

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

JOHN AND JEANETTE SCHWARTZ,)	
et al.,)	
Plaintiffs,)	Case No. 00 CV 226639
)	Case No. 00 CV 226639-01
v.)	Case No. 00 CV 226639-02
)	Case No. 00 CV 226639-03
BANN-COR MORTGAGE, et al.,)	
)	Division 14
Defendants.)	

**DEFENDANT WACHOVIA EQUITY SERVICING, LLC’S, as successor to HOMEQ
SERVICING CORPORATION, f/k/a TMS MORTGAGE, INC., ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFFS’ FIFTH AMENDED PETITION**

Defendant Wachovia Equity Servicing, LLC, as successor to HomEq Servicing Corporation, f/k/a TMS Mortgage, Inc., (“HomEq”) by its counsel, files this Answer and Affirmative Defenses to the Fifth Amended Petition filed on behalf of John and Jeannette Schwartz, James G. Wong, and Daniel R. and Wanda D. Jensen (collectively, the “Named Plaintiffs” or “Plaintiffs”).

ANSWER

Each paragraph of this Answer constitutes HomEq’s answer to the same numbered paragraph of the Plaintiffs’ Fifth Amended Petition. HomEq denies all allegations of Plaintiffs’ Fifth Amended Petition, except those specifically admitted in this Answer.

1. Paragraph 1 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 1 of the Fifth Amended Petition and, accordingly, those allegations are denied.

2. Paragraph 2 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 2 of the Fifth Amended Petition and, accordingly, those allegations are denied.

3. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 3 of the Fifth Amended Petition and, accordingly, those allegations are denied.

4. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 4 of the Fifth Amended Petition and, accordingly, those allegations are denied.

5. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 5 of the Fifth Amended Petition and, accordingly, those allegations are denied.

6. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 6 of the Fifth Amended Petition and, accordingly, those allegations are denied.

7. Paragraph 7 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 7 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

8. Paragraph 8 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 8 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

9. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 9 of the Fifth Amended Petition and, accordingly, those allegations are denied.

10. HomEq admits that it has been served with process or waived service of this process in this action but denies the remainder of Plaintiffs' allegations.

11. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 10 of the Fifth Amended Petition and, accordingly, those allegations are denied.

12. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 12 of the Fifth Amended Petition and, accordingly, those allegations are denied.

13. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 13 of the Fifth Amended Petition and, accordingly, those allegations are denied.

14. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 14 of the Fifth Amended Petition and, accordingly, those allegations are denied.

15. Paragraph 15 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 15 of the Fifth Amended Petition and, accordingly, those allegations are denied, except that HomEq admits that it purchased and serviced the loan made by Bann-Cor to Plaintiffs John A. and Jeannette A. Schwartz. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiffs James G. Wong or Daniel and Wanda Jensen. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to these Named Plaintiffs.

16. Paragraph 16 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 16 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

17. Paragraph 17 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 17 of the Fifth Amended Petition.

18. Paragraph 18 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 18 of the Fifth Amended Petition and, accordingly, those allegations are denied.

19. Paragraph 19 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 19 of the Fifth Amended Petition and, accordingly, those allegations are denied.

20. Paragraph 20 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 20 of the Fifth Amended Petition and, accordingly, those allegations are denied, except that HomEq admits that it purchased and serviced the loan made by Bann-Cor to Plaintiffs John A. and Jeannette A. Schwartz.

21. Paragraph 21 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 21 of the Fifth Amended Petition and, accordingly, those allegations are denied.

22. Paragraph 22 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 22 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

23. Paragraph 23 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 23 of the Fifth Amended Petition and, accordingly, those allegations are denied.

24. Paragraph 24 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 24 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

25. Paragraph 25 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 25 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

26. Paragraph 26 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 26 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

27. Paragraph 27 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 27 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

28. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 28 of the Fifth Amended Petition and, accordingly, those allegations are denied.

29. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 29 of the Fifth Amended Petition and, accordingly, those allegations are denied.

30. Paragraph 30 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 30 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

31. Paragraph 31 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 31 of the Fifth Amended Petition and, accordingly, those

allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

32. Paragraph 32 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 32 of the Fifth Amended Petition and, accordingly, those allegations are denied.

33. Paragraph 33 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 33 of the Fifth Amended Petition and, accordingly, those allegations are denied.

