

1 Law Office of Christine A. Wilton
Christine A. Wilton, State Bar No. 256503
5150 Candlewood Street, Suite 17F
2 Lakewood, CA 90712
Tel: 877-631-2220
3 Fax: 636-212-7078
Attorneys for Debtors

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5 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT CALIFORNIA
6 **LOS ANGELES DIVISION**

7 In re) Case No.: 2:10-bk-57157-VZ
8 [REDACTED]) Adv. No.:
9 Debtors) Chapter 13
10 [REDACTED] Smith,) COMPLAINT TO DETERMINE THE
Plaintiffs) SECURED STATUS, EXTENT, VALIDITY,
11 Vs.) PRIORITY OF LIENS, REMOVE CLOUD
12) FROM TITLE, SANCTIONS AND OTHER
SIB Mortgage Corporation,) RELIEF
13)
Fannie Mae,)
14 GreenPoint Mortgage Funding, Inc.,)
GMAC Mortgage, LLC,)
15 Chase Home Finance, LLC.)
US Bank, N.A. individually and as Trustee,)
16 And UNKNOWN DEFENDANTS 1 through)
10.)
17 Defendants)

18 COMES NOW, [REDACTED] Smith, Debtors, by and through
19 counsel, and files this Complaint to Determine extent, validity, priority of liens and secured
20 status, remove clouds from title, sanctions, and other relief and in support thereof states as
21 follows:

22 **JURISDICTION & VENUE**

- 23 1. This is an adversary proceeding brought pursuant to Rule 7001 of the Federal Rules of
24 Bankruptcy Procedure.
- 25 2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§
26 157 and 1334 and 11 U.S.C. §§ 105 and 542.
- 27 3. This contested matter is a core proceeding as defined by 28 U.S.C. §157.
- 28 4. Venue is proper under 29 U.S.C. § 1409.

1 **PARTIES**

2 5. Debtors as Plaintiff have standing to bring this action pursuant to 11 U.S.C. §§ 101,
3 109 and as owners of real property located at [REDACTED], Lakewood, CA 90712.

4 6. Defendant SIB Mortgage Corporation¹ is a New Jersey corporation with its principal
5 place of business in Branchburg, New Jersey. Defendant may be served with process of this
6 Court upon its registered agent, CT Corporation System, Agent for Service, 818 W 7th Street,
7 Los Angeles, CA 90017. Individually this defendant will be referred to as “SIB” herein below.

8 7. Defendant Fannie Mae is Fannie Mae is a government-sponsored enterprise (GSE)
9 chartered by Congress with its principal place of business located at 3900 Wisconsin Avenue,
10 N.W. Washington, D.C. 20016. Defendant may be served with process of this Court upon any
11 officer or authorized agent by mailing a copy of the summons and complaint to the legal
12 department, Fannie Mae Legal Department Beth Wilkinson, General Counsel, 14221 Dallas
13 Parkway, Suite 1000, Dallas, TX 75254. Defendant is being sued in its individual capacity.
14 Individually this defendant will be referred to as “Fannie Mae” herein below.

15 8. Defendant Chase Home Finance, LLC. is successor by merger from JP Morgan JP
16 Morgan Chase Bank, N.A. with its principal place of business located at 800 Brookside Blvd.,
17 Westerville, OH 43081. Defendant may be served with process of this Court upon any officer of
18 the corporation, authorized agent, or counsel of record by mailing a copy of the summons and
19 complaint to their counsel of record. Defendant is being sued in its individual capacity and as
20 servicer for Fannie Mae. Individually this defendant will be referred to as “CHASE” herein
21 below.

22 9. Defendant GMAC Mortgage is a subsidiary GMAC Rescap with its principal place of
23 business located at 1100 Virginia Drive, Fort Washington, PA 19034. Defendant may be served
24 with process of this Court upon any officer of the corporation by mailing a copy of the summons
25 and complaint to the principal place of business. Defendant is being sued in its individual
26

27 _____
28 ¹ SIB Mortgage Corporation entity no. C2251166 was forfeited 06/30/00
according to the California Secretary of State website
<http://kepler.sos.ca.gov/cbs.aspx>

1 capacity and as servicer for U.S. Bank, N.A. as Trustee. Individually this defendant will be
2 referred to as “GMAC” herein below.

