IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WENDY N. JENKINS, ELEANOR SPRATLIN CRAWFORD, *each Plaintiff individually, and on behalf of all Georgia residents similarly situated.*

Plaintiffs,

vs.

McCALLA RAYMER, LLC, THOMAS A. SEARS, ESQ., INDIVIDUALLY, AS AN OFFICER OF MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, AS AN OFFICER OF WELLS FARGO, AND AS AN EMPLOYEE OF McCALLA RAYMER CHARLES TROY CROUSE, ESQ., aka C. TROY CROUSE ESQ., INDIVIDUALLY, AS AN OFFICER OF MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, AS AN OFFICER OF WELLS FARGO AND AS AN EMPLOYEE OF McCALLA RAYMER, MERSCORP INC., BANK OF AMERICA, N.A., BAC HOME LOANS SERVICING, LP., fka COUNTRYWIDE HOME LOANS SERVICING, LP.,WELLS FARGO BANK, N.A., PROMMIS SOLUTIONS, LLC., PROMMIS SOLUTIONS HOLDING INC., GREAT HILL PARTNERS, INC., MORTGAGE ELECTRONIC REGISTRATION SYSYTEMS INC. AMERICA'S SERVICING COMPANY, TAYLOR BEAN &WHITAKER, CRYSTAL WILDER, INDIVIDUALLY, AS NOTARY PUBLIC AND AS AN EMPLOYEE OF McCALLA RAYMER, ELIZABETH LOFARO, INDIVIDUALLY, AS NOTARY PUBLIC AND AS AN EMPLOYEE OF McCALLA RAYMER,

CASE NO.

CIVIL COMPLAINT FOR DAMAGES

PLAINTIFFS DEMAND TRIAL BY JURY

JUDGE ____________________

CHIQUITA RAGLIN, INDIVIDUALLY,)
AS NOTARY PUBLIC AND AS AN)
EMPLOYEE OF McCALLA RAYMER,)
VICTORIA MARIE ALLEN,)
INDIVIDUALLY, AS NOTARY PUBLIC)
AND AS AN EMPLOYEE OF McCALLA)
RAYMER, IRIS GISELLA BEY,)
INDIVIDUALLY, AS NOTARY PUBLIC)
AND AS AN EMPLOYEE OF McCALLA)
RAYMER, JAMELA REYNOLDS,)
INDIVIDUALLY, AS NOTARY PUBLIC)
AND AS AN EMPLOYEE OF McCALLA)
RAYMER AND LATASHA DANIEL,)
INDIVIDUALLY, AS NOTARY PUBLIC)
AND AS AN EMPLOYEE OF McCALLA)
RAYMER)
)
Defendants.)

COMES NOW, Plaintiffs, Wendy N. Jenkins and Eleanor Spratlin Crawford, by and through the undersigned counsel, and complains as follows:

INTRODUCTION:

1. In this Class Action Complaint, Plaintiff(s) seek, *inter alia,* the injunction of various foreclosure and eviction proceedings, for themselves and other similarly situated, based upon the Defendant's routine failure to comply with statutory prerequisites to foreclosure. Plaintiffs and the class they seek to represent also seek a determination of the validity of foreclosure

www.4closureFraud.org

sales held in violation of statutory requirements, together with damages and other relief.

2. Georgia has longstanding, statutorily prescribed non-judicial procedures by Power of Sale with minimal consumer protections for homeowners. O.C.G.A. § 44-14-162 et seq. Homes are routinely foreclosed upon pursuant to the statutory Power of Sale without a pre-foreclosure hearing.

3. The law is clear, however, that entities foreclosing upon homeowners must strictly comply with Georgia's statutory prerequisites to foreclosure. O.C.G.A. § 23-2-114. Among other things, it is black letter law that the entity seeking to foreclose must have actual legal authority to exercise the Power of Sale.

4. In recent years, many foreclosing entities, including Defendants have dispensed with this fundamental requirement. Such entities foreclose, through their Counsel, without having first obtained proper and legally valid assignment of the mortgage and the power of sale on property they purport to foreclose.

5. Georgia's foreclosure process has become an undisciplined and lawless rush to seize homes. Many thousands of foreclosures are plainly void under statute and Georgia case law. Many

www.4closureFraud.org

borrowers never obtain accurate statutorily required notices, have flawed and fraudulently created assignments of title and thus are sold and, sometimes, resold without a proper chain of title.

6. Plaintiffs in this matter seek relief for the Defendant's wrongful foreclosure practices and actions. They seek declaratory and injunctive relief concerning foreclosures conducted by entities who do not hold the Power of Sale, injunction of eviction action pending procedures to verify the validity of underlying sales, injunction of upcoming sales where there is no proof of assignment, cancellation of fees and costs for invalid sales processes and damages.

7. Plaintiffs seek such relief on their own behalf and on behalf of all Georgia property owners similarly situated.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this action pursuant to federal question under 18 U.S.C.A. §§1961-68, 18 U.S.C.A. §1343 and 28 U.S.C. §1331; 12 U.S.C. §§2605-2608, and 15 U.S.C. §1692.

www.4closureFraud.org

9. Diversity subject matter jurisdiction exists over this class-action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 ("CAFA"), amending 28 U.S.C. §1332, at new subsection (d), conferring federal jurisdiction over class action involving (a) 100 or more members of the proposed Class; (b) at least some members of the proposed class members have different citizenship from some Defendants and (c) the claims of the proposed class members exceed the sum or value five million dollars ($5,000,000) in aggregate. 28 U.S.C. §1332(d)(2) and (6).

10. Venue is proper in the Northern District of Georgia, Atlanta Division pursuant to 28 U.S.C. §1391 and 18 U.S.C. §1965(a), in that Defendants systematically conduct and transact substantial business in this state and District, as licensed attorneys at the Bar in Georgia and licensed banks and corporations organized and operating in the State of Georgia, the causes of action occurred in this District as Plaintiff Wendy Jenkins resides in Columbus, Georgia and Plaintiff Eleanor Spratlin Crawford resides in Marietta, Georgia.

www.4closureFraud.org

PARTIES

11. Plaintiff Wendy N. Jenkins is a married woman, over the age of majority and competent to bring this action, residing at 7372 Cedar Creek Loop, Columbus, GA 31904.

12. Plaintiff Eleanor Spratlin Crawford is a married woman, over the age of majority and competent to bring this action, residing at 3149 Saddleback Mountain Rd., Marietta, GA 30062

13. Defendant McCalla Raymer, LLC (hereinafter "McCalla Raymer") is a law firm incorporated in the state of Georgia, their principal place of business is 1544 Old Alabama Road, Roswell, GA, 30076-2012. McCalla Raymer acting for and on the behalf of its' clients Bank of America, BAC Home Loans Servicing, Wells Fargo and Chase Bank, N.A. has instituted and pursued non-judicial foreclosures of Georgia Security Deeds against the property of Plaintiffs described above with full knowledge that it lacked authority to do so, and has imposed similarly illegal foreclosures upon thousands of similarly situated residents of Georgia. Defendant continues to prosecute such foreclosures against citizens of Georgia.

www.4closureFraud.org

14. Defendant Thomas A. Sears, Esq. is a licensed attorney practicing at the Bar in the State of Georgia. He is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

15. Defendant Charles Troy Crouse, Esq. aka C. Troy Crouse, Esq. is a licensed attorney practicing at the Bar in the State of Georgia. He is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

16. Defendant MERSCORP Inc.(hereinafter "MERSCORP") conducts business as an electronic loan registry for the mortgage finance industry, their principal place of business is 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182..

17. Defendant Bank of America, N.A. (hereinafter "Bank of America") is a federally chartered bank, their principal place of business is 401 North Tryon St., Charlotte, NC 28255-0001.

18. Defendant BAC Home Loans Servicing, LP, f.k.a. Countrywide Home Loans, LP (hereinafter "BAC") is a wholly owned subsidiary of Bank of America NA, and conducts business as a

www.4closureFraud.org

mortgage servicer, their principal place of business is 4500 Park Granada, Calabasas, CA 91302.

19. Defendant Wells Fargo Bank, N.A. (hereinafter “Wells Fargo”) is a federally chartered bank, their principal place of business is 101 N. Phillips Avenue, Sioux Falls SD 57104.

20. Defendant Prommis Solutions LLC, (hereinafter “Prommis”) is a document preparation company working with mortgage servicers and law firms with large mortgage default resolution practices, its principal place of business is 400 Northridge Road Atlanta, Georgia 30350.

21. Defendant Prommis Solutions Holding Corporation (hereinafter “Prommis Holding Corp.”) is a Holding Corporation, incorporated in Delaware, which owns multiple companies, each of whom provides some aspect of foreclosure, bankruptcy, loss mitigation, and loan settlement processing service, tax examination, title search, and other document management services. Prommis’ companies provide outsourced foreclosure processing services in 18 states and bankruptcy processing services in all 50 states. Their principal place of business is 400 Northridge Rd. Atlanta, GA 30350

www.4closureFraud.org

22. Defendant Great Hill Partners, LLC (hereinafter "Great Hills") is a private equity firm, incorporated in Massachusetts, who owns two-thirds of Prommis Solutions Holding Corporation. Great Hill Partners, LLC's principal place of business is One Liberty Square Boston, Massachusetts 02109.

23. Defendant Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") is a wholly owned subsidiary of MERSCORP, incorporated in Delaware, operating an electronic registry designed to track servicing rights and ownership of mortgage loans. Their principal place of business is 1818 Library Street, Suite 300, Reston, VA, 20190.

24. Defendant America's Servicing Company (hereinafter "ASC") is the fictitious name of Wells Fargo Home Mortgage, Inc., which is a wholly owned subsidiary of Wells Fargo & Company, whose principal place of business is 101 N. Phillips Avenue, Sioux Falls SD 57104.

25. Defendant Taylor Bean and Whitaker (hereinafter "TBW") was a correspondent mortgage lender who closed its doors on August 5, 2009, and subsequently filed for Chapter 11 Bankruptcy

www.4closurefraud.org

protection in the Middle District of Florida, Jacksonville Division, on August 24, 2009.

26. Defendant Crystal Wilder is a Notary Public who is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

27. Defendant Elizabeth Lofaro is a Notary Public who is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

28. Defendant Chiquita Raglin is a Notary Public who is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

29. Defendant Victoria Marie Allen is a Notary Public who is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

30. Defendant Iris Gisella Bey is a Notary Public who is an employee of McCalla Raymer and conducts business at their

www.4closureFraud.org

principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

31. Defendant Jamela Reynolds is a Notary Public who is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

32. Defendant Latasha Daniel is a Notary Public who is an employee of McCalla Raymer and conducts business at their principal place of business which is 1544 Old Alabama Road, Roswell, GA, 30076-2012.

