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AUG 19 2013

MARY R. BOLIEU & LEON S. BOLIEU
(Your Name(s))

SUPERIOR COURT
CLERK'S OFFICE

4 S. ORANGE AVE, #115 SOUTH ORANGE, NJ
(Your Mailing Address)

Superior Court of New Jersey
Chancery Division
General Equity

(201) 306-4391
(Your Daytime Telephone Number)

CITIMORTGAGE, INC
(Name of company or bank that filed the foreclosure
complaint)

Essex County
County where the property is located or
"Mercer" for an objection to the Order to Show Cause
Docket No F- 49322-09

Plaintiff(s),

Vs.

MARY R. BOLIEU
(Name of first defendant listed on the complaint)
Defendant(s),

CIVIL ACTION
OBJECTION TO: (select one)
 Order to Show Cause
 Corrected Notice of Intention to Foreclose

I/We MARY R. BOLIEU & LEON S. BOLIEU, the defendant(s) in the foreclosure matter
(filing party or parties)

hereby object

(caption and docket number if different from above)

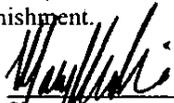
to the Plaintiff's filing of the (select one)

Order to Show Cause Corrected Notice of Intention to Foreclose for the following specific reasons:
(Describe specific objections in numbered paragraphs. Please attach additional pages if necessary.)

See attached objection document #OBJ-CNODITF-BOLIEU20130819.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing
statements are willfully false, I am subject to punishment.

08/19/2013
Date


Signature
MARY R. BOLIEU / LEON S. BOLIEU
Print or Type Name

Certification of Service

I hereby certify that on 08/19/2013 I sent my objection to the following parties by: (Select which mailing method you chose. If you sent it by both regular and certified mail, check both.

regular mail certified mail other _____

List each party to the lawsuit; send your opposition to the attorney if the party is represented by counsel; if the party is pro se you may send the papers directly to that individual.

Name THEODORE V. WELLS, ESQ

Name HON. MARGARET MARY MCVEIGH

Address PAUL, WEISS, RIFKIND, WHARTON & G.

Address SUPERIOR COURT OF N.J. - PASSAIC CTY

1285 AVENUE OF THE AMERICAS

CHAMBERS 100, 71 HAMILTON ST

NEW YORK, NY 10019

PATERSON, NJ. 07505

Attorney for CITIMORTGAGE, INC - PLAINTIFF

Attorney for _____

08/19/2013
Date

Leon Bolieu
Signature
LEON S. BOLIEU
Print or Type Name

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Leon and Mary Bolieu, L.S.
Husband and Wife and Sui Juris
c/o 4 South Orange Ave, Unit 115
South Orange, New Jersey [07040]
Phone: (201) 306-4391

Paul, Weiss, Rifkind, Wharton & Garrison
LLP

Attorneys for Plaintiff
CitiMortgage, Inc,

Plaintiff,

vs.

MARY R. BOLIEU
And
LEON S. BOLIEU,
Husband and wife

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY

ESSEX COUNTY

Docket No. F-49322-09

**DEFENDANTS' OBJECTION TO
CORRECTED NOTICE OF DEFAULT
AND INTENTION TO FORECLOSE**

August 19, 2013

OBJECTION

TO THIS HONORABLE COURT, TO ALL PARTIES AND THEIR RESPECTIVE
ATTORNEY OF RECORD, NOTICE IS HEREBY GIVEN THAT DEFENDANTS, MARY R.
BOLIEU AND LEON S. BOLIEU, OBJECT TO THE CORRECTED NOTICE OF DEFAULT
AND INTENTION TO FORECLOSE SUBMITTED BY PLAINTIFF CITIMORTGAGE, INC.
FOR THE FOLLOWING REASONS:

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CORRECTED NOTICE IS DEFECTIVE AS PLAINTIFF IS NOT THE "LENDER" AS DEFINED IN THE MORTGAGE, HAS NOT ACQUIRED CREDITOR RIGHTS, IS NOT ENTITLED TO SUBROGATION, AND SAID NOTICE IS VOID

- 1. The Corrected Notice names CitiMortgage, Inc. as "Lender" contrary to the mortgage agreement.
- 2. Regarding the definitions and relevant terms in the Mortgage agreements, please note the following:

