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ANS

(Name)

(Mailing Address)

(City, State, Zip Code)

(Telephone Number)

(Fax Number)

(E-mail Address)

Defendant, In Proper Person

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Plaintiff(s),
vs.

Defendant(s).

Case No.: _____

Dept. No.: _____

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant *(insert your name)* _____, appearing in proper person, submits this Answer and Affirmative Defenses to Plaintiff's Complaint on file herein and alleges and avers as follows:

1. Defendant admits the allegations contained in the following numbered paragraphs in Plaintiff's Complaint *(insert selected paragraph numbers from Plaintiff's Complaint)*: _____

2. Defendant denies the allegations contained in the following numbered paragraphs in Plaintiff's Complaint *(insert selected paragraph numbers from Plaintiff's Complaint)*: _____

///

1 practices and with the Federal Housing Authority (FHA), Veteran's Affairs (VA), or the USDA default
2 servicing guidelines, which presents an equitable defense to this mortgage foreclosure action.

3 **AFFIRMATIVE DEFENSE NO. 3**

4 **Estoppel / Failure of Contractual Condition Precedent: Plaintiff Failed to Comply with Its Duty to**
5 **Review Defendant for a Loan Modification**

6 The subject loan is secured by and/or underwritten by a lender/servicer contractually
7 obligated to follow the Making Home Affordable – HAMP program.

8 **AFFIRMATIVE DEFENSE NO. 4**

9 **Illegality / Plaintiff Has and Continues to Add Illegal Charges to the Alleged Loan Balance**

10 Plaintiff has charged and/or collected payments from Defendant for property inspections,
11 attorney fees, other fees, legal fees, foreclosure costs, assessments, advances, late fees and/or other
12 charges that are not authorized by, or in conformity with, the terms of the subject note and mortgage.

13 Plaintiff wrongfully added, and continues to unilaterally add, these illegal charges to the
14 balance Plaintiff claims is due and owing under the subject note and mortgage.

15 **AFFIRMATIVE DEFENSE NO. 5**

16 **Waiver / Breach of Agreement**

17 After the date of the original agreement, mortgage, or note, the parties modified the terms of
18 the original agreement, mortgage, or note pursuant to a Trial Period Plan as follows: _____

19 _____
20 _____ (attach additional pages if necessary)

21 Plaintiff has breached its agreement with Defendant by not converting the Trial Period Plan
22 to a permanent modification per the guidelines.

23 Defendant has not defaulted under the terms of the new agreement with Plaintiff.

24 Plaintiff has breached the terms of the new agreement with Defendant as follows: _____

25 _____
26 _____ (attach additional pages if necessary)

27 ///

28 ///

1 **AFFIRMATIVE DEFENSE NO. 6**

2 **Unclean Hands**

3 Plaintiff comes to this Court with unclean hands and is prohibited by reason thereof from
4 obtaining the equitable relief of foreclosure from this Court.

5 Plaintiff's unclean hands result from, among other things:

6 Plaintiff's improper acceleration of the subject mortgage and note;

7 Plaintiff's failure to fulfill or perform all conditions precedent to the filing of this action;

8 Plaintiff's failure to comply with the material terms of the subject mortgage and note,
9 which it now seeks to accelerate and foreclose;

10 Plaintiff's failure to comply with applicable requirements of federal law; and

11 Plaintiff's ongoing/continuing addition of illegal/unauthorized charges to the alleged loan
12 balance.

13 **AFFIRMATIVE DEFENSE NO. 7**

14 **Violation of NRS 40.430**

15 Plaintiff has violated Nevada's "one action rule."

16 Plaintiff has already attempted to recover for this debt and/or enforce the security agreement
17 via a previous action in violation of NRS 40.430, specifically in Case No. _____.

18 **AFFIRMATIVE DEFENSE NO. 8**

19 **Violation of NRS 14.010**

20 Plaintiff failed to file and record a Notice of Lis Pendens pursuant to NRS 14.010 and has,
21 therefore, failed to meet statutory requirements necessary to maintain this action.

22 **AFFIRMATIVE DEFENSE NO. 9**

23 **Equitable Estoppel / Unconscionability**

24 As a matter of equity, this Court should refuse to foreclose this mortgage because
25 acceleration of the note would be inequitable, unjust, and the circumstances of this case render
26 acceleration unconscionable.

27 WHEREFORE, Defendant prays that this Court dismiss Plaintiff's Complaint with prejudice or,
28 in the alternative, as this Court deems just and proper,

1 (a) Refuse the acceleration and deny foreclosure unless and until such time as Plaintiff has
2 demonstrated full and strict compliance with the obligations and performance of all conditions precedent
3 imposed upon it;

4 (b) Reduce the amount owed by Defendant by the amount of the damages Defendant has
5 incurred as a result of Plaintiff's failure to perform and fulfill all contractual conditions precedent;

6 (c) Order an accounting under the mortgage and note of all money collected and paid out by
7 Plaintiff;

8 (d) Order an accounting of all the money paid into the escrow account;

9 (e) Order restoration and the return of any and all overpayments made by Defendants and
10 improperly paid out by Plaintiff;

11 (f) Reduce any amount owed by Defendant, if any, by the amount of the unauthorized charges
12 and fees Plaintiff has wrongfully charged;

13 (g) Otherwise deny the relief sought by Plaintiff in its Complaint;

14 (h) Award Defendant its attorney fees and costs incurred herein;

15 (i) Order a loan modification adjusting the payment under the note to an affordable level for
16 Defendant;

17 (j) Order the parties to attend a Nevada Foreclosure Mediation to resolve the issues presented in
18 Plaintiff's Complaint; and

19 (k) Award such other and further relief as the Court deems just and appropriate.

20 DATED this _____ day of _____, 20_____.

21
22 By: *(Signature)* _____
23 *(Print Name)* _____
24 Defendant, In Proper Person

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CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 20____, I served a true and correct copy of the foregoing DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES, pursuant to NRCP 5(b), by depositing for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Las Vegas, Nevada, addressed to the following:

(Insert name and address of Plaintiff's attorney:)

(Insert name and address of attorney for any other party that has appeared in case:)

DATED this _____ day of _____, 20_____.

By: *(Signature)* _____
(Print Name) _____