33. Defendants' wrongful acts, as hereinbelow alleged in greater detail, took place within and throughout the State of Georgia.

34. The Defendants,[1] and each of them, were the agents, employees, representatives, partners, officers, principals and/ or joint venturers of each of the remaining defendants, and in doing the things hereinafter alleged, were acting within the scope, course and purpose of such agency, employment or position, or within the apparent scope, course and purpose of such agency,

[1] Whenever appearing in this complaint, each and every reference to Defendants or to any of them, is intended to be and shall be a reference to all Defendants hereto, and to each of them, unless said reference is specifically qualified.

www.4closureFraud.org

employment or position and with permission and consent of each of the remaining defendants.

FACTS

PLAINTIFF WENDY JENKINS

35. On or about July 3, 2008, Plaintiff Jenkins executed a Note and Security Deed, in favor of Taylor Bean and Whitaker due to a refinancing of the subject Property.

36. During the course of payment of the note by Plaintiff Jenkins, TBW, BAC and/ or Does, and their alleged predecessor(s) have repeatedly and willfully acted fraudulently in that they have improperly added fees to the balance of the loan, improperly credited and/or misapplied payments to the principal balance of the note and refused to provide documentation or legal justification for the debt, the fees or the irregular amortization of the principal. In addition, they have refused payment and repeatedly returned Plaintiff's attempts to tender payment. Plaintiff Jenkins had set up electronic payments, taken directly from her checking account, to pay her mortgage payments to TBW. Unbeknownst to her, TBW abruptly closed its doors on August 5, 2009, and subsequently filed for Chapter 11 Bankruptcy protection in the Middle District of Florida, Jacksonville Division, on August 24, 2009.

www.4closureFraud.org

Plaintiff Jenkins continued to make payments to TBW which were not credited to her mortgage.

37. Specifically, on May 29, 2009, an electronic debit in the amount of $1400.00 was made to TBW.

38. Specifically, on June 15, 2009, an electronic debit in the amount of $500.00 was made to TBW.

39. Specifically, on August 3, 2009, an electronic debit in the amount of $1500.00 was made to TBW.

40. Specifically, on August 17, 2009, an electronic debit in the amount of $1000.00 was made to TBW.

41. Specifically, on September 30, 2009, an electronic debit in the amount of $1880.00 was made to Bank of America.

42. Plaintiff has asked repeatedly, and Defendants TBW and Bank of America have refused, repeatedly, to clarify whether any of those payments had been properly credited to Plaintiff Jenkins' mortgage.

43. Bank of America accepted multiple payments from Plaintiff

www.4closureFraud.org

and then, on April 4, 2010, returned a payment of $2000.00 which had been made on April 1, 2010.

44. Defendants BAC, TBW and/or Does 1-100 have repeatedly refused to properly credit payments in an effort to manufacture a default in order to fraudulently foreclose on Plaintiff's home. Defendants have **adamantly refused to identify the secured creditor and the Real Party in interest,** which would allow Plaintiff to tender and make payments on her home. Furthermore, they have misled the Plaintiff as to obtaining the information as to obtaining the information for payoff.

45. Plaintiff Jenkins is, and was, understandably concerned that she may never see any credit for the monies paid, due to the very public allegations of fraud, by the SEC on the part of the management of TBW, which culminated in the arrest of the former CEO and principal owner of the privately held TBW, Jamie Farkas. See: http://www.sec.gov/news/press/2010/2010-102.htm

46. Defendants maintained in their "Verified Answer" (Exhibit "A") that Plaintiff Jenkins' request for proof that Bank of America has an actual pecuniary interest in the debt instrument is a ruse to evade payment of the mortgage note. Nothing could be further from the truth. Plaintiff has attempted, in good faith, to make her payments, and in fact

www.4closureFraud.org

has tendered monies that have disappeared into the quagmire that is the TBW bankruptcy. These monies, totaling $3400.00, have not been credited to her mortgage by either TBW or Bank of America.

47. At some time unknown to Plaintiff Jenkins, the Note and security deed were bifurcated where the deed alone was separated from the note and was assigned, for servicing purposes, to Defendants "BAC", and/or Does. It is unknown who presently owns and holds the actual "wet ink" original promissory Note. Based upon knowledge and belief, the promissory note has been pledged, hypothecated, and/or assigned as collateral security to an unknown entity, foreign trust, or to an agency of the United States government or the Federal Reserve.

48. By letter dated March 26, 2010, counsel for BAC (McCalla Raymer) affirmatively represented that its "client" was, in fact, Defendant BAC and that BAC, was both the servicer and the "secured creditor" for the aforementioned alleged indebtedness regarding the property. Said correspondence, however fails to identify BAC as the owner and holder of the Note, and fails to affirmatively represent that BAC owns and holds any interest in the Security Deed or has any rights therein or thereto which would support a foreclosure of the Property.

www.4closureFraud.org

49. Notwithstanding the letter of March 26, 2010, to Plaintiff Jenkins from McCalla Raymer said Defendant confirmed, in its letter, that BAC is merely the servicer of the loan and that the alleged note holder, was possibly "Bank of America" and not the originating lender.

50. McCalla Raymer, which provided Plaintiff with written notice that their "client" for purposes of the loan and foreclosure sale was BAC is the same law Firm which also fraudulently and affirmatively represented that the entity that had full authority to negotiate, amend, and modify all terms of the mortgage instrument for purposes of the subject loan and foreclosure sale was "Bank of America", who is also a "client".

51. Upon knowledge and belief the Note and Security Deed are or were part of a securitized mortgage transaction where the Security Deed and Note were, at some point after original execution by the Plaintiff, severed and sold, assigned, pledged, hypothecated or transferred to separate entities, with certain rights being sold separately.

52. The servicing rights to the Note were sold separately or obtained by the liquidation of TBW to BAC and/or Does, however, BAC has not established both the existence of the mortgage and mortgage note, or ownership of the note and mortgage. The Plaintiff

www.4closureFraud.org

has requested the proof of ownership and even sent a Qualified Written Request, as allowed under the Real Estate Settlement and Procedures Act, to Defendants “BAC”, Bank of America and McCalla Raymer. They, each and every one, have refused to provide proof thereof and answer Plaintiff's questions.

53. The admissions of record demonstrate that Defendant “BAC” has no legal or equitable interests in both the Note and Security Deed which are a legal prerequisite to institute and maintain a foreclosure, and that such interests may in fact lie with one or more of Defendants DOE(S).

54. As a severance of the ownership and possession of the original Note and Security Deed has occurred and as the true owner and holder of both the original Note and Security Deed are unknown and as a result of multiple and/or missing assignments and an incomplete and improper chain of title via written admissions set forth above, all defendants named above are legally precluded from foreclosing and/or selling the subject property.

55. Defendant McCalla Raymer’s foreclosure sale notice letter is not in accordance with notice provisions involving foreclosure proceedings as required under Georgia law. Specifically, O.C.G.A. § 44-

www.4closureFraud.org

14-162.2 requires, in pertinent part, that *"notice ... shall include the name, address, and telephone number of the individual or entity who shall have the full authority to negotiate, amend, and modify all terms of the mortgage with the debtor".* Upon knowledge and belief, ONLY a vested investor, in a securitized trust, who is the real party in interest, may authorize amendments and/or modification of the Plaintiff's note and security deed.

56. Furthermore, O.C.G.A. § 7-6A-2 (6) prescribes that *"A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity."*

57. The letter of counsel for BAC dated March 26, 2010 (Exhibit "B") fails to comply with the notice provisions of O.C.G.A. § 44-14-162 (b) *"The security instrument or assignment thereof vesting the secured creditor with title to the security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located."* as said letter does not indicate who the secured creditor is; nor does identify the secured creditor who has title to the security instrument but instead recites that the assignment is "to be recorded" in the Office of the Clerk of Muscogee County, Georgia.

58. As such, Defendant BAC is without standing and is legally precluded from foreclosing on and selling the Property.

www.4closureFraud.org

59. In an attempt to cure the deficiencies noted supra, Defendants McCalla Raymer, Prommis Solutions and MERS have caused a purported assignment (Exhibit "C") from MERS to BAC to be recorded upon the Public Records of Muscogee County on April 14, 2010.

60. On or about May 3, 2010, Plaintiff Jenkins filed suit in the Superior Court of Muscogee County which was styled SU-10-CV-1731.

61. Defendants McCalla Raymer and Defendants Prommis Solutions, failed to answer in the statutorily required time and entered into default.

62. On or about October 8, 2010, Defendants McCalla Raymer and Defendants Prommis Solutions filed a "Motion to Open Default and Memorandum of Law in Support Of".

63. On or about October 8, 2010, Defendants McCalla Raymer and Defendant Prommis Solutions simultaneously filed their "Verified Answer to Plaintiff's Suit" with their "motion to Open Default".

64. In her original complaint, which is re-alleged herein Plaintiff Jenkins asserted that the purported assignment recorded in the Muscogee County Property records was deficient upon its face as the Defendants:

a) purport to have executed the assignment (Exhibit "C") on February 2, 2010, which was a full three (3) months prior to the "sale" date and that there was no logical way that anyone

www.4ClosureFraud.org

could know with a certainty that a foreclosure sale would definitely occur on May 4th, 2010 therefore the alleged date of execution is suspect if not fraudulent.

b) The signatures on the assignment are suspect as they are illegible, Plaintiff Jenkins provided an example of the signature of Charles Troy Crouse's signature on his own Security Deed (Exhibit "D") as showing that the illegible mark is wildly different than the "known" signature on the Security Deed for his own home.

c) In addition, when looking at the signatories for this assignment, it is abundantly clear that once pen was set upon paper to "sign" the documents, it never left the paper. There is an illegible squiggle above the signature line for "C. Troy Crouse" as "Vice President" for MERS which then travels in an unbroken line directly to the signature line for "Thomas Sears" acting as "Assistant Secretary" for MERS, which again, results in an illegible squiggle.

