

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**
CHARLOTTESVILLE DIVISION

DONALD SCOTT and
MELISSA SCOTT,

Plaintiffs,

v.

GMAC MORTGAGE, LLC

Defendant.

CIVIL ACTION NO. 3:10-CV-24

MEMORANDUM OPINION

JUDGE NORMAN K. MOON

Plaintiffs Donald Scott and Melissa Scott brought this action for damages, seeking to hold Defendant GMAC Mortgage, LLC ("GMAC") liable for common law fraud and violations of the Homeowners Protection Act of 1998, 12 U.S.C. § 4901 *et seq* ("HPA"). In the course of discovery, Plaintiffs brought a motion for sanctions pursuant to Rule 37(c), claiming that GMAC failed to disclose information contained in an electronic document clearinghouse, known as "Pilot." (docket no. 88). Upon consideration of the motion, the magistrate judge entered an order granting Plaintiffs attorney fees; prohibiting Defendant from relying on information contained in Pilot for a wide variety of purposes; and recommending that I enter a default judgment holding Defendant liable on the fraud claim, and issue an adverse jury instruction. (docket no. 111). This appeal followed. (docket no. 143).

For the reasons stated herein, and as set forth more fully below, I will modify those portions of the order prohibiting Defendant from relying on information contained in Pilot; adopt the recommendation to enter a default judgment; decline to review, as moot, the issue of an adverse jury instruction; affirm the award of attorney fees and costs; and award further fees and costs associated with this appeal.

I.

Plaintiffs entered a residential mortgage refinance transaction with GMAC in August, 2007. The complaint alleges that in the course of the transaction, GMAC fraudulently misrepresented that the loan would not be encumbered with Lender Paid Mortgage Insurance ("LPMI"); that Defendant failed to disclose the existence of LPMI in the manner required by the Homeowners Protection Act; and that Plaintiffs were unable to refinance their mortgage at a desirable interest rate as a result. GMAC admits liability on the HPA claim, but argues, *inter alia*, that the two-year statute of limitations for fraud has lapsed, Va. Code §§ 8.01-243, 249, and that Plaintiffs cannot show that they reasonably relied on GMAC's alleged false representations. *See Cohn v. Knowledge Connections, Inc.*, 585 S.E.2d 578, 581 (Va. 2003). Both defenses turn on the extent to which Plaintiffs knew, or should have known, that their loan was encumbered with LPMI when they negotiated and closed on the loan in August, 2007.

Accordingly, the contents and provenance of a number of loan application documents are of great importance. These include:

- (i) "General Loan Application Acknowledgment" dated August 3, 2007, signed by Defendant and Plaintiffs, indicating that "[a]t the time of the application, [Plaintiffs'] loan does not require Private Mortgage Insurance," (hereinafter, "Loan Acknowledgment");
- (ii) "Mortgage Loan Commitment," dated August 6, 2007, signed by Defendant but not Plaintiffs, indicating that "Private Mortgage Insurance is required," (hereinafter, "GMAC Loan Commitment");
- (iii) "Mortgage Loan Commitment," dated August 6, 2007, signed by Plaintiffs and Defendant, containing no language concerning private mortgage insurance, (hereinafter, "Scott Loan commitment"); and
- (iv) "Notice Regarding Private Mortgage Insurance," dated January 13, 2010, which appears to comply with the HPA's LPMI disclosure requirements, except that it was not timely delivered (hereinafter, "LPMI Notice").

The existence of these documents gives rise to a number of obvious questions, the resolution of which bears directly on the outcome of the case. Any evidence tending to explain the inconsistency among the documents, why the LPMI notice is dated months after the closing, who created these documents, and when, is highly material.

As explained more fully below, it has become evident that the answers to these questions are found in, or at least suggested by, information contained within GMAC's "Pilot" system. According to GMAC's Rule 30(b)(6) designee, Susan Young, "Pilot is the electronic system of record. It is the tool that was utilized to process, underwrite, and close the loan." Former GMAC employee Yvonne Wolert testified that Pilot keeps track of "all the information" needed to close a new loan transaction, including information inputted by the loan processor, underwriters, loan officers, and managers. GMAC used Pilot to map the information from these disparate sources onto the various documents used to process Plaintiffs' loan. Consequently, the allegation that Defendant withheld information contained in Pilot is quite serious.

A.

A party's duty to disclose documents in discovery has a number of bases. First, Rule 26(a) imposes a duty to disclose "without awaiting a discovery request . . . a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession . . . and may use to support its claims, or defenses" Fed. R. Civ. P. 26(a)(1)(A)(ii). Second, Rule 34 permits a party to request production of "documents or electronically stored information." Fed. R. Civ. P. 34(a). The responding party may object to the request, but if it is a partial objection, the party must "specify the part and permit inspection of the rest." Fed. R. Civ. P. 34(b)(2)(C).

Pursuant to the pretrial order, Rule 26(a) initial disclosures were due on July 15, 2010. In compliance with the deadline, Defendant produced a number of loan documents. However, those disclosures were not complete. Significantly, Defendant failed to include a copy of what are known as the “contemporaneous notes” from GMAC loan officer Karen Morris. Dated July 31, 2007, the notes indicate that she “[s]poke to Donald [Scott] and discussed 40 Yr. LPMI, 30 Yr. LPMI, 30 year Combo, and 30 Year with MI.” And although it appears on the face of the contemporaneous notes that they were printed, or accessed from Pilot, at 11:43 a.m. on August 26, 2010, they were not produced until November 24, 2010, when GMAC appended them as an exhibit to a brief on summary judgment.

Paragraph 2 of Plaintiffs’ October 24, 2010 request for production broadly sought the following documents:

For any loans between Plaintiffs and GMAC that were secured by Plaintiffs’ home, any and all documents containing, evidencing, referring to, or otherwise involving: (a) conversation/contact/loan logs; . . . (c) all internal GMAC communications; . . . (e) the available options, negotiation, terms, processing, servicing . . . [and] (m) the servicing of any such loan, including responding to inquiries made by or on behalf of Plaintiffs concerning mortgage insurance.

By letter to GMAC dated December 14, 2010, Plaintiffs voiced numerous discovery objections, among them that the late production of the contemporaneous notes had given rise to their suspicion that GMAC was withholding documents. Accordingly, they asked that GMAC “confirm that GMAC has produced every requested document. . . .” In a more concise follow-up letter dated December 17, 2010, Plaintiffs wrote to “make specific demand for documents that we believe should have been provided to us” The letter proceeds to describe that a “former GMAC employee”¹ informed counsel that:

¹ Later identified as Yvonne Wolert.

the Pilot program should generate a "log" or some other form of evidence that shows: what documents were generated as a part of the loan; when those documents were generated; who accessed those documents; when those documents were accessed; who amended any accessed documents; when any amendments were made; why the amendments were made; etc. In addition, it is our understanding from this source that the contact notes made and stored in the Pilot program, of which your "contemporaneous note" is one, should be numerous.

On December 23, 2010, Defendant's counsel responded, offering to meet and confer on January 3, 2011 to resolve the various issues identified. Prior to the meeting, Plaintiffs filed a motion to compel. Then, by letter dated January 4, 2011, Plaintiffs responded to Defendant's objection that the Paragraph 2 request was overly broad, by agreeing to limit the request "to the subject Loan." However, they noted that "for the reasons stated previously . . . we are concerned that we have not been provided . . . *GMAC's entire paper and electronic files.*" (emphasis added).

B.

On January 20, 2011, the parties appeared before the magistrate judge for a hearing on the motion to compel. Upon counsel's suggestion that the matter could best be resolved out of court, the magistrate judge responded:

[T]he problem is, it's taken this to get us to this point, and there's no excuse for that. The plaintiff has asked, the plaintiff moved, nothing was done, nothing – things were forthcoming, but it's dribbled in and it's dribbled out, and I want to fix a drop-dead date that the answers to these are as complete as they're going to get. And if there are no answers to them, then [Plaintiffs] can use those no answers however they want to.

Nonetheless, he deferred any decision on the motion to allow the parties opportunity to resolve the dispute. After conferring subsequent to the hearing, the parties submitted a number of discovery deadlines to the court, which the magistrate judge adopted by order dated January 25, 2011. The order fixed a February 4, 2011 drop-dead date for Defendant to complete its supplemental responses and document production. Having determined that the matter was resolved, the magistrate judge dismissed the motion to compel without prejudice on January 26, 2011.

On February 4, 2011, in purported compliance with the discovery deadline, Defendant issued its supplemental responses to the request for production of documents. Again, it objected to Paragraph 2 of Plaintiffs' request, asserting that it was overly broad. Despite not having produced any additional Pilot documents, Defendant contended that "GMAC has produced the entire loan file and all notes or communications related to the Loan."

Evidently unsatisfied with Defendant's response, Plaintiffs filed a motion for sanctions on March 4, 2011, on the basis of GMAC's "refus[al] to provide the electronically stored Pilot system information or documents." Upon consideration of the motion, the magistrate judge noted:

The problem with this is when you couple the requirements of Rule 26 with the responses here, an opposing party would have the right to rely on those all the way up through summary judgment and trial. But that isn't what the evidence reveals. There were documents not produced contained in what I would call this clearing house electronic storage medium called the Pilot Program accessible by and to anybody working on the loan, clearly relevant to these proceedings. Whether admissible or not is not the question. But certainly could lead to discoverable evidence, including the preparation of any examination of any opposing witness that the defense may offer, including the preparation of the expert for purposes of testifying as to whether there was any fraud or anything else.

He found that there had been "an abject failure to produce evidence that is crucial to this case or at least the development of the case."

Accordingly, the magistrate judge entered an order granting attorney fees and prohibiting Defendant from (i) using information obtained from Pilot in support of or opposition to any motions for summary judgment or partial summary judgment; (ii) relying in whole or part on any information contained in the Pilot system in support of its motion to exclude the testimony of Plaintiffs' expert witness; and (iii) opposing any of Plaintiffs' claims or supporting any of its defenses with the use of any information contained in the Pilot system. He further recommended that I (i) enter default judgment against Defendant on all issues of liability related to Plaintiffs'

claim for fraud; and (ii) in the event the case proceeds to trial, issue a jury instruction concerning Defendant's failure to disclose, and informing the jurors that they may draw an adverse inference from such non-disclosure.

II.

Under Federal Rule of Civil Procedure 72(a), the nondispositive orders of a magistrate judge may only be set aside if clearly erroneous or contrary to law. "The decision to award sanctions . . . is generally considered nondispositive unless the sanction imposed is itself dispositive of a claim or defense, *i.e.*, the dismissal of a claim or defense." *Bowers v. Univ. of Virginia*, No. 3:06-cv-41, 2008 WL 2346033, at *4 (W.D. Va. June 6, 2008). Among other things, the magistrate judge recommended an entry of default judgment. This recommendation must be reviewed *de novo*.

A.

A failure to disclose under Rule 26(a) may give rise to the imposition of sanctions. *See* Fed. R. Civ. P. 37(c). As noted earlier, Rule 26(a) requires a party to disclose, without a discovery request, "a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has . . . and may use to support its claims or defenses. . . ." The duty is on-going, and a party must supplement its initial disclosures if it learns that they are incomplete or incorrect. Fed. R. Civ. P. 26(e). According to the 2000 Advisory Committee Notes, the "use" implicating Rule 26 includes "any use at a pretrial conference, to support a motion, or at trial. The disclosure obligation is also triggered by intended use in discovery" For instance, "use of a document to question a witness during a deposition is a common example." *Id.* At the outset, I note that Defendant initially failed to disclose Rule 26(a) material, consisting in particular of the contemporaneous

notes. Although it appears on the face of the notes that Defendant accessed them on August 26, 2010, it first produced them nearly three months later.

Moreover, GMAC clearly used the information contained within Pilot to “question a witness during a deposition.” *See* Fed. R. Civ. P. 26 advisory committee’s note. Susan Young testified that in preparation for her February 18, 2011 deposition, she “reviewed that system to see if I could identify why some of the [loan] documents might have been different and was not able to identify any change” that would have explained it. She ultimately concluded that the discrepancy among the documents must have arisen from a software malfunction, and Defendant relied on this testimony in its reply brief in support of its motion for summary judgment, filed on March 11, 2011. Although Defendant contends that its invocation of Young’s testimony does not amount to a “use” within the meaning of Rule 26, because GMAC’s brief only cites to Young’s testimony concerning the software glitch, I disagree. Her statement that she “reviewed that system” to arrive at her determination necessarily implicates the full scope of information available within Pilot. Accordingly, Rule 26(e) required Defendant to disclose the Pilot data as early as February 18, 2011.

Under Rule 37(c)(1), a court may impose sanctions if a party “fails to provide information . . . as required by Rule 26(a) or (e) . . . unless the failure was substantially justified or harmless.” In *Southern States Rack and Fixture Company v. Sherwin-Williams Company*, 318 F.3d 592 (4th Cir. 2003), the Fourth Circuit identified five factors that a court should consider in making such determinations:

(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing Party’s explanation for its failure to disclose the evidence.

Id. at 597. The court explicitly held that this test “does not require a finding of bad faith or callous disregard of the discovery rules,” although it may be “relevant to the fifth factor.” *Id.*

Defendant contends that the first and fourth *Southern States* factors weigh in its favor, because the undisclosed information was duplicative and immaterial. As has become apparent, that contention is patently false. Following the magistrate judge’s order granting sanctions, Defendant produced a number of screenshots from Pilot, including the following:

- (i) GMAC/DMS 910, entitled “Items needed for processing,” stating that “PMI Requirements” were “Waived” as of August 6, 2007.
- (ii) GMAC/DMS 824, entitled “Changed Pricing and Lock Data,” showing that on August 6, 2007, a user changed the “MI Insured” field on the loan four times.
- (iii) GMAC/DMS 915, entitled “Items Required for Final Submission,” showing two “Mortgage Loan Commitments,” dated August 6, 2007 and August 16, 2007.
- (iv) GMAC/DMS 916, entitled “Items Required for Final Approval” showing that a “Notice Regarding Mortgage” was “outstanding” as of January 13, 2010.
- (v) GMAC/DMS 935-936, entitled “Loan Data Export History,” showing the identity, by username, of individuals who accessed the loan, along with dates and times of access.
- (vi) GMAC/DMS 959, entitled “Notes to Closing,” identifying GMAC employees who had not been previously identified (i.e. Brandi Brewer and Pam Smith) and who were involved in the loan transaction.

