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2-22-13

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

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SUPERIOR COURT  
CLERK'S OFFICE

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

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO.: F-25354-12

CIVIL ACTION

NOTICE OF MOTION

2-28-13

-----  
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.

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 Plaintiffs shall apply to the above Court located at the Mercer County Courthouse, 175 South Broad Street, Trenton, New Jersey.

- 1) To allow the Defendants-Third Party Plaintiffs to file a counterclaim and third-party complaint.
- 2) For a judgment on the pleadings of counts 1,2 & 3 of the counterclaim and counts 1, 2 & 3 of the third party complaint .

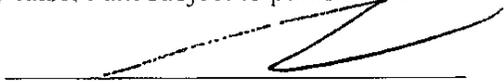
I will rely upon the brief, and certifications with attached exhibits in support hereof

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.

2/22/13

  
LEWIS G ADLER, ESQUIRE

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

Third Party Defendants

BRIEF IN SUPPORT OF DEFENDANT'-THIRD PARTY PLAINTIFFS'  
NOTICE OF MOTION FOR  
LEAVE TO FILE A COUNTERCLAIM AND THIRD PARTY COMPLAINT  
AND JUDGMENT ON THE PLEADINGS

On the Brief: LEWIS G. ADLER, ESQ.

## FACTS

The Statement of facts for purposes of this motion is outlined in GMACM's verified complaint which is incorporated by reference herein

## ARGUMENT

- I. **The Court should allow the within application or for the matter to proceed as a plenary matter under R 4:67-5 or in the alternative to sever the action.**

The broad issue before the court is to determine the appropriate remedy for the failure of GMACM to issue proper notices of intention to foreclose on behalf of the lenders. The facts relied upon by the Defendant-Third Party Plaintiffs are the same as those in the verified complaint. The Court in fashioning its remedy must also address the statutory claims of the borrowers. It would be inequitable to consider only the interests of the GMACM and the lenders. The Supreme Court in Guillaume specifically held

Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case:

Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application, the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties." [*Sears, Roebuck & Co v Camp*, 124 N.J. Eq. 403, 411-12, 1 A.2d 425 (E. & A. 1938) (quoting John N. Pomeroy, *Equity Jurisprudence* 109 (4th ed. 1918))] Absent legislative direction with respect to a remedy, New Jersey courts retain discretion "to fashion equitable remedies," which are "valuable because they allow relief to be fashioned directly to redress the statutory violations shown." *Brenner v Berkowitz*, 134 N.J. 488, 514, 634 A.2d 1019 (1993); see also *Marioni v Roxy Garments Delivery Co.*, 417 N.J. Super. 269, 275, 9 A.3d

607 (App Div 2010) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case ")  
Id at 476

Beyond fashioning a just remedy, the Court must also consider the claims of the Borrowers under the New Jersey Truth in Consumer Contract Warranty and Notice Act and the New Jersey Civil Rights Act

In addition to the equities which require the court to consider these issues, the Entire Controversy Doctrine codified in R 4:30A would require the Defendant-Third Party Plaintiffs to bring the within action State v Bradley, 174 NJ Super 154 (App Div 1980)

If the court declines to allow this application to proceed in this proceeding, the matter should be severed and allowed to proceed separately

## **II. Standard for Determination of a motion under R 4:6-2(e).**

The New Jersey Supreme Court in the case of NCP Litig. Trust v KPMG LLP, 187 NJ 353 (2005) articulated the standard the Court must use in a motion to dismiss under **R 4:6-2(e)**

At the outset, we observe that this matter is before us on a **Rule 4:6-2(e)** motion to dismiss. On such motions, a trial court should grant a dismissal "in only the rarest of instances" Printing Mart-Morristown v Sharp Elecs Corp., 116 N.J. 739, 772, 563 A.2d 31 (1989). A court's review of a complaint is to be "undertaken with a generous and hospitable approach." *id.* at 746, 563 A.2d 31, and the court should assume that the nonmovant's allegations are true and give that party the benefit of all reasonable inferences, Smith v SBC Communications Inc., 178 N.J. 265, 282, 839 A.2d 850 (2004). If "the fundament of a cause of action may be gleaned even from an obscure statement of claim," then the complaint should survive this preliminary stage Craig v Suburban Cablevision, Inc., 140 N.J. 623, 626, 660 A.2d 505 (1995) (citation omitted).

In the instant case, the Court must accept as true the allegations of the complaint

**III. The Defendant-Third Party Plaintiffs have proven a cause of action for violation of the New Jersey TCCWNA.**

The Defendant-Third Party Plaintiffs have proven a cause of action in count I of the counterclaim and count I of the third party complaint for violations of the Truth-In-Consumer, Warranty and Notice Act. The Defendant-Third Party Plaintiffs have a cause of action under *NJSA 56 12-14* which prohibits the issuance of a notice which violates the Defendant-Third Party Plaintiffs' rights under state or federal law. The act does not require any actual damages by the Defendant-Third Party Plaintiffs and instead provides for a statutory penalty of at least \$100 per violation plus reasonable attorney's fees and court costs. *NJSA 56 12-17* states

Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.