65. In their "Verified Answer", Defendants McCalla Raymer and Prommis Solutions attempted to defend their fraudulent actions in regards to the Assignment by presenting documents *See generally Answer* which they

www.4closureFraud.org

claim gave Attorneys Crouse and Sears, among others, the Authority to sign as Officers of MERS. These documents, just like the Assignment, have been manufactured to fabricate the appearance of propriety and to mislead the court into thinking that these attorneys, their "clients", their employers and associated entities were all acting in good faith. These baldly fraudulent attempts to lull the court into thinking that the actions taken were done with all the rights and authority required by Georgia law, fail upon their face, just like the purported Assignment.

66. The barest, most cursory, glance at the dates of these purported authorizations reveals that the so-called "Agreement for Signing Authority" and "Corporate Resolution" by and between Defendants MERS, Bank of America and McCalla Raymer were supposedly executed approximately two and a half months (2.5) **AFTER** the Assignment in question was purportedly executed. Specifically, the alleged Assignment purports to have been executed on February 2, 2010, and the "Agreement for Signing Authority" and "Corporate Resolution" by and between Defendants MERS, Bank of America and McCalla Raymer purports to have been executed on April 21, 2010, which is **Seventy Eight (78) days <u>after</u>** the purported date of execution indicated on the recorded Assignment.

www.4closureFraud.org

67. Nothing in either the “Agreement for Signing Authority” or “Corporate Resolution” by and between Defendants MERS, Bank of America and McCalla Raymer gives Defendants Crouse, Sears, McCalla Raymer, or Prommis Solutions the authority to execute ANY documents prior to April 21, 2010, let alone the Assignment that purports to transfer Plaintiff Jenkins’ property.

68. Likewise, the barest, most cursory glance at the dates of these purported authorizations reveals that the so-called “Agreement for Signing Authority” and “Corporate Resolution” by and between Defendant MERS, BAC and McCalla Raymer were supposedly executed approximately two and a half months (2.5) **AFTER** the Assignment in question was purportedly executed. Specifically, the alleged Assignment purports to have been executed on February 2, 2010, and the “Agreement for Signing Authority” and “Corporate Resolution” by and between Defendants MERS, Bank of America and McCalla Raymer purports to have been executed on April 26, 2010 which is **Eighty Three (83) days <u>after</u>** the purported date of execution indicated on the recorded Assignment.

69. Nothing in either the “Agreement for Signing Authority” or “Corporate Resolution” by and between Defendants MERS, BAC and

www.4closureFraud.org

McCalla Raymer gives Defendants Crouse, Sears, McCalla Raymer, or Prommis Solutions the authority to execute ANY documents prior to April 26, 2010, let alone the Assignment that purports to transfer Plaintiff Jenkins' property.

70. Close examination of each of these fraudulent "Agreement for Signing Authority" and "Corporate Resolution" documents reveals that they were not signed at all, but rather that a stamp with, what Defendants fraudulently represent to be the "signature" of William Hultman as "Secretary/Treasurer" and Sharon Horstkampf as "Vice President" of MERS, was applied to each and every document where a signature was needed.

71. Defendants also present "Agreement for Signing Authority" and "Corporate Resolution" documents by and between MERS, Countrywide Financial Corporation and McCalla Raymer. It is common knowledge that Countrywide is a defunct entity and as such cannot maintain any contract.

72. There is no language in the "Agreement for Signing Authority" or "Corporate Resolution" that confers either of these contracts the ability to survive the demise of Countrywide. In fact, the "Agreement for Signing Authority" contract expressly provides at Paragraph 7 "Upon termination

www.4closurefraud.org

of the contract between Member and Vendor, this agreement shall concurrently terminate and the corporate resolution shall be revoked at such time."

73. Defendants McCalla Raymer and Prommis Solutions make much ado of having "complied" with the non-judicial foreclosure process in Georgia, all the while completely ignoring the fact that their client did not then, and does not now, have any standing to foreclose by virtue of having no legally cognizable claim to the subject property.

74. Defendant Bank of America argues that it is entitled to foreclose by virtue of being a servicer, however, the Georgia Legislature has specifically defined in O.C.G.A. 7-6A-2 (6) that *"A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity."* Therefore, Bank of America, acting as a mere servicer and not being the secured creditor cannot foreclose even, *assuming arguendo,* that the Assignment was valid.

75. It is abundantly clear that the Legislature, in specifying that the "secured creditor" be upon the record prior to the sale *see O.C.G.A.*

www.4closureFraud.org

44-14-162 (b) meant for the creditor to be vested with title to the any property it proposes to foreclose upon **prior** to the sale. Defendants argue that they have satisfied the requirements of 44-14-162 (b) by causing the alleged Assignment to be recorded. Plaintiff specifically avers that a fraudulently created Assignment confers no rights at all, let alone the right to foreclose.

76. Indeed, O.C.G.A. § 44-2-4**3** declares ***"Any person who: (1) fraudulently obtains or attempts to obtain a decree of registration of title to any land or interest therein; (2) knowingly offers in evidence any forged or fraudulent document in the course of any proceedings with regard to registered lands or any interest therein; (3) makes or utters any forged instrument of transfer or instrument of mortgage or any other paper, writing, or document used in connection with any of the proceedings required for the registration of lands or the notation of entries upon the register of titles; (4) steals or fraudulently conceals any owner's certificate, creditor's certificate, or other certificate of title provided for under this article; (5) fraudulently alters, changes, or mutilates any writing, instrument, document, record, registration, or register provided for under this article; (6) makes any false oath or affidavit with respect to any matter or thing provided for in this article; or (7) makes or knowingly uses any counterfeit of any certificate provided for by this article shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years."***

www.4closureFraud.org

PLAINTIFF ELEANOR SPRATLIN CRAWFORD

77. On or about August 11, 1997, Plaintiff Crawford executed a Note and Security Deed, in favor of NationsBank due to a refinancing of the subject Property.

78. In 1998, NationsBank acquired BankAmerica Corporation, and the whole unit took on the name of Bank of America.

79. At some time unbeknownst to Plaintiff Crawford, ASC acquired the servicing rights to the subject loan and began servicing the loan.

80. Plaintiff Crawford admits that she was in arrears in regards to four months of mortgage payments in May of 2009. This was due to having suffered four (4) deaths within four months within her immediate family. She fell behind because of contributing to funeral and burial costs for her deceased family members.

81. Plaintiff Crawford, being mindful of her obligations called ASC and obtained an amount to "cure" her default. She was told that she had to make a payment Sixty Two Hundred dollars ($6200.00),

www.4closureFraud.org

which she was willing and able to pay immediately. When she attempted to make that payment to ASC, she was told that she had call McCalla Raymer and/ or Prommis Solutions.

82. Plaintiff Crawford contacted McCalla Raymer in order to cure her default and was told to contact Prommis Solutions.

83. Upon contacting Prommis Solutions, Plaintiff Crawford was given an inflated amount of **over double** the previously quoted amount of Sixty Two Hundred dollars ($6200.00). When she questioned the amount, she was told that it was due to "fees and costs associated with your foreclosure."

84. These fees are inflated and improper under FDCPA 15 U.S.C. §1692K *et seq.*.

85. On or about May 1st, 2010, Defendants McCalla Raymer sent Plaintiff Crawford a Notice of Sale Under Power, affirmatively representing that their "client" was Wells Fargo and that Wells Fargo had retained them to foreclose upon the subject property.

86. On or about June 15, 2010, Plaintiff Crawford obtained a certified copy of an Assignment purporting to transfer "all right and

www.4closureFraud.org

interest" in the subject property to from MERS to ASC, which is a fictitious name (DBA) of Wells Fargo.

87. Said Assignment is patently defective and fails upon its face to transfer anything as it does not comply with O.C.G.A. § 44-14-64, and O.C.G.A. § 44-14-33 in that the Notary, Crystal Wilder had not been commissioned as a notary on the date of the purported execution of the Assignment.

88. The Assignment purports have been executed on April 4, 2009. On that date, Ms. Wilder was not a Notary. Ms Wilder was not granted a Notary Commission until May 15, 2009.

89. According to the Notary Index, which is searchable and available on the GSCCA website; Ms. Wilder had never been granted a Notary Commission, within the State of Georgia, previous to May 15, 2009. (Exhibit "E")

90. Said Assignment was recorded upon the Land Records of Cobb County on June 23, 2009.

91. Again, and similarly to Plaintiff Jenkins' assignment, the "Sale Date" was approximately three (3) months after the Assignment purported to

www.4closureFraud.org

be executed. Specifically, the "Sale Date" is indicated as being "7/07/2009" and the date of the purported execution of the Assignment was April 4, 2009. One wonders again at the power of clairvoyance those at Prommis must possess to be able to know with a certainty that there would be no possible way for Plaintiff to "cure" any purported default and or refinance the home.

92. On or about June 1, 2010, Plaintiff Crawford sought and obtained a Temporary Restraining Order to stay a pending foreclosure. The court required a deposit into the Court's registry of $17,485.84 which Plaintiff Crawford deposited into the Court's registry.

93. On or about September 24, 2009, Defendants sought to have the TRO lifted and sought to collect the funds deposited into the Court's registry by Plaintiff Crawford.

94. Defendants continued to rely upon the fraudulent assignment when seeking to lift the TRO and to foreclose upon Plaintiff's property.

95. On or about September 24, 2010, the Temporary Restraining Order was lifted. It is not known to Plaintiff Crawford if the monies tendered into the court's registry have been paid out to Defendants and/

www.4closureFraud.org

or their Counsel.

96. On or about Oct 19, 2010, after having been sued, and while being in litigation with Plaintiff Crawford, Defendants caused another assignment to be recorded upon the Land Records of Cobb County. This new Assignment is labeled "Amended Assignment" but it in fact "amends" nothing. It is an obvious attempt to "fix" the fraudulent conveyance of the previous assignment.

97. Plaintiff Crawford specifically avers that the assignment dated October 15, 2010 and recorded on October 19, 2010 must be considered hearsay as it fails to meet the criteria required in order to qualify as a "Business Record" exempt from Hearsay Rules.

98. The October Assignment was not made contemporaneously with any transfer of rights or interest, assuming *arguendo* that any transfer was valid. Furthermore, this document was obviously created in anticipation of litigation.

99. Defendants BAC, TBW and/or Does 1-100 have repeatedly refused to properly credit payments in an effort to manufacture a default in order to fraudulently foreclose on Plaintiff's home. Defendants have **adamantly refused to identify the secured creditor and the Real**

www.4ClosureFraud.org

Party in interest, which would allow Plaintiff to tender and make payments on her home. Furthermore, they have misled the Plaintiff as to obtaining the information as to obtaining the information for payoff.