34. Paragraph 34 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 34 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor. By way of further response, the Correspondent/Lender Broadcast and the Sale and Purchase Agreement are written statements, and Plaintiffs' characterization and/or partial quotation of those documents is denied.

35. Paragraph 35 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 35 of the Fifth Amended Petition. HomEq specifically avers

that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

36. Paragraph 36 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 36 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

37. HomEq denies the allegations contained in Paragraph 37 of the Fifth Amended Petition.

38. Paragraph 38 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 38 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

39. Paragraph 39 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 39 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

40. Paragraph 40 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 40 of the Fifth Amended Petition. HomEq specifically avers

that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

41. Paragraph 41 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 41 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

42. HomEq denies the allegations contained in Paragraph 42 of the Fifth Amended Petition. HomEq specifically avers that it was not involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

43. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 43 of the Fifth Amended Petition and, accordingly, those allegations are denied.

44. Paragraph 44 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 44 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

45. Paragraph 45 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the

allegations contained in Paragraph 45 of the Fifth Amended Petition and, accordingly, those allegations are denied.

46. Paragraph 46 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 46 of the Fifth Amended Petition and, accordingly, those allegations are denied.

47. Paragraph 47 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 47 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

48. Paragraph 48 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 48 of the Fifth Amended Petition and, accordingly, those allegations are denied, except that HomEq admits that it purchased and serviced the loan made by Bann-Cor to Plaintiffs John A. and Jeannette A. Schwartz.

49. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 49 of the Fifth Amended Petition and, accordingly, those allegations are denied, except that HomEq admits that Defendant HomEq

purchased and serviced the loan made by Bann-Cor to Plaintiffs John A. and Jeannette A. Schwartz.

50. Paragraph 50 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 50 of the Fifth Amended Petition and, accordingly, those allegations are denied. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

51. Paragraph 51 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 51 of the Fifth Amended Petition and, accordingly, those allegations are denied. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

52. Paragraph 52 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 52 of the Fifth Amended Petition and, accordingly, those allegations are denied.

53. Paragraph 53 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 53 of the Fifth Amended Petition and, accordingly, those allegations are denied.

54. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 54 of the Fifth Amended Petition and, accordingly, those allegations are denied.

55. Paragraph 55 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 55 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

56. Paragraph 56 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 56 of the Fifth Amended Petition and, accordingly, those allegations are denied.

57. Paragraph 57 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 57 of the Fifth Amended Petition and, accordingly, those allegations are denied.

58. Paragraph 58 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 58 of the Fifth Amended Petition and, accordingly, those

allegations are denied. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiff James G. Wong. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to this Named Plaintiff.

59. Paragraph 59 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 59 of the Fifth Amended Petition and, accordingly, those allegations are denied.

60. Paragraph 60 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 60 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

61. Paragraph 61 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 61 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiff James G. Wong. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to this Named Plaintiff.

62. Paragraph 62 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 62 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiff James G. Wong. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to this Named Plaintiff.

63. HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 63 of the Fifth Amended Petition and, accordingly, those allegations are denied.

64. Paragraph 64 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 64 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

65. Paragraph 65 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 65 of the Fifth Amended Petition and, accordingly, those allegations are denied.

66. Paragraph 66 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 66 of the Fifth Amended Petition and, accordingly, those allegations are denied.

67. Paragraph 67 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 67 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiffs Daniel and Wanda Jensen. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to these Named Plaintiffs.

68. Paragraph 68 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 68 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

69. Paragraph 69 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 69 of the Fifth Amended Petition and, accordingly, those

allegations are denied. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiffs Daniel and Wanda Jensen. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to these Named Plaintiffs.

70. Paragraph 70 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 70 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, Plaintiffs have admitted that HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiffs Daniel and Wanda Jensen. Accordingly, Plaintiffs cannot hold HomEq liable under any theory of assignee liability on any second mortgage loan made by Bann-Cor to these Named Plaintiffs.

71. Paragraph 71 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 71 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

72. Paragraph 72 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 72 of the Fifth Amended Petition and, accordingly, those allegations are denied.

73. Paragraph 73 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 73 of the Fifth Amended Petition and, accordingly, those allegations are denied.

74. Paragraph 74 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 74 of the Fifth Amended Petition and, accordingly, those allegations are denied.

75. Paragraph 75 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 75 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

76. Paragraph 76 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 76 of the Fifth Amended Petition and, accordingly, those allegations are denied.