To have standing, the consumer Defendant-Third Party Plaintiffs had to have a notice issued in violation of the law. Defendant-Third Party Plaintiffs need not have suffered any damages. This same conclusion was reached by the New Jersey Appellate Division in the case of Smerling v Harrah's, 389 N.J. Super. 181 (App. Div. 2006). In that case, the court held that advertising by the casino which contained false, deceptive or misleading information was actionable under the Truth-in-Consumer Contract, Warranty

and Notice Act. As the New Jersey Appellate Court held in Bosland v. Warwick Dodge, 396 NJ Super 267 ( App Div 2007) ,affirmed 197 NJ 453 (2009) that proving a case under the New Jersey Consumer Fraud Act will satisfy a cause of action under this act. The purpose of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act is remedial in nature to prevent wrongs to consumers. Just like the New Jersey Consumer Fraud Act, the Truth-in-Consumer Contract, Warranty and Notice Act is to be liberally construed given the broad scope of wrongs and remedies covered by the statute.

In the instant case, GMACM admits that it sent Notices of Intent to Foreclose as an agent of the lenders which did not include the names and address of the lenders in violation of the Fair Foreclosure Act. The Supreme Court in Guillaume specifically provided that the ruling was not limited and applied the law retroactively. The Guillaume Court held that the failure to provide the name and address of the lender violated the borrower's fundamental rights under the FFA. Guillaume at 470.

The act provides that any person who violates the act shall be liable. In the instant case, GMACM as the agent of GMAC Mortgage, LLC and the other Lenders admits to actually causing the defective notices to be issued. In addition, GMAC Mortgage, LLC and the other Lenders are responsible for the actions of their agent. The court in Rickenbach v. GMACM Bank, NA, 635 F. Supp. 2d 389, 400 (2009) specifically held with a similar set of facts that a cause of action did exist under the act against the principal for the actions of its agent. In Rickenbach the issue was for the issuance of an improper payoff statement.

Defendants argue on reply 8 that Plaintiffs cannot state a claim under the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act.

because the letter to the McTagues that included the allegedly improper charges was sent by Defendant Zucker, as the attorney for Defendants Wells and MERS, not Wells or MERS. The Court rejects this argument. Plaintiffs McTague allege that Defendant Zucker represented Wells and MERS throughout the foreclosure proceeding and mailed the payoff statement to the McTagues "on behalf of MERS and WELLS." (Am. Compl. PP 4, 28.) Defendants Wells and MERS cannot escape liability for conduct of their alleged agent. The Court finds that Plaintiffs have sufficiently alleged that they received "notice" from Wells and MERS through their attorney agent Zucker and so the Court will not dismiss their claim under the Truth-in-Consumer Contract Act.

As a matter of law, judgment must be entered on behalf of the Defendant-Third Party Plaintiffs against GMACM, GMAC Mortgage, LLC, and the Lenders

**IV. The Defendant Third Party Plaintiffs in Count II of the counterclaim and third party complaint object that the remedy be limited solely to the issuance of a corrected NOI.**

The Defendant Third Party Plaintiffs object that the remedy be limited solely to the issuance of a corrected NOI. The Defendants seek payment by GMACM and/or the Banks for violation of their fundamental rights under the FFA. The court in Guillaume and the Court's April 4, 2012 order reserved to this court the fashioning of the appropriate remedy. In most cases, a reduction in legal fees and costs of suit in the amount due to redeem or reinstate the mortgage presents no benefit for the borrower. The Plaintiff notes in footnote 2 that considerable time has passed since the NOIs were originally sent. As a result, the amount to redeem or reinstate the loans is far out of reach of most borrowers.

"In determining an appropriate remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11), trial courts should consider the express purpose of the provision: to provide notice that makes 'the debtor aware of the situation,' and to enable the homeowner to attempt to cure

the default *N.J.S.A. 2A 50-56(c)*, *Statement to Assembly Bill No. 1064, supra*, at 8. Accordingly, a trial court fashioning an equitable remedy for a violation of *N.J.S.A. 2A 50-56(c)(11)* should consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default ” Id at 480

In the instant case, it appears that the full extent of the offered remedy is to only give relief to the foreclosing lenders. The lender is allowed to proceed with the foreclosure without the necessity of re-filing. There is no provision to discourage such conduct on the part of the lenders. There is no consideration of the impact on the homeowners ability or opportunity to cure.

There being an admitted violation of the Act, the Court should exercise its equitable powers and provide some compensation to the borrowers for the failure to comply with the Act.

**V. The Defendant-Third Party Plaintiffs have proven a cause of action under the New Jersey Civil Rights Act.**

The Defendant-Third Party Plaintiffs have proven a cause of action in count III of the counterclaim and count III of the third party complaint for violations of the New Jersey Civil Rights Act. The Civil Rights Act, N.J.S.A. 10:6-2 provides:

c. Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection c. of

this section shall be applicable to a violation of this subsection

d An action brought pursuant to this act may be filed in Superior Court Upon application of any party, a jury trial shall be directed

e Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund

f In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection e. of this section, the court may award the prevailing party reasonable attorney's fees and costs

In the instant case, GMACM admits that it issued defective notices of intention to foreclosure on behalf of GMAC Mortgage, LLC and the other lenders which failed to include the names and addresses of the lenders The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure Guillaume at 470 It is for this reason that GMACM brought the within action

