

John and Jane Doe

Real Property Located:

1234 Example Blvd

Santa Cruz, NM 87525

AFFIDAVIT OF

JOSEPH R.ESQUIVEL JR

I, Joseph R. Esquivel Jr., declare as follows:

1. I am over the age of 18 years and qualified to make this affidavit. I am a resident of the State of Texas and make this affidavit based on my own personal knowledge. I have no direct or indirect interest in the outcome of this case for which I am offering observations, analysis, opinions and testimony.

2. I perform my research through the viewing of actual business records and Corporate/Trust Documents. I use specialty licensed software ABS Net and other professional resources to view these records and documents. I have the training, knowledge and experience to perform these searches and understand the meaning of these records and documents with very reliable accuracy. I am available for court appearances, in person or via telephone for further clarification or explanation of the information provided herein, or for cross examination if necessary. I have examined the following documents;

A. Complaint filed into District Court Santa Fe County New Mexico case# 999-999-999

B. Note of John and Jane Doe in the amount of \$999,000.00

C. Recorded Mortgage pertaining to the Note of John and Jane Doe in the amount of \$999,999.00 made payable to New Century Mortgage Company

D. A document purporting to be an "Assignment of Mortgage" recorded January 20, 2010

E. A complete search of the Santa Fe County Record pertaining to 1234 Any Street , Santa Cruz, NM 87532

F. An audio record supplied through the Court Clerk of a December 1, 2011 and August 15, 2012 Hearing in case#999-999999-999

1 3. I have personal knowledge of the information retrieved from the terminals and experience to
2 render opinions in the topic areas related the securitization of mortgage loans, derivative securities,
3 the securities industry, real property law, Uniform Commercial Code practices, predatory lending
4 practices, Truth in Lending Act requirements, loan origination and underwriting, accounting in the
5 context of securitization and pooling and servicing of securitized loans, assignment and assumption
6 of securitized loans, creation of trusts under deeds of trust, pooling and agreements, and issuance of
7 asset backed securities and specifically mortgage-backed securities by special purpose vehicles in
8 which an entity is named as trustee for holders of certificates of mortgage backed securities, the
9 economics of securitized residential mortgages during the period of 2001-2008, appraisal fraud, and
10 its effect on APR disclosure, usury, exceeding the legal limit for interest charged, foreclosure of
11 securitized, non-securitized residential mortgages.

12 4. From many hours of study and research and formal training and reviewing thousands of
13 mortgage documents, I learned that one procedure for funding is via mortgage securitization where
14 such pools solicit funds from investors by means of a Pooling and Servicing Agreement (PSA) which
15 was used to explain and govern the Mortgage Backed Security (MBS). The PSA is the governing
16 document for the MBS pool which was typically established as a Trust. State trust laws uniformly
17 demand that the governing documents of the Trust be strictly adhered to compliance with IRS taxing
18 guidelines.

19 General Overview of Secured Transactions

20 5. Ownership of the intangible payment stream collected from a Mortgage Loan can be bought,
21 sold and transferred. This transfer of ownership is evidenced through the sale of a certificate funded
22 by payment stream(s) received from payments made upon what will be defined within this
23 document as the "Obligation". Ownership of the Obligation via buying and selling the certificates
24 (intangible payment stream) is allowable under the governance of UCC Article 9, as a Transferable
25 Record. Transferred ownership can be seen though the financial record of the distributed payment
26 stream. Transfer of ownership through certificates is an actual transfer of a partial ownership of a
27 beneficial interest in the intangible payment stream of the Obligation.
28

1 6. The initial and subsequent certificate transactions involving the divided intangible payment
2 stream of the Obligation does not transfer ownership of the Note and the Mortgage to the owners of
3 the intangible payment stream. Transfer of ownership of the Note and the Mortgage would require
4 that partial interest in the tangible instruments which secure the Obligation (Note and the Mortgage)
5 be transferred/assigned to all and each of the potential multiple owners of the certificates compliant
6 with the local laws of jurisdiction. That described transfer would be impossible. To create the
7 appearance that the transfer of the partial interest of the tangible instruments has been accomplished,
8 the transfer is made to a common Trustee. Any owner of the Obligation as a transferable record of the
9 payment stream could be in jeopardy of stripping the Obligation away from the Note unless
10 ownership of the Note is also obtained.

11 7. In the Commercial Money Ctr., Inc. bankruptcy, the Ninth Circuit Appellate Court had no
12 difficulty concluding that ownership of income streams can be stripped from the records that
13 evidence them.

14 From Commercial Money Ctr., Inc., 350 B.R. 465, 473-79 (B.A.P. 9th Cir.
15 2006), rev'g, 56 U.C.C. Rep. Serv. (West) 54 (Bankr. S.D. Cal. Jan. 27, 2005).
16 *"This language on its face defines chattel paper to mean the records that "evidence"*
17 *certain things, including monetary obligations. Payment streams stripped from the*
18 *underlying leases are not records that evidence monetary obligations they are*
19 *monetary obligations. Therefore, we agree with NetBank that the payment streams are*
20 *not chattel paper."*

21 8. Of the three transferable linked parts of every Mortgage Loan, the Obligation, the Note and
22 the Mortgage, two of those transferable parts are tangible instruments, the Note and the Mortgage.
23 The Note is a negotiable instrument that evidences the Obligation. The Mortgage, seen as a Real
24 Property Lien, is a contract listing alternatives for collecting payment due under the Obligation
25 evidenced by the Note.

26 9. Each Note associated with a Mortgage Loan is created as a negotiable instrument to allow for
27 future sale. When a Note is treated as a negotiable instrument, falling under the governance of UCC
28 article 3, ownership of the Note shall be transferred by means of special indorsement or by indorsing
in blank to create a bearer Note. However, possession of the Note must not be confused with
ownership of the Note, where a possessor may not be more than a custodian or agent of an owner.

