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06/02/03

CAUSE NO. 03-61011-2

Jesus A. Guzman + Joahn Guenans  
Plaintiff  
Owen Federal Bank, FSB, et. al. s  
Defendant

IN THE DISTRICT COURT OF  
NUECES COUNTY, TEXAS  
\_\_\_\_\_ JUDICIAL DISTRICT  
COUNTY COURT-AT-LAW 2  
OF NUECES COUNTY, TEXAS

CIVIL CASE INFORMATION SHEET

This form must be completed and filed with every original petition, and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. This form does not constitute a discovery request, response, or supplementation, and is not admissible at trial.

Service must be obtained promptly. Notice is hereby given as per Rule 165a R.C.P. that any case in which no answer has been filed or default judgment signed SIX (6) MONTHS from filing will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of Action: Check all claims pled:  Commercial  Personal Injury  Death  Other

- |   |   |   |   |   |
|---|---|---|---|---|
| <input type="checkbox"/> Account due          | <input type="checkbox"/> Defamation           | <input type="checkbox"/> Fraud                | <input type="checkbox"/> Product Liability    | <input type="checkbox"/> Asbestos           |
| <input type="checkbox"/> Admiralty            | <input type="checkbox"/> Disbarment           | <input type="checkbox"/> Garnishment          | <input type="checkbox"/> Post Judgment        | <input type="checkbox"/> Assault            |
| <input type="checkbox"/> Discrimination       | <input type="checkbox"/> Injunction/TRO       | <input type="checkbox"/> Railroad             | <input type="checkbox"/> Ins. bad faith       | <input type="checkbox"/> Dram Shop          |
| <input type="checkbox"/> Auto                 | <input type="checkbox"/> DTPA                 | <input type="checkbox"/> Malicious prosecutio | <input type="checkbox"/> Real Estate          | <input type="checkbox"/> Bill of Review     |
| <input type="checkbox"/> Employment discharge | <input type="checkbox"/> Malpractice/Legal    | <input type="checkbox"/> Sequestration        | <input type="checkbox"/> Business dissolution | <input type="checkbox"/> Environmental tort |
| <input type="checkbox"/> Malpractice/Medical  | <input type="checkbox"/> Silicone implant     | <input type="checkbox"/> Conspiracy           | <input type="checkbox"/> Expunction           | <input type="checkbox"/> Malpractice/other  |
| <input type="checkbox"/> Tax                  | <input type="checkbox"/> Contract             | <input type="checkbox"/> False Imprisonment   | <input type="checkbox"/> Name Change          | <input type="checkbox"/> Deed restriction   |
| <input type="checkbox"/> Foreclosure          | <input type="checkbox"/> Note                 | <input type="checkbox"/> Trespass             | <input type="checkbox"/> Declaratory judgment | <input type="checkbox"/> Forfeiture         |
| <input type="checkbox"/> Premises liability   | <input type="checkbox"/> Workers compensation | <input type="checkbox"/> Judgment Nisi        | <input type="checkbox"/> Other                |   |

Has this dispute previously been in the Nueces County Courts?  NO  YES, in the following court: \_\_\_\_\_

Monetary damages sought:  less than \$50,000  greater than \$50,000

Desired discovery level:  Level 1 (TRCP 190.2)  Level 2 (TRCP 190.3)  Level 3 (TRCP 190.4)\*  
\*A case will remain in Level 1, if applicable, or else Level 2 unless and until the court enters an order establishing a Level 3 discovery plan. See TRCP 190.4 & cmt. o. The court may enter a Level 3 plan sua sponte or the parties may request entry of such a plan by separate motion. id.

Estimate time needed for discovery:  0-3 months  4-6 months  7-12 months  Other

Estimate time needed for trial:  1-2 days  3-5 days  6-10 days  ? 10 days

Is there a likelihood of experts other than treating physicians or experts on attorney's fees?  Yes  No

Is immediate ADR requested?  Yes  No

Name of party filing this cover sheet:

Signature of attorney or pro se filing cover sheet: [Signature]  
Name printed: William H. Oliver  
Phone No.: 210 820-0082 Bar No.: 15265200

FOR COURT USE ONLY:  
Track assigned:  Track 1  Track 2  Track 3

Court Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

2003 JUN -2 P 2:31  
NUECES COUNTY, TEXAS  
CLERK OF DISTRICT COURT  
DPT

2

06/02/03

**INFORMATION FOR ISSUANCE OF SERVICE**

CAUSE NUMBER: 03-61011-2

NAME EACH DOCUMENT TO BE SERVED: \_\_\_\_\_

DATE REQUESTING: 6 MONTH 2 DAY 03 YEAR

SERVICE BY (CHECK ONE PLEASE)

CONSTABLE /SHERIFF \_\_\_\_\_ RETURN TO ATTORNEY BY MAIL \_\_\_\_\_

CERTIFIED MAIL  PICK UP BY ATTY/PROCESS SERVER \_\_\_\_\_  
**PLEASE NOTE IF RESTRICTED DELIVERY**

CITATION BY POSTING AT COURTHOUSE DOOR (# OF DAYS TO BE POSTED) \_\_\_\_\_

CITATION BY PUBLICATION (NAME OF PAPER) \_\_\_\_\_  
(# OF DAYS TO BE PUBLISHED) \_\_\_\_\_

SERVICE TO BE ISSUED ON: (PLEASE PRINT INFORMATION)

*cm* ✓  
1.) NAME: Ocean Federal Bank, FSB, C.E.O., William C. Erbey  
ADDRESS: 1675 Palm Beach Lakes Blvd., Suite 1000, West Palm, Florida 33401-212  
AGENT (IF APPLICABLE) \_\_\_\_\_

*cm* ✓  
2.) NAME: Lasalle National Bank, CEO Norman Robins  
ADDRESS: 135 S. LaSalle St., Suite 425, Chicago Ill. 60603  
AGENT (IF APPLICABLE) \_\_\_\_\_

ADDT'L INFORMATION FOR SERVICE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE PROVIDE ALL SERVICE COPIES NEEDED FOR YOUR REQUEST!

SERVICE REQUESTED BY:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

SIGNATURE OF PERSON REQUESTING SERVICE

FILED - PATSY J. ...  
CLERK OF COURTS  
DISTRICT COURTS  
MOBES COUNTY TEXAS  
2003 JUN -2 P 2:32  
DPTY

CAUSE NO. 03-61011-2

JESUS S. GUZMAN and JOANN B. GUZMAN,

Plaintiffs

v.

