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5 Attorney for Debtor
6 GORDY A SPIRES

7
8
9 UNITED STATES BANKRUPTCY COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 GORDY A SPIRES)

13)
14 Debtor/Plaintiff,)

15 v.)

16 G8 CAPITAL FUND VII, LLC.;)
17 MORTGAGE ELECTRONIC)
18 REGISTRATION SYSTEMS, INC.)
"MERS" and DOES 1-50, inclusive.)

19)
20)
21 Defendant)
22)
23)
24)

CHAPTER 13
CASE NO: 08-13091-LT 13

ADVERSARIAL CASE NO:
09-90133-LT

DECLARATION OF DEBTOR
IN SUPPORT OF REPLY TO
RESPONSE FOR EMERGENCY
HEARING

25
26
27 **I. EMERGENCY RELIEF IS WARRANTED**

28 1. I am the DEBTOR in the above referenced matter.

1 2. All I ever wanted to do in this matter was to re-negotiate the loan on my house.

2 3. I never did agree to the "Settlement Agreement and Mutual Release". Brett
3 Gillian and Evan Gentry suggested that they meet me in Vista to sign the agreement;
4 however my attorney Mr, Landers could not be present. The following day I instructed
5 Mr. Gilliland I was not going to sign the agreement without my counsel present.

6 4. The agreement contained no protection, it was merely a lease agreement, the
7 foreclosure would still proceed, and without any guarantee to me of keeping the house.
8 There was never an offer of a loan modification throughout the entire process, only a
9 Settlement Agreement that DEFRAUDED THE SECOND NOTE HOLDER. In addition,
10 it stated I would be giving up my rights for and further legal action against them. I was
11 instructed by my counsel of record for the State Court proceedings, Mr. Landers not to
12 sign anything without his review, and cautioned against signing anything that had no
13 protection for me that the property would not be sold.

14 5. I have no knowledge that the purported sale was duly noted, I did not receive
15 any notice of sale for the sale 04-20-09.

16 6. The Declaration of Mr. Gilliland stated that they made every effort to act in good
17 faith with me. This is simply not true, the only correspondence that I received was a
18 letter from Mr. Gilliland of G8 Capital dated 10-15-08. The letter stated they made many
19 attempts to provide me with options to foreclosure, and to modify the loan. The only
20 letter I received was threatening and intimidating.

21 7. On 10-24-08 Peppertree Financial fled a Notice of Sale.

22 8. On 10-27-08 G8 Capital quit claimed the property to themselves before the
23 foreclosure sale.

24 My sole purpose has really been to modify the loan I have with the lender.

25 9. They have not dealt with me in good faith. I thought I had reached settlement in
26 the State Court, however on the eve of the injunction hearing, I was presented with a
27 settlement agreement which was nothing more then a lease purchase option on my
28 home, with no guarantee that my house would not be sold.

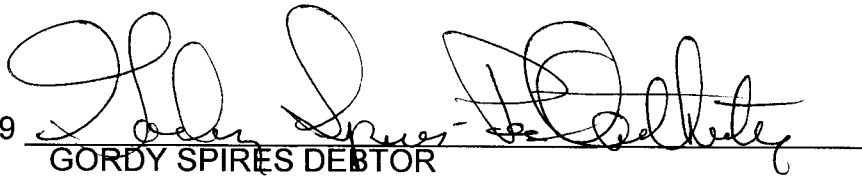
1 10. I recently spoke with a representative of American Coast Title who assured me
2 that even if I am able to maintain the property the deeds have to be reformed, as there
3 is an improper chain of title, as is argued in are response. No buyer including myself will
4 be able to obtain title insurance with the current status of the title.