The significance of these documents is extraordinary, and the failure to produce them until this late hour is inexcusable.

One of GMAC’s principal arguments in support of its motion for summary judgment was that Plaintiffs knew or should have known that their mortgage “required” LPMI, pursuant to a GMAC policy that “required” such insurance where the principal amount of the loan exceeded 80% of the appraisal value of the property securing the loan. To the extent the argument is

sound, it suggests that Plaintiffs' claim is time barred, and that Plaintiffs' cannot prove reasonable reliance on GMAC's alleged fraudulent statements. Yet, GMAC/DMS 910 suggests that Defendant's argument was utterly frivolous because "PMI Requirements" had been "waived."

Another lately produced document may provide information relevant to determining why there are two, conflicting Loan Commitments dated August 6, 2007. GMAC/DMS 824 shows that a user identified as "b181ga34" changed the "MI Insured" field on the loan at 2:56 p.m., 2:57 p.m., 2:59 p.m, and 3:13 p.m. on August 6, 2007. Yet because of GMAC's obstinate refusal to produce this clearly relevant information, Plaintiffs have not yet been able to determine who "b181ga34" is, and why this user might have changed the "MI Insured" field four times in one day. Although this line of inquiry might have been unavailing, Plaintiffs should have been given the opportunity to pursue it.

Plaintiffs have argued that a January 25, 2010 letter from GMAC purporting to "enclos[e] copies of the documents prepared during the origination of your loan," is indicative of fraud, because the enclosed LPMI Notice was actually dated January 13, 2010, well after the origination of the loan. GMAC/DMS 916 corroborates this claim, showing that a "Notice Regarding Mortgage" was an outstanding "Item[] Required for final Approval" as of January 13, 2010. Another lately produced document shows that there may be a third Loan Commitment document, which must be investigated. Another document reveals at least two potential new witnesses, Brandi Brewer and Pam Smith. And GMAC/DMS 935-936 confirms that Plaintiffs were right to suspect, months ago, that Defendant's had failed to produce a "log or list of actions that were taken on the Scotts' loan." Accordingly, the first and fourth *Southern States* factors weigh strongly against Defendants.

Contrary to Defendant's contention, a short continuance would not cure the problem. The significance of the information lately disclosed would require the parties to depose nearly every witness again, to interview new witnesses, and to begin the summary judgment process *ab initio*. As this would require a lengthy continuance, at significant cost to the Plaintiffs, the second *Southern States* factor weighs in favor of granting the default.

Moreover, as Defendant has only provided feeble justification for its refusal to produce Pilot documents, the fifth *Southern States* factor weighs against it. GMAC has argued that production would be "burdensome," and that GMAC believed it had reached a compromise with Plaintiffs, whereby Plaintiffs agreed to allow GMAC to withhold its entire electronic loan file. As discussed in Part B, below, neither of these contentions bears any scrutiny, and viewed together with GMAC's other misrepresentations, they are indicative of bad faith intent to deprive Plaintiffs of key evidence to which they are manifestly entitled. Thus, the only *Southern States* factor that arguably weighs in Defendant's favor is the third, since the trial has not yet begun.

Especially when viewed in light of Defendant's refusal to respond to discovery requests, discussed below, the entry of a default judgment on Plaintiffs' claim of liability for fraud is wholly appropriate under Rule 37(c).

B.

Defendant argues that the *Southern States* test is inapposite where a court enters a default judgment sanction. In such cases, Defendant posits that the court must apply a four-factor test, which includes a bad-faith prong. *Southern States* rejected application of that test, including the bad faith requirement, to a sanction imposed under Rule 37(c)(1). See 318 F.3d at 597. One plausible reading of the decision is that it applies to all analyses under the rule. However, another colorable reading is that the five-factor *Southern States* test is limited to the case of

evidence exclusion. *See Southern States*, 318 F.3d at 597 (“While the broad language of these decisions suggests that a court must consider [the four-factor test] as part of any sanctions analysis under Rule 37, neither of these cases addressed exclusion of undisclosed evidence under Rule 37(c)(1)”). Thus, in light of the magistrate judge’s indication that he based his decision in part on Defendant’s failure to respond appropriately to discovery requests, which directly implicates Rule 37(b), and Defendant’s contention that the four-factor standard provides no basis for a default judgment, it is appropriate to address these issues.

A failure to comply with a court order, including a scheduling order, may give rise to discovery sanctions. Fed. R. Civ. P. 37(b)(2)(A); *Hathcock v. Navistar Int’l Trans. Corp.*, 53 F.3d 36, 40 (1995) (holding that “a default sanction can, under certain circumstances, be an appropriate response to the violation of a Rule 16 order.”). In evaluating a motion for sanctions under Rule 37(b), the court must consider four factors: “(1) whether the noncomplying party acted in bad faith, (2) the amount of prejudice that noncompliance caused the adversary, (3) the need for deterrence of the particular sort of non-compliance, and (4) whether less drastic sanctions would have been effective.” *Anderson v. Found. for Advancement, Educ. & Employment of Am. Indians*, 155 F.3d 500, 504 (4th Cir.1998); *accord Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 348 (4th Cir.2001) (*en banc*), *cert. denied*, 535 U.S. 986, 122 S.Ct. 1537, 152 L.Ed.2d 465 (2002), and *cert. denied*, 535 U.S. 986, 122 S.Ct. 1538, 152 L.Ed.2d 465 (2002).

While a court has broad discretion to impose discovery sanctions, it is not “without bounds or limits.” *Wilson v. Volkswagen of Am.*, 561 F.2d 494, 503 (4th Cir. 1977). “In the case of default, the ‘range of discretion is more narrow’ than when a court imposes less severe sanctions.” *Hathcock v. Navistar Int’l Trans. Corp.*, 53 F.3d 36, 40 (4th Cir. 1995) (citing

Volkswagen, 561 F.2d at 503). This is because a default judgment deprives a party of its right to trial by jury, and “runs counter to sound public policy of deciding cases on their merits, and against depriving a party of his fair day in court.” *Wilson*, 561 F.2d at 504. (quotations omitted). The Fourth Circuit has “emphasized the significance of warning a defendant about the possibility of default before entering such a harsh sanction.” *Hathcock*, 53 F.3d at 40. “[T]he exercise of the power should be confined to the ‘flagrant case’ in which it is demonstrated that failure to produce ‘materially affect[s] the substantial rights of the adverse party’ and is ‘prejudicial to the presentation of his case.’” *See also Wilson*, 561 F.2d at 504.

As noted, the magistrate judge sought to impose a “drop-dead date” for the completion of discovery, and ultimately fixed a February 4, 2011 deadline for Defendant’s document production to be complete. When the date arrived, Defendant had still not produced all of the documents responsive to Plaintiffs’ Rule 34 request for documents. Moreover, its objections should not have prevented it from producing the Pilot files related to the subject loan.²

Defendant effectively contends that the court must explicitly use the word “default” as a pre-requisite to imposing a default judgment sanction. However, the Fourth Circuit has merely “emphasized the significance of warning,” *Hathcock*, 53 F.3d at 40, and described explicit warning as a “salient fact.” *Lolatchy v. Arthur Murray, Inc.*, 816 F.2d 951, 954 n.2 (4th Cir. 1987). Although there is strong language in an unpublished decision suggesting that the court “must” explicitly warn of default, the court ultimately remanded the case, because the four-factor test did not “unequivocally weigh in favor of dismissal, especially in light of the absence of

² As mentioned, Defendant objected that the request was overly broad to the extent it applied to information regarding loans other than the subject loan, and information that was protected by the work product and attorney-client privileges. The first objection is clearly inapposite to Pilot files related to the subject loan, and there has never been any indication that Pilot contained any documents protected under the attorney-client, or work product privileges. Although the rules allow a party to object to a request for production of documents, they must nonetheless produce those documents to which they have no credible objection. *See Fed. R. Civ. P. 34(b)(2)(C).*

notice” *Malhotra v. KCI Technologies, Inc.* 240 Fed. App’x 588, 590 (4th Cir. 2007) (unpublished decision). Thus, none of these cases hold that notice is *per se* dispositive.

Moreover, at the January 20, 2011 hearing, the magistrate judge made it clear that Defendant’s failure to comply with discovery requests would result in sanctions. He told Defendant’s counsel that “the burden is on you” to satisfy Plaintiffs’ discovery demands. He warned that “the discovery requests have not been answered, or they’ve been answered in ways where objections have been voiced or put forth that really are not sustainable in some form.” He further cautioned that “if I find GMAC has withheld evidence, there are going to be sanctions,” and in a clear reference to GMAC, he also admonished that it was inexcusable to “force a motion to compel near the end of discovery on some things that are just so clearly and easily answerable.” Finally, his admonition that a “wide range” of sanctions could be imposed implicated the panoply of options at the court’s disposal. These repeated warnings substantially satisfy the notice requirement imposed by the caselaw.

Moreover, each element of the four-factor test supports the determination that a default judgment is appropriate. *See Anderson v. Found. for Advancement, Educ. & Employment of Am. Indians*, 155 F.3d 500, 504 (4th Cir.1998). Most significantly, Defendant’s catalog of misdeeds and misrepresentations indicates bad faith intent to withhold key evidence from Plaintiffs and the court. For instance, at the hearing on the motion to compel, Defendant misrepresented that for the “first time” GMAC was learning what Plaintiffs claimed was deficient. This was not true. Later, in its opposition to the motion for sanctions, GMAC asserted that Plaintiffs “did not serve written discovery requesting production of the Pilot program,” and that they “did not even mention the Pilot program in their written discovery requests until issuing 30(b)(6) deposition topics on February 14, 2011 . . .” This was also not true. Paragraph 2 of the October 24, 2010

request should have elicited many documents from Pilot, and Plaintiff's subsequent letter demands could not have been clearer.

In support of the instant appeal, GMAC contended that "Defendant offered to discuss [Plaintiffs' discovery objections] on January 3, 2011" but Plaintiffs "rejected that offer out of hand." This was false. The aforementioned letter of January 4, 2011 specifically noted that it was "a follow-up to our discovery 'meet and confer' on January 3, 2011."

Moreover, Defendant has repeatedly claimed that GMAC made Pilot available during the Susan Young deposition, which Plaintiffs attended telephonically. But the transcript reflects otherwise. When asked what screens from Pilot she viewed in preparation for her deposition, she replied, "[w]ithout having the system, you know, available . . . I can't tell you the exact screens that I looked at but I went through the system to view information."

In addition, Defendant has claimed on multiple occasions that its failure to produce evidence related to Pilot stemmed from a belief that the parties had compromised on the issue subsequent to the January 20 hearing. Purportedly, "Plaintiffs limited their inquiries to the Pilot program about whether or not other contact notes were stored or maintained" in Pilot. GMAC raised this claim in support of the instant appeal, and on numerous other occasions. Yet in light of Plaintiffs' explicit, targeted letters of December 17, 2010, and January 4, 2011, the absence of any writing memorializing the agreement, and the manifest importance of Pilot to the case, I do not credit Defendant's contention. In any event, Defendant's account provides no excuse for its false claim on February 4, 2011 that "GMAC has produced the entire loan file and all notes or communications related to the Loan." To say as much, while withholding nearly the full scope of data within its "electronic system of record," is unjustifiable.

It was only after the “drop-dead date” that the falsity of Defendant’s statement emerged. In a February 18, 2011 deposition, when asked whether Pilot contained a “log or list of actions that were taken on the Scotts’ loan,” GMAC’s Susan Young replied, “there are status screens which tells you what status the loan moved to.” She also explained that “[o]nce the loan closes and funds, [the Pilot] system is locked with the information of how the loan was closed.” In addition, when former GMAC employee Yvonne Wolert was asked whether Pilot leaves a record of which employees accessed or modified documents, she replied, “that’s why they have separate logins, so they can see, you know, who is the person working on that file or whose name it’s in . . .” She further clarified,

Like at the end when I finish the file, and I stepped it to closing docs complete, it will show my name and the date and time of when that was done. So, if like a loan officer wants to know do I have my closing doc finished, they would just go into that part in Pilot and see yes, Yvonne completed her file. I have the time here when it was stepped that she completed it.

As Plaintiffs had made it perfectly clear that they sought information from Pilot concerning access logs, GMAC’s refusal to produce that information is all the more troubling.

Defendant has consistently maintained that producing the Pilot documents would be unduly burdensome. Most recently, on March 21, 2011, counsel for Defendant reiterated “and the only reason we didn’t [disclose the information] upon receiving the motion, Judge, is because it is the system that is very difficult to access.” Even if true, this would provide little reason to withhold key evidence pertaining to the litigation. But it was not true. Mere days after the hearing, Defendant claimed to have completed production of all of the information in Pilot. Upon review of the lately produced documents, it is evident that the great bulk of them were printed out or accessed from Pilot between 11:10 a.m. and 12:52 p.m. on March 19, 2011 – two

days before the hearing. This two-hour effort hardly amounts to an inconvenience, let alone an undue burden.

Moreover, at the same hearing, Defendant claimed that “there is no other non-duplicative material information in the Pilot program.” As discussed in Part A, above, this was patently false. Because the lately produced documents contain significant, new, material information, their disclosure after the close of discovery, after the filing and argument of summary judgment motions, and on the eve of trial, has greatly prejudiced Plaintiffs. Had the Pilot documents been produced months ago, as they should have been, it may have increased Plaintiffs chances of securing a settlement. In any event, it certainly would have given rise to additional depositions or at least witness interviews, which could have in turn led to further evidence. Moreover, the information could have been used to inform nearly every deposition taken, and all of the briefing on summary judgment provided to the court. For that reason, Defendant’s contention that a short continuance would be an adequate sanction is without merit. Its malfeasance has essentially put Plaintiffs in the position they should have occupied months ago.

Accordingly, any sanction less severe than an entry of default judgment would be insufficient under the circumstances. Rule 37(b)(2) suggests the following sanctions:

- (i) directing that matters embraced in the order . . . be taken as established . . .
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or part;
- (iv) staying further proceedings;
- (v) dismissing the action . . .
- (vi) rendering a default judgment . . . or
- (vii) treating as contempt of court the failure to obey . . .

Options (i), (iii) and (v) are inapposite here. Option (ii) would be a more effective deterrent where a party withholds information that is beneficial to it, and for reasons already mentioned,

option (iv) is inappropriate. Furthermore, neither party has suggested that contempt proceedings are in order.