The Defendant-Third Party Plaintiffs' fundamental rights under the FFA have been violated by GMAC Mortgage, LLC and the other lenders through the actions of

their agent GMACM. The CRA provides that any person who deprives another of their rights is liable for civil penalty, damages, and attorneys fees

As a matter of law, judgment must be entered on behalf of the Defendant-Third Party Plaintiffs against GMACM, GMAC Mortgage, LLC, and the Lenders

**VI. Any dismissal by the Court should be without prejudice and the Defendant-Third Party Plaintiffs given an opportunity to be heard with a remedy.**

In the event, the court should hold that any of the Defendant-Third Party Plaintiffs' pleadings are defective, the court should allow them an opportunity to amend and to be heard. The New Jersey Supreme Court in the case of Printing Mart- Morristown v. Sharp Elecs. Corp., 116 NJ 739, 746 (1989) articulated the standard

However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary " Di Cristofaro v Laurel Grove Memorial Park, 43 *N.J. Super.* 244, 252 (App Div.1957)

The issues raised by the Defendant-Third Party Plaintiffs' are areas of law which have not been subject to much litigation. In the event the court finds any of the pleadings or process deficient, the Defendant-Third Party Plaintiffs should be allowed to file an amended pleading and an opportunity to be heard

## CONCLUSION

The Defendant Third Party Plaintiffs object that the limit of the remedy be limited solely to the issuance of a corrected NOI. The Defendants seek payment by GMACM and/or the Banks for violation of their fundamental rights under the FFA. The court in Guillaume and the Court's April 4, 2012 order reserved to this court the fashioning of the appropriate remedy. In most cases, a reduction in legal fees and costs of suit in the amount due to redeem or reinstate the mortgage presents no benefit for the borrower. The Plaintiff notes in footnote 2 that considerable time has passed since the NOIs were originally sent. As a result, the amount to redeem or reinstate the loans is far out of reach of most borrowers.

Respectfully submitted,

  
Lewis G. Adler, Esquire

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(856)845-1968  
ATTORNEY FOR Defendant-Third Party Plaintiffs  
Jennifer & Mark Grasso

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WILMINGTON TRUST COMPANY.

Third Party Defendants

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO.: F-25354-12

CIVIL ACTION

ORDER

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

**IT IS** on this \_\_\_\_ day of \_\_\_\_\_, 2013. **ORDERED** that

1) The Defendant-Third Party Plaintiffs motion to file a counterclaim and third party complaint are granted

2) The Defendant-Third Party Plaintiffs motion for judgment on the pleadings as to counts 1, 2, & 3 of the counterclaim and counts 1, 2, & 3 of the third party complaint are granted

---

, JSC

LEWIS G. ADLER, ESQUIRE  
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(856)845-1968  
ATTORNEY FOR Defendant-Third Party Plaintiffs  
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SUPERIOR COURT OF NEW JERSEY  
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DOCKET NO.: F-25354-12

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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 delivered by UPS Next day for filing to the above-named Court on this 21<sup>th</sup>  
day of April 2013

**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 25203-2119

, 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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**CIVIL ACTION**

**WILMINGTON TRUST COMPANY.**

**Third Party Defendants**

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**STATEMENT OF UNCONTESTED MATERIAL FACTS**

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## STATEMENT OF UNCONTESTED MATERIAL FACTS

- 1 GMAC Mortgage, LLC (GMACM) is authorized to act on behalf of the Foreclosure Plaintiffs in pending, pre-judgment uncontested foreclosure actions [Verified Complaint]
- 2 GMACM is a limited liability company and a wholly owned subsidiary of GMAC Residential Holding Company, LLC [ Verified Complaint paragraph 1]
- 3 GMACM services mortgage loans for residential properties in New Jersey [ Verified Complaint paragraph 2]
4. When GMACM is the servicer of a loan, it undertakes payment collection, loss mitigation (modifications, short sales, deeds in lieu) and collection efforts, including foreclosure, with respect to a mortgage loan. If a loan is owned by another entity, GMACM undertakes these efforts in accordance with the contracts that govern its relationship with the owner of the loan as well as the loan documents, Rules of Court and any applicable laws. As the entity collecting and processing payments, GMACM has the information relevant to the payments, escrows paid, amounts due and whether a loan is in default and by how much. This information is maintained on GMACM's system of record. In cases in which GMACM is only the servicer (and not also the lender), the lender is not likely to have possession of the relevant servicing information, as was recognized by the Supreme Court when it revised the Court Rules governing foreclosures at R. 4:64-1 and R. 4:64-2 in June 2011. GMACM made the within application to the Court

pursuant to the authority granted to GMACM as the servicing agent of Foreclosure Plaintiffs in pending foreclosure cases [ Verified Complaint paragraph 3]

