OF COVENEANT OF GOOD FAITH AND FAIR DEALING**

334. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.
335. Madison's actions and failures to provide information in compliance with applicable federal laws and the terms of the Note and Deed of Trust constituted at best negligence, and at worst, upon information and belief, intentional bad faith.
336. Madison is subject to a standard of care independent of its obligations under the Note and Deed of Trust through its supportive role as a servicer under the Note and Deed of Trust, including compliance with federal statutory and regulatory provisions applicable to Madison's role as servicer.
337. Madison's actions and failures to provide statements, interest rate adjustment information, account history and accounting, disclosure of fees, represent such a gross failure of its obligations of good faith that it is grossly negligent at best, and likely intentionally acting in bad faith to not give Nguyen her rights under the Note, Deed of Trust, and applicable laws she is entitled to as a consumer borrower.
338. Madison's violations of its obligations to Nguyen caused actual economic damages in the nature and extent as previously alleged herein.
339. Madison's actions and violations of its obligations to Nguyen caused actual damages in the form of continued and exacerbated emotional distress.

340. Madison's actions and tortious violations showed such a persistent and intentional disregard for its legal obligations to Nguyen as to warrant punitive damages.

**SEVENTEENTH THROUGH TWENTIETH CLAIMS FOR RELIEF: VIOLATION OF OREGON UNLAWFUL TRADE PRACTICES ACT ORS § 646.608(1)(u) and OAR 137-020-0805(5)**

341. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

342. Nguyen is an individual who is obligated to repay under a residential mortgage loan agreement such that she is a Borrower pursuant to OAR 137-020-0800 (1).

343. Madison is a person engaging in the servicing of residential mortgage loan in Oregon such that it is a Mortgage Loan Servicer pursuant to OAR 137-020-0800 (3).

344. NOE #1, NOE #2, NOE #3, and NOE #4 all constituted Qualified Written Requests pursuant to 12 U.S.C. § 2605(e)(1)(B).

345. Madison was required to conduct an investigation of the Nguyen's account and alleged errors pursuant to 12 U.S.C § 2605(e)(2)(B) & (C).

346. Madison's failure to provide a response to each of NOE #1-4 constituted distinct and separate violations of 12 U.S.C § 2605(e)(2), which constituted violations of Oregon's Unlawful Business and Trade Practices Statute, ORS § 646.608.

347. Nguyen incurred actual damages in the form of additional attorneys' fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.

348. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**TWENTY-FIRST CLAIM FOR RELIEF: VIOLATION OF OREGON UNLAWFUL TRADE PRACTICES ACT ORS § 646.608(1)(u) and OAR 137-020-0805(5)**

349. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

350. NOE #3 constituted a Qualified Written Request pursuant to 12 U.S.C. § 2605(e)(1)(B).

351. Madison's failure to acknowledge NOE #3 constituted a distinct and separate violation of 12 U.S.C § 2605(e)(1)(A), which constituted a violation of Oregon's Unlawful Business and Trade Practices Statute, ORS § 646.608.

352. Nguyen incurred actual damages in the form of additional attorneys' fees and mailing costs for having to assert Nguyen's rights in reply to Madison's failure.

353. Also as a result of Madison's actions and failures, Madison is liable to Nguyen for actual damages, statutory damages, costs, and attorneys' fees.

**TWENTY-FIRST CLAIM FOR RELIEF: VIOLATION OF OREGON UNLAWFUL TRADE PRACTICES ACT ORS § 646.608(1)(u) and OAR 137-020-0805(6)**

354. Nguyen restates and incorporates herein all of their statements and allegations contained in the preceding paragraphs in their entirety, as if fully rewritten.

355. Madison's actions in failing to adjust the interest rate, charging inaccurate late fees, failing to send statements, and never intending to service the loan for Nguyen constitute a persistent, repeated, and ongoing failure to deal with Nguyen in good faith.
356. Madison's failure to deal with Nguyen in good faith constitutes an ongoing violation of Oregon's Unlawful Business & Trade Practices Statute.
357. As a result of Madison's failure to act in good faith, Nguyen suffered actual economic damages in the nature and extent as previously alleged herein, including the need to pay for ongoing attorney fees in connection with Madison's refusal to service the loan, including attorney fees required to defend foreclosure and seek information that should have been provided to Nguyen without attorney efforts.
358. Madison's actions and violations of its good faith obligation to Nguyen caused actual damages in the form of continued and exacerbated emotional distress.
359. Madison's actions and continued intentional conduct, including refusal to service the loan, showed such a persistent and intentional disregard for its legal obligations to Nguyen as to warrant punitive damages pursuant to ORS § 646.638(1).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Anna Nguyen prays that this Court enter its order granting judgment for the following:

- A.) For actual damages, costs, and reasonable attorney fees for violations contained in the First Claim For Relief;

- B.) For statutory damages in the amount of One Thousand Dollars (\$1,000.00) as to each separate violation contained in the First Claim For Relief;
  - C.) For actual damages, costs, and reasonable attorney fees for violations contained in Claims for Relief Two through Eleven;
  - D.) For statutory damages in the amount of Two Thousand Dollars (\$2,000.00) as to each separate violation contained in Claims For Relief Two through Eleven;
  - E.) For actual damages, costs, and reasonable attorney fees for violations contained in the Twelfth Claim For Relief;
  - F.) For statutory damages in the amount of Four Thousand Dollars (\$4,000.00) as to each separate violation contained in the Twelfth Claim For Relief in the past year;
  - G.) For Actual damages, costs, and reasonable attorney fees for violations contained in the Thirteenth Claim for Relief;
  - H.) For actual damages, costs, and reasonable attorney fees for violations contained in the Fourteenth Claim for Relief;
  - I.) For statutory damages in the amount of One Thousand Dollars (\$1,000.00) for violations in the Fourteenth Claim for Relief;
  - J.) For actual damages, costs, and attorney fees for violations in the Fifteenth Claim For Relief;
  - K.) For actual damages, costs, and attorney fees for violations in the Sixteenth Claim For Relief;
  - L.) For punitive damages as alleged in the Sixteenth Claim For Relief;
  - M.) For actual damages, costs, and attorney fees for violations in the Seventeenth through Twenty-First Claims For Relief;
-

- N.) For statutory damages in the amount of \$200 of each separate and distinct violation found in the Seventeenth through Twenty-First Claims For Relief;
- O.) For punitive damages as alleged in the Twenty-First Claim For Relief; and
- P.) Such other relief which this Court may deem just and appropriate.

**JURY DEMAND**

Defendant and Counterclaim Plaintiff Anna Nguyen hereby requests a trial by jury on all issues, with the maximum number of jurors permitted by law.

Respectfully submitted this 8th day of April, 2016.

/s/ Chris Mertens  
Chris Mertens, OSB #092230  
Of Attorneys for the Plaintiff