1 Additionally, a valid subsequent owner, while negotiating ownership of a Note, must exercise care so
2 as to avoid loss of Secured Party status in the negotiation of a Note. (Secured Party status is of
3 serious concern for the Bankruptcy Courts) An alleged subsequent owner of the Note failing to
4 permanently perfect (filing of record as required by law) ownership of the Mortgage (Security)
5 associated with a Note into their name, while negotiating Ownership of a Note, would render a
6 Secured Note being an Unsecured Note. Ownership of Unsecured Note, no longer secured by
7 ownership of a Real Property Lien, separates the Obligation from the Conditions to enforce the
8 Power of Sale. Where an alleged subsequent owner of a negotiable instrument lacks indorsement for
9 owner/holder status, the UCC allows for such party to obtain indorsements to allow the subsequent
10 party to be entitled to enforcement rights upon the negotiable instrument. However, the UCC has no
11 retroactive means to re-establish an unsecured negotiable instrument back into a secured negotiable
12 Instrument. Secured status and Unsecured status is dependent upon the securing security being in
13 compliance with local laws of jurisdiction.

14 10. A Note transferred in interstate commerce is a negotiable instrument and therefore falls under
15 the governance of UCC Article 3. Any party who possesses a valid ownership interest in a Note can
16 only transfer that interest by way of negotiation through indorsement. However, because real estate
17 ownership rights are concerned, perfection of transfer of the Mortgage, a contract involving real
18 estate, securing the Note, falls within governance of Laws of Jurisdiction where the real property
19 resides. Even, within its own language, the Mortgage contains notice that Federal Statutes and/or the
20 Laws of Local Jurisdiction are governing law, therefore attempts to apply UCC Article 9 as
21 governing the transfer of the Mortgage would be misplaced. Subsequently, any party who possesses a
22 valid beneficial interest in a Mortgage can only transfer that interest by way of properly recorded
23 assignment of that interest. Transfer of beneficial interest in a Mortgage, without properly recorded
24 assignment, would place anyone doing so in jeopardy of violating Federal Statutes and/or Local Laws
25 of the applicable Jurisdiction and potentially the common law Statutes of Fraud.

26 11. A properly recorded assignment of the Mortgage memorializes the Note's negotiation, but
27 does not cause the Note's transfer. For a Note to change ownership and remain secured through the
28 Mortgage each and every transfer of the Note, by indorsement or negotiation, must be performed
with a parallel assignment of the Mortgage properly filed in the local County Record. If a Note is
indorsed and negotiated to one party while the Mortgage is assigned to another party, a separation

1 between the Ownership of the Note evidencing the Obligation and the Ownership of the Conditions
2 which secure the Obligation to Real Property occurs.

3
4 12. For a Party with ownership of a Note to be a Holder in Due Course with the rights and power
5 of foreclosure, the "Power of Sale", the Note must remain secured to Real Property. When a
6 separation of Ownership of the Obligation and the Ownership of Conditions which secure the
7 Obligation occurs by failing to follow mandated law, the Mortgage Loan (Security securing) is no
8 longer secured by Real Property. When the Mortgage Loan is no longer secured by Real Property,
9 there can be no Holder in Due Course of a Secured Note. Such Holder of the Note has lost the right
10 to seek alternate payment through the use of a now invalid security instrument. Therefore, any Party
11 seeking to bring a claim, against real estate title in a foreclosure, as Holder in Due Course of a
12 Secured Mortgage Loan, must demonstrate an unbroken chain of properly recorded assignments of
13 the Mortgage and a parallel unbroken chain of completed Note indorsements. Making a claim of
14 beneficial interest in a Mortgage Loan without an unbroken chain of properly recorded assignments
15 of the Mortgage and a parallel unbroken chain of completed Note indorsements would place anyone
16 doing so in jeopardy of violating Federal Statutes and/or Local Laws of Jurisdiction. Where such
17 alternate collection method has been dissolved by failure to follow law, the owner of the Note does
18 (did) have equitable remedy by seeking recovery of the debt by filing suit in a jurisdictional court of
19 equity. The paradox, is, where such a holder has pledged a Mortgage Loan (Secured Package) as
20 collateral, knowing that such was not a Secured Package, would present such a pledgor with unclean
21 hands.

22 13. The Mortgage is a contract between the borrower (Payor) and the parties spelled out on the
23 face of the document. A separation between Ownership of the Note and the Ownership of the
24 Mortgage would be a violation of the terms of that contract. Under long existing contract law, if the
25 terms of a contract are violated, affecting the conditions under which the Payor is obligated, without
26 the properly evidenced consent of the Payor, that contract is void and cannot be returned to without
27 the consent of the Payor.

28 14. It is an ancient and long held concept within United States Law, that ownership of the Note
and ownership of the Mortgage can be separated, however, if ownership is separated, the Mortgage,
because it can have no separate existence, can not survive and becomes a nullity.

1 In *Carpenter v. Longan* 16 Wall 271,83 U.S. 271, 274, 21 L.Ed. 313 (1872), the U.S.
2 Supreme Court stated “The note and mortgage are inseparable; the former as
3 essential, the latter as an incident. An assignment of the note carries the mortgage
4 with it, while assignment of the latter alone is a nullity. . . . The mortgage can have
5 no separate existence. When the note is paid the mortgage expires. It cannot survive
6 for a moment the debt which the note represents. This dependent and incidental
7 relation is the controlling consideration”

8
9 15. Sometimes a Mortgage Loan is sold into MBS Trust. A MBS Trust is governed by a PSA
10 filed with the Securities and Exchange Commission. When a Mortgage Loan is sold into MBS Trust
11 all the well-established Real Estate and Contract Law explained above still applies. For a MBS Trust
12 to be Holder in Due Course of a Secured Mortgage Loan, properly recorded assignments of the
13 Mortgage, as well as completed parallel indorsements of the Note to match, are required not only by
14 well-established Real Estate and Contract Law, but also by the PSA and or REMIC Master Trust
15 Agreement which governs the MBS Trust in question.

