

CK #5725 + 5726  
\$60.00  
OVP#30.00  
B-058  
2-22-13

FILED Feb 22, 2013

LEWIS G. ADLER, ESQUIRE  
26 NEWTON AVENUE  
WOODBURY, NJ 08096  
(856)845-1968

ATTORNEY FOR Defendant-Third Party Plaintiffs  
Jennifer & Mark Grasso

IN RE APPLICATION BY GMAC  
MORTGAGE, LLC TO ISSUE  
CORRECTED NOTICES OF INTENT TO  
FORECLOSE ON BEHALF OF  
IDENTIFIED FORECLOSURE  
PLAINTIFFS IN UNCONTESTED CASES

-----  
Jennifer & Mark Grasso individually and as  
a class representative on behalf of others  
similarly situated

Defendants-Third Party Plaintiffs  
VS.

ALLY BANK, AMALGAMATED BANK,  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY, DLJ MORTGAGE CAPITAL,  
INC., E\*TRADE BANK, EMC  
MORTGAGE, LLC, GMAC MORTGAGE,  
LLC, HSBC BANK USA, NA., LEHMAN  
CAPITAL, LEX SPECIAL ASSETS, LLC,  
MACQUARIE MORTGAGES USA, INC,  
ONEWEST BANK, FSB, RBS CITIZENS,  
NA., RESIDENTIAL FUNDING  
COMPANY, LLC, BANK OF NEW YORK  
MELLON TRUST COMPANY, NA, US  
BANK, NA, USAA FEDERAL SAVINGS  
BANK, WELLS FARGO BANK, NA,  
WILMINGTON TRUST COMPANY.

Third Party Defendants

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO.: F-25354-12

CIVIL ACTION

MOTION FOR CLASS CERTIFICATION

2-28-13

TO: Ian S Marx, Esquire  
Greenberg Traurig LLP  
200 Park Avenue  
PO Box 677  
Florham Park, NJ 07932

Attorneys for GMAC Mortgage, LLC

D Brian O'Dell  
Bradley Arant Boult Cummings, LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Al 25203-2119  
Attorneys for GMAC Mortgage, LLC

TAKE NOTICE that on April **11, 2013** at 10 00am, in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorney for the Defendant-Third Party Plaintiff's shall apply to the above Court located at the Mercer County Courthouse, 175 South Broad Street, Trenton, New Jersey, for an Order for class certification of counts 1,2 & 3 of the counterclaims and counts 1, 2 & 3 of the third party complaint

I will rely upon the brief, and certifications with attached exhibits in support hereof.

I request oral argument.

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

Dated

2/21/13

  
LEWIS G ADLER, ESQUIRE

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CIVIL ACTION

ORDER FOR CLASS CERTIFICATION

**THIS MATTER** having been brought before the Court on the application of Lewis G Adler, Esquire, attorney for the Defendant-Third Party Plaintiffs, and for good cause having been shown;

**IT IS** on this \_\_\_ day of \_\_\_\_\_, 2013, **ORDERED** that **THIS MATTER** having been brought to the Court in connection with Defendant's Motion. (A) To Approve The Certification of a Class, (B) To Appoint Class Counsel and the Court having considered the papers submitted in connection with the Motion, and arguments of counsel, and for good cause shown,

1. The Defendant's motion for class certification as to counts 1, 2 & 3 of the counterclaim and counts 1, 2, & 3 of the third party complaint is GRANTED as follows

2 The Court certifies a Class according to the provisions of Rule 4.32.

a) The court certifies a New Jersey class as to GMACM, as to the Counterclaim Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff: In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

b) The court certifies a New Jersey class as to GMACM, as to the Counterclaim Count II ((Guillaume) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff; In which final judgment has not been entered, and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

c) The court certifies a New Jersey class as to GMACM, as to the Counterclaim Count III ((New Jersey Civil Rights Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff; In which final judgment has not been entered, and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

3 The Court certifies a Defendant Class according to the provisions of Rule 4.32 of the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI Lenders are defined as ALLY BANK, AMALGAMATED BANK, DEUTSCHE BANK NATIONAL TRUST COMPANY, DLJ MORTGAGE CAPITAL, INC., E\*TRADE BANK, EMC MORTGAGE, LLC, GMAC MORTGAGE, LLC, HSBC BANK USA, NA , LEHMAN CAPITAL, LEX SPECIAL ASSETS, LLC, MACQUARIE MORTGAGES USA, INC, ONEWEST BANK, FSB, RBS CITIZENS, NA , RESIDENTIAL FUNDING COMPANY, LLC, BANK OF NEW YORK MELLON

TRUST COMPANY, NA, US BANK, NA, USAA FEDERAL SAVINGS BANK,  
WELLS FARGO BANK, NA, WILMINGTON TRUST COMPANY

a) The court certifies a New Jersey class as to the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI., as to the third party complaint Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff ; In which final judgment has not been entered, and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

b) The court certifies a New Jersey class as to the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI , as to the third party complaint Count II ((Guillaume) as follows.

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff : In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

c) The court certifies a New Jersey class as to the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI , as to the third party complaint Count III ((New Jersey Civil Rights Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which

GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff. In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

4 The Court, pursuant to Rule 4.32 names Lewis G Adler, Roger C Mattson, and Louis D Fletcher, 26 Newton Avenue, Woodbury, New Jersey 08096 as Class Counsel. The Court finds that Class Counsel are adequate pursuant to the Rule.

---

, JSC

LEWIS G. ADLER, ESQUIRE  
26 NEWTON AVENUE  
WOODBURY, NJ 08096  
(856)845-1968  
ATTORNEY FOR Defendant-Third Party Plaintiffs  
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Third Party Defendants

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO.: F-25354-12

CIVIL ACTION

Proof of filing and certification of service

**Proof of Filing:**

I hereby certify that the within motion together with documents in support thereof have  
been hand delivered for filing to the above-named Court on this 21<sup>th</sup> day of  
Feb 2012

**Proof of Mailing:**

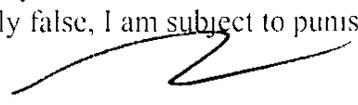
I hereby certify that a copy of the within motion together with documents in support thereof were mailed to the Defendants' counsel, by way of UPS Next day. to:

TO: Ian S. Marx, Esquire  
Greenberg Traurig LLP  
200 Park Avenue  
PO Box 677  
Florham Park, NJ 07932  
Attorneys for GMAC Mortgage, LLC

D. Brian O'Dell  
Bradley Arant Boult Cummings, LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2119  
Attorneys for GMAC Mortgage, LLC

. this 21<sup>th</sup> day of Feb 2013

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

  
\_\_\_\_\_  
Lewis G. Adler, Esquire

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SUPERIOR COURT OF NEW JERSEY  
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DOCKET NO.: F-25354-12

CIVIL ACTION

CERTIFICATION OF Lewis G. Adler,  
Esquire

Lewis G. Adler, Esq. hereby certifies.