(D) "Lender" is Quicken Loans Inc. Lender is a Corporation organized and existing under the laws of the State of Michigan

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. *Lender* shall give notice to Borrower prior to acceleration ... The Notice shall specify: (a) **THE DEFAULT**; ... *Lender* at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand... (emphasis added)

- 3. Plaintiff is specifically *not named* as "Lender".
- 4. Section 22 of the Mortgage agreement is the section that allows for foreclosure on the Mortgage; it specifically states only the **LENDER** has the right of Foreclosure, not successors or assigns, not an alleged Note Holder.
- 5. The corrected notice fails further as the Mortgage states that the **LENDER** (not successor or assignee) shall send notice of Default and **LENDER (NOT SUCCESSOR OR ASSIGNEE) MAY Foreclose** on the Security Instrument.
- 6. As Plaintiff is specifically not the lender, Plaintiff has no authority to claim Defendants are in default.

- 1 7. The undersigned has not received such notice from Quicken; hence, there was no valid
2 Notice from the “Lender” in this matter before the foreclosure action.
- 3 8. Not only is Plaintiff not the “Lender” in this matter, **it is not a CREDITOR** in this
4 matter and is not entitled to collect anything.
- 5 9. Plaintiff cannot be a **CREDITOR** in this instant matter since Plaintiff is not in contract
6 with Defendant, it did not “lend” or give Defendant anything that required payback, and
7 Plaintiff did not risk any assets with Defendant.
- 8 10. Moreover, in this case, although MERS is named in the Mortgage as a beneficiary,
9 solely as the “nominee” of Quicken, holding only “legal title” to the interests granted to
10 Quicken under the Mortgage, a number of cases have held that such language confers
11 **no economic benefit on MERS**. See, e.g., *Landmark, supra*; *In re Sheridan*, 2009 WL
12 631355, *4 (Bankr. D. Idaho 2009); *In re Mitchell*, 2009 WL 1044368, *3-4 (Bankr. D.
13 Nev. 2009); *In re Jacobson*; 402 B.R. 359, 367 (Bankr. W.D. Wash. 2009)¹. As noted
14 by the *Sheridan* court, MERS “collect[s] no money from [d]ebotors under the [n]ote,
15 nor will it realize the value of the [p]roperty through foreclosure of the [d]eed of [t]rust
16 in the event the [n]ote is not paid.” 2009 WL 631355 at *4. In *Landmark*, the Supreme
17 Court of Kansas stated “MERS argued in another forum that **it is not authorized** to
18 engage in the practices that would make it a party to either the enforcement of mortgages
19 **or the transfer of mortgages**” (*Id*; emphasis added). Accordingly, MERS does not have
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21 ¹The undersigned has relied on out-of-state case law to support these arguments because they were unable to find
22 the same in New Jersey case law. Hence, via the *Full Faith and Credit Clause* of Article IV, Section 1 of the United
23 States Constitution and this State’s statutes, the case law employed is proper before the Court and the rationales and
24 logic should be duly considered, respected and adopted.
25

1 the right to foreclose or assign the Mortgage. Therefore, MERS could not legally step
2 into the shoes of Quicken to assign to Citi.

3 11. The Court in *LaSalle Bank Natl. Assn. v. Ahearn*, 59 AD3d 911 (3rd Dep't 2009), in
4 dismissing the plaintiff's complaint stated the following that is relevant in principal to the
5 instant matter:

6 Notably, foreclosure of a mortgage may not be brought by one who
7 has no title to it and an assignee of such a mortgage does not have
8 standing to foreclose unless the assignment is complete at the time
9 the action is commenced.
10

11 12. Even if the Mortgage had been assigned, **only the holder of the Note** can initiate
12 foreclose proceedings, regardless of whom the mortgage is owed. See *Adler v. Sargent*,
13 109 Cal. 42, 49 (1895). A "mortgagee's purported assignment of the mortgage without an
14 assignment of the debt which is secured is a legal nullity" (*Kelly v. Uspahaw*, 39 Cal.2d
15 179, 192 [1952]). Therefore, in order for a party to obtain ownership of a mortgage
16 through assignment, the debt secured by the mortgage also must be transferred to the
17 assignee.

