IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENNIS A. RHODES, GERALD A. BENDER , EDWARD H. WOLFERD, JR., and DIANE and CHARLES J. GILES, individually and on behalf of all others similarly situated,	:	**Civil Action No. 5:09-cv-01302-CDJ**
Plaintiffs,	:	
v.	:	**JURY TRIAL DEMANDED**
ROSEMARIE DIAMOND, FRANCIS S. HALLINAN, DANIEL G. SCHMIEG, LAWRENCE T. PHELAN, JUDITH T. ROMANO, PHELAN HALLINAN & SCHMIEG, LLP, PHELAN HALLINAN & SCHMIEG, P.C., WELLS FARGO & COMPANY, WELLS FARGO BANK, N.A., COUNTRYWIDE HOME LOANS SERVICING LP and COUNTRYWIDE HOME LOANS, INC. (both now owned by BANK OF AMERICA),	:	
Defendants.	:	

AMENDED COMPLAINT - CLASS ACTION

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On behalf of themselves and all others similiarly situated, Plaintiffs Dennis A. Rhodes, Gerald A. Bender, Edward H. Wolferd, Jr., and Diane and Charles J. Giles ("Plaintiffs") bring this action against Defendants for damages and injunctive relief.

Except for allegations concerning their own acts and the wrongful acts of Defendants that damaged Plaintiffs' interests, Plaintiffs' allegations are based on information and belief. Plaintiffs' information and belief are derived from an investigation undertaken by their attorneys, which includes, among other things (1) interviews of witnesses; (2) review and analysis of court and other public records; and (3) review and analysis of legal journals, Congressional testimony, news media reports and published commentaries disseminated by representatives of the Office of the United States Trustee and other public agencies. Additional evidentiary support confirming the truth of the allegations in this Complaint will be established through discovery from Defendants and non-parties with knowledge of the systematic conduct alleged herein.

I. INTRODUCTION AND OVERVIEW

1. This is a proposed class action on behalf of all homeowners who, during the period from January 15, 2004 through the present ("Class Period") (1) resided in the Commonwealth of Pennsylvania or the State of New Jersey; (2) were defendants in mortgage foreclosure actions prosecuted by the law firm of Phelan Hallinan & Schmeig, LLP or Phelan Hallinan & Schmeig, P.C. and their attorneys (collectively "PHS"); (3) were forced to pay systematically inflated or fabricated charges imposed by PHS in mortgage foreclosure actions that did not result in sheriffs' sales because of loan modification agreements, bankruptcy filings or distress sales. These systematically inflated or fabricated charges include, without limitation (a) misappropriation or theft of

sheriff's deposit refunds that were not credited properly to homeowners' accounts (¶¶ 78-101, below); (b) unreasonable attorneys' fees or attorney fees that were not actually incurred; (c) excessive real estate title and litigation support costs generated through inside transactions with affiliated companies owned and controlled by Defendants Lawrence T. Phelan, Francis S. Hallinan and Daniel G. Schmieg; (d) unessential property inspection and valuation fees ; and (e) duplicative costs for "services" already included in independent charges assessed by PHS. (¶¶ 102-110, below)

2. This action is also brought on behalf of Pennsylvania and New Jersey homeowners who during the Class Period were prosecuted by PHS on behalf of "plaintiffs" that did not hold legal title to mortgages or notes relied upon by PHS in filing its foreclosure actions -- circumstances that at times caused PHS or its agents to record phony assignments with county land record agencies (¶¶ 112-144, below). In disregard of its duty of candor to the courts, among other professional and legal obligations, PHS has maintained the pretense of an attorney-client relationship with entities that have no standing to sue homeowners in foreclosure lawsuits. This contrived "representation" continues throughout state court foreclosure proceedings prosecuted by PHS and, in many instances, it persists through false creditor claims filed by PHS in federal bankruptcy actions (¶¶ 134-135, 175f and n. 182, below). As a direct and intended result of this artifice, PHS obtains for itself opportunities to reap the inflated or fabricated fees identified in ¶ 1, above.

3. The fraudulent schemes perpetrated by PHS are made possible through the knowing cooperation of lenders or mortgage servicers that retain PHS to prosecute foreclosure actions, including Defendants Wells Fargo Bank, N.A., and Countrywide

Home Loans, Inc. (¶¶ 56-73, below). These "clients" are aware of PHS' systematic pattern of misconduct, but they encourage, facilitate and turn a blind eye to it. This is because (1) they benefit financially from PHS' wrongdoing, which is aided and abetted by computerized case management and invoicing systems that such "clients" require PHS to use (¶¶ 148-159, below); (2) they benefit operationally from their long-term, mutually profitable relationship with a large-volume law firm that claims to be "the region's premier foreclosure operation, representing almost every major lender and loan servicer"[1] (¶¶ 192-193, below); and (3) they understand that PHS's institutionalized misconduct is but one local extension of their own established pattern of mortgage foreclosure abuses, for which they have been excoriated by federal and state judges, academic commentators, government agencies and respected experts throughout the United States. (¶¶ 56-73, below). In these and other ways, PHS and its "clients" conduct their business through an enterprise controlled by them through a pattern of racketeering. (¶¶ 175-193, below).

4. Because of Defendants' wrongful conduct, Plaintiffs and other Class members have sustained damages substantially in excess of five million dollars. In addition, because Defendants persist in their unlawful practices, despite frequent public exposure and/or judicial condemnation of their misconduct, Plaintiffs and the Classes request an injunction requiring Defendants to undertake and implement institutionalized changes to their business and accounting practices, which in their current form exploit distressed homeowners struggling to survive in the worst financial crisis since the Great Depression.

[1] www.fedphe.com.