1. I am an attorney at law, licensed to practice in the State of New Jersey and Commonwealth of Pennsylvania, and am also licensed before the U.S. District Court in both states, U.S. Tax Court, as well as the Third Circuit and the U.S. Supreme Court. I am counsel for the Defendants- Third Party Plaintiffs in this action. I have represented William Brody, and Justine & John Sexton and the class in this matter. This Certification is given in support of the motion for

- a) Certification of the class.
- b) Approval of Class Counsel.

2. I have been an attorney in good standing since I began practice in 1985.

3. The Court should be aware that this case along with other banking cases have been the primary focus of both my litigation over the past four years, and it has also been the primary focus of Mr. Mattson's and Mr. Fletcher's litigation. There is indeed not a day that has gone by when we have not collectively dealt with some aspect of the various litigation. Through the years of practicing law, these cases have proved to be the most complex that I have handled, and I personally have handled many other cases that courts have termed complex and that other counsel have acknowledged as complex. As a twenty-four year practitioner, I have specialized previously in both highly technical civil litigation involving products liability, land use, and other civil matters.

4. For the last ten years or so I have begun to focus more toward the class action lawsuits.

5 Mr. Mattson and I were named as Class Counsel in a suit entitled Giesk v. Old Republic in N.J. Superior Court which involved illegal prepayment penalties and a certified class of 704 individuals. The docket number was L-2125-05.

6 Mr. Fletcher, Mr. Mattson and I were named as Class Counsel in a suit entitled Boyko v. AIG in N.J. District Court which involved illegal charges for auto insurance. The docket number was 1:08-cv-2214.

7. One of our previous cases was Glukowsky vs. Equity One, Superior Court of New Jersey, Gloucester County, Docket L-872-01. The Glukowsky litigation went to the State Supreme Court, and this office filed for certification to the U.S. Supreme Court which was denied. The Glukowsky case involved an issue concerning the charging of pre-payment penalties by non-depository lenders. Glukowsky and the others have caused us to be totally immersed in numerous areas of Federal banking statutes, regulations, and administrative decisions. It has also caused us to be immersed in state banking law in this state and in other jurisdictions.

8 In addition to this and the Glukowsky litigation, Mr. Mattson, Mr. Fletcher and I also litigated the published opinion of Shinn vs. Encore Mortgage, which was ruled upon in the District Court by Judge Joseph Irenas, and ultimately an appeal was taken to the Third Circuit Court of Appeals and was settled at that level.

9 We were appointed class counsel in a national class action in the U.S. District Court of New Jersey. Our case of Discoll v. First Union involved the charging of prepayment penalties by First Union in violation of the National Bank Act, North Carolina and New Jersey laws.

10 In addition to all of the above cases, we have a number of cases that are awaiting litigation. They will not be enumerated at this point in time since they may or may not ultimately go to suit.

11. Mr. Fletcher, Mr. Mattson and I have carefully researched all of these issues across the country, and it appears that these issues are in many instances ones of first impression and unique. It also appears that there may not be any other group of lawyers litigating these issues on behalf of consumers. Indeed, in at least one instance we have had contact with another lawyer who has picked up on these issues, and we have assisted in educating that individual and many other individuals who have called us concerning our expertise. This is particularly true after the 54 page published Opinion by Judge King at the New Jersey Appellate Division in the Glukowsky matter.

12 There has been much written across the country concerning predatory lending, and the practices of lenders in the "sub prime" marketplace. We feel that we have as much knowledge and expertise as anyone in this area, and given the volume of cases that we have filed and had reported, I am not certain whether there is anyone who individually has as many cases pending as we have, and who are attacking the problem as aggressively as we are attacking the problem.

13 It should also be noted that the Office of Thrift Supervision (OTS) has cited our Shinn case and Glukowsky cases in their recent rule-making activities. Consequently, it appears that our litigation is reaching into the banking industry Federal bureaucracy. I hope to have much more impact.

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

Dated 2/21/2013



---

**LEWIS G. ADLER, ESQ.**  
26 Newton Avenue  
Woodbury, NJ 08096  
856-845-1968

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CIVIL ACTION

CERTIFICATION OF Roger C. Mattson,  
Esquire

## CERTIFICATION OF Roger C. Mattson, Esquire

Roger C. Mattson, Esq. hereby certifies

1. I am an attorney at law admitted to practice in this Court and have been practicing law since I was admitted to practice in 1976. I make this Certification in support of my firm's application for appointment as class counsel in our motion for class certification.

2. I am licensed to practice law in the State of New Jersey, Commonwealth of Pennsylvania, and I am also licensed before the U.S. District Court in both states, as well as the Third Circuit and the U.S. Supreme Court. I am co-counsel for the Plaintiff in this action, along with Lewis G. Adler, Esq. and Louis D. Fletcher, Esq. We have represented the Plaintiff and the Plaintiff class in this matter.

3. Since I was admitted to the bar in 1976, I have concentrated my practice largely on civil litigation, real estate, business law, estates and bankruptcy.

4. For the last eight years or so I have begun to focus more toward the class action lawsuits.

5. Mr. Adler and myself were recently named as Class Counsel in a class action suit entitled Gresk v. Old Republic in State Superior Court which involved illegal pre-payment penalties and a certified class of 704 individuals. The docket number was L-2125-05.

6. One of our previous cases was Glukowsky vs. Equity One, Superior Court of New Jersey, Gloucester County, Docket L-872-01. The Glukowsky litigation went to the State Supreme Court, and this office filed for certification to the U.S. Supreme Court which was denied. The Glukowsky case involved an issue concerning the charging of

pre-payment penalties by non-depository lenders. Glukowsky and others have caused us to be immersed in numerous areas of Federal banking statutes, regulations, and administrative decisions. It has also caused us to be immersed in state banking law in this state and in other jurisdictions.

7. In addition to this and the Glukowsky litigation, Mr. Adler, Mr. Fletcher and I also litigated the published opinion of Shinn vs. Encore Mortgage, which was ruled upon in US District Court by Judge Joseph Irenas, and ultimately an appeal was taken to the Third Circuit Court of Appeals and was settled at that level.

8. We were appointed class counsel in a national class action which was pending in the District Court of New Jersey. Our case of Driscoll v. First Union involved the charging of prepayment penalties by First Union in violation of the National Bank Act, North Carolina and New Jersey laws.

9. In addition to all of the above cases, we have a number of cases that are awaiting litigation. They will not be enumerated at this point in time since they may or may not ultimately go to suit.

