

## 1.2 Plaintiff's First Request For Production of Documents

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DOROTHY PARKER, on behalf of	)	Index No.
herself and all others similarly	)	
situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DELTA FUNDING CORPORATION,	)	
DELTA FINANCIAL CORPORATION,	)	
ALL STATE CONSULTANTS, INC.,	)	
a/k/a CITY MORTGAGE BANKERS,	)	
DOE CORPORATIONS 1 through	)	
X, DELTA FUNDING HOME	)	
EQUITY LOAN TRUST and	)	
BANKERS TRUST COMPANY OF	)	
CALIFORNIA, N.A., as trustee for	)	
the DELTA FUNDING HOME	)	
EQUITY LOAN TRUST,	)	
	)	
Defendants.	)	

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### **PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS DELTA FUNDING CORPORATION AND DELTA FINANCIAL CORPORATION**

Pursuant to Federal Rules of Civil Procedure 26 and 34, and New York Local Rule 26.3 of the United States District Courts for the Southern and Eastern Districts, plaintiff hereby requests that Defendants Delta Funding Corporation and Delta Financial Corporation (collectively "Delta") produce for inspection and copying the documents described herein which are in the possession, custody or control of Delta or its officers, agents, employees, accountants or attorneys.

Delta is requested to produce all responsive documents for inspection and photocopying in the time and manner specified by the Federal Rules of Civil Procedure at the offices of Attorneys for Plaintiffs, LLP, [Address].

## DOCUMENTS REQUESTED

### I. DEFINITIONS

1. The definitions set forth in New York Local Civil Rule 26.3 for the terms "*document(s)*," "*communication(s)*," "*identify*," "*parties*," "*person(s)*" and "*concerning*" shall be applicable herein.

2. "*All documents*" means every document and every non-identical copy known to you and every such document or writing which you can locate or discover by reasonably diligent efforts, including, but not limited to, documents now in the possession, custody or control of any of your companies, any of their merged or acquired predecessors, any of their former and present directors, officers, counsel, agents, employees and/or persons acting on any of their behalves.

3. "*You*" or "*Your*" means Delta Funding Corporation, or Delta Financial Corporation, or any of their officers, directors or employees, or any of their agents, including but not limited to any of their attorneys and accountants.

4. "*Defendants*" refers to one or more of the following defendants in the above captioned action -- Delta Funding Corporation, Delta Financial Corporation, Delta Funding Home Equity Loan Trust, and Bankers Trust Company of California, N.A., as trustee for the Delta Funding Home Equity Loan Trust -- and any of their subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The above term also refers to any present or former officers, directors, agents, and/or employees acting or purporting to act on any of the Defendants' behalves.

5. "*Bankers Trust Company of California, N.A.*" or "*Bankers Trust*" refers to the entity that is serving as the trustee of the Delta Funding Home Equity Loan Trust, as described in the First Amended Complaint, dated December 4, 1998.

6. "*Employee*" or "*Employees*" mean any individual(s) currently in the employ of, or at any time employed by, Delta as defined herein.

7. "*Policies*" or "*Procedures*" means any rule, procedure, practice, or course of conduct, whether formal or informal, written or unwritten, recorded or unrecorded, which was recognized or followed, explicitly or implicitly, by you.

8. "*Intervenor*" means any or all of the following individuals: Edna Ferber, Robert Benchley, or Alexander Woolcott.

9. "*Named Plaintiff*" means Dorothy Parker.

10. "*Delta*" means Delta Financial Corporation and/or Delta Funding Corporation or any of their officers, directors or employees, or any of their agents, including but not limited to any of their attorneys and accountants.

11. "*Complaint*" means the named plaintiff's First Amended Complaint, dated December 4, 1998.

12. "*Computer Systems*" means any of the Defendants' computer hardware, or computer software programs, or electronic data stored on disks.

13. "HOEPA" means the Home Owner Equity Protection Act, and any amendments thereto, and any regulations or official staff commentary interpreting HOEPA.

14. "TILA" means the Truth in Lending Act, and any amendments thereto, and any regulations or official staff commentary interpreting TILA.

15. "Relationship" or "Affiliation" means any relationship established between any of the Defendants and any third party, other than where the third party acts entirely independently and without any preexisting written or oral understanding or agreement.

16. "Standard Broker Agreement," "Agreement of Purchase and Sale," "Compliance Reviews," "Credit Reviews," "Post-Funding Quality Control Review", and "Mortgage Loan Credit Underwriter(s)," shall all be defined as Delta defines and/or uses those terms in its Form 10-K, for the year ended December 31, 1997.