16 **The John and Jane Doe Mortgage Loan**

17 **The Doe Obligation had been sold**
18 **by New Century Mortgage Company on or before February 8, 2007.**

19 16. On 09/01/2012, I researched the online database at the request of John and Jane Doe whose
20 property address is 1234 Any Street, Santa Cruz, NM 87532. John and Jane Doe had allegedly
21 signed a Note in favor of New Century Mortgage Company on September 2, 2005 with the loan
22 number 999999999. This loan was identified in C-BASS Mortgage Loan Asset-Backed Certificates
23 Series 2007-SP1 with the ID number # 999999999. The loan is being serviced by Litton Loan
24 Servicing Inc. with the clarifying code and, or abbreviation on the Specialty Licensed Terminal of
25 CBASS 2007-SP1.

26 17. Pursuant to a thorough research I have found the aforementioned Doe Mortgage Loan
27 number in multiple classes of the CBASS 2007-SP1 Trust. The Doe Obligation has been sold to
28 multiple classes of the CBASS 2007-SP1 Trust where it remains a performing asset as of September
1, 2012.

1 18. It is impossible to ascertain to who owns what, as the income stream from the Doe
2 Obligation is no longer owned in a unified manner as described by the Prospectus when discussing
3 the Classes within the Trust Pool. Each class of the CBASS 2007-SP1 Trust owns a different partial
4 interest in the Doe Obligation. Even though a Trust may show a Class within that Trust as being paid,
5 this is a predetermined action by the Trust. It does not mean that the Doe Obligation has been paid. It
6 is impossible to make that determination as the Doe Obligation no longer exists in its original form.
7 Subsequently, the ownership of partial interest in the Doe Obligation can no longer be determined,
8 nor can it be determined what or which partial interest in Doe Obligation has been paid nor what
9 percentage of that partial interest in the Doe Obligation has been satisfied/settled. Even though there
10 is some division of performance of the loan from class to class. If ownership the Doe Obligation
11 exists in any class as the Transferable Record of the ownership, the Doe Obligation exists in total
12 within the Trust.

13 19. Securitization is the process of aggregating the Obligations from a large number of mortgage
14 loans, into what is called a mortgage pool and then selling "shares" (called certificates) of ownership
15 of partial interest of the Obligations to investors. The income stream from the Obligation that the
16 John and Jane Doe 's mortgage payments produce, flows through fractionalized payments into many
17 different classes to many different investors, of the CBASS 2007-SP1 Trust depending on which
18 certificates of which class were purchased by which investor. My research shows that ownership of
19 the Doe Obligation does appear in the schedules and agreements. The divided monthly loan payments
20 paid by John and Jane Doe to Litton Loan Servicing Inc. most definitely flowed into multiple
21 classes of the C-BASS Mortgage Loan Asset-Backed Certificates Series 2007-SP1 (herein also
22 known as CBASS 2007-SP1 Trust).

23 20. The ownership of the Doe Obligation has been conveyed as a Transferable Record to multiple
24 classes of the CBASS 2007-SP1 Trust. For ownership of the Doe Obligation not to have been
25 stripped away from the ownership of the Doe Note by that conveyance, ownership of the Doe Note
26 must have also been transferred to multiple classes of the CBASS 2007-SP1 Trust.

27 21. Even though the Doe Obligation is owned by multiple classes of the CBASS 2007-SP1
28 Trust, it can only be determined if the original Doe Note had been physically delivered to multiple

1 classes of the CBASS 2007-SP1 Trust by checking with the custodian of documents. Until then, there
2 is no evidence multiple classes of the CBASS 2007-SP1 Trust possessed in any manner the Doe Note
3 before the closing date of February 8, 2007, as required by its own agreements.

4 22. The ownership of the Doe Obligation has been conveyed as a Transferable Record to multiple
5 classes of the CBASS 2007-SP1 Trust. For the conditions of Doe Mortgage over the Doe Obligation
6 not to have been stripped away by that conveyance, ownership of the Doe Mortgage must have also
7 been transferred to multiple classes of the CBASS 2007-SP1 Trust.

8 23. The beneficial interest (ownership) of the Doe Mortgage has been recorded in the Official
9 records of Santa Fe County Registry as being in the name of New Century Mortgage Company of the
10 loan on September 2, 2005. However, it is clear that New Century Mortgage Company as recorded as
11 the original lender on the Doe Mortgage sold all ownership interest, in the Doe Obligation to multiple
12 classes of the CBASS 2007-SP1 Trust on or about February 8, 2007 the closing date of the CBASS
13 2007-SP1 Trust. Ownership of the Doe Obligation is held in multiple classes of the CBASS 2007-
14 SP1 Trust, and the payments under the Doe Obligation are disbursed to the investors of CBASS
15 2007-SP1 Trust who hold certificates to the investment classes into which payments under the Doe
16 Obligation are scheduled to flow. Therefore the transfer of beneficial interest in the Doe Mortgage by
17 New Century Mortgage Company might be accomplished, but that beneficial interest is no longer
18 attached to ownership of the Doe Obligation.

19 **As Multiple Classes of the CBASS 2007-SP1 Trust Own**
20 **the Doe Obligation**

21 **Multiple Classes of the CBASS 2007-SP1 Trust are**
22 **Required to have Ownership of the**
23 **Doe Note and the Doe Mortgage**

24 24. By multiple classes of the CBASS 2007-SP1 Trust purchasing the Doe Obligation and doing
25 with it whatever was done, multiple classes of the CBASS 2007-SP1 Trust were exercising rights of
26 ownership over the Doe Mortgage Loan and payment stream. By exercising rights of ownership over
27 the Doe Mortgage Loan multiple classes of the CBASS 2007-SP1 Trust made claims of ownership of
28 all three parts of the Doe Mortgage Loan.