100. Plaintiff Jenkins is, and was, understandably concerned that she may never see any credit for the monies paid, due to the very public allegations of fraud, by the SEC on the part of the management of TBW, which culminated in the arrest of the former CEO and principal owner of the privately held TBW, Jamie Farkas. See: http://www.sec.gov/news/press/2010/2010-102.htm

101. Defendants maintained in their "Verified Answer" (Exhibit "A") that Plaintiff Jenkins' request for proof that Bank of America has an actual pecuniary interest in the debt instrument is a ruse to evade payment of the mortgage note. Nothing could be further from the truth. Plaintiff has attempted, in good faith, to make her payments, and in fact has tendered monies that have disappeared into the quagmire that is the TBW bankruptcy. These monies, totaling $3400.00, have not been credited to her mortgage by either TBW or Bank of America.

102. At some time unknown to Plaintiff Jenkins, the Note and security deed were bifurcated where the deed alone was separated from

www.4closureFraud.org

the note and was assigned, for servicing purposes, to Defendants “BAC”, and/or Does. It is unknown who presently owns and holds the actual “wet ink” original promissory Note. Based upon knowledge and belief, the promissory note has been pledged, hypothecated, and/or assigned as collateral security to an unknown entity, foreign trust, or to an agency of the United States government or the Federal Reserve.

103. By letter dated March 26, 2010, counsel for BAC (McCalla Raymer) affirmatively represented that its “client” was, in fact, Defendant BAC and that BAC, was both the servicer and the “secured creditor” for the aforementioned alleged indebtedness regarding the property. Said correspondence, however fails to identify BAC as the owner and holder of the Note, and fails to affirmatively represent that BAC owns and holds any interest in the Security Deed or has any rights therein or thereto which would support a foreclosure of the Property.

104. Notwithstanding the letter of March 26, 2010, to Plaintiff Jenkins from McCalla Raymer said Defendant confirmed, in its letter, that BAC is merely the servicer of the loan and that the alleged note holder, was possibly "Bank of America” and not the originating lender.

105. McCalla Raymer, which provided Plaintiff with written notice that their “client” for purposes of the loan and foreclosure sale

www.4closureFraud.org

was BAC is the same Law Firm which also fraudulently and affirmatively represented that the entity that had full authority to negotiate, amend, and modify all terms of the mortgage instrument for purposes of the subject loan and foreclosure sale was "Bank of America", who is also a “client".

106. Upon knowledge and belief the Note and Security Deed are or were part of a securitized mortgage transaction where the Security Deed and Note were, at some point after original execution by the Plaintiff, severed and sold, assigned, pledged, hypothecated or transferred to separate entities, with certain rights being sold separately.

107. The servicing rights to the Note were sold separately or obtained by the liquidation of TBW to BAC and/or Does, however, BAC has not established both the existence of the mortgage and mortgage note, or ownership of the note and mortgage. The Plaintiff has requested the proof of ownership and even sent a Qualified Written Request, as allowed under the Real Estate Settlement and Procedures Act, to Defendants “BAC”, Bank of America and McCalla Raymer. They, each and every one, have refused to provide proof thereof and answer Plaintiff's questions.

108. The admissions of record demonstrate that Defendant

"BAC" has no legal or equitable interests in both the Note and Security Deed which are a legal prerequisite to institute and maintain a foreclosure, and that such interests may in fact lie with one or more of Defendants DOE(S).

109. As a severance of the ownership and possession of the original Note and Security Deed has occurred and as the true owner and holder of both the original Note and Security Deed are unknown and as a result of multiple and/or missing assignments and an incomplete and improper chain of title via written admissions set forth above, all defendants named above are legally precluded from foreclosing and/or selling the subject property.

110. Defendant McCalla Raymer's foreclosure sale notice letter is not in accordance with notice provisions involving foreclosure proceedings as required under Georgia law. Specifically, O.C.G.A. § 44-14-162.2 requires, in pertinent part, that *"notice ... shall include the name, address, and telephone number of the individual or entity who shall have the full authority to negotiate, amend, and modify all terms of the mortgage with the debtor".* Upon knowledge and belief, ONLY a vested investor, in a securitized trust, who is the real party in interest, may authorize amendments and/or modification of the Plaintiff's note and security deed.

www.4closureFraud.org

111. Furthermore, O.C.G.A. § 7-6A-2 (6) prescribes that *"A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity."*

112. The letter of counsel for BAC dated March 26, 2010 (Exhibit "B") fails to comply with the notice provisions of O.C.G.A. § 44-14-162 (b) *"The security instrument or assignment thereof vesting the secured creditor with title to the security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located."* as said letter does not indicate who the secured creditor is; nor does identify the secured creditor who has title to the security instrument but instead recites that the assignment is "to be recorded" in the Office of the Clerk of Muscogee County, Georgia.

113. As such, Defendant BAC is without standing and is legally precluded from foreclosing on and selling the Property.

114. In an attempt to cure the deficiencies noted supra, Defendants McCalla Raymer, Prommis Solutions and MERS have caused a purported assignment (Exhibit "C") from MERS to BAC to be recorded upon the Public Records of Muscogee County on April 14, 2010.

115. On or about May 3, 2010, Plaintiff Jenkins filed suit in the Superior Court of Muscogee County which was styled SU-10-CV-1731.

www.4closureFraud.org

CLASS ACTION ALLEGATIONS

116. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of all Georgia real property owners who are members of the following two subclasses:

(SUBCLASS 1: FORECLOSED BORROWER SUBCLASS)

117. Individuals whose real property was foreclosed upon, under the Power of Sale, by Defendants and Does 1-100 that did not have actual, valid, legal and non-fictitious written assignment of the mortgage, granting a secured creditor the standing to foreclose as statutorily required by O.C.G.A. §44-14-162 *et seq.*.

(SUBCLASS 2: BORROWERS FACING FORECLOSE SUBCLASS)

Individuals whose real property is being foreclosed upon, under the Power of Sale, by Defendants and Does 1-100 that do not have actual, valid, legal and non-fictitious written assignment of the mortgage, granting a secured creditor the standing to foreclose as statutorily required by O.C.G.A. §44-14-162 *et seq.*.

www.4closureFraud.org

118. Excluded from the class are Defendants, their subsidiaries, successors and assigns, officers, directors and employees.

119. Plaintiffs believe that there are thousands of members of the class although, at present, their identities are unknown.

120. The losses suffered by members of the class are such that prosecution of individual actions is impractical or economically unfeasible.

121. Prosecution of separate lawsuits by individual members of the class would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for the Defendants, making concentration of the litigation concerning this matter in this Court desirable.

122. There are questions of law and fact that are common to the members of the both classes, which questions predominate any questions that affect only individual members of the class.

123. There are questions of law common to the members of the class relating to the existence of the acts of the Defendants alleged herein, the wrongful nature thereof, and the type of damage suffered, to wit:

www.4closureFraud.org

(a) Whether Defendants in collusion with MERS and Prommis Solutions have engaged in a conspiracy to defraud homeowners by conducting illegal foreclosures, taking advantage of the lack of judicial oversight in the current non-judicial foreclosure system in Georgia;

(b) Whether the Defendants have filed fraudulent documents within the Superior Courts of Georgia relating to transfers of mortgages, notes, assignments, and any other documents related to Real Property.

(c) Whether Defendants, their officers and agents have caused to be filed, fraudulent documents to disguise the real party in interest with respect to foreclosure proceedings and to further destroy the current system of deed recordation and constructive notice in the State of Georgia by using MERS to avoid properly filing assignments to deeds for the sole purpose of evading county clerk fees.

(d) Whether demands for payment send by Defendant firms/lenders to homeowners were falsified and included inflated fees that were not reflective of actual and necessary fees incurred by the servicer.

www.4closureFraud.org

(e) Whether Defendant lenders failed to properly disclose the role of MERS and how its role as "nominee" affected the rights of the homeowners prior to their executing the Security Deed and Waiver of Borrower's rights.

(f) Whether Defendant MERS has acted outside the scope of its authorized capacity as nominee.

(g) Whether Defendant and/or Does 1-100 acted without authority pursuant to a Power of Sale during the foreclosure process.

(h) Whether Plaintiffs and the putative class they seek to represent are entitled to declaratory judgment, injunctive relief or damages.

(i) For Subclass 1 (Foreclosed Borrowers); whether the foreclosure sales conducted are void or voidable,

(j) For Subclass 2 (Borrowers facing foreclosure) whether pending foreclosure sales may be conducted.

124. Plaintiff's claims are typical of the claims of class members. Plaintiffs will adequately and fairly protect the class' interests. The interests of the Plaintiff coincide with that of the class and

www.4closureFraud.org

the interests of the Plaintiff are not antagonistic to interests of other members of the class.

125. A class action is superior to other available methods for the fair and efficient adjudications of this controversy.

126. If individual members of the class were to bring separate lawsuits, it would create a risk of inconsistent judgments and/or verdicts, unclear public policy regarding the accountability and wrong doing of Defendants, contradictory standards regarding what is acceptable, legal and proper behavior by Defendants.

127. In the absence of the class action device, Plaintiffs and members of the putative class they seek to represent would be left without a remedy for the wrongful acts alleged, and the Defendants would be unjustly enriched.

128. The class concerned in the foregoing complaint is definable. Prosecution as a class eliminates repetitious litigation, prevents multiple law suits being filed that involve the same parties and questions of law and/or fact, provides relief for members with both large and small claims and allows for a judicial efficiency.

129. The only individual questions concern the identification of members of the Plaintiff class. Identification can be made by a

www.4closureFraud.org

review of records in possession of the Defendants and/or public records.

130. Mailed notice can be provided to Plaintiff class by various means of communications, as identified in the public records, the records of the Defendants and/or other sources. Publication notice can be provided to supplement mailed notice.

131. Plaintiff claims are typical of the claims of the Plaintiff class members. All are based on the same legal and remedial theories.

132. Plaintiffs will fairly and adequately protest the interest of all Plaintiff class members in the prosecution of this action and in the administration of all matters relating to the claims stated herein. They are similarly situated with and have suffered similar injuries as the members of the class they seek to represent.