II. JURISDICTION AND VENUE

5. This action is instituted against Defendants for injuries sustained by Plaintiffs and Class members resulting from Defendants' violations of the Racketeer Influenced and Corruption Act ("RICO"), 18 U.S.C. §1962(c), and the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. §§ 1692(e)(2)(A) and (B), 1692f(1), and 1692(g)(2). To remedy these violations, Plaintiffs seek actual and statutory damages (including treble damages under RICO), together with costs of suit and reasonable attorneys' fees. Federal question jurisdiction is conferred upon this Court by 18 U.S.C. § 1964(c); 15 U.S.C. § 1692k(d); and 28 U.S.C. §§ 1331, 1334 and 1337.

6. This action is also instituted against Defendants for injuries sustained by Plaintiffs and Class members resulting from Defendants' violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201 *et seq*. To remedy Defendants' violations of the UTPCPL, Plaintiffs seek actual and statutory damages (including treble damages), together with costs of suit and reasonable attorneys' fees, as authorized by 73 P.S. § 201-9.2.

7. In addition, Plaintiffs and Class members seek damages under common law remedies under the laws of the Commonwealth of Pennsylvania and the State of New Jersey. State law causes of action available to redress Defendants' systematic misconduct include common law fraud, breach of contract, breach of good faith and fair dealing, money had and received, and negligent misrepresentation. In addition to actual and statutory damages, Plaintiffs and members of the Classes also seek (1) an accounting, restitution and disgorgement of funds obtained by Defendants as a result of their

violations of federal, Pennsylvania and New Jersey law; and (2) appointment of an auditor or special master to (a) ascertain the amount of money wrongfully taken by Defendants from Plaintiffs and members of the Classes; (b) recommend specific business management and accounting procedures that Defendants must adopt and implement to avoid future repetition of the wrongful conduct documented throughout this Complaint; and (c) monitor Defendants' compliance with any business management or accounting procedure that may be ordered by the Court in granting injunctive relief in this action.

8. The Court may adjudicate Plaintiffs' state law claims under principles of pendant jurisdiction. Moreover, under the Class Action Fairness Act of 2005, federal jurisdiction over class actions exists where, as here, any member of a class of plaintiffs is a citizen of a State different from any Defendant, and the aggregated amount in controversy exceeds five million dollars. *See* 28 U.S.C. §§ 1332(d)(2) and (6).

9. This Court has *in personam* jurisdiction over Defendants, *inter alia*, because Defendants live in and/or maintain a principal office, have employees and agents, and regularly transact business within this District.

10. Venue is proper in this District because many of the events giving rise to Plaintiffs' claims occurred in this District.

III. PARTIES

A. Plaintiffs

11. Plaintiff Dennis A. Rhodes is a homeowner and a consumer within the meaning of 15 U.S.C. § 1692a(3). Plaintiff Rhodes resides within this District in Berks County, Pennsylvania.

12. Plaintiff Gerald A. Bender is a homeowner and consumer within the meaning of 15 U.S.C. § 1692a(3). Plaintiff Bender resides within this District in Berks County, Pennsylvania.

13. Plaintiff Edward H. Wolferd, Jr. is a homeowner and a consumer within the meaning of 15 U.S.C. § 1692a(3). Plaintiff Wolferd resides within this District in Lancaster County, Pennsylvania.

14 Plaintiffs Diane and Charles J. Giles, husband and wife, were homeowners and are consumers within the meaning of 15 U.S.C. § 1692a(3). Plaintiff Diane and Charles Giles reside in Barnegat Township, New Jersey.

B. Defendants

15. Defendant Phellan Hallinan & Schmieg, LLP is a mortgage foreclosure law firm having its principal place of business at 617 J.F.K. Boulevard, Suite 1400, Philadelphia, Pennsylvania 19103. PHS is a domestic limited liability general partnership organized and existing under the laws of the Commonwealth of Pennsylvania.

16. Organized and operating as a professional corporation under the laws of the State of New Jersey, PHS also maintains an office at 400 Fellowship Road, Suite 100, Mount Laurel, New Jersey 08054.

17. Defendant Lawrence T. Phelan purports to be the managing partner of PHS offices in both Pennsylvania and New Jersey.[2] Phelan is admitted to practice law in the Commonwealth of Pennsylvania. Although he is not licensed to practice law in New Jersey, Phelan serves as president and majority shareholder of PHS's New Jersey professional corporation.

[2] www.fedphe.com/index.html

18. Defendant Francis S. Hallinan is a member of PHS, doing business in the firm's Philadelphia office. Hallinan is PHS's "administrative partner" who "oversees the firm's practices in both Pennsylvania and New Jersey." PHS describes Hallinan as "the 'behind the scenes' manager who ensures that the job gets done."[3] Hallinan is admitted to practice law in the Commonwealth of Pennsylvania and serves as vice president of PHS's New Jersey professional corporation.

19. Defendant Daniel G. Schmieg, a one-time freelance cartoonist from Texas,[4] is now a member of PHS, doing business in the firm's Philadelphia office. Schmieg is admitted to practice law in the Commonwealth of Pennsylvania. He serves as secretary of PHS's New Jersey professional corporation.

20. Defendant Rosemarie Diamond is a member of PHS who, like Defendant Lawrence Phelan, also purports to be "Managing Partner of the New Jersey office of PHS."[5] Following her admission to practice in Pennsylvania in 1992, Diamond was admitted to the New Jersey Bar in 1999. Perhaps as a means of qualifying for designation as a counsel/trustee for Freddie Mac, or for other client recruitment purposes, Diamond is sometimes held out to others by PHS as a member of Phelan Hallihan Schmieg & Diamond P.C., an entity that apparently has no legal existence.[6]

21. Defendant Judith T. Romano is a member of PHS, doing business in the firm's Philadelphia office. Romano is PHS's in-house "general counsel," who during the Class Period has had managerial responsibility for the firm's bankruptcy practice. She is

[3] www.fedphe.com/pages/FSH.htm
[4] www.fedphe.com/pages/DGS.htm
[5] www.fedphe.com/pages/RD.htm
[6] http://www.freddiemac.com/service/msp/pdf/desigcounsel.pdf at 15; http://www.sm-online.com/sm/ar-AFN08.pdf at 8.

admitted to practice law in the Commonwealth of Pennsylvania.