1 25. The Doe Obligation only exists through the tangible instruments creating it, the Doe Note and
2 the Doe Mortgage. The sale of the ownership of the Doe Obligation to multiple classes of the
3 CBASS 2007-SP1 Trust, without stripping away the ownership of the Doe Obligation from the
4 ownership of the Doe Note, could only be accomplished with the accompanying negotiations of the
5 Doe Note and the accompanying assignments of the Doe Mortgage to multiple classes of the
6 CBASS 2007-SP1 Trust.

7 26. Multiple classes of the CBASS 2007-SP1 Trust have made and continue to make claims of
8 ownership of the Doe Obligation, and exercises those claims. To exercise claims of ownership of the
9 Doe Obligation, assignments of the Doe Mortgage should have been accomplished. Multiple classes
10 of the CBASS 2007-SP1 Trust are acting as if assignments of the Doe Mortgage have been
11 accomplished.

12 27. The assignment of the Doe Mortgage is a conveyance of an instrument concerning real
13 property which must be recorded to be acted upon. United States Code considers that anyone
14 certifying that a real estate instrument has been assigned when in fact it has not, is guilty of a
15 felonious criminal act.

16
17 *Title 18 USC Chapter 47 § 1021*

18 *Whoever, being an officer or other person authorized by any law of the United States to*
19 *record a conveyance of real property or any other instrument which by such law may be*
20 *recorded, knowingly certifies falsely that such conveyance or instrument has or has not*
been recorded, shall be fined under this title or imprisoned not more than five years, or
both.

21 **Multiple Classes of the CBASS 2007-SP1 Trust can not**
22 **Claim Ownership of either**
23 **the Doe Note or the Doe Mortgage.**
24

25 28. Multiple classes of the CBASS 2007-SP1 Trust own the Doe Obligation. However the
26 transfers of ownership of either of the two tangible parts of the security instrument that evidence the
27 Doe Obligation from New Century Mortgage Company to multiple classes of the CBASS 2007-SP1
28 Trust are not memorialized in the Santa Fe County Record in a manner which observes United States
Code.

29. Under the Consumer Credit Protection Act Title 15 USC Chapter 41 § 1641(g) any transfer of the Doe Mortgage to multiple classes of the CBASS 2007-SP1 Trust would be in violation of Federal Statute, if those transfers had not been recorded Santa Fe County Record within 30 days along with notification of John and Jane Doe that the transfers had occurred. As there are no recorded assignments of the Doe Mortgage from New Century Mortgage Company to multiple classes of the CBASS 2007-SP1 Trust, within 30 days of the of February 8, 2007 closing date of the CBASS 2007-SP1 Trust either there has been a violation of Federal Law or multiple classes of the CBASS 2007-SP1 Trust, who are the owners of the Doe Obligation, are not the owners of the either the Doe Note or the Doe Mortgage.

Title 15 USC Chapter 41 § 1641(g)

(g) Notice of new creditor

(1) In general

In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

(A) the identity, address, telephone number of the new creditor;

(B) the date of transfer;

(C) how to reach an agent or party having authority to act on behalf of the new creditor;

(D) the location of the place where transfer of ownership of the debt is recorded; and

(E) any other relevant information regarding the new creditor.

30. Multiple classes of the CBASS 2007-SP1 Trust are the owners of the Doe Obligation, however, according to New Mexico State Law, multiple classes of the CBASS 2007-SP1 Trust can only be entitled to enforce the Doe Mortgage if multiple classes of the CBASS 2007-SP1 Trust were transferred ownership of the Doe Mortgage by way of assignments pursuant to

NMSA 1978 § 14-9-1. Instruments affecting real estate; recording

All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated. Leases of any term or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section. As used in this section, “memoranda of the material terms of a lease” means a memorandum

1 containing the names and mailing addresses of all lessors, lessees or assignees; if
2 known, a description of the real property subject to the lease; and the terms of the
3 lease, including the initial term and the term or terms of all renewal options, if
any.(emphasis added)

4 NMSA. 1978, § 14-9-3 Unrecorded instruments; effect

5 No deed, mortgage or other instrument in writing not recorded in accordance with
6 Section 14-9-1 NMSA 1978 shall affect the title or rights to, in any real estate, of any
7 purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of
8 the existence of such unrecorded instruments. Possession alone based on an
9 unrecorded executory real estate contract shall not be construed against any
subsequent purchaser, mortgagee in good faith or judgment lien creditor either to
impute knowledge of or to impose the duty to inquire about the possession or the
provisions of the instruments. (emphasis added)

10
11 31. The Doe Mortgage must have been duly assigned to multiple classes of the CBASS 2007-SP1
12 Trust for multiple classes of the CBASS 2007-SP1 Trust to be entitled to enforce the Doe Mortgage.

13
14 32. As explained previously in ¶5 thru ¶12 assignments of the Doe Mortgage must be
15 accompanied by parallel endorsements of the Doe Note for the Doe Mortgage Loan to remain
16 secured by the Doe Property. Because endorsements are very often undated and because a plaintiff
17 must prove that it had standing at the inception of a case, Marianna & B.R. Co. v. Maund, 56 So.
18 670, 672 (Fla. 1911), the assignment will be determinative of, or at least evidence that would support
19 or contradict, a plaintiff's claim of standing.

20 33. Importantly, mere presentment of the Doe Note (even if shown to be the original) is not in
21 itself proof of an equitable transfer of the Doe Note. This demonstration of possession may be
22 sufficient to enforce the Doe Note, but carries no indicia of ownership or intent to transfer. The UCC
23 consecrated a preference in commercial transactions for simple possession of endorsed instruments
24 over proof of actual ownership, an exception in the law that was intended to foster free trade of
25 commercial paper.

