

EXHIBIT B

Westlaw

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 1

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United States District Court,
 N.D. Illinois,
 Eastern Division.
 Tommie Lee HARRIS, et al., Plaintiffs,
 v.

OSI FINANCIAL SERVICES, INC., et al., Defendants.

No. 07 C 3552.

Jan. 29, 2009.

Background: Borrowers brought action alleging that mortgage broker, construction company, and mortgage lender participated in scheme to broker high-cost mortgages for home repair loans in order to finance shoddy home repair work. Borrowers moved for partial summary judgment, and lender's assignee moved for summary judgment.

Holdings: The District Court, Samuel Der-Yeghiayan, J., held that:

- (1) lender's provision of wrong model Federal Reserve Board (FRB) form in connection with its first financing transaction with borrowers violated Truth in Lending Act (TILA);
- (2) lender that originated mortgage loan, but had assigned its interest in loan, was still "creditor" under TILA;
- (3) borrowers' filing and service of complaint charging lender with TILA violations satisfied TILA's requirement for notice of intent to rescind loan; and
- (4) borrowers failed to provide assignee with timely notice of rescission.

Motions granted in part and denied in part.

West Headnotes

[1] Consumer Credit 92B ↪36

92B Consumer Credit
 92BII Federal Regulation
 92BII(A) In General

92Bk36 k. Rescission Rights; Liens on Residences. Most Cited Cases
 Borrower's right of rescission under Truth in Lending Act (TILA) encompasses right to return to status quo that existed before loan. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635.

[2] Consumer Credit 92B ↪51

92B Consumer Credit
 92BII Federal Regulation
 92BII(B) Disclosure Requirements
 92Bk51 k. Form and Sufficiency of Disclosure in General. Most Cited Cases
 Mortgage lender's provision of wrong model Federal Reserve Board (FRB) form in connection with its first financing transaction with borrowers violated Truth in Lending Act (TILA) by failing to provide borrowers with adequate notice of their rescission rights, even though borrowers were refinancing previously existing loan through different creditor, where form provided by lender failed to inform borrowers that they had complete right to rescind entire amount of loan. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635; 12 C.F.R. § 226.23(b).

[3] Consumer Credit 92B ↪33.1

92B Consumer Credit
 92BII Federal Regulation
 92BII(A) In General
 92Bk33 Persons, Businesses, and Transactions Subject to Regulations
 92Bk33.1 k. In General. Most Cited Cases

Consumer Credit 92B ↪51

92B Consumer Credit
 92BII Federal Regulation
 92BII(B) Disclosure Requirements
 92Bk51 k. Form and Sufficiency of Disclosure in General. Most Cited Cases
 Lender that originated mortgage loan, but had assigned its interest in loan, was still "creditor" under

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 2

Truth in Lending Act (TILA), and thus was required to provide borrowers who were refinancing loan originally issued by lender with model Federal Reserve Board (FRB) form for refinancing transactions, rather than FRB form for first financing transactions. Truth in Lending Act, §§ 103(f), 125, 15 U.S.C.A. §§ 1602(f), 1635; 12 C.F.R. § 226.23(b), (f)(2).

[4] Consumer Credit 92B ↪51

92B Consumer Credit

92BII Federal Regulation

92BII(B) Disclosure Requirements

92Bk51 k. Form and Sufficiency of Disclosure in General. Most Cited Cases
 Addition of new borrower in refinancing mortgage did not transform transaction into first financing transaction, and thus lender violated Truth in Lending Act's (TILA) rescission notification provision by providing model Federal Reserve Board (FRB) form for first financing transactions, rather than FRB form for refinancing transactions, where three of four consumers involved in transaction were same as initial transaction. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635; 12 C.F.R. § 226.23(f)(2).

[5] Consumer Credit 92B ↪36

92B Consumer Credit

92BII Federal Regulation

92BII(A) In General

92Bk36 k. Rescission Rights; Liens on Residences. Most Cited Cases
 Borrowers' filing and service of complaint charging mortgage lender with Truth in Lending Act (TILA) violations satisfied TILA's requirement for notice of borrowers' intent to rescind loan, where complaint clearly stated borrowers' intent to rescind and specifically named party to whom demand for rescission was addressed. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635; 12 C.F.R. § 226.23(a)(2).

[6] Consumer Credit 92B ↪36

92B Consumer Credit

92BII Federal Regulation

92BII(A) In General

92Bk36 k. Rescission Rights; Liens on Residences. Most Cited Cases
 Borrowers seeking to rescind financing transaction based on lender's failure to comply with Truth in Lending Act's (TILA) rescission notification requirements were required to provide lender's assignee with timely notice of rescission, even though they sent notice to original lender. Truth in Lending Act, §§ 125, 131(d)(1), 15 U.S.C.A. §§ 1635, 1641(d)(1).

[7] Consumer Credit 92B ↪36

92B Consumer Credit

92BII Federal Regulation

92BII(A) In General

92Bk36 k. Rescission Rights; Liens on Residences. Most Cited Cases

Consumer Credit 92B ↪60

92B Consumer Credit

92BII Federal Regulation

92BII(C) Effect of Violation of Regulations

92Bk60 k. In General; Validity of Transactions. Most Cited Cases
 Truth in Lending Act (TILA) provision setting time for borrowers to serve notice of rescission on lender was statute of repose, rather than statute of limitations, and thus was not subject to relation back doctrine or any other equitable extensions. Truth in Lending Act, § 125, 15 U.S.C.A. § 1635.
 *887 Al Hofeld, Jr., Law Offices of Al Hofeld, Jr., LLC, Chicago, IL, for Plaintiffs.

Joseph R. Ziccardi, Law Offices of Joseph R. Ziccardi, Michael J. McMorrow, Karen Ann Kawashima, Foley & Lardner, Leann Pedersen Pope, Danielle J. Szukala, Jean M. Gallo, Susan J. Miller Overbey, Burke, Warren, Mackay & Serritella, P.C., James Michael Dash, Much, Shelist, Freed, Denenberg, Ament & Rubenstein, P.C., Peter M. King, William J. Holloway, Hinshaw & Culbertson LLP, Steven Russell Smith, Derek S.

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 3

Holland, Mariangela M. Seale, Bryan Cave LLP,
 Dennis E. Both, Chicago, IL, for Defendants.

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge.

This matter is before the court on Plaintiff Tommie Lee Harris' ("Tommie"), Plaintiff Louise Harris' ("Louise"), Plaintiff Jeffrey Harris' ("Jeffrey"), and Plaintiff Donna Harris' ("Donna") motion for partial summary judgment. This matter is also before the court on Defendant Bank of New York's ("BONY") motion for summary judgment. For the reasons stated below, we grant in part and deny in part Plaintiffs' motion for partial summary judgment and we grant BONY's motion for summary judgment.

BACKGROUND

Plaintiffs allege that Tommie and Louise are a retired couple who own a home in Chicago, Illinois ("Residence"). Plaintiffs allege that Jeffrey and Donna are the adult children of Tommie and Louise and that Jeffrey and Donna also have an ownership interest in the Residence. Plaintiffs claim that they were the victims of a scheme by Defendant Mark Diamond ("M. Diamond") and his company OSI Financial Services, Inc. ("OSI") to broker high-cost mortgages for home repair loans in order to finance shoddy home repair work that would be performed by Defendant United Construction of America, Inc. ("United") which, unbeknownst to Plaintiffs, was owned by M. Diamond's brother, Defendant Terry Diamond ("T. Diamond").

Plaintiffs allege that M. Diamond arranged for two separate loans on Plaintiffs' behalf from Defendant Encore Credit Corp. (which has since changed its name to Performance Credit Corporation) ("Encore"). First, on June 30, 2004, Tommie, Louise, and Jeffrey (collectively referred to as "Original Borrowers") allegedly closed on a

\$354,000 mortgage loan from Encore ("2004 Loan"). Plaintiffs allege that on the date of the closing for the 2004 Loan, no loan documents were provided to the Original Borrowers, including disclosure statements or Notice of Right to Cancel ("NORTC") forms. Plaintiffs claim that an NORTC form was later provided to them, but that it was the wrong form which did not fully and accurately disclose the Original Borrowers' right to rescind the 2004 Loan. Second, on January 7, 2005, the Original Borrowers, along with Donna, allegedly closed on another mortgage loan *888 through Encore in the amount of \$500,000 ("2005 Loan"). Plaintiffs claim that the 2005 Loan was necessitated by the fact that T. Diamond and United had stopped in the middle of renovations to the Residence and had demanded more money. The 2005 Loan allegedly went to pay off the 2004 Loan and the additional amount was to be used to complete the renovations. Plaintiffs allege that, with respect to the 2005 Loan, they were provided with incorrect NORTC forms that did not fully and accurately disclose Plaintiffs' right to cancel the 2005 Loan.

Plaintiffs brought the instant action and include in their corrected second amended complaint Truth in Lending Act, 15U.S.C. 1601, *et seq.* ("TILA") claims brought against Encore, Defendant Mortgage Electronic Registration Systems, Inc, Defendant HSBC Bank, USA, as Trustee for Friedman, Billings, Ramsey Group, Inc. ("HSBC"), and BONY (Count I), Credit Repair Organization Act, 15 U.S.C. § 1679g, *et seq.*, claims brought against M. Diamond and OSI (Count II), breach of fiduciary duty claims brought against OSI, M. Diamond, and Defendant Lawyers' Title Insurance Corporation ("LTIC") (Count III), breach of contract claims brought against M. Diamond, T. Diamond, OSI and United (collectively referred to as "Diamond Defendants") (Count IV), Illinois Consumer Fraud Act, 815 ILCS 505/2, *et seq.*, claims brought against the Diamond Defendants (Count V), common law fraud claims brought against the Diamond Defendants (Count VI), common law civil conspiracy claims brought against the Diamond De-

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 4

defendants (Count VII), race discrimination claims under 42 U.S.C. § 1981 ("Section 1981") brought against the Diamond Defendants and Encore (Count VIII), Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, claims brought against the Diamond Defendants and Encore (Count IX), and Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, claims brought against the Diamond Defendants and Encore (Count X).

Plaintiffs subsequently filed a stipulation to dismiss the Diamond Defendants and the court also granted Plaintiffs' oral motion to dismiss LTIC without prejudice. Plaintiffs filed a motion for partial summary judgment on the TILA claims in Count I. BONY, which is only named in Count I, has also moved for summary judgment.