22. Defendant Wells Fargo & Company ("WFC") is a diversified financial services company maintaining its principal executive offices at 420 Montgomery Street, San Francisco, California 94163. WFC provides retail, commercial and corporate banking services in 39 states, including Pennsylvania and New Jersey, and in the District of Columbia. As of December 31, 2008, WFC had assets of $1.3 trillion, loans of $865 billion, deposits of $781 billion and stockholders' equity of $99 billion. Based on assets, WFC is the fourth largest bank holding company in the United States.

23. Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), WFC's principal subsidiary, is a national banking association chartered in Sioux Falls, South Dakota, with principal offices at WFC's headquarters in San Francisco, California. As of December 31, 2008, Wells Fargo had assets of $539 billion, or 41% of WFC's assets. Wells Fargo provides and services residential mortgages through its division Wells Fargo Home Mortgage (or through the division's alternate name, America's Servicing Company), which maintains its headquarters at 7000 Vista Dr., West Des Moines, Iowa 50266-93.

24. Defendant Countrywide Financial Corporation ("CFC") was a Delaware Corporation that maintained its principal executive offices at 4500 Park Granada, Calabasas, California 91302, which originated and serviced residential mortgages throughout the United States through the wholly owned subsidiaries identified in ¶¶ 25-26 below. On July 1, 2008, after CFC faced bankruptcy amid payment defaults and foreclosures tied to sub-prime mortgages, CFC merged with and became a wholly owned subsidiary of Bank of America Corporation ("Bank of America") in exchange for stock valued at $ 4.1 billion.

25. Defendant Countrywide Home Loans, Inc. was a New York corporation maintaining its principal executive offices at 4500 Park Granada, Calabasas, California 91302. Countrywide Home Loans, Inc. provided, originated, purchased, securitized, sold, and serviced home loans. In 2006, Countrywide financed 20 percent of all mortgages in the United States (at a value of about 3.5 percent of United States Gross Domestic Product), a proportion greater than any other mortgage company.

26. Defendant Countrywide Home Loans Servicing, LP was a Texas limited partnership doing business at 7105 Corporate Drive, Plano, Texas 75024. It was owned directly by Countrywide GP, Inc. and Countrywide LP, Inc., each a Nevada corporation and a wholly owned subsidiary of Countrywide Home Loans, Inc. Defendant Countrywide Home Loans Servicing, LP "serviced" mortgage loans originated, *inter alia*, by Defendant Countrywide Home Loans, Inc., Fannie Mae, Freddie Mac, Ginnie Mae, the U.S. Department of Housing and Urban Development and the U.S. Veterans Administration. After the July 1, 2008 CFC/Bank of America merger, Countrywide GP, Inc. and Countrywide LP, Inc. sold their partnership interest in Defendant Countrywide Home Loans Servicing, LP to a Bank of America holding company for approximately $19.7 billion. As of June 30, 2008, Countrywide Home Loans Servicing, LP's assets included approximately $15.3 billion of Mortgage Servicing Rights and $4.4 billion of reimbursable servicing advances. It now conducts business as BAC Homes Loans Servicing, LP.

27. Defendant Bank of America is a Delaware Corporation with principal executive offices at 100 N. Tryon Street, Charlotte, North Carolina 28255. Bank of America's acquisition of CFC, Countrywide Home Loans, Inc., Countrywide Home

Loans Servicing, LP made it the largest mortgage lender and servicer in the United States.

28. Throughout this Complaint, CFC, Countrywide Home Loans, Inc., Countrywide Home Loans Servicing, LP and Bank of America are collectively referred to as "Countrywide."

IV. FACTUAL ALLEGATIONS

A. Pervasive Abuse In The Mortgage Foreclosure Industry

1. Record Numbers of Homeowners Are at Risk of Losing Their Homes

29. In Pennsylvania, New Jersey and throughout the United States, there is an epidemic of mortgage foreclosures that the Pew Charitable Trust characterized as "Defaulting on the Dream" of homeownership.[7] As the Pew Charitable Trust warned almost two years ago, "[f]oreclosure can have a devastating impact on homeowners and their families. It can ruin their credit for years, adversely affect their jobs and children's schooling, and take away what for many Americans is their principal investment opportunity and chance to get ahead."[8]

30. On November 19, 2009, the Mortgage Bankers Association ("MBA") reported that 14.2 percent (almost one in ten) homeowners with mortgages on their property were more than 30 days delinquent on their loans as of September 30 2009, the highest level since 1972, when the MBA first began compiling delinqency data.[9] The percentage of loans in foreclosure as of September 30, 2009 was 4.47 percent, as

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[7] *Defaulting on the American Dream*, PEW CHARITABLE TRUST, April 2009 ("Pew Report"), www.pewcenteronthestates.org/uploadedFiles/PCS_DefaultingOnTheDream_Report_FINAL041508_01.pdf

[8] Pew Report at 11-12.

[9] Press Release, *Delinquencies Continue to Climb in Latest MBA National Delinquency Survey*, MORTGAGE BANKERS ASSOCIATION, Nov. 19, 2009, http://www.mortgagebankers.org/NewsandMedia/PressCenter/71112.htm;

compared to 2.7 percent for the same date in 2008, according to the MBA; this translates into a total of one in seven American mortgageholders now in dire financial straits. Overall, more than **five million** households are in jeopardy of losing their homes.[10]

31. About a month before the MBA released the above numbers, the Congressional Oversight Committee, pursuant to Section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, released a report on October 9, 2009 entitled "An Assessment of Foreclosure Mitigation Efforts after Six Months" ("Congressional Report").[11] The Congressional Report descrbed the gravity of the nation's mortgage foreclosure problem in appropriately stark terms:

> The United States is now in the third year of a foreclosure crisis unprecedented since the Great Depression, with no end in sight. Of the 75.6 million owner-occupied residential housing units in the United States, approximately 68 percent (51.6 million) of homeowners carry a mortgage to finance the purchase of their homes. Since 2007, 5.4 million of these homes have entered foreclosure, and 1.9 million have been sold in foreclosure. Absent a significant upturn in the broader economy and the housing market, another 3.5 million homes could enter foreclosure by the end of 2010.
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> Foreclosure rates are now nearly quadruple historic averages (see Figures 1 and 2)…. Homeowners avoiding foreclosure, but still losing their homes in pre-foreclosure sales (short sales) or deeds-in-lieu (DIL) transactions further add to this crisis.