I concur fully with the magistrate judge that when a party represents that it has produced all documents responsive to a discovery request, the opposing party has the right to rely on that representation through summary judgment and trial. To make such claims, falsely, and to conceal evidence as valuable as the evidence concealed in this case, cannot be permitted. In light of Defendant's egregious misconduct, the imposition of a harsh sanction is necessary to provide adequate deterrence for GMAC, and those that might follow GMAC's example.

III.

The entry of a default judgment on liability for the fraud claim does not dispose of the case, as damages determinations, on both the HPA and fraud claims, remain to be decided. Accordingly, I must address how the remainder of the magistrate judge's order applies to the proceedings that may follow.

The magistrate judge's order prevents Defendant from using information "obtained from Pilot" in connection with the pending motions for summary judgment;³ using "information contained in Pilot" in support of its motion to exclude Plaintiffs' expert witness; and opposing Plaintiffs' claims, or supporting GMAC's defenses with "information contained in Pilot." Read literally, these prohibitions could effectively prevent GMAC from raising almost any defense regarding the outstanding issues. As such, the prohibitions are tantamount to a default judgment, and *de novo* review is appropriate.

³ Plaintiffs' motion for summary judgment sought liability on the fraud claim, and is therefore mooted by this disposition. Defendant's motion for summary judgment, however, raised certain claims related to damages, which are not affected by this opinion.

Defendant has raised a number of objections concerning the exclusion of evidence. First, it contends that this sanction may only issue in egregious cases. *See Lathon v. Wal-mart Stores East, LP*, No. 3:09-cv-57, 2009 U.S. Dist. LEXIS 54682, at *6, 12 (E.D. Va. June 24, 2009); *Derrickson v. Circuit City Stores, Inc.*, 95-3296, 1999 U.S. Dist. LEXIS 2110, at *20 (D. Md. March 19, 1999) (concluding that “exclusion is a harsh sanction”). As I have already concluded that this is an egregious case, Defendant’s argument is unavailing. Second, Defendant contends that it is unfair to apply the exclusion to evidence already disclosed months ago. I agree. To address this concern, I will limit the order to apply only to non-duplicative information “contained in” or “obtained from” Pilot, which was produced after the March 18, 2011 hearing on the motion for sanctions.

Because Defendant did not object to the award of attorney fees, I will affirm the magistrate judge’s order in that respect. I will also grant fees and costs associated with this appeal. Finally, as the entry of default judgment and the late production of documents render the jury instruction issue moot, I decline to review it.

The Clerk of the Court is directed to send a certified copy of this opinion to all counsel of record.

Entered this 13th day of April, 2011.


NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

DONALD R. SCOTT and
MELISSA J. SCOTT,

Plaintiffs,

v.

Case No: 3:10-cv-24

GMAC MORTGAGE, LLC,

Defendant.

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT GMAC
MORTGAGE, LLC'S SECOND MOTION *IN LIMINE*
REGARDING LOAN OFFICER COMPENSATION**

Among its string of Motions *in Limine* that are either meritless or unnecessary is Defendant GMAC MORTGAGE, LLC's (hereinafter "Defendant") Motion seeking to exclude any evidence of the financial incentive for the Defendant's loan officer to have engaged in the deceitful sale of the subject loan. Examples of this evidence that Defendant finds "prejudicial" include the following:

1. Ms. Morris, the originating loan officer for the subject loan, was solely dependent upon commissions for her income GMAC/DMS 582 – 585, Deposition of Karen Morris, p. 105, l. 12 – 21, (a copy of the referenced pages from Ms. Morris Deposition are attached as Exhibit "A");
2. As of May, 2007, Ms. Morris had been terminated from her position as District Manager as a result of the decline in Defendant's business (i.e., selling residential mortgage loans) and as a result no longer received any salary (so her income was based solely on commissions.) GMAC/DMS 582 – 585, Deposition of Karen Morris,

p. 105, l. 12 - 21;

3. The amount of Ms. Morris' commission income was based on the number of loans she originated and the dollar volume of those loans. Deposition of Karen Morris, p. 104, l. 1 - 11, GMAC/DMS 565 - 581;
4. Ms. Morris had been experiencing a dramatic decline in her income over the years preceding the time of the subject loan. Deposition of Karen Morris, p. 106, l. 4 - 13;
5. Ms. Morris originated approximately 179 loans with a dollar volume of approximately \$35,000,000 in 2003 and by 2007 (the year when she originated the subject loan) the number of loans she originated had declined to approximately 56 with a dollar volume of approximately \$16,000,000. Deposition of Karen Morris, p. 114, l. 1 - 8;
6. Ms. Morris' employment agreement provided that she had minimum performance standards in terms of the number of loans and the dollar volume of loans that she was required to originate every month. GMAC/DMS 566, Deposition of Karen Morris, p. 105, l. 24 - p. 106, l. 3;

These facts are contained in the employment documents that Defendant seeks to conceal from the jury in this Motion *in Limine*.

As the basis for its Motion, Defendant unilaterally and without any basis in reality assigns the following mental state and nefarious motives to Plaintiffs:

Frustrated with the fact that they had not been able to uncover any proof of fraud by Karen Morris or GMAC, Plaintiffs resort to irrelevant, speculative, and prejudicial evidence of Karen Morris' compensation, and other loan officers' compensation in the mortgage industry, in order to confuse and mislead the jury into thinking that loan officers are crooks who extend huge loans to unwilling, resisting consumers, such as Plaintiffs. Defendant's Second Motion *in Limine* Regarding Loan Officer Compensation

(hereinafter "Motion"), p. 1.

Defendant should rest assured that Plaintiffs are not frustrated. To the contrary, Plaintiffs are confident that the jury will find that Defendant committed fraud and then engaged in conduct intended to conceal its wrongdoing. That none of the "wrapped up" former employees have stepped forward and owned up to the deceit is not at all surprising since such character would be inconsistent with the character of one who would engage in the deceit in the first place. But Plaintiffs are not limited to proving fraud only when the wrongdoer confesses to the deceit.

Among the facts that are unquestionably probative on the issue of fraud are the employment terms and conditions of the loan officer who originated the subject loan and the substantial decline in income that she was experiencing in the several years leading up to the subject loan. Those facts and circumstances demonstrate that Ms. Morris had a financial incentive to sell the Plaintiffs a larger loan than Plaintiffs required and as a result, Ms. Morris had a financial incentive to sell the Plaintiffs a loan with hidden mortgage insurance in the form of lender paid mortgage insurance.

The facts which Defendant finds "prejudicial" and which Defendant would not like the jury to hear include:

- A) That as of May 1, 2007, Ms. Morris was terminated from her position as District Manager and no longer received any salary. GMAC/DMS 582 – 585.
- B) That "this action (was) being taken as a result of the overall performance in the district in reflecting a substantial loss for last year . . . and the unlikely event that the district will be within reach of the 2007 business plan." GMAC/DMS 582 – 585;
- C) That Ms. Morris had performance requirements for her employment with

Defendant that mandated at least \$600,000 in closed loans and 6 loan units every month. GMAC/DMS 566;

- D) That Ms. Morris' compensation was completely based on how many loans she originated and the dollar amount of those loans at the time of the subject loan. The more loans she originated and the greater the dollar amount of those loans, the more she was compensated;
- E) That by the time of the subject loan, Ms. Morris' originations and dollar volume had undergone a precipitous decline so that the number of loans and dollar value of those loans had decreased by more than 50% over the previous four years; and
- F) That consistent with the decline in the mortgage industry, Defendant closed its entire retail mortgage loan offices nationwide, including the Charlottesville office in September of 2008. Deposition of Karen Morris, p. 53, l. 23, 24.

Defendant argues that this evidence "should be excluded pursuant to Rule 403 of the Federal Rules of Evidence." Rule 403 does provide for the exclusion of relevant evidence, but only "if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (Emphasis added.) Defendant argues that this evidence should be excluded because it is prejudicial and because it will confuse or mislead the jury. Neither argument has merit.

Defendant argues that the jury's passions will be inflamed and there will be resentment and bias against Ms. Morris because her salary might be higher than that of the jurors, and therefore the above-mentioned evidence should be excluded. There are a number of problems

with this argument. First, evidence of the amount of Ms. Morris' salary will not be presented to the jury because it has not even been provided to Plaintiffs. The one page Retail Commission Statement for August, 2007 (GMAC/DMS 586)(hereinafter "Statement") does not show Ms. Morris' salary, but rather apparently shows her compensation for the month of August, 2007, and how much compensation she directly received as a result of the subject loan. The document does not show Ms. Morris' compensation, or "salary" for 2007. It does show that Ms. Morris received about \$10,600 as compensation for the month of August, 2007. While that is certainly not minimum wage, neither is it on its face an astronomical number that would inflame any passions.

The authority cited by Defendant is distinguishable on its facts. In *United States v. Stahl*, 616 F.2d 30 (2nd Cir. 1980), a "young prosecutor" engaged in a calculated and continuous course of conduct designed to equate wealth with wrongdoing and made the argument "that a man whose *total life* is geared to make money in real estate would also, in all likelihood, be driven by greed to pay the \$10,000 bribe in order to not pay substantial monies in taxes." *Id.*, at 31, emphasis original. This evidence and argument were clearly inadmissible and improper for a host of reasons, none of which are applicable in the case at bar.

Defendant also argues that because Ms. Morris' compensation structure is somewhat nuanced, the consideration of the above-described facts and evidence "will likely confuse and mislead the jury." Defendant argues that because there are adjustments that are made to her compensation – which are shown on the Statement – the jury will be hopelessly confused and misled. Finally, Defendant argues that "because the loan amount is only one factor in determining the size of a loan officer's commission . . . Plaintiffs should not be permitted to offer inaccurate, simplified evidence that Karen Morris stood to benefit from originating the higher amount on Plaintiffs' loan." Motion, at p. 4. Defendant's argument concedes the

relevance of the evidence – since it concedes that loan size is a factor in determining compensation of its loan officers. That there are other factors and adjustments does not dispel this relevance. That there are other factors and adjustments does not change the fact that loan number and size were components of Ms. Morris' compensation and that the more loans and the higher the dollar value of each loan that she originated, the more she stood to make – subject of course to any applicable adjustments. Defendant's explanation of these adjustments in less than a half-page of its Motion demonstrates that the evidence is not very complicated or likely to mislead jurors and that no "lengthy expert testimony" would be needed.

Defendant also seeks to exclude any evidence that loan officers generally are compensated based upon the amount and number of loans they originate. It is not clear what evidence Defendant is concerned about. It appears that Defendant may have misunderstood certain questions posed to Ms. Morris at her deposition that inquired not about loan officer compensation in general, but rather about mortgage company profits generally. Moreover, since Defendant has produced the actual employment and compensation records for Ms. Morris and they show facts which support Plaintiffs' claim, Defendant has no need to offer evidence of how other loan officers may have been compensated.

Finally, it is not at all clear how it is that this evidence would be used. Plaintiffs anticipate that it is most likely to be used in impeachment of Ms. Morris. Plaintiffs anticipate that Ms. Morris will testify that she explained lender paid mortgage insurance to the Plaintiffs and that they knowingly selected such a loan and that the documentation that Ms. Morris filled out that indicated the loan did not have any mortgage insurance was a "good faith mistake." If Ms. Morris testifies to that effect, then Plaintiffs should be permitted to impeach her testimony with evidence that is inconsistent with testimony. That Ms. Morris had a financial incentive to

have the Plaintiffs take out a larger loan than they needed and hide mortgage insurance from them since they had told her that they wanted a loan with mortgage insurance is highly relevant. That Ms. Morris had been experiencing a steep decline in her income over a four year period preceding the subject loan and had been stripped of her salaried position and was totally dependent on commission income for her livelihood, is obviously relevant and inconsistent with such anticipated testimony. That Ms. Morris compensation was based in part on the size of the loans she originated and so, in general, the greater the dollar value of the loans the more she was compensated, is clearly relevant.

Conclusion

That Ms. Morris had been experiencing a substantial decline in her income over a four year period of time preceding the subject loan, that she was solely dependent upon commissions for her income, that her commissions were determined based on the number and size of loans she originated, and therefore, that she had an economic incentive to sell the Plaintiffs a loan for as high a dollar value as possible and thus make it an undisclosed lender paid mortgage insurance loan, are all facts contained in the evidence that Defendant would like excluded. Those facts and that evidence is highly relevant and the marginal complaints about prejudice and confusion that Defendant raises in no way establish a prejudicial impact that would *substantially outweigh* the probative value of this evidence. Accordingly, the Motion should be denied.

Respectfully submitted,

DONALD R. SCOTT and
MELISSA J. SCOTT

By: 

Counsel

JONATHAN T. WREN, VSB #40304
JOHN B. SIMPSON, VSB #38759
MartinWren, P.C.
1228 Cedars Court
Charlottesville, Virginia 22903
(434) 817-3100 (phone)
(434) 817-3110 (fax)
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF that will send a true and correct copy of the foregoing to the following counsel of record:

Jason E. Manning, Esq.
Troutman Sanders LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462

Attorney for Defendant GMAC Mortgage LLC



John B. Simpson

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

DONALD R. SCOTT and
MELISSA J. SCOTT,

Plaintiffs,

v.

Case No: 3:10-cv-24

GMAC MORTGAGE, LLC,

Defendant.

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT GMAC
MORTGAGE, LLC'S FOURTH MOTION *IN LIMINE*
REGARDING OTHER LOANS ORIGINATED BY GMAC**

As part of the formal discovery in this case, Defendant GMAC MORTGAGE, LLC (hereinafter "Defendant") produced a spreadsheet which contained historic data concerning the loans originated out of its Charlottesville office from March, 2003 until the office closed in September of 2008. (GMAC/DMS 412 – 455). These spreadsheets contain the following specific information concerning each loan that was originated in Defendant's Charlottesville office during that time period: a) the loan amount; b) the Defendant's internal loan product code; c) the date of the loan; and, d) the loan officer. Consequently, contained in these records are the following relevant facts concerning the loans originated by Defendant's loan officer, Karen Morris, who originated the subject loan:

Loans Originated Per Year by Karen Morris

2003	-	173
2004	-	140
2005	-	106
2006	-	89
2007	-	56

Value of Karen Morris Loans Per Year

2003	-	\$35,242,000
2004	-	\$29,370,000
2005	-	\$29,828,000
2006	-	\$22,941,000
2007	-	\$16,008,000

In addition, because this spreadsheet identifies the specific loan product type, with the use of Defendant's product list also produced in discovery, the extreme rarity of lender paid mortgage insurance loans is illustrated. The spreadsheet shows that of the 1258 loans originated in Defendant's Charlottesville office between March, 2003, and September, 2008, only 4 (one of which was the subject loan) – or approximately .3% of all loans out of the Charlottesville office - had lender paid mortgage insurance. The spreadsheet also shows that these 4 lender paid mortgage insurance loans were all originated by Ms. Morris, and all during a period of a few months in 2007. No other loan officer working for Defendant in its Charlottesville office originated a single lender paid mortgage insurance loan during the time period from March, 2003, through September, 2008.