OCWEN FEDERAL BANK, FSB, LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS, SALOMON BROTHERS REALTY, CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, HUGHES, WATERS & ASKANASE, L.L.P. and THE HONORABLE LARRY G. COX,

Defendants.

§ IN THE COUNTY COURT AT LAW

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§

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NUMBER 2

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§

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§ NUECES COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, JESUS S. GUZMAN and JOANN B. GUZMAN (herein collectively referred to as "Plaintiffs" or the "Guzmans"), Plaintiffs herein, and file this, their Original Petition and Application for Temporary and Permanent Injunction and Application for Temporary Restraining Order complaining of OCWEN FEDERAL BANK, FSB, LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS, SALOMON BROTHERS REALTY, CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, and HUGHES WATERS & ASKANASE, L.L.P. (hereinafter collectively referred to as "Defendants") and THE HONORABLE LARRY G. COX and would show the Court as follows:

FILED  
CLERK OF COUNTY  
DISTRICT COURT  
NUECES COUNTY, TEXAS  
2003 JUN -2 P 2:30  
[Signature]

**I.**

**DISCOVERY CONTROL PLAN.**

1. The nature of this cause is such that discovery should be conducted under Discovery Control Plan – Level 2, pursuant to Tex.R.Civ.P. 190.2.

**II.**

**PARTIES.**

2. Plaintiff JESUS S. GUZMAN (hereinafter “Mr. Guzman”) is an individual who resides at 8742 Ridgefront, San Antonio, Bexar County, Texas 78250.

3. Plaintiff JOANN B. GUZMAN (hereinafter “Mrs. Guzman”) is an individual who resides at 8742 Ridgefront, San Antonio, Bexar County, Texas 78250.

4. Defendant OCWEN FEDERAL BANK FSB is a federal savings bank organized and doing business under the laws under the United States of America and may be served with citation in this action by serving its C.E.O., William C. Erbey, at 1675 Palm Beach Lakes Boulevard, Suite 1000, West Palm Beach, Florida 33401-2129 by certified mail, return receipt requested.

5. Defendant LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS is a national bank organized and doing business under the laws under the United States of America and may be served with citation in this action by serving its C.E.O., Norman Bobins, at 135 South LaSalle Street, Suite 425, Chicago, Illinois 60603 by certified mail, return receipt requested.

6. Defendant SALOMON BROTHERS REALTY CORPORATION is a foreign business corporation doing business in the State of Texas and may be served with citation in this action by serving its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

7. Defendant CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, is an individual employed as an attorney with Defendant HUGHES, WATERS & ASKANASE, L.L.P., and may be served with citation at 1415 Louisiana, 37<sup>th</sup> Floor, Houston, Texas 77002-7354.

8. Defendant HUGHES, WATERS & AKANASE, L.L.P. is a business organization duly existing under the laws of the State of Texas, and can be served with citation at 1415 Louisiana, 37<sup>th</sup> Floor, Houston, Texas 77002-7354.

9. LARRY G. COX is a Justice of the Peace in Precinct 2-2, Nueces County Texas, and can be served with citation at said Precinct located at 10110 Compton Road, Corpus Christi, Texas 78480-1200.

### III.

#### Jurisdiction and Venue.

10. This Court has jurisdiction over Defendants Ocwen Bank, LaSalle National Bank, and Salomon Brothers Realty by virtue of the fact that they own property in the State of Texas, do business in the State of Texas, including owning and servicing of loans, which necessarily involves contracting with Texas residents by mail or otherwise when at least one of the parties is to perform the contract in Texas. Further, such Defendants have committed the torts as set forth hereinbelow in

whole or in part in Texas. Such Defendants are foreign entities engaged in business in Texas. Defendant Carolyn Taylor is a resident of the State of Texas and, therefore, subject to personal jurisdiction. Defendants Hughes, Waters & Askanase, L.L.P. is a law firm existing under the laws of the State of Texas, which has its headquarters in Texas and does business in Texas, and is therefore subject to personal jurisdiction.

11. Venue is proper in Nueces County, Texas, as the suit involves recovery of real property and removal of encumbrance on real property located in Nueces County, Texas. Venue is proper under Tex. Civ. Prac. & Rem. Code Ann. Art. 15.002(a)(1) as Nueces County is where all or a substantial part of the events or omissions occurred, including the wrongful foreclosure sale describe below. Venue is also proper as to all of the Defendants under Tex. Civ. Prac. & Rem. Code Ann. Art. 15.005, as the claims or actions against each of them arose out of the same transaction or occurrence, or series of transactions or occurrences.

#### IV.

#### **Statement of Facts.**

12. Mr. and Mrs. Guzman purchased a home at 5206 Millwood, Corpus Christi, Nueces County, Texas, on or about January 15, 1990 (the "Property"). They financed the purchase through Mortgage Creditcorp, Inc., granting a Deed of Trust lien dated on or about January 15, 1990, and recorded in Volume 2376, Page 435 of the Deed of Trust Records of Nueces County, Texas (the "Deed of Trust"). The original Trustee was William A. Whittle. During the year 1992, Mr. Guzman lost his job and was unable to make his mortgage payments. The mortgage with Mortgage Creditcorp, Inc. was a loan guaranteed by the United States Department of Housing and Urban



Development (“HUD”). Accordingly, when Mr. Guzman was unable to make his payments, he contacted HUD and received a Forbearance Agreement (the “Forbearance Agreement”) whereby the delinquent amount owed would be paid over a period of years by increasing the monthly payment on the mortgage. The original Forbearance Agreement was signed on or about January 12, 1993, and the Guzmans proceeded to make their regular monthly payments called for by the original Promissory Note, as well as an extra amount to pay the arrearage pursuant to the terms of the Forbearance Agreement.

13. Once the Forbearance Agreement was in place and the Guzmans were making their regular mortgage payment and the forbearance payment HUD re-transferred the mortgage to Defendant Salomon Brothers Realty (hereinafter “Salomon Brothers”). This occurred in or around September 1996. Salomon Brothers contracted with Ocwen Federal Bank, FSB (hereinafter “Ocwen Bank”) to service the said loan.

14. The assignment from HUD to Ocwen Bank recited that Ocwen Bank was bound by the terms of the Forbearance Agreement.

15. On two occasions, Ocwen Bank, on behalf of Salomon Brothers, sent the Guzmans new Forbearance Agreements in which the forbearance payment was raised. The Guzmans voluntarily paid the additional amount. On or about February 1998, the Guzmans were making a regular monthly payment of \$949.72, even though the payment stated in the original Note was \$747.00, and the Guzmans had been making extra payments since 1993.

