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7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

9 RUSSELL and CONNIE SUTCLIFFE,) Case No. C10-0138 JL
10 individuals, on their own behalf and all others)
11 similarly situated,) PLAINTIFFS' NOTICE OF
) VOLUNTARY DISMISSAL
12)
13) Judge: Hon. James Larson
14)
15) Complaint Filed: January 11, 2010
)
)

16 PLEASE TAKE NOTICE that Plaintiffs Russell and Connie Sutcliffe (“Plaintiffs”),
 17 pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby voluntary dismiss
 18 this lawsuit against Defendant GMAC Mortgage (“Defendant”).¹

19 Federal Rule of Civil Procedure 41(a)(1) provides in relevant part:

- 20 (a) Voluntary Dismissal.
- 21 (1) By the Plaintiff.
- 22 (A) *Without a Court Order.* Subject to Rules 23(e), 23(1)(c), 23.2 and 66 and any
 23 applicable federal statute, the plaintiff may dismiss an action without a court
 24 order by filing:
 - (i) a notice of dismissal before the opposing party serves either an answer or a
 motion for summary judgment; or
 - (ii) a stipulation of dismissal signed by all parties who have appeared.

25 ¹ Voluntary dismissal is appropriate at this time because Defendant’s Response to
 26 Plaintiffs’ Supplemental Brief has clarified Defendant’s position that an arbitrator may, under
 27 appropriate circumstances, award permanent injunctive relief—an issue that was previously
 unclear. (Def. Suppl. Response Br., p. 5-6.)

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(B) *Effect*. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

In this case, Defendant has neither answered Plaintiffs' Complaint nor served a motion for summary judgment. In addition, Plaintiffs have not previously dismissed any federal or state action based on or including the same claim. Accordingly, this matter may be dismissed without prejudice and without an Order of the Court.

Dated: May 14, 2010

Respectfully submitted,

RUSSELL and CONNIE SUTCLIFE,
individually and on behalf of a class of similarly
situated individuals

By: /s/ Sean Reis
One of Plaintiffs' Attorneys

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PROOF OF SERVICE

I, Sean Reis, an attorney, hereby certify that on May 14, 2010, I electronically filed the foregoing *Plaintiffs' Notice of Voluntary Dismissal* with the Clerk of the Court using the CM/ECF system. Notice of this filing is sent to the following parties by operation of the Court's electronic filing system:

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