133. Plaintiffs have retained a team of attorneys experienced in handling defenses to foreclosures, as well as complex litigation and/or class action suits involving unfair business practices and consumer law. Neither the Named Plaintiffs nor their counsel have any interest that might cause them to not vigorously pursue this action.

www.4closurefraud.org

134. No unusual difficulties are likely to be encountered in the management of this action as a class action.

FIRST CAUSE OF ACTION

WRONGFUL FORECLOSURE

135. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

136. Defendants conducted foreclosures as part of a fraudulent business scheme whereby various employees of Promiss, who were non-official witnesses acting under the guise of notary publics robo-signed attestation clauses prior to the date on which the notary public obtained a lawful commission and authorization to act as a notary public under the laws of the state of Georgia.

137. The Assignments created by Prommis are, for the most part, uniform and include verbiage that specifically states: ***"IN WITNESS WHEREOF, the Assignor has hereunto set its hand and seal this (date inserted). Signed, sealed and delivered in the presence of :"***

138. Under Georgia law, a notary public is commissioned for a term of 4 years, O.C.G.A. §45-17-5. Notary commissions are granted

www.4closureFraud.org

by the County Clerk of Court in either the county where the prospective notary resides or conducts, substantially, their business. The beginning date of any notary commission is easily calculable. Anyone capable of basic math can determine the approximate beginning date of a Notary's commission by simply subtracting 4 years from the date of expiration recited on each document notarized.

139. A security deed vests legal title to the property in the grantee, who may foreclose on the security interest. *Tomkus v. Parker*, 224 S.E.2d 353, 369 (Ga. Ct. App. 1978). A "power of sale" in a security deed grants the original grantee the power to sell the property at a foreclosure sale as attorney-in-fact for the debtor to satisfy the debtor's delinquency. An assignee of the original grantee of a security deed may exercise the power of sale contained in such security deed. O.C.G.A. § 23-2-114; *Allen v. Wade,* 203 Ga. 753, 755, 48 S.E.2d 538 (1948); *Williams v. Joel,* 89 Ga. App. 329, 79 S.E.2d 401 (1953). An assignee of a security deed, however, cannot exercise the power of sale and foreclose upon the security until there has been an actual

www.4closureFraud.org

assignment complying with Georgia law. *In re Cummings*, 173 B.R. 959, 962 (N.D. Ga. 1994).

140. Georgia law requires that "All transfers of deeds to secure debt shall be in writing; shall be signed by the grantor or, if the deed has been previously transferred, by the last transferee; and shall be witnessed as required for deeds." O.C.G.A. § 44-14-64. A deed must be attested in the manner prescribed by law for mortgages. O.C.G.A. § 44-14-61. Recorded mortgages for real property must be attested or acknowledged ***by an official witness*** and at least one additional witness. O.C.G.A. § 44-14-33. Pursuant to section 44-2-15 of the Georgia code, the official witness may be a notary public. O.C.G.A. § 44-2-15. The validity of an assignment of a security deed is governed by the laws applicable to the recording of mortgages, O.C.G.A. § 44-14-33.

141. Under Georgia law, "the registry of a deed not attested, proved, or acknowledged according to law, is not constructive notice to a bona fide purchaser." *Hopkins v. Va. Highlands & Assoc., LP*, 541 S.E.2d 386, 390 (Ga. Ct. App. 2000) (quoting *Connif v. Hunnicutt*, 157 Ga. 823, 836, 122 S.E. 694 (Ga. 1924)). As

www.4closureFraud.org

between the parties to the instrument, however, the deed is valid and binding absent a showing of fraud. *Duncan v. Ball* 172 Ga .App. 750, 752, 324 S.E.2d 477, 480 (Ga. Ct. App. 1984). In *Leeds Bldg. Products, Inc. v. Sears Mtg. Corp*, the Georgia Supreme Court held that a deed that facially complies with statutory requirements provides constructive notice, but reaffirmed the general rule that a patently defective deed—a deed with a facial defect—does not constitute constructive notice to subsequent purchasers. 267 Ga. 300, 301-02, 477 S.E.2d 565 (Ga. 1996); *see also In re Yearwood,* 318 B.R. 227, 229 (Bankr.M.D.Ga.2004) (holding that where there is a patent defect in the security deed, there is no constructive notice like that of a latent defect); *In re Blackmon,* 283 B.R. 910, 912 (Bankr.E.D.Tenn.2002) (interpreting Georgia law to mean that a recorded instrument that is facially invalid does not constitute constructive notice to subsequent purchasers).

142. A patent defect is a defect that "is obvious and easily detectable," such as the absence of an unofficial witness's signature on the face of the instrument. *In re Codrington*, 430 B.R. 287, 292 (N.D. Ga. 2009).

www.4closurefraud.org

143. By way of example, in *In re Yearwood*, the debtor executed a security deed to her residence in favor of the defendant. 318 B.R. 227, 228 (N.D. Ga. 2004). The security deed was notarized by an official witness, but did not bear the signature of an unofficial witness. *Id.* The court found that the Chapter 7 Trustee could avoid the defendant's interest in the property because the lack of unofficial witness's signature was a patent defect in the security deed, and thus there was no constructive notice to third parties of its invalidity.

144. In another case, the Supreme Court of Georgia found that where a warranty deed showed on its face that it was for consideration in excess of $100 but that no transfer tax had been paid to entitle the deed to be recorded, the deed had a patent defect, was not entitled to be recorded, and could not serve as constructive notice to a subsequent purchaser. *Higdon v. Gates*, 231 S.E.2d 345, 346-47 (Ga. 1976). Finding that patent defect did not afford constructive notice, the court affirmed the cancellation of the deed as a cloud upon the superior title of a subsequent purchaser. *Id.*

www.4closureFraud.org

145. The assignment of the security deed must comply with the attestation requirements of deeds, O.C.G.A. 44-14-61, and thus the signature of an *official witness* was required to create a valid assignment of the security interest. O.C.G.A. § 44-14-33. Just as a deed missing the signature of an unofficial witness is patently defective, an assignment missing the signature of an *official witness* is likewise patently defective.

146. A foreclosure of the security in the absence of a valid assignment is null and void. *In re Cummings,* 173 B.R. 959, 962 (N.D. Ga. 1994). By way of example, in *Cummings*, the foreclosing creditor claimed that it was entitled to foreclose on the property because it had acquired a security interest prior to the foreclosure sale by assignment from the original grantee of the security deed. *In re Cummings,* 173 B.R. 959, 962 (N.D. Ga. 1994). There were two documents at issue in that case. The first document was a hand-written assignment, which stated that the original grantee "agrees to assign its interest" in the subject property to the foreclosing creditor, but did not contain language of conveyance. The evidence before the court demonstrated that the assignment was not executed with the same formalities as

www.4closureFraud.org

the original deed containing the power of sale. *Id.* In addition, a second document entitled "Transfer and Assignment" from the original grantee to the foreclosing party was executed by the appropriate officers of the parties to the assignment with the same formalities of as the security deed, but the parties failed to proffer evidence concerning when the documents were executed and delivered with respect to the foreclosure date. *Id.* In the absence of evidence of execution and delivery, the court concluded that note and the security deed not actually assigned to the foreclosing party before the date of the foreclosure sale. *Id.* at 963. Since there was no proof of a valid assignment of the note and security deed, the foreclosure of the property was declared null and void. *Id.*

147. The purported assignments do not comply with section 44-5-64 because the assignment of the security deed did not satisfy the attestation formalities prescribed by section 44-5-33, the purported assignment is not a valid assignment under Georgia law. Thus, any foreclosure of the security interest covered by the assignment is null and void.

www.4closureFraud.org

148. Although Georgia recognizes the doctrine of *de facto* notary public in cases in which a deed or other instrument is notarized by a notary public whose commission has expired at the time of execution and attestation. *See Thomas v. Gastroenterology Assocs. of* , 280 Ga. 698, 700, 632 S.E.2d 118, 120 (citing *Smith & Bondurant v. Meador*, 74 Ga. 416 (1885)). In *Smith & Bondurant*, the court explained that a notary public who attests the execution of a document after his commission has expired shall be recognized by the court a notary public *de facto.* 74 Ga. at 418-19. This doctrine exists as a matter of public policy: "where the public servant is acting in the place apparently all right, and the applicant to him in good faith has a deed witnessed or an oath administered, that it is better for society that the act de facto stand than that . . . the title to property be all wrecked, because parties did not know that the term of office of the public official expired the day before." *Id.*

149. Notaries with expired commissions have already proven their qualifications to the clerk before obtaining their commissions, and the clerk has been given the opportunity to deny or grant the commission. Additionally, the notary has maintained the

www.4closureFraud.org

position of an official for four years prior to execution. Here, the clerk has not yet confirmed approval of the individual's qualification to hold the office of notary public. Application of the de facto notary exception would grant official status to an individual who has yet to prove qualification for office, which is quite distinguishable from cases where the individual has already been authorized by the state to fulfill official duties. Because there are no cases in Georgia applying the *de facto* notary doctrine to cases in which the alleged notary has yet to obtain a commission at the time of signing, the public policy underlying the doctrine does not support a similar finding in the absence of a previously granted commission.

150. These false attestations by civilians acting under the guise of notary publics causes a patent defect in the required attestation of assignments and other deeds as more particularly described supra.

151. Upon the face of the document, the Defendant whose notary seal was stamped on the document in question on the day of execution was not lawfully commissioned to act as a notary

www.4closureFraud.org

public or as an official witness on the date the documents were illegally and fraudulently executed.

152. Signatures of official witnesses are required to create valid assignments of security interests (O.C.G.A. § 44-14-33) and therefore the alleged assignments, each and every one, are invalid. Assignments of security deeds must comply with O.C.G.A. § 44-14-61.

153. Any foreclosure of the security in the absence of a valid assignment is null and void *ab initio*. *In re Cummings,* 173 B.R. 959, 962 (N.D. Ga. 1994). Any foreclosure conducted using fraudulently signed and attested documents, which the Defendants knew or should have known to be fraudulently executed, including deeds, transfers, assignments or any other document, that are missing the signature of an unofficial witness and deeds missing the signature of an *official witness (emphasis added)* are defective. Therefore, any wrongful foreclosures are void under O.C.G.A. § 23-2-114.

154. The Defendants' fraudulent assignments creates both patently and latently defective deeds, which slanders the title of any

www.4closureFraud.org

property foreclosed upon that relied upon an assignment with the fraudulent attestation causing plaintiffs damages.

SECOND CAUSE OF ACTION

WIRE FRAUD

155. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

156. Defendants used wire communications, including but not limited to facsimile's, emails and the internet to accomplish their scheme to defraud the public, the Courts and the non-judicial foreclosure system in Georgia by causing to be sent, filed, and recorded mortgage documents which they knew or should have known to be fraudulent in violation of 18 U.S.C. § 1343. .Because of said actions of Defendants Plaintiffs are entitled to damages.