16. On numerous occasions, Ocwen sent the Guzmans notices that they were in default and that the forbearance amount exceeded \$10,000.00. The Guzmans were surprised by this, given

that their forbearance payments should have already paid off the arrearage. They hired Richard Halter, an attorney in San Antonio, to request an accounting and an explanation from Ocwen Bank. No such explanation was received. No accounting has ever been received by the Guzmans showing the application of the additional payments to the forbearance amount. The Guzmans tried numerous times to get an accounting from either HUD or Ocwen Bank, with no success. Ocwen Bank continued to accept the regular monthly payment of \$949.72 until August 2002, when it refused further payments.

17. The original arrearage for which the Guzmans signed a Forbearance Agreement with HUD was less than Five Thousand Dollars (\$5,000.00). The arrearage has been paid by the additional monthly payments made by the Guzmans or on their behalf. Nevertheless, Ocwen Bank continues to insist that more than Ten Thousand Dollars (\$10,000.00) is still owed on the arrearage. They have refused to give an accounting after numerous requests by the Guzmans and by two different law firms on their behalf. Ocwen has also failed to give credit for payments made. Further, Ocwen has represented that the arrearage has a different balance at different times and has failed to give payoff quotes that would enable to Guzmans to sell their home or move their loan.

18. Recently, the Guzmans' attorney requested verification of the debt. Three months later, Defendants Carolyn Taylor and Hughes, Waters & Askanase wrote back representing that the unpaid principal balance of the Guzmans' Note was Sixty-Four Thousand, Fifty and 52/100 Dollars (\$64,050.52), and that the loan was due for June 1, 2002. They represented further that Salomon Brothers was the owner of the Note and that Ocwen Bank was the servicer. With that information, the Guzmans agreed with their tenants to sell the house for the amount of the principal balance plus

the arrearage, which they estimated to total about Seventy-Two Thousand Dollars (\$72,000.00). The tenants were approved for a mortgage. The Guzmans' attorney wrote Defendants Carolyn Taylor and Hughes, Waters & Askanase and requested a payoff that could be taken to the title company for closing. Some two weeks later, Defendants Carolyn Taylor and Hughes, Waters & Askanase faxed a payoff at 3:30 p.m. in the afternoon on February 28, 2003, stating a payoff amount of Eighty-Five Thousand, Seven Hundred Fifty-Four and 97/100 Dollars (\$85,754.97) that was only good for the next 1 ½ hours. In essence, Defendants Carolyn Taylor and Hughes, Waters & Askanase increased the payoff by some Thirteen Thousand Dollars (\$13,000.00) without explanation and gave the Guzmans only an hour and a half to make the payoff and close their sale to their tenants. This made it impossible and was unconscionable.

19. The Guzmans continued to try to request a payoff through telephone calls to Defendant Carolyn Taylor, to no avail.

20. Even though Carolyn Taylor had dealt with the Guzmans' attorney and had sent the verification of the debt to the Guzmans in care of the Guzmans' attorney, she proceeded to issue foreclosure notices for the April 2003 foreclosure sale without sending a copy of such notices to the Guzmans' attorney. This violated the Texas State Bar Rules of Professional Conduct.

21. Further, even though Defendant Carolyn Taylor knew that the Guzmans had a different address, and even though Ocwen Federal Bank had received correspondence showing that address, the foreclosure notices were sent to the Property, and never received by the Guzmans.

22. As a result, and on information and belief, a foreclosure sale was held and Defendant LaSalle National Bank became the alleged purchaser at that foreclosure sale.

23. Defendant LaSalle National Bank then instituted a forcible detainer action against Jesus Guzman and all occupants in the Justice of the Peace Court in Nueces County, Texas, and was assigned the Honorable Larry G. Cox as Justice.

24. Once the tenants received the notice and forwarded it to the Guzmans, the Guzmans found out for the first time that there had been an attempted foreclosure of their home and that their tenants were about to be evicted. The Guzmans requested that they be allowed to sell the home to the tenants and that the attempted foreclosure be undone, to no avail, leaving them with no option but to file this lawsuit.

## V.

### Causes of Action.

#### A. Wrongful Foreclosure.

25. Plaintiffs reurge the allegations of paragraphs 12 through 24. Plaintiffs further show that Defendants committed wrongful foreclosure by virtue of the following actions:

- (a) Defendants failed to notify Plaintiffs at their last known address of the foreclosure sale, even though they were aware that Plaintiffs moved to San Antonio;
- (b) Defendants failed to notify Plaintiffs' law firm of the foreclosure sale, even though such firm had been representing Plaintiffs and had requested verification of the debt on behalf of Plaintiffs;

- (c) Defendants misrepresented the identity of the holder of the Note and, on information and belief, the wrong entity posted notice and foreclosed on the property; and
- (d) The Trustee, Carolyn Taylor, violated the State Bar of Texas Rules of Professional Conduct (the “Code of Ethics”) by contacting the Plaintiffs directly when she knew they were represented by an attorney, and by failing to send a copy of the foreclosure notice to the attorney.

26. The Property is worth at least Forty Thousand Dollars (\$40,000.00) more than what Plaintiffs owed. Consequently, Plaintiffs suffered damages in such amount and seek that amount from Defendants. Alternatively, Plaintiffs request that the sale be set aside and that they recover title to the Property free and clear of any lien by Defendants and seek cancellation of the debt.

**B. Breach of Contract.**

27. Plaintiffs reurge the allegations of paragraphs 11 through 25. Plaintiffs would further show that Defendants breached their contract with Plaintiffs in the following manner:

- (a) Defendants misapplied or otherwise failed properly to apply payments Plaintiffs made on their loan;
- (b) Defendants misrepresented the balance due on the Forbearance Agreement;
- (c) Defendants failed to accept payments and then pretended that the lack of payments was a default;
- (d) Defendants failed to comply with the contractual notice provisions in the Deed of Trust; and

- (e) Defendants failed to give a payoff quote when requested by Plaintiffs, thereby causing Plaintiffs to lose a sale of the property.

28. Plaintiffs have been damaged by the Defendants breaches in at least as much as Plaintiffs' equity in the property, which exceeded the minimum jurisdictional limits of this Court.