LEGAL STANDARD

Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, reveals that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). In seeking a grant of summary judgment the moving party must identify "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (quoting Fed.R.Civ.P. 56(c)). This initial burden may be satisfied by presenting specific evidence on a particular issue or by pointing out "an absence of evidence to support the non-moving party's case." *Id.* at 325, 106 S.Ct. 2548. Once the movant has met this burden, the non-moving party cannot simply rest on the allegations in the pleadings, but, "by affidavits or as otherwise provided for in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). A "genuine issue" in the context of a motion for summary judgment is not simply a "metaphysical doubt as to the material

facts." *889 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Rather, a genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Insolia v. Philip Morris, Inc.*, 216 F.3d 596, 599 (7th Cir.2000). The court must consider the record as a whole, in a light most favorable to the nonmoving party, and draw all reasonable inferences that favor the non-moving party. *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505; *Bay v. Cassens Transport Co.*, 212 F.3d 969, 972 (7th Cir.2000). When there are cross motions for summary judgment, the court should "construe the evidence and all reasonable inferences in favor of the party against whom the motion under consideration is made." *Premcor USA, Inc. v. American Home Assurance Co.*, 400 F.3d 523, 526-27 (7th Cir.2005).

DISCUSSION

The instant motions before the court only implicate Plaintiffs' claims under TILA for rescission of the 2004 Loan and the 2005 Loan and for damages under TILA. The issue before the court is whether the NORTC documents provided to Plaintiffs in connection with both loans provided Plaintiffs with sufficient notice of their rights to cancel the loans and, if not, whether Plaintiffs timely elected to rescind the two loans.

[1] The relevant provision of TILA in this case is 15 U.S.C. § 1635 ("Section 1635"), which provides certain borrowers with a three-day "cooling off" period after a loan transaction is completed, during which time such borrowers have a right to rescind certain loan transactions. *Andrews v. Chevy Chase Bank*, 545 F.3d 570, 573 (7th Cir.2008); 15 U.S.C. § 1635(a). TILA provides that, in the event that a borrower does timely elect to rescind a loan, the creditor has an obligation, within 20 days, to "return to the obligor any money or property given

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 5

as earnest money, downpayment, or otherwise, and ... take any action necessary or appropriate to reflect the termination of any security interest created under the transaction.” 15 U.S.C. § 1635(b). The borrower's right of rescission “encompasses a right to return to the status quo that existed before the loan.” *Handy v. Anchor Mortg. Corp.*, 464 F.3d 760, 766 (7th Cir.2006). A creditor's failure to honor a valid rescission request made pursuant to Section 1635 can subject that creditor to actual and statutory damages as enumerated in TILA. *See* 15 U.S.C. § 1640(a) (stating that “any creditor who fails to comply with any requirement imposed under ...section 1635, ... is liable to such person ...” for statutory damages, including “the costs of the action, together with a reasonable attorney's fee as determined by the court”)

Section 1635 also requires creditors to “clearly and conspicuously disclose” to the borrower the borrower's rescission rights under TILA. 15 U.S.C. § 1635(a). In the event that a creditor fails to adequately inform the borrower of the precise rescission rights available, the period in which the borrower is entitled to rescind the loan extends until the creditor does provide all proper disclosures and adequate notice of the right to rescind the loan or for three years from the date of the completion of the loan transaction, whichever is sooner. *Andrews*, 545 F.3d at 573; 15 U.S.C. § 1635(a), (f).

A borrower's right of rescission varies depending on the type of transaction at issue. In a first-time loan transaction between a borrower and creditor, the borrower is free under Section 1635 to rescind the entire amount of the loan. 12 C.F.R. § 226.23(a)(1); 15 U.S.C. § 1635(a). This right to rescind the entire amount of the loan applies even in a case where the borrower is seeking a loan to refinance an *890 existing loan from a different prior creditor. 12 C.F.R. § 226.23(a)(1). However, an exception exists where a borrower is seeking a second loan from the same creditor in an amount that exceeds a previous loan from that same creditor (“Modification Exemption”). 12 C.F.R. §

226.23(f)(2). In the case of a refinancing with an existing creditor, the Modification Exemption acts to limit the borrower's right to rescind only to the value of the difference between the first and second loans, along with certain costs associated with the second loan. *Id.*; *Handy*, 464 F.3d at 762-63.

In an effort to curtail any confusion to consumers potentially caused by these differing rights of rescission, the Federal Reserve Board (“FRB”), which is the agency responsible for implementing the provisions of TILA, has created model NORTC forms which contain all of the necessary disclosures for each type of loan transaction. *Handy*, 464 F.3d at 763; 12 C.F.R. § 226.23(b)(2) (stating that creditors must either supply the proper model form or else supply some other form that provides “substantially similar notice”). The model NORTC form that applies to ordinary transactions involving first-time creditors is known as the FRB Rescission Model Form H-8 (“H-8 Form”). 12 C.F.R. § 226 Appx. H-8. The H-8 Form notifies borrowers of their right to rescind the entire amount of the loan. *Id.* The model NORTC form that applies to loans that are subject to the Modification Exemption is known as the FRB Rescission Model Form H-9 (“H-9 Form”). 12 C.F.R. § 226 Appx. H-9. The H-9 Form notifies borrowers that the right of rescission applies only to the value of the difference between the first and second loans, along with certain costs associated with the second loan. *Id.*

1. Plaintiffs' Motion for Partial Summary Judgment

In their motion for partial summary judgment, Plaintiffs contend that the undisputed facts establish that Encore violated TILA when it provided incorrect NORTC forms to Plaintiffs with respect to both the 2004 Loan and the 2005 Loan. The undisputed facts establish that, in connection with the 2004 Loan, Encore provided the Original Borrowers with an NORTC form that is identical to the H-9 Form. (HSBC R Pl. SF Par. 39, 41, 43-44); (Enc. R. Pl. SF 1). As indicated above, the H-9 Form applies to Modification Exemption loans and notifies borrow-

ers that they are only entitled to rescind the difference between the second loan and the first loan with the same creditor. 12 C.F.R. § 226 Appx. H-9. The undisputed facts also establish that, in connection with the 2005 Loan, Encore provided Plaintiffs with an NORTC form that is substantially identical to the H-8 Form. (HSBC R Pl. SMF Par. 71-72); (Enc. R. Pl. SF 1). As indicated above, the H-8 Form applies to first-time loans between a given borrower and a given lender, and the H-8 Form indicates that the borrower has the right to rescind the entire amount of the loan. 12 C.F.R. § 226 Appx. H-8.

Plaintiffs argue that, with respect to both loans, Encore provided them with the incorrect form and Plaintiffs were, thus, never appropriately notified of their TILA rescission rights. Plaintiffs further argue that, since the instant action seeking rescission was filed less than three years from the dates of the closings of both loans and the undisputed facts establish that no Defendant has effectuated a rescission of either loan, Plaintiffs are entitled to rescission and statutory damages under TILA.

Encore, HSBC, and BONY have each filed briefs in opposition to Plaintiffs' motion for partial summary judgment and *891 have argued that the NORTC forms provided to Plaintiffs were either correct or sufficient to provide notice of rescission under TILA. Encore and BONY have also raised the argument that, even if TILA violations occurred, Plaintiffs never timely and properly elected to rescind the loans in the manner prescribed by TILA.

A. The 2004 Loan

Plaintiffs dispute with Encore the issue of whether the provision of the H-9 Form in connection with the 2004 Loan failed to adequately inform the Original Borrowers of their right to rescind the 2004 Loan. Encore admits with respect to the 2004 Loan that it did provide the wrong form. (Enc. R. Pl. SF 1). It is undisputed that the Original Borrowers were financing for the first time with Encore as the

creditor. (Enc. R. Pl. SF 1). Therefore, the H-8 Form, which would have informed them of their right to rescind the entire amount of the 2004 Loan would have been the appropriate form. 12 C.F.R. § 226 Appx. H-8. The NORTC form that was provided to them, the H-9 Form, incorrectly indicated that the Modification Exemption applied and that the Original Borrowers could only rescind the difference between the 2004 Loan and a prior existing loan. (Enc. R. Pl. SF 1); 12 C.F.R. § 226 Appx. H-9. Notwithstanding this fact, Encore argues that the H-9 Form did "clearly and conspicuously disclose" the necessary elements of the Original Borrowers' rights to rescind. 15 U.S.C. § 1635(a).

Pursuant to the regulations adopted by the FRB for enforcing TILA (referred to as "Regulation Z"), there are five essential elements of which a consumer must be notified with respect to the consumer's right to rescind. 12 C.F.R. § 226.23(b). These elements are:

- (i) The retention or acquisition of a security interest in the consumer's principal dwelling.
- (ii) The consumer's right to rescind the transaction.
- (iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
- (iv) The effects of rescission....
- (v) The date the rescission period expires.

Id. Encore argues that the H-9 Form met all of the requirements for providing notice, as set out in Regulation Z. Encore notes that the only statement in the H-9 Form that did not apply to the Original Borrowers was the statement that the transaction was to "increase the amount of credit previously provided to [them]." 12 C.F.R. § 226 Appx. H-9. Encore argues that this was an accurate statement, since the Original Borrowers were refinancing a previously existing loan, albeit through a different creditor. Encore argues that there is existing precedent outside of the Seventh Circuit supporting the

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 7

argument that an NORTC form need not be “ ‘perfect’ ” so long as it adequately discloses rescission rights. (Enc. Ans. P SJ Mot. 13) (quoting *McKenna v. First Horizon Home Loan Corp.*, 537 F.Supp.2d 284, 290 (D.Mass.2008)). Encore argues that, with respect to the 2004 Loan, the H-9 Form, although not the perfect form, did comply with TILA's requirements for notification of rescission rights.

Plaintiffs disagree with Encore's argument that the H-9 Form provided the Original Borrowers with adequate notice of their rights to rescind the 2004 Loan under TILA. Plaintiffs argue that there are meaningful distinctions between the H-9 Form and the H-8 Form and that creditors must provide the correct form in order to give clear and conspicuous notice of rescission rights. Plaintiffs rely on the Seventh Circuit decision in *892Handy v. Anchor Mortgage Corp., 464 F.3d 760 (7th Cir.2006), where the Court found that a lender that provided both an H-8 Form and an H-9 Form to borrowers failed to “clearly and conspicuously” disclose rescission rights to the borrower. *Id.* at 763. Plaintiffs argue that in *Handy*, the Seventh Circuit implicitly recognized an essential distinction between the H-8 Form and the H-9 Form that would make the provision of the wrong form a violation of TILA. *Id.*

[2] We agree with Plaintiffs that Encore's admitted provision of the wrong NORTC form was a violation of TILA and that, based on the undisputed facts, the Original Borrowers were not provided with adequate notice of their rescission rights with respect to the 2004 Loan. Encore's attempted distinction of the facts in *Handy* is unpersuasive. Although *Handy* involved a slightly different scenario where the creditor provided both an H-8 and an H-9 Form to the borrower, *Id.*, its holding is equally applicable to the instant action where the creditor provided only the wrong form. In fact, an argument can be made that the notice provided in this case was even less sufficient than the notice provided in *Handy* since none of the forms provided to the Original Borrowers notified them of their complete

right to rescind the entire amount of the 2004 Loan and the only NORTC form provided to the Original Borrowers in this case incorrectly suggested that the Modification Exemption was applicable. 12 C.F.R. § 226 Appx. H-9.