18 13. Similarly, this has long been the law throughout the United States: when a note secured
19 by a mortgage is transferred, "transfer of the note carries with it the security, without any
20 formal assignment or deliver, or even mention of the latter." *Carpenter v. Longan*, 16
21 Wall. 271. 83 U.S. 271, 275 (1872)². Given that "the debt is the principal thing and the
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2. Hughes v. Rowe, 449 U.S. 5 (1980); *Haines v. Kerner*, 404 U.S. 519 (1972) collectively states that courts **must not**
24 hold *pro se* litigants to the same standards as a lawyer of the bar regarding procedure, etc.; that courts are to
25 "liberally construe" *pro se* litigant's submissions and to make "reasonable allowances" due to their lack of legal
26 training. Accordingly, if there are any defects in the undersigned's papers, the undersigned respectfully requests
27 that the Court interpret said defects and render a proper and just decision, or point out the defects for correction
28 and grant permission and provide sufficient time to re-file said paperwork rather than penalizing my papers for
29 procedure or other errors due to the undersigned's lack of legal training.

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2 mortgage an accessory,” the Supreme Court reasoned that, as a corollary, “[t]he mortgage
3 can have no separate existence.” *Carpenter*, 83 U.S. at 274, 16 Wall 271. For this reason,
4 “an assignment of the note carries the mortgage with it, while an assignment of the latter
5 alone is a nullity.” *Id.* At 274, 16 Wall. 271. While the note is “essential,” the mortgage is
6 only “an incident” to the note. *Id.*

7 **14. However, with the advent of MERS and securitization, everything changed and the**
8 **long standing presumption that “transfer of the note carries with it the security,**
9 **without any formal assignment or delivery, or even mention of the latter,” is herein**
10 **effectively challenged; notes and mortgages are routinely separated at closing (as**
11 **explained below) rendering each unenforceable.**

12 **15. The alleged assignment of the Mortgage to Plaintiff without the note (as in the instant**
13 **case) renders the Mortgage a legal nullity with no enforceable power of sale.**

14 **16. On September 1, 2009, the record before the court evidences an alleged assignment of the**
15 **Mortgage containing a purported assignment of Mortgage from MERS (as nominee for**
16 **Quicken) to Citi, filed for recording in September 21, 2009.**

17 **17. Plaintiff has not satisfied evidentiary standard that it purchased the Note and Mortgage**
18 **from Quicken.**

19 **18. The alleged assignment of Mortgage from MERS to Citi is legally void and without legal**
20 **force or effect since MERS cannot legally assign a Mortgage or Note because MERS**
21 **does not have an equitable or beneficial interest in the Mortgage or Promissory Note. See**
22 ***Landmark National Bank v. Kesler*, 2009 Kan. LEXIS 834 (Kan Supreme Court) and**
23 **the highly relevant cases cited therein (hereinafter “*Landmark*”).**

1 19. *Landmark* is one of the major cases in the newspapers and the Internet that has caused
2 great interest in the actual authority of MERS in foreclosures and assignments of
3 Mortgages.

4 20. In *Landmark*, the Supreme Court of Kansas, in its well-reasoned opinion heavily
5 supported by authority from various States, stated the following:

6 **MERS argued in another forum that it is *not* authorized to**
7 **engage in the practices that would make it a party to either the**
8 **enforcement of mortgages or the transfer of mortgages.** In
9 ***Mortgage Elec. Reg. Sys. V. Nebraska Dept. of Banking*, 270**
10 **Neb. 529, 704 N.W.2d 784 (2005), MERS challenged an**
11 **administrative finding that it was a mortgage banker subject to**
12 **license and registration requirements (emphasis added).**

13
14 The Nebraska Supreme Court found in favor of MERS, noting that
15 “MERS has no independent right to collect on any debt because
16 MERS itself has not extended credit, and none of the mortgage
17 debtors owe MERS any money.” 270 Neb. at 535. The Nebraska
18 court reached this conclusion based on the submissions by counsel
19 for MERS that “MERS does not take applications, underwrite
20 loans, make decisions on whether to extend credit, collect
21 mortgage payments, hold escrows for taxes and insurance, or
22 provide any loan servicing functions whatsoever. MERS merely
23 tracks the ownership of the lien and is paid for its services through
24 membership fees charged to its members. MERS does not receive
25 compensation from consumers.” 270 Neb. at 534.