**C. Negligence.**

29. Plaintiffs reurge the allegations of paragraphs 12 through 28. Plaintiffs would show that Defendants occupied a position of trust as to Plaintiffs, whether as Trustees, Substitute Trustees, or as holder of the Note secured by the Deed of Trust. Defendants Carolyn Taylor, individually and as Trustee, and Hughes, Waters & Askanase also owed a duty based upon their position as attorneys to live up to the State Bar Rules of Professional Conduct (the "Code of Ethics") and notify the Plaintiffs' attorneys when taking the severe action of posting the Property for foreclosure and carrying through with a foreclosure on it. Defendants breached the duty owed to Plaintiffs, as set forth above, including by taking the following actions:

- (a) Sending Foreclosure Notices and other legal notices without sending a copy to Plaintiffs at their last known address;
- (b) Sending Foreclosure Notices and other legal notices without sending a copy to Plaintiffs' attorney; and
- (c) Failing to comply with the statutory and common law requirements regarding verification of the debt, contact with the debtor, etc.

30. Defendants' breach of such duties proximately caused the Plaintiffs injury in that as a direct result of Defendants' actions and inactions, Plaintiffs have suffered a foreclosure of their

home, thereby losing its valuable equity, which is an amount in excess of the minimum jurisdictional limits of this Court.

**D. Exemplary Damages.**

31. Plaintiffs reurge the allegations of paragraphs 12 through 30. Defendants' actions were outrageous, malicious, and otherwise morally culpable and support exemplary damages.

**E. Intentional Infliction of Emotional Distress.**

32. Plaintiffs reurge the allegations of paragraphs 12 through 31. Plaintiffs would show that Defendants desired to cause the foreclosure and for Plaintiffs to lose their home. Defendants believe that the consequences of their actions were substantially certain to result in Plaintiffs losing their home. Defendants' conduct was reckless in that Defendants should have known that there was a high degree of risk or harm that Plaintiffs would lose their home and suffer damages. The conduct of the Defendants caused emotional distress to Plaintiffs, which even resulted in physical symptoms to Plaintiff Mrs. Guzman, including a stomach disorder. The actions of Defendants caused Mr. Guzman to be turned down for a favorable interest rate in applying for a car loan for his daughter, and embarrassed by the foreclosure on his credit record reported by Defendants. The Guzmans have suffered embarrassment, fear, humiliation, and worry for years because of the unreasonable actions of Defendants.

**F. Unreasonable Debt Collection Practices.**

33. Plaintiffs reurge the allegations of paragraphs 12 through 32. Defendants' actions in failing properly to account for forbearance payments, failing properly to provide a payoff when requested, failing to verify the debt on the request of Plaintiffs, continually posting for foreclosure

when Plaintiffs were trying to pay off the debt, giving inconsistent accounting information on the amount of the debt, and generally failing to cooperate in allowing Plaintiffs to pay off the debt constitute unreasonable debt collection practices. The Defendants' failure to properly notify Plaintiffs and their attorney of a posted foreclosure sale is also an unreasonable debt collection practice. As a result of these practices, Plaintiffs have possibly lost their home to an improper foreclosure. The Guzmans have both been nervous, anxious, and fearful of losing their home and their credit rating. In addition, Mrs. Guzman has suffered physical symptoms and has been treated by a doctor for same. Defendants' conduct was intentional or reckless and was extreme and outrageous, thereby causing Plaintiffs severe emotional distress. Plaintiffs seek damages for their physical injuries and medical expenses, as well as their mental anguish and the loss of the equity in the Property. Plaintiffs further seek exemplary damages and attorneys' fees.

**G. Violations of the Texas Debt Collection Practices Act.**

34. Plaintiffs reurge the allegations of paragraphs 12 through 33. Plaintiffs would show that Ocwen Bank and/or LaSalle National Bank ("LaSalle") and/or Carolyn Taylor and/or Hughes, Waters & Askanase are debt collectors for purposes of the Texas Debt Collection Practices Act ("TDCPA"). Plaintiffs would show that Ocwen Bank, Carolyn Taylor, and Hughes, Waters & Askanase failed to respond in a timely manner to an allegation of the Plaintiffs' attorney in or about October 2002 that the debt was incorrect in accordance with TDCPA §392.202. Such Defendants also used unfair or unconscionable means by collecting or attempting to collect interest or a charged fee or expense incidental to the allegation that was not authorized by the terms of the parties' contract, in violation of TDCPA §392.303. Such Defendants also failed to disclose clearly in



communications with Plaintiffs the name of the person to whom the debt has been assigned or owed when making a demand for money, in violation of TDCPA §392.304. Such Defendants also violated TDCPA §392.304(a)(5), (6), and (8). Defendants' violation of the TDCPA entitles Plaintiffs to injunctive relief and actual damages and attorneys' fees under TDCPA §392.403.

**H. Violations of the Fair Debt Collection Practices Act.**

35. Plaintiffs reurge the allegations of paragraphs 12 through 34. Plaintiffs would show that Defendants' actions also violated the Federal Fair Debt Collection Practices Act.

**I. Declaratory Judgment.**

36. Plaintiffs reurge the allegations of paragraphs 12 through 35. Plaintiffs seek a declaration that the foreclosure was wrongful and that they are the current owners of the Property.

**J. Deceptive Trade Practices Act.**

37. Plaintiffs reurge the allegations of paragraphs 12 through 36. The violations of the TDCPA also constitute violations of the Texas Deceptive Trade Practices Act. The conduct of Defendants was knowing and, therefore, supports the imposition of additional damages under the Texas Deceptive Trade Practices Act.