77. Paragraph 77 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 77 of the Fifth Amended Petition and, accordingly, those allegations are denied.

78. Paragraph 78 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 78 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

79. Paragraph 79 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 79 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

80. Paragraph 80 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 80 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

81. Paragraph 81 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a further response may be required, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

82. Paragraph 82 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 82 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

83. Paragraph 83 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 83 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

84. Paragraph 84 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a further response may be required, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

85. Paragraph 85 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the

allegations contained in Paragraph 85 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

86. Paragraph 86 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 86 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, Plaintiffs have admitted that the second mortgage loan made by Bann-Cor to the Named Plaintiffs John and Jeannette Schwartz was not a "high cost" loan as defined in 15 U.S.C. § 1602(aa) of the Home Ownership and Equity Protection Act ("HOEPA"). Accordingly, Plaintiffs cannot utilize 15 U.S.C. § 1641(d) to hold Money Store liable on the second mortgage loan made by Bann-Cor to these Named Plaintiffs.

87. Paragraph 87 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 87 of the Fifth Amended Petition and, accordingly, those allegations are denied.

88. Paragraph 88 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq denies the allegations contained in Paragraph 88 of the Fifth Amended Petition. HomEq specifically avers that at no time was it involved in a partnership, joint venture/enterprise, and/or conspiracy with Bann-Cor.

89. Paragraph 89 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 89 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

90. Paragraph 90 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a further response may be required, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

91. Paragraph 91 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 91 of the Fifth Amended Petition and, accordingly, those allegations are denied.

92. Paragraph 92 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 92 of the Fifth Amended Petition and, accordingly, those allegations are denied.

93. Paragraph 93 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the

allegations contained in Paragraph 93 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

94. Paragraph 94 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 94 of the Fifth Amended Petition and, accordingly, those allegations are denied.

95. Paragraph 95 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 95 of the Fifth Amended Petition and, accordingly, those allegations are denied.

96. Paragraph 96 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 96 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

97. Paragraph 97 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the

allegations contained in Paragraph 97 of the Fifth Amended Petition and, accordingly, those allegations are denied.

98. Paragraph 98 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 98 of the Fifth Amended Petition and, accordingly, those allegations are denied.

99. Paragraph 99 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 99 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

100. Paragraph 100 of the Fifth Amended Petition contains conclusions of law to which no response is required. To the extent that a response may be required, HomEq is without knowledge or information sufficient to form a belief as to the accuracy or veracity of the allegations contained in Paragraph 100 of the Fifth Amended Petition and, accordingly, those allegations are denied. By way of further response, the Missouri Revised Statutes are written statements, and Plaintiffs' characterization and/or partial quotation of those Statutes is denied.

WHEREFORE, Wachovia Equity Servicing, LLC, as successor to HomEq Servicing Corporation, f/k/a TMS Mortgage, Inc., respectfully requests this Court to enter judgment in favor of it and against Plaintiffs.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Fifth Amended Petition fails to state any claim upon which relief may be granted against HomEq.

2. Named Plaintiffs James G. Wong and Daniel and Wanda Jensen lack legal standing to assert any claim against HomEq because HomEq never held, purchased, or was assigned any second mortgage loan made to these individuals by Bann-Cor.

3. Plaintiffs John A. and Jeannette A. Schwartzes' claims are barred by the three-year statute of limitations set forth in Mo.Rev.Stat. § 516.130(2) based on their admission that their loan was not a HOEPA loan. On September 7, 2004, the Court held that HomEq is not a "moneyed corporation" for the purposes of Mo.Rev.Stat. § 516.420. Accordingly, the Court found that the Schwartzes' claims against HomEq were governed by the three-year statute of limitations set forth in Mo.Rev.Stat. § 516.130(2) and that those claims were therefore time-barred. The Missouri Court of Appeals later reversed the Court's dismissal as to HomEq reasoning that if the loan obtained by Plaintiffs John A. and Jeannette A. Schwartz was a HOEPA loan under the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. Section 1602, *et seq.*, "assignees of mortgage loans are subject to all claims and defenses under any law that a borrower could have asserted against the original lender." *Schwartz v. Bann-Cor Mortgage*, 197 S.W.3d 168, 179 (Mo. Ct. App. 2006). The Court of Appeals held that because Bann-Cor was a "moneyed corporation," it was subject to the six-year limitations period prescribed by Mo.Rev.Stat. § 516.420, and HomEq, as an alleged assignee of the alleged HOEPA loan, was also subject to the six-year limitations period. However, on December 21, 2007, Plaintiffs John A. and Jeannette A. Schwartz admitted that their loan does not qualify as a HOEPA loan. Therefore, based on the Schwartzes' admission and the reasoning of the Court of

Appeals, the three-year statute of limitations set forth in Mo.Rev.Stat. § 516.130(2) should be applied to bar the Schwartzes' claims against HomEq.

