

4. Admits that McGuire Mortgage Company was a Missouri corporation prior to December 31, 1998 and that it merged into First Horizon Home Loan Corporation, but denies all other allegations contained in paragraph 4 of the Third Amended Petition.

5. Denies all allegations contained in paragraph 5 of the Third Amended Petition.

6. Denies all allegations contained in paragraph 6 of the Third Amended Petition.

7. Admits that the quoted words appear in R.S.Mo. §§ 408.231.1 and 408.231.3, denies that the quotes are accurate, and denies all other allegations contained in paragraph 7 of the Third Amended Petition.

8. Admits, on information and belief, as to the McLeans, the Joneses, and some class members, but denies all remaining allegations contained in paragraph 8 of the Third Amended Petition.

9. Admits all allegations contained in paragraph 9 of the Third Amended Petition, except it incorporates by reference its response to paragraph 8 as to the allegation the loans were all "Second Mortgage Loans."

10. Denies all allegations contained in paragraph 10 of the Third Amended Petition.

11. Denies all allegations contained in paragraph 11 of the Third Amended Petition.

12. Admits the allegations contained in paragraph 12 of the Third Amended Petition.

13. Denies all allegations contained in paragraph 13 of the Third Amended Petition.

14. Admits the allegations contained in paragraph 14 of the Third Amended Petition.

15. Admits all allegations contained in paragraph 15 of the Third Amended Petition, except it incorporates by reference its response to paragraph 8 as to the allegation the loans were all "Second Mortgage Loans."

16. Denies all allegations contained in paragraph 16 of the Third Amended Petition.

17. Admits that loan fees were financed over the life of the McLean loans, but denies all other allegations contained in paragraph 17 of the Third Amended Petition.

18. Admits the allegations contained in paragraph 18 of the Third Amended Petition.

19. Denies all allegations contained in paragraph 19 of the Third Amended Petition.

20. Admits that the Joneses executed deeds of trust in connection with the making of their loans, but denies all other allegations contained in paragraph 20 of the Third Amended Petition.

21. Denies all allegations contained in paragraph 21 of the Third Amended Petition.

22. Denies all allegations contained in paragraph 22 of the Third Amended Petition.

23. Admits that loan fees were financed over the life of the Jones loan, but denies all other allegations contained in paragraph 23 of the Third Amended Petition.

COUNT I

24. For its answer to paragraph 24 of the Third Amended Petition, First Horizon incorporates by reference paragraphs 1 through 23 of this Answer as though fully set forth herein.

25. Denies all allegations contained in paragraph 25 of the Third Amended Petition. First Horizon specifically denies the class has been so defined.

26. Denies all allegations contained in paragraph 26 of the Third Amended Petition.

27. Denies all allegations contained in paragraph 27 of the Third Amended Petition.

28. Denies all allegations contained in paragraph 28 of the Third Amended Petition.

29. Denies all allegations contained in paragraph 29 of the Third Amended Petition.

30. Denies all allegations contained in paragraph 30 of the Third Amended Petition.

31. Denies all allegations contained in paragraph 31 of the Third Amended Petition.

32. Denies all allegations contained in paragraph 32 of the Third Amended Petition.

33. Denies all allegations contained in paragraph 33 of the Third Amended Petition.

34. Denies all allegations contained in paragraph 34 of the Third Amended Petition.

35. Admits that the MSMLA contains the quoted words, denies that the quotes are accurate, denies that the MSMLA includes the emphasis identified in paragraph 35 of the Third Amended Petition, and denies all other allegations contained in paragraph 35 of the Third Amended Petition.

36. Denies all allegations contained in paragraph 36 of the Third Amended Petition.

37. Denies all allegations contained in paragraph 37 of the Third Amended Petition.

38. Denies all allegations contained in paragraph 38 of the Third Amended Petition.

39. Denies all allegations contained in paragraph 39 of the Third Amended Petition.

40. Denies all allegations contained in paragraph 40 of the Third Amended Petition.

41. Denies all allegations contained in paragraph 41 of the Third Amended Petition.

42. Denies all allegations contained in paragraph 42 of the Third Amended Petition.

43. Admits that plaintiffs have accurately set forth R.S.Mo. § 408.562 in paragraph 43 of the Third Amended Petition.

44. Denies all allegations contained in paragraph 44 of the Third Amended Petition.

45. Denies all allegations contained in paragraph 45 of the Third Amended Petition.

In response to the “Prayer for Relief,” First Horizon denies that any relief should be awarded in this action; demands that a judgment be entered in its favor and against the interests of plaintiffs and the class members; prays that it be awarded its attorneys’ fees and costs; and prays for such other and further relief as the Court may deem necessary and proper.