**K. Temporary Restraining Order and Injunctive Relief.**

38. Plaintiffs reurge the allegations of paragraphs 12 through 37. Plaintiffs allege that the Honorable Larry G. Cox is a Justice of the Peace in Nueces County, Texas. He has set a jury trial for the purpose of determining who is entitled to the right of possession of the Property during the pendency of this lawsuit. Given that the determination of right of possession depends upon the propriety of the foreclosure and the title to the property and whether title to the property is in

Plaintiffs or Defendants or Defendant LaSalle, such Court lacks jurisdiction and should be enjoined from proceeding. In the event that a Temporary Restraining Order does not immediately issue, Plaintiffs will suffer irreparable harm in that they will be deprived of the use of their home throughout the pendency of this suit. Such harm is imminent because on Tuesday, June 3, 2003, there will be an eviction proceeding in which the Judge will not allow testimony about the wrongful foreclosure and the misrepresentation about the ownership of Plaintiffs' mortgage. Consequently, Plaintiffs seek a Temporary Restraining Order and a Temporary Injunction and a Permanent Injunction to enjoin and restrain the Honorable Larry G. Cox from the following:

- (a) continuing, prosecuting, or otherwise holding hearings or other proceedings in *Lasalle National Bank, as Trustee, Its Successors And Assigns v. Jesus A Guzman And All Other Occupants*, No. 03-Fd-000174-S In The Justice Court, Nueces County, Texas, Precinct Number 2-2;
- (b) rendering a verdict or decision, judgment, or otherwise ruling in *Lasalle National Bank, as Trustee, Its Successors And Assigns v. Jesus A Guzman And All Other Occupants*, No. 03-Fd-000174-S In The Justice Court, Nueces County, Texas, Precinct Number 2-2; and
- (c) taking any action other than dismissing the case, *Lasalle National Bank, as Trustee, Its Successors And Assigns v. Jesus A Guzman And All Other Occupants*, No. 03-Fd-000174-S In The Justice Court, Nueces County, Texas, Precinct Number 2-2, for lack of jurisdiction.

39. Plaintiffs further seek a Temporary Restraining Order, Temporary Injunction, and a Permanent Injunction to enjoin and restrain the Defendants other than the Honorable Larry G. Cox, their agents, servants, employees, representatives, or attorneys from the following:

- (a) issuing a notice of acceleration, notice of intent to foreclose, notice of foreclosure; notice posting of foreclosure, or otherwise taking actions designed to accomplish a foreclosure;
- (b) attempting to or actually taking possession of the Property, which is located at 5206 Millwood Drive, Corpus Christi, Texas;
- (c) interfering in any way with Plaintiffs' possession or Plaintiffs' tenants' possession of the Property;
- (d) taking any action whatsoever to collect a debt from the Plaintiffs;
- (e) taking any action whatsoever to report the alleged debt of the Plaintiffs to Defendants or any one of them to a credit reporting agency or other credit bureau or other person or entity; and
- (f) from taking any action whatsoever that may be construed as unreasonable debt collection or otherwise violating the Texas or federal statutes regarding debt collection.

**L. Temporary Injunction.**

40. Plaintiffs reurge the allegations of paragraphs 12 through 39. Plaintiffs seek a Temporary Injunction enjoining and restraining Defendants, their agents, employees, and attorneys

from taking any other action against Plaintiffs connected with the subject matter of this suit during the pendency of this suit.

**M. Permanent Injunction.**

41. Plaintiffs reurge the allegations of paragraphs 12 through 40. Plaintiffs seek a permanent injunction enjoining and restraining Defendants, their agents, employees, and attorneys from attempting to collect a debt, harass, foreclose, or take any other action against Plaintiffs connected with the subject matter of this suit.

**N. Damages.**

42. Plaintiffs reurge the allegations of paragraphs 12 through 41. Due to the wrongful disclosure, breach of contract, negligence, and gross negligence on behalf of Defendants, Plaintiffs have suffered a loss of equity in their home of at least \$40,000.00. In addition, Mrs. Guzman has suffered stomach problems, has incurred medical expenses, and has experienced a high degree of discomfort and distress over the actions of the Defendants. Given that the conduct of the Defendants was intentional and/or done with a reckless disregard for the welfare of the Plaintiffs, Plaintiffs are entitled to punitive damages, as well. Plaintiffs seek an amount in excess of the minimum jurisdictional limits of this Court from Defendants for such punitive damages.

**N. Attorneys' Fees.**

43. Plaintiffs reurge the allegations of paragraphs 12 through 42. Plaintiffs have been obliged to employ counsel to represent their interests by reason of the conduct and the acts of Defendants heretofore alleged. In that regard, Plaintiffs employed the undersigned attorneys and

Plaintiffs are obligated to pay such attorneys reasonable fees for the services necessarily rendered on their behalf.

**O. Demand for Jury Trial.**

44. Plaintiffs hereby demand a jury trial, and tender the requisite fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer, and the following orders be entered:

1. That a Temporary Restraining Order be issued without notice to the Honorable Larry G. Cox, restraining him, his agents, servants, officers, directors, employees, representatives, and attorneys from taking the actions set forth in paragraph 37 above;
2. That the Honorable Larry G. Cox be cited to appear and show cause, and that upon such hearing, a Temporary Injunction be issued enjoining the Honorable Larry G. Cox, his agents, servants, officers, directors, employees, representatives, and attorneys from taking the actions set forth in paragraph 37; and
3. That upon the conclusion of this suit, a Permanent Injunction be issued enjoining and restraining the Honorable Larry G. Cox, his agents, servants, officers, directors, employees, representatives, and attorneys from taking the actions set forth in paragraph 37.
- 4.. That a Temporary Restraining Order be issued without notice to Defendants other than the Honorable Larry G. Cox, restraining Defendants, their agents, servants, officers, directors, employees, representatives, and attorneys from taking the actions set forth in paragraph 38 above;

5. That Defendants other than the Honorable Larry G. Cox, be cited to appear and show cause, and that upon such hearing, a Temporary Injunction be issued enjoining Defendants, their agents, servants, officers, directors, employees, representatives, and attorneys from taking the actions set forth in paragraph 38; and
- 6 That upon the conclusion of this suit, a Permanent Injunction be issued enjoining and restraining Defendants other than the Honorable Larry G. Cox., their agents, employees, and attorneys from attempting to collect a debt, harass, foreclose, or take any other action against Plaintiffs connected with the subject matter of this suit.

Plaintiff further prays that upon final hearing the following be entered:

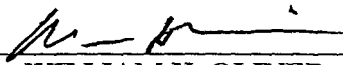
1. Judgment against Defendants, jointly and severally, for actual damages sustained by Plaintiffs in the amount of Fifty Thousand Dollars (\$50,000.00);
2. Judgment against Defendants, jointly and severally, for cancellation of the indebtedness described hereinabove;
3. Judgment against Defendants, jointly and severally, for punitive damages in an amount to be determined by the trier of fact;
4. Declaratory Judgment that Plaintiffs are the owner of the Property free and clear of any lien in favor of Defendants;
5. Permanent Injunction enjoining and restraining Defendants as set forth above;
6. Judgment for Plaintiffs to recover their reasonable and necessary attorneys' fees for bringing this case to trial and judgment, as well as a conditional award in the event of an appeal;

7. Judgment for both pre-judgment interest and post-judgment interest at the maximum interest rate allowed by law;
8. Judgment for costs of Court; and
9. Judgment for such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted this 2<sup>nd</sup> day of June, 2003.