We agree with Plaintiffs that an ordinary consumer could have read the H-9 Form to suggest that there was not a complete right to rescind the entire amount of the loan. Given the potential erroneous implication of the H-9 Form, we find that the provision of that form could not have adequately notified the Original Borrowers of their rights to rescind the 2004 Loan. In reaching this conclusion, we are also mindful of the Seventh Circuit's repeated assertion that TILA is intended to be read strictly and that “hypertechnicality reigns” when considering a creditor's conformity with TILA. *Cowen v. Bank United of Texas, FSB*, 70 F.3d 937, 941 (7th Cir.1995); *Handy*, 464 F.3d at 764 (stating that “TILA does not easily forgive ‘technical’ errors’ ”). In keeping with TILA's stated purpose of “assur[ing] meaningful disclosure of credit terms,” 15 U.S.C. § 1601(a) (emphasis added), we find that in this case the provision of the incorrect model NORTC form to the Original Borrowers in the 2004 Loan was a violation of TILA.

B. The 2005 Loan

There is no factual dispute between the parties that, in connection with the 2005 Loan, Encore provided to Plaintiffs only copies of the H-8 Form. Plaintiffs dispute with Encore and HSBC whether the provision of the H-8 Form by Encore to Plaintiffs in connection with the 2005 Loan was incorrect and insufficient to provide proper notice of Plaintiffs' rights to rescind the 2005 Loan.

1. Encore's Status As a Creditor

Encore and HSBC claim that since the majority of the interest in the 2004 Loan was owned by another creditor at the time of the 2005 Loan, the Modification Exemption did not apply and the 2005 Loan

fell into the category of an ordinary first-time loan between a new borrower and a new creditor. The language of the Modification Exemption in Regulation Z states that the exemption applies to “[a] refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer’s principal dwelling.”¹² C.F.R. § 226.23(f)(2). The issue before the court is whether an original creditor which originated a loan but which has since assigned its interest in the loan is still considered to be a creditor for the purposes of the application of the Modification Exemption on a subsequent loan.

Neither party has pointed to any legal authority establishing what a borrower’s specific rights of rescission would be in such a case. Plaintiffs have, however, pointed to the language in Regulation Z and the official commentary on Regulation Z, promulgated by the FRB, to support their contention that the original creditor maintains its status as creditor even after assigning its interest in the loan. (P. Reply 4-5). For example, Plaintiffs point out that TILA defines a “creditor” as “the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness....”¹⁵ U.S.C. § 1602(f). Plaintiffs correctly note that there is no provision in TILA indicating that a creditor relinquishes its creditor status after it assigns its interest in the loan to a third party. Plaintiffs also cite Comment 23(f)-4 to Regulation Z which “clarifies that [the Modification Exemption] exempts from the right of rescission refinancings by *original creditors*-to whom a written agreement was originally payable.” 60 Fed.Reg. 16771, 776 (April 3, 1995) (emphasis added). This language supports Plaintiffs’ contention that the FRB intended the Modification Exemption to apply to original creditors even in situations where the original creditor has assigned its interest in the loan to a third party.

We recognize that Plaintiffs’ interpretation of the Modification Exemption may, in fact, diminish consumer rights under TILA. For example, under

Plaintiffs’ reading, a borrower could take out a first loan with a creditor that subsequently assigns its interest in the loan to a third party. If, after paying only interest on the first loan and leaving the principal unchanged, the borrower returns to the original creditor to refinance the first loan in the exact same amount, the original creditor could rely on its status as the original creditor on the borrower’s first loan to successfully argue that it is completely exempt from any rescission request under the Modification Exemption, notwithstanding the fact that the original creditor no longer had any legal right to collect on the first loan. Plaintiffs, however, point to FRB commentary indicating that the FRB has considered such “anomalous” results and nonetheless has promulgated Regulation Z with the following commentary which states:

In certain circumstances the application of this rule may produce an anomalous result. Nevertheless, this interpretation is required by [15 U.S.C. § 1602(f)] and [12 C.F.R. §] 226.2(a)(17) [], which define ‘creditor’ as ‘... the person to whom the debt arising from the consumer credit transaction is initially payable....’ ”

Id.(quoting in part 15 U.S.C. § 1602(f) and 12 C.F.R. § 226.2(a)(17)).

[3] Based on the language in TILA and the FRB’s commentary on Regulation Z, we agree with Plaintiffs that Encore was still a creditor with respect to the 2004 Loan at the time that Plaintiffs and Encore agreed to refinance via the 2005 Loan. See *Hamm v. Ameriquest Mort. Co.*, 506 F.3d 525, 528 (7th Cir.2007) (stating that the courts should “defer[] to the views of the FRB, as expressed in the Commentary”). Encore falls under the definition of a “creditor” as it is plainly defined by TILA and Encore and HSBC have pointed to no authority to indicate that Encore was no longer a creditor. 15 U.S.C. § 1602(f). As such, we find that the “same creditor” clause in the Modification Exemption applies to Encore with respect to the 2005 Loan. 12 C.F.R. § 226.23(f)(2).

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 9

894 2. *Whether Plaintiffs Constituted the Same Consumers as the 2004 Loan

Encore and HSBC argue that even if Encore is considered to have been an existing creditor at the time of the 2005 Loan, the Modification Exemption still did not apply since Plaintiffs constituted a new group of consumers. It is undisputed that Donna, who was not a party to the 2004 Loan, joined the Original Borrowers as an obligor on the 2005 Loan. (P SF Par. 54). Encore and HSBC assert that the addition of Donna transformed Plaintiffs into a new "consumer" which nullified the application of the Modification Exemption. 12 C.F.R. § 226.23(f)(2). Plaintiffs argue that Encore's and HSBC's interpretation of the term "consumer" in the Modification Exemption provision constitutes a "verbal sleight of hand" that seeks to distract from the fact that the 2005 Loan was clearly a refinancing of the 2004 Loan by an existing creditor. (P. Reply 8).

Once again, no party has cited to legal authority establishing whether the addition of one borrower to an existing group of borrowers would destroy the application of the Modification Exemption and make a new loan subject to full rescission rights. Plaintiffs argue that the 2005 Loan did constitute the refinancing of a preexisting loan issued by the same creditor, Encore. Plaintiffs correctly point out that the 2004 Loan was completely satisfied and replaced by the 2005 Loan and, although Donna joined the Original Borrowers as an obligor on the 2005 Loan, the parties remained substantially the same.

[4] We agree with Plaintiffs that the 2005 Loan constituted the refinancing of the 2004 Loan, both in letter and in spirit. We also agree with Plaintiffs that, at the very least, three of the four consumers involved in the 2005 Loan maintained a limited right to rescind the 2005 Loan only to the extent that the 2005 Loan exceeded the value of the 2004 Loan. The undisputed facts establish that none of the Plaintiffs received any notice of the fact that the Modification Exemption was in effect, since all of the Plaintiffs received only the H-8 Form. (HSBC R

Pl. SMF Par. 71-72); (Enc. R. Pl. SF 1); 12 C.F.R. § 226 Appx. H-8. Plaintiffs argue that Tommie, Louise, and Jeffrey may have, in fact, preferred to have a limited rescission right if they decided that they would rather not rescind all of the mortgage. However, based on the undisputed facts, it is clear that none of the Plaintiffs were ever notified that such might be an option. The failure by Encore to provide Plaintiffs with adequate notice of their precise rescission rights under TILA was a violation of Section 1635 and, as a consequence, we find that Plaintiffs' right to rescind the 2005 Loan was extended for a period of three years from the date of the closing of the 2005 Loan. 15 U.S.C. § 1635(a).

C. Proper Notice of the Election to Rescind Against Encore and HSBC

Encore also raises the argument that, even if Encore's provision of the H-9 Form with respect to the 2004 Loan and its provision of the H-8 Form with respect to the 2005 Loan did constitute TILA violations which extended the statutory periods during which Plaintiffs had a right to elect to rescind the loans, Plaintiffs never properly elected to rescind either loan before bringing suit in the instant action. Regulation Z provides that "to exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication." 12 C.F.R. § 226.23(a)(2). Furthermore, Regulation Z also provides creditors with 20 days from the date that the notice of a rescission is received to "return any money or property that has been given to anyone in connection with the transaction and [] take any action necessary to reflect the termination of the *895 security interest." 12 C.F.R. § 226.23(d)(2).

Plaintiffs tacitly admit that they never sent any form of written communication to any Defendant prior to bringing the instant action for rescission. (P R. Enc. SAF Par. 4). Plaintiffs instead argue that the actual filing of the instant action occurred less than three years from the date of the closing of both the 2004 Loan and the 2005 Loan and that the filing

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 10

of the instant action itself along with service of the complaint on Defendants was sufficient, pursuant to Regulation Z, to provide notice of Plaintiffs' intention to rescind the mortgage. Encore argues that Regulation Z implies that borrowers must present notice of their intention to rescind directly to the creditor and allow the creditor twenty days to respond before bringing suit.

The courts in this district are split on the precise issue of whether the filing and service of a lawsuit can satisfy TILA's requirement for notice of a borrower's intent to rescind a loan. Encore points out that at least one court in this district has held that filing a complaint is not sufficient to provide notice to creditors. *Jefferson v. Security Pacific Fin. Servs.*, 162 F.R.D. 123, 126 (N.D.Ill.1995) (holding that a borrower must request rescission from a creditor before bringing suit). However, Plaintiffs point out that other courts in this district have reached the opposite conclusion, namely, that the filing and service of a federal complaint is sufficient under the language of TILA to provide creditors with notice of rescission. *See, e.g., Pulphus v. Sullivan*, 2003 WL 1964333, at *16 (N.D.Ill.2003) (holding that the service of a federal complaint that demands rescission complies with TILA's requirements for providing notice to a creditor of a borrower's intent to rescind a loan); *Elliott v. ITT Corp.*, 764 F.Supp. 102, at *105-06 (N.D.Ill.1991) (same).