5
6 LIST OF EXHIBITS TO SUPPORT MY DECLARATION:

- 7 A) G8 CAPITAL LETTER DATED 10-15-08
- 8 B) LETTER FROM MY PREVIOUS ATTORNEY ROY LANDERS 10-22-08
- 9 C) SETTLEMENT AGREEMENT AND RELEASE FROM G8 12-08
- 10 D) LETTER FROM CURRENT ATTORNEY 02-10-09
- 11 E) LETTER FORM G8 CAPITAL 03-20-09 INDICATING
12 THEY ARE AWARE OF THE PROCEEDINGS
- 13 F) TRUSTEE LETTER DATED 04-10-09

14
15 I declare under the penalty of perjury that the foregoing is true and correct and if
16 called to testify I would be competent to do so. I execute this Declaration at 8765 Aero
17 Drive, Ste. 306, San Diego, CA 92123.

18
19 DATED: 05-18-09



GORDY SPIRES DEBTOR



999 Corporate Drive, Suite 215 • Ladera Ranch, CA 92684 • Phone 949-545-6996 • Fax 949-545-6999

October 15, 2008

**GORDY SPIRES
4743 CRATER RIM ROAD
CARLSBAD, CA 92010**

Dear GORDY SPIRES:

By now, you should have received notification that G8 Capital has purchased your loan from your previous lender, Litton Loan Servicing. There is a problem with your loan—you are not making your mortgage and/or property tax payments. As a result, your file is in **Default status**. We have made many attempts to provide you with options that allow you to avoid the painful foreclosure process. Unfortunately, as of today, we have been unsuccessful in those attempts, and it appears that we are forced to continue the foreclosure process.

This letter is to notify you of a few important issues:

First: You are responsible to pay your 2008 property taxes. They become due in two installments, one in November 2008 and the other in February 2009. If you do not pay these taxes on time, they will become delinquent. You are also required to reimburse us for any delinquent property taxes that we have paid on your behalf. According to our records, we paid approximately \$ 15,802.66, which needs to be reimbursed to us at this time. If you refuse to work out a repayment plan, we will be forced to continue the foreclosure process based on the past due amount on your mortgage and/or the unpaid/delinquent property taxes.

Second: If we are forced to complete the foreclosure process, we will be required to report this matter to the credit reporting bureaus. A foreclosure reported on your credit report will remain there for approximately 7 years and will severely affect your ability to qualify for any type of loan. Applications for personal loans, credit cards, car loans, business loans, etc. are all impacted by a foreclosure reported to the credit bureaus. Even if you are able to qualify for a loan (or credit card), your foreclosure status will result in high interest rates, which might make it difficult to make the payments. Also, laws allow us to recover any fees we incur and/or losses we take in this matter. This simply means that we will work with a credit collection agency to help us collect on the amounts due based on the terms of your loan, which will force you to deal with this defaulted

debt long after you are not living in this home. We want to avoid this if at all possible. It is your responsibility to work with us to be able to avoid a foreclosure.

Third: One of the options we have offered you (that allows you to avoid foreclosure) is a Deed in Lieu transaction. This simply means you return the house back to us, we write off the amount you owe and close your file. Because you decide to work with us in a responsible manner, we will not report your default status to the credit reporting agencies and we will not work with a collection agency to collect on the amount owed to us. If you are interested in this option, we would be willing to assist you with your moving expenses. Please contact us for further details.

Fourth: Other options that allow you to avoid foreclosure are: a loan modification, a repayment plan, or a short sale. If you have been declined for some of these other options, please work with us to resolve this matter with the options that are available to you. If you have not contacted us about any of these options, please call me as soon as possible.

We have made many attempts to contact you to resolve this matter. It is our hope that we can agree upon an arrangement that will allow you to avoid foreclosure.

Please call me immediately at **888-600-6389 ext. 227**.