4. Any purported civil conspiracy claim that the Named Plaintiffs are asserting for the first time in their Fifth Amended Complaint is barred by the five-year statute of limitations set forth in Mo.Rev.Stat. § 516.120.

5. HomEq did not solicit or make any of the Named Plaintiffs' second mortgage loans. Therefore, HomEq did not violate the Missouri Second Mortgage Loan Act.

6. HomEq did not act as an agent of Bann-Cor, nor did Bann-Cor act as an agent of HomEq, in connection with the making of the second mortgage loans to the Named Plaintiffs. Accordingly, HomEq cannot be held vicariously liable for any alleged violations by Bann-Cor.

7. HomEq did not violate the Missouri Second Mortgage Loan Act because it did not make the second mortgage loans at issue, it never held the second mortgage loans made to Named Plaintiffs James G. Wong and Daniel and Wanda Jensen and, in any event, the loans at issue do not violate the Missouri Second Mortgage Loan Act.

8. As a matter of law, Plaintiffs' claims are not cognizable under the Missouri Second Mortgage Loan Act because the Act permits a lender to make a second mortgage loan that complies with other state or federal law.

9. HomEq was not involved in any of the alleged wrongful conduct, was not an alleged assignee of the loans made to Named Plaintiffs James G. Wong and Daniel and Wanda Jensen, and has no knowledge of the conduct alleged in Plaintiffs' Fifth Amended Petition. Therefore, HomEq has been improperly joined as a defendant and hereby demands its immediate dismissal with prejudice.

10. Named Plaintiffs are inadequate class representatives in that they have raised individual, non-class claims.

11. To the extent Plaintiffs seek to maintain this action as a class action, Plaintiffs' claims should be dismissed and the putative class should not be certified under Missouri Rule 52.08 because Plaintiffs have failed to satisfy the prerequisites of class certification, including but not limited to the requirements of numerosity, commonality, typicality, adequacy of representation, predominance, superiority and manageability.

12. To the extent the Named Plaintiffs or any member of the putative class signed an agreement to arbitrate with Bann-Cor or any other defendant, Plaintiffs' claims are subject to binding arbitration.

13. To the extent that any of the Named Plaintiffs or any member of the putative class was on actual or constructive notice of the fees at issue when he or she entered into the second mortgage loan at issue and delayed filing his or her claim, some or all of Plaintiffs' claims may be barred by the doctrines of estoppel, waiver or laches.

14. To the extent that any member of the putative class or his or her co-borrower already has previously pursued any claims against Bann-Cor and such claims have been judicially determined, some or all of such individuals' claims may be barred by the doctrines of collateral estoppel/issue preclusion and/or *res judicata*/claim preclusion. Such judicial determinations may include, but are not limited to, the orders and judgments of the United States Bankruptcy Court in *In re FirstPlus Financial, Inc.*, Case No. 99-31869-HCA, Northern District of Texas.

15. Plaintiffs' claims under Missouri law do not apply to assignees, good faith purchasers for value or holders in due course. Moreover, under the common law, assignees do not assume the burdens or obligations of assignors and, particularly, alleged violations of law occurring prior to any alleged assignment. As set forth elsewhere herein, HomEq did not purchase the second mortgage loans made to the Named Plaintiffs James G. Wong or Daniel and Wanda Jensen.

16. As a matter of law, the second mortgage loans at issue may not be rescinded either because the Plaintiffs have failed to tender the outstanding principal balance or because such loans already have been paid off.

17. Because HomEq did not purchase or hold any second mortgage loans made by Bann-Cor to the Named Plaintiffs James G. Wong or Daniel and Wanda Jensen, HomEq cannot possibly be held liable under any theory of assignee liability on any second mortgage loan made to these Named Plaintiffs.

18. HomEq raises any and all defenses afforded under the Second Mortgage Loan Act to any lender, alleged assignee or loan servicer.