26
27 21. In *Mortgage Elec. Reg. Sys. V. Nebraska Dept. of Banking*, 270 Neb. 529, 704 N.W.2d
28 784, 785 (2005), as a case relied on heavily by *Landmark*, the Supreme Court of
29 Nebraska stated:

30
31 MERS is a private corporation that administers the MERS System,
32 a national electronic registry that tracks the transfer of ownership
33 interests and servicing rights in mortgage loans. Through the MERS
34 System, MERS becomes the mortgagee of record for participating
35 members through assignment of the members’ interests to MERS.
36 MERS is listed as the grantee in the official records maintained at
37 county register of deeds offices. **The lenders retain the**
38 **promissory notes, as well as the servicing rights to the**
39 **mortgages.** The lenders can then sell these interests to investors
40 without having to record the transaction in the public record. MERS

1 is compensated for its services through fees charged to participating
2 MERS members (*Id.* At 785, emphasis added).
3

4 ... To execute a MERS Mortgage, the borrower conveys the
5 mortgage to MERS, who is acting as a contractual nominee. MERS
6 becomes the recorded grantee, however, **the lender retains the**
7 **note and servicing right.** The lender can then sell that note and
8 servicing rights on the market and MERS records each transaction
9 electronically on its files. When the mortgage loan is repaid, MERS,
10 as agent grantor, conveys the property to the borrower. MERS
11 represents that this system saves the lender and the consumer the
12 transaction costs that would be associated with manually recording
13 every transaction (*Id.* At 787, emphasis added).
14

15 ... MERS serves as legal title holder in a nominee capacity,
16 permitting lenders to sell their interests in the notes and servicing
17 rights to investors without recording each transaction. But, simply
18 stated, MERS has no independent right to collect on any debt
19 because MERS itself has not extended credit, and none of the
20 mortgage debtors owe MERS any money (*Id.* at 788).
21

22 **22. In *LaSalle Bank Nat. Ass'n v. Lamy*, 12 Misc.3d 1191(A), 2006 WL 2251721 (N.Y.**

23 **Sup. 2006) (unpublished opinion; also available at www.fastcast.com), a case cited by**

24 ***Landmark* in support of its opinion, the following salient points are applicable herein:**

25 **A nominee of the owner of a note and mortgage may not**
26 **effectively assign the note and mortgage to another for want of**
27 **an ownership interest in said note and mortgage by the**
28 **nominee.**
29

30 The record adduced on the instant application clearly establishes
31 that the plaintiff's claims of ownership to the mortgage for which
32 foreclosure is herein demanded are without merit. The December
33 29, 2005 assignment of the mortgage to the plaintiff, upon which
34 the plaintiff originally predicated its claim of ownership to the
35 subject mortgage, **was made by an entity (MERS) which had no**
36 **ownership interest in either the note or the mortgage at the time**
37 **the purported assignment thereof was made. The December 29,**
38 **2005 assignment of mortgage is thus invalid.** Nor does the
39 plaintiff's new submission of a purported separate assignment of the
40 note by a purported indorsement of same by the original lender in
41 favor of the plaintiff establish the plaintiff's ownership interest in
42 the subject note and mortgage. This undated document does not

1 appear to be part of the note itself nor does it appear to be affixed
2 thereto so firmly as to become prepared independently of the note
3 and subsequent to its execution on October 1, 2004. It is thus not an
4 indorsement within the contemplation of UCC 3-202[2]. **In any**
5 **event, the plaintiff failed to establish a valid assignment of the**
6 **mortgage by the owner thereof [citation omitted]**
7

8 The court thus finds that this purported, undated, indorsement by
9 "allonge" to the note by the original lender in favor of the plaintiff
10 and the December 29, 2005 written assignment of the note and
11 mortgage by MERS to the plaintiff failed to pass ownership of the
12 note and mortgage to the plaintiff prior or subsequent to the
13 commencement of this action. **Consequently, the original lender**
14 **remains the owner of both the note and mortgage since no**
15 **proper assignment of either the note or the mortgage was ever**
16 **made by the original lender/owner to the plaintiff or to the**
17 **plaintiff's purported assignee. Under these circumstances, the**
18 **plaintiff has no cognizable claims for the relief demanded in its**
19 **complaint [citations omitted] (emphasis added).**
20