Respectfully submitted,

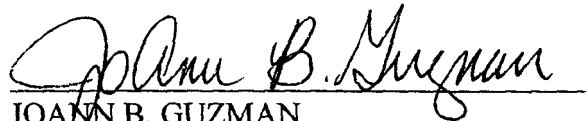
PIPKIN, OLIVER & BRADLEY, L.L.P.  
1020 N.E. Loop 410, Suite 810  
San Antonio, Texas 78209  
Telephone: (210) 820-0082  
Fax No.: (210) 820-0077

By:   
WILLIAM H. OLIVER  
State Bar No. 15265200  
ATTORNEYS FOR PLAINTIFFS

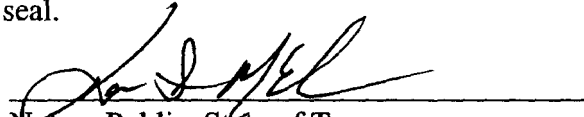
**VERIFICATION**

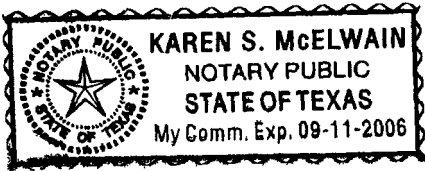
STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned Notary Public, on this day personally appeared JOANN B. GUZMAN, being by me duly sworn, on her oath deposed and said that she has read the above and foregoing PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER and that every factual statement contained therein is within her personal knowledge and is true and correct.

  
\_\_\_\_\_  
JOANN B. GUZMAN

SUBSCRIBED AND SWORN TO BEFORE ME on the 30<sup>th</sup> day of May, 2003, to certify which witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: 09/11/06





CAUSE NO. 03-61011-2

JESUS S. GUZMAN and JOANN B. GUZMAN,

Plaintiffs

v.

OCWEN FEDERAL BANK, FSB,  
LASALLE NATIONAL BANK, AS  
TRUSTEE, ITS SUCCESSORS AND  
ASSIGNS, SALOMON BROTHERS  
REALTY, CAROLYN TAYLOR,  
INDIVIDUALLY, AND AS  
SUBSTITUTE TRUSTEE, HUGHES,  
WATERS & ASKANASE, L.L.P. and  
THE HONORABLE LARRY G. COX,

Defendants.

§ IN THE COUNTY COURT AT LAW

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§

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§

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NUMBER

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NUECES COUNTY, TEXAS

**BOND FOR TEMPORARY RESTRAINING ORDER**

WHEREAS, JESUS S. GUZMAN and JOANN B. GUZMAN, Movants, has commenced an action herein against Defendants and have made application to the Court for a Temporary Restraining Order against said Defendants, enjoining and restraining them, their agents, representatives, servants, officers, directors and employees from the commission of certain acts more particularly described and as set forth in the Plaintiffs' Original Petition and Application for Temporary and Permanent Injunction and Application for Temporary Restraining Order on file herein.

NOW, THEREFORE, JESUS S. GUZMAN and JOANN B. GUZMAN, the undersigned, Movants in the above styled cause, as Principal and Hartford Insurance Company as Surety, in consideration of the issuance of said Temporary Restraining Order and other good and valuable consideration, do hereby undertake the sum of \$ 10,000.00, and promise to the effect

2003 JUN 2 3:39  
CLERK OF COURTS  
DISTRICT COURTS  
NUECES COUNTY, TEXAS  
DPTY

that Movant will abide by the decision which may be made in this cause and will pay all sums of money and costs that may be adjudged against Movants if such Temporary Restraining Order may be dissolved in whole or in part.

WITNESS its hand this 2nd day of June, 2003.

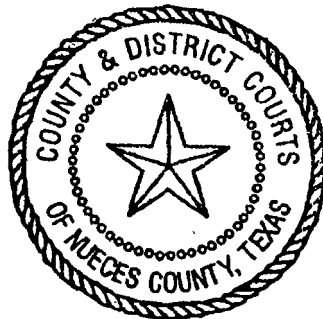
Jesus S. Guzman, by H.K.K., attorney  
JESUS S. GUZMAN *in fact*

Joanne B. Guzman, by H.K.K.  
JOANNE B. GUZMAN *attorney in fact*

Surety: Hartford Casualty Insurance Company

By: Cheryl Knife  
Cheryl Knife, Attorney-in-Fact

APPROVED this 2 day of June, 2003.



Clerk, County Court at Law No. 2,  
Nueces County, Texas

By: Claudia Puller

**THE HARTFORD**  
HARTFORD PLAZA  
HARTFORD, CONNECTICUT 06115

- Hartford Fire Insurance Company
- Hartford Casualty Insurance Company
- Hartford Accident and Indemnity Company
- Hartford Underwriters Insurance Company

- Twin City Fire Insurance Company
- Hartford Insurance Company of Illinois
- Hartford Insurance Company of the Midwest
- Hartford Insurance Company of the Southeast

KNOW ALL PERSONS BY THESE PRESENTS THAT the *Hartford Fire Insurance Company, Hartford Accident and Indemnity Company and Hartford Underwriters Insurance Company*, corporations duly organized under the laws of the State of Connecticut; *Hartford Insurance Company of Illinois*, a corporation duly organized under the laws of the State of Illinois; *Hartford Casualty Insurance Company, Twin City Fire Insurance Company and Hartford Insurance Company of the Midwest*, corporations duly organized under the laws of the State of Indiana; and *Hartford Insurance Company of the Southeast*, a corporation duly organized under the laws of the State of Florida; having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of UNLIMITED:

JAMIE HARRIS, SANDRA J. DESBROW, CHERYL KNIFE, BILLY RAY JINKS, DONALD N. JORDAN AND TIM MALEY OF SAN ANTONIO, TEXAS

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on September 12th, 2000, the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary, this 19th day of September, 2000.



*Paul A. Bergenholtz*

Paul A. Bergenholtz, Assistant Secretary

*John P. Hyland*

John P. Hyland, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } ss. Hartford

On this 19<sup>th</sup> day of September, 2000, before me personally came John P. Hyland, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



*Jean H. Wozniak*

Jean H. Wozniak  
Notary Public  
My Commission Expires June 30, 2004

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of June 2, 2003

Signed and sealed at the City of Hartford.