AFFIRMATIVE DEFENSES

1. The Third Amended Petition fails to plead facts sufficient to state a claim.

2. Plaintiffs cannot state a claim under the Missouri Second Mortgage Loans Act (“MSMLA”) because their loans are governed by the laws of the State of Kansas as to rates and charges, as a matter of contract and as a matter of choice-of-law and otherwise.

3. Plaintiffs’ claims are barred by operation of R.S.Mo. § 408.232.4 because the interest rates on their loans were lawful without regard to the rates permitted in R.S.Mo. § 408.232.1. *See Phipps v. FDIC*, 417 F.3d 1006 (8th Cir. 2005); *Avila v. Community Bank of Virginia*, 143 S.W.3d 1 (Mo. Ct. App. 2004); *Adkison v. FirstPlus Bank*, 143 S.W.3d 29 (Mo. Ct. App. 2004).

4. Plaintiffs have waived any reliance on Missouri law or are estopped from denying the application of Kansas law to their loans.

5. Plaintiffs cannot state a claim under the MSMLA because they used the proceeds of their loans for business purposes.

6. If the loans to plaintiffs violate R.S.Mo. § 408.233, as alleged in the Third Amended Petition, and if interest on the loans is an element of recovery, said violations were committed accidentally and as the result of a bone fide error of computation, or were committed in reliance on advice of counsel or on other grounds, as provided for in R.S.Mo. § 408.236.

7. The application of Missouri law to First Horizon constitutes an unreasonable restraint on interstate commerce, in violation of the Commerce Clause, and it violates the Full Faith and Credit Clause of the United States Constitution. The application of Missouri law in this instance would place unconstitutional restraints on First Horizon with respect to the market for and transactions involving second mortgages. The MSMLA discriminates against interstate commerce and/or unduly burdens interstate commerce such that the MSMLA is violative of the United States Constitution.

8. If the MSMLA is found applicable to their loans, the claims of plaintiffs Roger and Eugenia Jones are barred by R.S.Mo. § 408.237.

9. The claims of plaintiffs Roger and Eugenia Jones are barred because they filed for bankruptcy protection and their cause of action against First Horizon remains property of the bankruptcy estate and/or was discharged in bankruptcy and/or is subject to estoppel or other defenses as a result of the bankruptcy, including but not limited to release and waiver of their claims herein.

10. Plaintiffs Roger and Eugenia Jones lack standing to assert claims stated in the Third Amended Petition against First Horizon.

11. First Horizon is and has always been an operating subsidiary of a national bank chartered under the laws of the United States, and so Missouri law, and the MSMLA in particular, is preempted by the laws of the United States. Any claim by plaintiffs to impose state laws against it is preempted by applicable federal laws, including but not limited to the National Bank Act, 12 U.S.C. §§ 24 (Seventh), 85, 86, and 371 and federal regulations thereunder.

12. Plaintiffs' claims against First Horizon, which is and always has been an operating subsidiary of a national bank, are preempted by the National Bank Act, 12 U.S.C. §§ 24 (Seventh), 85, 86, and 371 and federal regulations thereunder. The National Bank Act preempts and supersedes plaintiffs' claims and thereby bars them from proceeding under state laws against First Horizon.

13. Plaintiffs' claims are barred by the voluntary payment doctrine and by their voluntary agreement to the loan terms at issue.

14. Plaintiffs' claims are barred by the doctrine of mutual mistake.

15. Plaintiffs' claims are barred or limited in whole or in part by laches.

16. Plaintiffs' claims are barred or limited by the applicable statutes of limitation.

17. Plaintiffs' claims are barred or limited by the admissions in the "First Amended Petition for Damages" and the "Second Amended Petition for Damages" that they filed herein, whether as a result of judicial estoppel or otherwise.

18. Plaintiffs have failed to join in this action parties indispensable to a full and just adjudication of the claims. To the extent other plaintiffs, unnamed defendants, or other persons are in any respect responsible for plaintiffs' alleged remedy or damages, or are in a superior position to provide the remedy or damages or possess the monies plaintiffs seek as remedy or damages, then those persons must be joined to ensure fair and just adjudication without the specter of multiple or inconsistent results.

19. Plaintiffs' claims are barred, in whole or in part, to the extent they are based on, and/or the damages alleged or remedy sought in the Third Amended Complaint were caused by, acts or omissions of third parties over whom First Horizon has no control or right of control.