26 34. The concept that a Note holder, even one who is not legitimate, may nevertheless bring an
27 action on the Doe Note is entrenched in commercial law and commonly summarized by the axiom
28 "even a thief may enforce a note." However, the taking of the Doe Home by foreclosure is an

1 equitable remedy and equity does not allow a “thief” to use a stolen Doe Note to foreclose through
2 the Doe Mortgage lien.

3
4 35. For all three parts of the Doe Loan as a whole to have been transferred into the CBASS 2007-
5 SP1 Trust there is a chain of entities through which the Doe Mortgage must be assigned and the Doe
6 Note indorsed. This chain of transfer as required in the CBASS 2007-SP1 Trust PSA is to have
7 begun with a recorded assignment of the Doe Mortgage and an indorsement of the Doe Note from
8 the Lender (New Century Mortgage Company) to the Seller (Credit-Based Asset Servicing and
9 Securitization LLC,). Once the Seller (Credit-Based Asset Servicing and Securitization LLC,) had
10 taken complete ownership, then a recorded assignment of the Doe Mortgage and an indorsement of
11 the Doe Note from the Seller (Credit-Based Asset Servicing and Securitization LLC,) to the
12 Depositor (C-BASS ABS LLC) was to have occurred. After the Depositor (C-BASS ABS LLC) had
13 taken complete ownership, a recorded assignment of the Doe Mortgage and an indorsement of the
14 Doe Note from the Depositor (C-BASS ABS LLC) to the Trustee (LaSalle Bank National
15 Association) was next to have occurred. Finally, once the Trustee (LaSalle Bank National
16 Association) had taken complete ownership, a recorded assignment of the Doe Mortgage and an
17 indorsement of the Doe Note from the Trustee (LaSalle Bank National Association) to the C-BASS
18 Mortgage Loan Asset-Backed Certificates Series 2007-SP1 (herein also known as CBASS 2007-SP1
19 Trust) was to have occurred.

20
21 36. Moreover, these assignments were to all be recorded in the Official records of Santa Fe
22 County Registry as per the PSA for the CBASS 2007-SP1 Trust. To explain further with a simple
23 example, Party A must contract and assign to Party B, and Party B must contract and assign to Party
24 C, and Party C must contract and assign to Party D and so on. So a contract and an assignment from
25 Party A to Party D is not allowable. Of course, all of these dealings must be recorded within the
26 Official records of Santa Fe County Registry which date stamps each recording so as to prevent any
27 “back-dating.”

28
29 37. As explained previously, any electronic transfers of the Doe Mortgage that may have been
30 executed without recording within the Official records of Santa Fe County Registry are void under
31 Uniform Electronic Transactions Act (UETA) USC § 15-96-1-7003.

USC § 15-96-1-7003

(a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A

38. The Doe Note specifically states that it is secured by a Mortgage, dated the same day, and the Doe Mortgage refers to the Doe Note, and incorporates the Doe Note into its terms and conditions.

39. The written agreement that created the CBASS 2007-SP1 Trust is a PSA, dated PSA Date and is a matter of public record, available on the website of the Securities Exchange Commission. The CBASS 2007-SP1 Trust is also described in a “Prospectus Supplement,” also available on the SEC website. The CBASS 2007-SP1 Trust by its terms set a “CLOSING DATE” of on or about February 8, 2007. The Doe Note in this case did not become CBASS 2007-SP1 Trust property in compliance with the requirement set forth in the PSA. The CBASS 2007-SP1 Trust agreement is filed under oath with the Securities and Exchange Commission. The acquisition of the assets of the CBASS 2007-SP1 Trust and PSA are governed under the laws of the New York.

40. The PSA is the document that governs this trust. The CBASS 2007-SP1 Trust operates in the state of New York, and New York law requires strict compliance and adherence to the CBASS 2007-SP1 Trust documents. Any action by the CBASS 2007-SP1 Trust in contravention to the CBASS 2007-SP1 PSA is void under New York Trust Law.

C-BASS 2007-SP1 PSA Section 11.04 Governing Law; Jurisdiction.

This Agreement shall be construed in accordance with the laws of the State of New York, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws (without regard to principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law which shall govern). With respect to any claim arising out of this Agreement, each party irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in The City of New York, and each party irrevocably waives any objection which it may have at any time to the laying of venue of any suit, action or proceeding arising out of or relating hereto brought in any such courts, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in any inconvenient forum and further irrevocably waives the right to object, with respect to such claim, suit, action or proceeding brought in any such court, that such court does

1 *not have jurisdiction over such party, provided that service of process has been made*
2 *by any lawful means.(emphasis added)*

3 *New York Trust Law Chapter 17- B § 7-2.4 Act of trustee in contravention of trust*

4 *If the trust is expressed in the instrument creating the estate of the trustee, every sale,*
5 *conveyance or other act of the trustee in contravention of the trust, except as*
6 *authorized by this article and by any other provision of law, is void.*

7 41. Ownership or possession by the New Century Mortgage Company or its agents, of a Note
8 evidencing an Obligation sold to CBASS 2007-SP1 Trust is a violation of the PSA. Additionally, if
9 the Doe Mortgage was transferred to the CBASS 2007-SP1 Trust as required by the PSA, then there
10 is no way that New Century Mortgage Company or it's Agents can claim any beneficial interest in the
11 Doe Mortgage to assign.

12 42. According to the PSA for the CBASS 2007-SP1 Trust, the transfer and sale of all Beneficial
13 Interest of the Doe Mortgage to CBASS 2007-SP1 Trust should have been done on or before the
14 closing date of the CBASS 2007-SP1 Trust which was February 8, 2007. These requirements from
15 the PSA also mean the CBASS 2007-SP1 Trust is unable to have any other assets put into the
16 CBASS 2007-SP1 Trust after the closing date.