- 5 The identities of the Foreclosure Plaintiffs in the foreclosure cases for which GMACM is seeking to issue corrected Notices of Intent (NOI) are identified alphabetically in the Counts 1 through 34. The Exhibits 1-34 of the complaint are the current lists of the pending, uncontested foreclosure cases that require a corrected NOI [ Verified Complaint paragraph 4]
6. One of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and server the NOI, in accordance with the applicable contracts and as required by NJSA 2A:50-56 of the Fair Foreclosure Act. The NOI is prepared based on current loan information held by GMACM and includes, among other data elements, information about the amount that is required to reinstate the loan and the date by which the reinstatement must occur [ Verified Complaint paragraph 5]
- 7 GMACM reviewed its pending foreclosure cases with its counsel to identify those foreclosure cases which will require a corrected NOI because the lender and the lender's address were not included in the previously served NOIs. The Corrected NOI List was reviewed for accuracy to verify the status of the foreclosures, the effect of loss mitigation on pending foreclosures, whether there are relevant bankruptcy proceedings and whether, since the original NOIs were sent, there

were intervening deaths of Foreclosure Defendants. [ Verified Complaint paragraph 9]

8. The Corrected NOI List attached as Exhibits 1-34 of the complaint includes the portfolio of loans that are pre-judgment, uncontested foreclosures that GMACM is servicing and in which deficient NOIs were served by GMACM. Specifically, as directed by the Supreme Court in Guillaume and the April 4, 2012 Order, the Corrected NOI List includes a listing of
  - a. 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
  - b. In which final judgment has not been entered, and,
  - c. In which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address. [ Verified Complaint paragraph 10]
9. The Corrected NOI List also identifies (1) the name of the lender on each loan which is listed as the Plaintiff in the foreclosure action, (2) the name of the first named Foreclosure Defendant, (3) the foreclosure docket number and, (4) the vicinage. While GMACM is not the Plaintiff in each of the foreclosure actions, it is the servicer of each such loan, maintains the records for each such loan, and is responsible for mailing the corrected NOI pursuant to the relevant contracts with the Foreclosure Plaintiffs. [ Verified Complaint paragraph 11]

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WILMINGTON TRUST COMPANY.

Third Party Defendants

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO.: F-25354-12

CIVIL ACTION

ANSWER, COUNTERCLAIM  
AND THIRD PARTY COMPLAINT

Defendants, by their attorney, individually, and as private attorneys general, and  
on behalf of all others similarly situated, hereby makes the following complaint:

Defendants, **Jennifer & Mark Grasso**, by way of Answer and Counterclaim

against the Plaintiff say.

- 1 Admit
- 2 Admit
- 3 Admit
- 4 Admit
5. Admit
- 6 Admit The Defendants object that the remedy be limited solely to the issuance of a corrected NOI. The Defendants seek payment by the Plaintiff and/or the Banks for violation of their fundamental rights under the FFA. The court in Guillaume and the Court's April 4, 2012 order reserved to this court the fashioning of the appropriate remedy. In most cases, a reduction in legal fees and costs of suit in the amount due to redeem or reinstate the mortgage presents no benefit for the borrower. The Plaintiff notes in footnote 2 that considerable time has passed since the NOIs were originally sent. As a result, the amount to redeem or reinstate the loans is far out of reach of most borrowers.

- 7 Admit
- 8 Admit
9. Admit
- 10 Admit
- 11 Admit
12. Admit
- 13 Admit

**COUNT 1- ALLY BANK**

- 14 Admit
- 15 Admit

**COUNT 2- AMMALGAMATED BANK**

16. Admit
- 17 Admit

**COUNT 3- DEUTSCHE BANK NATIONAL TRUST COMPANY**

- 18 Admit

19 Admit

**COUNT 4- DLJ MORTGAGE CAPITAL, INC**

20 Admit

21 Admit

**COUNT 5- E\*TRADE BANK**

22. Admit

23. Admit

**COUNT 6- EMC MORTGAGE, LLC**

24 Admit

25 Admit

**COUNT 7- GMAC MORTGAGE, LLC**

26. Admit

27. Admit

**COUNT 8- HSBC BANK USA, NA**

28 Admit

29 Admit

**COUNT 9- LEHMAN CAPITAL**

30 Admit

31 Admit

**COUNT 10- LEX SPECIAL ASSETS, LLC**

32 Admit

33 Admit

**COUNT 11- MACQUARE MORTGAGES USA, INC**

34 Admit

35 Admit

**COUNT 12- ONEWEST BANK, FSB**

36. Admit

37 Admit

**COUNT 13- RBS CITIZENS, NA**

38 Admit

39 Admit

**COUNT 14- RESIDENTIAL FUNDING COMPANY, LLC**

40. Admit

41 Admit

**COUNT 15- BANK OF NEW YORK MELLON TRUST COMPANY, NA**

42. Admit

43 Admit

**COUNT 16 US BANK, NA**

44 Admit

45 Admit

**COUNT 17-USAA FEDERAL SAVINGS BANK**

46. Admit

47 Admit

**COUNT 18- WELLS FARGO BANK, NA**

48 Admit

49 Admit

**COUNT 19- WILMINGTON TRUST COMPANY**

50 Admit

51. Admit

**COUNT 20- PENDING BANKRUPTCY MATTERS**

52 Admit

**WHEREFORE**, the Defendants-Third Party Plaintiffs request that that this court provide as part of its remedy compensation to the various Defendants-Third Party Plaintiffs for violation of their rights under the FFA attorneys fees and costs of suit

**COUNTERCLAIM  
BACKGROUND**

- 53 The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporates them by reference herein as if they were set forth fully herein
54. The Defendants-Third Party Plaintiffs, **Jennifer & Mark Grasso**, each have been served by GMACM
55. The Defendants-Third Party Plaintiffs, **Jennifer & Mark Grasso**, are each natural persons who are consumers who borrowed money secured by their residence for personal household expenses
- 56 **Jennifer & Mark Grasso**, are subject to a foreclosure action captioned GMAC Mortgage, LLC v Mark Grasso et al , Docket No. F-46628-10
- 57 The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act
58. The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure Guillaume at 470
- 59 The Court decision in Guillaume was not limited to prospective relief only. See footnote 3
- 60 GMACM as a servicer was acting as an agent of the lender principals named in the complaint.