These facts are highly relevant on a number of different issues. First, they evidence the precipitous decline in Ms. Morris' business and corresponding income, providing incentive for her to increase the size of the Plaintiffs' loan and hide the fact that it contained mortgage insurance since Plaintiffs had told her they wanted a loan without mortgage insurance. Secondly, the spreadsheets show the extreme rarity of lender paid mortgage insurance. This is relevant in response to Defendant's defense that the Plaintiffs knew or should have known that their loan had mortgage insurance due to the presence of the Defendant's internal product code "LPMI – 30 Yr fixed Conf fnma." The fact that lender paid mortgage insurance or "LPMI" occurred in only one out of every 400 loans made by Defendant is clearly relevant to show that Plaintiffs, as average consumers, would likely not know what "LPMI" could have meant.

Conclusion

The Defendant's own spreadsheets showing the type, value, date, and loan officer for each loan originated out of its Charlottesville office contain relevant evidence showing the

precipitous decline in the compensation of the loan officer who originated the subject loan and evidence economic incentive for her to have deceived the Plaintiffs as to the existence of lender paid mortgage insurance on their loan in order to sell them a larger loan than they otherwise would have taken. These records also contain highly relevant information showing the extreme rarity of lender paid mortgage insurance which is directly relevant to Defendant's defense that the Plaintiffs knew or should have known of the existence of such mortgage insurance on their loan due to the presence of the Defendant's internal product code acronym containing the letters "LPMI" on two pages of the loan documents. Accordingly, the Defendant's Fourth Motion *in Limine* should be denied.

Respectfully submitted,

DONALD R. SCOTT and
MELISSA J. SCOTT

By: 

Counsel

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Virginia Beach, VA 23462

Attorney for Defendant GMAC Mortgage LLC



John B. Simpson

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

**DONALD R. SCOTT and
MELISSA J. SCOTT,**

Plaintiffs,

v.

Civil Action No. 3:10-cv-24-NKM

GMAC MORTGAGE, LLC,

Defendant.

DECLARATION OF KAREN MORRIS

I, Karen Morris, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury the following facts. I am a former employee of GMAC Mortgage, LLC ("GMACM") and I was the loan officer for Donald Scott's and Melissa Scott's ("Plaintiffs") cash-out refinance loan that is the subject of this litigation ("Loan"). I make this declaration based on my personal knowledge of the Loan and my review of loan documents produced by GMACM and Plaintiffs in this litigation.

1. I have reviewed the allegations in Plaintiffs' Amended Complaint and have knowledge regarding Plaintiffs' Loan secured on 14 Overlook Circle, Palmyra, VA 22963 ("Property") that closed on August 17, 2007. I have worked in the mortgage industry for nearly thirty (30) years. I was District Manager at GMACM during 2007, and worked at GMACM for nine (10) years until I was laid off due to downsizing in September 2008. I am currently the Vice President of Mortgage Services at Member Options, LLC in Charlottesville, Virginia.

2. In July 2007, Plaintiffs contacted me about a cash-out refinance of their first and second mortgages secured on the Property. Plaintiffs owed approximately \$203,000 on their first mortgage with GMACM, which was a 5-1 ARM loan with a variable interest rate and borrower

paid mortgage insurance. Plaintiffs second mortgage with BB&T was a home equity loan with a fixed 8.0% interest rate and approximately \$45,000 owed. Plaintiffs wanted to receive payment of at least \$10,000 in cash after closing on the refinance.

3. I discussed mortgage insurance with Plaintiffs because the amount of the cash-out refinance Plaintiffs sought exceeded 80% of the value of the Property. This is evidenced by notes that I recorded after discussing mortgage insurance with Plaintiffs on July 31, 2007: "Spoke to Donald and discussed 40 Yr. LPMI, 30 Yr. LPMI, 30 year Combo, and 30 year with MI. They are going to discuss and call back with selection." A true and accurate copy of a screenshot of my notes is attached hereto as Exhibit 1.

4. It was my practice at GMACM to always explain mortgage insurance to borrowers and that it was required on loans such as this one when the loan-to-value ratio exceeded 80%. My notes confirm that I explained mortgage insurance to the Scotts, who were already familiar with it from their prior loan with GMAC.

5. LPMI stands for lender paid mortgage insurance, which means that the lender, in this case GMACM, pays the mortgage insurance premiums rather than the borrower. My notes confirm that I explained LPMI to Plaintiffs and that we discussed various loan products to determine which one was best suited to accomplish their financial goals.

6. Plaintiffs desired to obtain the cash-out loan described above while minimizing the monthly payments. I examined several loan products including a combo loan by issuing new first and second mortgages and discussed the advantages and disadvantages with Plaintiffs. To provide Plaintiffs with the best loan to accomplish their economic goals, I ran several calculations based on a variety of factors—including the available products, Plaintiffs' debt-to-

income ratio, Plaintiffs' credit score, and the current rate sheets. A summary of these calculations and the relevant rate sheets are attached hereto as Exhibit 2.

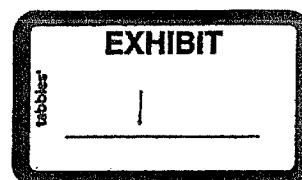
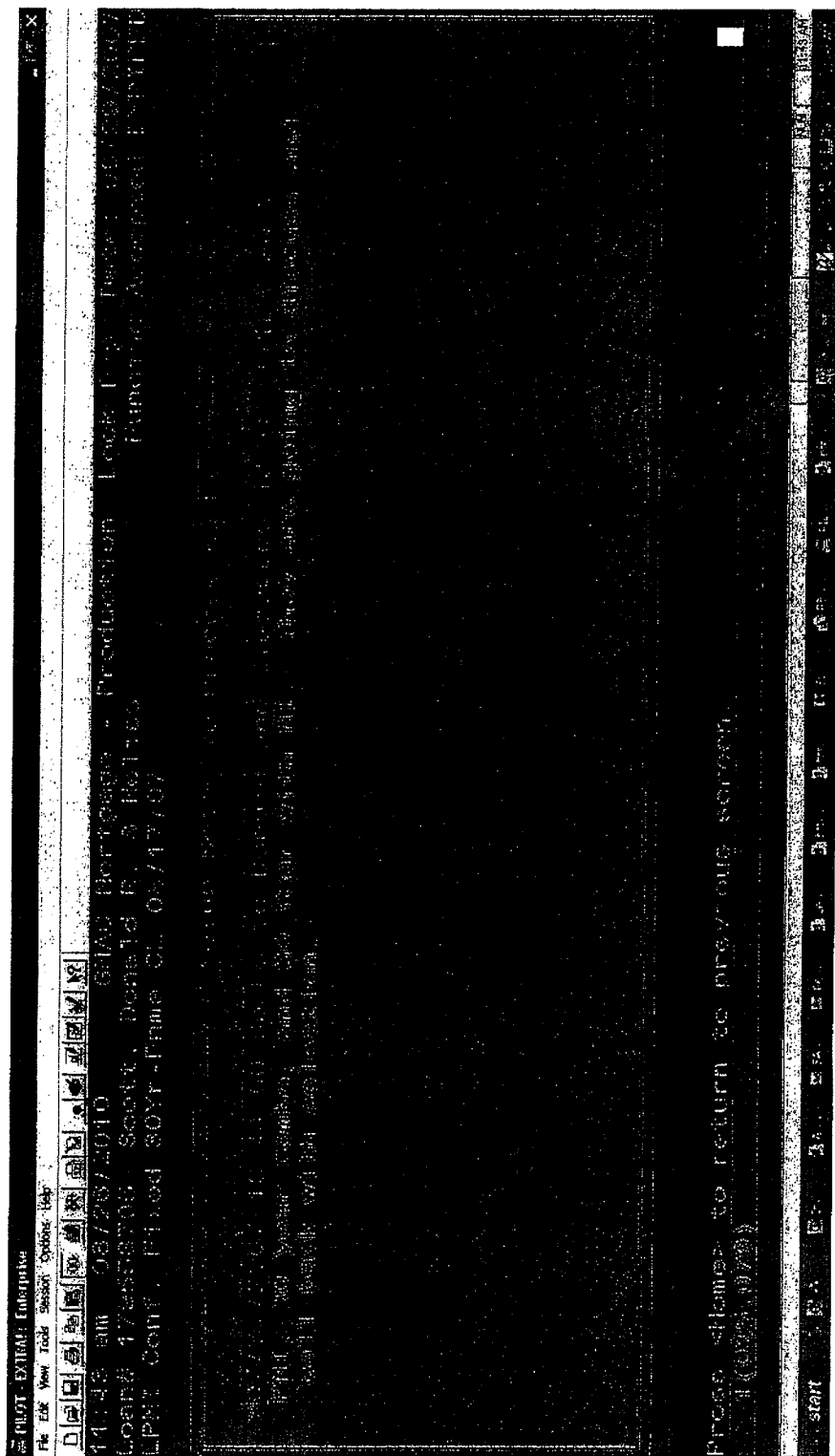
7. After I explained the various options available to the Plaintiffs, Plaintiffs selected a 30 Yr. LPMI product as best suited to their financial goals. For example, it allowed them to obtain the desired loan amount with the lowest monthly payments and the Property would not be burdened by a second mortgage. Plaintiffs' selection of the 30 Yr. LPMI loan is evidenced by the Interest Rate Lock-In Agreement, signed by Plaintiffs on August 3, 2007 and the Mortgage Loan Commitment, signed by Plaintiffs on August 17, 2007. True and accurate copies of these documents are attached hereto as Exhibit 3. Plaintiffs believed it was in their financial interest to close on this Loan, and I was able to accomplish their financial goals through this LPMI Loan.

8. The consideration of different loan products to best accomplish Plaintiffs' economic goals explains the General Loan Acknowledgement, which stated private mortgage insurance was not required at that time and was subject to change. A true and accurate copy of the general loan acknowledgement is attached hereto as Exhibit 4. Checking the box was a good faith mistake that did not affect Plaintiffs' understanding of the Loan terms. On the contrary, LPMI was disclosed verbally and in several loan documents to Plaintiffs, and they understood it and knowingly selected the LPMI loan.

The foregoing three (3) page declaration is true and accurate to the best of my information and belief.

Dated: January ^{4th} 6, 2011


KAREN MORRIS



Scott Refinance Options

Rates as of 8/1/2007

LPMI	
1st Loan Amt.	\$ 266,780.00
2nd Loan Amt.	\$ -
Total Financed	\$ 266,780.00
Base Rate	6.500%
Concession	-1.125
Loan Purpose (Cash Out)	0.250%
LPMI Rate Adj.	0.125%
LPMI C/O Adj.	6.875%
	1.625

1st Trust	
Prin. & Int.	\$ 1,752.56
Monthly Mtg. Ins.	\$ -
Hazard Ins.	\$ 30.33
Taxes	\$ 106.50
Total Payment	\$ 1,889.39

30 Yr. Fixed w/PMI	
1st Loan Amt.	\$ 266,780.00
2nd Loan Amt.	\$ -
Total Financed	\$ 266,780.00
Base Rate	6.500%
Concession	-1.125
Loan Purpose (Cash Out)	0.750
	1.625

1st Trust	
Prin. & Int.	\$ 1,686.23
Monthly Mtg. Ins.	\$ 93.37
Hazard Ins.	\$ 30.33
Taxes	\$ 106.50
Total Payment	\$ 1,916.43

MI Rate Calculation

Base Rate	0.32%
Cash Out Adj.	0.10%
	0.42%

* Approval was not a sure bet because the MI Company has to approve the loan, as well. MI Underwriting is generally more restrictive than agencies.

Combo Mtg.	
1st Loan Amt.	\$ 257,600.00
2nd Loan Amt.	\$ 9,180.00
Total Financed	\$ 266,780.00
Base Rate	6.500%
Concession	-1.125
Loan Purpose (Cash Out)	0.750
	1.625

HELOC (Interest only payment)

Index = Prime Rate	8.250%
Margin = 660-679	2.025%
Rate	10.275%
	\$ 77.53

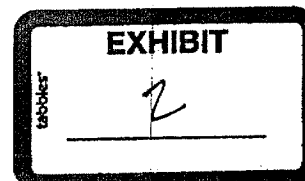
HE Loan

5 Year Term	10.125%
10 Year Term	10.175%
15 Year Term	10.225%
20 Year Term	10.375%
25 Year Term	10.525%
30/15 Term	10.300%
	\$ 195.61
	\$ 122.21
	\$ 99.92
	\$ 90.88
	\$ 86.84
	\$ 82.60

1st Trust

Prin. & Int.	\$ 1,686.23
Monthly Mtg. Ins.	\$ -
Hazard Ins.	\$ 30.33
Taxes	\$ 106.50
Total 1st Pmt.	\$ 1,823.06
Projected 2nd Pmt.	\$ 77.53
Total Combo Pmt.	\$ 1,900.59

** The proposed payment assumes borrower selects the lowest possible payment scenario, which did not provide for principal reduction on the HELOC unless additional principal were paid.



*Pricing displayed on this rate sheet will be adjusted in accordance with high-cost mortgage test results.

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Home Equity Program - Bridge Financing

12.240%

Home Equity Line of Credit

Prime Rate Index = 8.250

Credit Score	CLTV					
	<= 75%	75.01% to 80%	80.01% to 85%	85.01% to 90%	90.01% to 95%	95.01% to 100%
720+	0.550%	1.025%	1.150%	1.150%	1.525%	1.650%
700-719	0.900%	1.275%	1.400%	1.525%	1.650%	1.900%
680-699	1.150%	1.400%	1.525%	1.650%	1.650%	1.900%
660-679	1.650%	1.650%	2.025%	2.400%	2.650%	2.650%
640-659	1.900%	1.900%	2.400%	2.900%	4.150%	5.150%
620-639	2.400%	2.400%	3.650%	4.150%	4.900%	6.150%

Teaser Rate = PRIME Minus .5% For the first 3 Months

Teaser Rate not available for 100% CLTV

*Fees are Appraisal, Recording, Title and Closing (if by 3rd party) fees.

