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6 Attorneys for Defendants  
Wells Fargo Bank, N.A. and  
7 U.S. Bank National Association,  
as Trustee for WFASC 2005-ARI  
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9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO  
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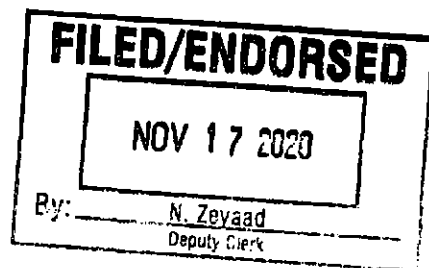
12 THADDEUS J. POTOCKI and  
13 KELLY R. DAVENPORT,

14 Plaintiffs,

15 vs.

16 WELLS FARGO BANK, N.A.;  
FIRST AMERICAN SERVICING  
SOLUTIONS, LLC;  
17 U.S. BANK, N.A., and  
DOES 1 through 100, inclusive,  
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19 Defendants.  
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Case No. 34-2014-00160873

**DEFENDANTS WELLS FARGO BANK,  
N.A. AND U.S. BANK NATIONAL  
ASSOCIATION, AS TRUSTEE FOR  
WFASC 2005-ARI'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' UNVERIFIED  
FIFTH AMENDED COMPLAINT**

Complaint Filed:	March 27, 2014
FAC Filed:	September 5, 2014
SAC Filed:	February 13, 2015
TAC Filed:	April 9, 2015
4 <sup>th</sup> AC Filed:	February 26, 2020
5 <sup>th</sup> AC Filed:	October 13, 2020

1 Defendants Wells Fargo Bank, N.A. and U.S. Bank National Association, as Trustee for  
2 WFASC 2005-ARI (collectively, "Defendants") hereby answer the causes of action asserted against  
3 them in the unverified Fifth Amended Complaint ("5<sup>th</sup> AC") of Plaintiffs Thaddeus J. Potocki and  
4 Kelly R. Davenport ("Plaintiffs") as follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure Section 431.30(d), Defendants generally deny  
7 each and every allegation of Plaintiffs' 5<sup>th</sup> AC. Defendants also deny, generally and specifically,  
8 that Plaintiffs have been damaged as alleged in the 5<sup>th</sup> AC, or in any way at all, or that Plaintiffs are  
9 entitled to any damages, injunctive relief, or other relief whatsoever from Defendants, and further  
10 deny, generally and specifically, that Plaintiffs are entitled to any of the relief prayed for in the  
11 5<sup>th</sup> AC.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 Plaintiffs fail to state a claim against Defendants upon which relief may be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Waiver)**

18 By their actions, Plaintiffs have waived any and all claims, rights, and demands made in the  
19 5<sup>th</sup> AC.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Failure to Mitigate Damages)**

22 Plaintiffs failed to take proper and reasonable steps to avoid, minimize, or mitigate Plaintiffs'  
23 alleged damages, and, to the extent of such failure, the damages allegedly incurred by Plaintiffs, if  
24 any, should be reduced accordingly or eliminated entirely.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Safe Harbor – Civil Code § 2924.12(c))**

27 Defendants are not liable for any alleged violations of the Homeowners Bill of Rights as any  
28 alleged violation has been corrected and remedied.

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**FIFTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

Plaintiffs' claims are barred by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Tender)**

Plaintiff's claims are barred in whole or in part by failure to tender the amount due and owing under the operative note and deed of trust.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Bona Fide Error)**

Although Defendants deny any liability in this matter, Defendants contend that any alleged acts or omissions of Defendants giving rise to Plaintiffs' claims are the result of innocent mistake and/or bona fide error despite reasonable procedures implemented by Defendants. Defendants acted in a reasonable manner in connection with the transaction(s) at issue in this action.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Good Faith Conduct)**

Defendants at all times acted in good faith and in accordance with reasonable commercial standards, thus precluding any recovery by Plaintiffs against Defendants.

**NINTH AFFIRMATIVE DEFENSE**

**(Lack of Malice)**

Defendants specifically deny acting with any willfulness, oppression, fraud, or malice towards Plaintiffs or others.

**TENTH AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

Plaintiffs lack standing because they fail to allege an injury-in-fact.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Consent/Acquiescence)**

Plaintiffs' claims are barred because Plaintiffs acquiesced in and/or consented to any alleged conduct in the 5<sup>th</sup> AC.