21 **23. And in *Deutsche Bank v. Jones*, 2007 NY Slip Op 30183(U) (N.Y. Sup. Ct., 2007), that**
22 **court articulated the following that is likewise relevant to the matter at hand;**

23 Here, the plaintiff stands before this court as a purported assignee of
24 the entity known as Mortgage Electronic Registration Systems, Inc.
25 (MERS), whom the plaintiff characterizes as the nominee of the
26 lender/obligor named in the subject note and mortgage. Review of
27 the documentation attached to the moving papers reveals, however,
28 that the plaintiff's assignor, MERS, was not the owner of the note
29 and mortgage at the time it executed the purported assignment of
30 the note and mortgage to the plaintiff. Rather, MERS was merely
31 named in the mortgage as a "separate corporation acting solely as
32 nominee for the lender and the lender's successors and assigns **AND**
33 **FOR PURPOSES OF RECORDING THIS MORTGAGE MERS IS**
34 **THE MORTGAGEE OF RECORD.**" Since MERS was without
35 ownership of the note and mortgage at the time of its assignment
36 thereof to the plaintiff, the assignment did not pass ownership of the
37 note and mortgage to the plaintiff. The failure on the part of the
38 plaintiff to plead and establish its ownership of the note and
39 mortgage at the time of the commencement of this action precludes
40 the granting of the instant motion as the plaintiff has failed to
41 establish the fact(s) constituting a viable claim against the
42 defendants as required by CPLR 3215(f) (citations omitted). *Id.* at
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24. Accordingly, MERS's alleged assignment of Mortgage to Citi in the instant matter is legally void since MERS could not have legally assigned the Note and Mortgage since MERS did not have an equitable or beneficial interest in said Note and Mortgage. Further, MERS was never the holder of the note; hence, MERS could not have assigned the Note to Citi. The assignment of Mortgage is a fraudulent document.

25. Pursuant to the Mortgage in this matter, MERS was only acting solely as nominee for the alleged lender, Quicken; MERS had no ownership interest in either the Note or the Mortgage at the time the purported assignment to Citi was made (or at any time thereafter); therefore, the assignment to Plaintiff is invalid and void.

26. Moreover, there is no record in the public record or in the court record of MERS being the Note Holder nor is there any public record exhibiting of how Plaintiff allegedly came into possession of the Note, i.e., if Plaintiff actually possesses the original, unaltered wet-inked signature note, which the undersigned does not believe was ever in the possession of Plaintiff.

27. There is no verified/certified chain of title record in evidence or in the public record regarding the note.

28. Plaintiff has yet to prove via the public record that it is the lawful owner of the original Note and Mortgage.

29. 'When the note is split from the deed of trust, "the note becomes, as a practical matter, unsecured.' *RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES)* § 5.4 cmt. a (1997). **A person holding only a note lacks the power to foreclose because it lacks the security, and a person holding only a deed of trust suffers no default because only**

1 **the holder of the note is entitled to payment on it. See *RESTATEMENT (THIRD) OF***
 2 ***PROPERTY (MORTGAGES)* § 5.4 cmt. e (1997). “Where the mortgagee has ‘transferred’**
 3 **only the mortgage, the transaction is a nullity and his ‘assignee,’ having received no**
 4 **interest in the underlying debt or obligation, has a worthless piece of paper.” 4**
 5 **RICHARD R. POWELL, *POWELL ON REAL PROPERTY*, § 37.27[2] (2000) (emphasis**
 6 **added).**

7 **30. The Supreme Court in *Landmark* further stated:**

8 **The practical effect of splitting the deed of trust from the**
 9 **promissory note is to make it impossible for the holder of the**
 10 **note to foreclose, unless the holder of the deed of trust is the**
 11 **agent of the holder of the note. [Citation omitted.] Without the**
 12 **agency relationship, the person holding only the note lacks the**
 13 **power to foreclose in the event of default. The person holding only**
 14 **the deed of trust will never experience default because only the**
 15 **holder of the note is entitled to payment of the underlying**
 16 **obligation. [Citation omitted.] The mortgage loan becomes**
 17 **ineffectual when the note holder did not also hold the deed of trust.”**
 18 ***Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, 623**
 19 **(Mo. App. 2009).**