Note: Pricing for HELOC's and Closed End Seconds will normally be set Monday and remain in place for an entire week. Capital Markets reserves the right to change prices at any time (for loans not already on the system) should market conditions dictate.

Closed End Seconds Program

5 Year Term CLTV						10 Year Term CLTV					
Credit Score	<= 80%	80.01%-85%	85.01%-90%	90.01%-95%	95.01%-100%	Credit Score	<= 80%	80.01%-85%	85.01%-90%	90.01%-95%	95.01%-100%
720+	8.125%	8.475%	8.475%	8.475%	8.475%	720+	8.175%	8.525%	8.525%	8.525%	8.525%
700-719	8.375%	8.575%	8.575%	8.875%	9.175%	700-719	8.425%	8.625%	8.625%	8.925%	9.225%
680-699	8.375%	9.025%	9.025%	9.325%	9.625%	680-699	8.425%	9.075%	9.075%	9.375%	9.675%
660-679	9.275%	10.125%	10.125%	10.175%	10.225%	660-679	9.325%	10.175%	10.175%	10.225%	10.275%
640-659	9.375%	10.625%	10.625%	10.875%	11.075%	640-659	9.425%	10.675%	10.675%	10.925%	11.125%
620-639	10.025%	11.175%	11.175%	12.025%	12.125%	620-639	10.075%	11.225%	11.225%	12.075%	12.175%
600-619	11.025%	13.500%	N/A	N/A	N/A	600-619	11.075%	13.550%	N/A	N/A	N/A

15 Year Term CLTV						20 Year Term CLTV					
Credit Score	<= 80%	80.01%-85%	85.01%-90%	90.01%-95%	95.01%-100%	Credit Score	<= 80%	80.01%-85%	85.01%-90%	90.01%-95%	95.01%-100%
720+	8.325%	8.575%	8.575%	8.575%	8.575%	720+	8.375%	8.725%	8.725%	8.725%	8.725%
700-719	8.475%	8.675%	8.675%	8.975%	9.275%	700-719	8.625%	8.825%	8.825%	9.125%	9.425%
680-699	8.475%	9.125%	9.125%	9.425%	9.725%	680-699	8.625%	9.275%	9.275%	9.575%	9.875%
660-679	9.375%	10.225%	10.225%	10.275%	10.325%	660-679	9.525%	10.375%	10.375%	10.425%	10.475%
640-659	9.475%	10.725%	10.725%	10.975%	11.175%	640-659	9.625%	10.875%	10.875%	11.125%	11.325%
620-639	10.125%	11.275%	11.275%	12.125%	12.225%	620-639	10.275%	11.425%	11.425%	12.275%	12.375%
600-619	11.125%	13.600%	N/A	N/A	N/A	600-619	11.275%	13.750%	N/A	N/A	N/A

25 Year Term CLTV						30 / 15 Product CLTV					
Credit Score	<= 80%	80.01%-85%	85.01%-90%	90.01%-95%	95.01%-100%	Credit Score	<= 80%	80.01%-85%	85.01%-90%	90.01%-95%	95.01%-100%
720+	8.525%	8.875%	8.875%	8.875%	8.875%	720+	8.300%	8.650%	8.650%	8.650%	8.650%
700-719	8.775%	8.975%	8.975%	9.275%	9.575%	700-719	8.550%	8.750%	8.750%	9.050%	9.350%
680-699	8.775%	9.425%	9.425%	9.725%	10.025%	680-699	8.550%	9.200%	9.200%	9.500%	9.800%
660-679	9.675%	10.525%	10.525%	10.575%	10.625%	660-679	9.450%	10.300%	10.300%	10.350%	10.400%
640-659	9.775%	11.025%	11.025%	11.275%	11.475%	640-659	9.550%	10.800%	10.800%	11.050%	11.250%
620-639	10.425%	11.575%	11.575%	12.425%	12.525%	620-639	10.100%	11.350%	11.350%	12.200%	12.300%
600-619	11.425%	13.900%	N/A	N/A	N/A	600-619	11.200%	13.675%	N/A	N/A	N/A

Product	Category	Feature	Price Add-On	Rate Add-On	Comments
Concomit 15, Concomit 30, LPMI 30YR, Conf Fixed Rate Interest Only, Texas Conf Fixed Rate Equity, Manufactured Home Fixed 15YR & 30YR, Concomit 40	LTV/FICO	LTV > 75% & Credit Score < 820	1.000		Does not apply to LPMI & Expanded Approval
	LTV/Units	2 Unit & LTV > 90% <= 95%	0.500		Does not apply to Interest First
	LTV/Purpose	C/O Refi & LTV > 70% <= 80%	0.500		Does Not Apply to Qualified GM Family First Members when loan does not have subordinate financing (LTV = CLTV/HCLTV). (Click Here to See CM 06-16 for Details)
		C/O Refi & LTV > 80% <= 90%	0.750		Does not apply to LPMI; Ineligible for TX Equity Refinance
	Investment Property (15 Year Fixed)	Investment LTV <= 75% & FICO >= 720	0.500		15 YEAR FIXED CONFORMING PRODUCTS ONLY (1-4 UNITS)
		Investment & LTV <= 75% & FICO < 720	0.750		15 YEAR FIXED CONFORMING PRODUCTS ONLY (1-4 UNITS)
		Investment & LTV > 75% & FICO >= 720	1.000		15 YEAR FIXED CONFORMING PRODUCTS ONLY (1-2 UNITS)
		Investment & LTV > 75% & FICO < 720	1.250		15 YEAR FIXED CONFORMING PRODUCTS ONLY (1-2 UNITS)
		Investment & LTV > 75% <= 80% & 3-4 Units	3.000		USED IN PLACE OF OTHER INVESTMENT ADD-ONS (3-4 UNITS)
	Investment Property (All Other Fixed Conforming)	Investment LTV <= 75% & FICO >= 720	0.500		EXCLUDES 15 YEAR FIXED CONFORMING PRODUCTS (1-4 UNITS)
		Investment LTV <= 75% & FICO < 720	0.750		EXCLUDES 15 YEAR FIXED CONFORMING PRODUCTS (1-4 UNITS)
		Investment LTV > 75% & FICO >= 720	1.500		EXCLUDES 15 YEAR FIXED CONFORMING PRODUCTS (1-2 UNITS)
		Investment LTV > 75% & FICO < 720	1.750		EXCLUDES 15 YEAR FIXED CONFORMING PRODUCTS (1-2 UNITS)
	Products	Investment & LTV > 75% <= 80% & 3-4 Units	3.000		USED IN PLACE OF OTHER INVESTMENT ADD-ONS (3-4 UNITS) FHLMC Only
	Investment Property (Super Express Processing Only)	Investment & LTV <= 75%	1.000		WHERE PROCESSING STYLE = SUPER EXPRESS (1-4 UNITS)
		Investment & LTV > 75% <= 80% (1-2 Units)	2.000		WHERE PROCESSING STYLE = SUPER EXPRESS (1-2 UNITS)
		Investment & LTV > 75% <= 80% (3-4 Units)	3.000		WHERE PROCESSING STYLE = SUPER EXPRESS (3-4 UNITS)
		Investment & LTV > 80% <= 90%	2.500		WHERE PROCESSING STYLE = SUPER EXPRESS (1-4 UNITS)
	LTV/CLTV	LTV > 85% & CLTV > 90%	0.250		Subordinate Financing Only; Does not apply when LTV=CLTV
	Property Type	2nd Home - Refer W/ Caution	0.500		Does not apply to Interest First
		Manufactured Home	0.500		Manufactured Home 15 Year and 30 Year product only
	Term & Lock Window & Express/Super Express Cap	<= 10 Year (Shaded Area of Rate Sheet ONLY) & Lock/Cap Window > 91		(0.125)	
		<= 20 Year (Shaded Area of Rate Sheet ONLY) & Lock/Cap Window > 91		(0.125)	
		<= 10 Year (Shaded Area of Rate Sheet ONLY) & Lock/Cap Window <= 91		(0.250)	EXCLUDES EXPRESS/SUPER EXPRESS 63 DAY CAP
		<= 20 Year (Shaded Area of Rate Sheet ONLY) & Lock/Cap Window <= 91		(0.250)	EXCLUDES EXPRESS/SUPER EXPRESS 63 DAY CAP
		<= 10 Year (Shaded Area of Rate Sheet ONLY) & Express/Super Express 63 Day Cap		(0.125)	EXPRESS/SUPER EXPRESS 63 DAY CAP ONLY
		<= 20 Year (Shaded Area of Rate Sheet ONLY) & Express/Super Express 63 Day Cap		(0.125)	EXPRESS/SUPER EXPRESS 63 DAY CAP ONLY
	Processing Style	Relocation - Conforming Below Par	(0.125)		Adjustment does not apply to LPMI or Interest First
		Nat/Int'l Relo Enhancements	0.750		W/ Non-Forgivable Employer 2nd
		Express Purchase - 1 Unit	0.125		
		Express Purchase - 2 Units	0.250		Does not apply to Interest First
		Super Express/Extreme Express Refis	0.250		When the new Loan Balance exceeds the original Loan Balance
	LPMI LTV/Credit Score RATE Adjustments	LTV 80.01% - 85% & Credit Score 680 - 679		0.375	LPMI Only
		LTV 80.01% - 85% & Credit Score 680 - 699		0.250	LPMI Only
		LTV 80.01% - 85% & Credit Score 700 - 719		0.250	LPMI Only
		LTV 80.01% - 85% & Credit Score > 719		0.250	LPMI Only
		LTV 85.01% - 90% & Credit Score 680 - 679		0.500	LPMI Only
		LTV 85.01% - 90% & Credit Score 680 - 699		0.375	LPMI Only
		LTV 85.01% - 90% & Credit Score 700 - 719		0.375	LPMI Only
		LTV 85.01% - 90% & Credit Score > 719		0.375	LPMI Only
		LTV 90.01% - 95% & Credit Score 680 - 679		0.750	LPMI Only
		LTV 90.01% - 95% & Credit Score 680 - 699		0.500	LPMI Only
		LTV 90.01% - 95% & Credit Score 700 - 719		0.500	LPMI Only
		LTV 90.01% - 95% & Credit Score > 719		0.500	LPMI Only
	LPMI Purpose & Property Type RATE Adjustments	Cash Out Refinance	0.125		LPMI Only
	Additional Conf. Fixed Interest Only Adjustments	Investment Property		0.250	LPMI Only
		All Conforming Fixed Interest Only Loans	0.625		
		LTV > 90% <= 95%	0.250		
	DU Findings: Expanded Approval	LTV > 75% With Subordinate Financing	0.250		Additional Subordinate Financing Adjustment for Interest Only
		All Expanded Approval Eligible Loans	0.375		EA Eligible Products Only
		Expanded Approval Level 1 - No TPR		0.500	EA Eligible Products Only
		Expanded Approval Level 2 - No TPR		0.875	EA Eligible Products Only
		Expanded Approval Level 3 - No TPR		1.250	EA Eligible Products Only
		Expanded Approval Level 2 - With TPR		1.000	EA Eligible Products Only
		Expanded Approval Level 3 - With TPR		1.500	EA Eligible Products Only
		EA Decisions re-submitted through LP	0.250		Available for EA Levels 1, 2 AND 3
FNMA Flexible	LTV No Subordinate Financing	LTV >= 90% <= 97% (No Subordinate Fin.)	0.500		FNMA Flexible Only - Does not apply to EA Eligible Decisions - See above for EA Adjustments
		LTV > 97% <= 100% (No Subordinate Fin.)	1.000		FNMA Flexible Only - Does not apply to EA Eligible Decisions - See above for EA Adjustments
	Subordinate Financing (80/20)	Credit Score >= 700 With Subordinate Fin.	0.750		FNMA Flexible Only - See above for EA Adjustments
		Credit Score 680 - 699 With Sub. Fin	1.250		FNMA Flexible Only - See above for EA Adjustments
		Credit Score < 680 With Sub. Fin.	1.500		FNMA Flexible Only - See above for EA Adjustments
HomeStrength & MCM	HomeStrength	All HomeStrength Loans	1.000	1.000	
	MCM	All MCM (30 and 40 Year)	2.125		
	LPMI LTV/Credit Score Adjustments	LTV 87.01% - 100% & Credit Score 680 - 699		0.625	LPMI Only
		LTV 87.01% - 100% & Credit Score > 700		0.375	LPMI Only
	Term/Unit/LTV	All MCM / Unit / LTV <= 97	(0.200)		
	Subordinate Fin Term/IO	Subordinate Finance (Non-MCM Seconds)	0.500		
Pro Loan	Floatdown	40 Year IO	1.250		
		Pro Loan - 1 Time Floatdown	0.500		14-28 day prior to funding - Does not Apply to LPMI
All Products on this page	Lock Window	91 Day Lock (Due Upfront & Non-Refundable)	0.500		Based on 63-Day Price - Does not apply to LPMI
		128 Day Lock (Due Upfront & Non-Refundable)	1.000		Based on 63-Day Price - Does not apply to LPMI

