

**NOTICE OF CANCELTION OF LOAN
&
AUTOMATIC VOIDING OF THE DEED OF TRUST**

Notice to Agent is Notice to Principal
Notice to Principal is Notice to Agent

Notice date: March 29, 2010

From: Borrower

John E. Public
Service by and respond to:
c/o Sally Smith, A Notary Public located at:
7000 Regional Street
Suite 440
Downtown, CA 94568

To: Mr. Joe Black, President and Chief Financial Officer
c/o U.S. Bank, National Association, 425 Walnut Street, Cincinnati, OH 45202-3923
Certified Mail #7009 3410 0002 xxxx xxxx

R.K. Brown, President and Chief Executive Officer
Mortgage Electronic Registration Systems Inc. "MERS", P.O. Box 2026, Flint, MI 48501-2026
Delivered by Certified Mail #7009 3410 0002 xxxx xxxx

Chad Blue President, Financial Group, Inc., dba, Nations Choice Mortgage, Lender is An
Arizona Corporation, 3393 East Baseline Road, #7-118, Gilbert, ARIZONA 85234
Certified Mail #7009 3410 0002 xxxx xxxx

Olivia A. Green, National Default Servicing Corporation, (NDSC)
7720 N. 16th Street, Suite 300, Phoenix, Arizona 85020
Delivered by Certified Mail #7009 3410 0002 xxxx xxxx

Benny Smith & Lucy Brown,
Title Company, 2550 N. Red Hill Avenue, Santa Ana, CA 92705
Certified Mail #7009 3410 0002 xxxx xxxx

CEO Timothy Blue
Select Portfolio Servicing Inc. (SPS) Loan Servicer
3815 South West Temple, Salt Lake City, UT 84115
Certified Mail #7009 3410 0002 xxxx xxxx

Re: **Lender on the Deed of Trust:** Fisher Financial Group, Inc., dba, Nations
Choice Mortgage, Lender is An Arizona Corporation, located at 3393 East
Baseline Road, #7-118, Gilbert, ARIZONA 85234
Servicer: Select Portfolio Servicing Inc. (SPS) Loan Number 00xxxxxxxx

Deed of Trust Dated: 7/13/2007
Deed of Trust Record: # 2007108403
Record Date: JULY 18, 2007 in the County of San Mateo in the State of CALIFORNIA
Subject property: 123 12TH AVENUE; SAN MATEO, CA 94402
Deed of Trust Grantor/Trustor John E. Public
Beneficiary on the Deed of Trust: "MERS" Mortgage Electronic Registration Systems, Inc.
Property Owner: John E. Public, Trustee of the ABC TRUST
Loan: SPS Loan number 00xxxxxxxx,
Loan Amount in Dispute: \$1,350,000 principal on original Note, plus \$119,446.55 in interest and other charges claimed on the VOID monthly loan statement from SPS dated 03/17/2010. And, \$78,000 in interest payments made by the Borrower and any other payments that have been made by the Borrower to Lender.
Void Trustee's Sale: NDSC conducted and scheduled an unlawful and fraudulent Trustee's Sale on March 2, 2010, and thereafter cancelled it without notice and scheduled another fraudulent and illegal sale without notice for April 1, 2010, is hereby **VOIDED by this Notice.**

NOTICE OF CANCELATION OF LOAN is hereby made by the undersigned to the above referenced Lender(s), Assign(s), Successor(s) Beneficiary(s), Trustee(s), Agent(s), Entities and any other Parties with interest, (herein after referred to as "Lender") as provided for in (Reg. Z §§ 226.15(a)(2), 226.23(a)(2), Official Staff Commentary § 226.23(a)(2)-1) and 15 U.S.C. § 1635(b).and other applicable law contained in the Federal Truth in Lending Act (TILA) including all other applicable law.

SERVICE OF THIS NOTICE is done in accordance with the above Law by Certified Mail numbers referenced above with Return Receipt of proof of delivery to the above referenced Lender, Entities and Individuals and is proof of notification according to the Official Staff Commentary, 226.2(a)(22)-2 as authorizing service. In addition, this Notice was served on National default Servicing Corporation by fax message sent to (602) 264-6209 by a Notary Public and verified sent electronically on the date indicated below. And, service was done by delivery to National Default Service Corporation by U.S. Express Mail Certified number referenced above and Return Receipt by Jan Schieberl, Notary Public with a Certificate of Service.