10. Mr. Fletcher, Mr. Adler and I have carefully researched all of these issues across the country, and it appears that these issues are in many instances ones of first impression and unique. It also appears that there may not be any other group of lawyers litigating these issues on behalf of credit consumers. Indeed, in at least one instance we have had contact with another lawyer who has picked up on these issues, and we have assisted in educating that individual and many other individuals who have called us concerning our expertise. This is particularly true after the 54 page published Opinion by Judge King at the New Jersey Appellate Division in the Glukowsky matter.

11 There has been much written across the country concerning predatory lending, and the practices of lenders in the "sub prime" marketplace. We feel that we have as much knowledge and expertise as anyone in this area, and given the volume of cases that we have filed and had reported, I am not certain whether there is anyone who individually has as many cases pending as we have, and who are attacking the problem as aggressively as we are attacking the problem.

12 It should also be noted that the Office of Thrift Supervision (OTS) has cited our Shinn case and Glukowsky cases in their rule-making activities. Consequently, it appears that our litigation is reaching into the banking industry Federal bureaucracy. We hope to have much more impact.

13. The Court should be aware that this case along with the other cases named above have been the primary focus of both my litigation over the past three years, and it has also been the primary focus of Mr. Fletcher's and Mr. Adler's litigation. There is indeed not a day that has gone by when we have not collectively dealt with some aspect of the various litigation. Through the years of practicing law, these cases have proved to be the most complex that I have handled.

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

Dated 2/21/13

  
\_\_\_\_\_  
ROGER C. MATTSON, ESQ.

LEWIS G. ADLER, ESQUIRE  
26 NEWTON AVENUE  
WOODBURY, NJ 08096  
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DOCKET NO.: F-25354-12

CIVIL ACTION

CERTIFICATION OF Louis D. Fletcher,  
Esquire

CERTIFICATION OF Louis D. Fletcher, Esquire

I, Louis D. Fletcher, Esq, hereby certify as follows

1 I am an attorney at law admitted to practice in the State of New Jersey and before this Court. I have been practicing law since 1974 when I was initially admitted to practice, and have been practicing ever since. This Certification is being made in support of my application, in conjunction with the applications of Roger C. Mattson, Esq. and Lewis G. Adler, Esq., to act as Class Counsel. Mr. Mattson, Mr. Adler and I have all worked together in the above matter and have shared all of the duties in this case.

2. One of our previous cases was Glukowsky vs. Equity One, Superior Court of New Jersey, Gloucester County, Docket L-872-01. The Glukowsky litigation went to the New Jersey Supreme Court, where we received a 4-3 decision, and this office filed for certification to the U.S. Supreme Court, which was denied. The Glukowsky case involved an issue concerning the charging of pre-payment penalties, by a non-depository lender. Glukowsky and the others have caused us to be immersed in numerous areas of Federal banking statutes, regulations, and administrative decisions. It has also caused us to be immersed in state banking law in this state and in other jurisdictions.

3 In addition to this and the Glukowsky litigation, Mr. Adler, Mr. Mattson and I also litigated the published opinion of Shinn vs. Encore Mortgage, which was ruled upon in this Court by Judge Joseph Irenas, and ultimately an appeal was taken to the Third Circuit Court of Appeals and was settled at that level.

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

Dated 2/21/13

  
LOUIS D. FLETCHER, ESQ.

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a class representative on behalf of others  
similarly situated

Defendants-Third Party Plaintiffs  
VS.

ALLY BANK, AMALGAMATED BANK,  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY, DLJ MORTGAGE CAPITAL,  
INC., E\*TRADE BANK, EMC  
MORTGAGE, LLC, GMAC MORTGAGE,  
LLC, HSBC BANK USA, NA., LEHMAN  
CAPITAL, LEX SPECIAL ASSETS, LLC,  
MACQUARIE MORTGAGES USA, INC,  
ONEWEST BANK, FSB, RBS CITIZENS,  
NA., RESIDENTIAL FUNDING  
COMPANY, LLC, BANK OF NEW YORK  
MELLON TRUST COMPANY, NA, US  
BANK, NA, USAA FEDERAL SAVINGS  
BANK, WELLS FARGO BANK, NA,  
WILMINGTON TRUST COMPANY.

Third Party Defendants

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO.: F-25354-12

CIVIL ACTION

BRIEF IN SUPPORT OF DEFENDANT'-THIRD PARTY PLAINTIFFS'  
NOTICE OF MOTION FOR CLASS CERTIFICATION

On the Brief  
LEWIS G. ADLER, ESQ.

## INTRODUCTION

filed the instant putative class action concerning the practices of the lenders ALLY BANK, AMALGAMATED BANK, DEUTSCHE BANK NATIONAL TRUST COMPANY, DLJ MORTGAGE CAPITAL, INC , E\*TRADE BANK, EMC MORTGAGE, LLC, GMAC MORTGAGE, LLC, HSBC BANK USA, NA., LEHMAN CAPITAL, LEX SPECIAL ASSETS, LLC, MACQUARIE MORTGAGES USA, INC, ONEWEST BANK, FSB, RBS CITIZENS, NA., RESIDENTIAL FUNDING COMPANY, LLC, BANK OF NEW YORK MELLON TRUST COMPANY, NA, US BANK, NA, USAA FEDERAL SAVINGS BANK, WELLS FARGO BANK, NA, WILMINGTON TRUST COMPANY, through their agent GMAC Mortgage by which violates their rights under the Fair Foreclosure Act (FFA) which is a violation of their consumer rights under the New Jersey Truth in Consumer Contract Warranty and Notice Act (TCCNWA), the holding of the New Jersey Supreme Court in Guillaume and the New Jersey Civil Rights Act. (CRA)

## FACTS

The facts included here are the same facts as included in the original amended complaint filed by GMACM as supplemented in the Defendant Third Party's answer, counterclaim and third party complaint

## ARGUMENT

### I. THIS COURT SHOULD CERTIFY THIS ACTION, EITHER ON A FULL OR PARTIAL BASIS, AS A CLASS ACTION.

#### A Standard of Review

Rule 4:32-1 governs the certification of a class action in New Jersey. The rule must be liberally construed, particularly in cases involving consumer fraud. *In re Cadillac*, 188 N.J. 412, 435, 461 A.2d 736 (1983). A request for class action certification should be granted "unless there is a clear showing that it is inappropriate or improper." *Delgozzo v Kennv.*, 266 N.J. Super. 169, 180, 628 A.2d 1080 (App.Div. 1993) (quoting *Lusky v Capasso Bros.*, 118 N.J. Super. 369, 373, 287 A.2d 736 (App. Div. 1972)).