Retail Loan Level Adjustments

Product	Category	Feature	Margin Add-On	Comments
Home Equity Line of Credit	Loan Amount	Loan Amount > \$500,000	0.250	Stated Income Adjustments include the following Processing Styles: NINA, NIV, Quick.
	Processing Style	Stated Income & CLTV <= 80%	1.250	Refer to Processing Options/Product Summary for Availability
		Stated Income & CLTV > 80% & <= 90%	1.750	Also applies to 80/20 HELOC Products.
		Stated & Credit Score >= 700 & CLTV > 90%	3.000	Standalone Only
		Stated & Credit Score < 700 & CLTV > 90%	4.500	Standalone Only
	Processing Style (No Ratio No Longer Allowed)	SIVA & CLTV <= 80	0.500	Standalone Only
		SIVA & CLTV > 80 & <= 90	1.250	Standalone Only
		SIVA & CLTV > 90 & <= 95	1.500	Standalone Only
		SIVA & CLTV > 95 & <= 100	3.000	Standalone Only
	Occupancy / Property Type & LTV/CLTV	Second Home & CLTV > 80% & <= 90%	0.750	
Line of Credit		Second Home & CLTV > 90% & <= 95%	1.000	
		Second Home & CLTV > 95%	1.750	
		Investment Properties & CLTV <= 80%	1.000	
		Investment Properties & CLTV > 80% & <= 90%	1.500	
		Investment Properties & CLTV > 90% & <= 95%	2.250	
		3 - 4 Units	0.500	
	Line Usage Discount	Earnings Balance Outstanding > \$25K <= \$50K	(0.250)	Adjustments Applied through Servicing & NOT Quoted Up-Front; Applies to CLTV <= 90%
		Earnings Balance Outstanding > \$50K	(0.500)	Only
	Teaser Rate	Prime - 0.500% for 3 Months		Not Available for CLTV > 95%
	Buy Up / Buy Down	Credit Only Line (Piggy Back) HELOC Buy Up / Buy Down		Purchase Money Line (Piggy Back) & Stand Alone Line Effective 08/01/2008
Closed End Secured GMAC Bank Fixed Rate & TX Variable Home Equity	Buy Ups	Not Permitted		Each 1/8 increment in rate = 12.5 bps added to commission tier Max of 1% (100 bps)
	Buy Downs	Each 1/8 decrement in rate = 12.5 bps reduction to commission tier (Buy-Downs above 0.5% require District Manager approval)		
	Risk Based Pricing	GMAC BANK RISK BASED ADJUSTMENTS ARE NOW BLENDED INTO THE RATES ON THE RATE SHEET. PLEASE REFER TO RATE SHEET FOR APPROPRIATE RISK BASED PRICING.		N/A for TX Variable
	Loan Amount	Loan Amount < \$20,000	0.500	Stated Income Adjustments include the following Processing Styles: NINA, NIV, Quick.
	Processing Style	Stated Income & CLTV <= 80%	1.250	Refer to Processing Options and Product Summary for Availability
		Stated Income & CLTV > 80% & <= 90%	1.750	Standalone Only
		Stated & Credit Score >= 700 & CLTV > 90%	3.000	Standalone Only
		Stated & Credit Score < 700 & CLTV > 90%	4.500	Standalone Only
	Processing Style (No Doc/No Ratio no longer allowed)	SIVA & CLTV <= 80	0.500	Standalone Only
		SIVA & CLTV > 80 & <= 90	1.250	Standalone Only
All Loans		SIVA & CLTV > 90 & <= 95	1.500	Standalone Only
		SIVA & CLTV > 95 & <= 100	2.750	Standalone Only
	Occupancy / Property Type & LTV/CLTV	Second Home & CLTV > 80% & <= 90%	0.750	
		Second Home & CLTV > 90% & <= 95%	1.000	
		Second Home & CLTV > 95%	1.750	
		Investment Properties & CLTV <= 80%	1.000	
		Investment Properties & CLTV > 80% & <= 90%	1.500	
		Investment Properties & CLTV > 90% & <= 95%	2.250	
		3 - 4 Units	0.500	
	Buy Up / Buy Down	Closed End Home Equity Buy Up / Buy Down		Effective 08/01/2008
All Loans	Buy Ups	Each 1/8 increment in rate = 12.5 bps added to commission tier Max of 1% (100 bps)		
	Buy Downs	Each 1/8 decrement in rate = 12.5 bps reduction to commission tier (Buy-Downs above 0.5% require District Manager approval)		

All adjustments are to points unless indicated otherwise.

Consult Product Summary for additional details.

INTEREST RATE LOCK OPTION/FINANCING AGREEMENT

DATE: 08/01/2007

LOAN NUMBER: 179558705

APPLICANT(S): Donald R Scott
Melissa J Scott

LENDER: GMAC Mortgage, LLC

PROPERTY: 14 Overlook Circle
Palmyra, VA 22963

LOAN AMOUNT: \$267,571.00

LOAN TERM: 30 Years

LOAN PROGRAM: LPMI Conf-Fnma

LOAN TYPE: ☒ Fixed Rate

☒ Conventional

☐ Adjustable Rate

☐ FHA

☐ Balloon

☐ VA

☐ Other: _____

The purpose of this form is to identify your preference with respect to locking-in the interest rate and points in conjunction with your loan request. Listed below are three options along with various terms and conditions which apply to each option. Please indicate your preference and acceptance of the related terms by checking the appropriate box (check only one). PLEASE NOTE THAT THIS IS NOT A LOAN COMMITMENT. YOU WILL BE NOTIFIED AS TO WHETHER OR NOT YOUR APPLICATION IS APPROVED.

OPTION 1 ☐ MARKET FLOAT OPTION

By checking this box, I understand that the interest rate (initial rate if I am applying for an adjustable rate mortgage) and points have not yet been set and locked-in. I understand that this option does not provide interest rate or points protection.

I understand that I have the right to lock-in my interest rate and points at any time during the processing of my loan request. Once I decide to lock-in, I must notify the following individual or department between the hours of _____ A.M. and _____ P.M. on a regular business day: Karen Dowell Morris at 434-975-4622 (toll free phone number). If my application is approved, and I have not yet locked-in the interest rate and points, my interest rate and points will be set by Lender within five (5) business days of loan closing based on the terms in effect at that time for my approved Loan Program and Loan Type and also based on the estimated time to the date of loan funding.

In the event of a joint loan request, I agree that one applicant can bind the other(s) with respect to locking-in the interest rate and points.

OPTION 2 ☒ LOCK-IN OPTION

By checking this box, I understand that my interest rate and points are to be locked-in under the following terms:

The rate quoted ☐ is/ ☒ is not subject to acceptance by the applicant and approval by Lender of a Home Equity Line of Credit in the amount of \$0.00.

INTEREST RATE: 7.0000%*

LOCK-IN EXPIRATION DATE: 8/29/2007

LOCK-IN TERM: 28 Days

TOTAL POINTS: 1.625.

Each point is equal to 1.0% of the Loan Amount. Except as indicated below, the following is a breakdown of the various points:

Origination Fee: 1.0000%

Commitment Fee: 0.0000%

Discount Points: 0.6250%

Lock-In Fee: 0.0000%

☐ If this box is checked, the Lock-In Fee is NOT included in the Total Points. Instead, in the event a loan commitment is issued and loan closing and loan disbursement occurs on or before the Lock-In Expiration Date, the Lock-In Fee collected will be applied as a credit against the Origination Fee, Commitment Fee, or Discount Points listed above or against other fees or loan charges at loan closing.

In consideration for locking in the interest rate and points, Lender requires payment of a Lock-In Fee of \$0.00 (0.0000% of Loan Amount) upon execution of this Agreement. This fee, along with any other fee and loan charge collected prior to loan closing, is non-refundable except as provided under the terms of this Agreement and as provided under applicable law.

EXHIBIT

3

GMAC/DMS 267

Retail Loan Level Adjustments

Product	Category	Feature	Margin Add-On	Comments
Home Equity Line of Credit	Loan Amount	Loan Amount > \$500,000	0.250	Stated Income Adjustments include the following Processing Styles: NINA, NIV, Quick.
	Processing Style	Stated Income & CLTV <= 80%	1.250	Refer to Processing Options/Product Summary for Availability
		Stated Income & CLTV > 80% & <= 90%	1.750	Also applies to 80/20 HELOC Products.
		Stated & Credit Score >= 700 & CLTV > 90%	3.000	Standalone Only
		Stated & Credit Score < 700 & CLTV > 90%	4.500	Standalone Only
	Processing Style (No Ratio No Longer Allowed)	SIVA & CLTV <= 80	0.500	Standalone Only
		SIVA & CLTV > 80 & <= 90	1.250	Standalone Only
		SIVA & CLTV > 90 & <= 95	1.500	Standalone Only
		SIVA & CLTV > 95 & <= 100	3.000	Standalone Only
	Occupancy / Property Type & LTV/CLTV	Second Home & CLTV > 80% & <= 90%	0.750	
Closed End Secured GMAC Bank Fixed Rate & TX Variable Home Equity		Second Home & CLTV > 90% & <= 95%	1.000	
		Second Home & CLTV > 95%	1.750	
		Investment Properties & CLTV <= 80%	1.000	
		Investment Properties & CLTV > 80% & <= 90%	1.500	
		Investment Properties & CLTV > 90% & <= 95%	2.250	
		3 - 4 Units	0.500	
	Line Usage Discount	Earnings Balance Outstanding > \$25K & <= \$50K	(0.250)	Adjustments Applied through Servicing & NOT Quoted Up-Front; Applies to CLTV <= 90%
		Earnings Balance Outstanding > \$50K	(0.500)	Only
	Teaser Rate	Prime - 0.500% for 3 Months		Not Available for CLTV > 95%
	Buy Up / Buy Down	Credit Only Line (reggy wacc)		Purchase Money Line (Piggy Back) & Stand Alone Line Effective 08/01/2008
Closed End Secured GMAC Bank Fixed Rate & TX Variable Home Equity	Buy Ups	Not Permitted		Each 1/8 increment in rate = 12.5 bps added to commission tier Max of 1% (100 bps)
	Buy Downs	Each 1/8 decrement in rate = 12.5 bps reduction to commission tier (Buy-Downs above 0.5% require District Manager approval)		
	Risk Based Pricing	GMAC BANK RISK BASED ADJUSTMENTS ARE NOW BLENDED INTO THE RATES ON THE RATE SHEET. PLEASE REFER TO RATE SHEET FOR APPROPRIATE RISK BASED PRICING.		N/A for TX Variable
	Loan Amount	Loan Amount < \$20,000	0.500	Stated Income Adjustments include the following Processing Styles: NINA, NIV, Quick.
	Processing Style	Stated Income & CLTV <= 80%	1.250	Refer to Processing Options and Product Summary for Availability
		Stated Income & CLTV > 80% & <= 90%	1.750	Standalone Only
		Stated & Credit Score >= 700 & CLTV > 90%	3.000	Standalone Only
		Stated & Credit Score < 700 & CLTV > 90%	4.500	Standalone Only
	Processing Style (No Doc/No Ratio no longer allowed)	SIVA & CLTV <= 80	0.500	Standalone Only
		SIVA & CLTV > 80 & <= 90	1.250	Standalone Only
Closed End Secured GMAC Bank Fixed Rate & TX Variable Home Equity		SIVA & CLTV > 90 & <= 95	1.500	Standalone Only
		SIVA & CLTV > 95 & <= 100	2.750	Standalone Only
	Occupancy / Property Type & LTV/CLTV	Second Home & CLTV > 80% & <= 90%	0.750	
		Second Home & CLTV > 90% & <= 95%	1.000	
		Second Home & CLTV > 95%	1.750	
		Investment Properties & CLTV <= 80%	1.000	
		Investment Properties & CLTV > 80% & <= 90%	1.500	
		Investment Properties & CLTV > 90% & <= 95%	2.250	
		3 - 4 Units	0.500	
	Buy Up / Buy Down	Closed End Home Equity Buy Up / Buy Down		Effective 08/01/2008
Closed End Secured GMAC Bank Fixed Rate & TX Variable Home Equity	Buy Ups	All Loans		Comments
		Each 1/8 increment in rate = 12.5 bps added to commission tier Max of 1% (100 bps)		
	Buy Downs	Each 1/8 decrement in rate = 12.5 bps reduction to commission tier (Buy-Downs above 0.5% require District Manager approval)		

All adjustments are to points unless indicated otherwise.

Consult Product Summary for additional details.

The remaining amount of 1.625 points (\$4,348.03), along with other related closing fees and charges, will be collected at the time of loan closing.

In order for these terms to remain binding, I understand that my loan must close and loan funding must take place on or before the Lock-In Expiration Date. After that date, the interest rate, fees and points may change at the option of Lender.

I also understand that, if my loan request is for a refinance to be secured by my primary residence, I will not receive the loan proceeds on the date of closing due to regulatory requirements. In that case, I understand that the loan must close at least four (4) business days prior to the Lock-In Expiration Date. Otherwise, I may be charged a higher interest rate and/or additional points.

In the event of a joint loan request, I agree that one applicant can bind the other(s) with respect to locking-in the interest rate and points.

* If applying for an adjustable rate mortgage loan, the Interest Rate is for the initial term only and is subject to change in accordance with the terms of the adjustable rate loan documents.

OPTION 3 ☐ INTEREST RATE "CAP" OPTION

By checking this box, I understand that my interest rate and points are "capped" based on the following terms:

CAPPED RATE: %*

CAP EXPIRATION DATE:

RATE CAP TERM: Days

TOTAL POINTS: 1.625%

Each point is equal to 1.0% of the Loan Amount. Except as indicated below, the following is a breakdown of the various points:

Origination Fee:

Commitment Fee:

Discount Points:

Lock-In/Rate Cap Fee:

- ☐ If this box is checked, the Lock-In/Rate Cap Fee is NOT included in the Total Points. Instead, in the event a loan commitment is issued and loan closing and loan disbursement occurs on or before the Cap Expiration Date, the Lock-In/Rate Cap Fee collected will be applied as a credit against the Origination Fee, Commitment Fee, or Discount Points listed above or against other fees or loan charges at loan closing.

In consideration for locking-in the interest rate and points, Lender requires payment of a Lock-In/Rate Cap Fee of \$ (% of the Loan Amount) upon execution of this Agreement. This fee, along with any other fees and charges collected prior to loan closing, is non-refundable except as provided under the terms of the Agreement and as provided under applicable law.

The remaining amount of 1.625 points (\$4,348.03), along with other related closing fees and charges, will be collected at the time of loan closing.

I understand that, provided my loan closes and funds on or before the Cap Expiration Date, my interest rate and points will not be greater than the Capped Rate and Total Points listed above. I also understand that the Capped Rate is generally higher than the interest rate quoted by Lender on other Loan Programs and Loan Types.

Although capped, my interest rate and points may be lower at the time of loan closing under the following circumstances:

Within 28 days prior to the Cap Expiration Date or 5 business days prior to the date of loan closing (whichever occurs first), I understand that I must lock-in my interest rate and points by notifying the following individual or department between the hours of _____ A.M. and _____ P.M. on a regular business day: Karen Dowell Morris at 434-975-4622 (toll free phone number). My established interest rate and points will be the lower of (A) the Capped Rate and Points; or (B) the interest rate and points quoted by Lender at the time of the lock-in under the Lender's Cap Program for my approved Loan Program and Loan Type and based on the estimated time to the date of loan funding.