**COUNT ONE**  
**TRUTH-IN-CONSUMER CONTRACTS, WARRANTY**  
**AND NOTICE ACT. N.J.S.A. 56:12-1**

- 61 The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein
- 62 The notices of intention to foreclose issued by the GMACM on behalf of the lenders which failed to include the lender's identity and the lender's address in violation of the Fair Foreclosure Act and is actionable as a violation of the Truth-In-Consumer Contracts, Warranty and Notice Act N J S A 56 12-14 et seq (TCCWNA)
- 63 TCCWNA provides that No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed NJSA 56 12-15
- 64 It is a violation of the Act for the lenders and their agent to send notices of intention to foreclose which failed to include the lender's identity and the lender's address as required by the FFA
65. TCCWNA provides that "Any person who violates the provisions of this act shall

be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. N.J.S.A. 56:12-17

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against GMACM for damages, a statutory penalty of at least \$100 for each violation, attorney's fees, interest and costs of suit.

**COUNT TWO**  
**GUILLAUME**

66. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein.

67. The Court in Guillaume provided that the trial court has the authority to mold an appropriate equitable remedy for violations of the requirements for failure to comply with the notice requirements of the FFA.

68. The Court held:

Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case.

Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application, the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties." [*Seais, Roebuck &*

*Co v Camp*, 124 N.J. Eq. 403, 411-12, 1 A.2d 425 (E. & A.1938) (quoting John N. Pomeroy, *Equity Jurisprudence* 109 (4th ed. 1918)) [Absent legislative direction with respect to a remedy, New Jersey courts retain discretion "to fashion equitable remedies," which are "valuable because they allow relief to be fashioned directly to redress the statutory violations shown." *Brenner v Berkowitz*, 134 N.J. 488, 514, 634 A.2d 1019 (1993). *see also Marion v Roxy Garments Delivery Co*, 417 N.J. Super. 269, 275, 9 A.3d 607 (App.Div. 2010) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case")  
Id at 476

69 In determining an appropriate remedy for a violation of N.J.S.A. 2A:50-56(c)(11).

trial courts should consider the express purpose of the provision: to provide notice that makes "the debtor aware of the situation." and to enable the homeowner to attempt to cure the default. *N.J.S.A. 2A:50-56(c)*; *Statement to Assembly Bill No 1064, supra*, at 8. Accordingly, a trial court fashioning an equitable remedy for a violation of *N.J.S.A. 2A:50-56(c)(11)* should consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default. Id at 480.

70. In the instant case, it appears that the full extent of the offered remedy is to only give relief to the foreclosing lenders. The lender is allowed to proceed with the foreclosure without the necessity of re-filing. There is no provision to discourage such conduct on the part of the lenders. There is no consideration of the impact on the homeowners ability or opportunity to cure.

71. There being an admitted violation of the Act, the Court should exercise its equitable powers and provide some compensation to the borrowers for the failure to comply with the Act.

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the

Plaintiff for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit

### **COUNT THREE NEW JERSEY CIVIL RIGHTS ACT**

- 72 The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporates them by reference herein as if they were set forth fully herein
- 73 The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act.
- 74 The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure. Guillaume at 470
75. The Defendants rights under the FFA have been violated as a direct and proximate result of the Defendants' misconduct in violation of the New Jersey Civil Rights Act.
76. The Civil Rights Act NJSA 10:6-2 provides

c Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e of this section shall be applicable to a violation of this subsection.

d. An action brought pursuant to this act may be filed in Superior Court. Upon application of any party, a jury trial shall be directed.

e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.

f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection e of this section, the court may award the prevailing party reasonable attorney's fees and costs.

77 GMACM deprived the Defendants-Third Party Plaintiffs of the rights under the FFA by failing to include the lender's name and address in the notice of intention to foreclose.

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the GMACM for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit.

#### GMACM CLASS ACTION ALLEGATIONS

78. The Defendants-Third Party Plaintiffs repeat each and every previous allegation and incorporate them by reference herein as if they were set forth fully herein.

79 GMACM has brought this summary action against a uniform class of individuals GMACM has provided a list of individuals as an exhibit to its complaint that

A. 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

B In which final judgment has not been entered, and

C In which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

80. The Defendants-Third Party Plaintiffs bring this action on behalf of all persons similarly situated and pursuant to R. 4:32 as a class action on behalf of a statewide class of persons as defined below

81 The claims of the named class representatives and the absent class members have a common origin and share a common basis Their claims originate from the same illegal Notice of Intent to Foreclose issued by the GMACM in the same way toward the Individual Defendants-Third Party Plaintiffs and the members of the class As such, the Individual Defendants-Third Party Plaintiffs have been denied their rights under the FFA.