*Colleen Mastroianni*

Colleen Mastroianni, Assistant Vice President

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lose their home. The Court is, therefore, of the opinion that Plaintiffs are entitled to a Temporary Restraining Order, without notice.

~~It is, therefore, ORDERED that the Clerk of this Court shall forthwith issue a Temporary Restraining Order to continue into effect until conclusion of the hearing on the Temporary Injunction hereinafter set, or until further order of this Court, restraining and enjoining the HONORABLE LARRY G. COX, his agents, representatives, servants, employees, officers and directors from:~~

- ~~(a) continuing, prosecuting, or otherwise holding hearings or other proceedings in *Lasalle National Bank, as Trustee, Its Successors And Assigns v. Jesus A Guzman And All Other Occupants*, No. 03-Fd-000174-S In The Justice Court, Nueces County, Texas, Precinct Number 2-2;~~
- ~~(b) rendering a verdict or decision, judgment, or otherwise ruling in *Lasalle National Bank, as Trustee, Its Successors And Assigns v. Jesus A Guzman And All Other Occupants*, No. 03-Fd-000174-S In The Justice Court, Nueces County, Texas, Precinct Number 2-2; and~~
- ~~(c) taking any action other than dismissing the case, *Lasalle National Bank, as Trustee, Its Successors And Assigns v. Jesus A Guzman And All Other Occupants*, No. 03-Fd-000174-S In The Justice Court, Nueces County, Texas, Precinct Number 2-2, for lack of jurisdiction.~~

~~It is further ORDERED that the Clerk of this Court shall forthwith issue a Temporary Restraining Order to continue into effect until conclusion of the hearing on the Temporary Injunction hereinafter set, or until further order of this Court, restraining and enjoining Defendants OCWEN~~

**FEDERAL BANK, FSB, LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS, SALOMON BROTHERS REALTY, CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, HUGHES, WATERS & ASKANASE, L.L.P.,** their agents, agents, representatives, servants, employees, officers and directors from:

- (a) issuing a notice of acceleration, notice of intent to foreclose, notice of foreclosure; notice posting of foreclosure, or otherwise taking actions designed to accomplish a foreclosure;
- (b) attempting to or actually taking possession of the Property, which is located at 5206 Millwood Drive, Corpus Christi, Texas; *including but not limited to*
- (c) *prosecuting an eviction in cause number 03-FD-000174-5 On the Justice Court NUECES COUNTY TULSA Precinct number 2-2.* interfering in any way with Plaintiffs' possession or Plaintiffs' tenants' possession of the Property;
- (d) taking any action whatsoever to collect a debt from the Plaintiffs;
- (e) taking any action whatsoever to report the alleged debt of the Plaintiffs to Defendants or any one of them to a credit reporting agency or other credit bureau or other person or entity; and
- (f) from taking any action whatsoever that may be construed as unreasonable debt collection or otherwise violating the Texas or federal statutes regarding debt collection;

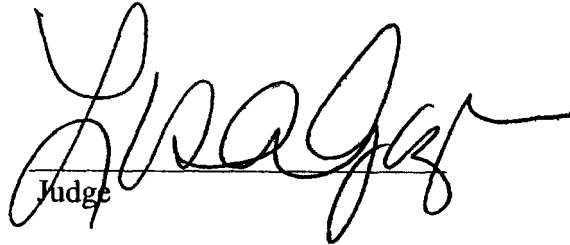
provided that the Plaintiffs shall, prior to the issuance of such Temporary Restraining Order, File with the Clerk of this Court, a Bond in the amount of \$ 1,000.00, in sufficient form and condition as required by law to be approved by the Clerk of this Court.

It is further ORDERED that Plaintiffs' Original Petition and Application for Temporary and

Permanent Injunction and Application for Temporary Restraining Order is set for hearing on

June, 12, 2003, <sup>at 10:00 a</sup> in the presiding County Court at Law No. 2 of Nueces County, Texas, by agreement of all parties and by Order of this Court.

SIGNED AND ENTERED on this 2<sup>nd</sup> day of June, 2003, at 3:30 o'clock p.m.

  
Judge

Return signed copy of Order to:

William H. Oliver, Esq.  
Pipkin, Oliver & Bradley, L.L.P.  
1020 N.E. Loop 410, Suite 810  
San Antonio, Texas 78209



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CAUSE NO. \_\_\_\_\_

<b>JESUS S. GUZMAN and JOANN B. GUZMAN,</b>	§	<b>IN THE COUNTY COURT AT LAW</b>
<b>Plaintiffs</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>OCWEN FEDERAL BANK, FSB, LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS, SALOMON BROTHERS REALTY, CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, and HUGHES, WATERS &amp; ASKANASE, L.L.P.,</b>	§	<b>NUMBER _____</b>
	§	
	§	
	§	
	§	
<b>Defendants.</b>	§	<b>NUECES COUNTY, TEXAS</b>

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, JESUS S. GUZMAN and JOANN B. GUZMAN (herein collectively referred to as "Plaintiffs" or the "Guzmans"), Plaintiffs herein, and file this, their Original Petition and Application for Temporary and Permanent Injunction and Application for Temporary Restraining Order complaining of OCWEN FEDERAL BANK, FSB, LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS, SALOMON BROTHERS REALTY, CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, and HUGHES, WATERS & ASKANASE, L.L.P. (hereinafter collectively referred to as "Defendants"):

I.

**DISCOVERY CONTROL PLAN.**

1. The nature of this cause is such that discovery should be conducted under Discovery Control Plan – Level 2, pursuant to Tex.R.Civ.P. 190.2.

II.

**PARTIES.**

2. Plaintiff JESUS S. GUZMAN (hereinafter “Mr. Guzman”) is an individual who resides at 8742 Ridgefront, San Antonio, Bexar County, Texas 78250.

3. Plaintiff JOANN B. GUZMAN (hereinafter “Mrs. Guzman”) is an individual who resides at 8742 Ridgefront, San Antonio, Bexar County, Texas 78250.

4. Defendant OCWEN FEDERAL BANK FSB is a federal savings bank organized and doing business under the laws under the United States of America and may be served with citation in this action by serving its C.E.O., William C. Erbey, at 1675 Palm Beach Lakes Boulevard, Suite 1000, West Palm Beach, Florida 33401-2129 by certified mail, return receipt requested.