17 43. The PSA for the CBASS 2007-SP1 Trust, holds any conveyance of instrument into the
18 CBASS 2007-SP1 Trust subject to the specific procedures explained above and in further paragraphs.
19 Therefore, the conveyance of the Doe Note and Mortgage into the CBASS 2007-SP1, cannot be true
20 unless compliance with the PSA specific procedures of conveyance is also proved to be true. The
21 conveyance of the Doe Note and Mortgage into the CBASS 2007-SP1 Trust lacks proof of execution
22 of these specific procedures. Then, as proof of PSA compliant conveyance of the Doe Note and
23 Mortgage into the CBASS 2007-SP1 Trust is lacking, and can not now be made to exist, CBASS
24 2007-SP1 Trust, can not claim have taken the Doe Note and Mortgage as a secured instrument into
25 its collateral pool.

26 44. The Doe Mortgage contains notice to the Borrowers that the Doe Note or a partial interest
27 in the Doe Note may be sold; however, a sale of a "partial interest" in the Doe Note strips
28 ownership of the Doe Obligation from ownership of the Doe Note, leaving the Doe Note without
 an obligation to evidence and the Doe Mortgage without an obligation to hold conditions over.

From the Doe Mortgage

“20. Sale of Note; Change of Servicer; Notice of Grievance.

The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the “Servicer”) that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law....”

The document purporting to be an

“Assignment Name”

is Invalid as an Assignment Name

Black’s Law Dictionary defines the term valid as “having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or sent aside... Founded on trust of fact; capable of being justified; supported, or defended; not weak or defective... of binding force; legally sufficient or efficacious; authorized by law... as distinguished from that which exists or took place in fact or appearance, but has not the requisites to enable it to be recognized and enforced by law.”(See Black’s Law Dictionary, Sixth Edition, 1990, page 1550)

45. There is a document purporting to be a “Assignment of Mortgage” dated September 15, 2006 recorded January 20, 2010 Santa Fe County, NM 1588816 with an assigner New Century Mortgage Corporation with an assignee LaSalle Bank National Association as Trustee for the C-BASS Mortgage Loan Asset-Backed Certificates Series 2007-SP1, signed by Diana Noriega Acting Vice President, notarized by Marisa G. Carrasco California Notary.

46. First and most importantly the original lender, New Century Mortgage Company gave up all ownership of the Doe Obligation on or before February 8, 2007 to multiple classes of the CBASS 2007-SP1 Trust. Once New Century Mortgage Company had given up the ownership of the Doe Obligation, the ownership of the Doe Obligation was stripped away from the ownership of the Doe Note and the ownership of the Doe Mortgage. New Century Mortgage Company could transfer beneficial interest in the Doe Note or Mortgage; however, that beneficial interest would not include ownership of the Doe Obligation.

1 47. The consequences of the ownership of the Doe Obligation being stripped away from the
2 beneficial interests of the Doe Note and Mortgage means the Doe Note is without an Obligation to
3 evidence and the Doe Mortgage is without an Obligation to enforce conditions against.

4 48. New Century Mortgage Company can assign beneficial interest in the Doe Mortgage, albeit
5 with no ownership of the Doe Obligation, to whomever they please. In order for this document
6 purporting to be an "Assignment Name" to be valid as an Assignment Name however, it would have
7 to determined if a transfer could be made to the assignee. I will explain how transfer to the assignee
8 named could not have been accomplished by this document purporting to be an "Assignment Name".

9
10 49. The assignee named by the document purporting to be an "Assignment Name" is LaSalle
11 Bank National Association as Trustee for the C-BASS Mortgage Loan Asset-Backed Certificates
12 Series 2007-SP1.

13
14 50. In order to exist the CBASS 2007-SP1 Trust agreed to operate under the CBASS 2007-SP1
15 PSA and all applicable Law. As previously explained in ¶35 in order to for the Doe Mortgage Loan
16 to be transferred to the CBASS 2007-SP1 Trust a chain of negotiations needed to occur. A direct
17 transfer from the original lender, New Century Mortgage Company, to the LaSalle Bank National
18 Association violates the terms and conditions under the CBASS 2007-SP1 PSA, under New York
19 Trust Law governing the CBASS 2007-SP1 Trust, and is void

20 51. Further this document purporting to be an "Assignment Name" is not timely to properly
21 transfer the Doe Note and Mortgage to the CBASS 2007-SP1 Trust where is has been shown to be a
22 performing asset.

23 From the Prospectus Supplement (To Prospectus dated PSA Date) for the CBASS 2007-SP1;

24 *C-BASS 2007-SP1 PSA page 80*

25 *The Servicer shall cause the Assignments of Mortgage which were delivered in blank*
26 *to be completed and shall cause all Assignments referred to in Section 2.01(a)(iii) and*
27 *(viii) hereof and, to the extent necessary, in Section 2.01(a)(iv) and (vii) hereof to be*
28 *recorded. **The Servicer shall be required to deliver such assignments and financing***
***statements for recording within 30 days of the Closing Date.** The Servicer shall*
furnish the Custodian, with a copy of each Assignment of Mortgage. In the event that
any such Assignment is lost or returned unrecorded because of a defect therein, the

1 *Servicer shall promptly have a substitute Assignment prepared or have such defect*
2 *cured, as the case may be, and thereafter cause each such Assignment to be duly*
3 *recorded.(emphasis added)*

4 52 The closing date for the CBASS 2007-SP1 Trust was February 8, 2007. What this means is
5 that the CBASS 2007-SP1 Trust is unable to have any other assets put into the CBASS 2007-SP1
6 Trust after February 8, 2007 closing date.