82. The actions of GMACM are not isolated GMACM has identified the class members in their exhibits 1-20

83. The actions of GMACM have affected similarly situated individuals throughout the State of New Jersey

84 GMACM has identified the class of 34 banks on whose behalf this action was brought The action can proceed with either a subclass for each bank or a class of the bank Third Party Defendants

85 The Defendants-Third Party Plaintiffs propose a class as

A. 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.

B In which final judgment has not been entered, and

C In which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

86 The proposed class representatives state a claim upon which relief can be granted that is typical of the claims of absent class members. If brought and prosecuted individually, the claims of each class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

87 The claims and remedial theories pursued by the named class representative are sufficiently aligned with the interests of absent class members to ensure that the individual claims of the class will be prosecuted with diligence and care by the individual Defendants-Third Party Plaintiffs as class representative.

88 The class members are so numerous that joinder of all members is impracticable. The list provided by the Plaintiffs list approximately 2724 persons.

89 The claims of the Defendants-Third Party Plaintiffs are typical of the claims of each of the class members, and the Defendants-Third Party Plaintiffs have no claim antagonistic to class members. They are aware that they cannot settle this action without Court approval. They have and will continue to vigorously pursue the class member claims.

90 The Representative Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class members. The Defendants-Third Party Plaintiffs are committed to the vigorous representation of the class members and have

retained competent counsel experienced in the prosecution of complex and class action litigation. Counsel have agreed to advance the costs of the litigation contingent upon the outcome.

91. GMACM has acted on grounds generally applicable to the class members, thereby justifying relief against GMACM, for the class members as whole.

92. A class action is superior to other methods for the fair and efficient adjudication of this controversy because prosecution of separate actions by mortgagors creates a high risk of inconsistent and varying adjudications, with inconsistent and varying results. Furthermore, as the damages suffered by many individual class members may be relatively small in relation to the costs of litigation, the expense and burden of individual litigation make it difficult, if not impossible, for class members to individually redress the wrongs done to them. Many, if not most, of the class members are unaware that claims exist against GMACM and the 34 lenders. There will be no unusual difficulty in the management of this class action.

93. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to, or which directly and irrevocably conflict with, the interests of the other class members.

94. The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representatives

will undertake to well and truly protect the interests of the absent class members

95 Questions of fact and law common to the class that predominate include but are not limited to:

- I. Did GMACM send notices which were in violation of the New Jersey Fair Foreclosure Act?

96. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to, or which directly and irrevocably conflict with, the interests of the other class members

97. The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representative will undertake to well and truly protect the interests of the absent class members

98. The named individual Defendants-Third Party Plaintiffs have engaged the services of counsel indicated below. Said counsel are experienced in complex class litigation, will adequately prosecute this action and will assert, protect, and otherwise well represent the named class representative and absent class members.

99. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action, or could substantially

impair or impede their ability to protect their interests. It is for this reason that the Plaintiff brought the within single action.

100 The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying applications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Such incompatible standards and inconsistent or varying adjudications, on what would be necessarily the same essential facts, proof and legal theories, would also create and allow to exist inconsistent and incompatible rights within the class.

101 GMACM on behalf of the 34 lenders named in the complaint, has acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

102 The questions of law and fact common to members of the class predominate over any questions affecting only individual members.

103. A class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that:

- a) individual claims by the class members are impractical as the costs of pursuit far exceed what any one Defendant-Third Party Plaintiff or class member has at stake.
- b) as a result, there has been no other litigation over the controversies herein, and individual members of the class have no interest in prosecuting and controlling separate actions, and
- c) the proposed class action is manageable.

PRAYER FOR RELIEF

Wherefore Defendants-Third Party Plaintiffs request that this court certify a class pursuant to Rule 4 32 and award:

- 1 Actual, special, and general damages according to proof;
- 2 Statutory damages and penalties,
3. Statutory damages.
- 4 Litigation Expenses and Costs of the proceedings herein,
- 5 Reasonable attorneys' fees; and
- 6 All such other further relief as the Court deems just

**THIRD PARTY COMPLAINT**

**COUNT ONE  
TRUTH-IN-CONSUMER CONTRACTS, WARRANTY  
AND NOTICE ACT. N.J.S.A. 56:12-1**

104. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

105. GMACM as a servicer was acting as an agent of the lender, GMAC Mortgage, LLC , the principal named in the foreclosure complaint

106 Third Party Defendants herein are 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

107 GMACM acted as Agent for the principal defendants listed above. As  
such they are liable to the defendants Third Party Plaintiffs for damages

108 The notices of intention to foreclose issued by the GMACM on behalf of  
the lenders. GMAC Mortgage, LLC which failed to include the lender's identity  
and the lender's address in violation of the Fair Foreclosure Act are actionable as  
a violation of the Truth-In-Consumer Contracts, Warranty and Notice Act  
N.J.S.A. 56 12-14 et seq (TCCWNA)