CERTIFIED MAILING AND PROOF OF FAX DELIVERY of this NOTICE is done prior to the foreclosure sale scheduled for April 1, 2010 by NDSC as indicated by the fax delivery and mailing dates indicated below and within the three (3) year time period for Borrower's right to cancel as referenced herein.

WHEREAS, the above referenced law provides the Borrower the absolute right to cancel the above referenced Loan and to automatically VOID the mortgage/lien/security interest/Deed of Trust on the Subject Property located at 123 12th Avenue, San Mateo, California as referenced above. Upon serving the notice of rescission, the TILA statute and Regulation Z state that by operation of the law, the security interest automatically

becomes void and the debtor is relieved of any obligation to pay any finance or other charge (15 U.S.C. § 1635(b), Reg. Z §§ 226.15(d)(1), 226.23(d)(1)). (In re Moore, 117 B.R. 135 (Bankr. E.D. Pa. 1990) (security interest eliminated upon effective rescission, reducing creditor to status of unsecured creditor). Thus, since the security interest is automatically voided per TILA and Regulation Z upon rescission, the secured mortgage note is no longer secured and must be classified as unsecured.

WHEREAS, Regulation Z requires that the voiding be absolute and not subject to judicial modification and is covered by a *Rule of law* of the Federal Truth-in-Lending Act which empowers the debtor/Borrower to exercise their right in writing by notifying creditors of the cancellation by mail to rescind the mortgage loan transactions per (Reg. Z §§226.15(a)(2), 226.23(a)(2), Official Staff Commentary § 226.23(a)(2)-1) and 15 U.S.C. § 1635(b). The statute and regulation specify that the security interest, promissory note or lien arising by operation of law on the property becomes automatically void. (15 U.S.C. § 1635(b); Reg. Z §§ 226.15(d)(1), 226.23(d)(1)). As noted by the Official Staff Commentary, the creditor's interest in the property is "automatically negated regardless of its status and whether or not it was recorded or perfected." (Official Staff Commentary §§ 226.15(d)(1)-1, 226.23(d)(1)-1). Thus, since the security interest is **automatically voided** per TILA and Regulation Z upon rescission, the secured mortgage note is no longer secured and must be classified as unsecured.

WHEREAS, the cancellation period in § 226.15 right of rescission (3) states *"If the required notice and material disclosures are not delivered, the right to rescind shall expire three years after the occurrence giving rise to the right of rescission"*.

WHEREAS, the cancellation period in § 226.15 right of rescission notice and material disclosures were not delivered to the Borrower including but not limited to: 1. In the "NOTICE OF RIGHT TO CANCEL" or other documents delivered to the Borrower there was no delivery of the material fact and disclosure that the right of rescission period extended beyond a three day period **to three (3) year period** after the occurrence giving rise to the rescission in the case where material disclosures are not delivered. 2. In the "NOTICE OF RIGHT TO CANCEL" or other documents there was no delivery of the material fact and disclosure of the Federal Truth in Lending Act (TILA) referenced above or any other applicable law to fully inform the Borrower of their rights, including no content, text, citing or information source for TILA to inform the borrower of the three (3) year recession period or any other part of the law that affected the borrower. 3. There was no delivery by the Lender of the material fact and disclosure of the right to cancel delivered to the Beneficiaries in the trust the property was held in. 4. "THE NOTICE OF RIGHT TO CANCEL" delivered to the Borrower was devoid of the part of the law that provided for a three (3) year rescission period and therefore was concealed from the Borrower and mislead the Borrower to believe that the law only provided for a three (3) day recession period. Therefore, there was no delivery of the material fact and disclosure that the right of rescission period extended beyond a three (3) day period to a three (3) year period. The Right to Cancel are not limited to 1 through 4 above and include other factors that would extend the right to cancel to there (3) years from the time of the discovery of any material non-disclosure. The discovery of fraud in the origination of this Loan, the fraud in connection with the securitization and default insurance and the fraud in the chain of title and forged documents

to claim the authority to foreclose are all instances of material concealment that upon discovery would trigger the three (3) year period and Right to Cancel.