Brett Gilliland
G8 Capital
VP, Asset Management
999 Corporate Drive, Suite 215
Ladera Ranch, CA 92694
888-600-6389 ext. 227
brettg@g8cap.com



Roy L. Landers
ATTORNEY AT LAW

7840 MISSION CENTER COURT, SUITE 101
SAN DIEGO, CA 92108-1321

TEL: (619) 296-7898 FAX: (619) 296-5611

E-MAIL: roylanders@landerslaw.com www.landerslaw.com

October 22, 2008

VIA FACSIMILE/U.S. Mail

Fax: 949-545-6999

Brett Gilliland
VP, Asset Management
999 Corporate Drive, Suite 215
Ladera Ranch, CA 92694

Re: Gordy Spires
Property Address: 4743 Crater Rim Road – Carlsbad, CA 92010
Loan # 21937834

Dear Mr. Gilliland:

Thank you for taking the time to speak with me with regard to the real estate loan that Mr. Gordy Spires presently pays to G8 Capital. As I indicated he has retained me to represent him with the desire to negotiate a loan workout plan that is mutually beneficial to him and the creditor in this matter.

You stated that your company has previously reviewed information obtained from Mr. Spires and believe that the income he reported at the time is insufficient to work out a plan that is feasible for a loan workout. I met with Mr. and Mrs. Spires earlier today and they have informed me that their financial circumstances have changed significantly since the earlier financial information was sent. Accordingly they are requesting that G8 Capital forbear any continuation of any foreclosure proceedings until they have provided additional financial information and a payment plan that they believe would serve to preclude foreclosure and work in favor of resolving the current issues.

You indicated that your company would be willing to look at additional information and make a determination based thereon. I will obtain the additional information and get it to you without delay.

I look forward to working with you to work out a plan that will save the Spires home and provide adequate protection to the lender.

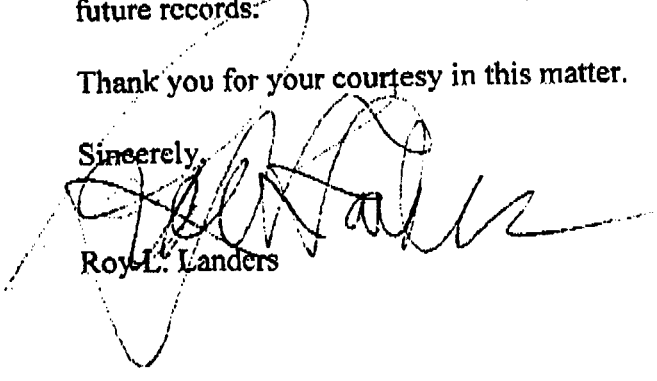
A difference you can count on

Gordy Spires re loan modification
October 22, 2008
Page 2,

I have enclosed an authorization to release information on behalf of Mr. Spires for your future records:

Thank you for your courtesy in this matter.

Sincerely,


Roy L. Landers

DRAFT

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") by and between GORDY ANTHONY SPIRES, on the one hand ("Plaintiff"), and Defendant G8 CAPITAL FUND VII, LLC (hereinafter "G8"), on the other hand, is effective as of the date of execution by all parties.

RECITALS

A. On November 5, 2008, Plaintiff filed an action against G8 (as well as three other named defendants) in the Superior Court of the State of California, County of San Diego, Case No. 37-2008-00060507-CU-OR-NC, claiming, among other things, wrongful foreclosure, declaratory relief, breach of fiduciary duty and statutory unfair competition ("the Action").

B. On or about November 7, 2008, Plaintiff sought and obtained an *ex parte* TRO to prevent the non-judicial foreclosure sale concerning the Real Property from going forward as previously noticed and scheduled on November 12, 2008.

C. On or about November 10, 2008, Plaintiff filed a Notice of Pendency of Action ("*Lis Pendens*") claiming the Action affected title to certain real property commonly known as 4743 Crater Rim Road, Carlsbad, California 92110 (the "Real Property").

D. Thereafter, G8 filed its Opposition to the OSC re Preliminary Injunction, and also filed a Cross-Motion to expunge the *Lis Pendens*, both motions which are set for hearing on December 19, 2008 by stipulation of the parties.