109 TCCWNA provides that No seller, lessor, creditor, lender or bailee shall  
in the course of his business offer to any consumer or prospective consumer or  
enter into any written consumer contract or give or display any written consumer  
warranty, notice or sign after the effective date of this act which includes any  
provision that violates any clearly established legal right of a consumer or  
responsibility of a seller, lessor, creditor, lender or bailee as established by State  
or Federal law at the time the offer is made or the consumer contract is signed or  
the warranty, notice or sign is given or displayed NJSA 56 12-15

110 It is a violation of the Act for the lenders and their agent to send notices  
of intention to foreclose which failed to include the lender's identity and the  
lender's address as required by the FFA

111 TCCWNA provides that "Any person who violates the provisions of this  
act shall be liable to the aggrieved consumer for a civil penalty of not less than

\$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. N.J.S.A. 56:12-17

WHEREFORE, the Defendants-Third Party Plaintiffs demands judgment against the Third Party Defendant for damages, a statutory penalty of at least \$100 for each violation, attorney's fees, interest and costs of suit

**COUNT TWO**  
**GUILLAUME**

112. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

113. The Court in Guillaume provided that the trial court has the authority to mold an appropriate equitable remedy for violations of the requirements for failure to comply with the notice requirements of the FTA

114. The Court held

Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case

Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties." [*Sears, Roebuck &*

*Co v Camp*, 124 N.J. Eq. 403, 411-12, 1 A 2d 425 (E & A.1938) (quoting John N. Pomeroy, *Equity Jurisprudence* 109 (4th ed. 1918)) ]Absent legislative direction with respect to a remedy, New Jersey courts retain discretion "to fashion equitable remedies," which are "valuable because they allow relief to be fashioned directly to redress the statutory violations shown " *Brenner v Berkowitz*, 134 N.J. 488, 514, 634 A.2d 1019 (1993), *see also Marion v Roxy Garments Delivery Co.*, 417 N.J. Super. 269, 275, 9 A 3d 607 (App.Div.2010) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case ") Id at 476.

115        In determining an appropriate remedy for a violation of N.J.S.A. 2A:50-56(c)(11), trial courts should consider the express purpose of the provision to provide notice that makes "the debtor aware of the situation," and to enable the homeowner to attempt to cure the default *N.J.S.A. 2A:50-56(c)*, *Statement to Assembly Bill No. 1064, supra.* at 8 Accordingly, a trial court fashioning an equitable remedy for a violation of *N.J.S.A. 2A:50-56(c)(11)* should consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default Id at 480.

116        In the instant case, it appears that the full extent of the offered remedy is to only give relief to the foreclosing lenders. The lender is allowed to proceed with the foreclosure without the necessity of refilling. There is no provision to discourage such conduct on the part of the lenders. There is no consideration of the impact on the homeowners' ability or opportunity to cure.

117        There being an admitted violation of the Act, the Court should exercise its equitable powers and provide some compensation to the borrowers for the failure to comply with the Act.

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the Third Party Defendants for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit

**COUNT THREE NEW JERSEY CIVIL RIGHTS ACT**

118 The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

119 The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act

120 The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure Guillaume at 470.

121 The Defendant-Third Party Plaintiffs rights under the FFA have been violated as a direct and proximate result of the Lenders' misconduct through the actions of their agent GMACM in violation of the New Jersey Civil Rights Act

122 The Civil Rights Act NJSA 10 6-2 provides.

c Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e of

this section shall be applicable to a violation of this subsection

d. An action brought pursuant to this act may be filed in Superior Court. Upon application of any party, a jury trial shall be directed

e Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.

f In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c of this section, the court may award the prevailing party reasonable attorney's fees and costs.

123 GMAC Mortgage, LLC and the other lenders through the actions of its agent, GMACM deprived the Defendants of the rights under the FFA by failing to include the lender's name and address in the notice of intention to foreclose

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the Third Party Defendants for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit

#### THIRD PART COMPLAINT CLASS ACTION ALLEGATIONS

124. The Defendants-Third Party Plaintiffs repeat each and every previous allegation and incorporate them by reference herein as if they were set forth fully herein

125 The Plaintiff has brought this summary action against a uniform class of individuals. The Plaintiff has provided a list of individuals as an exhibit to its complaint that:

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

126 The Defendants-Third Party Plaintiffs bring this action on behalf of all persons similarly situated and pursuant to R. 4:32 as a class action on behalf of a statewide class of persons as defined below

127 The claims of the named class representatives and the absent class members have a common origin and share a common basis. Their claims originate from the same illegal Notice of Intent to Foreclose issued by the Plaintiff as the agent 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 in the same way toward the Individual Defendants-Third Party Plaintiffs and the members of the class. As such, the Individual Defendants-Third Party Plaintiffs have been denied their rights under the FFA.

128. The actions of the Plaintiff and the Third Party Defendants are not isolated and they have identified the class members in their exhibits 1-35.

129. The actions of the Plaintiff and the Third Party Defendants have affected similarly situated individuals throughout the State of New Jersey.