"There are several prerequisites to maintaining a class action. Part (a) of Rule 4:32-1(a) states that a class action can be maintained only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition, one of the requirements of part (b) of the rule must also be met. Plaintiffs submit that they satisfy the conditions of part (b)(3), which specifically requires the court to find that:

[T]he questions of law or fact common to the members of the class predominate over questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The factors pertinent to the findings include: (A) the interest of members of the class in

individually controlling the prosecution or defense of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, (C) the desirability or undesirability in concentrating the litigation of the claims in the particular forum, and (D) the difficulties likely to be encountered in the management of a class action [417 N.J. Super. 178] [R. 4:32-1(b)(3)] “ *Kleinman v Merck & Co* , 417 NJ Super 166, 177(App. Div. 2008)

The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only," *Ihadis, supra*, 191 N.J. at 103, 922 A.2d 710 (quoting *Califano v Yamasaki*, 442 U.S. 682, 700-01, 99 S. Ct. 2545, 2558, 61 L. Ed. 2d 176, 193 (1979)), and is an "invention of equity" that "enable[s] litigation to proceed 'in suits where the number of those interested in the subject of the litigation is so great that their joinder as parties in conformity to the usual rules of procedure is impracticable'" *Id.* at 103, 922 A.2d 710 (quoting *Hansberry v Lee*, 311 U.S. 32, 41, 61 S. Ct. 115, 118, 85 L. Ed. 22, 27 (1940)) It "level[s] the playing field between adversaries," *Ihadis v Wal-Mart Stores, Inc* , 387 N.J. Super. 405, 415, 904 A.2d 736 (App. Div. 2006), *rev'd on other grounds, Ihadis, supra*, 191 N.J. 88, 922 A.2d 710 by "equaliz[ing] . . . the ability of the parties to prepare and pay for the advocacy of their rights " *In re Cadillac V8-6-4 Class Action*, 93 N.J. 412, 435, 461 A.2d 736 (1983), *see also Ihadis, supra*, 191 N.J. at 104-05, 922 A.2d 710 (discussing equalizing function of class action) Thus, despite the complexity of management a class action poses for a trial court, "overarching principle[s] of equity" dictate that *Rule 4:32-1* be liberally construed, especially in consumer fraud actions brought to redress common grievances. under circumstances that would make individual actions uneconomical to pursue

*Varacallo, supra*, 332 N.J. Super at 45, 752 A.2d 807; *see also Ihadis, supra*, 191 N.J. at 103, 922 A.2d 710

Given these policy considerations, class certification should be granted absent a clear showing that it is inappropriate or improper *Ihadis, supra*, 191 N.J. at 103, 922 A.2d 710 *Beegal v Park West Gallery*, 394 N.J. super 98, 110(App. Div. 2007)

"Our class-action rule, R 4:32, is a replica of Rule 23 of the Federal Rules of Civil Procedure as amended in 1966 " *Riley v New Rapids Carpet Ctr.*, 61 N.J. 218, 226, 294 A.2d 7 (1972) Construction of the federal rule may be considered helpful, if not persuasive, authority *See Saldana v City of Camden*, 252 N.J. Super at 194 n 1, 599 A.2d 582 Rule 4:32-2 tracks Rule 23(c) of the *Federal Rules of Civil Procedure* Fed. R. Civ. P. 23(c)(1) provides "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits." The content of the federal rule matches that of R 4:32-2(a) except for New Jersey's use of "conditioned" instead of "conditional" and the addition of the title "Order Determining Maintainability." *Muise v GPU, Inc*, 371 N.J. Super 13, 31 (App. Div. 2004)

#### **B. THE COURT SHOULD CERTIFY THE FOLLOWING CLASSES.**

This is a case particularly well suited for class action. This is also a case that is absolutely clear on its facts. The Lenders through their agent GMACM admit in the verified complaint that they issued notice of intent to foreclose in violation of the Fair Foreclosure Act by failing to include the lenders name and address

There is one (1) class being sought for each count of the counterclaim and third party complaint

**1. The Court should certify a New Jersey class as to GMAC Mortgage, LLC.**

a) The court should certify a New Jersey class as to GMACM, as to the Counterclaim Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff, In which final judgment has not been entered, and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

b) The court should certify a New Jersey class as to GMACM, as to the Counterclaim Count II ((Guillaume) as follows:

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff; In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

c) The court should certify a New Jersey class as to GMACM, as to the Counterclaim Count III ((New Jersey Civil Rights Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure

Plaintiff., In which final judgment has not been entered, and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

**2. The Court should certify a New Jersey class as to the lenders.**

The Court should certify a Defendant Class according to the provisions of Rule 4 32 of the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI. Lenders are defined as ALLY BANK AMALGAMATED BANK, DEUTSCHE BANK NATIONAL TRUST COMPANY, DLJ MORTGAGE CAPITAL, INC , E\*TRADE BANK, EMC MORTGAGE, LLC, GMAC MORTGAGE, LLC, HSBC BANK USA, NA., LEHMAN CAPITAL, LEX SPECIAL ASSETS, LLC, MACQUARIE MORTGAGES USA, INC, ONEWEST BANK, FSB, RBS CITIZENS, NA., RESIDENTIAL FUNDING COMPANY, LLC, BANK OF NEW YORK MELLON TRUST COMPANY, NA, US BANK, NA, USAA FEDERAL SAVINGS BANK, WELLS FARGO BANK, NA, WILMINGTON TRUST COMPANY

a) The court should certify a New Jersey class as to the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI , as to the third party complaint Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the

lender and the lender's address

b) The court should certify a New Jersey class as to the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI , as to the third party complaint Count II ((Guillaume) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff, In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

c) The court should certify a New Jersey class as to the lenders whose loans were serviced by GMACM in which GMACM is seeking to file an amended NOI , as to the third party complaint Count III ((New Jersey Civil Rights Act) as follows

Foreclosures that were filed on or before February 27, 2012 and which GMACM is servicing the loans and acting as agent for a Foreclosure Plaintiff , In which final judgment has not been entered; and in which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

## **II. THE DEFENDANT HAS ESTABLISHED A VALID CAUSE OF ACTION AGAINST THE VARIOUS LENDERS AND GMACM.**

The issues of liability have been extensively briefed in the Defendant Third Party Plaintiffs' motion for summary judgment. The Defendant Third Party Plaintiffs' would incorporate those arguments in their entirety with this brief.