E. On December 9, 2006, G8 filed its Answer to the Complaint and generally denied each of the allegations therein.

F. On December 19, 2008, the Court denied Plaintiff's request for a preliminary injunction, and dissolved the TRO.

G. The parties to this Agreement wish to resolve the Action without the need for further litigation and desire to fully and finally settle all claims or disputes as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, including the waiver by all sides of all court costs and fees, the Parties to this Agreement agree as follows:

1. Recitals. The Recitals to this Agreement are incorporated and made a part hereof.
2. Payment to G8. Upon execution of this Agreement, Plaintiff will pay G8 the amount of FIVE THOUSAND DOLLARS (\$5,000.00) in the form of a cashier's check drawn on Wells Fargo Bank.
3. Withdrawal of Lis Pendens. Upon execution of this Agreement, Plaintiff will immediately take all steps necessary to withdraw the previously recorded *Lis Pendens* on the Real Property by recording an acknowledged notice of withdrawal pursuant to C.C.P. § 405.50.
4. Non-Judicial Foreclosure Sale Be Allowed. Plaintiff further agrees and consents that the non-judicial foreclosure sale previously noticed may proceed to move forward, and that Plaintiff will not engage in any further legal efforts to stop or prohibit the trustee's non-judicial foreclosure sale on the Real Property from going forward.
5. Residential Lease and Option to Purchase. Upon completion and consummation of the non-judicial foreclosure sale, and assuming that G8 becomes record owner and obtains fee title to the Real Property by entering a credit bid of not less than \$600,000, G8 agrees that it will enter into a twelve-month residential lease with Plaintiff for the Real Property, as well as providing Plaintiff with an option to purchase the Real Property within the twelve-month term of the residential lease. A true and correct copy of the terms and conditions that the Parties have agreed to with respect to the residential lease and option to purchase are set forth in the document attached hereto as Exhibit "A," and by this reference incorporated herein. **The residential lease and option to purchase is not intended by the parties to create any redemption rights in favor of Plaintiff in the Real Property.** In the event that a third party, who is unaffiliated with G8, makes a successful bid at the non-judicial foreclosure sale in an amount in excess of \$600,000, then G8 will be under no obligation to enter into the attached residential lease and option to purchase agreement with Plaintiff. To the extent that Plaintiff becomes delinquent or in default under the terms of the lease, and G8 is forced to evict him under an unlawful detainer or other legal proceeding, Plaintiff's option to purchase the Real Property will automatically terminate.
6. Payment of Delinquent Property Taxes, Homeowner Association Dues and Assessments, and Maintenance of Hazard Insurance on the Real Property. As a further condition of entering into this Agreement (including the residential lease and option to purchase), Plaintiff agrees to first bring current and pay all delinquent property

taxes for the Real Property, including the first installment for 2008, which has not been paid and is now delinquent. Plaintiff also will be responsible for bringing current any delinquent homeowner association dues or assessments related to the Real Property, and keep those dues or assessments current. Finally, Plaintiff agrees to pay for and maintain, throughout the term of the twelve-month lease, a hazard insurance policy on the Real Property. The amount to be insured will be approved by G8 to ensure that G8's ownership interest is adequately protected.

7. Dismissal of Action. In exchange for the execution of all documents required under this Settlement, Plaintiff immediately shall execute and file a Request for Dismissal of the entire Action. The dismissal will be with prejudice as to G8 and Peppertree Financial Inc., and may be without prejudice as to the other two named defendants. The parties shall also stipulate to the Court retaining jurisdiction over the settlement under California Code of Civil Procedure, section 664.6.