THIRD CAUSE OF ACTION

RESPA VIOLATION

157. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

158. Defendants did not properly notified borrowers of transfers of servicing rights as required by 12 U.S.C. § 2605. With the

www.4closureFraud.org

exception of MERS, Defendant who are bankers, servicers and law firms are debt collectors as contemplated by the meaning of FDCPA 15 U.S.C. §1692K *et seq.*.

159. Defendants willfully, wantonly and knowingly filed false and fraudulent documents with county clerks and courts in a deliberate attempt to defraud the Plaintiffs into believing that a legal collection of debt was attempted when the Defendants knew, or should have known, that they had no legal standing to collect a debt from Plaintiffs and that the documents used to effect such transfers were fraudulently executed and attested in violation of state and federal laws. Plaintiff demands damages pursuant to 12 U.S.C. §2605(f) and FDCPA 15 U.S.C. §1692K *et seq.*.

FOURTH CAUSE OF ACTION

Violation of the Fair Debt Collection Practices Act ("FDCPA")

160. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

161. Defendants improperly misrepresented themselves to Plaintiffs to be the party in interest with legal authority to collect on debts secured by a deed when in fact they are not authorized to collect

www.4closureFraud.org

debts on behalf of the true party in interest in violation of 15 U.S.C. § 1692 *et seq.*. Because of said actions of Defendants , Plaintiffs are entitled to damages.

FIFTH CAUSE OF ACTION

CIVIL CONSPRIACY AND FRAUD (MERSCORP and MERS, Inc.)

162. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

163. Defendant MERS and its parent company, MERSCORP at the direction of the "founding shareholders" which include Bank of America, Wells Fargo, Fannie Mae, Freddie Mac, and other parties, which may include Defendant Does 1-100 colluded to create a fictitious corporation, designed and designated a "bankruptcy remote" vehicle, acting at all times as a strawman, and designed specifically to avoid paying county clerk filing fees which are routinely required when recording any type of transfers of security deeds.

164. In 1996, mortgage lenders created Mortgage Electronic Registration Systems, Inc ("MERS") in order to internally track secondary market sales of promissory notes and home loan servicing rights by and between its members. Mortgage

www.4closureFraud.org

Electronic Recording Systems, Inc. subsequently changed its name to MERSCORP and used the name Mortgage Electronic Recording Systems, Inc. for their bankruptcy remote subsidiary, MERSCORP, Inc. is the parent company of Mortgage Electronic Recording Systems, Inc., commonly known as "MERS".

165. When a mortgage is registered under the MERS system, MERS holds bare legal title acting "solely as nominee" for their members, which may be banks, mortgage lenders, title companies, or even Government Sponsored Entities.

166. MERS maintains an electronic registry that purports to track the various sales and assignments of notes when they are sold from the original lenders to third parties.

167. MERS' theory is that as long as the subsequent sale of the servicing rights or the promissory note is sold to another "insider" member, MERS can remain the "nominee" for security deeds and the "beneficiary" for deeds of trust on behalf of the new owner.

168. To the courts, county clerks and general public, it appears as if one person continues to hold the deed and thus no recordation fees are incurred by MERS members even though the sale of

www.4closureFraud.org

promissory notes and servicing rights occur multiple times within a single mortgage transaction over the life of the loan.

169. The role of MERS is not properly disclosed to borrowers in their loan documents. MERS provides that it is a “nominee”, but the term “nominee” is never defined in the security deed and no disclosures regarding MERS role in the transaction were provided to homeowners prior to executing the security deed.

170. Homeowners were and are **never informed** prior to arrival at the closing that MERS is a party to the transaction.

171. Upon arrival at the closing, homeowners are given an untenable “take it or leave it” choice in regards to MERS. They may **ONLY** accept giving legal title to MERS if they wish to close the transaction for a home for themselves and their families.

172. MERS lacks the capacity to act as a Trust or Corporate Fiduciary in the State of Georgia, thereby rendering void the security deeds of the Plaintiff and putative plaintiff class that named MERS, acting solely as "nominee" for the Lender and the Lender's successors and assigns.

173. The term "nominee" is not defined in the security deed.

www.4closureFraud.org

174. Georgia law does not recognize the term "nominee" in a real estate transaction wherein the grantee holds legal title for the benefit of another.

175. Black's Law Dictionary defines "nominee" as "[a] person designated to act in place of another, usually in a very limited way" and as "[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others."Black's Law Dictionary 1076 (8111 ed. 2004).

176. A "beneficiary" is defined as "one designated to benefit from an appointment, disposition, or assignment or to receive something as a result of a legal arrangement or instrument." Black's Law Dictionary 165 (8111 ed. 2004).

177. According to MERS own admission in a Nebraska Court: ***"[MERS] does not acquire mortgage loans and is therefore not a mortgage banker under §45-702(6) because it only holds legal title to members' mortgages in a nominee capacity and is contractually prohibited from exercising any rights with respect to the mortgages without the authorization of the members. Further, MERS argues that it does not own the promissory notes secured by the mortgages and has no right to***

www.4closurefraud.org

payments made on the notes. MERS explains that it merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur". (See Mortgage Elec. Reg. Sys., Inc. v. Nebraska Department of Banking, 270 Neb. 529, 704 N.W. 2d 74 (2005) (brief for MERS). The Nebraska court found that MERS was not a mortgage banker and held that MERS is a legal title holder in nominee capacity that permits lenders to sell and assign their interests in notes and servicing rights to third party investors without recording each transaction.

178. Payment of county clerk fees are deliberately avoided for each MERS transaction, which as a consequence, destroys the traditional notice given through recordation to third parties and destroying any chain of title relating to such transaction, except as such transfers or assignments are saved and held in the MERS electronic database and therefore available ONLY to "insider" members but not to the Courts or the general public. In exchange for its services, MERS is paid through membership fees charged to its members

www.4closureFraud.org

179. The creation of MERS had the foreseeable effect of avoiding transfer fees associated with the traditional recording of assignments and transfers in the county clerk's deed books and evading disclosure of the time, nature and circumstances of assignments and transfers as well as the identity of the true owner of the mortgage and promissory note.

180. Any notice of foreclosure given by a MERS' attorney was improper and does not qualify as "notice" under the meaning of O.C.G.A. §44-14-162.2. Under that code section, notice of initiation of foreclosure proceedings must be given by the secured creditor at least 30 days before the foreclosure sale date. In violation of O.C.G.A. §44-14-162.2, MERS knowingly sent false and fraudulent information with the intent to defraud and mislead the Plaintiff into thinking that a lawful foreclosure was being initiated against them by the party with legal authority to foreclose when in fact MERS and other culpable defendants did comply with the pre-requisites of O.C.G.A. §44-14-162 *et seq* MERS is not a secured creditor and cannot send the notice required under O.C.G.A. §44-14-162. *et seq*

www.4closureFraud.org

181. By its own admission, MERS is not a secured creditor because it does not hold the security for the subject real properties and it **never** has any beneficial interest in the debt instrument. Therefore, MERS has never been entitled to collect any debt from Plaintiffs, enforce collection of any debt against Plaintiffs or initiate foreclosure proceedings against Plaintiffs because MERS never had legal standing to do same. MERS is not a secured creditor under Georgia law because it is barred from acting in a fiduciary capacity with respect to the note.

182. Any deeds that were prepared, filed and/or recorded in violation of the notice requirements of O.C.G.A. §44-14-162 *et seq* should be rendered void in order to restore title to the owner who held title at the time of the wrongful foreclosure.

183. Defendant MERSCORP and its shareholders, Bank of America, and Wells Fargo among them, (Exhibit "F") has at all times relevant been in direct control of Defendants MERS who operates, controls, owns and manage the operations and business activities of Defendant MERS.

184. MERSCORP and its shareholders deliberately created MERS, a "bankruptcy remote" company, to act as a strawman, and

www.4closureFraud.org

present itself as a “nominee” for purposes of assignments and transfers of servicing rights.

185. MERSCORP and its founding members have used MERS, Inc. as the instrumentality through which they (1) avoid paying court and county clerk recordation fees for assignments and transfers (2) conduct fraudulent transfers and assignments, (3) outsource foreclosure paperwork to foreclosure mill law firm who they knew or should have known were unlawfully robo-signing mortgage assignments and conveyances for use in conducting wrongful foreclosures.

186. Defendants MERSCORP and its member shareholders created MERS, Inc. to promote injustice, protect fraud and defeat the purpose of law, to provide a uniform system of recordation of assignments and transfers which would serve as proper constructive notice to all third parties and bona-fide purchasers.

187. For these reasons, the corporate veil of MERS, Inc. and MERSCORP should be pierced, and these Defendants should be disgorged of any profits and interests earned as a result of its tortuous and illegal conduct.

www.4closureFraud.org

188. Its members, officers and directors should be held personally liable for any and all fraud occurring through the acts of MERS, Inc. and MERSCORP.[2]

189. Defendant MERS, as nominee and/or assignee, was <u>not</u> the secured creditor of the Plaintiff's security interest because the improperly attested assignment conveyed no legal interest in the subject property. Even if the assignee became the holder in due course of the note, in the absence of a security interest in the property, the assignee does not become the "secured" creditor, and any notice received by the residential debtor from the alleged assignee is insufficient to comply with the strict notice requirements of section 44-14-162.1.

190. Where a creditor does not comply with the statutory duty to exercise fairly the power of sale in a deed to secure debt, the debtor may pursue a cause of action for wrongful foreclosure under O.C.G.A. § 23-2-114. *DeGloyer v. Green Tree Servicing, LLC*, 662 S.E.2d 141 (Ga. Ct. App. 2008).

---

[2] *Boafo v. Hospital Corp. of America*, **338 S.E.2d 477 (Ga. Ct. App. 1985),** *Humana, Inc. v. Kissun*, **471 S.E.2d 514 (Ga. Ct. App. 1996).**

www.4closureFraud.org

191. Additionally, section 44-14-162 of the Georgia code requires that notice of the intention to exercise the power of sale in a security deed of residential property be given the debtor by the *secured creditor* no later than thirty (30) days before the date of the proposed foreclosure sale. O.C.G.A. § 44-14-162 *et seq*.