## **III. The Proposed Classes Satisfy Rule 4:32-1**

### **A. The Proposed Classes Satisfy Rule 4:32(1)(a)**

#### **1. Numerosity Exists.**

*Rule 4:32-1(a)(1)* requires that the class be "so numerous that joinder of all members is impracticable." There is no magic number to this determination. The number of class members is "not wholly dispositive of the analysis," *W. Morris Pediatrics, P.A. v. Henry Schein, Inc.*, 385 N.J. Super. 581, 595 (Law Div. 2004) (citing *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993)), aff'd, No. A-3595-04 (App. Div. Mar. 30, 2006), and plaintiffs do not have "to show the exact size of the class in order to satisfy numerosity." *Ibid.* "Rather, an equal part of the inquiry centers around whether 'the difficulty and or inconvenience of joining all members of the class calls for class certification.'" *Id.* at 596 (quoting *Lerch v. Citizens First Bankcorp, Inc.*, 144 F.R.D. 247, 250 (D.N.J. 1992)). Plaintiffs are not required to detail, to the person, the exact size of the class or to demonstrate the joinder of all class members is impossible. "Impracticability does not mean impossibility." *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993) ("precise enumeration of the members of a class is not necessary."); see also *Zimberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 405 (D.N.J. 1990) ("It is proper for the court

to accept common sense assumptions in order to support a finding of numerosity”),  
*Moskowitz v Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989). Instead, Plaintiffs need only  
provide the Court with an estimate as to the size of the class. *Zimberg*, 138 F.R.D. at 405  
“Difficulty in immediately identifying all class members makes joinder more  
impracticable and certification more desirable.” *Haywood v Barnes*, 109 F.R.D. 568,  
575 (E.D.N.C. 1986).

In *Riordan v Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986), the class included  
twenty-nine members, in *Saldana v City of Camden*, 252 N.J. Super. 188, 193 (App. Div.  
1991), the class consisted of eighty-one members; and in *Delgozzo v Kennv*, 266 N.J.  
Super. 169, 184 (App. Div. 1993), the class included “35,000 purchasers throughout the  
United States and Canada.”

Numerosity is indisputable here. GMACMs has attached to its complaint a list of  
2724 cases all which require a revised NOI to be issued [Exhibits 1-20 of GMACM  
Complaint]

Thus, based on the GMACM’s own verified pleading, it is clear that the  
numerosity requirement for certification is easily satisfied. See *Stewart v Abraham*, 275  
F.3d 220, 226-27 (3d Cir. 2001) (“[G]enerally if the named plaintiff demonstrates that the  
potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.”)

## **2. There are Questions of Law and Fact Common to the Class**

Rule 4 32(1)(a)(2) requires that there be “questions of law or fact common to the  
class.” The commonality requirement with other members of the class is met if  
Plaintiff’s grievances share a common question of law or fact. *Baby Neal*, supra. Rule  
23 only requires that “the questions of law or fact common to the members of the class

predominate over any questions affecting only an individual member.” Plaintiffs are not required to show that all class members’ claims are identical to each other as long as there are common questions at the heart of the case, “factual differences among the claims of the putative class members do not defeat certification.” Fed. R. Civ. P. 23(b)(3); *Baby Neal*, 43 F.3d at 56; *In re Prudential Ins. Company of America Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998). Indeed, a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). See *H. Newberg & A. Conte*, 1 *Newberg on Class Actions* § 3.10, at 3-50 (1992), accord *Baby Neal*, 43 F.3d at 56. “Commonality does not require an identity of claims or facts among class members. Instead, ‘the commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.’” *Johnston v. HBO Film Mgmt.*, 265 F.3d 178, 184 (3d Cir. 2001) (quoting *In re the Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d 283, 310 (3d Cir. 1998)). This requirement is easily met in this case, as there are a number of questions of law or fact common to all class members as reflected in the prior sections on the various causes of action, including 1) Did GMACM send notices which were in violation of the New Jersey Fair Foreclosure Act? 2) Whether such clauses are a violation of the New Jersey Truth in Consumer Contact and Warranty Act? 3) What is the appropriate relief under Guillaume to allow the lender to proceed? 4) Whether such clauses are a violation of the New Jersey Civil Rights Act?

Plaintiffs have satisfied the commonality requirement. As to the Class, the heart of the Plaintiffs’ claims against the Defendants is that they and all members of the proposed class had the defective NOI sent to them.

**3. The Claims of the Representative Plaintiffs are Typical of the Claims of the Class at Large.**

Rule 4.32(1)(a)(3) also requires that the representative Plaintiff's claims be "typical" of those of other class members. The court discussed the legal considerations regarding the typicality requirement in Laufer v. U.S. Life Insurance Company

The claims of a putative class representative are typical if they "have the essential characteristics common to the claims of the class." [In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 425] (quoting 3B James W. Moore et al., Moore's Federal Practice § 23.06-2 (2d ed. 1982)). "Since the claims only need share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding." 5 James W. Moore, et al., Moore's Federal Practice, § 23.24[4] (3d ed. 1997). "If the class representative's claims arise from the same events, practice, or conduct, and are based on the same legal theory, as those of other class members, the typicality requirement is satisfied." Moore, supra, § 23.24[2]. "[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims." Baby Neal v. Casey, 43 F.3d 48, 58 (3d Cir. 1994). "Actions requesting declaratory and injunctive relief to remedy conduct directed at the class[.]" which is the primary relief sought in a class action brought under Rule 4:32-1(b)(2), "clearly fit this mold."

[385 N.J. Super. 172, 180-81 (App. Div. 2006) (all but first alteration in original).]

A "proper consideration" of typicality includes

three distinct, though related, concerns: (1) the claims of the class representative must be generally the same as those of the class in terms of both (a) the legal theory advanced and (b) the factual circumstances underlying that theory, (2) the class representative must not be subject to a defense that is both inapplicable to many members of the class and likely to become a major focus of the litigation, and (3) the interests and incentives of the representative must be sufficiently aligned with those of the class.

[Schering Plough, supra, 589 F.3d at 599.]