7 53. In view of the foregoing, all assignments executed after the CBASS 2007-SP1 Trust's closing
8 date are void for the reason that all assignments into the Trust after February 8, 2007 violate the
9 express terms of the CBASS 2007-SP1 Trust PSA. All assignments of Mortgages/Deeds of Trust and
10 or indorsements of notes executed after the CBASS 2007-SP1 closing date are void.

11 54. The Prospectus Supplement for the CBASS 2007-SP1 Trust provides that any attempted or
12 purported transfer in violation of these transfer restrictions will be null and void and will vest no
13 rights in any purported transferee. Any transferor or agent to whom the Trustee provides information
14 as to any applicable tax imposed on such transferor or agent may be required to bear the cost of
15 computing or providing such information.

16 55. There are enormous tax consequences, if the document purporting to be an "Assignment
17 Name" filed in the Official Records of Santa Fe County would be authentic, in that this trust has
18 elected to be a REMIC Trust. According to the Prospectus, under the heading "Federal Income Tax
19 Consequences", multiple classes of the CBASS 2007-SP1 Trust, that the Doe Obligation is owned
20 by, elected to be treated as a REMIC, which provides for pass-through tax treatment of the income
21 generated by the Trust assets.

22 56. Internal Revenue Code Section 860 regulates the activities and requirements of a REMIC
23 Trust.

24 *According to 26 CFR§ 1.860D-1(c) (2)*

25 ***Identification of assets.*** *The formation of the REMIC does not occur until (i)*
26 *The sponsor identifies the assets of the REMIC, such as through execution an*
27 *indenture with respect to the asset; and (ii) The REMIC issues the regular and*
28 *residual interests in the REMIC.*

57. In other words, the REMIC is not officially formed until the Credit-Based Asset Servicing and Securitization LLC, the seller/sponsor of the MBS Trust Name Trust identifies and transfers all the specific assets (the specific loans) of the REMIC.

58. The PSA for the CBASS 2007-SP1 Trust specifically identifies a closing date which is the last day that an asset (loan) can be “identified for inclusion” in the Trust/REMIC. The closing date also serves as the Startup Day for the REMIC. According to Internal Revenue code Section, “All of a REMIC’s loans must be acquired on the startup day of the REMIC or within three months thereafter”.

C-BASS 2007-SP1 PSA page 169

Section 9.02 Prohibited Transactions and Activities.

*Neither the Seller, the Depositor, the Servicer nor the Trustee shall sell, dispose of, or substitute for any of the Mortgage Loans, except in a disposition pursuant to (i) the foreclosure of a Mortgage Loan, (ii) the bankruptcy of the Trust Fund, (iii) the termination of any REMIC created hereunder pursuant to Article X of this Agreement, (iv) a substitution pursuant to Article II of this Agreement or (v) a repurchase of Mortgage Loans pursuant to Article II of this Agreement, nor acquire any assets for any REMIC, nor sell or dispose of any investments in the Distribution Account for gain, **nor accept any contributions to either REMIC after the Closing Date,** unless it has received an Opinion of Counsel (at the expense of the party causing such sale, disposition, or substitution) that such disposition, acquisition, substitution, or acceptance will not (a) affect adversely the status of any REMIC created hereunder as a REMIC or of the interests therein other than the Residual Certificates as the regular interests therein, (b) affect the distribution of interest or principal on the Certificates, (c) result in the encumbrance of the assets transferred or assigned to the Trust Fund (except pursuant to the provisions of this Agreement) or (d) cause any REMIC created hereunder to be subject to a tax on prohibited transactions or prohibited contributions pursuant to the REMIC Provisions.(emphasis added)*

New Century Mortgage Company Has No
Claim to Ownership of the Doe Note

59. The Doe Note has been indorsed by New Century Mortgage Company the original lender. The indorsement states “Pay to the Order of without Recourse”. This constitutes a negotiation under UCC Article 3 concerning negotiable instruments. Although no payee is yet named, clearly New Century Mortgage Company has released all interest in the Doe Note.

UCC 7-501 Form of negotiation and requirements of due negotiation

1 (a) The following rules apply to a negotiable tangible document of title:
2 (1) if the document's original terms run to the order of a named person, **the document is**
3 **negotiated by the named person's indorsement and delivery.** After the named person's
4 indorsement in blank or to bearer, any person may negotiate the document by delivery
5 alone ;(emphasis added)

6 60. New Century Mortgage Company transferred its ownership of the Doe Obligation to multiple
7 classes of the CBASS 2007-SP1 Trust and transferred its ownership of the Doe Note. Ownership of
8 the Doe Obligation was transferred to multiple classes of the CBASS 2007-SP1 Trust and ownership
9 of the Doe Note traveled on without it.

10 **The Terms of the Doe Mortgage have been Violated**
11 **and the Doe Mortgage is Unenforceable**

12 61. New Century Mortgage Company has released all interest in the Doe Note to an as yet
13 unnamed payee. The Doe Mortgage as a contract can only enforce its contractual terms against the
14 obligation evidenced by the Doe Note.

15 62. The Doe Mortgage is governed by New Mexico Law. New Mexico Law and Federal Law
16 require properly recordation of assignment to transfer ownership of the Doe Mortgage.

17
18 From the Doe Mortgage;

19
20 ***16. Governing Law; Severability; Rules of Construction.*** This Security Instrument shall
21 be governed by Federal law and the law of the jurisdiction in which the Property is
22 located. All rights and obligations contained in this Security Instrument are subject to
23 any requirements and limitations of Applicable Law. Applicable Law might be explicitly
24 or implicitly allow the parties to agree by contract or might be silent, but such silence
25 shall not be construed to be a prohibition against agreement by contract.

26 63. It has been explained earlier, how it is not possible for ownership of the Doe Mortgage to
27 have been assigned to LaSalle Bank National Association as Trustee for the C-BASS Mortgage Loan
28 Asset-Backed Certificates Series 2007-SP1.