19. Some or all of Plaintiffs' claims are barred as to HomEq in that HomEq did not specifically assume any alleged contractual liabilities.

20. Plaintiffs' claims are barred in whole or in part because of their failure to exercise ordinary and reasonable care. Plaintiffs read, signed and thereby consented to the loan agreements which they allege violated Missouri law. Had Plaintiffs exercised reasonable care, they would or should have recognized the allegedly excessive fees and refused to consent to the payment of such fees.

21. To the extent that Plaintiffs or any member of the putative class accepted the benefits of their second mortgage loans and/or refinanced higher cost consumer debt, Plaintiffs' claims are barred in whole or in part by the doctrine of unjust enrichment.

22. Plaintiffs' claims are barred in whole or in part for failure to mitigate their damages, if any, because once Plaintiffs were notified or they realized that a claim might exist they failed to minimize their alleged losses, if any.

23. Any loss or damage suffered by Plaintiffs was a direct and proximate result of the acts or omissions of others for which HomEq is not liable.

24. To the extent that any of the Plaintiffs or any of the members of the putative class have defaulted, renegotiated or paid off their second mortgage loans at issue, Plaintiffs' claims are barred, in whole or in part, by the doctrines of accord and satisfaction, estoppel, ratification and novation.

25. Plaintiffs have failed to join all necessary and indispensable parties required for a full and just adjudication of the claims in this action. To the extent that there are other purported plaintiffs, including co-borrowers or co-obligors, defendants or other persons who are in any respect responsible for Plaintiffs' alleged damages, then those persons must be joined to ensure a fair and just adjudication without the risk of multiple or inconsistent results.

26. Plaintiffs' claims for punitive or exemplary damages are barred or reduced by applicable law or statute or, in the alternative, are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and applicable provisions of the Constitution of the State of Missouri. Any law, statute or other authority

purporting to permit the recovery of punitive damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness in that it failed to provide adequate advance notice as to what conduct will result in punitive damages; (3) unconstitutionally may permit recovery of punitive damages based on conduct that complied with applicable law, or conduct that was not directed, or did not proximately cause harm, to Plaintiff; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Plaintiff and to the amount of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to defendants; (6) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any punitive damages award; (7) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (8) otherwise fails to satisfy Supreme Court precedent, including, without limitation, *State Farm Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003), *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996), and *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032 (1991). Plaintiffs' claim for punitive damages is, and any award of punitive damages in this case would be, unconstitutional insofar as such damages are sought on behalf of absent class members who are not called to testify in this action and who seek to punish HomEq for Bann-Cor's conduct related to transactions on which neither the named Plaintiffs nor HomEq were directly involved. *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (U.S. 2007). Moreover, an award of punitive damages in addition to any alleged statutory penalty would be excessive and violative of the United States Constitution and the applicable provisions of the Constitution

of the State of Missouri. In addition, R.S. Mo. § 408.236 is unconstitutionally vague in that it does not provide an affirmative cause of action for recovery of interest paid and/or future interest.

27. The application of Missouri law to HomEq constitutes an unreasonable restraint on interstate commerce in violation of the Commerce Clause of the United States Constitution. The application of Missouri law in this instance would and will place unconstitutional restraints on HomEq and other defendants that are engaged in interstate commerce with respect to the market for and transactions involving second mortgages. The Missouri Second Mortgage Loan Act discriminates against interstate commerce and/or unduly burdens interstate commerce such that the Act is violative of the United States Constitution.

28. To the extent that Plaintiffs have any cognizable claims, the penalties associated with such claims may not be recovered through a class action. As a matter of law, Plaintiffs are not entitled to pursue claims for statutory penalties in an alleged class action.

29. Plaintiffs' claims are barred to the extent that any violation of the Second Mortgage Loan Act was the result of an accidental and bona fide error of computation or was committed in reliance on a written interpretation of the Missouri Division of Finance of the provisions of Mo. Rev. Stat. §§ 408.231 to 408.241.

30. This Court lacks personal jurisdiction over HomEq. Plaintiffs have not sufficiently alleged nor can they prove that HomEq is subject to jurisdiction in this action pursuant to the Missouri long-arm statute. Moreover, HomEq does not have sufficient minimum contacts with the state of Missouri to allow the Court to exercise personal jurisdiction according to constitutional standards. Accordingly, HomEq is not subject to jurisdiction in this action and should be dismissed as a defendant.