[5] We agree with Plaintiffs that the filing and service of a complaint is sufficient to satisfy TILA's notice requirements for electing a rescission, provided that the complaint clearly states the borrower's intent to rescind and specifically names the party to whom the demand for rescission is addressed. In reaching this conclusion we note that the language in Regulation Z setting forth the requirements for serving notice of rescission on a creditor is very broad. 12 C.F.R. § 226.15(a)(2). Regulation Z allows a borrower to effectuate notice of a rescission "by mail, telegram, or *other means of written communication.*" *Id.* (emphasis added). A complaint in a federal lawsuit that expressly de-

mands rescission clearly falls into the category of a written communication. When properly served on the parties to whom rescission is demanded within the proper statutory period, such a complaint satisfies the notice requirements as stated in Regulation Z. *Id.* This conclusion is consistent with the purpose of the notice requirement for rescission under TILA, which is to provide the creditor with valid notice that the borrower wishes to rescind the loan. We are not persuaded by Encore's argument that they did not receive proper notice since Plaintiffs' complaint in this case clearly provided notice of Plaintiffs' rescission of the 2004 Loan and the 2005 Loan in a timely manner. There was nothing preventing Encore from complying with Plaintiffs' rescission demand within 20 days of the filing of the instant action which would have had the effect of mooted Plaintiffs' TILA claims against Encore.

In this case, as discussed above, the NORTC forms that were provided to the Original Borrowers with respect to both loans were insufficient to notify Plaintiffs of their respective rescission rights. Thus, pursuant to TILA, Plaintiffs' rights to exercise rescission on both loans were extended to three years from the respective dates of the closings on both loans. The *896 docket in this case reflects that Plaintiffs served Encore with a copy of the complaint demanding rescission on June 26, 2007, which was less than three years from the dates of the closings on both loans. (Doc. No. 13). The docket also reflects that HSBC was served with a copy of the First Amended Complaint on October 9, 2007, which was less than three years from the date of the closing of the 2005 Loan (the only loan with which HSBC is implicated). (Doc. No. 64). As indicated above, the service of the complaint, which clearly indicated Plaintiffs' intention to effectuate rescission of both loans, constituted valid notice of Plaintiffs' intent to rescind both loans. Thus, the undisputed facts establish that Encore was under a legal obligation to comply with the procedures set out in Section 1635 and Regulation Z for effectuating rescission on both the 2004 Loan and the 2005 Loan. HSBC was also under a legal obligation to

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 11

comply with the procedures set out in Section 1635 and Regulation Z for effectuating rescission on the 2005 Loan. Since neither Encore nor HSBC complied with Plaintiffs' rescission demands within 20 days of the date that notice of rescission was received, Encore and HSBC are also subject to damages under TILA. *See* 15 U.S.C. § 1640(a).

II. BONY's Motion For Summary Judgment

BONY has also moved for summary judgment on Plaintiffs' TILA claims. BONY was the assignee of the 2004 Loan which was satisfied in full by the 2005 Loan. (P R. BONY SF Par. 10); (BONY R.P. SF Par. 60). Plaintiffs seek rescission of the 2004 Loan even though the loan was already paid off. BONY does not challenge Plaintiffs' argument that they are free to seek rescission of the 2004 Loan. (P. SJ Mem. 15). BONY, however, argues that the undisputed facts establish that BONY is not liable for rescission under TILA.

A. Assignee Liability

BONY argues in support of its motion for summary judgment that, pursuant to TILA, an assignee can only be held liable for rescission when the underlying TILA disclosure violation which extended the borrower's right to rescind the loan was apparent on the face of the loan documents available to the assignee. Plaintiffs argue that the prevailing law indicates otherwise and that courts in this district have concluded that assignee liability does not require underlying TILA violations to be apparent on their face. *See, e.g., Adams v. Nationscredit Fin. Servs. Corp.*, 351 F.Supp.2d 829, 834 (N.D.Ill.2004) (citing to 15 U.S.C. § 1641(c) as support for the fact that an assignee may be held liable for rescission notwithstanding a disclosure violation that is apparent on its face). However, the legal issue debated by Plaintiffs and BONY is not pertinent to this action given that BONY has not pointed to undisputed facts that establish that the underlying disclosure violation was not apparent on

its face. BONY acknowledges that it received a loan file in connection with the 2004 Loan which included numerous documents in connection to the 2004 Loan. (BONY R.P. SAF Par. 26-28). Plaintiffs argue in their response to BONY's motion for summary judgment that BONY's loan file included a copy of the incorrect NORTC form which would have provided BONY with notice of the underlying violation. (P Ans. BONY Mot. SJ 12); 15 U.S.C. § 1641(a). BONY has not pointed to any evidence that would establish that it did not have access to such information. Therefore, even if BONY were correct in its legal argument that prevailing law only permits assignee liability to the extent that underlying TILA disclosure violations are apparent on their face, BONY has not shown that it is entitled to summary judgment for that reason.

*897 B. Insufficient Notice of Original Borrowers' Rescission Against BONY

BONY also argues that since it was not served with a complaint related to this action until December 4, 2007, which was more than three years from the date of the closing on the 2004 Loan, that the extended period in which the Plaintiffs could exercise their rescission rights against BONY had expired and that BONY cannot be held liable for rescission or for failing to rescind the 2004 Loan. Plaintiffs argue that a rescission demand was properly and timely asserted against BONY since, pursuant to TILA, notice of rescission is only required for the original creditor, and Plaintiffs' joining of BONY subsequent to the filing of the instant action relates back to the date that the action was originally filed and, thus, notice of Plaintiffs' intent to rescind the 2004 Loan was timely provided.

1. Notice Requirement for Assignees

Plaintiffs argue that, based on the language in TILA, they were only required to provide notice of rescission to the original creditor of the 2004 Loan and that such notice to the original creditor was suf-

595 F.Supp.2d 885
 595 F.Supp.2d 885
 (Cite as: 595 F.Supp.2d 885)

Page 12

ficient to bind any subsequent assignees to the rescission demand, as well as to subject future assignees to statutory damages and attorney's fees for failing to rescind. Plaintiffs point to the fact that both Section 1635 and Regulation Z state that a borrower should notify the "creditor" to effectuate rescission. 15 U.S.C. § 1635(a); 12 C.F.R. § 226.23(a)(2). Plaintiffs rely on the fact that neither Section 1635 nor Regulation Z explicitly use the phrase "assignee" when describing the borrower's procedures for electing a rescission.

[6] Plaintiffs' statutory argument is unpersuasive. Plaintiffs ignore the fact that TILA explicitly states that an assignee of a mortgage is "subject to all claims and defenses with respect to the mortgage that the consumer could assert against the creditor of the mortgage..." 15 U.S.C. § 1641(d)(1). Plaintiffs themselves argue that "assignees are subject to the rescission right to the same extent as the original creditor." (P. Ans. 10) (emphasis in original). Notwithstanding the fact that TILA does not explicitly mention assignees in its rescission notice provisions (just as TILA does not explicitly mention assignees in other provisions where assignees are in fact implicated, including other rescission provisions), there is no indication from the language of TILA that assignees should not be entitled to the same rights to notice of rescission as original creditors.

Plaintiffs argue that public policy considerations favor binding assignees to rescission demands made on original creditors. Plaintiffs argue that ascertaining the identities of assignees can be difficult for borrowers since the given assignee of a particular loan is not always a matter of public record. Plaintiffs argue that requiring borrowers to identify assignees and to serve notice of rescission on such assignees within the three year statutory period would be unduly burdensome for borrowers. However, there is no indication that such a consideration was not before Congress and the FRB when the provisions of TILA and Regulation Z were drafted setting the extended period of three years in

which to exercise rescission. Furthermore, as BONY notes, adopting Plaintiffs' interpretation of the notice requirement in TILA would have the absurd effect of subjecting to rescission and damages assignees that, in some cases, have absolutely no means of discovering that a rescission demand has been made. Plaintiffs have not pointed to persuasive authority indicating that this was a result intended by Congress. We also note that in the instant action there is no evidence in the *898 record indicating that BONY had any notice of the instant action or of Plaintiffs' demand for rescission prior to the date that BONY was served with the second amended complaint. Therefore, we find that Plaintiffs could not effectuate notice of rescission to BONY simply by notifying Encore.

We finally note that Plaintiffs argue that this court has recently concluded in another case that notification to an original creditor is sufficient by itself to bind a subsequent assignee to a rescission demand. (P. Ans. 10). In *Lippner v. Deutsche Bank Nat. Trust Co.*, 544 F.Supp.2d 695 (N.D.Ill.2008), this court did find that an assignee was liable for rescission under TILA. *Id.* at 705. However, in *Lippner*, the plaintiff's provision of notice of rescission to the assignee within the statutory period was not an issue. *Id.* That is because in *Lippner* the assignee defendant was accurately named and served with the original complaint demanding rescission less than three years after the date of the closing of the loan at issue in that case. (07 C 448 Doc. No. 7). Such, however, is not the case in the instant action.

2. Relation Back

Plaintiffs further argue that relation back principles can be applied to render Plaintiffs' notice of rescission to BONY timely. However, BONY points out that the three year extended right of rescission in Section 1635 has been interpreted by the Supreme Court to be a statute of repose and not a statute of limitations. *Beach v. Ocwen F.B.*, 523 U.S. 410, 417, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998) (stating that the language in Section 1635(f)"talks

595 F.Supp.2d 885
595 F.Supp.2d 885
(Cite as: 595 F.Supp.2d 885)

Page 13

not of a suit's commencement but of a right's duration, which it addresses in terms so straightforward as to render any limitation of the time for seeking a remedy superfluous"). BONY correctly notes that statutes of repose, unlike statutes of limitation, are not subject to equitable extensions. *See Teamsters & Employers Welfare Trust of Illinois v. Gorman Bros. Ready Mix*, 283 F.3d 877, 887 (7th Cir.2002) (stating that "equitable extensions are incompatible with periods of repose").