130. Defendants-Third Party Plaintiffs propose a Third Party Defendant class

The Plaintiffs have identified the class of 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 on whose behalf this action was brought. The action can proceed

with either a subclass for each bank or a Third Party Defendant class of banks

serviced by GMACM

131. The Defendants-Third Party Plaintiffs propose a Defendants-Third Party Plaintiffs class as

A. 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

B In which final judgment has not been entered, and

C In which GMACM is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address

132 The proposed class representatives state a claim upon which relief can be granted that is typical of the claims of absent class members. If brought and prosecuted individually, the claims of each class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief

133 The claims and remedial theories pursued by the named class representative are sufficiently aligned with the interests of absent class members to ensure that the individual claims of the class will be prosecuted with diligence and care by the individual Defendants-Third Party Plaintiffs as class representative

134. The class members are so numerous that joinder of all members is impracticable. The list provided by GMACM lists approximately 2724 persons

135 The claims of the Defendants-Third Party Plaintiffs are typical of the claims of each of the class members, and the Defendants-Third Party Plaintiffs have no claim antagonistic to class members. They are aware that they cannot settle this action without Court approval. They have and will continue to vigorously pursue the class member claims

136. The Representative Defendants-Third Party Plaintiffs will fairly and

adequately protect the interests of the class members. The Defendants-Third Party Plaintiffs are committed to the vigorous representation of the class members and have retained competent counsel experienced in the prosecution of complex and class action litigation. Counsel have agreed to advance the costs of the litigation contingent upon the outcome.

137. US Bank through its agent GMACM has acted on grounds generally applicable to the class members, thereby justifying relief against 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 for the class members as whole

138. A class action is superior to other methods for the fair and efficient adjudication of this controversy because prosecution of separate actions by mortgagors creates a high risk of inconsistent and varying adjudications, with inconsistent and varying results. Furthermore, as the damages suffered by many individual class members may be relatively small in relation to the costs of litigation, the expense and burden of individual litigation make it difficult, if not impossible, for class members to individually redress the wrongs done to them

Many, if not most, of the class members are unaware that claims exist against the 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 There will be no unusual difficulty in the management of this class action.

139. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to or which directly and irrevocably conflict with, the interests of the other class members

140 The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representative will undertake to well and truly protect the interests of the absent class members

141. Questions of fact and law common to the class that predominate include but are not limited to:

I Did 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 though their agent GMACM send notices which were in violation of the New Jersey Fair Foreclosure Act?

142. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to or which directly and irrevocably conflict with, the interests of the other class members

143. The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representatives will undertake to well and truly protect the interests of the absent class members

144 The named individual Defendants-Third Party Plaintiffs have engaged the services of counsel indicated below. Said counsel are experienced in complex class litigation, will adequately prosecute this action and will assert, protect, and otherwise well represent the named class representative and absent class members.

145 The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action, or could substantially impair or impede their ability to protect their interests. It is for this reason that GMACM brought the within single action.

146 The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying applications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Such incompatible standards and inconsistent or varying adjudications, on what would be necessarily the same essential facts, proof and legal theories, would also create and allow to exist inconsistent and incompatible rights within the class.

147 US Bank and the 34 other lenders through their agent GMACM have acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

148. The questions of law and fact common to members of the class predominate over any questions affecting only individual members.

149 A class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that

- a) individual claims by the class members are impractical as the costs of pursuit far exceed what any one Defendants-Third Party Plaintiffs or class member has at stake,
- b) as a result, there has been no other litigation over the controversies herein, and individual members of the class have no interest in prosecuting and controlling separate actions, and
- c) the proposed class action is manageable

PRAYER FOR RELIEF

Wherefore Defendants-Third Party Plaintiffs requests that this court certify a class pursuant to Rule 4:32 and award.

- 1 Actual, special, and general damages according to proof,
- 2 Statutory damages and penalties.
- 3 Statutory damages:
4. Litigation Expenses and Costs of the proceedings herein.
- 5 Reasonable attorneys' fees, and
- 6 All such other further relief as the Court deems just

DESIGNATION OF TRIAL COUNSEL

The undersigned, Roger C. Mattson, Esquire and Louis D Fletcher, Esquire are designated as trial counsel

CERTIFICATION REGARDING FILING AND SERVICE

The undersigned hereby certifies that a copy of the within pleading was served and filed within the time allowed by R 4:6

CERTIFICATION

I hereby certify that, to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding

Dated:

2/21/13



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February 21, 2013

Jennifer Perez  
Clerk Superior Court of New Jersey Foreclosure Processing  
Services  
25 West Market Street 6<sup>th</sup> Floor  
Trenton, NJ 08625  
Attention Objection to Notice to Foreclose

**Re: IN RE APPLICATION BY GMACM TO ISSUE CORRECTED NOTICES  
OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE  
PLAINTIFFS IN UNCONTESTED CASES**

Docket No. F-25354

Dear Sir/Madam:

Please find enclosed on behalf of the Defendant-Third  
Party Plaintiff's the following documents:

- 1) Answer, counterclaim and third party complaint;
- 2) Motion for leave to file a counterclaim and third  
party complaint and for judgment on the pleadings  
with supporting papers;
- 3) Motion for class certification and appointment of  
class counsel with supporting papers;

I have enclosed the filing fees of \$200.00, \$30.00  
and \$30.00. A copy of the same has been served on the  
Defendants' counsel.

Truly yours,

  
Lewis G. Adler, Esquire

Cc: Honorable Paul Innes, P.J.Ch.  
Ian S. Marx, Esquire  
D. Brian O'Dell, Esquire