Congressional Report at 6 (footnotes omitted).

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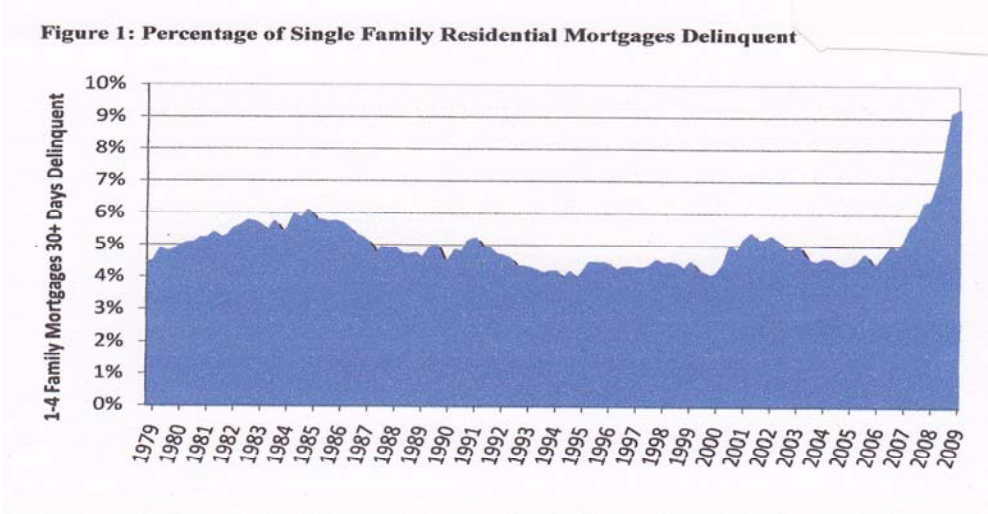
[10] David Streitfeld, *U.S. Mortgage Delinquencies Reach a Record High*, N.Y. TIMES, Nov. 20, 2009 (http://www.nytimes.com/2009/11/20/business/20mortgage.html); Renae Merle, *Problem Mortgages Hit New High at 14 Percent*, Nov 20, 2009, WASH. POST, Nov. 20, 2009 (http://www.washingtonpost.com/wp-dyn/content/article/2009/11/19/AR2009111903885.html); E. Scott Richard, *Foreclosures Will Keep Rising Through 1010, Report Says*, L.A. TIMES, Nov. 20, 2009 (http://www.latimes.com/business/la-fi-mortgage-defaults20-2009nov20,0,1052221.story); Renae Merle, *Foreclosure, Delinquency Rates Spike Amid Growing Unemployment*, WASH.POST,Nov.19,2009,(http://www.washingtonpost.com/wpdyn/content/article/2009/11/19/AR2009111902097.html); Julie Haviv, *One in 7 U.S. Mortgages Foreclosing or Are in Default*, REUTERS, Nov. 19, 2009, (http://www.reuters.com/article/idUSN1937065020091119).

[11] A PDF copy of the Congressional Report can be found on a link contained in http://cop.senate.gov/reports/library/report-100909-cop.cfm

32. Charts set forth in the Congressional Report, which reflect information superceded by the more discouraging MBA November 19, 2009 data, illustrate an escalating human tragedy that cannot be captured by statistics alone.[12]



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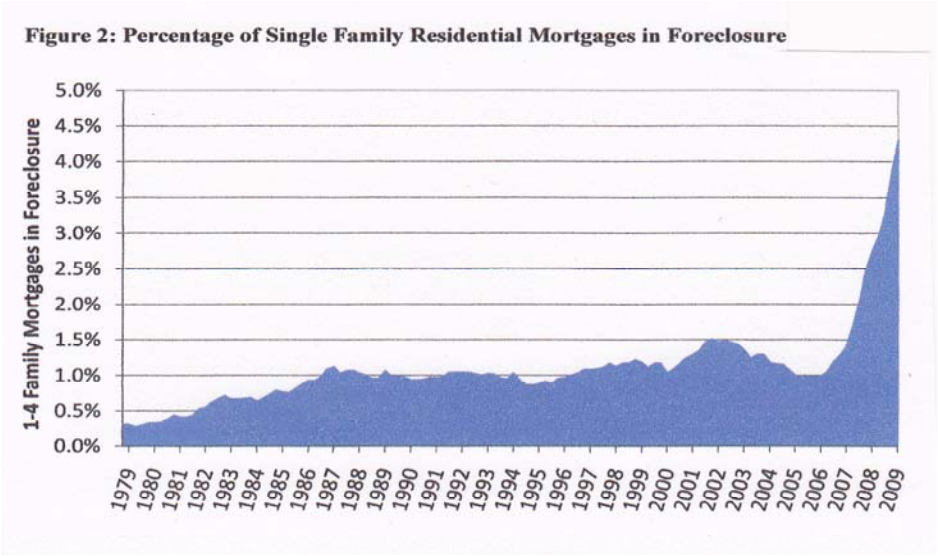

[12] The statistics alone are chilling: One alarming statistic is the estimate that "2 million children will lose their homes to foreclosure," which would not only deprive them of a place to live, but destabilize their educational foundation. *See* Congressional Report at 7 n.7, *citing*, FirstFocus, *The Impact of the Mortgage Crisis on Children* (Apr. 30, 2008) (www.firstfocus.net/Download/HousingandChildrenFINAL.pdf) (*citing* Russell Rumberger, *The Causes and Consequences of Student Mobility*, Journal of Negro Education, Vol. 72, No. 1, at 6-21, (2003)). For a real life human story behind the frightening numbers, *see* Erik Eckholm, *A Surge of Homeless Children Tests School Aid Program*, N.Y. TIMES, Sept. 5, 2009 (http://www.nytimes.com/2009/09/06/education/06homeless.html).