3 10. Defendant U.S. Bank, N.A. is a national association and an insured depository
4 institution with its principal place of business located at 60 Livingston Ave, 4th Floor St. Paul,
5 MN 55107. Defendant may be served with process of this Court upon any officer of the
6 corporation by mailing, via certified mail, a copy of the summons and complaint to the principal
7 place of business. Defendant is being sued in its individual capacity and as trustee. Individually
8 this defendant will be referred to as “US Bank” herein below.

9 11. Defendant GreenPoint Mortgage Funding, Inc.² is a mortgage loan originator, a unit
10 of Capital One, with its principal place of business located at 100 Wood Hollow Drive, Novato,
11 CA 94945. Defendant may be served with process of this Court upon any officer of the
12 corporation by mailing a copy of the summons and complaint to the principal place of business.
13 Defendant is being sued in its individual capacity. Individually this defendant will be referred to
14 as “Greenpoint” herein below.

15 12. Unknown Defendants 1 through 10 are corporate entities and/or individuals that may
16 have a legal interest in the promissory notes, deed of trust, assignments or the real property
17 which is the subject of this proceeding and/or who may be responsible for the acts complained of
18 herein.

19 13. Collectively the defendants named above will be referred to as “Defendants.”

20 FACTS

21 The Smith’s Mortgages

22 14. On or about July 2, 2003, Debtors, [REDACTED] (“Smiths”
23 or “Debtors”), executed a promissory note (“First Note”) payable to SIB Mortgage Corporation
24 and a deed of trust (“First Trust Deed”) conveying their certain real property to SIB in trust to
25

26 _____
27 ² GreenPoint Mortgage funding, Inc. is a current active corporate entity no.
28 C1846167 per California Secretary of State website
<http://kepler.sos.ca.gov/cbs.aspx>. Their mortgage loan originator license no.
01263629 expired 07/25/07 according to the California Department of Real
Estate website <http://www2.dre.ca.gov/PublicASP/pplinfo.asp>.

1 secure repayment of the First Note. The First Trust Deed was recorded in the land records of Los
2 Angeles County, California as document no. [REDACTED] 9592. The First Note and First Trust Deed
3 are attached hereto as Exhibits "A" and "B" respectively.

4 15. On or about March 17, 2006, Debtors executed a Home Equity Line of Credit
5 Agreement and Promissory Note ("Second Note") payable to GreenPoint Mortgage Funding,
6 Inc. and a Home Equity Line of Credit Deed of Trust ("Second Trust Deed") conveying their
7 certain real property to Greenpoint in trust to secure repayment of the Second Note. The Second
8 Note and Second Trust Deed are attached hereto as Exhibits "C" and "D" respectively.

9 16. The subject real property is more particularly described as follows:
10 Lot [REDACTED], of tract no. [REDACTED] 9198, in the City of Lakewood, in the County of
11 Los Angeles, State of California, as per map recorded in book 492,
12 pages 8 to 10 inclusive of maps, in the office of the county recorder
13 of said county. A-P.Number: [REDACTED]-019 which was the property
14 address of [REDACTED], Lakewood, CA 90712.

13 The Smiths' Bankruptcy

14 17. Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code on
15 11/02/10. The Plan proposed, inter alia, that the pre-petition arrears and continuing mortgage
16 payments would be made through the loan servicers Chase and GMAC.

17 18. On 12/01/10, Chase caused to be filed a proof of claim (Clm. #6-1) in the bankruptcy
18 case. Said proof of claim identified the creditor as Chase Home Finance, LLC. The claim was
19 signed by Edward T. Weber an attorney with the firm Routh Crabtree Olsen, PS. A copy of the
20 proof of claim is attached hereto as Exhibit "E."

21 19. Attached to the proof of claim were the First Note and First Deed of Trust. From the
22 proof of claim and its attachments it was unclear that Chase held the underlying debt or First
23 Deed of Trust.

24 20. On 01/27/11, Debtors filed a motion to disallow claim no. 6 of Chase. In the
25 objection Debtors alleged that Chase was not the creditor.

26 21. A hearing was scheduled for 03/14/11. The matter was heard on that date and the
27 Court granted the Debtor's motion.
28

1 22. The Court entered its Order granting Debtor’s motion and disallowing the Chase
2 claim on 04/13/11.