31. Plaintiffs' John A. and Jeannette A. Schwartz have admitted that their loan does not qualify as a HOEPA loan under the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. Section 1602, *et seq.*

32. As a matter of law, Plaintiffs' John A. and Jeannette A. Schwartz's claims are not cognizable against HomEq because their loan does not meet either the APR test or "points and fees" test as defined under the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. Section 1602, *et seq.*

33. Plaintiff James G. Wong lacks standing to sue HomEq because he has no alleged direct or personal claim against HomEq. Accordingly, Plaintiff Wong's claim, if any, should be dismissed with prejudice and he cannot serve as a putative class representative in this action.

34. Plaintiffs Daniel and Wanda Jensen lack standing to sue HomEq because they have no alleged direct or personal claim against HomEq. Accordingly, Plaintiffs Daniel and Wanda Jensen's claims, if any, should be dismissed with prejudice and they cannot serve as a putative class representative in this action.

35. Plaintiffs' claims are barred as to HomEq because Plaintiffs voluntarily agreed to the terms of their loans, understood the facts underlying their loan transactions, and willingly entered into their loan transactions.

36. Because the United States District Court for the Western District of Missouri, No. 01-0980-CV-W-6, has already determined that 15 U.S.C. Section 1641(d) does not create an independent basis of liability against HomEq, Plaintiffs' claims against HomEq are barred by the federal law of the case.

37. To the extent that HomEq is held liable for any type or form of damages or recovery of any nature on any loan made by Bann-Cor to Plaintiffs or any putative class member and assigned to HomEq, any such damages are limited by 15 U.S.C. Section 1641(d)(2).

38. HomEq did not charge, contract for, or receive any challenged fee.

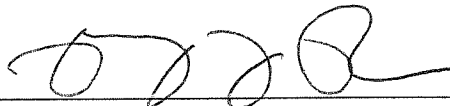
39. HomEq reserves the right to assert additional affirmative defenses as may be revealed during discovery and as justice requires.

WHEREFORE, The HomEq, LLC, f/k/a The HomEq, Inc., respectfully requests this Court to enter judgment in favor of it and against Plaintiffs.

Dated: February 29, 2008

Respectfully Submitted,

Rasmussen, Willis, Dickey, and Moore, L.L.C.

By: 

Randolph G. Willis, Mo. Bar # 47834
Bradley Raple, Mo. Bar # 58634
9200 Ward Parkway, Suite 310
Kansas City, Missouri 64114
Telephone: (816) 960-1611
Facsimile: (816) 960-1669

Of Counsel:

Thomas L. Allen, Pa. Bar # 33243
Roy W. Arnold, Pa. Bar # 70544
Lyle D. Washowich, Pa. Bar # 84348
REED SMITH LLP
435 Sixth Avenue
Pittsburgh, PA 15219
Telephone: (412) 288-3131
Facsimile: (412) 288-3063

Attorney for Defendant Wachovia Equity Servicing,
LLC, as successor to HomEq Servicing Corporation,
f/k/a TMS Mortgage, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Defendant Wachovia Equity Servicing, LLC's, as successor to HomEq Servicing Corporation, Answer and Affirmative Defenses to Plaintiff's Fifth Amended Petition* was sent via hand-delivery, this 29th day of February 2008, to:

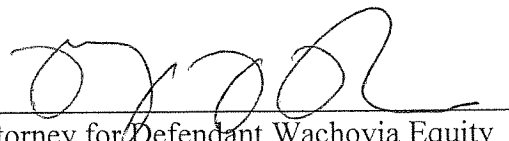
Garrett M. Hodes, Esq.
Walters, Bender, Strohbehn and Vaughan, P.C.
2500 City Center Square
12th and Baltimore
P. O. Box 26188
Kansas City, Missouri 64196

Attorneys for Plaintiffs

with a representative copy mailed to:

Bann-Cor Mortgage
26431 Crown Valley Parkway
Suite 100
Missouri Viejo, California 92691

Master Financial, Inc.
Master Financial Asset Securitization Trusts 1997-1, 1998-1, 1998-2
505 City Parkway West, Suite 800
Orange, California 92868



An Attorney for Defendant Wachovia Equity Servicing, LLC, as successor to HomEq Servicing Corporation, f/k/a TMS Mortgage, Inc.