192. The notice requirement, being in derogation of the common law, is strictly construed. *See Breitzman v. Heritage Bank,* 180 Ga. App. 171, 348 S.E.2d 713 (1986).

193. Georgia statutes require notice by the "secured creditor" to the "debtor." Foreclosures conducted by Defendants pursuant to illegal assignments are wrongful foreclosures, are tortuous conduct and Plaintiffs are entitled to recover damages for same.[3]

SIXTH CAUSE OF ACTION

ILLEGAL FEE SPLITTING AND UNAUTHORIZED PRACTICE OF LAW

194. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

[3] *See Roylston v. Bank of America, N.A.*, 290 Ga. App. 556, 660 S.E.2d 412, Ga. App. (2008). Where a grantee creditor does not comply with the statutory duty to exercise fairly the power of sale in a deed to secure debt, OCGA § 23-2-114, the debtor may either seek to set aside the foreclosure **or** sue for damages for the tort of wrongful foreclosure. *Calhoun First Nat. Bank v. Dickens*, 264 Ga. 285, 286, 443 S.E.2d 837, 838 (Ga. 1994) (citing *Clark v. West,* 196 Ga. App. 456, 457, 395 S.E.2d 884 (1990); *Curl v. First Federal,* 243 Ga. 842, 843, 257 S.E.2d 264 (1979)).

www.4closureFraud.org

195. The categorization of the fees as "administrative" or something other than illegal fee splitting was a direct attempt to conceal the nature of the arrangement by and between Defendants.

196. These fees are eventually charged back to the class members because they are added into default statements and usually included in the foreclosure notices sent to Plaintiffs referencing the "default" amount.

197. Defendants have knowingly engaged in illegal fee splitting to the sole financial profit and benefit of Defendants.

198. Prommis Solutions Holdings currently has **TWENTY YEAR** (20) contracts to perform services, called "networking agreements" or similar, with 4 separate Law firms who specialize in default "resolution", specifically, McCalla Raymer LLC, Johnson & Freedman LLC, Morris Hardwick Schneider, and Pite Duncan LP.

199. In furtherance of their scheme to conceal their fraudulent and unethical conduct, Defendants Prommis Solutions, Inc. and Defendants MERS, MERSCORP and Great Hills have executed confidentiality agreements with the intention of never disclosing the true nature and terms of their illegal, fee-splitting agreements

www.4closureFraud.org

therefore depriving the mortgagors and other interested parties of the true nature of their business relationship and financial arrangement to receive payment for services rendered, whether those services were in fact rendered or not.

200. Some of the fees that are charged to the class members are never actually earned by the Defendants. For example, in Plaintiff Jenkins, the notice of default sent by Defendant McCalla Raymer includes fees for administration and foreclosure, which may or may not have been actually incurred by the Defendants.

201. While the above-named Defendants may argue that disclosure of business relationships, terms or financial arrangements may disclose the trade secrets of competitors, the true purpose of the confidentiality and/or non-disclosure agreements is to protect a common scheme of fraud, protect cash flow, engage in a conspiracy to conceal the unethical conduct and agreements of Defendant attorneys and their non-attorney co-conspirators and to prevent full disclosure of the role of the Defendants and their respective financial interests in and roles in the foreclosure process.

www.4closureFraud.org

202. Defendant Prommis Solutions, Inc. is not a law firm and is therefore a non-attorney. Non-attorneys in the State of Georgia are barred and prohibited from splitting fees with attorneys.

203. Defendant Prommis Solutions, Inc. and Defendants McCalla Raymer have continuously engaged in a common course or scheme of illegal fee splitting, which fees are then billed back to the class members in the form of "fees" for foreclosures, administration, etc.

204. The cumulative effect of Defendants illegal and tortuous conduct is to perpetuate a continuing fraud on the public, Courts and mortgagors in default in a collective effort to knowingly conduct wrongful foreclosures.

205. Defendants have generated billions of dollars in fees, gained money from governmental entities who have insured the defaulted loans and generated substantial profits from their wrongful foreclosure scheme. Plaintiffs have suffered harm and damages from Defendants schemes and unlawful practices.

SEVENTH CAUSE OF ACTION

(Great Hill Partners, Inc. and Prommis Solutions, Inc.)

www.4closureFraud.org

206. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

207. The history and founding of Prommis Solutions, Inc. is summarized on the Great Hills Partners, Inc. website under the subsection titled "case studies" as follows: "In 2005, GHP was looking for a way to invest in the expected downturn in residential housing when Chairman and former CEO Dan Phelan was contacted. Phelan, a lawyer by training, had built a large processing business providing foreclosure and bankruptcy technology for the residential real estate market. Interestingly, the operations were co-mingled inside a working law firm. In order to provide founder liquidity and prepare for a national business expansion, Phelan interviewed several private equity firms to lead a transaction. GHP worked with Phelan to create a stand-alone commercial enterprise in a novel "spinout" from the law firm. Importantly, GHP was able to introduce a CFO and CIO from a prior successful portfolio investment to work with Phelan on the project. In 2006, with debt financing from GHP relationship lenders and our equity sponsorship, Prommis Solutions, Inc. was founded." (Exhibit "G")

www.4closureFraud.org

208. Great Hills Partners, Inc. funded Prommis Solutions, Inc. on February 24, 2006.

209. Defendant Great Hill Partners, Inc., the majority owner of Prommis Solutions Holding, parent company of Prommis Solutions, Inc. caused and directed Prommis Solutions, Inc. to engage, collude and conspire with law firms to promote and protect fraud by executing non-disclosure, non-confidentiality, networking and other agreements to further their unethical practice of illegal fee splitting to the detriment of Class members.

210. Defendants Prommis Solutions, Inc., Prommis Solutions Holding and Great Hill Partners, Inc. knowingly and intentionally outsourced foreclosure services to law firm "foreclosure mills" and engaged in a common course of illegal business conduct, that is, robo-signing, for the purpose of fraudulently conveying, recording and attesting falsified mortgage documents, including but not limited to assignments and transfers of servicing rights, in a common and concerted effort to defraud mortgagors, courts, county clerks, bona-fide purchasers and other third parties not named herein.

www.4closureFraud.org

211. Non-lawyer Defendants engaged in fee-splitting had direct control and management of attorney activities through networking or other similar agreements and therefore engaged in the unauthorized practice of law.

212. Non-lawyers Defendants prepared and continue to prepare documents for filing by attorneys, and directly managed the activity and voluminous robo-signed documents conveyed, executed and recorded pursuant to a networking or similar agreement.

213. The Defendants unethical conduct perpetuated a scheme of concealing illegal fee splitting, charged mortgagors fees beyond and above those which were actually incurred or agreed upon, concealed the nature of agreements concerning fee earning and fee-splitting and provided a "volume" of cases to foreclosure mill law firms for the purpose of continuing this unethical, tortuous, illegal and wrongful course of conduct.

214. Defendants Great Hill Partners, Inc., Prommis Solutions Holding and Prommis Solutions, Inc., promoted injustice, protected fraud and defeated the purpose of law and intentionally entered into agreements for the purpose of

www.4closureFraud.org

concealing the nature of their illegal fee-splitting relationships with law firms to interested parties.

215. The corporate veil of Great Hill Partners, Inc., Prommis Solutions Holding and Prommis Solutions, Inc. should be pierced. These Defendants should be disgorged of any profits and interests earned as a result of tortuous and illegal conduct. Its members, officers and directors should be held personally liable for any and all fraudulent acts committed in furtherance of this common course of business conduct. [4]

EIGHTH CAUSE OF ACTION

RICO VIOLATIONS

Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §1962)

216. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

217. Plaintiffs and all members of the class are considered persons within the meaning of 18 U.S.C. §1961(3) and 1964.

[4] *Boafo v. Hospital Corp. of America*, **338 S.E.2d 477 (Ga. Ct. App. 1985),** *Humana, Inc. v. Kissun*, **471 S.E.2d 514 (Ga. Ct. App. 1996).**

www.4closureFraud.org

Defendants are also considered persons within the meaning of 18 U.S.C. §1961(3).

218. Defendants followed the directions of Defendants Bank of America and Wells Fargo in their capacity as shareholders of MERS and "clients" of Prommis and McCalla Raymer when they filed illegal and fraudulent foreclosures and caused to be prepared and filed other false documents with Courts of this state knowingly and with the intent defraud the Courts, delinquent homeowners and the general public for their own sole benefit and <u>without</u> standing.

219. Collectively, defendants are an "enterprise" under the meaning of 18 U.S.C. §1961(4) because they have been and are presently engaging in foreign and interstate commerce and their activities directly affect foreign or interstate commerce. In an attempt to defraud literally thousands of homeowners, Defendants continued a long-term course of conduct be perpetuating fraud and deceit against Plaintiffs during the class period.

220. As part of their interstate commerce scheme, Defendant, acting directly or indirectly through directors, officers and employees caused fraudulent wire transfers and obtained a monetary profits

www.4closureFraud.org

from the fraudulent and illegal foreclosures in violation of 18 U.S.C. §§1341 and 1343, and 15 U.S.C. §§45 and 52.

221. Defendants gained a monetary benefit from their fraudulent conduct, and profits made from racketeering activities was used to continue a scheme to further defraud Plaintiffs and violate RICO laws.

222. Plaintiffs suffered actual, real damages when Defendants knowingly misrepresented to Plaintiffs that they parties to a lawful foreclosure process when in fact the documents presented by Defendants to Plaintiffs were executed unlawfully as part of a foreclosure mill "assembly line" process which operated to produce income for the Defendants to use in further perpetuation of their fraudulent schemes and provided income for the Defendants to continue their racketeering activities.

223. Documents prepared with the intent to defraud Plaintiffs were produced by Defendants who knowingly engaged in fraudulent conduct, which conduct can be considered predicate acts of racketeering activity under the meaning of 18 U.S.C. §1961(1) since a common pattern of fraud occurred during the Class

www.4closureFraud.org

period. The fraudulent activity is likely to continue and is therefore capable of indefinite repetition.

224. Because of the broad scope of damages caused by Defendants, a specific, monetary amount is undetermined at this time.

Racketeer Influenced and Corrupt Organizations Act18 U.S.C. §1962(c) –

225. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

226. The Defendants are collectively engaged in an enterprise whose course of conduct and activities affect interstate and foreign commerce within the meaning of 18 U.S.C. §§ 1961(4) and 1962. The enterprise created by the defendants maintains an existence separate from the allegations of racketeering activity.