20
 21 The Missouri court found that, because MERS was not the original
 22 holder of the promissory note and because the record contained no
 23 evidence that the original holder of the note authorized MERS to
 24 transfer the note, the language of the assignment purporting to
 25 transfer the promissory note was ineffective. **“MERS never held**
 26 **the promissory note, thus its assignment of the deed of trust to**
 27 **Ocwen separate from the note had no force.”** 284 S.W.3d at 624;
 28 see also *In re Wilhelm*, 407 B.R. 392 (Bankr. D. Idaho 2009)
 29 **(standard mortgage note language does not expressly or**
 30 **implicitly authorize MERS to transfer the note); *In re Vargas*,**
 31 **396 B.R. 511, 517 (Bankr. C.D. Cal. 2008) (“[I]f FHM has**
 32 **transferred the note, MERS is no longer an authorized agent of the**
 33 **holder unless it has a separate agency contract with the new**
 34 **undisclosed principal. MERS presents no evidence as to who owns**
 35 **the note, or of any authorization to act on behalf of the present**
 36 **owner.”); *Saxon Mortgage Services, Inc. v. Hillery*, 2008 WL**
 37 **5170180 (N.D. Cal. 2008) (unpublished opinion) (“[F]or there to be**
 38 **a valid assignment, there must be more than just assignment of the**
 39 **deed alone; the note must also be assigned. . . . MERS purportedly**

1 assigned both the deed of trust and the promissory note. . . .
2 However, there is no evidence of record that establishes that MERS
3 either held the promissory note or was given the authority . . . to
4 assign the note.”)(emphasis added).
5

6 31. Consequently, Plaintiff in the instant matter is without lawful/legal authority to foreclose
7 in the first instance since the alleged assignment of the Mortgage from MERS to Citi was
8 unlawful rendering the alleged assignment of the Mortgage to Plaintiff inherently void.

9 There is no admissible proof in the record of Plaintiff being assigned the original Note or
10 the original Mortgage. **The Note has been separated from the mortgage at closing;**
11 **hence, foreclosure in this matter was impossible.**

12 32. “A party offering an item of nontestimonial evidence, such as a document (not offered to
13 prove the truth of its contents), must prove that the item is what the party claims it is. See,
14 e.g., 31 WEIGHT & GOULD, FEDERAL PRACTICE & PROCEDURE: EVIDENCE ¶
15 7101 (2000).

16 33. Accordingly, authentication is a condition to the admissibility of such evidence ... Thus,
17 a person testifying in support of a motion for [Motion for Appointment For Receiver][]
18 must have personal knowledge of the authenticity of the promissory note and [mortgage],
19 or the documents must be admissible under another evidentiary rule.” (*In re Vargas*, 396
20 B.R. 511, 519 (Bankr.C.D.Cal., 2008)); see also, N.J.R.E. Rule 901.

21 34. A promissory note and a mortgage cannot be admitted into evidence unless the same are
22 authenticated.

23 35. The lack of an allegation that the original Note being owned by Plaintiff is fatal to
24 Plaintiff's case.

1 36. Before an assignment of mortgage is to be valid to succeed all rights of the assignor,
2 there must be proof of full consideration for the alleged debt in order for the assignee to
3 have rights over the mortgagor, which is actually assignor's right of subrogation.

4 37. Subrogation and assignment work hand-in-hand in an assignment of mortgage situation.
5 There is no proof in the record that Plaintiff paid the entire mortgage debt in full upon the
6 alleged assignment of mortgage. See, 73 Am Jur 2d, Subrogation § 90:

7 One who pays off a mortgage or encumbrance which the principal
8 debtor has failed to discharge may be entitled to subrogation,
9 provided, of course, **he is not a mere volunteer and provided the**
10 **entire mortgage debt is valid** ... This right of subrogation may
11 exist in favor of one who pays the encumbrance to protect his own
12 interest in the property, or who makes the payment because he is
13 secondarily liable for the debt or for the discharge of the lien, or
14 where the payment is made pursuant to an agreement, express or
15 implied, for subrogation" [emphasis added; citations omitted].
16