5. Defendant LASALLE NATIONAL BANK, AS TRUSTEE, ITS SUCCESSORS AND ASSIGNS is a national bank organized and doing business under the laws under the United States of America and may be served with citation in this action by serving its C.E.O., Norman Bobins, at 135 South LaSalle Street, Suite 425, Chicago, Illinois 60603 by certified mail, return receipt requested.

6. Defendant SALOMON BROTHERS REALTY CORPORATION is a foreign business corporation doing business in the State of Texas and may be served with citation in this action by serving its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

7. Defendant CAROLYN TAYLOR, INDIVIDUALLY, AND AS SUBSTITUTE TRUSTEE, is an individual employed as an attorney with Defendant HUGHES, WATERS & ASKANASE, L.L.P., and may be served with citation at 1415 Louisiana, 37<sup>th</sup> Floor, Houston, Texas 77002-7354.

8. Defendant HUGHES, WATERS & AKANASE, L.L.P. is a business organization duly existing under the laws of the State of Texas, and can be served with citation at 1415 Louisiana, 37<sup>th</sup> Floor, Houston, Texas 77002-7354.

### III.

#### Jurisdiction and Venue.

9. This Court has jurisdiction over Defendants Ocwen Bank, LaSalle National Bank, and Salomon Brothers Realty by virtue of the fact that they own property in the State of Texas, do business in the State of Texas, including owning and servicing of loans, which necessarily involves contracting with Texas residents by mail or otherwise when at least one of the parties is to perform the contract in Texas. Further, such Defendants have committed the torts as set forth hereinbelow in whole or in part in Texas. Such Defendants are foreign entities engaged in business in Texas. Defendant Carolyn Taylor is a resident of the State of Texas and, therefore, subject to personal jurisdiction. Defendants Hughes, Waters & Askanase, L.L.P. is a law firm existing under the laws of

the State of Texas, which has its headquarters in Texas and does business in Texas, and is therefore subject to personal jurisdiction.

10. Venue is proper in Nueces County, Texas, as the suit involves recovery of real property and removal of encumbrance on real property located in Nueces County, Texas. Venue is proper under Tex. Civ. Prac. & Rem. Code Ann. Art. 15.002(a)(1) as Nueces County is where all or a substantial part of the events or omissions occurred, including the wrongful foreclosure sale described below. Venue is also proper as to all of the Defendants under Tex. Civ. Prac. & Rem. Code Ann. Art. 15.005, as the claims or actions against each of them arose out of the same transaction or occurrence, or series of transactions or occurrences.

#### IV.

#### Statement of Facts.

11. Mr. and Mrs. Guzman purchased a home at 5206 Millwood, Corpus Christi, Nueces County, Texas, on or about January 15, 1990 (the "Property"). They financed the purchase through Mortgage Creditcorp, Inc., granting a Deed of Trust lien dated on or about January 15, 1990, and recorded in Volume 2376, Page 435 of the Deed of Trust Records of Nueces County, Texas (the "Deed of Trust"). The original Trustee was William A. Whittle. During the year 1992, Mr. Guzman lost his job and was unable to make his mortgage payments. The mortgage with Mortgage Creditcorp, Inc. was a loan guaranteed by the United States Department of Housing and Urban Development ("HUD"). Accordingly, when Mr. Guzman was unable to make his payments, he contacted HUD and received a Forbearance Agreement (the "Forbearance Agreement") whereby the delinquent amount owed would be paid over a period of years by increasing the monthly payment on

the mortgage. The original Forbearance Agreement was signed on or about January 12, 1993, and the Guzmans proceeded to make their regular monthly payments called for by the original Promissory Note, as well as an extra amount to pay the arrearage pursuant to the terms of the Forbearance Agreement.

12. The Guzman's found a tenant to occupy the home and make the new payment as their rental payment. That arrangement has continued through the present. Once the Forbearance Agreement was in place and the Guzmans were making their regular mortgage payment and the forbearance payment through their tenant, HUD re-transferred the mortgage to Defendant Salomon Brothers Realty (hereinafter "Salomon Brothers"). This occurred in or around September 1996. Salomon Brothers contracted with Ocwen Federal Bank, FSB (hereinafter "Ocwen Bank") to service the said loan.

13. The assignment from HUD to Ocwen Bank recited that Ocwen Bank was bound by the terms of the Forbearance Agreement.

14. On two occasions, Ocwen Bank, on behalf of Salomon Brothers, sent the Guzmans new Forbearance Agreements in which the forbearance payment was raised. The Guzmans voluntarily paid the additional amount. On or about February 1998, the Guzmans were making a regular monthly payment of \$949.72, even though the payment stated in the original Note was \$747.00, and the Guzmans had been making extra payments since 1993.

15. On numerous occasions, Ocwen sent the Guzmans notices that they were in default and that the forbearance amount exceeded \$10,000.00. The Guzmans were surprised by this, given that their forbearance payments should have already paid off the arrearage. They hired Richard

Halter, an attorney in San Antonio, to request an accounting and an explanation from Ocwen Bank. Richard Hatter sent a written request, but no such explanation was received. No accounting has ever been received by the Guzmans showing the application of the additional payments to the forbearance amount. The Guzmans tried numerous times to get an accounting from either HUD or Ocwen Bank, with no success. Ocwen Bank continued to accept the regular monthly payment of \$949.72 until August 2002, when it refused further payments.

16. The original arrearage for which the Guzmans signed a Forbearance Agreement with HUD was less than Five Thousand Dollars (\$5,000.00). The arrearage has been paid by the additional monthly payments made by the Guzmans or on their behalf. Nevertheless, Ocwen Bank continues to insist that more than Ten Thousand Dollars (\$10,000.00) is still owed on the arrearage. They have refused to give an accounting after numerous requests by the Guzmans and by two different law firms on their behalf. Ocwen has also failed to give credit for payments made. Further, Ocwen has represented that the arrearage has a different balance at different times and has failed to give payoff quotes that would enable to Guzmans to sell their home or move their loan.

17. Recently, the Guzmans' attorney requested verification of the debt. Three months later, Defendants Carolyn Taylor and Hughes, Waters & Askanase wrote back representing that the unpaid principal balance of the Guzmans' Note was Sixty-Four Thousand, Fifty and 52/100 Dollars (\$64,050.52), and that the loan was due for June 1, 2002. They represented further that Salomon Brothers was the owner of the Note and that Ocwen Bank was the servicer. With that information, the Guzmans agreed with their tenants to sell the house for the amount of the principal balance plus the arrearage, which they estimated to total about Seventy-Two Thousand Dollars (\$72,000.00). The