17. "Things Of Value" shall be defined as it is defined pursuant to 12 U.S.C. 2602(2), and shall include any payment, advance, funds, loans, service or other consideration.

18. "Horan" means William Horan, Esq., his firm, or any present or former employee of William Horan, Esq., or any present or former employee of his firm.

## **II. RULES OF CONSTRUCTION**

1. *All/Each* - The terms "all" and "each" shall be defined as they are defined in New York Local Rule 26.3(d).

2. *And/Or* - The connectives "and" and "or" shall be defined as they are defined in New York Local Rule 26.3(d).

3. The use of the singular form of any word shall include the plural and vice versa.

4. The masculine gender shall include the feminine.

## **III. INSTRUCTIONS**

1. A document shall be deemed to be in your control if you have the right to secure the document or copy thereof from another person or public or private entity having possession or custody thereof. If any otherwise responsive document was, but is no longer, in existence or in your possession, custody or control, or has been lost, discarded or destroyed, said document shall be identified as completely as possible by providing the following information:

(a) the date, manner and reason for disposal or disposition from your possession, custody or control;

(b) the person authorizing disposal or disposition from your possession, custody or control;

- (c) the document's current or last known custodian;
- (d) the circumstances surrounding the document's disposition from your possession, custody or control;
- (e) the generic category of the document, e.g., memo, letter, computer print-out, etc.;
- (f) the type(s) of information contained in the document; and
- (g) the identity of all persons having knowledge or who had knowledge of the contents of the document.

2. Unless otherwise indicated, the documents to be produced include all documents prepared, sent, dated or received, or those which otherwise came into existence at anytime during the Relevant Period described herein.

3. Where an objection is made to any document request under Fed. R. Civ. P. 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived to the extent provided by statute and law.

4. Where a claim of privilege is asserted in objecting to any document demand, or sub-part thereof, and an answer is not provided on the basis of such assertion, Local Rule 26.2 shall be complied with in all respects.

5. Notwithstanding the assertion of any objection to production, any document to which an objection is raised containing non-objectional subject matter which is relevant and material to a request must be produced, but that portion of the document for which the objection is asserted may be withheld or redacted provided that the above-requested information is furnished.

6. This request is a continuing request. All documents coming into your possession, custody or control subsequent to an initial production, and which are responsive to this request, shall be produced forthwith in accordance with the Federal Rules of Civil Procedure.

7. Each document requested herein is requested to be produced in its entirety and without deletion or excisions, regardless of whether you consider the entire document to be relevant or responsive to these requests. If you redact any portion of a document, you should stamp the word "redacted" on each page of the document that has been redacted. Redactions should be included on the privilege log described in Instruction 4.

8. The fact that a document is produced by a third party or by the plaintiff does not relieve you of the obligation to produce your copy of the same document, even if the two documents are identical in all respects.

9. In producing documents, you are requested to produce a copy of each document requested, together with all non-identical copies and drafts of that document.

10. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained. If, for any reason, the container cannot be produced, produce copies of all labels, other identifying marks or writing on the container.

11. Each document should be produced in the form and manner that it was found or maintained. Documents attached to each other should not be separated. Documents separated from each other should not be bound.

12. Documents not otherwise responsive to this discovery request shall be produced if such documents mention, discuss, refer to, or explain the documents which are called for by this discovery request, or if such documents are attached to documents called for by this discovery request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.

#### **IV. RELEVANT PERIOD**

The relevant period for these document requests, unless otherwise indicated, shall be from November 18, 1992, to the date of response, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period.

#### **V. DOCUMENTS REQUESTED**

1. All documents related to the Named Plaintiff, or any of the three Intervenor, including but not limited to:

(a) All documents or correspondence received by any of the Defendants from the Named Plaintiff or Intervenor, or sent by any of the Defendants to the Named Plaintiff or Intervenor.