WHEREAS, Borrower was vaguely informed of an option to cancel the loan in mid March, 2010 by Marie McDonnell, a loan forensic examiner who performed the forensic audit of the above referenced Loan. However, both McDonnell and the Borrower believed that a foreclosure sale had occurred on March 2, 2010 and therefore the option to cancel the loan was not available. NDSC had not informed the borrower that the trustee's sale had been cancelled. Only after learning on March 24, 2010 that NDSC had rescheduled another trustee's sale on April 1, 2010, and after the Borrower did law research on the internet on March 27, 2010 was Borrower fully informed of the three (3) year rescission provision of the TILA law and of his right to cancel the loan and automatically void the security instrument/Deed of Trust.

WHEREAS, the law referenced herein state that the Lender, Assign(s) or authorized Agent(s) are required to cancel documents creating the security interest and file a Release or Termination Statements in the public record. (Official Staff Commentary §§ 226.15(d)(2)-3, 226.23(d)(2)-3.). Regulation Z makes it clear that, if the Debtor has the extended right and chooses to exercise it, the security interest and obligation to pay charges are automatically voided. (Cf. *Semar v. Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699, 704-05 (9th Cir.1986) (courts do not have equitable discretion to alter substantive provisions of TILA, so cases on equitable modification are irrelevant). Also, it is clear from the statutory language that the court's modification authority extends only to the procedures specified by section 1625(b). The voiding of the security interest is not a procedure, in the sense of a step to be followed or an action to be taken. Thus, since the security interest is automatically voided per TILA and Regulation Z upon rescission, the secured mortgage note is no longer secured and must be classified as unsecured.

WHEREAS, there are penalties for non-compliance, the statute makes no distinction between the right to rescind in three days or extended in three years and neither case law nor statute give courts equitable discretion to alter TILA's substantive provisions. Since the rescission process was intended to be self-enforcing, failure to comply with the rescission obligations subjects the above referenced Lender(s) to liability. Non-compliance is a violation of the act which gives rise to a claim for actual and statutory damages under 15 USC 1640. Borrower has the option of enforcing the rescission right in federal district, state or bankruptcy court (See S. Rep. No. 368, 96th Cong. 2 Sess. 28 at 32 reprinted in 1980 U.S.C.A.N. 236, 268 ("The bill also makes explicit that a consumer may institute suit under section 130 [15 U.S.C., 1640] to enforce the right of rescission and recover costs and attorney fees in a successful action").

WHEREAS, Lender must payback all money collected from Borrower plus damages. TIL rescission does not only cancel a security interest in the property but it also cancels any liability for the Debtor to pay finance and other charges, including accrued interest, points, broker fees, closing costs and that the lender must refund to Borrower all finance charges, fees and other payments made by borrower. In addition, the Lender is liable to borrower for all damages borrower sustained as a result of any fraud or other illegal act committed by Lender(s).

THEREFORE, based on the above law and facts the undersigned hereby RESCINDS AND CANCELS THE LOAN AND SECURITY INSTRUMENT/DEED OF TRUST referenced above, effective with the mailing and fax transmission of this NOTICE to the above referenced Lender(s). Therefore, the Lender(s) are obligated under the above referenced law to do the following:

Step one of the recession process, the Lender(s) is obligated to acknowledge the Borrower's rescinding of the Loan transaction. As the bare bones nature of the FRB model notice demonstrates, it is not necessary to explain why the borrower is canceling. The FRB Model Notice simply says: "I WISH TO CANCEL," followed by a signature and date line (Arnold v. W.D.L. Invs., Inc., 703 F.2d 848, 850 (5th cir. 1983) (clear intention of TILA and Reg. Z is to make sure that the creditor gets notice of the Borrower's intention to rescind).

The statute and Regulation Z states that if creditor disputes the Borrower's right to rescind, it should file a declaratory judgment action within the twenty days after receiving the rescission notice, before its deadline to return the Borrower's money or property and record the termination of its security interest (15 USC 1625(b)). Once the Lender(s) receives this Notice, the statute and Regulation Z mandate 3 steps to be followed.

Step two of the recession process, upon Borrower's rescinding of the Loan transaction, the Lender(s) must return any money, including that which may have been passed on to a third party, such as a broker or an appraiser and to take any action necessary to reflect the termination of the security interest within 20 calendar days of receiving the rescission Notice. The Lender(s)'s other task is to take any necessary or appropriate action to reflect the fact that the security interest was automatically terminated by the rescission within 20 days of the Lender(s)'s receipt of this rescission Notice (15 USC 1635(b); Reg. Z-226.15(d)(2),226.23(d)(2)).