595 F.Supp.2d 885

END OF DOCUMENT

[7] The court agrees with BONY that, since the statutory period, enumerated in Section 1635, for borrowers to elect a rescission is a statute of repose, Plaintiffs may not rely on the relation back doctrine or on any other equitable extensions. Plaintiffs attempt to employ other arguments for why their notification of rescission to BONY should be considered timely, but ultimately Plaintiffs cannot escape the undisputed fact that they failed to serve any written notice on BONY of their intention to rescind the 2004 Loan within three years of the date of the closing on the 2004 Loan. (P R. BONY SF Par. 15). The straightforward language in Section 1635 mandates that a borrower provide such notice within the extended period of three years from the date of the closing on the loan in order to effectively compel a rescission. 15 U.S.C. § 1635(f). Since the undisputed facts establish that Plaintiffs failed to do so with respect to BONY, we find that BONY is entitled to summary judgment on the TILA claim which is the only claim in which BONY is named.

CONCLUSION

Based on the foregoing analysis, we grant Plaintiffs' motion for partial summary judgment on Count I with respect to Encore and HSBC. We deny Plaintiffs' motion for partial summary judgment on Count I with respect to BONY. We also grant BONY's motion for summary judgment.

N.D.Ill.,2009.
Harris v. OSI Financial Services, Inc.

EXHIBIT C

TRUE-IN-LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

LENDER OR LENDER'S AGENT:
Encore Credit Corp.
1901 Butterfield Road, Suite 1010
Downers Grove, IL 60516

Preliminary Final

DATE: 06/30/2004
LOAN NO.: 105914
Type of Loan: ARM 2/28

BORROWERS: TOMMIE LEE HARRIS
LOUISE HARRIS
JEFFREY HARRIS

ADDRESS: 1036 E HYDE PARK BLVD
CITY/STATE/ZIP: CHICAGO, IL 60615
PROPERTY: 1036 E HYDE PARK BLVD CHICAGO IL 60615

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit including your down-payment of
9.070%	\$564,024.55	\$335,433.32	\$899,457.87	

PAYMENT SCHEDULE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE		NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE	
		monthly BEGINNING	monthly BEGINNING			monthly BEGINNING	monthly BEGINNING
24	\$2,436.56	09/01/2004					
335	\$2,502.93	09/01/2006					
1	\$2,498.88	09/01/2004					

DEMAND FEATURE: This loan does not have a Demand Feature. This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE:
 This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at: 1036 E HYDE PARK BLVD CHICAGO IL 60615

ASSUMPTION: Someone buying this property cannot assume the remaining balance due under original mortgage terms.
 may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

FILING / RECORDING FEES: \$ 131.50

PROPERTY INSURANCE: Property hazard insurance with a mortgagee clause to the lender is a required condition of this loan. Borrower may purchase this insurance from any insurance company acceptable to the lender.
Hazard insurance is is not available through the lender.

LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of 5.00 % of the overdue payment. **

PREPAYMENT: If you pay off your loan early, you
 may will not have to pay a penalty.
 may will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.
* means estimate

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

X Louise Lee Harris 6/30/04 DATE LOUISE HARRIS
X Louise Harris 6/30/04 DATE
X Jeffrey Harris 6/30/04 DATE

PC000448

DEFINITION OF TRUTH-IN-LENDING TERMS

ANNUAL PERCENTAGE RATE

This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private Mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate generally higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

PREPAID FINANCE CHARGES

Prepaid Finance Charges are certain charges made in connection with the loan and which must be paid upon the close of the loan. These charges are defined by the Federal Reserve Board in Regulation Z and the charges must be paid by the borrower. Non-Inclusive examples of such charges are: Loan origination fee, "Points" or Discount, Private Mortgage Insurance or FHA Mortgage Insurance, Tax Service Fee. Some loan charges are specifically excluded from the Prepaid Finance Charge such as appraisal fees and credit report fees.

Prepaid Finance Charges are totaled and then subtracted from the Loan Amount (the face amount of the Deed of Trust/Mortgage Note). The net figure is the Amount Financed as explained below.

FINANCE CHARGE

The amount of interest, prepaid finance charge and certain insurance premiums (if any) which the borrower will be expected to pay over the life of the loan.

AMOUNT FINANCED

The Amount Financed is the loan amount applied for less the prepaid finance charges. Prepaid finance charges can be found on the Good Faith Estimate/Settlement Statement (HUD-1 or 1A). For example if the borrower's note is for \$100,000 and the Prepaid Finance Charges total \$5,000, the Amount Financed would be \$95,000. The Amount Financed is the figure on which the Annual Percentage Rate is based.

TOTAL OF PAYMENTS

This figure represents the total of all payments made toward principal, interest and mortgage insurance (if applicable).

PAYMENT SCHEDULE

The dollar figures in the Payment Schedule represent principal, interest, plus Private Mortgage Insurance (if applicable). These figures will not reflect taxes and insurance escrows or any temporary buydown payments contributed by the seller.

T-R
Initials: J.H.
1 - 0

EXHIBIT D

AS400 SERVICING HISTORY

TEXT			
FCT101R1 MFAVALOR	ACCOUNT STATUS LISTING	2/12/2008	12:15:28
Account Number: 67812168 - 2 Mortgagor Name: TOMMIE L HARRIS			
CURRENT BALANCE INFORMATION		CURRENT PAYMENT INFORMATION	
Principal Balance:	.00	Principal/Interest Payment:	2,436.56
Escr Bal/Int:	.00 / .00	GPM / Increase Pending:	.00
Partial Payment Balance:	.00	*Escrow Payment:	.00
Prtl Bal/Acr(SI):	.00	Escrow Increase Pending:	.00
Uncollected Late Charges:	.00	Credit Life Insurance:	.00
Uncollected Escrow:	.00	Hud-Assistance or Buydown:	.00
Uncollected Fees:	.00	Mortgagor Payment:	2436.56
ADDITIONAL INFORMATION		CMTDTE 7/01/2004	
Closed Code:	08	C.F.C. Ln Type:	67 B&C C-ARMS CMT# 9903105
Warning Code:	00	Phase Code/Date:	8 11/24/2004
Lockout Code:	00	Comp/Inv/Blk :	02 7007721 356
Certified Funds Req: Exp:		Div: ACQUISITION	Bch: 0000810 000 09082
Int PTD:12/01/2004	Pmt PTD:12/01/2004	ACH: 00	Simple Int Loan
APP/FND/PYOFF/Sale Dt	1/14/2005	Year to Date Taxes:	.00
Mail Payments To:	FTWORTH	Year to Date Interest:	3,081.05
Delinquent History: ... FHAVA Case Number:			
Sec MKT#: 009903105 Issue DT: 7/01/2004			
Telephone:1-773-548-8016		Co-Mortgagor LOUISE HARRIS	
PROPERTY ADDRESS		MAILING ADDRESS	
1036 E HYDE PARK BLVD		1036 E Hyde Park Blvd	
CHICAGO, IL	60615	Chicago	IL 60615
ORIGINAL INFORMATION			
Original Principal:	354,000.00	Sale Price:	0
Discount Held:	.00	Appraisal Date:	
Date of Mort/Cont:	7/07/2004	Appraisal Amount:	550,000
DueDay/1st Pymt Due:	1 9/2004	Loan Purpose Code:	311
Maturity Date:	8/2034	Property Type:	25
Term of Loan/Remaining Term	360/356	Number of Units:	2
Interest Rate	7.340	Late Charge Amount:	121.83
Annual Percentage Rate	.000		
State Code	14	Grace Days:	15
Fрма County Code:	43	Census Tract:	3905.00
Prepayment Penalty Code:	0	Last Activity Date:	1/27/2005
Times Loan Assumed:	0	Last Analysis date (MMC):	

Date Last Assumed:
 Previous Owner Name: HOMEQ/ENCORE LN#:350236626

HSR117R1 MFAVALOR Loan History Listing - ASCENDING 2/12/08 12:15:28

NAME: TOMMIE L HARRIS W/C: 00 L/C: 00 C/C: 08 L/T: 67 Page:
 ACCT: 067812168-2 PR: /00/00- 2/12/08 FEE: .00 CO#: 02 BR/SR: 0000810

TYP	DATE	POSTED	PRINCIPAL	INTEREST	ESCROW	LT/CHG	PARTIAL
DUE	ADDN.PMT	CRL/DI	BALANCE	BUYDN/235	BALANCE	BALANCE	BALANCE
010	10/22/04	2516.64	272.92	2163.64	.00	80.08	
1004	.00	.00	353455.82	.00	.00	41.75-	
947	10/25/04	41.75	.00	.00	.00	41.75	
1004	.00	.00	353455.82	.00	.00	.00	
010	11/09/04	2436.56	274.59	2161.97	.00	.00	
1104	.00	.00	353181.23	.00	.00	.00	
020	11/09/04	11.75	11.75	.00	.00	.00	
1104	.00	.00	353169.48	.00	.00	.00	
820	11/24/04	264.52	264.52	.00	.00	.00	
1104	.00	.00	352904.96	.00	.00	.00	
820	11/24/04	264.52-	264.52-	.00	.00	.00	
1104	.00	.00	353169.48	.00	.00	.00	
010	12/28/04	2436.56	276.32	2160.24	.00	.00	
1204	.00	.00	352893.16	.00	.00	.00	
020	12/28/04	11.44	11.44	.00	.00	.00	
1204	.00	.00	352881.72	.00	.00	.00	
050	1/14/05	356033.73	352881.72	3081.05	70.96	.00	
1204	.00	.00	.00	.00	70.96	.00	
510	1/27/05	70.96-	.00	.00	70.96-	.00	
1204	.00	.00	.00	.00	.00	.00	

FDR117R1 FEES DUE LISTING 2/12/08 12:15:28
 FROM: 0/00/0000 - 2/12/2008 W/C: 00 LIQ:
 ACCT: 067812168 FEES DUE: .00 MORTGAGOR: TOMMIE L HARRIS

CDE	DATE	AMOUNT	DESCRIPTION	TYP	ENDING BAL	KEY	BATCH	SEQ
-----	------	--------	-------------	-----	------------	-----	-------	-----

10052	11/02/04	30.00	PAYOFF STATEMENT FEE600	30.00	0000731187004	PPP10R
10052	11/09/04	30.00	PAYOFF STATEMENT FEE100	.00	0000734514882	Z50042
10052	12/27/04	30.00	PAYOFF STATEMENT FEE600	30.00	0000756293991	PPP10R
10052	12/28/04	30.00	PAYOFF STATEMENT FEE100	.00	0000756792388	000831
10052	1/04/05	30.00	PAYOFF STATEMENT FEE600	30.00	0000760828771	PPP10R
10052	1/14/05	30.00	PAYOFF STATEMENT FEE100	.00	0000766104948	Y006
10094	1/14/05	15.00	REC RCRDNG OTHER STS100	15.00-	0000766104966	Y006
10094	1/14/05	15.00	REC RCRDNG OTHER STS600	.00	0000767069582	W202

IEP100RM MFAVALOR Impound/Escrow Account Review 2/12/08 12:15:28
Account: 067812168 Name:

Dep/Disb	XXXXXXXXXXXXXXXXXXXX			Dep/Disb	XXXXXXXXXXXXXXXXXXXX		
Date	!Amount	!Des	!Balance	Date	!Amount	!Des	!Balance

Ending Balance: .00

MDS613R1 MFAVALOR Customer Delinquent Contact 2/12/08 12:15:28

FROM: 0/00/0000 - 2/12/2008

Account #: 67812168 Customer's Name: TOMMIE L HARRIS
Payment Pending: .00

		Follow-Up	Contact	Ex
T S	History of Contacts Made	Date	Date	Cd
X	PAYMENTS BROUGHT CURRENT		10/22/04	
X	PAYMENTS BROUGHT CURRENT		11/09/04	



53RD - ELLIS
CURRENCY
EXCHANGE
P.C.