(b) The Named Plaintiff's complete loan files;

(c) All computerized information or data related in any way to the Named Plaintiff or Intervenor;

(d) All letters, notices, forms or other documents transmitted to the Named Plaintiff or Intervenor or received from the Named Plaintiff or Intervenor;

- (e) All documents related to any payments made to the Named Plaintiff or Intervenor, or to any third parties, in connection with the Named Plaintiff's or Intervenor's mortgage loan transactions;
- (f) All documents related to fees, commissions, bonuses or any payments paid to any third party, including but not limited to payments to Delta employees, agents, affiliated or subsidiary companies and/or brokers in connection with the Named Plaintiff's or Intervenor's mortgage loan transactions;
- (g) Copies of both sides of all checks issued by Delta, or any person acting on Delta's behalf, to Delta or to any third party, in connection with the Named Plaintiff's or Intervenor's mortgage loan transactions, whether or not the subject payment was charged to the Named Plaintiff or Intervenor or financed as part of their mortgage loan transactions;
- (h) All documents related in any way to any determination of the fair market value of the property which is the security for the Named Plaintiff's or Intervenor's mortgage loan transactions with Delta;
- (i) All documents reflecting whether and when prior existing mortgages or debts of the Named Plaintiff or Intervenor were paid off by Delta, or by any third party operating on behalf of Delta or the Named Plaintiff or Intervenor, in connection with any of their mortgage loan transactions.

2. Documents sufficient to represent all of the following standard form documents used by Delta during the Relevant Period: (i) all mortgages; (ii) all mortgage riders or amendments; (iii) all notes; (iv) all note riders or amendments; (v) all agreements and/or disclosures and/or statements and/or affidavits concerning broker fees or services; (vi) all agreements and/or disclosures and/or statements and/or affidavits concerning lawyer fees or services or legal representation; (vii) all notices and/or disclosure documents provided to any borrowers, pursuant to HOEPA; (viii) all notices and/or disclosure documents provided to any borrowers, pursuant to TILA; and (ix) all documents requesting a borrower's financial information or income and asset verification. If more than one standard form document was used by Delta during the Class Period with respect to any of items (i)-(ix) above, produce a copy of each standard form document used.

3. With respect to all loans closed on or after November 18, 1995, for which any of the Defendants has filed foreclosure complaints, produce the following documents:

- (a) the mortgage and any riders or amendments thereto;
- (b) the note and any riders or amendments thereto;

- (c) the Settlement Statement or HUD-1, and any additional pages containing HUD-1 information pursuant to 24 CFR 3500;
- (d) any loan application, financial statement and/or document containing any financial information related to the borrower, including but not limited to a credit report, or income verification;
- (e) any pre-closing disclosure or notice documents provided to the borrower (pursuant to HOEPA or any other statutory or regulatory requirement);
- (f) the foreclosure complaint filed in connection with the loan, and any mortgage, or mortgage rider, or note, or note rider attached thereto or filed in connection with the foreclosure;
- (g) any referee's report or affidavit or statement submitted in connection with the foreclosure, disclosing amounts due and owing on the loan or interest owing on the loan;
- (h) all documents reflecting the interest rate charged to the borrower after the borrower defaulted on the loan, including but not limited to: information in any of the Defendant's Computer Systems, or invoices or bills or letters transmitted to the borrower;
- (i) any at-closing or post-closing disclosure or notice documents provided to the borrower (pursuant to TILA or any other statutory or regulatory requirement).

4. All written contracts or agreements between Delta and any mortgage banker, mortgage broker, title insurance company, title abstractor, credit reporting company, attorney, law firm, appraiser, or settlement agent of any kind which relate to any service to be provided in connection with Delta's mortgage loans to borrowers.

5. All documents concerning any Relationship or Affiliation between Delta on the one hand, and any mortgage broker, title insurance company, title abstractor, credit reporting company, attorney, law firm, appraiser or settlement agent of any kind.

6. All documents in any way related to any payments or transfers of Things Of Value or payment agreements between Delta on the one hand, and any mortgage broker, title insurance company, title abstractor, credit reporting company, attorney, law firm, appraiser or settlement agent of any kind on the other hand.

7. All documents in any way related to any evaluation or assessment of fees being charged by any third party or Delta affiliate or Delta employee

in connection with the rendering of any services to Delta or to any Delta borrower.

8. All training materials used by Delta concerning Delta's mortgage loan business.

9. All Delta manuals, guidebooks, guidelines, regulations, internal office memoranda or other documents setting forth Delta's Policies or Procedures in connection with any Delta mortgage loan transaction for: (a) its own employees or affiliates, or (b) any third parties (including but not limited to any mortgage broker, title insurance company, title abstractor, credit reporting company, attorney, law firm, appraiser or settlement agent of any kind).

