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OBJ TO NOI/ASC

Michelle Labayen  
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973-622-8180

MAR 27 2013

SUPERIOR COURT  
CLERK'S OFFICE

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GMAC Mortgage LLC

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
Mercer County

Plaintiff,

Docket No.: F F025354-12

-against-

Thomas Medina

, NOTICE of APPEARANCE

Defendant(s).

-----x

Sirs/Madams:

**PLEASE TAKE NOTICE**, that the Defendant, THOMAS MEDINA, hereby appears in the above entitled action, and that the undersigned has been retained as Attorney for said Defendant.

Dated: March , 2013  
Newark, NJ 07102

Yours, etc.

Michelle Labayen  
Law Office of Michelle Labayen  
One Gateway Center 26<sup>th</sup> Floor  
Newark, NJ 07102

To:

Greenberg Traurig LLP  
100 Park Avenue  
P.O. Box 677  
Florham Park, NJ 07932

Michelle Labayen  
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One Gateway Center  
Newark, NJ 07102  
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-----x  
GMAC Mortgage LLC

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER County

Plaintiff,

Docket No.: F 005810-13

-against-

THOMAS MEDINA

**Objection to Show Cause  
For Corrected NOI**

Defendant(s).

-----X

**PRELIMINARY STATEMENT**

Defendant, THOMAS MEDINA, objects to the allowance for GMAC to issue a Corrected Notice of Information for Foreclosure because of GMAC deliberate bad faith and attempts to commit additional fraud against the homeowners. GMAC with intent and malice attempted to sidesteps the requirement of this state by failing to follow N.J.S.A 2A:50-56(e).

1. Plaintiff's Complaint seeks foreclosure upon a "residential mortgage" as defined by the New Jersey Fair Foreclosure Act, N.J.S.A 2A:50-53 et seq., and therefore Defendant is entitled to the protections and requirements set forth in the Fair Foreclosure Act.
2. As a result, Plaintiff fails to state a claim upon which relief can be granted by this Court because Plaintiff failed to comply with provisions under the Fair foreclosure Act, Chapter 50 title 2A of the New Jersey Statutes prior to filing this Complaint, to wit
  - a. Plaintiff failed to serve Defendant with a proper

Notice of Intent to Foreclosure, by registered or certified mail, return receipt requested at least thirty (30) days in advance of filing the complaint and/or

Based on the foregoing, the court lacks subject matter jurisdiction to hear Plaintiff's Complaint for Foreclosure.

**WHEREFORE**, Defendant objects to the Corrected NOI demands judgment dismissing the Complaint with prejudice for lack of subject matter jurisdiction and /or failure to state a claim upon which relief may be granted.

**Objection due to failure to comply with NJ  
Fair Debt Collection Act**

3. Plaintiff's Complaint seeks to collect a debt subject to the "New Jersey Fair Debt Collection Practices Act" and therefore Defendant is entitled to the protections and requirements set forth therein. Defendant has been denied this protection
4. As a result Plaintiff's complaint fails to state a claim upon which relief can be granted by this Court because Plaintiff with intent failed to comply with the provisions under the Fair Debt Collection Act.

**WHEREFORE**, Defendant Objects to the corrected NOI and demands judgment dismissing the Complaint with prejudice for lack of failure to state a clam upon which relief may be granted.

**Objections due to failure to comply with  
Truth in Lending Act**

5. The transactions alleged in Plaintiff's complaint is a consumer transaction that involved a purchase-money mortgage secured by Defendants primary residence.

6. At all times relevant hereto, Plaintiff or Plaintiff's alleged assignor was a creditor under the Federal Truth in Lending Act, 15 U.S.C.A section 1601 et seq ("TILA") that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Defendant
7. Plaintiff or Plaintiff's alleged assignor failed to comply with TILA by failing to provide Defendant with proper and adequate written rescission notices and accurate material disclosures as required by TILA and continues to disregard and ignore federal and state procedures.
8. The TILA violations complained hereto were apparent on the face of the foreclosure documents resulting in assignee liability pursuant to 15 U.S.C section 1641(e).
9. But for Plaintiff's TILA violations, the Defendant would have exercised the right to rescind the mortgage by sending a Notice of Rescission of Mortgage to Plaintiff by certified mail, return receipt requested.
10. By virtue of the forgoing, the Defendant hereto exercises the right to rescind the mortgage and said mortgage which is the basis of the Plaintiff's complaint is hereby rescinded and Plaintiff's alleged security interest in Defendant's primary residence is void by operation of law.