227. Defendants knowingly and in consensus participated, directly and indirectly, engaged in, managed and directed the affairs of the enterprise by continuing a pattern of racketeering activity over a span of years, including but not limited to knowingly preparing fraudulent documents, sending facsimile transmissions and wires to homeowners, filing false documents the County Clerks and continuously misrepresenting the true party in interest with the intent to further perpetuate the fraud and

www.4closurefraud.org

racketeering activities which give rise to the allegations of violations of 18 U.S.C. §§1962(c) and 1343 (as §1343 relates to wire fraud/facsimile transmissions/emails, etc.).

228. Any wire transmissions, including but not limited to facsimiles, emails and the like were send from Defendants in their respective states to the Plaintiff homeowners, who are all owners of real property located in Georgia. As a direct and proximate result of Defendant's illegal behavior and racketeering activities, Plaintiffs suffered actual and real damages, including but not limited to the loss of the real property which they owned.

229. Defendants should disgorge themselves from any and all profits and interest they have unlawfully obtained at the expense of members of the Class and a constructive trust should be created therefrom wherein the profits constitute the *corpus* of same.

NINTH CAUSE OF ACTION

DAMAGES

230. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

231. Where a creditor does not comply with the statutory duty to exercise fairly the power of sale in a deed to secure debt, the

www.4closureFraud.org

debtor may pursue a cause of action for wrongful foreclosure under O.C.G.A. § 23-2-114. *DeGloyer v. Green Tree Servicing, LLC*, 662 S.E.2d 141 (Ga. Ct. App. 2008).

232. Where a foreclosing creditor fails to comply with the notice requirements of section 44-14-162.1, the residential debtor may pursue a claim for wrongful foreclosure. *Roylston v. Bank of America, N.A.*, 290 Ga. App. 556, 660 S.E.2d 412, Ga. App. 2008.

233. The fact that the foreclosing party did not have a legal interest in the property and thus did not have a valid power to sell the property is a cognizable defense for a wrongful foreclosure claim. *Id.* "A claim for wrongful exercise of power of sale under 23-2-114 can arise when the creditor has no legal right to foreclose." *Id.* (reversing trial court ruling that creditor's lack of a legal interest in the foreclosed property barred a wrongful foreclosure claim); *see also Rapps v. PHH US Mtg. corp*, (allowing appellant to maintain wrongful foreclosure claim based on allegations that appellee altered deed so that it could foreclose on property that was never subject to the deed).

www.4closureFraud.org

234. Where a grantee creditor does not comply with the statutory duty to exercise fairly the power of sale in a deed to secure debt, OCGA § 23-2-114, the debtor may either seek to set aside the foreclosure **or** sue for damages for the tort of wrongful foreclosure. *Calhoun First Nat. Bank v. Dickens*, 264 Ga. 285, 286, 443 S.E.2d 837, 838 (Ga. 1994) (citing *Clark v. West,* 196 Ga. App. 456, 457, 395 S.E.2d 884 (1990); *Curl v. First Federal,* 243 Ga. 842, 843, 257 S.E.2d 264 (1979)). If the debtor elects to set aside the foreclosure sale, the debtor cannot also recover damages for the value of the property; the debtor may seek both cancellation of the foreclosure sale and recovery of damages "not associated with the value of the property for other wrongful conduct by a mortgagor." *Calhoun*, 443 S.E.2d at 838; *Clark*, 395 S.E.2d at 885-86 (explaining that damages "for other breaches of duty and other losses" are allowed in action to cancel foreclosure sale).

235. In a wrongful foreclosure action, the injured party may seek damages for mental anguish in addition to the cancellation of the foreclosure. *DeGolyer v. Green Tree Servicing, LLC*, 291 Ga. App. 444, 662 S.E.2d 141,147 9Ga. Ct. App. 2008). "As a

www.4closureFraud.org

general precept, damages for mental distress are not recoverable in the absence of physical injury where the claim is premised upon ordinary negligence. However, when the claim is for intentional misconduct, damages for mental distress may be recovered without proof of physical injury." *Clark*, 196 Ga. App at 457-58; 395 S.E.2d at 886 (quoting *Hamilton v. Powell, Goldstein, Frazer & Murphy*, 252 Ga. 149, 150, 311 S.E.2d 818 (Ga. 1984)).

236. An action for damages for emotional distress in a wrongful foreclosure action is treated as an action for intentional infliction of emotional distress, and the plaintiff has the burden to prove intentional conduct to cause harm. *Mc Carter v. Banker Trust Co.,* 543 S.E.2d 755, 758 (Ga. Ct. App. 2000).

237. Breach of the statutory duty upon mortgagee to exercise fairly and in good faith the power of sale in a deed to secure debt is a tort compensable at law, and entitles the debtor to punitive damages where appropriate. *Clark v. West*, 196 Ga. App. 456, 457, 395 S.E.2d 884, 886 (Ga. Ct. App. 1990); *see, e.g.*, *Curl v. First Federal Savings & Loan Assn.,* 243 Ga. 842, 843-844(2), 257 S.E.2d 264 (1979) (affirming award of actual and punitive

www.4closureFraud.org

damages in an action for wrongful foreclosure); *Decatur Investments Co. v. McWilliams,* 162 Ga. App. 181, 181, 290 S.E.2d 526, 527 (1982) (affirming award of punitive damages in a wrongful foreclosure action where debtor provided sufficient evidence of creditor's bad faith).

238. Because an improperly attested deed does not provide constructive notice of the assignee's security interest, the bona fide purchaser has priority of title to the disputed property as against the assignee, and thus, the assignee's deed should be canceled as a cloud upon the superior title of the purchaser. *See Higdon v. Gates*, 238 Ga. 105, 231 S.E.2d 345 (Ga. 1976) (affirming trial court's cancellation of bank's security deed as a cloud upon title of subsequent purchaser where the deed was not properly attested because it showed on its face that the tax had not been paid to entitle it to be recorded).

239. As a result of Defendant's illegal and tortuous conduct in conducting wrongful foreclosures, Plaintiffs request, actual, compensatory, intentional infliction of emotional distress and punitive damages[5].

[5] *Clark v. West*, 196 Ga. App. 456, 457, 395 S.E.2d 884, 886 (Ga. Ct. App. 1990); *see, e.g., Curl v. First Federal Savings & Loan Assn.,* 243 Ga. 842, 843-844(2), 257 S.E.2d 264 (1979) (affirming award of actual and punitive damages in an action for wrongful foreclosure); *Decatur Investments Co. v. McWilliams,* 162 Ga. App. 181, 181, 290 S.E.2d 526, 527 (1982) (affirming award of punitive damages in a wrongful foreclosure action where debtor provided sufficient evidence of creditor's bad faith).

www.4closureFraud.org

240. Plaintiffs further pray that Defendants be disgorged from any profits obtained as a direct or indirect result of their illegal, intentional and tortuous conduct and that a constructive trust be imposed thereon.

241. Plaintiffs request that all wrongful foreclosure sales are deemed void and set aside and that the court impose and issue restraining orders and/or protective orders against Defendants on behalf of all Plaintiffs who are currently victims of wrongful foreclosures.

242. Plaintiffs respectfully request that attorney fees be paid by Defendants in all appropriate stages of the proceedings, if any.

COUNT TEN- PUNITIVE DAMAGES

243. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.

244. Defendants are banking institutions, mortgage servicers and licensed attorneys who are held to a high standard of honesty.

245. Defendants' frauds and other misconduct upon the public and the judiciary for their financial benefit is reprehensible, outrageous and demands serious punitive damages to deter

www.4closureFraud.org

Defendants from further harming the public and deceiving the judiciary.

246. Defendants' conduct described herein was done with conscious and intentional disregard of Plaintiffs' and the Class members rights and with the intent to injure, vex and annoy and take Plaintiffs' and the Class without due process of law and the same constituted oppression, fraud or malice, entitling Plaintiffs and Members of the Class to an award of punitive damages in the amount appropriate to punish or set an example of Defendants and to deter them from such conduct.

JURY DEMAND

247. Plaintiff demands a trial by Jury

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court grant the relief herein sought as follows:

1. `That the Court determine that this action may be maintained as a Class Action under Rule 23 of the Federal Rules of Civil Procedure;

www.4closureFraud.org

2. That defendants , their subsidiaries, successors, transferees, assignees and their respective officers, directors, partners, agents, and employees and all other persons acting or claiming to act on their behalf or in concert with them be permanently restrained and enjoined from continuing the unlawful conduct herein alleged with respect to any real estate transactions;
3. That the aforesaid conduct of Defendants be adjudged and declared to have been in violation of the law and statutes of Georgia and other states and the laws of the United States , and that judgment be entered for Plaintiffs and the members of the class and against Defendants for the amount of damages determined to have been sustained by them or otherwise allowed by law, together with punitive damages to punish Defendants and deter them from future misconduct, multiple damages where authorized by law and statute, compensatory, restitution and all allowable damages be granted to Plaintiff and the class regarding all violations alleged herein ;
4. That the aforesaid conduct of Defendants be adjudged and declared to have been in violation of RICO, 18 U.S.C.§1961 et seq., and that judgment be entered for Plaintiffs and the members of the

www.4closureFraud.org

class and against Defendants for threefold the amount of damages sustained by Plaintiffs and the class together with the costs of this action , including reasonable attorneys' fees;

5. That reasonable attorney fees and costs of the suit be granted to Plaintiff and the Class;
6. That Punitive damages be granted to Plaintiff and the Class
7. That compensatory damages, restitution and all allowable damages be granted to Plaintiff and the Class regarding the RESPA, Fraud and other violations alleged herein above;
8. That Plaintiffs demand a trial by jury; and
9. That Plaintiff and members of the class have such other and further and/or different relief as the Court may deem just and proper.,
10. Any other further and different relief deemed proper by the court.

Respectfully submitted this 12th day of November, 2010.

____

Louise T. Hornsby
Attorney for Plaintiffs

www.4closureFraud.org

Georgia Bar 367800
2016 Sandtown Rd. SW
Atlanta, Georgia 30311

(404) 752-5082
(404) 758-5337 fax

www.4closureFraud.org

CERTIFICATE OF COMPLIANCE

This is to certify that this document was prepared in Times Roman , 14 point font that complies with this Court's Rules.

____
Louise T. Hornsby, Esq.
Counsel for Plaintiffs
Georgia Bar No. 367800

2016 Sandtown Rd.SW
Atlanta, Georgia 30311
404-752-5082
404-785-5337 (fax)

www.4closureFraud.org