33. One primary "foreclosure driver" is peristent unemployment.[13] On December 4, 2009, the U.S. Department of Labor, Bureau of Labor Statistics, reported that the unemployment rate stood at a rate of 10 percent of the American workforce, or approximately 15.4 million people, not including another 861,000 discouraged people who are no longer actively seeking employment because they believe no jobs are available.[14] (By contrast, at the start of the recession in December 2007, the number of unemployed persons was 7.5 million, and the jobless rate was 4.9 percent). Among the employed, the number of persons working part time who would have preferred full-time work was 9.2 million.

34. Despite historically low interest rates (as of December 1, 2009, the average interest rate for a conventional 30-year mortgage was just 4.65 percent),[15] and despite efforts by federal, state and local governments to contain the still-mushrooming foreclosure crisis, record numbers of people continue to face the nightmare of losing their homes.

2. Government's Response to the Mortgage Foreclosure Crisis

35. All levels of government in the United States have recognized and reacted to the personal catastrophes wrought by the foreclosure crisis, with varying decrees of success.

36. On March 4, 2009, the U.S. Department of the Treasury issued initial guidelines for what was called the "Making Home Affordable Program," the purpose of

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[13] *See* Congressional Report at 103; 5 ("Rising unemployment, generally flat or even falling home prices, and impending mortgage rate resets threaten to cast millions more out of their homes, with devastating effects on families, local communities, and the broader economy. Ultimately, the American taxpayer will be forced to stand behind many of these mortgages").

[14] Bureau of Labor Statistics, Economic News Release, Dec. 4, 2009(http://www.bls.gov/news.release/empsit.nr0.htm)

[15] Press release, ZILLOW MORTG. RATE MONITOR, Dec. 1, 2009 (http://www.prnewswire.com/news-releases/thirty-year-fixed-mortgage-rate-continues-rapid-fall-lowest-rate-since-zillow-mortgage-marketplace-launched-in-april-2008-78212772.html)

which is to "prevent the destructive impact of foreclosures on families, communities and the national economy."[16] Approved by Congress at a cost to American taxpayers of $75 billion, the Helping Families Stay in Their Homes Act of 2009 was signed into law by President Barack Obama on May 20, 2009,[17] establishing what is now known as the Home Affordable Modification Plan ("HAMP"). As the President said at the time of the bill's signing:

> [T]oo many Americans are hurting. They're Americans desperate to find a job, or unable to make ends meet despite working multiple jobs; Americans who pay their bills on time but can't keep their heads above water; Americans living in fear that they're one illness or one accident away from losing their home -- hardworking Americans who did all the right things, met all of their responsibilities, yet still find the American Dream slipping out of reach.

37. HAMP tries to support loan modifications that will provide sustainable, affordable mortgage payments for up to 3 to 4 million borrowers by offering "pay-for-success" incentives to investors, lenders, servicers, and homeowners.[18] For servicers, these incentives include receipt of an up-front payment of $1,000 for each successful modification after completion of the trial period, and "pay for success" fees of up to $1,000 per year, provided the borrower remains current, as well as other financial rewards. As of June 17, 2009, Defendant Countrywide, by itself, received $5.2 billion in federal taxpayer incentives to work with borrowers to avoid foreclosure.[19]

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[16] http://www.treas.gov/press/releases/reports/guidelines_summary.pdf

[17] http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Signing-of-the-Helping-Families-Save-Their-Homes-Act-and-the-Fraud-Enforcement-and-Recovery-Act/

[18] *See* Testimony dated September 9, 2009 by U.S. Treasury Department Assistant Secretary For Financial Institutions, Michael S. Barr, before the House Financial Services Committee, Subcommittee on Housing and Community Opportunity. (http://makinghomeaffordable.gov/pr_09092009.html)

[19] Martin Crutsinger, *Treasury Adds $3.1 Billion to Foreclosure Program*, A. P., June 17, 2009 (http://www.boston.com/business/articles/2009/06/17/treasury_adds_31b_to_foreclosure_program/)

38. Despite the magnitude of the problem and its expense to American taxpayers, HAMP has not achieved the success desired by the federal government. This was apparent on October 10, 2009 with the issuance of the Congressional Report, which expressed concern about the limited scope and scale of the Making Home Affordable Program and questioned whether the Treasury Department's strategy will lead to permanent mortgage modifications for many homeowners.[20] The Congressional Report singled out for criticism some members of the mortgages servicing industry for failing to meet the obligations they assumed under HAMP:

> A key element to HAMP's success is the degree to which servicers comply with the Program's guidelines. If borrowers face incorrectly rejected applications, unreasonably long wait times for responses to questions and completed applications, lost paperwork, and incorrect information, HAMP will not reach its full potential.
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> * * *
>
> Preliminary information … suggests some participating servicers violate HAMP guidelines in a number of … serious ways, including requiring borrowers to waive legal rights, offering non-compliant loan modifications, refusing to offer HAMP modifications, charging borrowers a fee for the modification, and selling homes at foreclosure while the HAMP review is pending. Others have found such violations as "[d]enials of HAMP modifications for reasons not permitted in the guidelines," such as "insufficient income" and "too much back-end debt," assertions by participating servicers that they are not bound by HAMP, and incorrect "claims of investors denying HAMP modifications."

Congressional Report at 106-07 (footnote omitted).