In the event of a joint loan request, I agree that one applicant can bind the other(s) with respect to locking-in the interest rate and points.

In order for these terms to remain binding, I understand that my loan must close and loan funding must take place on or before the Cap Expiration Date. After that date, the interest rate, fees and points may change at the option of Lender.

I understand that, if my loan request is for a refinance to be secured by my primary residence, I will not receive the loan proceeds on the date of closing due to regulatory requirements. In that case, I understand that the loan must close at least four (4) business days prior to the Cap Expiration Date. Otherwise, I may be charged a higher interest rate and/or additional points.

* If applying for an adjustable rate mortgage loan, the Interest Rate is for the initial term only and is subject to change in accordance with the terms of the adjustable rate loan documents.

☐ **ADJUSTABLE RATE MORTGAGE LOAN**

If you are applying for an adjustable rate mortgage (ARM) loan, the following are descriptions of various ARM loan provisions which will apply for the type of loan program you have requested:

1. The initial interest rate of the ARM loan as stated in the Note will remain in effect for _____ months. At the time of the first interest rate adjustment, the interest rate you are required to pay will not be:
 - ☐ Greater than _____ % above the initial interest rate.
 - ☐ Less than _____ % below the initial interest rate.
 - ☐ More than _____ %.
2. After the first interest rate adjustment, the interest rate of the ARM loan will be adjusted every _____ months. The interest rate will never be increased more than _____ % or decreased by _____ % from the rate you had been paying during the immediately preceding period.
3. At no time will the interest rate you are paying be:
 - ☐ Greater than _____ % above the initial interest rate.
 - ☐ Less than _____ % below the initial interest rate.
 - ☐ More than _____ %.
4. Changes in the interest rate will be based on a formula which will include the use of the following index:
 - ☐ One Year Treasury Bill.
 - ☐ The average of interbank offered rates for ☐ one year ☐ six month ☐ one month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal.
 - ☐ Other: _____
5. A specific percentage figure (the "margin") will be added to the index value at a specified date prior to each interest rate adjustment date to determine the new interest rate.

☐ **The loan for which you are applying also includes the following provisions:**

1. The monthly payment amount will change annually and at such times as when the unpaid principal loan balance would exceed the maximum limit. Changes in the interest rate during each year can result in the unpaid principal loan balance increasing (negative amortization). At no time can the unpaid principal loan balance be greater than _____ % of the original principal balance of your loan.
2. Except as otherwise noted, each year, your new payment amount will be the lesser of the payment amount due the month preceding the payment change date times 1.075 (the "Limited Payment") or the amount that would be sufficient to repay the unpaid principal over the remaining term of the loan at the new interest rate (the "Full Payment"). On the 5th, 10th, 15th, 20th, 25th and 29th payment change date, your new payment will be the Full Payment.
3. If your last monthly payment does not pay off all of the remaining unpaid balance and accrued interest remaining on your loan, and you do not make an additional payment of principal, you will have to make a "balloon payment".

Additional information relating specifically to the ARM loan can be found in the ARM Disclosure Notice and the related ARM loan documents.

ADDITIONAL LOCK-IN TERMS

The terms described in this Agreement pertain to the Loan Program and Loan Type noted above. If you choose to change to a different Loan Program or Loan Type, this Agreement may become null and void at the option of Lender. Also, the terms of this Agreement are based in part on information provided by you in connection with your loan application and are subject to applicable state law requirements. Lender reserves the right to terminate this Agreement or alter the interest rate, at its option, in the event the information provided by you cannot be verified as true and accurate.

Please sign and return the enclosed copy of this Agreement, along with a check payable to GMAC Mortgage, LLC in the amount of \$0.00, on or before 8/15/2007.

In connection with processing your loan request, Lender will gather the necessary documentation in order that the file can be reviewed for a loan decision. Processing information generally consists of a credit report, property appraisal report, verification of income, employment and bank and asset statements, along with other information disclosed in the application request. During the course of loan processing, you may be asked to provide additional documentation.

Once complete, the file will be reviewed for an underwriting decision. In the event your loan application is approved, you will receive a commitment letter which will contain the terms included in this Agreement which are locked-in and not subject to change along with additional terms and conditions with respect to your approved loan.

You will be required to comply with certain requirements at or before the date of loan closing. These requirements generally include obtaining hazard insurance coverage and, if applicable, flood insurance, covering the mortgaged premises. In addition, you will be required to provide Lender with an acceptable commitment for title insurance in form and content and issued by a title company acceptable to Lender. The title commitment must be followed; at loan closing, by a title insurance policy confirming that the mortgage/deed of trust/security deed will be insured as a valid first lien.

Additional requirements may include, without limitation, (1) verification of the information contained in your loan application, including income, assets, and the timely payment of debts; (2) property survey; (3) certificate of occupancy; (4) master policy insurance certificate (if applicable in the case of a condominium); (5) termite inspection report; (6) well water test; (7) septic inspection report; (8) radon test report; and (9) satisfactory final inspection report, if new construction. You will be advised of any additional conditions which must be satisfied on or before the date of loan closing, or documentation to be produced by you if and when your loan request is approved.

The remaining amount of 1.625 points (\$4,348.03), along with other related closing fees and charges, will be collected at the time of loan closing.

In order for these terms to remain binding, I understand that my loan must close and loan funding must take place on or before the Lock-In Expiration Date. After that date, the interest rate, fees and points may change at the option of Lender.

I also understand that, if my loan request is for a refinance to be secured by my primary residence, I will not receive the loan proceeds on the date of closing due to regulatory requirements. In that case, I understand that the loan must close at least four (4) business days prior to the Lock-In Expiration Date. Otherwise, I may be charged a higher interest rate and/or additional points.

In the event of a joint loan request, I agree that one applicant can bind the other(s) with respect to locking-in the interest rate and points.

* If applying for an adjustable rate mortgage loan, the Interest Rate is for the initial term only and is subject to change in accordance with the terms of the adjustable rate loan documents.

OPTION 3 ☐ INTEREST RATE "CAP" OPTION

By checking this box, I understand that my interest rate and points are "capped" based on the following terms:

CAPPED RATE: %*

CAP EXPIRATION DATE:

RATE CAP TERM: Days

TOTAL POINTS: 1.625%

Each point is equal to 1.0% of the Loan Amount. Except as indicated below, the following is a breakdown of the various points:

Origination Fee:

Commitment Fee:

Discount Points:

Lock-In/Rate Cap Fee:

- ☐ If this box is checked, the Lock-In/Rate Cap Fee is NOT included in the Total Points. Instead, in the event a loan commitment is issued and loan closing and loan disbursement occurs on or before the Cap Expiration Date, the Lock-In/Rate Cap Fee collected will be applied as a credit against the Origination Fee, Commitment Fee, or Discount Points listed above or against other fees or loan charges at loan closing.

In consideration for locking-in the interest rate and points, Lender requires payment of a Lock-In/Rate Cap Fee of \$ (% of the Loan Amount) upon execution of this Agreement. This fee, along with any other fees and charges collected prior to loan closing, is non-refundable except as provided under the terms of the Agreement and as provided under applicable law.

The remaining amount of 1.625 points (\$4,348.03), along with other related closing fees and charges, will be collected at the time of loan closing.

I understand that, provided my loan closes and funds on or before the Cap Expiration Date, my interest rate and points will not be greater than the Capped Rate and Total Points listed above. I also understand that the Capped Rate is generally higher than the interest rate quoted by Lender on other Loan Programs and Loan Types.

Although capped, my interest rate and points may be lower at the time of loan closing under the following circumstances:

Within 28 days prior to the Cap Expiration Date or 5 business days prior to the date of loan closing (whichever occurs first), I understand that I must lock-in my interest rate and points by notifying the following individual or department between the hours of _____ A.M. and _____ P.M. on a regular business day: Karen Dowell Morris at 434-975-4622 (toll free phone number). My established interest rate and points will be the lower of (A) the Capped Rate and Points; or (B) the interest rate and points quoted by Lender at the time of the lock-in under the Lender's Cap Program for my approved Loan Program and Loan Type and based on the estimated time to the date of loan funding.

In the event of a joint loan request, I agree that one applicant can bind the other(s) with respect to locking-in the interest rate and points.

In order for these terms to remain binding, I understand that my loan must close and loan funding must take place on or before the Cap Expiration Date. After that date, the interest rate, fees and points may change at the option of Lender.

I understand that, if my loan request is for a refinance to be secured by my primary residence, I will not receive the loan proceeds on the date of closing due to regulatory requirements. In that case, I understand that the loan must close at least four (4) business days prior to the Cap Expiration Date. Otherwise, I may be charged a higher interest rate and/or additional points.

* If applying for an adjustable rate mortgage loan, the Interest Rate is for the initial term only and is subject to change in accordance with the terms of the adjustable rate loan documents.

Please note that, if your loan request is approved and loan closing takes place, Lender will be the source of the funding.

Except as otherwise provided in the State Specific Disclosures section noted below, in the event your loan application is denied by Lender as a result of the property appraisal report or your credit worthiness (and you have provided complete and correct information), any Lock-In Fee paid by you to Lender will be refunded to you.

The terms of this Agreement shall remain in effect through the date of loan closing and funding if your loan request is approved. Any terms not locked-in by this Agreement are subject to change until the mortgage loan is closed at settlement.

Once signed, this Agreement is enforceable by you and Lender.

STATE SPECIFIC DISCLOSURES:

District of Columbia ONLY:

If the mortgage loan is not closed within the applicable Lock-In Expiration Date or Cap Expiration Date, Lender will no longer be obligated by this Agreement and any Lock-In Fee paid by you will be refunded.

Florida loans ONLY:

In the event your loan application is denied by Lender as a result of the property appraisal report or your credit worthiness (and you have provided complete and correct information), any Lock-In Fee paid by you to Lender will be refunded to you.

In the event your loan application is approved and through "no substantial fault of the borrower" (see definition below), your loan does not close and fund prior to the applicable Lock-In Expiration Date or Cap Expiration Date, you may withdraw your application or reject or terminate any commitment. In that event, Lender will promptly refund to you any Lock-in Fee and Commitment Fee previously paid by you to Lender.

Florida law requires that a lender make a good faith effort to process the loan application and stand ready to fulfill the terms of any lock-in agreement before the expiration date of the Agreement and any permitted extension.

The term "substantial fault of the borrower" means that:

- A. You failed to provide information or documentation required by Lender or the broker in a timely manner;
- B. You failed to provide information, in the application or subsequently, which, upon verification, proved to be significantly inaccurate, causing the need for review or further investigation by Lender or the broker;
- C. You failed to produce, no later than the date specified by the Lender, all of the documentation specified in the commitment or closing or escrow instructions as being required for closing; or
- D. You failed to be ready, willing, or able to close the loan no later than the date specified by the Lender or broker.

Any lock-in agreement received by Lender by mail or through a broker must be signed by Lender in order to be effective. You may rescind any lock-in agreement until a written confirmation of the agreement has been signed by Lender and mailed to you or to the brokerage business pursuant to its contractual relationship with you. If you elect to rescind, Lender will promptly refund any Lock-In Fee paid.

Minnesota loans ONLY:

Any agreement to lock-in the interest rate and points may only be made in accordance with the requirements of Minnesota Statute Section 47.206 (3) and (4).

Virginia loans ONLY:

If the loan is not closed within the applicable Lock-In Expiration Date or Cap Expiration Date, Lender is no longer obligated by this Agreement and any Lock-In Fee paid by you will be refunded only as provided under the terms of this Agreement or if the applicable Lock-In Expiration Date or Cap Expiration Date did not provide a reasonable period of time given the prevailing market conditions at the time you entered into this Agreement.

Arizona loans ONLY:

Any Lock-In Fee or Rate Cap Fee paid is non-refundable.

Acknowledgement:

BY SIGNING BELOW, the parties acknowledge and accept the terms and conditions of this Agreement this 15th of August, 2007.

Donald R. Scott 8/3/07 Melissa J. Scott 8/3/07
Applicant Donald R. Scott Date Applicant Melissa J. Scott Date

Applicant _____ Date _____ Applicant _____ Date _____

By: Karen D. Morris
Karen Dowell Morris
District Manager
GMAC Mortgage, LLC

GMAC
Mortgage

GMAC Mortgage, LLC
Roanoke, VA 24018

MORTGAGE LOAN COMMITMENT

Donald R. Scott
Melissa J. Scott

14 Overlook Circle
Palmyra, VA 22963

DATE: August 6, 2007

LOAN NUMBER: 179558705

PROPERTY: 14 Overlook Circle
Palmyra, VA 22963

LOAN TYPE: Conventional
LOAN PURPOSE: Refinance
PRODUCT: LPMI Conf. Fixed 30Yr-Fnma

PROPERTY TYPE: PUD
RATE PROGRAM: Rate Locked-in

EXPIRATION DATE: November 27, 2007

RATE LOCK EXPIRATION DATE: August 29, 2007

GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation (GMAC Mortgage, LLC) ("Lender")
is pleased to advise you that your application for a loan secured by a first mortgage lien on the above referenced property
(the "Property") has been approved subject to the following terms and conditions.

1. LOAN AMOUNT

The Principal amount of the loan will be \$ 266,780.00.

2. LOAN TERM

The term of the loan will be 30 years.

3. INTEREST RATE

The interest rate (initial interest rate in the event you are applying for an Adjustable Rate Mortgage loan) of the loan will be 6.875% per annum.

If this loan is for the refinance of your primary residence you will not receive the loan proceeds on the day of your loan closing. Therefore, your loan must close at least four (4) business days prior to the Commitment Expiration Date stated above or Lender will have no obligation to honor the terms of this Agreement.
THIS MAY RESULT IN A HIGHER INTEREST RATE OR MORE POINTS BEING CHARGED ON YOUR LOAN.

4. MONTHLY PAYMENT OF PRINCIPAL AND INTEREST (P&I)

The loan will provide for monthly installments of principal and interest in the amount of \$1,752.56

5. MONTHLY ESCROW RESERVES

In addition to the monthly installments of principal and interest, you will be required to remit monthly escrow deposits for the payment of real estate taxes, insurance premiums, municipal assessments, Private Mortgage Insurance or FMA Mortgage Insurance Premiums (if applicable), and all other items for which an escrow is established under the terms of your loan documents. An initial deposit for these items will be required at loan closing.