Step three of the recession process, the Borrower's tender obligation is based on an accounting and return of all money paid by borrower to the Lender(s) and satisfactory ways in which to meet this obligation. The termination of the security interest is required **before** tendering and step 1 and 2 have to be respected and performed by the Lender(s).

Conclusion, I, John E. Public am requesting an itemized statement of my payment record from the above referenced Lender(s) to facilitate a conclusion and final settlement of this Loan rescission and the obligations of Lender(s) and Borrower there under. Courts have held that the rescission effectively voids the security interest, rendering the debt, if any, unsecured (See Exhibit #6). (See in re Perkins, 106 B.R. 863, 874 (Bankr. E.D.Pa. 1989); In re Brown, 134 B.R. 134 (Bankr. E.D.Pa. 1991); In re Moore, 117 B.R. 135 (Bankr.E.D. Pa. 1990)).

Once the court finds a violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability (in re Wright, supra. At 708; In re Porter v. Mid-Penn Consumer Discount Co., 961 F,2d 1066, 1078 (3d. Cir. 1992); Smith v. Fidelity Consumer Discount Co., Supra. At 898. Any misgivings

creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts.

If the Lender(s) have not cancelled the security interest and returned all monies paid by the undersigned Borrower within the 20 days of receipt of this Notice of rescission dated March 29, 2010, the Lender(s) named above are responsible for actual and statutory damages pursuant to 15 U.S.C. § 1640(a).

The Lender(s) referenced above are to take any necessary or appropriate action to reflect the fact that the security interest was automatically terminated by the rescission (15 USC 1635(b); Reg. Z-226.15(d)(2),226.23(d)(2). This requires canceling documents creating the security interest and filing release or termination statements in the public record of FREE and CLEAR TITLE to Mr. John E. Public.

Existing claims, this Notice of Cancellation of Loan does not relinquish, void, or cancel any previous agreement, claim, default, judgment, lien, or public recording that presently exists or may exist as a result of any previous claim by Borrower against Lender(s) and any agreement, judgment or lien against Lender(s) and obligation arising there from is preserved and remains in force and may be a separate claim subject to other jurisdiction. Note: the term Borrower as used herein shall mean alleged Borrower and Lender(s) as alleged Lender(s) in light of any existing or previous controversy, default or judgment as to whether an actual loan was made and received.

IN WITNESS WHEREOF I hereunto set my hand and seal on this 29TH day of March 2010 and hereby certify all the statements made above are true, correct and complete to the best of my knowledge and belief..

Date: _____ Signed: _____
John E Public

Date: _____ Signed: _____
John E Public/Trustee ABC TRUST

JURAT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SISKIYOU)

Subscribed and sworn to (or affirmed) before me on this _____ day of _____,

_____ , by _____, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

(seal) Signature
Wende Knight NOTARY PUBLIC

PROOF OF DELIVERY

I, Sally B Smith, a PUBLIC NOTARY in the State of California, County of Siskiyou, notarized the above document entitled NOTICE OF CANCELTION OF LOAN, dated March 29, 2010 and signed by John E. Public, herby certify that I delivered pages one (1) through seven (7) of the above referenced NOTICE by fax message to the telephone numbers listed below on March 29, 2010:

National Default Servicing Corporation’s fax telephone number (602) 264-6209

Select Portfolio Servicing Inc. (SPS) Loan Servicer’s fax telephone number (801) 594-6476

Lender, Financial Group, Inc., dba, Nations Choice Mortgage 480-654-4398

IN WITNESS WHEREOF I hereunto set my hand and seal on this 29TH day of March 2010 and hereby certify all the statements made above are true, correct and complete to the best of my knowledge and belief.

Date: _____ Signed: _____
Sally B Smith, Notary Public

Sources of Law in Truth in Lending Cases, these include TILA itself, the Federal Reserve Board’s Regulation Z which implements the Act, the Official Staff Commentary on Regulation Z, and case law. Except where Congress has explicitly relieved lenders of liability for noncompliance, it is a strict liability statute. (Truth-In-Lending, 5th Edition, National Consumer Law Center, 1.4.2.3.2, page 11)