39. Uncertainty over the possibility that HAMP is "foundering" became even more pronounced on November 28, 2009, when *The New York Times* quoted Assistant Treasury Secretary Thomas Barr as stating that the "banks are not doing a good enough

[20] *See* Congressional Report at 6-7 (link available at http://cop.senate.gov/reports/library/report-100909-cop.cfm).

job. Some of the firms ought to be embarrassed, and they will be."[21] While Secretary Barr promises that recalcitrant mortgage servicers[22] will be made to "suffer the consequences," some observers think these may be "empty threats" because "Treasury relies on voluntary agreements and cash incentives to get servicers to help homeowners."[23]

40. Both the Philadelphia Court of Common Pleas and the State of New Jersey have been in the vanguard of state and local efforts to lessen the pain of everyday citizens facing loss of their homes through foreclosure. Both of these programs are mandatory. Citing an "unprecedented increase in mortgage foreclosures" (and the accompanying "social dislocation, declining housing values, neighborhood blight, homelessness, and a general decline in neighborhood morale and safety"), New Jersey's Administrative Office of the Courts in January 2009 implemented a mandatory program under which mortgage lenders or servicers are required to submit to mediation requested by homeowners.[24]

41. Months before the foreclosure crisis gave rise to the federal HAMP program and the New Jersey mediation program, on April 16, 2008, the First Judicial District of

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[21] Peter S. Goodman, *U.S. Will Push More Firms to Reduce More Loan Payments*, N.Y. TIMES, Nov. 28, 2009 (http://www.nytimes.com/2009/11/29/business/economy/29modify.html). One real-life example of intransigent conduct by Bank of America (as successor to Countrywide) and its law firm, PHS, is described in an article written by Barry Carter, *Fearing the Approach of the Sheriff's Officer*, NEWARK STAR LEDGER, Dec. 30, 2009 (http://www.nj.com/news/ledger/jersey/index.ssf?/base/news-15/1262139307228080.xml&coll=1).

[22] Both Bank of America and Wells Fargo have been singled out as institutions that have "lagged" behind other servicers in responding to the federal government's mortgage relief initiative. *See* Darrell Delamonte, *BofA/Countrywide Lags Other Lenders in HAMP Loan Modifications*, DSNEWS.COM, Oct. 15, 2009 (http://www.dsnews.com/articles/bofa-countrywide-lags-other-lenders-in-hamp-loan-modifications-2009-10-15); Alan Zibel, *Two Big Banks Lag in Mortgage Aid Program*, A.P., Aug. 4, 2009 (http://www.dailybreeze.com/ci_12989252); Alan Zibel, *Foreclosure Wave Feared As Mortgage Aid Lags Behind Goal*, A.P., Dec. 11, 2009 (http://www.boston.com/business/articles/2009/12/11/foreclosure_wave_feared_as_mortgage_aid_lags_behind_goal/) *See also* http://makinghomeaffordable.gov/docs/MHA%20Public%20111009%20FINAL.PDF at 4-5.

[23] Theo Francis, *Treasury's Mortgage Modification: Empty Threats*?, BUS. WEEK, Dec. 2, 2009 (http://www.businessweek.com/bwdaily/dnflash/content/dec2009/db2009121_237976.htm)

[24] Press Release, *Statewide Mortgage Foreclosure Mediation Program Launched*, OFFICE OF N.J. ATTY. GEN, Jan. 9, 2009 (http://www.nj.gov/oag/newsreleases09/pr20090109a.html).

Pennsylvania, Philadelphia Court of Common Pleas, established a "Residential Mortgage Foreclosure Diversion Pilot Program" under which "[o]wner-occupied residential properties which are subject to execution to enforce a residential mortgage cannot proceed to Sheriff Sale unless a conciliation conference is held…."[25]

42. Philadelphia's program is viewed as a "national model to keep people in their homes."[26] As the *New York Times* reported on November 17, 2009, "In a nation confronting a still-gathering crisis of foreclosure, Philadelphia's program has emerged as a model that has enabled hundreds of troubled borrowers to retain their homes. Other cities, from Pittsburgh to Chicago to Louisville, have examined the program and adopted similar efforts."[27] From the Program's inception in April 2009 through September 2009, 6,300 conferences have been scheduled with approximately 1,600 homes saved from sheriffs' sale, not including another 3,000 cases that may be resolved as the parties continue to negotiate.[28]

43. While the Philadelphia program accomplishes what it can, homeowner advocates and foreclosure lawyers alike are mindful of the program's limitations. For example, at a hearing on foreclosure mitigation held by the Congressional Oversight Panel on September 24, 2009, Irwin Trauss, supervising attorney with the Consumer Housing Unit at Philadelphia Legal Assistance, testified:

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[25] First Judicial District of Pennsylvania, Philadelphia Court of Common Pleas, Joint General Court Regulation No. 2008-01, April 16, 2009 (http://fjd.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf).

[26] Jon Hurdle, *Philadelphia Program is Model in U.S. Housing Crisis*, REUTERS, Sept. 26, 2009 (http://www.reuters.com/article/gc03/idUSTRE48P58I20080926)

[27] Peter S. Goodman, *Philadelphia Gives Homeowners a Chance to Stay Put*, N.Y. TIMES, Nov. 17, 2009 (http://www.nytimes.com/2009/11/18/business/18philly.html?_r=1).

[28] Testimony of Hon. Annette M. Rizzo, Judge of the Court of Common Pleas for the First Judicial District of Philadelphia County, at Hearing on Foreclosure Mitigation Efforts Under TARP Before the Congressional Oversight Panel, Sept. 24, 2009 ("COP Hearing"), at 8. *See also* Testimony of Irwin Trauss at COP Hearing at 6. PDF copies of the COP Hearing testimony can be found on a link located in http://cop.senate.gov/hearings/library/hearing-092409-philadelphia.cfm.