20. Plaintiffs' claims for equitable relief are barred by want of equity and other available equitable defenses. Such defenses include that plaintiffs' equitable claims are barred or limited by unclean hands, by plaintiffs' acts and inequitable conduct, by plaintiffs' failure to seek equitable remedies in a timely fashion, by plaintiffs' lack of irreparable harm, by governing standards of equity and good conscience, and because the requested relief would result in unjust enrichment.

21. Plaintiffs' claims are barred in whole or in part by plaintiffs' failure to mitigate damages and/or avoid the consequences of their own conduct.

22. Plaintiffs' claims for damages are barred in whole or in part because, *inter alia*, plaintiffs have suffered no actual damages or loss that can be or should be remedied by First Horizon.

23. The loan discount fees and other charges provided a savings to plaintiffs as to other loan terms, or enabled plaintiffs to avoid terms that would have been imposed had those fees and charges not been made. Any award to plaintiffs must be reduced or eliminated by interest rate savings and savings as to such other terms afforded to plaintiffs in each loan.

24. Plaintiffs' claims are unconstitutional, contrary to due process, and contrary to state and federal law.

25. To the extent plaintiffs have settled or do settle their claims herein, then First Horizon is entitled to a setoff of amounts paid.

26. Plaintiffs' claims are barred by all defenses that First Horizon has asserted in pleadings, motions, and other documents served upon plaintiffs in this action, including prior Answers and dispositive motions.

27. Plaintiffs' claims for punitive damages are deficient on the following additional grounds:

a. The standard by which defendant's conduct is to be determined as alleged by plaintiff for claimed "punitive damages" is vague and wholly arbitrary and as such denies due process in violation of Mo. Const. Article I, § 10 and the Fifth and Fourteenth Amendments of the United States Constitution.

b. The standards for determining the amount of "punitive damages" are vague, supplying no notice to defendant of the potential repercussions of any conduct,

and are subject to the unbridled discretion of the jury thereby denying due process under Mo. Const. Article I, § 10.

c. Plaintiffs' request for "punitive damages" constitutes a request for and/or imposition of an excessive fine in violation of Mo. Const. Article I, § 21 and the Eighth Amendment of the United States Constitution.

d. Plaintiffs' request for "punitive damages" against defendant constitutes a denial of equal protection under the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that defendant's wealth or net worth may be considered by the jury in determining the amount of punitive damage award.

e. Plaintiffs' request for punitive damages against defendant subjects defendant to multiple punishments for the same alleged wrong, thereby denying due process under the Mo. Const. Article I, § 10 and the Fifth and Fourteenth Amendment to the United States Constitution.

f. Plaintiffs' punitive damage claims are barred and fail in that they require strict proof and must be established by clear and convincing evidence, which is absent from their case as a matter of law.

g. There can be no punitive damages assessed in an action in a Missouri court based upon First Horizon's conduct, even if found to be unlawful, outside the state of Missouri.

h. As a matter of law, there can be no punishment for legal conduct. First Horizon cannot be assessed punitive damages for conduct that was legal in Kansas.

i. The Missouri Approved Instruction on Punitive Damages provides unconstitutional standards for determining liability for or any amount of punitive damages.

j. Any punitive damage award in this case cannot be based upon interest awarded as actual damages, but, at most, can only be based upon fees charged. An imposition of punitive damages on an award of interest—a statutory penalty—would lead to an impermissible double penalty for the same alleged wrongs.

k. Punitive damages may not be awarded against First Horizon for the acts or omissions of McGuire Mortgage Company.

l. Punitive damages may not be assessed against First Horizon Home Loan Corp. because such request is preempted by the National Bank Act and other principles of preemption.

28. Plaintiffs may not seek both an award of interest and an award of punitive damages, as that would lead to an impermissible double penalty for the same alleged wrong.

29. The expansion of the class by reason of the Court's *nunc pro tunc* Order was an invalid and impermissible action.

30. Plaintiffs' claims constitute a penalty that may not be recovered through a class action.

31. No class action can be certified by the Court under the Third Amended Petition, and the class that has been certified should be decertified, for the reasons set forth in filed pleadings in this action and because plaintiffs cannot meet the standards of Rule 52.08, certification is an abuse of discretion, and the named plaintiffs' claims are not typical or

representative of some class members' due to differing fees charged and different practices to which they allegedly were subjected.