10. All documents which concern and/or support the representations made in the Lee Miller Declaration, dated December 21, 1998, that (a) Delta did not require borrowers to use the services of a broker in order to obtain a loan in 1996; or (b) approximately 443 loans totaling approximately \$31.1 million in value were made to borrowers in 1996 directly -- without the involvement of a broker -- representing approximately 9.7% of the loan transactions funded by Delta in 1996. Included among the documents to be produced should be documents reflecting a) whether the above described loans were in connection with properties located in the state of New York; and (b) whether the above described loans were in connection with the refinancing of already-existing Delta loans.

11. For the period November 18, 1995 to December 31, 1995, produce all documents reflecting that Delta did not require borrowers to use the services of a mortgage broker.

12. The following documents concerning Horan:

- (a) All documents concerning Delta's employment of Horan;
- (b) All documents concerning any services rendered by Horan to or on behalf of Delta;
- (c) All documents concerning any payments to or from Horan;
- (d) All documents concerning the giving or receipt of any Things Of Value to or from Horan;
- (e) All documents concerning Delta's Relationship or Affiliation with Horan;
- (h) All documents concerning Delta's direct or indirect provision of health insurance, life insurance, disability insurance, prescription benefit insurance, pension benefits, or any other fringe benefits to Horan.

13. All documents identifying (a) all mortgage brokers or correspondent banks originating or referring loans to Delta; (b) the number of Delta mortgage loan transactions that each of those mortgage brokers or



correspondent banks, respectively, brokered for, or sold to, Delta; and/or (c) the percentage of Delta's total loans that each of those mortgage brokers or correspondent banks, respectively, brokered for, or sold to, Delta.

14. All documents identifying (a) all title companies or title closers or title abstractors used by Delta; (b) the number of Delta mortgage loan transactions that each of those entities provided title insurance for; and/or (c) the percentage of Delta's total loans for which each of those entities provided title insurance.

15. Documents sufficient to (a) identify any lawyer or law firm that provided legal services for more than 10% of Delta loan closings in any fiscal year; (b) the number of Delta mortgage loan transactions for which each of those lawyers or law firms provided legal services; and/or (c) the percentage of Delta's total loans for which each of those lawyers or law firms provided legal services.

16. All documents concerning any and all activities of any person acting on Delta's behalf to ensure its compliance with HOEPA, TILA, Regulation Z (12 C.F.R. 226.1, et seq.), the Official Staff Commentary to Regulation Z promulgated by the Federal Reserve Board, General Business Law 349, or any other federal or state statute or regulation.

17. Documents reflecting Delta's organizational and hierarchical structure, including (a) the divisions, departments, groups, committees or any other of their operating units; and (b) the officers, directors, and managing heads of any of the units identified in response to item (a) of this Request.

18. All documents concerning or constituting any contracts or agreements or indentures or pooling or servicing agreements between Delta on the one hand, and Bankers Trust and/or the Delta Funding Home Equity Loan Trust on the other hand.

19. All documents concerning or constituting any representations or warranties made by and between Delta on the one hand, and either Bankers Trust and/or the Delta Funding Home Equity Loan Trust on the other hand, in connection with the sale or assignment of any loans by Delta to Bankers Trust and/or the Delta Funding Home Equity Loan Trust.

20. All communications between Bankers Trust and Delta concerning Delta's loans sold to Bankers Trust.

21. Documents sufficient to identify (a) all third parties or entities (other than the Delta Funding Home Equity Loan Trust) to which Delta has sold its loans, or to which Delta has transferred certain interests in its loans; and (b) the numbers of loans sold, or for which such interests were transferred, for each such party or entity.

22. All documents related to any inquiries or complaints or investigations or actions taken by any federal or state regulatory agency, any U.S. Attorney's office, or any District Attorney's office, in connection with Delta's mortgage lending activities in general, or in connection with any mortgage loan transaction entered into by Delta, during the Relevant Period.

23. All documents constituting or related to any complaints made by any borrower against (a) Delta; or (b) any mortgage broker referring or brokering a loan to Delta; or (c) any correspondent bank referring or selling a loan to Delta.

24. All documents related to:

(a) increased default interest earned by Delta during any fiscal period during the Relevant Period;

(b) projections of increased default interest expected to be earned by Delta for the year ended December 31, 1998, the quarter ending March 31, 1999, and the year ended December 31, 1999;

(c) prepayment penalties earned by Delta during any fiscal period during the Relevant Period;

(d) projections of prepayment penalties expected to be earned by Delta for the year ended December 31, 1998, the quarter ending March 31, 1999, and the year ended December 31, 1999.