> [V]oluntary modifications resulting from programs such as the [Philadelphia] Diversion Program and [federal] MHA will not enable families to save their homes in the vast numbers required to significantly stem the tide of foreclosures. Voluntary modifications, while helpful to some people, in my experience, only help at the margins. Preventing foreclosures in the numbers necessary to have a significant impact on the continued erosion of the housing market and the mass dislocation of people from their homes requires something more. We are faced now with loans that are defaulting for a combination of reasons. In addition to the millions of loans that are in default because they were unaffordable and unsustainable when they were made, we now have millions of defaults that are the result of the rising tide of unemployment. To address this situation we need a multi-pronged approach that is not dependent on the willingness of the mortgage servicers to agree to the solution and is not dependent on the lenders determining for themselves whether they have complied with the requirements of the program.[29]

44. PHS partner Rosemarie Diamond, identified above at ¶ 20, co-wrote an article circulated to her colleagues at the USFN, a foreclosure industry group that refers to itself by the registered trademark, "America's Mortgage Banking Attorneys."[30] This article, published on February 12, 2009, asserts that the Philadelphia program has produced "near chaos" and "little success," yielding mostly failed mediations that "waste valuable judicial resources" and create "delay as an unproductive by-product." Diamond, the only author of the article whose firm practices in Philadelphia, wrote:

> Thus far, Philadelphia County has spent nearly $1 million promoting and managing the program. Of the 686 mandatory conciliation conferences attended by this author's firm on behalf of its clients, only 31 matters were settled as a result of the conferences. During that same time period, direct loss mitigation efforts between the lenders and borrowers resolved 103 of the pending actions. In essence, the direct efforts of the parties are

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29 http://cop.senate.gov/hearings/library/hearing-092409-philadelphia.cfm

30 Peter Mehler, Rosemarie Diamond and Michele Sensale, *Mediation: Views from OH, PA, NJ, and CT*, USFN, Feb 12, 2009 (http://www.usfn.org/AM/Template.cfm?Section=Home&CONTENTID=11901&TEMPLATE=/CM/HTMLDisplay.cfm&SECTION=Article_Library).

> three times more successful than the court-sponsored mediation program.

If Defendant Diamond's statement is true, it is an indictment of PHS' refusal to participate in good faith in Philadelphia's Residential Mortgage Foreclosure Diversion Pilot Program more than it is a *bona fide* criticism of the program itself.

45. As demonstrated below, the institutionalized practices of some mortgage servicers and their attorneys (PHS prominently among them) have exacerbated the toxic explosion of residential mortgage foreclosures that has eluded solution by federal, state and local government. Whether a solution can be found is uncertain, but judicial authority can and should be exercised to require mortgage servicers and their lawyers to follow established legal rules, and to punish them severely when they don't.

3. Unscrupulous Mortgage Servicers and Their Attorneys Systematically Exploit and Profit From the Mortgage Foreclosure Crisis

a. "Egregious Mortgage-Related Schemes" Are "Known Problems" in the Foreclosure Industry

46. While the lives of millions of homeowners and their families have been turned upside down by the foreclosure crisis, painful times have presented unprecedented opportunities for profit to servicers and law firms like PHS that specialize in the prosecution of residential foreclosure actions and related bankruptcy matters. They have cashed in on these opportunities in ways that are both morally bankrupt and unlawful.

47. In a March 30, 2008 article, the *New York Times* identified several cases in which homeowners forced into bankruptcy under threat of losing their homes to foreclosure have been victimized by "improper fees" charged by mortgage servicers and their lawyers. As the *Times* reported:

> [A] small army of law firms and default servicing companies, who represent mortgage lenders, have been raking in mounting profits. These little-known firms assess legal fees and a host of other charges, calculate what the borrowers owe and draw up the documents required to remove them from their homes. As the subprime mortgage crisis has spread, the volume of the business has soared, and firms that handle loan defaults have been the primary beneficiaries. Law firms, paid by the number of motions filed in foreclosure cases, have sometimes issued a flurry of claims without regard for the requirements of bankruptcy law, several judges say.[31]

48. Institutionalized exploitation of financially distressed homeowners and abuse of the nation's system of justice has become so prevalent among mortgage servicers and their law firms that the Office of the United States Trustee ("UST"), part of the U.S. Department of Justice, has made it a priority to identify and punish creditors and counsel that file false or inaccurate claims in foreclosure-related bankruptcy cases.[32]

49. On May 6, 2008, a subcommittee of the United States Senate's Committee on the Judiciary convened a hearing on the topic "*Policing Lenders and Protecting Homeowners: Is Misconduct In Bankruptcy Fueling the Foreclosure Crisis?*" Testimony provided at the hearing by Clifford J. White III, Executive Director of the UST, leaves no doubt that the answer is yes. Director White testified:

> Protecting consumer debtors is one of the most important objectives of the [UST]'s enforcement efforts. One of the basic principles of our bankruptcy system is that the honest but unfortunate debtor deserves a

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[31] Gretchen Morgenson and Jonathan D. Glaser, *Foreclosure Machine Thrives on Woes*, N.Y.TIMES, Mar. 30, 2008 (http://www.nytimes.com/2008/03/30/business/30mills.html?_r=1&sq=morgenson&st=nyt&scp=8&pagewanted=all.) *See also* Ray Glier, *Legal Eagles Swooping in on Foreclosure Work*, ATLANTA BUS. CHRON., Oct. 24, 2008 ("Glier") ("Not only do the law firms get a set fee from the banks, but some also tack on their own fees to the foreclosure process, such as fax fees, auction fees and sheriff fees, among other charges"), www.bizjournals.com/atlanta/stories/2008/10/27/focus5.html?b=1225080000%5E1720032&brthrs=1

[32] Pamela A. MacLean, *Mortgage Industry Probes Grow*, NAT'L. L.J., July 28, 2008 ("Allegations of shoddy accounting and padded bankruptcy claims have grown to such a pitch against the mortgage loan servicing industry and its lawyers that investigations have been launched by the Executive Office for U.S. Trustees and the Federal Trade Commission") (http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202423359052). *See also* Glier (The UST "says business is too good for some law firms that handle actual foreclosures. The government and its judges in some states -- particularly Texas, Florida, Ohio, Nevada, and one case in Georgia -- are investigating lenders and their lawyers for tacking on fees to distressed homeowners and running up their mortgage payments").