3 23. On 04/25/11, Chase caused to be filed Notice of Motion and Motion for
4 Reconsideration of their claim no. 6 and to vacate order entered 04/13/11. The motion had no
5 exhibits attached to it.

6 24. A hearing was scheduled for 06/13/11 and the matter was heard on that date. The
7 Court denied Chase’s motion for reconsideration and did not vacate its prior order disallowing
8 the Chase claim no. 6.

9 25. The deadline to file a proof of claim for all creditors was 03/16/11 and for a
10 governmental unit 05/2/11.

11 **COUNT I – DETERMINATION OF SECURED STATUS**

12 26. The allegations set forth in paragraphs 1 through 25 above are incorporated herein by
13 reference.

14 27. As determined by this Court following Debtors motion to disallow claim of no. 6,
15 Chase does not hold a perfected secured claim upon Debtor’s residence.

16 28. In addition to the Court’s findings, the First Note and First Deed of Trust were not
17 transferred.

18 29. At no time relevant hereto did Chase or Fannie Mae hold both the First Note and
19 First Deed of Trust. Therefore, the loan could not have been serviced by Chase or its successor
20 also Chase and Chase did not have standing to file the proof of claim.

21 30. Pursuant to 11 U.S.C. § 506(d) the lien is void. Therefore, any claim of Defendants
22 Chase, Fannie Mae or SIB Mortgage Corp. should be deemed unsecured and the First Deed of
23 Trust void and/or satisfied.

24 **COUNT II – EXTENT, VALIDITY AND PRIORITY OF LIEN**

25 31. The allegations set forth in paragraphs 1 through 30 above are incorporated herein by
26 reference.

1 32. GreenPoint Mortgage Funding, Inc. was named as the “Lender” on Debtors’ Home
2 Equity Line of Credit Agreement and Promissory Note and Home Equity Line of Credit Deed of
3 Trust executed on or about 03/20/06. The current servicer of this loan is GMAC Mortgage.

4 33. On 07/11/11, counsel for Debtors sent a Qualified Written Request (“QWR”) under
5 Real Estate Settlement Procedures Act (“RESPA”) to GMAC.

6 34. GMAC responded to Debtors QWR on 08/12/11. Their written response indicated
7 that the current owner of the loan is “US Bank N.A., as Trustee.” A copy of the GMAC letter
8 dated 08/12/11 is attached hereto as Exhibit “F.”

9 35. GMAC was included in the creditor matrix, listed on Debtors’ Schedules and served
10 a copy of the Plan on 11/15/10 and the First Amended Plan on 06/23/11. To date, neither
11 GMAC, nor US Bank N.A. has filed a proof of claim in Debtors’ bankruptcy case.

12 36. Debtor asserts that neither GMAC nor US Bank N.A. as Trustee hold a perfected
13 secured claim upon Debtors’ residence.

14 37. Pursuant to 11 U.S.C. § 506(d) the lien is void. Therefore, this lien should be
15 deemed unsecured and the Second Trust Deed void and/or satisfied.

16 **COUNT III – REMOVE CLOUDS FROM TITLE**

17 38. The allegations set forth in paragraphs 1 through 37 above are incorporated herein by
18 reference.

19 39. Based upon the foregoing allegations, Debtors allege that the Deeds of Trust secure
20 nothing for their alleged holders and are therefore, clouds on the title.

21 40. Debtors request an order of this Court finding that the First and Second Deeds of
22 Trust are a cloud upon the title of Debtors and that they shall be stricken from the land records in
23 the Office of the Registrar of Deeds, Los Angeles County, California. Further, Debtors request
24 such other relief to which they or this bankruptcy estate may be entitled.

25 WHEREFORE, PREMISES CONSIDERED, Debtors, pray that the Court enter its order
26 granting judgment for the following:

27 A. A determination that none of the Defendants hold both the Note and Deed of Trust on
28 either the First Trust Deed or Second Trust Deed;

1 B. A finding that the First Trust Deed is either void or satisfied and order to the clerk to
2 strike it from the land records;

3 C. A finding that the Second Trust Deed is either void or satisfied and order to the clerk
4 to strike it from the land records; and

5 D. Such other relief to which the Debtors and this bankruptcy estate may be entitled.

6 Respectfully Submitted.

7 Dated this 30th Day of August, 2011

8 Law Office of Christine A. Wilton

9 By: _____

10 Christine A. Wilton
11 Counsel for the Debtors

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