25. All documents setting forth your document retention policies.

26. All insurance agreements as described by Rule 26(a)(1)(D).

27. All documents concerning Delta's "network" of brokers, including but not limited to documents which: (a) identify the brokers in the network; (b) identify the date the brokers became part of Delta's network; (c) identify the number of loans brokered with Delta for each annual period (or part thereof) of the Relevant Period; (d) concern Delta's qualifications for its approval of a broker as a mortgage broker; (e) reflect any agreement entered into by a mortgage broker and Delta, related to the referral of mortgage loans to Delta, or the brokering of mortgage loans for or on behalf of Delta; (f) reflect Delta's review of or analysis of mortgage brokers' loan submissions or applications or documentation; (g) reflect any modifications requested or required by Delta to mortgage brokers' loan submissions or applications or documentation; (h) reflect Delta's guidelines to mortgage brokers concerning loan submissions or applications or documentation; (i) concern Delta's standards for analyzing a mortgage brokers' loan submissions or applications or documentation; and (j) constitute any "Standard Broker Agreement" signed by any broker and Delta during the Relevant Period, as that phrase is defined or used by Delta in its Form 10K, for the period ending December 31, 1997.

28. All documents concerning correspondent banks that submit loans to Delta, and/or that close loans in their own names and subsequently sell those loans to Delta, which: (a) identify the correspondents banks; (b) identify the date each correspondent bank was approved by Delta as a correspondent bank; (c) identify the number of loans brokered by the correspondent bank for Delta, or sold by the correspondent bank to Delta, for

each annual period (or part thereof) of the Relevant Period; (d) concern Delta's qualifications for its approval of a bank as a correspondent bank; (e) reflect any agreement entered into by a correspondent bank and Delta, related to the closing of mortgage loans for Delta, or the selling of mortgage loans to Delta; (f) reflect Delta's review of or analysis of correspondent banks' loan documentation; (g) reflect any modifications requested or required by Delta to standard loan documentation submitted by correspondent banks; (h) reflect Delta's guidelines to correspondent banks regarding the quality of loan submissions; (i) constitute any "Agreement(s) of Purchase and Sale" between Delta and correspondent banks, as that phrase is defined or used in Delta's Form 10K, for the year ended December 31, 1997; and (k) concern Delta's standards for analyzing a correspondent bank's lending operations.

29. All documents concerning the standards used by Delta's indemnity department to approve or reject loan submissions or applications.

30. Documents sufficient to identify the number of loan submissions or applications approved by Delta, and rejected by Delta, in each quarterly and/or annual period (or portion thereof) of the Relevant Period.

31. Documents sufficient to identify all "Mortgage Loan Credit Underwriters" employed by Delta during the Relevant Period (as that phrase is defined or used by Delta in its Form 10K, for the year ended December 31, 1997).

32. All documents which reflect any "Compliance Reviews" or "Credit Reviews" performed on loans submitted to Delta during the Relevant Period (as those phrases are defined or used by Delta in its Form 10K, for the year ended December 31, 1997).

33. All documents that reflect the results of all "Post-Funding Quality Control Review" procedures used by Delta during the Relevant Period to monitor or evaluate Delta's loan origination policies and procedures (as that phrase is defined or used by Delta in its Form 10K, for the year ended December 31, 1997).

34. All documents concerning the factual basis for Delta's "Third", "Fourth", "Fifth", "Sixth", "Seventh", "Eighth", "Ninth", "Tenth", "Eleventh", "Thirteenth", "Fourteenth", "Fifteenth", "Sixteenth", "Seventeenth", "Eighteenth", "Nineteenth", "Twentieth", "Twenty-First", "Twenty-Second" and "Twenty-Third" Affirmative Defenses.

35. All documents concerning the "bona fide error" referred to in Delta's Sixteenth Affirmative Defense.

36. All documents concerning the "procedures reasonably adapted to avoid such error" referred to in Delta's Sixteenth Affirmative Defense.

37. All documents concerning the faulty calculation tool referred to in Delta's Seventeenth Affirmative Defense.

38. All documents concerning the "error which was timely corrected" as referred to in Delta's Eighteenth Affirmative Defense.

39. All documents concerning how Delta determines the interest rate to be applied on a mortgage loan transaction.

40. All documents that reflect the average time (a) from submission of a loan application to Delta's approval of the loan application; or (b) from Delta's approval of a loan application to the loan closing; or (c) from the submission of a loan application to the loan closing.

41. All documents that reflect the basis for calculating a broker's commission in total dollars, and/or as a percentage of the total loan, on mortgage loans made by Delta.

Dated: New York, New York  
February 18, 1999

Attorneys for Plaintiffs