8. Mutual But Limited Release. With the exception of the note and deed of trust discussed below, and also excepting Defendants GE Money Bank and First Capital Financial Resource, neither of which are parties to this Agreement and to which these releases and waivers do not apply, the Parties hereto and any of their heirs, assigns, devisees, legatees, agents, employees, officers, owners, principals, members, shareholders, affiliates, parents, attorneys, and/or representatives release each other, as well as also releasing defendant Peppertree Financial, Inc., (collectively, the "Releasees"), from any and all claims, lawsuits, demands, fees, costs, or causes of action, known or unknown, that each may have against the other. This release specifically excludes and is not intended to release the promissory note obligation signed by Plaintiff, which is secured by a deed of trust, both of which are now held by G8, and which are the subject of the non-judicial foreclosure proceeding that is contemplated under this Agreement and also the subject of the Action.

9. Civil Code Section 1542. The Parties hereto specifically waive as to each other the provision of California Civil Code § 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

10. Attorney's Fees and Costs. Each party to this Agreement shall bear its or his own attorneys fees and costs incurred.

11. Consultation With Counsel. All Parties warrant, represent, and agree that in executing this document, they do so with full knowledge of the rights they may have against the other Parties to this Agreement with respect to the matters released herein, and all Parties warrant, represent and agree that they have received or had the opportunity to receive independent legal advice as to these rights.

12. Amendment or Modification. Any amendment or modification of this Agreement, or any waiver of its terms, must be written and signed by the Parties.

13. Final Agreement. This Agreement constitutes the entire and final agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements, representations, promises and undertaking of any kind, whether oral or written.

14. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their representatives, successors, insurers, and assigns.

15. No Representations. Except for the statements, representations, promises and warranties stated in this Agreement, each party specifically does not rely upon any statement, representation, promise, or warranty of any other party in executing this Agreement.

16. Warranty of Authority. Each of the parties to this Agreement represents and warrants that as of the date of this Agreement it has the sole right and authority to execute this Agreement on its behalf, and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand relating to any right surrendered by virtue of this Agreement. Each of the Parties to this Agreement represents and warrants that it has not entered into any agreements which conflict with this Agreement and has taken the necessary steps to give effect to this Agreement.

17. Terms of Agreement. The terms of this Agreement are contractual and not a mere recital.

18. Mutual Drafting of Agreement. The Parties acknowledge that each of them has had an equal opportunity to participate in the drafting of this with assistance of their own legal counsel prior to executing this Agreement. Therefore, in any construction of this Agreement, the parties agree and understand that this Agreement shall not be construed against any party on the basis of authorship. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed

freely by, each party. All persons and entities signing this Agreement have read this Agreement and are fully aware of, and fully understand, all of its content and legal effect.

19. No Waiver. No action taken by either party pursuant to this Agreement, and no waiver by either party, whether express or implied, of any provision or right in this Agreement or any breach thereof, and no failure of either party to exercise or enforce any of its rights under this Agreement, will constitute a continuing wavier with respect to such provision or right or a breach or waiver or any other provision or right, whether or not similar.

20. California Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of California.

21. Severability. This Agreement is severable. If any part of this Agreement is found invalid or unenforceable in any jurisdiction, that provision, as to that jurisdiction, will not render invalid or unenforceable the other remaining provisions of this Agreement. Any other remaining provisions will remain in force, to the maximum extent permissible.

22. Counterparts. This Agreement may be executed in one or more counterparts, and by facsimile transmission, each copy of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

Dated: December __, 2008

DRAFT
Gordy Anthony Spires

Dated: December __, 2008

G8 CAPITAL FUND VII, LLC

By: DRAFT

Its: _____

APPROVED AS TO FORM AND CONTENT:

Roy L. Landers, Esq.
Attorney for Plaintiff Gordy Spires



REGO LAW
INTEGRITY...ALWAYS
LAW OFFICES OF JOSEPH J. REGO
4019 PARK BOULEVARD
SAN DIEGO, CA 92103

TELEPHONE: 619-293-0310
FAX: 619-293-0940

WEB: WWW.REGOLAW.COM

February 10, 2009

Stephen L. Burton
15260 Ventura Boulevard #640
Sherman Oaks, CA 91403

VIA FACSIMILE ONLY 818-501-5849

RE: GORDY SPIRES, CASE NO. 08-13091-LT7

Dear Mr. Burton,

I am in receipt of your Relief from Stay Motion in the above referenced case. We are in the process of dismissing the Chapter 7 and will be re-filing a chapter 13.