The commonality and typicality requirements of Rule 23 (a) "tend to merge." *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982). "The typicality

requirement centers on whether the interests of the named Plaintiffs align with the interests of the absent members.” *Stewart v Abraham*, 275 F.3d 220, 227 (3d Cir. 2001) “Factual differences will not render a claim atypical if the claim arises from the same event or practice of course of conduct that gives rise to the claims of the class members, and it is based on the same legal theory.” *Hayworth v Blonde v Robinson & Co*, 980 F.2d 912, 923 (3d Cir. 1992) “[T]he threshold for satisfying the typicality prong is a low one.” *Barr v Harrish’s Entm’t, Inc.*, 2007 U.S. Dist. LEXIS 32435, \*13 (D.N.J. May 3, 2007)(quoting *Weisfeld v Sun Chemical Corp.*, 210 F.R.D. 136, 140 (D.N.J. 2002))

Typicality is demonstrated where the Plaintiff can “show that issues of law or fact he or she shares in common with the class occupy the same degree of centrality to his or her claims as to those of unnamed class members.” *Weiss v York Hosp.*, 745 F.2d 786, 809-10 (3d Cir. 1984); see also *Blihovde v St. Croix County*, 219 F.R.D. 607, 617 (W.D. Wis. 2003) (applying this principle to a strip search class action) A class representative should “have the incentive to prove all of the elements of the cause of action which would be presented by the individual members of the class were they initiating individual actions.” *Dietrich v Bauer*, 192 F.R.D. 119, 124 (S.D.N.Y. 2000) The Third Circuit has stated

In considering the typicality issue, the district court must determine whether the named plaintiff[s]’ individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based. This criteria does not require that all putative class members share identical claims. Indeed, so long as the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is established regardless of factual differences. *Johnston*, 265 F.3d at 184

Here, the claims against GMACM and the lenders are typical of the claims of the Class. They arise from the same course of events and the Defendant-Third Party Plaintiffs must make the same – or effectively the same – arguments to prosecute their claims as would be made by members of the proposed Class in any individual cases. See *Weisfeld v Sun Chem Corp*, 210 F.R.D. 136, 140 (D.N.J. 2002) (“[I]n instances wherein it is alleged that the Defendants engaged in a common scheme relative to all members of the class there is strong assumption that the claims of the representative parties will be typical of the absent class members”) (citation omitted); *Bowers*, 2006 WL 2818501, \*2-3 (“A Plaintiff’s claim is typical if it arises from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory.”), *Marriott v County of Montgomery*, 227 F.R.D. 159, 172-173, affirmed, 2005 U.S. App. LEXIS 25428 (2d Cir. 2005) (finding typicality even where the claims of the representative parties involved a more detailed search than other class members, because they were conducted pursuant to the same policy), Typicality exists because the Defendants acted pursuant to a policy that called for use of the same preprinted forms which included the illegal language. If this allegation is true, “then the named [P]laintiff would be similarly situated to the other members of the class.” *Bihovde v St. Croix County*, 219 F.R.D. 607, 617 (W.D. Wis. 2003)

Thus, typicality is easily satisfied by this proposed class action

#### **4. Jennifer & Mark Grasso and their Counsel Will Fairly and Adequately Represent the Class**

Rule 4:32(1)(a)(4) requires that the class representative “fairly and adequately protect the interests of the class.” “Adequate representation depends on two factors. (a) the Plaintiff’s attorney must be qualified, experienced and generally able to conduct the

proposed litigation, and (b) the Plaintiff must not have interests antagonistic to those of the class " *Weiss v York Hosp* , 745 F 2d at 811 Both prerequisites of adequacy of representation are met in this case. See *Lewis v Curtis*, 671 F 2d 779, 788 (3d Cir 1982). *New Directions Treatment Servs v City of Reading*, 490 F 3d 293, 313 (3d Cir 2007) (quoting *Wetzel v Liberty Mut Ins Co* , 508 F.2d 239, 247 (3d Cir 1975))

Under Rule 4 32-1(a)(4), the class representative must be able to "fairly and adequately protect the interests of the class " Although courts consider the adequacy of both the named representative and the class counsel, *Laufel* , supra, 385 N J Super at 181.

The determination whether a putative class representative can fairly and adequately protect the interests of the class is closely related to the requirement of typicality. See *In re Cadillac*, supra, 93 N.J. at 425, 461 A 2d 736. To satisfy this requirement, "the plaintiff must not have interests antagonistic to those of the class " *Delgozzo v Kenny*, 266 N.J. Super 169, 188, 628 A 2d 1080 (App Div. 1993) (quoting *In re Asbestos Sch Litig*, 104 F R D, 422, 430 (E D Pa 1984)) However, this does not mean that "the interests of the class representative and the absentee class members [must] be identical " Moore, supra, § 23 25[4][b][i] "[T]he named representative only needs to be adequate[ ]"

[Id. at 182 (alterations in original) ]

Here, Jennifer & Mark Grasso are interested in ending the use of the illegal notices of intention to foreclose Jennifer & Mark Grasso are further committed to obtaining appropriate compensation from GMACM and the lenders for themselves and the members of the proposed class They have come forward to represent the class under great personal pressure of this litigation. Their "interests in this case coincide with those of the potential class members in that [the Defendant-Third Party Plaintiffs seek] a declaration that the practices, policies, and conditions complained of in the Complaint are

illegal and seeks injunctive relief prohibiting the continuation of those” policies *Bowers*, 2006 WL 2818501, \*6-8.

The class is represented by competent and experienced counsel who have invested considerable time and resources into the prosecution of this action and who have had extensive experience in successfully litigating various forms of class actions and other complex matters, including other consumer cases (Copies of the their attorneys’ resumes are attached )

Accordingly, Jennifer & Mark Grasso are an adequate representatives and have retained experienced class counsel that have aggressively litigated this action. They have satisfied this requirement for certification.

**B. Jennifer & Mark Grasso Has Satisfied the Requirements for a Class Under Rule 23(b)(3), Since the Common Issues Shared by Class Members Predominate Over Individual Issues and a Class Action is the Superior Method to Prosecute this Action**

**1. Common Issues Predominate.**

Rule 4 32(1)(b)(3) requires that the party proposing a class action establish that issues common to the class predominate over the individual issues of particular class members. See *Amchem Prod V Windsor*, 521 U S 591, 623 (1997) The "predominance requirement" of Rule 4-32-1(b)(3) "is more demanding than the commonality requirement." *Muise v GPU, Inc* 371 N.J. Super. 13, 37 (App. Div 2004). It "requires an evaluation of the legal issues and the proof needed to establish them " *In re Cadillac*, supra, 93 N.J. at 430 A party must show that "the issues common to the class outweigh those that are not " *Debra F Fink, D.M D , MS, P C v Ricoh Corp* , 365 N J Super 520, 568 (Law Div. 2003) "Even where the individual issues are fewer than common issues, it is the significance of the uncommon issues that sways the pendulum " *Ibid* "As a matter of efficient judicial administration, the goal is to save time and money for the parties and the public and to promote consistent decisions for people with similar claims " *In re Cadillac*, supra, 93 N J at 430 The most pragmatic way for the Court to make this determination is to evaluate whether "common proof will predominate at trial " *In re NASDAQ Mkt Makers*, 169 F R D 473, 517 (S D N Y 1996), see also *Jenkins v Raymark Indus* , 782 F 2d 468, 472 (5th Cir 1986) (the "significant aspect" requirement is met if "jury findings on the class question will significantly advance the resolution of the underlying .cases"), *Dietrich*, 192 F.R.D at 127 (in determining whether common issues of fact predominate, "a court's inquiry is directed primarily toward whether the

issue of liability is common to members of the class”) This is especially true “when the class is challenging a uniform policy,” as “the validity of that policy predominates over individual issues.” *Blihovde v St Croix County*, 219 F.R.D. 607, 620 (W.D. Wis 2003) The Supreme Court has stated that “[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws ” *Anchem Products, Inc . v Windsor*, 521 U S 591, 625, 117 S. Ct 2231, 138 L Ed 2d 689 (1997)