RECEIVED
11/11

53RD - ELLIS
CURRENCY EXCHANGE

MONEY ORDER

COMMUNITY
SERVICE CENTER

70-2525
719

1001 E. 53RD STREET - CHICAGO, IL 60615
PHONE: (773) 363-0822 FAX: (773) 363-3715
TO VERIFY CALL - (847) 965-8560

CORIS BANK
CHICAGO, ILLINOIS

No. 033749

10/04/2004

REMITTER

Home & Services Corp

\$836.56

PAY TO THE ORDER OF
EIGHT HUNDRED THIRTY-SIX AND 56/100 DOLLARS NOT VALID OVER \$1,000
NO REFUND - IF DISTRICT BANK MEMBERSHIP CAN SEE A TRUE WATERMARK AND VISIBLE FROM BOTH SIDES

Ben S. D. 12/18



3RD - ELLIS
CURRENCY
EXCHANGE
M.C.

3RD - ELLIS
CURRENCY
EXCHANGE
M.C.

3RD - ELLIS
CURRENCY EXCHANGE

MONEY ORDER

COMMUNITY
SERVICE CENTER

ZD-2525
719

1001 E. 3RD STREET - CHICAGO, IL 60615
PHONE: (773) 363-0622 FAX: (773) 363-3119
TO VERIFY CALL - (647) 593-1500

3
Thomson Security Corp
CHICAGO, ILLINOIS
NOV 12 1993

No. 033747

10/04/2004

PAY TO THE
ORDER OF

Thomson Security Corp

\$800.00

EIGHT HUNDRED AND 00/100 DOLLARS
NOT VALID OVER \$1,000

3500 Lake

ESD



53RD - ELLIS
CURRENCY
EXCHANGE
INC.

53RD - ELLIS
CURRENCY
EXCHANGE
INC.

53RD - ELLIS
CURRENCY EXCHANGE

MONEY ORDER

COMMUNITY
SERVICE CENTER

70-2625
719

1001 E. 53RD STREET - CHICAGO, IL 60615
PHONE: (773) 363-0622 FAX: (773) 363-3715
TO VERIFY CALL - (917) 853-1850

CORUS BANK
CHICAGO, ILLINOIS

No. 033748

10/04/2004

PAID TO THE
ORDER OF

Home & Service Club

\$800.00

EIGHT HUNDRED AND 00/100 DOLLARS

NOT VALID OVER \$1,000

3506 STEUBEN

3506 STEUBEN

3506 STEUBEN

Account number 067812168
Tommie L Harris
Louise Harris
1036 E Hyde Park Blvd
Chicago, IL 60615

(2)

Payment due Nov 1, 2004
After Nov 15, 2004 late payment

•\$2,478.31
* \$2,600.14
* requires account includes late charges. See Home Loan Details for fee schedule.

SEE OTHER SIDE FOR IMPORTANT INFORMATION



Countrywide

PO BOX 660694
DALLAS TX 75266-0694



Additional
Principal

Additional
Escrow

Other

Check total

06781216820000247831000260014



53RD - ELLIS
CURRENCY
EXCHANGE
INC.

TEST AREA

53RD - ELLIS
CURRENCY EXCHANGE

MONEY ORDER

COMMUNITY
SERVICE CENTER

Z0-2625
719

1001 E. 53RD STREET - CHICAGO, IL 60615
PHONE: (773) 363-0622 FAX: (773) 363-3715
TO VERIFY CALL - (847) 363-1850

CORUS BANK
CHICAGO, ILLINOIS

No. 039674

10mm's Harris 6383216

12/12/2004

PAY TO THE
ORDER OF

Home Services

\$800.00

EIGHT HUNDRED AND 00/100 DOLLARS

NOT VALID OVER \$1,000

363-1850

BRIDGE



53RD - ELLIS
CURRENCY
EXCHANGE
INC.

53RD - ELLIS
CURRENCY EXCHANGE

MONEY ORDER

COMMUNITY
SERVICE CENTER

ZD-2625
719

1001 E. 53RD STREET - CHICAGO, IL 60615
PHONE: (773) 353-0622 FAX: (773) 353-3715
TO VERIFY CALL - (847) 583-1829

CORBUS BANK
CHICAGO, ILLINOIS

No. 039602C

REMITTER
Tommye Harris Rec 67812168 12/12/2004

PAY TO THE ORDER OF *Home P. Services*

\$800.00

*WEIGHT HUNDRED AND 00/100 DOLLARS**

NOT VALID OVER \$1,000

ORDER OF *Home P. Services* MUST BE RECEIVED IN FULL BY THE PAYEE TO BE VALID. ALL OTHERS ARE VOID.

350236675

BSOL



53RD - ELLIS
CURRENCY
EXCHANGE
INC.

53RD - ELLIS
CURRENCY EXCHANGE

1001 E. 53RD STREET - CHICAGO, IL 60615
PHONE: (773) 363-0622 FAX: (773) 363-3715
TO VERIFY CALL - (847) 583-1850

MONEY ORDER

COMMUNITY
SERVICE CENTER

20-2925
719

No. 039603C

Tomie Harris *3MB* *Chicago, Illinois*
Home & Services *DEC 18* *12/12/2004*
PAY TO THE ORDER OF *Home & Services* \$878.00

**EIGHT HUNDRED SEVENTY-EIGHT AND 00/100 DOLLARS PAID OVER \$1,000
9.99 NOT RETURNED TO ISSUER BY DEPOSITOR CAN SEE A TRUE WATERMARK AND VISIBLE FIBERS FROM BOTH SIDES

350236626

ESOL

EXHIBIT E

A. SETTLEMENT STATEMENT

**U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT**

OMB No. 2502-0265

B. TYPE OF LOAN

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FNMA	3. <input type="checkbox"/> CONV.UNINS.	6. File Number: 04-05521	7. Loan Number: 105914	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> CONV.INS.				

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.o)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER: TOMMIE LEE HARRIS LOUISE HARRIS JEFFREY HARRIS 1036 E. HOYNE PARK BLVD CHICAGO, IL 60615	E. NAME AND ADDRESS OF SELLER/TAX I.D.No.: REFINANCE	F. NAME AND ADDRESS OF LENDER: ENCORE CREDIT CORP. 1901 BUTTERFIELD ROAD, #1010 DOWNERS GROVE, IL 60516
---	--	---

G. PROPERTY LOCATION: 1036 E. HYDE PARK BLVD. CHICAGO, IL 60615	H. SETTLEMENT AGENT: LAWYERS TITLE INSURANCE CORPORATION	Disbursement Date: 07/06/04
--	--	---------------------------------------

PLACE OF SETTLEMENT: 5521 N. CUMBERLAND AVE., #1115 CHICAGO, IL 60656	I. SETTLEMENT DATE: 06/30/04
--	--

J. SUMMARY OF BORROWER'S TRANSACTION **K. SUMMARY OF SELLER'S TRANSACTION**

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	19,498.18	403.	
104. PAYOFF PCPS MORTGAGE	142,935.16	404.	
105. SEE ADDENDUM	9,501.00	405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109. PAY SST, INC.	3,935.00	409.	
110. T.I 2002 & 1998 TAXES	12,000.00	410.	
111. PAY FIRST INSTALLMENT 03 TAX	3,202.00	411.	
112. DUPLICATE TAX BILL	5.00	412.	
120. GROSS AMOUNT DUE FROM BORROWER	191,076.34	420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	354,000.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. County taxes to		510. County taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	354,000.00	520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)	191,076.34	601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	354,000.00	602. Less reductions in amount due seller (line 520)	
303. CASH (<input type="checkbox"/> FROM) (<input type="checkbox"/> TO) BORROWER	162,923.66	603. CASH (<input type="checkbox"/> TO) (<input type="checkbox"/> FROM) SELLER	

Previous edition is obsolete.

I. SETTLEMENT CHARGES					
700. TOTAL SALES/BROKER'S COMMISSION				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
based on price \$ _____ %					
Division of Commission (line 700) as follows:					
701. \$ _____	to				
702. \$ _____	to				
703. Commission paid at Settlement					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	WISI FINANCIAL		15,400.00		
802. Loan Discount	X				
803. Appraisal Fee to	JAMES DENDOR		600.00		
804. Credit Report to					
805. TAX RELATED SERVICE	ENCORE CREDIT CORP.		65.00		
806. FLOOD CERT FEE	ENCORE CREDIT CORP.		10.00		
807. ADMINISTRATION FEE	ENCORE CREDIT CORP.		400.00		
808. UNDERWRITING FEE	ENCORE CREDIT CORP.		395.00		
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest from	07/06/04 to 08/01/04	\$ 72,180,000 /day	1,876.68		
902. Mortgage Insurance Premium for	months to				
903. Hazard Insurance Premium for	years to				
904. Flood Insurance Premium for	years to				
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @	per month			
1002. Mortgage Insurance	months @	per month			
1003. City property taxes	months @	per month			
1004. County property taxes	months @	per month			
1005. Annual assessments	months @	per month			
1006. Flood Insurance	months @	per month			
1007.	months @	per month			
1008. Aggregate Adjustment	months @	per month	0.00		
1100. TITLE CHARGES					
1101. Settlement or closing fee	to LAWYERS TITLE		150.00		
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to				
(includes above item numbers: _____)					
1108. Title Insurance	to LAWYERS TITLE		300.00		
(includes above item numbers: 1102, 1103, 1104)					
1109. Lender's coverage	\$354,000.00 300.00				
1110. Owner's coverage	\$				
1111. EPA/COMP/LOC	LAWYERS TITLE		0.00		
1112. Courier Fees	LAWYERS TITLE		30.00		
1113. T.J. SET UP FEE	LAWYERS TITLE		100.00		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording fees: Deed \$	32.50 Mortgage \$	66.50 Release \$	32.50	131.50	
1202. City/county tax stamps: Deed \$		Mortgage \$			
1203. State tax/stamps: Deed \$		Mortgage \$			
1204. EMAIL SERVICE FEE	LAWYERS TITLE		25.00		
1205. LETTER OF REDEMPTION	LAWYERS TITLE		15.00		
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey to					
1302. Pest inspection to					
1303.					
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Sect J and 302, Sect K)				19,498.18	
<p>I have carefully reviewed the MD-1 Settlement Statement and to the best of my knowledge and belief it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the MD-1 Settlement Statement.</p>					
<p><i>Tomie Lee Harris</i> _____ TOMIE LEE HARRIS Borrower</p>			<p><i>Jeffrey Harris</i> 6/30/04 _____ WARRISANCE Sellers</p>		
<p>The MD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.</p>					
<p><i>Lynn Sawyer</i> _____ Settlement Agent LYNN SAWYER</p>			<p>June 30, 2004 _____ Date</p>		
<p>Warning: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.</p>					