I would like to discuss with you modification of the loan before filing of the Chapter 13. Please contact my office at your earliest convenience.

Thank you in advance for your consideration in this matter.

Sincerely,

Joseph Rego
Law Office of Joseph Rego

G8 CAPITAL

999 Corporate Drive, Suite 215 • Ladera Ranch, CA 92694 • Phone 949-545-6996 • Fax 949-545-6999

March 20, 2009

GORDY SPIRES
4743 CRATER RIM ROAD
CARLSBAD, CA 92010

RE: Loan Number: 21937834

Dear GORDY SPIRES:

Our records indicate that you filed bankruptcy. This is not an attempt to collect a debt. This is a review of your account with us either for your records or for you to provide to your bankruptcy attorney.

Our records indicate that your monthly payment is \$5,061.14. This payment is due to us from the 1st to the 15th of every month. If you do not make your payment before the 15th, your payment will be considered late and you will be required to pay a late fee on top of your monthly payment. After the 15th, your required payment will be \$5,314.20.

As you have been informed in prior letters and correspondence, our file does not contain evidence of a current homeowner's insurance policy (i.e., hazard insurance). You have received previous letters informing you that according to the Uniform Covenants of the Deed of Trust, you are required to provide us with proof that you have an active hazard insurance policy on this property. Also, according to the terms of your note, you are required to keep your property taxes current.

This is another official request for you to provide us proof that you have an active hazard insurance policy on this home and that your property taxes have been paid and are not delinquent. You can fax this evidence to me at 949-545-6999 or you can mail a copy of to the following address:

G8 Capital Fund VII
999 Corporate Drive, Suite 215
Ladera Ranch, CA 92694

Attn: Brett Gilliland



Brett Gilliland
G8 Capital
VP, Asset Management
999 Corporate Drive, Suite 215
Ladera Ranch, CA 92694
888-600-6389 ext. 227
brettg@g8cap.com

THOMAS H. BILLINGSLEA, JR.
CHAPTER 13 STANDING TRUSTEE
Email Address Billingslea@thb.coxatwork.com
Phone (619) 233-7525 • Fax (619) 233-7267

Address for payments: P.O. Box 188
Memphis, Tennessee 38101-0188

Friday, April 10, 2009

GORDY A SPIRES
743 CRATER RIM ROAD
CARLSBAD CA 92010

Re Chapter 13 Case# 08-13091-T13
Filing Date:

Instructions to Debtor

GORDY A SPIRES
YOU MUST TAKE THE FOLLOWING ACTIONS:

1. You must commence making payments within 30 days of the filing of the petition.

a.) Mail Payment to:

T.H. Billingslea, Jr.,
Ch13 Trustee
P.O. Box 188
Memphis, TN 38101-0188

b.) Please include your full name and case number on the payment as follows:

GORDY A SPIRES
08-13091-T13

If you have requested a wage deduction, you must make your payments until the wage deduction begins. If you would like an automatic wage deduction, consult your attorney or this office for information.

2. You must appear at your Meeting of Creditors to be held on

Friday, May 08, 2009
at 4:00 PM
at 402 W Broadway, Sixth Floor, Suite 630, San Diego CA 92101-8511.

3. You must notify in writing the Court and Trustee of any change in address or employment.

While you are in Chapter 13, consult your attorney if creditors contact you against your wishes or take any action against you. Such creditor actions are prohibited.

Very Truly Yours,

Thomas H. Billingslea, Jr.
Chapter 13 Trustee