Here, the proposed class members’ claims involve one central legal issue The illegal NOI issued by the lenders by their agent, GMACM See e g *Marriont*, 227 F R D at 173 (predominance found despite differing facts regarding personal involvement of some individual defendants and slight differences between class members)

Here, the claims of each individual claimant would be small, possibility as small as \$100 each It is doubtful any claimant would undergo the time and expense of a lawsuit to enforce his or her rights for \$100 The cost of litigation would exceed the benefit of the recovery. This is exactly the sort of claim class actions are designed to address Public policy also favors a class action in this setting A great deal more judicial resources would be expended in managing and trying thousands of Small Claims or Special Civil Part cases

In order to defeat Rule 23(b)(3) certification, the lenders and GMACM may argue that this case requires individual determination of damages for each class member and, as such, these damage calculations will predominate over other common issues It is black letter law that distinctions in damages will not defeat class certification when there are core common liability issues to be determined Indeed, it was noted nearly twenty years ago that ““overwhelming weight of authority hold that the need for individual damages

calculations does not diminish the appropriateness of class action certification where common questions as to liability predominate” *In re Asbestos Sch. Litig.*, 104 F.R.D. 422, 432 (E.D. Pa. 1983) (quoting *Wolgin v. Magic Marker Corp.*, 82 F.R.D. 168, 176 (E.D. Pa. 1979); accord *Weikel v. Tower Semiconductor Ltd.*, 183 F.R.D. 377, 399 (D.N.J. 1998); *Seawell v. Universal Fidelity Corp.*, 235 F.R.D. 64 (E.D. Pa. 2006).

Moreover, the Court can utilize various “management tools” to address any individualized damages issues that might arise in a class action, including (1) bifurcating liability and damages trial with the same or different juries, (2) appointing a magistrate judge or special master to preside over individual damages proceedings, (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages, (4) creating subclasses, or (5) altering or amending the case.” *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 141 (2d Cir. 2001)

“The existence of this defense does not foreclose class certification” *Id.*, quoting *Visa Check*, 280 F.3d at 138. See also *Tardiff v. Knox County*, 365 F.3d 1 (1<sup>st</sup> Cir. 2004) (likewise certifying class notwithstanding individual individualized issues)

## **2. A Class Action is the Superior Method to Prosecute this Action**

Rule 4 32-1(b)(3) superiority requirement asks a court “to balance, in terms of fairness and efficiency, the merits of a class action against those of ‘alternative available methods’ of adjudication.” *Georgine v. Amchem Products, Inc.*, 83 F.3d 610, 632 (3d Cir. 1996)

In determining whether a class action is superior to other available methods of adjudication, the Court looks to four (4) non-exhaustive factors:

(A) the interest of members of the class individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action  
Fed R Civ. P. 23(b)(3)

Here, the prosecution of this litigation as a class action is the superior method of proceeding with this case. To require hundreds or thousand of identical individual, repetitive cases to be filed to address the claims in this – all with the attendant possibility of inconsistent adjudications – verges on the absurd. See *California v. Yamaski*, 42 U S 682, 700-01 (1970). The class action device is designed for this very situation where an individual seeks to vindicate “the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.” *Amchem Prods.*, 521 U S at 617. “The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.” *Id.*, see also *Yang v. Odum*, 392 F 3d 97, 106 (3d Cir 2004), *Marriott*, 227 F R D at 173, *Sutton v. Hopkins County*, 2007 WL 119892, \*9 (W D Ky. Jan. 11, 2007). (“litigating the existence of a uniform policy for the class as a whole would both reduce the range of issues and promote judicial economy.”) This is especially true when, in considering what is “best” available method to provide legal redress, for a court to consider the “inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the

initiative individually.” *Haynes v Logan Furniture Mart, Inc* , 503 F.2d 1161, 1165 (7<sup>th</sup> Cir 1974), *accord Labbate-D’Alauo v GC Servs Ltd Pshp* , 168 F R D 451, 458 (E D N Y 1996)(quoting id ), Poor and marginalized class members are unlikely to be able to litigate these cases individually *See Mack v Suffolk County*. 191 F R D 16, 25 (D. Mass. 2000), *D’Alauo v GC Services Ltd* , 168 F R D 451, 458 (E D N.Y. 1996); *In re Nassau County Strip Search Cases*, 461 F 3d 219, 230 (2<sup>nd</sup> Cir 2006). Class certification is superior where individual claims are small or modest *In re Prudential Inc Co of Am Sales Practice Litigation Agent Actions*. 148 F.3d 283, 316 (3<sup>d</sup> Cir 1998)

Here, the first two factors support class certification. The size of the potential class suggests that individual suits would be overly burdensome for the Court and impracticable. The value of most individual claims at least \$100.00. The fact that no other complaints against the lenders and GMACM raising the claims presented here have been filed suggests a lack of interest in individually prosecuting claims, controlling the prosecution of the claims, or an inability for class members to pursue individual causes of action against the lenders and GMACM. Lastly, the potentially small amount of damages experienced by individual class members indicates that it would not be cost effective for a class member to individually seek relief *Pro v Hertz*, 72 F S 3d 485 (D N J 2008) "This is exactly the kind of result Congress intended to avoid through the creation of the class action form " *Barkouras v Hecker* , Civ. No. 06-0366 (AET), 2006 U.S. Dist LEXIS 88998, 2006 WL 3544585, at \*4 (D N J Dec 8, 2006). Accordingly, sophisticated parties know it gives them an edge in engaging in such practices

The third factor supports certification. The courts have held that a party's common course of conduct alone may support a finding of predominance under the NJCFA *see*,

*e.g.*, *Varacallo v Massachusetts Mutual Life Ins Co*, 332 N.J. Super. 31, 752 A.2d 807 (N.J. Super. Ct. App. Div. 2000), *Elias v Ungar's Food Prod., Inc.*, 252 F.R.D. 233, 238 (D.N.J. 2008). It is unquestioned that the lenders through their agent GMACM conducted themselves in a uniform manner. This is the very reason for the application by GMACM

The fourth factor is manageability. All large class actions present manageability issues. In this case, because the same contract clauses apply to all class members, any manageability issues presented will be minimal and do not justify denial of class certification. This case focuses on core questions of law and fact which will resolve liability for the entire potential class.