6. POINTS

The total number of points to be charged in connection with the loan will be 1.625% or a dollar equivalent of \$ 4,335.18 . Each point is equal to 1.000% of the loan amount. The following is a breakdown of the various points:

Loan Origination Fee	1.000%	(\$1,667.80)
Loan Discount Fee	0.625%	(\$1,667.38)

YOUR COMMITMENT FEE IS NON-REFUNDABLE, EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

In the event your loan does not close and fund by the applicable Commitment Expiration Date, Lender will no longer be obligated under this Commitment. In that event, any Commitment Fee paid by you will be refunded to you only under the following circumstances:

PROPERTY: 14 Overlook Circle
Palmyra, VA 22963

LOAN NO: 179558705
PAGE#: 2 of 3

MORTGAGE LOAN COMMITMENT (Continued)

- A. If this loan Commitment is conditioned on the approval of a third party investor or mortgage insurance company and that party rejects the loan; or
- B. If Lender determines that the property appraisal report is not acceptable for the loan you have applied for (unless you and Lender agree on another loan for which the property appraisal report is acceptable); or
- C. If Lender declines your loan application on the basis of your credit worthiness and you have provided Lender with complete and accurate credit information; or
- D. The Commitment period was not a reasonable period of time given the prevailing market conditions at the time the Commitment Agreement was entered into.

7. LOAN ASSUMABILITY

The loan is not assumable.

8. HAZARD INSURANCE

Hazard insurance covering the Property is required in connection with the loan. At the time of loan closing, you must provide GMAC Mortgage, LLC with an original, fully paid policy or binder of hazard insurance with extended coverage issued by a company acceptable to Lender. If you are purchasing the Property, you are also required to provide a paid receipt for the first year's premium.

The insurance carrier must have an A.M. Best Company's general policyholder rating of at least "B: III Non-Assessable". INSURANCE APPLICATIONS, MAILGRAMS, ASSESSABLE POLICIES, OR POLICIES CONTAINING A CO-INSURANCE CLAUSE ARE NOT ACCEPTABLE.

The amount of coverage must be at least equal to the lesser of

- (a) 100% of the insurable value of the improvements on the Property or
- (b) \$266,780.00 plus the amount of any other liens on the property provided the coverage equals at least 80% of the insured value of the improvements. The policy's Mortgage Clause must be in favor of GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation, its Successors and/or Assigns; P.O. Box 4025, Coraopolis, PA 15108-6942. Coverage which lists GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation "as its interests may appear" IS NOT acceptable. The policy's effective date must be the DAY OF LOAN CLOSING OR FUNDING for purchase transactions and on or before the DAY OF LOAN CLOSING OR FUNDING on refinance transactions.

Please note that since an insurance policy may take several weeks to obtain, you should not delay in contacting the appropriate provider. Failure to obtain the required insurance coverage may delay your loan closing.

9. TITLE INSURANCE

At least seven (7) days prior to the scheduled loan closing date you must deliver to Lender, at your expense, the following items:

- (i) An original signed commitment for title insurance in form and content and issued by a title insurance company acceptable to Lender confirming that the mortgage will be insured as a valid first mortgage lien against the Property;
- (ii) Copies of all instruments of record (covenants, restrictions, right of way agreements, etc) affecting the Property;
- (iii) Copies of all leases, if the Property is to be tenant occupied at the time of loan closing and funding;
- (iv) Current survey showing the location of the buildings, easements and encroachments;
- (v) All other certificates, permits, licenses and approvals required by any governmental agency or anyone else having the authority over the Property.

At the time of loan closing, the title insurance company must deliver, and you will be required to pay the premium for, a title insurance policy insuring the mortgage as a valid first lien, subject only to exceptions approved by Lender with affirmative insurance on such matters as Lender may require. In the event you are applying for an Adjustable Rate Mortgage ("ARM") loan, the title insurance policy must provide affirmative coverage for the ARM loan. The title insurance policy must be in favor of GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation, its successors and/or assigns. All matters affecting the sufficiency and status of title to the Property must be satisfactory to Lender at the time of loan closing.

Lender requests a "short form" title policy providing affirmative coverage for all outstanding exceptions to title. If the title insurance company is unable to provide a short form title policy, lender will accept a standard form title policy providing complete coverage for all outstanding exceptions to title.

10. CANCELLATION OF COMMITMENT

Lender reserves the right, in its sole discretion, to cancel this Commitment for any of the following reasons:

- (i) Your failure to comply with or satisfy any of the requirements of this Commitment;
- (ii) An examination of title reveals unmarketable, defective or unacceptable title;
- (iii) There is any change in your credit and/or employment or any other change

INITIALS

RS MS

GMAC/DMS 84

PROPERTY: 14 Overlook Circle
Palmyra, VA 22963

LOAN NO: 179558705
PAGE#: 3 of 3

MORTGAGE LOAN COMMITMENT (Continued)

- (iv) from the information disclosed in your original loan application; or
- (v) There is any change in the condition, valuation or character of the Property.
- (v) We are prohibited by any law or regulation from doing business with you for any reason.

11. OCCUPANCY OF PROPERTY

Unless otherwise approved by Lender in writing, by accepting this Commitment you confirm that upon loan closing and funding you will be occupying the Property for the following purpose: Primary Residence.

12. ADDITIONAL LOAN COMMITMENT CONDITIONS

This Commitment is also subject to the following special conditions:

B.) The following documentation must be received and/or the conditions satisfied at the time of your loan closing:

1. Secondary financing is not permitted unless approved by Lender in writing.
2. Corrected Uniform Residential Loan Application to be signed in all appropriate places.
3. Payoff and close the following liens on the subject property: GMAC Mortgage #575398003 & BB&T #390312364339004 , and any other lien of record.
4. Signed IRS Form 4506 (Request For Copy Of Tax Form) for Donald R. Scott.
5. Signed IRS Form 4506 (Request For Copy Of Tax Form) for Melissa J. Scott.

13. EXPIRATION OF COMMITMENT

Unless otherwise extended by Lender in writing, once accepted by you, this Commitment will expire on November 27, 2007. If an extension is granted, it may be subject to terms and conditions which are different from those stated in this Commitment.

14. ACCEPTANCE OF COMMITMENT

In order to accept this Commitment, you must sign and return the enclosed copy along with the fees, if any, required to be paid at this time as stated in the section entitled "Points" by August 20, 2007 .

Failure to comply with this requirement will enable Lender, at its option, to declare the Commitment null and void.

IF YOU SIGN THIS COMMITMENT, AND YOU DO NOT CLOSE AND FUND THIS LOAN IN ACCORDANCE WITH THE DESCRIBED TERMS, YOU MAY LOSE SOME OR ALL THE FEES OR CHARGES YOU HAVE PAID.

We are pleased to extend this loan Commitment to you and look forward to a successful loan closing. If you should have any questions about the terms and conditions of this Commitment, please contact Julie Jones at (540) 772-3108 . Information may be faxed to our office at (866) 264-4086 .

Sincerely,

GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation

By: _____

Title: _____

Signature: _____

The above terms and conditions are agreed to and accepted this _____ day of _____

By: Donald R. Scott Borrower

By: Melissa J. Scott Borrower

GMAC/DMS 85

PROPERTY: 14 Overlook Circle
Palmyra, VA 22963

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MORTGAGE LOAN COMMITMENT (Continued)

- (iv) from the information disclosed in your original loan application; or
- (v) There is any change in the condition, valuation or character of the Property.
- (v) We are prohibited by any law or regulation from doing business with you for any reason.

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Sincerely,

GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation

By: _____

Title: _____

Signature: _____

The above terms and conditions are agreed to and accepted this _____ day of _____

By: Donald R. Scott Borrower

By: Melissa J. Scott Borrower

GMAC/DMS 85

GENERAL LOAN APPLICATION ACKNOWLEDGMENT

Date: 08/01/2007 Lender: GMAC Mortgage, LLC
Applicant(s): Donald R Scott Branch/Contact 620 Woodbrook Drive, Ste. 2
Melissa J Scott Address: Charlottesville, VA 22901
Branch/Contact 434-975-4622
Phone:
Property 14 Overlook Circle Fax Number:
Address: Palmyra, VA 22963 Loan Officer: Karen Dowell Morris

Important Information About Procedures for Opening a New Account: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask you for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Acknowledgements:

I, the undersigned applicant, hereby make the following certifications with regards to my application for a mortgage loan:

- ☒ **Mortgage Process:** I acknowledge receipt of the Mortgage Process Summary.
- ☒ **Servicing Disclosure Statement:** I acknowledge receipt of the Servicing Disclosure Notice. I have read this disclosure form and understand its contents, as evidenced by my signature(s) below. I understand that this acknowledgment is a required part of the mortgage loan application.
- ☒ **Good Faith Estimate of Settlement Costs and Addendum:** I acknowledge receipt of the Good Faith Estimate of Settlement Costs and Addendum.
- ☒ **Settlement Costs Booklet:** I acknowledge receipt of the Buying Your Home - Settlement Costs and Helpful Hints Booklet.
- ☒ **Homeowner's Insurance Notice:** I acknowledge receipt of the Homeowner's Insurance Notice.
- ☒ **Truth-in-Lending Disclosure Statement:** I acknowledge receipt of a Truth-in-Lending Disclosure Statement.
- ☐ **Adjustable Rate Mortgage:** I acknowledge receipt of the Adjustable Rate Disclosure ("Important Information About the Adjustable Rate Loan") and Consumer Handbook on Adjustable Rate Mortgages booklet.
- ☐ **Balloon Payment Mortgage:** I acknowledge receipt of the Balloon Payment Disclosure ("Important Information About the Balloon Payment Fixed Rate Mortgage Loan").
- ☐ **Interest-Only Period Mortgage:** I acknowledge receipt of the Interest-Only Period Disclosure ("Important Information About the Interest-Only Period Mortgage Loan").
- ☐ **HELOC Disclosures:** I acknowledge receipt of the following disclosures regarding my application for a Home Equity Line of Credit (HELOC) Pre-Application Notices (Consolidated Rate Summary Disclosure, Important Terms Disclosure, and Historical Variable Rate Example Disclosure) and "When Your Home Is On the Line: What You Should Know About Home Equity Lines of Credit" booklet.
- ☐ **Closed-End Home Equity Disclosure:** I acknowledge receipt of the Home Equity Loan Preapplication Notices disclosure.
- ☒ **Credit Score Disclosure and Notice to Home Loan Applicant:** I acknowledge receipt of the Credit Score Disclosure and Notice to Home Loan Applicant.
- ☒ **Private Mortgage Insurance (for Conventional Mortgage Loans ONLY):**
- ☒ At the time of application, my loan does not require Private Mortgage Insurance (PMI). I understand that changes to my loan terms, including, but not limited to, the mortgage amount, the value of the Property, my intent to occupy the property, and the loan product may result in the need for PMI on my loan.

EXHIBIT

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GMAC/DMS 261

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- ☐ At the time of application, my loan requires Private Mortgage Insurance (PMI). I understand that, if my loan requires PMI and I prepay my loan in full prior to the scheduled maturity date, I will not be entitled to a refund of any portion of PMI unless otherwise indicated in writing at or before the time of loan closing.
- ☒ **Mortgage Broker Services:** Unless the box below is marked [X], I certify that I have not entered into any arrangement with a mortgage loan broker to assist me in obtaining mortgage loan financing.
- ☐ I have entered into an arrangement with a mortgage loan broker to assist me in obtaining mortgage loan financing. I agree to provide Lender with a complete copy of any fee arrangement with the mortgage loan broker listing the various fees, points, or other compensation which I have agreed to pay the mortgage loan broker.
- ☒ **Amounts Paid:** I acknowledge that, subject to applicable government restrictions, all amounts paid by me in connection with submitting my loan application are non-refundable.
- ☒ **Broker:** I acknowledge that, in the event that Lender cannot provide the requested loan financing, it may, in its sole discretion and without any obligations to do so, unless otherwise prohibited by law, act as a mortgage broker in attempting to locate another source of financing. I will be notified if your loan request will be brokered to another lender.
- ☒ **Appraisal of Mortgaged Property:** In the event an appraisal is required, I understand that Lender makes no representations, express or implied, to me or to any third party, regarding the mortgaged property, its building, construction, condition, state of completion, condition of land, or otherwise. I must rely solely upon my own independent inspection of the mortgaged property or the results of a professional home inspection performed by a home inspector hired by me, and not rely upon the appraisal report made for the sole benefit of Lender.
- ☒ **Notice of Availability of Appraisal Report:** In the event an appraisal is required, I understand that I have the right to a copy of the appraisal report used in connection with my application for credit. If I wish to receive a copy, I must contact the branch identified above or write to Lender at the mailing address Lender provided above. I must make my request no later than 90 days after (i) Lender notifies me about the action taken on my credit application; or (ii) I withdraw my application. The 90 day limitation period does not apply to Rhode Island or Arizona loan applicants.
- ☐ **Department of Veterans Affairs (VA):** If applying for a VA mortgage loan, VA requires me to give the name, address, and phone number of the veteran's nearest living relative not living with the veteran.

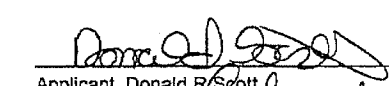
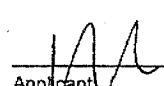
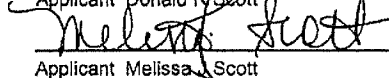
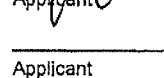
Relative's name: _____ Telephone Number: (____) _____

Address: _____

Veteran's date of birth: _____ Veteran's Service Serial Number: _____

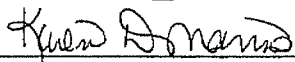
Veteran's Branch of Service: _____

- ☐ **For Your Protection Disclosure:** I acknowledge receipt of the FHA form "For Your Protection: Get A Home Inspection" (HUD-92564-CN).
- ☐ **Private Mortgage Insurance (for the state of New York only):** I acknowledge receipt of the Private Mortgage Insurance Cancellation Policies.

	8/3/07		N/A
Applicant Donald R. Scott	Date	Applicant	Date
	8/3/07		
Applicant Melissa Scott	Date	Applicant	Date

See addendum for additional signatures.

I certify that the above items, including the ☒ Truth-in-Lending Disclosure Statement and ☒ Good Faith Estimate of Settlement Costs were ☐ hand delivered ☒ mailed to the applicant(s) on 8/1/07.

By: 
Karen Dowell Morris

Date: 8/1/07