64. There is an assignment of the Doe Mortgage recorded in the Santa Fe County Record, with
Doe releasing ownership of the Doe Mortgage intending that transfer to be to LaSalle Bank National

1 Association as Trustee for the C-BASS Mortgage Loan Asset-Backed Certificates Series 2007-SP1.
2 However, Doe released, through indorsement, ownership of the Doe Note, evidencing the obligation,
3 to however wishes to fill in the payee line. LaSalle Bank National Association as Trustee for the C-
4 BASS Mortgage Loan Asset-Backed Certificates Series 2007-SP1, may attempt to claim ownership
5 of the Doe Mortgage but that ownership would have nothing to enforce the Doe Mortgage contractual
6 terms against. The Doe Mortgage is an unenforceable contract.

7 65. Ownership of the Doe Mortgage is no longer with New Century Mortgage Company, yet no
8 one else has any authority to enforce its terms, while the Doe Note is waiting for someone to claim
9 ownership. The Doe Mortgage is an unenforceable contract, no longer being tied to an obligation to
10 enforce its contractual terms over.

11 66. Under long existing contract law, if the terms of a contract are violated, affecting the
12 conditions under which the Payor is obligated, without the properly evidenced consent of the Payor,
13 that contract is void and cannot be returned to without the consent of the Payor. Even if ownership of
14 the Doe Note and the Doe Mortgage, could be rejoined, the Doe Mortgage, as a now unenforceable
15 contract, no longer being tied to an obligation to enforce its contractual terms over, cannot be
16 returned to being an enforceable contract without Client Full Name's consent.

17 **Ownership of the Doe Obligation**
18 **Can Not be Rejoined to Ownership of the**
19 **Doe Note or the Doe Mortgage**
20

21 67. Multiple classes of the CBASS 2007-SP1 Trust have ownership of the Doe Obligation.
22 Multiple classes of the CBASS 2007-SP1 Trust have yet to all and each be named as payee on the
23 Doe Note and do not now have ownership of the Doe Note. For multiple classes of the CBASS 2007-
24 SP1 Trust to gain ownership of the Doe Note, multiple classes of the CBASS 2007-SP1 Trust would
25 have to all and each be named payee.

26 68. In oral arguments in a August 15, 2012 Hearing case# D-101-CV-201200055 the Attorney
27 representing Bank of America NA as successor by merger to LaSalle Bank NA as Trustee for the C-
28 Bass Mortgage Loan Asset-Backed Certificates Series 2007-SP1 declared that the Doe Note had

1 not been properly negotiated to LaSalle Bank NA as Trustee for the C-Bass Mortgage Loan Asset-
2 Backed Certificates Series 2007-SP1 and that Bank of America NA as Trustee for CBASS 2007-SP1
3 Trust in succession by merger was only holder of the Doe Note by possession.

4 69. CBASS 2007-SP1 Trust its classes, its officers and its agents are prohibited from accepting
5 any assets on behalf of the Trust after February 8, 2007. CBASS 2007-SP1 Trust its classes, its
6 officers its and agents can longer accept ownership of the Doe Note. Ownership of the Doe Note and
7 ownership of the Doe Obligation will remain separate.

8
9 70. Because ownership of the Doe Note was separated from ownership of the Doe Obligation,
10 and will remain separate the Doe Mortgage, is left with no way to enforce its conditions over the
11 obligation which should be evidenced by the Doe Note, making the Doe Mortgage an
12 unenforceable contract.

13 **With Ownership of the Doe Obligation**
14 **Stripped Away and No Way to Enforce the Conditions**
15 **Under the Doe Mortgage,**
16 **the Doe Loan is a Nullity**
17

18 71. The ownership Doe Obligation was separated from the ownership of the Doe Note and the
19 ownership of the Doe Mortgage, leaving the Doe Note no Obligation to evidence and Doe
20 Mortgage no Obligation to enforce conditions over.

21 72. The limited beneficial interest New Century Mortgage Company retained in the Doe
22 Mortgage Loan after selling the Doe Obligation to multiple classes of the CBASS 2007-SP1 Trust as
23 of February 8, 2007, does not include ownership of the Doe Obligation. No acceptable assignments
24 of the limited beneficial interest in the Doe Mortgage to multiple classes of the CBASS 2007-SP1
25 Trust has been recorded into the Santa Fe County Recorder's Office, nor should there be, as such a
26 lawful intangible assignment would fall under the governance of UCC 9. There is no evidence of the
27 proper negotiations of the limited beneficial interest in the Doe Note to multiple classes of the
28 CBASS 2007-SP1 Trust. With no properly recorded owner of the Doe Mortgage, with corroborating
ownership of the Doe Obligation, there is no one to enforce the conditions that would have been over

the Obligation that would have been evidenced by the Doe Note. The Doe Obligation is no longer secured by the Doe Property.

73. With no specific properly-secured owner of the limited beneficial interest of the Doe Note, there is no way to enforce the stripped-away Doe Obligation through the Doe Note.

I, Joseph R. Esquivel Jr., am not an Attorney and nothing within this Affidavit should be construed as Legal Opinion or Legal Advice as it is not.

I, Joseph R. Esquivel Jr., declare, verify and state under penalty of perjury that the foregoing is true and correct.

Joseph R. Esquivel Jr.

06/25/2013

By _____ Executed on _____
Joseph R Esquivel, Jr.
Consumer Defense Programs

STATE OF TEXAS)
COUNTY OF TRAVIS)

Subscribed and sworn to (or affirmed) before me, _____,

Notary Public, on this _____ day of _____, 2012 by

_____, Proved to me on the basis of satisfactory evidence
To be the person(s) who appeared before me. WITNESS my hand and official seal.

Notary Public