WHEREFORE, Defendant objects to the corrected NOI, and demands judgment dismissing the Complaint with prejudice and awarding actual and statutory damages, attorneys fees and costs pursuant to 15 U.S.C section 1604(a) (2) (A) (iii).

Additionally, Plaintiff's claims are barred by the doctrine of waiver, unclean hands and other equitable doctrine and A judgment in favor of Plaintiffs will unjustly enrich the Plaintiffs

**Objection base on Consumer Fraud**

1. Plaintiff or Plaintiff's predecessor in interest engaged in unconscionable commercial practice, deception, fraud (legal and /or equitable) false, pretense, promise and/or misrepresentation which amount to predatory lending practices with regard to the subject mortgage.
2. Alternatively, or in addition thereto, Plaintiff or Plaintiff's predecessor in interest engaged in acts or omissions including but not limited to knowingly concealment suppression and omissions of material facts which amount to predatory lending practices in connection with the subject mortgage.
3. Plaintiff's predatory lending practices and other schemes and practices were the direct cause of Plaintiff's damages, if any, and were the direct and indirect legal and proximate cause of Defendant's damages.
4. The foregoing acts of Plaintiff's constitute violations of New Jersey's Consumer Fraud Act N.J.S.A 56:8-2 et seq. as a result of which Defendant suffered ascertainable loss.

WHEREFORE, Defendant objects to correction of NOI seeks judgment against Plaintiff as follows:

**(Objection based on Mortgagor's Violation of Duty of Care)**

1. Defendant repeats, realleges and incorporates by references all paragraphs above as if fully set forth herein
2. GMAC owed to Plaintiffs a Duty of Care with respect to servicing their mortgage loans for reasons including, without limitation that the loan was secured by an interest in Plaintiff's family residence and that a lack of care or additional unnecessary fees or bank ordered expensed would result in overpayments causing great economic hardship.
3. Plaintiff bargained and performed in good faith that the Defendant would properly calculate escrow, apply mortgage payments correctly to principal to interest, to properly apply escrow payments to principal and interest, to refrain from applying additional fees, consider for HAMP and other modification required under the AG Settlement.
4. GMAC is liable to the plaintiff for the actual damages they have sustained by reason of its violation of Duty of Care, in an amount to be determined by the Trier of fact, together but not limited to statutory, exemplary and punitive damages, out of pocket expenses, cost and time of repairing credit, pain, suffering, embarrassment, inconvenience, loss of incidental time, frustration, emotional duress, mental anguish, fear of personal and financial stress.

March 18, 2013

Respectfully Submitted

Michelle Labayen, Esq.  
Law office of Michelle Labayen  
One Gateway Center 26<sup>th</sup> Floor  
Newark, NJ 07102  
Office: 973-622-8180

**CERTIFICATE OF SERVICE**

We hereby certify a copy of Defendant's objection was served to all interested parties on March 19, 2013

**CERTIFICATION PURSUANT TO R.4:5-1(2)**

The undersigned, of full age, hereby certifies

1. I am an attorney of the State of New Jersey with the firm of Michelle Labayen, PC and am the attorney principally charged with handling this matter.
2. To the best of my knowledge and information, the within action is not the subject of any other action pending in any court, or any arbitration proceeding contemplated; and there are no other parties who should be joined in this action at this time.
3. This certification is provided pursuant to the requirements of R 4:5-1. I hereby certify that the forgoing statements made by me are true. I am aware that if any of the forgoing statements made by me are willfully false, I am subject to punishment

Respectfully Submitted,

By: \_\_\_\_\_

3/18/2013

Michelle Labayen, Esq.

The Law office of Michelle Labayen PC

One Gateway Center Suite 2600  
Newark, NJ 07102  
973-622-8180

**SERVICE UPON THE ATTORNEY GENERAL**

Service of a copy of Answer, Defenses and counterclaims I this matter is being made upon the Attorney General of the State of New Jersey, Pursuant to the Consumer Fraud Act for the purposes of encouraging intervention, by mailing a copy of said complaint to Anne Milgram, Attorney General, Office of the Attorney General, Hughes Justice Complex, P.O. Box 080, 25 West Market Street, Trenton, NJ 08625

3/18/2013

Respectfully Submitted,

By: \_\_\_\_\_

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