17 38. See also, 73 Am Jur 2d, Subrogation, § 92 ("... no agreement for subrogation will be
18 implied unless the evidence shows that the lender believed in good faith that he was to
19 have security of equal dignity and position with the discharged" [citations omitted]); and
20 73 Am Jur 2d, Subrogation, §93 ("... subrogation will not be allowed to a third person
21 who without any obligation so to do pays an indebtedness. And this rule is fully
22 applicable to payments of an indebtedness secured by mortgage. One who, **having no**
23 **interest to protect**, voluntarily pays off, or lends money to pay off, and encumbrance
24 without taking an assignment thereof, and without an agreement for substitution, cannot
25 invoke the doctrine of subrogation, in absence of fraud, mistake, or some other
26 consideration whereon equity can ground its jurisdiction" [emphasis added; citations
27 omitted]).

1 39. There is no contract or other agreement signed by the Defendants in the record that gave
2 Plaintiff the right to subrogation to any previous contract or agreement or to allow
3 another entity the rights of subrogation to any agreement signed by the undersigned, See,
4 ***Aetna Life Ins Co of Hartford v. Town of Middleport***, 124 U.S. 534, 551 (1888):

5 "Subrogation in equity is confined to the relation of principal and
6 surety and guarantors; to cases where a person, to protect his own
7 junior lien, is compelled to remove one which is superior; and to
8 cases of instance. *** Anyone who is under no legal obligation or
9 liability to pay the debt is a stranger, and, if he pays the debt, a
10 mere volunteer." No case to the contrary has been shown by the
11 researches of plaintiff in error, nor have we been able to find
12 anything contravening these principles in our own investigation of
13 the subject. They are conclusive against the claim of the
14 complainant here, who in this instance is a mere volunteer, who
15 paid nobody's debt, who bought negotiable bonds in open market
16 without anybody's indorsement, and as a matter of business. The
17 complainant company has therefore no right to the subrogation
18 which it sets up in the present action (internal quotations omitted).
19

20 40. In the instant case, Plaintiff is neither the principal, surety nor guarantor, who was under
21 no legal obligation or liability to allegedly pay the debt, and has no contract with the
22 undersigned; hence, a complete stranger to the transaction without any rights.

23 41. Further, Plaintiff was under no legal obligation or liability to pay the **alleged** debt in this
24 matter; hence, Plaintiff is a stranger to the transaction, and, if it paid the debt (no proof
25 in the record that the alleged debt was actually paid), Plaintiff volunteered the same.

26 42. Again, Plaintiff lacks standing to enforce a foreclosure this time pursuant to
27 N.J.S.A. 12A:3-301.

28 43. ***In re Russo***, Case No. 05-20771 (RG) (Bankr.N.J. 6/20/2008) (Bankr.N.J., 2008):

29 "A note is a negotiable instrument that is, by definition, a promise.
30 See N.J. STAT. Ann. § 12A:3-104(e) (West 2008). A promise is
31 defined as "a written undertaking to pay money signed by the
32 person undertaking to pay." *Id.* § 12A:3-103(9). The person

1 undertaking to pay a note is called the maker. *Id.* § 12A:3-103(5).
2 Section 12A:3-412 discusses the obligations of an issuer of a note
3 and indicates the issuer "is obliged to pay the instrument
4 according to its terms at the time it was issued" *Id.* §
5 12A:3-412. "The obligation is owed to a person entitled to
6 enforce the instrument" *Id.* A person entitled to enforce is
7 the holder of the instrument. *Id.* §12A:3-301. A holder "means
8 the person in possession if the instrument is payable to bearer or, in
9 the case of an instrument payable to an identified person, if the
10 identified person is in possession." *Id.* § 12A:1-201(20)."(emphasis
11 added)

12
13 **44.** The *entitlement* comes through the Note, not the mortgage alone.

14 **45.** "A mortgagee's purported assignment of the mortgage without an assignment of the debt
15 which is secured is a legal nullity" (*Kelly v. Upshaw*, 39 Cal 2d 179 [1952]), 246 P2d 23,
16 1952 Cal. LEXIS 248).

17 **46.** Where an instrument has been transferred, enforceability is determined based upon
18 possession.