32. The claims of individual members of the class are barred or limited by any and all of the defenses available to First Horizon pled in each and every Affirmative Defense, which are hereby asserted against each and every member of the class. In addition, claims of individual members of the class are barred or limited by:

- a. *res judicata* arising as a result of foreclosures or other voluntary or involuntary resolution of the loan obligation;
- b. payment;
- c. discharge in bankruptcy;
- d. fraud in the loan;
- e. release or settlement with an assignee;
- f. unclean hands;
- g. rescission by the class member; and
- h. agreement to a new loan after suit began and/or after receipt of class notice.

33. The claims of individual borrowers alleged to be part of the class cannot be adjudicated for failure to prove that they satisfy the requirements for inclusion in the class set forth in the Order Certifying Plaintiff Class dated December 17, 2002, the Order Amending Order Certifying Plaintiff Class dated March 31, 2003, the Second Amended Order Certifying Plaintiff Class dated November 7, 2005, and the Third Amended Order Certifying Plaintiff Class dated March 29, 2006.

34. The claims concerning mortgage broker fees are barred by the agreements the class members had to incur those fees, by their appointment of the brokers to act as an agent in demanding that those fees be paid, and by defendant's agreement to handle the processing of those payments on behalf of the borrower and with the borrower's consent and at his or her direction.

35. Plaintiffs lack standing to represent a class challenging loan fees that the plaintiffs were not charged, or to challenge practices that were not applied to the loans that they obtained.

36. The claims concerning flood certification fees are barred by federal law and federal preemption principles. *See* 42 U.S.C. § 4012a(h); 12 C.F.R. § 22.8.

37. The claims concerning express mail fees are barred by the agreements the class members had to incur those fees, by their appointment of the title company or defendant to transmit payoff funds or documents by expedited means for maximum benefit to the borrower, and by the borrower's consent and the fact the obligation was undertaken at his or her direction.

38. The claims for interest are barred by R.S.Mo. § 408.236 because the alleged violation occurred as a result of acts done or omitted on a written interpretation by Missouri Division of Finance.

39. The claims of plaintiffs and class members are barred or limited by the fact said person did not pay the challenged fee or charge, or by R.S.Mo. § 408.233.1(6), or because it was a fee used to reduce the rate on the loan and such loan was made after August 28, 1998, or because the fee qualifies as an authorized charge under R.S.Mo. § 408.233, or because the fee is interest permissible under R.S.Mo. § 408.232.

40. First Horizon may not be held liable derivatively for the acts or omissions of McGuire Mortgage.

41. First Horizon may not be held liable for the acts or omissions of assignees in collecting payments on the loans.

42. First Horizon relies on the effect of all statutory exemptions and limitations in the MSMLA.

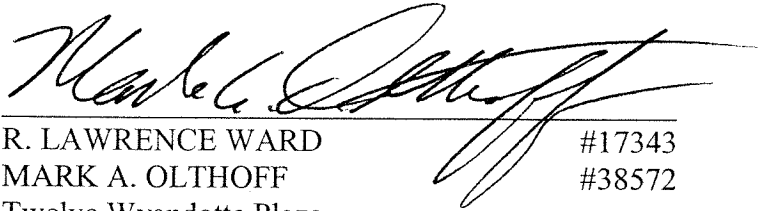
43. If and to the extent the MSMLA is unconstitutional in any term, the statute fails and First Horizon may not be held liable here.

44. If plaintiffs are correct about the magnitude of the remedy available under the MSMLA, the contracts fail for unconscionability and mutual mistake and/or are subject to rescission or reformation and/or the MSMLA is unconscionably harsh and excessive.

45. First Horizon reserves the right to assert additional affirmative defenses as may be revealed during discovery, uncovered as a result of analysis or review of any particular loan to a class member, and as justice requires.

WHEREFORE, having fully answered the Plaintiffs' Third Amended Petition, First Horizon prays that plaintiffs take nothing in their Third Amended Petition, that Plaintiffs' Third Amended Petition be dismissed with prejudice, that defendant receive its costs and attorneys' fees incurred herein, that if there be an award the Court enter equitable relief in First Horizon's favor under R.S.Mo. § 408.562, and for such other relief as the Court deems just and proper.

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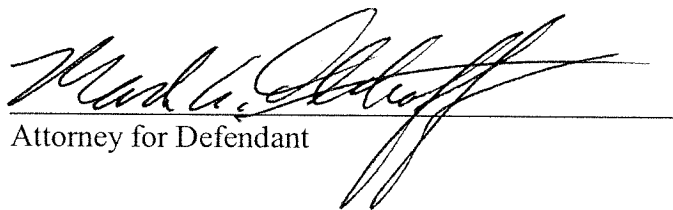
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was delivered via United States mail, postage prepaid, this 12th day of May, 2006, to:

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