EXHIBIT F

TRUTH IN LENDING DISCLOSURE STATEMENT
 (THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

LENDER OR LENDER'S AGENT:

Encore Credit Corp.
 1901 Butterfield Road, Suite 1010
 Downers Grove, IL 60516

Preliminary Final

DATE: 01/07/2005

LOAN NO.: 171685

Type of Loan: 2 YR I/O 2/28
 ARM

BORROWERS: JEFFREY HARRIS

DONNA HARRIS
 TOMMIE LEE HARRIS
 LOUISE HARRIS

ADDRESS: 1036 EAST HYDE PARK BLVD
 CITY/STATE/ZIP: CHICAGO , IL 60615
 PROPERTY: 1036 EAST HYDE PARK BLVD CHICAGO IL 60615

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
<small>The cost of your credit as a yearly rate.</small>	<small>The dollar amount the credit will cost you.</small>	<small>The amount of credit provided to you or on your behalf.</small>	<small>The amount you will have paid after you have made all payments as scheduled.</small>	<small>The total cost of your purchase on credit including your down-payment of</small>
7.656%	\$809,208.87	\$496,408.40	\$1,305,617.27	

PAYMENT SCHEDULE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE monthly BEGINNING	NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE monthly BEGINNING
24	\$2,225.00	03/01/2005			
335	\$3,691.15	03/01/2007			
1	\$3,682.02	02/01/2035			

DEMAND FEATURE: This loan does not have a Demand Feature. This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE: This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at: 1036 EAST HYDE PARK BLVD CHICAGO IL 60615

ASSUMPTION: Someone buying this property cannot assume the remaining balance due under original mortgage terms
 may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

FILING / RECORDING FEES: \$ 99.00

PROPERTY INSURANCE: Property hazard insurance with a mortgagee clause to the lender is a required condition of this loan. Borrower may purchase this insurance from any insurance company acceptable to the lender.
 Hazard insurance is is not available through the lender.

LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of 5.000 % of the overdue payment. **

PREPAYMENT: If you pay off your loan early, you
 may will not have to pay a penalty.
 may will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.
e means estimate

We hereby acknowledge reading and receiving a complete copy of this disclosure.

Jeffrey Harris
 JEFFREY HARRIS

Donna Harris
 DATE DONNA HARRIS

Tommy Lee Harris
 TOMMIE LEE HARRIS

Louise Harris
 DATE LOUISE HARRIS

PC000080

DEFINITION OF TRUTH-IN-LENDING TERMS

ANNUAL PERCENTAGE RATE

This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private Mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate generally higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

PREPAID FINANCE CHARGES

Prepaid Finance Charges are certain charges made in connection with the loan and which must be paid upon the close of the loan. These charges are defined by the Federal Reserve Board in Regulation Z and the charges must be paid by the borrower. Non-Inclusive examples of such charges are: Loan origination fee, "Points" or Discount, Private Mortgage Insurance or FHA Mortgage Insurance, Tax Service Fee. Some loan charges are specifically excluded from the Prepaid Finance Charge such as appraisal fees and credit report fees.

Prepaid Finance Charges are totaled and then subtracted from the Loan Amount (the face amount of the Deed of Trust/Mortgage Note). The net figure is the Amount Financed as explained below.

FINANCE CHARGE

The amount of interest, prepaid finance charge and certain insurance premiums (if any) which the borrower will be expected to pay over the life of the loan.

AMOUNT FINANCED

The Amount Financed is the loan amount applied for less the prepaid finance charges. Prepaid finance charges can be found on the Good Faith Estimate/Settlement Statement (HUD-1 or 1A). For example if the borrower's note is for \$100,000 and the Prepaid Finance Charges total \$5,000, the Amount Financed would be \$95,000. The Amount Financed is the figure on which the Annual Percentage Rate is based.

TOTAL OF PAYMENTS

This figure represents the total of all payments made toward principal, interest and mortgage insurance (if applicable).

PAYMENT SCHEDULE

The dollar figures in the Payment Schedule represent principal, interest, plus Private Mortgage Insurance (if applicable). These figures will not reflect taxes and insurance escrows or any temporary buydown payments contributed by the seller.

L.T.H.
L.D.H.
H.L.H.

EXHIBIT G

LOAN# 20117214 INV# 608 POOL# 0000004 NEXT DUE 6/01/07 INTEREST RATE 9.540 PRIN.BAL 499,096.60
 BORR1 JEFFREY HARRIS TYPE: 03-20 CRVU MAIL: 1036 EAST HYDE PARK BLVD ESC.BAL .00
 BORR2 DONNA HARRIS
 PROP: 1036 E HYDE PARK BLVD CHICAGO IL 60615 CHICAGO IL 60615

NBR	DATE	CODE	DESCRIPTION	NEXT -AFTER TRANS. BALANCES-			-----APPLIED-----			MISC.PMTS
				DUE	PRINCIPAL	ESCRON	TOTAL AMOUNT	PRINCIPAL INTEREST	ESCRON SUSPENSE/CD	
10	6/20/05	81	** BALANCE FORWARD **		.00		500000.00-	.00	.00	
11	6/20/05	1325	NEW LOAN NOCASH	6/05	500000.00	.00	500000.00-	.00	.00	2725.00 25
12	6/20/05	2625	PMT-MISC SUSP	6/05	500000.00	.00	2725.00-	.00	.00	2725.00-25
13	6/20/05	02	MISC ADJ	7/05	500000.00	.00	2725.00-	.00	.00	
14	7/14/05	02	PAYMENT	8/05	500000.00	.00	2725.00	2725.00	.00	
15	8/12/05	02	PAYMENT	9/05	500000.00	.00	2725.00	2725.00	.00	
16	9/14/05	02	PAYMENT	10/05	500000.00	.00	2725.00	2725.00	.00	
17	9/29/05	3199	OLD INV 590/0000201	10/05	500000.00	.00	500000.00	.00	.00	
18	9/29/05	8199	NEW INV 608/0000004	10/05	500000.00	.00	500000.00-	.00	.00	
19	10/14/05	02	PAYMENT	11/05	500000.00	.00	2725.00	2725.00	.00	
20	11/14/05	02	PAYMENT	12/05	500000.00	.00	2725.00	2725.00	.00	
21	12/22/05	0283	PAYMENT	1/06	500000.00	.00	2725.00	2725.00	.00	
22	1/13/06	02	PAYMENT	2/06	500000.00	.00	2725.00	2725.00	.00	
23	1/20/06	2651	DPFD LT CHG NOCASH ADJ	2/06	500000.00	.00	136.25	.00	.00	136.25 01
24	2/13/06	02	PAYMENT	3/06	500000.00	.00	2725.00	2725.00	.00	
25	3/15/06	02	PAYMENT	4/06	500000.00	.00	2725.00	2725.00	.00	
26	4/12/06	02	PAYMENT	5/06	500000.00	.00	2725.00	2725.00	.00	
27	5/15/06	02	PAYMENT	6/06	500000.00	.00	2725.00	2725.00	.00	
28	6/16/06	02	PAYMENT	7/06	500000.00	.00	2725.00	2725.00	.00	
29	7/17/06	02	PAYMENT	8/06	500000.00	.00	2725.00	2725.00	.00	
30	8/16/06	02	PAYMENT	9/06	500000.00	.00	2725.00	2725.00	.00	
31	9/15/06	02	PAYMENT	10/06	500000.00	.00	2725.00	2725.00	.00	
32	11/02/06	0283	PAYMENT	11/06	500000.00	.00	2725.00	2725.00	.00	
33	11/15/06	02	PAYMENT	12/06	500000.00	.00	2725.00	2725.00	.00	
34	12/15/06	02	PAYMENT	1/07	500000.00	.00	2725.00	2725.00	.00	
35	12/15/06	1432	DIRECT CHCK SVC FEE	1/07	500000.00	.00	20.00	.00	.00	
36	12/31/06	1931	COUNTY TAX ADVANCE	1/07	500000.00	.00	4450.67	4450.67	.00	20.00 32
37	12/31/06	6031	COUNTY TAX DISBURSED	1/07	500000.00	.00	4450.67-	.00	.00	
			PAYEE 311L031 #221230 DUE 3/01/07				4450.67-	.00	.00	
38	1/16/07	02	PAYMENT	2/07	500000.00	.00	2725.00	2725.00	.00	
39	2/15/07	1931	COUNTY TAX ADVANCE	2/07	500000.00	.00	5139.63	5139.63	.00	
40	2/15/07	6031	COUNTY TAX DISBURSED	2/07	500000.00	.00	5139.63-	.00	.00	
			PAYEE 311L031 #764049 DUE 3/01/07				5139.63-	.00	.00	
41	2/27/07	0283	PAYMENT	3/07	500000.00	.00	2725.00	2725.00	.00	
42	2/23/07	1325	EFFECTIVE DATE	3/07	500000.00	.00	135.00	.00	.00	135.00 25
			PMT-MISC SUSP							
43	2/27/07	2625	MISC ADJ	3/07	500000.00	.00	135.00-	.00	.00	135.00-25
44	2/27/07	1401	DEFERRED	3/07	500000.00	.00	135.00	.00	.00	
45	3/08/07	1325	PMT-MISC SUSP	3/07	500000.00	.00	4650.74	.00	.00	4650.74 25
46	3/22/07	2625	MISC ADJ	3/07	500000.00	.00	4650.74-	.00	.00	4650.74-25
47	3/22/07	0288	PAYMENT	4/07	499701.25	376.99	298.75	3975.00	376.99	
48	3/22/07	1919	RECOVER ESCROW ADVANCE	4/07	499701.25	.00	376.99-	.00	.00	376.99-