19 **47.** N.J.S.A. § 12A:3-301 limits a negotiable instrument's enforcement to the following:

20 "Person entitled to enforce" an instrument means the holder of the
21 instrument, a nonholder in possession of the instrument who has
22 the rights of a holder, or a person not in possession of the
23 instrument who is entitled to enforce the instrument pursuant to
24 12A:3-309 or subsection d. of 12A:3-418. A person may be a
25 person entitled to enforce the instrument even though the person is
26 not the owner of the instrument or is in wrongful possession of the
27 instrument.
28

29 **48.** Not only does the Mortgage not transfer the Note to Plaintiff, the alleged assignments of
30 the Mortgage are highly suspect on the face.

31 **49.** Defendant has found no power of attorney, corporate resolution or affidavit of
32 assignment in the public record with the assignment of the Mortgage establishing that the
33 person who signed the assignment of mortgage actually had authority to do so; hence, the

1 assignment of Mortgage is void. See, e.g., *HSBC Bank USA, N.A. v. Yeasmin*, 2008 NY
2 Slip Op 50924(U) at 1, 3-4 (N.Y. Sup. Ct. 5/2/2008):

3 The assignment was executed by “Nicole Gazzo, Esq., On behalf
4 of MERS, by Corporate Resolution dated 7/19/07.” Neither a
5 corporate resolution nor a power of attorney to Ms. Gazzo was
6 recorded with the assignment. Thus, the assignment is invalid and
7 Plaintiff HSBC lacks standing to bring the instant foreclosure
8 action. ... Neither a corporate resolution nor a power of attorney to
9 Ms. Gazzo was recorded with the assignment. Thus, the
10 assignment is invalid and plaintiff HSBC lacks standing to bring
11 the instant foreclosure action. ... **To have a proper assignment of**
12 **a mortgage by an authorized agent, a power of attorney is**
13 **necessary to demonstrate how the agent is vested with the**
14 **authority to assign the mortgage. ... To foreclose on a**
15 **mortgage, a party must have title to the mortgage. The instant**
16 **assignment, without a recorded corporate resolution or power**
17 **of attorney is a nullity (emphasis added).**
18

19 **50.** Quicken, according to the public record, has never assigned its rights under the Note, and
20 the alleged assignments of the mortgage are void, as established herein.

21 **51.** Accordingly, the alleged foreclosure by Plaintiff is unlawful; hence, its pending action is
22 void from inception.

23 **52.** Without Plaintiff’s documented and authenticated ownership of the original Note and the
24 original Mortgage (the title documents), there is no justiciable matter (or controversy)
25 before the Court, the Court has no subject-matter jurisdiction over the alleged
26 controversy and the matter is void *ab initio*.

27
28 **SUMMATION**

29
30 **53.** Plaintiff did not/does not own the Note when it filed the lawsuit. The assignment of
31 Mortgage is fraudulent and void. The Note is separated from the Mortgage rendering it

1 unenforceable. Plaintiff has/had no right to subrogation. Plaintiff is not the real party in
2 interest. Plaintiff is not the "Lender" qualified to foreclose. And equally important,
3 Plaintiff, from inception, is **NOT A CREDITOR** in this matter and it had no right to sue
4 in this first instance.

5 54. Plaintiff's Corrected Notice simply naming itself "Lender" does not satisfy the terms of
6 the mortgage or of ownership and enforcement.

7 55. Because the matter is facially insufficient to support any relief from this Court, since
8 there was no valid controversy before the Court, this Court lacks authority to proceed in
9 this matter and must dismiss the matter.

VERIFICATION

We, Leon S. Bolieu, Authorized Agent for **LEON S BOLIEU** (a legal fiction/person) and Mary R. Bolieu, Authorized Agent for **MARY R BOLIEU** (a legal fiction/person), have read the foregoing and know the contents thereof. The same is true based on Our own experience and knowledge, except as to those matters which are therein upon information and belief, and as to those claims or facts, We believe them to be true. We assert under the penalty of perjury of the laws of the United States of America and the laws of New Jersey that the foregoing is true and correct.

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Respectfully submitted,

By: Leon S. Bolieu
Leon S. Bolieu, Authorized Agent for
LEON S BOLIEU

By: Mary R. Bolieu
Mary R. Bolieu, Authorized Agent for MARY R
BOLIEU