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**TWELFTH AFFIRMATIVE DEFENSE**

**(Accuracy/Completeness of Information Furnished)**

The statements or representations made by Defendants, as alleged in the 5<sup>th</sup> AC, were accurate and complete when made or reasonably believed to be accurate and complete based upon the information then available to Defendants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Laches)**

Plaintiffs' claims are barred by the doctrine of laches.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

All of the causes of action alleged in the 5<sup>th</sup> AC are barred by the doctrine of estoppel.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Offset)**

Any award by Plaintiffs should be offset by the amounts owed by Plaintiffs to Defendants.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Justification and Privilege)**

Defendants were justified and privileged in taking the actions alleged in the 5<sup>th</sup> AC.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Mistake)**

Any alleged acts or omissions of Defendants that gave rise to Plaintiffs' claims are the result of innocent mistake.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(No Damages / Speculative Damages)**

Plaintiffs have suffered no actual damages, and any damages claimed in the 5<sup>th</sup> AC are speculative and cannot be recovered from Defendants.

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**NINETEENTH AFFIRMATIVE DEFENSE**

**(Compliance with Law and Applicable Regulations)**

The 5<sup>th</sup> AC and each claim set forth therein are barred because Defendants' conduct was compliant with all applicable laws and regulations and industry standards.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

The 5<sup>th</sup> AC and each cause of action therein are barred because recovery for Plaintiffs would result in unjust enrichment.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(No Obligation to Modify)**

Defendants were under no legal or contractual obligation to modify Plaintiffs' loan.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Protection of Economic Interest)**

Defendants, at all times, acted in good faith and in accordance with reasonable commercial standards to protect its economic interest, thus precluding any recovery by Plaintiffs.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Lack of Prejudice)**

Plaintiffs have failed to properly claim prejudice as a result of any purported procedural irregularity in the loan modification process.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Contribution)**

Any and all harm alleged by Plaintiffs can be attributed to several causes, and the damages for the harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Several Liability)**

Should Plaintiffs prevail against Defendants, each of Defendants' liability is several and limited to its own actionable segments of fault, if any.

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

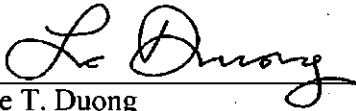
3 To the extent not set forth herein, Defendants reserve the right to assert additional defenses  
4 that become available or apparent during discovery and to amend the Answer accordingly.

5 **WHEREFORE**, Defendants pray:

- 6 1. That Plaintiffs take nothing by way of the 5<sup>th</sup> AC;  
7 2. That judgment be entered in favor of Defendants and against Plaintiffs; and  
8 3. That Defendants be granted such other relief as the Court deems just and proper.

9  
10 DATED: November 12, 2020

REED SMITH LLP

11 By:   
12 Le T. Duong  
13 Megan E. Farrell  
14 Attorneys for Defendants Wells Fargo Bank, N.A.  
15 and U.S. Bank National Association, as Trustee for  
16 WFASC 2005-ARI

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A limited liability partnership formed in the State of Delaware

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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, California 94105-3659. On November 17, 2020 I served the following document(s) by the method indicated below:

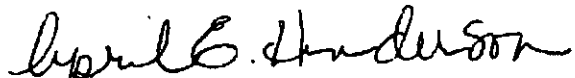
**DEFENDANTS WELLS FARGO BANK, N.A. AND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WFASC 2005-ARI'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' UNVERIFIED FIFTH AMENDED COMPLAINT**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service
- by transmitting via email to the parties at the email addresses listed below:

Christopher J. Fry, Esq. *Attorney for Plaintiff*  
 Fry Law Firm  
 980 9<sup>th</sup> Street, 16<sup>th</sup> Floor  
 Sacramento, CA 95814  
 P: 916-291-0700  
 F: 916-848-0256  
 E: [cfry@frylawcorp.com](mailto:cfry@frylawcorp.com)

Patrick Reider, Esq. *Attorney for First American Servicing Solutions, LLC*  
 First American Law Group  
 5 First American Way  
 Santa Ana, CA 92707

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 17, 2020, at San Francisco, California.

  
\_\_\_\_\_  
April E. Henderson