For these reasons, Jennifer & Mark Grasso respectfully suggests that his motion for class certification be granted.

**C. Jennifer & Mark Grasso Have Also Satisfied the Requirements of Rule 4:32-1(b)(2)**

Rule 4:32-1(b)(2) permits certification when “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Rule 4:32-1(b)(2) mirrors Fed.R.Civ.P. 23(b)(2). Rule 23(b)(2) is “almost automatically satisfied in actions primarily seeking injunctive relief.” *Babv Neal*, 43 F.3d at 58. As recognized:

Courts have noted that Rule 23(b)(2) is “an especially appropriate vehicle for civil rights actions seeking . . . declaratory relief for prison and hospital reform.” *Coley v Clinton*, 635 F.2d 1364, 1378 (8<sup>th</sup> Cir. 1980) (quoting 3B J. Moore & J. Kennedy, *Moore’s Federal Practice* P 23:40(1) (1980)). *see also Santiago v City of Phila.*, 72 F.R.D. 619, 625-26 (E.D. Pa. 1976) (“This subsection has been

liberally applied to the area of civil rights, including suits challenging conditions and practices at various detention facilities” (citing *Martinez Rodriguez v Jimenez*, 409 F Supp 582 (D P R 1976), *Woe v Mathews*, 408 F. Supp. 318 (M.D Ala 1976), *King v Carey*, 405 F Supp. 41 (W D N Y 1975) “The essential consideration is whether the complaint alleges that the plaintiffs have been injured by defendants’ conduct which is based on policies and practices applicable to the entire class.” *Santiago*, 72 F.R.D at 626

*Bowers v City of Philadelphia*, 2006 WL 2818501 (E D Pa Sept 28,

2006) \*3-4

Here, Jennifer & Mark Grasso seek to enjoin the lenders and GMACM from issuing improper NOI’s in the future. If Jennifer & Mark Grasso obtain the injunctive and declaratory relief sought, this relief would benefit the entire class. As a result, the proposed class is cohesive. Jennifer & Mark Grasso do seek money damages however, the money damages claims do not subordinate their injunctive and declaratory claims. Jennifer & Mark Grasso allege a wrong which they seek to redress and prevent from occurring again. The proposed class is cohesive and the relief sought would benefit all class members, Fed. R. Civ. P. 23(b)(2) certification is appropriate. *Pro v Hertz*, 72 F S 3d 485 (D N J 2008)

Accordingly, the requirements of Rule 23(b)(2) are satisfied. *Seawell*, 235 F R D at 67 (certification under Rule 23(b)(2) was warranted for the portion of the case for which the plaintiff sought exclusively injunctive/declaratory relief, where such relief “would obviously benefit the entire class”), *Marrion*, 227 F R D at 173 (holding that requirements of Rule 23(b)(2) are met where “the centerpiece of the litigation is elimination of the procedure which is applicable to all admittees without a requirement for reasonable suspicion”).

**D. Partial Certification is Appropriate Should the Court Deny Jennifer & Mark Grasso Motion for Full Certification**

Should the Court conclude that full certification under Rule 432-1(b)(3) is not appropriate, Jennifer & Mark Grasso submit that partial certification under Rule 432-2(d) should be granted. The common nature of liability would make any ensuing litigation duplicative and unnecessary. As one leading recent decision recognized, “If there are genuinely common issues, issues identical across all the claimants, issues moreover the accuracy of the resolution of which is unlikely to be enhanced by repeated proceedings, then it makes good sense, especially when the class is large, to resolve those issues in one fell swoop while leaving the remaining, claimant-specific issues to individual follow-on proceedings.” *Mejdrech v Met-Coil Sys Corp*, 319 F.3d 910, 911 (7<sup>th</sup> Cir. 2003); see also *Laufer v US Life Ins Co in City of New York*, 385 N.J. Super 172, 181, 896 A.2d 1101 (N.J. Super. 2006) “Federal district courts under Fed. R. Civ. P. 23(c)(4)(A) are instructed that they should take full advantage of this provision to certify separate issues in order to “reduce the range of disputed issues in complex litigation and achieve judicial efficiencies.”” *Robinson v Metro-North Commuter Railroad Co*, 267 F.3d 147, 167 (2d Cir. 2001). Specifically, Jennifer & Mark Grasso request that this Court certify this action to allow a class wide determination of GMACM’s uniform failure to provide the lender’s names and addresses in the NOI.

**E. The Lenders and GMACM Should Be Required to Assist Class Counsel in Providing Notice to Absent Class Members.**

“[I]f a defendant can undertake the tasks associated [with class notice] with less expenses and difficulty than could a plaintiff, the defendant may be ordered to provide

notice.” *LaFlamme v Carpenters Local #370 Pension Plan*, 212 F.R.D. 448, at 459 (D.N.Y. 2003). Class counsel is fully prepared and able to provide notice to all class members. The lenders and GMACM however, has all the addresses (at the least, the last known addresses) and social security numbers of all prospective class members, which can presumably be accessed to form a database and provide a mass mailing. We respectfully suggests that the lenders and GMACM be required to “provide the notice or cooperate with movants by giving them the information necessary to provide the notice.” *Id.*, at 460

**F. Appointment of class counsel.**

Rule 4 32-2(g) requires that the Court appoint class counsel when it certifies a class. Class counsel must “fairly and adequately represent the interest[s] of the class.” Rule 4 32-2(g). Rule 4 32-2(g) lists four factors to be considered. “(i) the work counsel has done identifying or investigating potential claims in the action, (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (iii) counsel's knowledge of the applicable law, and (iv) the resources that counsel will commit to representing the class.”

Jennifer & Mark Grasso proposes that Lewis G. Adler, Esquire, Roger C. Mattson, Esquire and Louis D. Fletcher, Esquire be appointed class counsel. These attorneys have done extensive work identifying and investigating their claims. The attorneys have experience prosecuting consumer class actions, have been designated as class counsel in federal courts, and are knowledgeable in class action and consumer law. The attorneys have already expended significant resources in representing the class which evidences that they are willing to continue to do so. Pursuant to Rule 4 32-2(g), Jennifer

& Mark Grasso ask the court to name Lewis G. Adler, Esquire, Roger C Mattson, Esquire and Louis D Fletcher, Esquire as class counsel

### **CONCLUSION**

For all the foregoing reasons, Jennifer & Mark Grasso respectfully request that the Court certify this action as a class action under Rules 4 32-1(a) ,(b)(2) and (3), and the appointment of class counsel under Rule 4 32-2(g), as well as any other relief that this Court finds to be just, proper and equitable

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. G. Adler', written over a horizontal line.

Lewis G. Adler, Esquire