SR497CR-02
RAMIRSU

Chase Home Finance LLC
DETAIL TRANSACTION HISTORY

7/01/08 10:17:16
JOB DT: 7/01/08
PAGE: 2

TRANSACTION NR	DATE	CODE	DESCRIPTION	NEXT DUE	AFTER TRANS PRINCIPAL	BALANCES- ESCROW	TOTAL AMOUNT	APPLIED- INTEREST	ESCROW SUSPENSE/CD	MISC. PMTS
CONTINUED										
49	4/11/07	02	PAYMENT	5/07	499400.12	675.74	4949.49	301.13	3972.62	675.74 .00
50	4/10/07		EFFECTIVE DATE							
50	4/11/07	1919	RECOVER ESCROW ADVANCE	5/07	499400.12	.00	675.74-	.00	.00	675.74- .00
51	4/10/07		EFFECTIVE DATE							
51	4/11/07	1401	DEFERRED	5/07	499400.12	.00	.51	.00	.00	.00 .51 01
52	4/10/07		EFFECTIVE DATE							
52	5/16/07	1325	PMT-MISC SUSP	5/07	499400.12	.00	4200.00	.00	.00	4200.00 25
53	5/15/07		EFFECTIVE DATE							
53	6/18/07	1325	PMT-MISC SUSP	5/07	499400.12	.00	2900.00	.00	.00	2900.00 25
54	6/15/07		EFFECTIVE DATE							
54	6/18/07	2625	MISC ADJ	5/07	499400.12	.00	4949.49-	.00	.00	4949.49-25
55	6/18/07	0283	PAYMENT	6/07	499096.60	675.74	4949.49	303.52	3970.23	675.74 .00
56	6/18/07	1919	RECOVER ESCROW ADVANCE	6/07	499096.60	.00	675.74-	.00	.00	675.74- .00
57	6/19/07	2625	MISC ADJ	6/07	499096.60	.00	564.37-	.00	.00	564.37-25
58	6/19/07	1401	DEFERRED	6/07	499096.60	.00	564.37	.00	.00	.00 564.37 01
59	1/29/08	1931	COUNTY TAX ADVANCE	6/07	499096.60	5472.38	5472.38	.00	.00	5472.38 .00
60	1/29/08	6031	COUNTY TAX DISBURSED	6/07	499096.60	.00	5472.38-	.00	.00	5472.38- .00
PAYEE 311L031 #500127 DUE 9/01/07										
61	2/13/08	1931	COUNTY TAX ADVANCE	6/07	499096.60	5306.01	5306.01	.00	.00	5306.01 .00
62	2/13/08	6031	COUNTY TAX DISBURSED	6/07	499096.60	.00	5306.01-	.00	.00	5306.01- .00
PAYEE 311L031 #500066 DUE 3/01/08										
									499096.60-69142.85	

* * * * * TOTALS * * * * *

EXHIBIT H

A. SETTLEMENT STATEMENT		U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		OMS No. 2502-0265
B. TYPE OF LOAN				
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FHA	3. <input type="checkbox"/> CONV. UNINS.	4. <input type="checkbox"/> VA	5. <input type="checkbox"/> CONV. INS.
6. File Number: 04-12269		7. Loan Number: 171665		8. Mortgage Insurance Case Number:
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.				
D. NAME AND ADDRESS OF BORROWER: JEFFREY HARRIS DONNA HARRIS TOMMIE LEE HARRIS 1036 E. HYDE PARK BLVD CHICAGO, IL 60615		E. NAME AND ADDRESS OF SELLER/TAX I.D.: REPINANCE		F. NAME AND ADDRESS OF LENDER: ENCORE CREDIT CORP. 1901 BUTTERFIELD ROAD, #1010 DOWNERS GROVE, IL 60516
G. PROPERTY LOCATION: 1036 E. HYDE PARK BLVD. CHICAGO, IL 60615		H. SETTLEMENT AGENT: LAWYERS TITLE INSURANCE COMPANY PLACE OF SETTLEMENT: 5521 N. CUMBERLAND AVE., #1115 CHICAGO, IL 60656		I. SETTLEMENT DATE: 01/07/05 DISBURSEMENT DATE: 01/12/05
J. SUMMARY OF BORROWER'S TRANSACTION			K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:			400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price			401. Contract Sales Price	
102. Personal property			402. Personal property	
103. Settlement charges to borrower (line 1400)	4,007.60		403.	
104. PAYOFF COUNTRYWIDE HOME	356,078.73		404.	
105. PAY 2ND INSTALLMENT 2003 TAX	9,774.84		405.	
Adjustments for items paid by seller in advance			Adjustments for items paid by seller in advance	
106. City/town taxes to			406. City/town taxes to	
107. County taxes to			407. County taxes to	
108. Assessments to			408. Assessments to	
109. DUPLICATE TAX BILL	5.00		409.	
110.			410.	
111.			411.	
112.			412.	
113.			413.	
114.			414.	
120. GROSS AMOUNT DUE FROM BORROWER	369,866.17		420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:			500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit of earnest money			501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	500,000.00		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to	
204.			504. Payoff of first mortgage loan	
205.			505. Payoff of second mortgage loan	
206.			506.	
207.			507.	
208.			508.	
209.			509.	
Adjustments for items unpaid by seller			Adjustments for items unpaid by seller	
210. City/town taxes to			510. City/town taxes to	
211. County taxes to			511. County taxes to	
212. Assessments to			512. Assessments to	
213.			513.	
214.			514.	
215.			515.	
216.			516.	
217.			517.	
218.			518.	
219.			519.	
220. TOTAL PAID BY/FOR BORROWER	500,000.00		520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER			600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)	369,866.17		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	500,000.00		602. Less reductions in amount due to seller (line 520)	
303. CASH (<input type="checkbox"/> FROM) (<input checked="" type="checkbox"/> TO) BORROWER	130,133.83		603. CASH (<input type="checkbox"/> TO) (<input type="checkbox"/> FROM) SELLER	

I. SETTLEMENT CHARGES			
700. TOTAL SALES/BROKER'S COMMISSION		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
based on price \$ _____ R _____ X= _____			
Division of Commission (line 700) as follows:			
701. \$ _____	to _____		
702. \$ _____	to _____		
703. Commission paid at Settlement _____			
704. _____			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Origination Fee _____ X			
802. Loan Discount _____ X			
803. Appraisal Fee to JAMES DENDOR		600.00	
804. Credit Report to _____			
805. TAX RELATED SERVICE ENCORE CREDIT		65.00	
806. FLOOD CERT ENCORE CREDIT		10.00	
807. ADMINISTRATION FEE ENCORE CREDIT		400.00	
808. UNDERWRITING FEE ENCORE CREDIT		395.00	
809. _____			
810. _____			
811. _____			
812. _____			
813. _____			
814. _____			
815. _____			
816. _____			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest from 01/12/05 to 02/01/05 @ 90.830000 /day		1,816.60	
902. Mortgage Insurance Premium for _____ months to _____			
903. Hazard Insurance Premium for 1 years to ALLSTATE INS.			
904. Flood Insurance Premium for _____ years to _____			
905. _____			
1000. RESERVES DEPOSITED WITH LENDER			
1001. Hazard Insurance		months 05	per month
1002. Mortgage Insurance		months 05	per month
1003. City property taxes		months 05	per month
1004. County property taxes		months 05	per month
1005. Annual assessments		months 05	per month
1006. Flood Insurance		months 05	per month
1007. _____		months 05	per month
1008. Aggregate Adjustment			0.00
1100. TITLE CHARGES			
1101. Settlement or closing fee to LAWYERS TITLE		150.00	
1102. Abstract or title search to _____			
1103. Title examination to _____			
1104. Title insurance binder to _____			
1105. Document preparation to COLB A. STREMMET		60.00	
1106. Notary fees to _____			
1107. Attorney's fees to _____			
(includes above item numbers: _____)			
1108. Title insurance to LAWYERS TITLE		300.00	
(includes above item numbers: 1102, 1103, 1104)			
1109. Lender's coverage \$ 500,000.00		300.00	
1110. Owner's coverage \$ _____			
1111. BPA/COMP/LOC LAWYERS TITLE		0.00	
1112. Courier Fees LAWYERS TITLE		30.00	
1113. EMAIL SERVICE FEE LAWYERS TITLE		25.00	
1114. DEED FACILITATION LAWYERS TITLE		40.00	
1115. _____			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording fees: Deed \$ 28.00 Mortgage \$ 62.00 Release \$ _____		90.00	
1202. City/county tax stamps: Deed \$ _____ Mortgage \$ _____			
1203. State tax/stamps: Deed \$ _____ Mortgage \$ _____			
1204. Record Cert of Rel LAWYERS TITLE		26.00	
1205. _____			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey to _____			
1302. Pest inspection to _____			
1303. _____			
1304. _____			
1305. _____			
1306. _____			
1307. _____			
1308. _____			
1309. _____			
1310. _____			
1311. _____			
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Sect J and 502, Sect K)		4,007.60	

Case Number: 05-12269

Signature Page to HUD-1 Settlement Statement

We have reviewed the HUD-1 Settlement Statement which consists of three pages and to the best of our knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on our account, or by us, in this transaction. We understand the figures contained herein were based on the best information available to the Settlement Agent, and agree to make the appropriate adjustments after settlement if adjustments are necessary.

Jeffrey Harris
JEFFREY HARRIS

REPAYANCE

Donna Harris
DONNA HARRIS

Lynn Selzer
LYNN SELZER

The Settlement Statement prepared by the Settlement Agent is, to the best of its knowledge and belief, a true and accurate account of this transaction. The Settlement Agent has caused or will cause the funds to be disbursed in accordance with this Statement.

LAWYERS TITLE INSURANCE CORPORATION
Settlement Agent

By: *Lynn Selzer*
LYNN SELZER

Warning: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment.
For details see: Title 18 U.S. Code Section 1001 and Section 1010.

HUD-1 (8-87)

RESPA, HB 4305.2

Previous edition is obsolete.