> fresh start. Those who prey upon debtors for their own financial gain undermine that basic principle.
>
> Among the more egregious mortgage-related schemes that we encounter are those perpetrated upon consumers facing foreclosures on their loan … [We] have been involved in significant litigation involving national mortgage servicing firms. Most of these cases involve homeowners who are behind in their mortgage payments and file for relief under chapter 13 of the Bankruptcy Code. To date, we have commenced actions or intervened in 16 pending cases involving mortgage servicers in eight judicial districts around the country. In addition, we are actively reviewing more than 30 cases in which we have not yet filed court papers.
>
> The US[T] has investigated complaints that some mortgage servicers were filing inaccurate papers in court claiming that debtors owe more money than they actually owe. We also investigated complaints that some mortgage servicers were tacking on charges that were undisclosed and impermissible under the terms of the loan contract or other applicable law.[33]

50. Director White explained in his Senate testimony that "in response to an increasing number of complaints about the accuracy of bankruptcy court filings," the UST established a "working group" to "review the complaints and devise a coordinated approach for addressing the problem."

51. During 2008, the UST initiated 68 actions against "systematic abuses" by mortgage servicers, including Defendant Countrywide, which has been the subject of litigation by UST in at least six states.[34] The UST's effort to uncover and punish abuses by mortgage servicers and their lawyers has continued into 2009, resulting in thoughtful judicial opinions that have shed light on improper practices that are a systemic blight on

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[33] Statement of Clifford J. White Before the Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, United States Senate, May 6, 2008 ("White Testimony") at 2; 5-6 (http://www.justice.gov/ust/eo/public_affairs/testimony/docs/testimony20080506.pdf)

[34] United States Trustee Program, *Annual Report for Fiscal Year 2008*, at 9-10 (http://www.justice.gov/ust/eo/public_affairs/annualreport/docs/ar2008.pdf); United States Trustee Program, FY 2010 Budget Request at 25-26 (http://www.justice.gov/jmd/2010justification/pdf/fy10-ustp.pdf); Kathy M. Kristof, *U.S. Investigates Countrywide Fees*, L.A. TIMES, Nov. 29, 2007 (http://www.latimes.com/business/la-fi-countrywide29nov29,1,4192234.story.)

the residential mortgage foreclosure industry (*see* ¶¶ 56-73, below).

52. Despite the UST's effort "to protect homeowners from lenders who improperly inflate their claims or who seek to foreclose on property without a proper showing of arrearages,"[35] the magnitude of the institutionalized problem of mortgage servicing abuse remains of scandalous proportions, and the ability of the UST to address the problem effectively is limited by budgetary and human resource constraints, as well as by confinement of the UST's jurisdictional mandate to cases arising under the United States Bankruptcy Code.

53. The seriousness of this issue has been underscored by an empirical study of 1,700 foreclosure-related Chapter 13 cases conducted by University of Iowa College of Law Professor Katherine M. Porter (funded by the National Conference of Bankruptcy Judges' Endowment for Education). Professor Porter found that questionable fees were added to borrowers' bills in nearly half of the mortgage loans she examined.[36] The data complied and analyzed by Professor Porter support her conclusion that "flawed mortgage servicing practices are a key contributor to the current crisis in the home mortgage market."[37]

54. While abusive mortgage servicing practices are often pronounced in bankruptcy proceedings, they harm non-bankrupt homeowners in a no less of an insidious way. Professor Porter observed that "[t]he misbehavior and mistakes of mortgage servicers [identified] in the bankruptcy data are not specific to the bankruptcy process. Indeed, the reliability of mortgage servicing may be worse for ordinary, nonbankrupt

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[35] Doreen Soloman, *Collaborative Efforts Help Protect Debtors From Unscrupulous Mortgage Schemes*, EXECUTIVE OFFICE OF U.S. TRUSEES, http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/2008/nac_200812.pdf

[36] Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 Texas L.Rev. 121, 124 (2008) ("Porter Study") (http://www.utexas.edu/law/journals/tlr/assets/archive/v87/issue1/porter.pdf). *See also* Gretchen Morgenson, *Dubious Fees Hit Borrowers in Foreclosure*, Nov. 6, 2007 (http://www.nytimes.com/2007/11/06/business/06mortgage.html?fta=y&pagewanted=all)

[37] Porter Study at 124.

Americans."[38]

55. As Professor Porter testified at the May 6, 2008 Senate Judiciary Subcommittee hearing on misconduct in the mortgage servicing industry:

> While bankruptcy is supposed to offer families one last chance to save their homes from foreclosure, the reality is that bankruptcy gives mortgage servicers new opportunities to engage in abusive practices. My study of 1700 bankruptcy cases showed that mortgage lenders routinely disobey clear rules of bankruptcy law and attempt to collect thousands more dollars than consumers believe is owed. These findings, along with dozens of published cases from bankruptcy courts, highlight how mortgage servicers' current practices permit them to impose unwarranted fees without scrutiny or sanction.
>
> The existing system does not ensure that borrowers pay only what is due under the terms of their mortgage notes. Instead, mortgage servicers can and do take advantage of struggling homeowners. Such misbehavior can cripple a family's efforts at homeownership. Without improved laws and enforcement activity, homeowners in financial trouble -- **both inside and outside bankruptcy** -- remain vulnerable to mortgage servicers' misbehaviors and mistakes. The costs of such abuse are devastating: families wrongfully lose their homes, the number of foreclosures is driven upward, and the integrity of the legal system is undermined.[39]

b. Countrywide's Documented History of Mortgage Servicing Abuse

56. After a trial in an adversary proceeding initiated by the UST, on July 31, 2009, Chief Judge Marilyn Shea-Stonum of the United States Bankruptcy Court for the Northern District of Ohio (citing Professor Porter as "one of the most deservedly respected scholars working to shed light on bankruptcy practices across the country") imposed sanctions against Defendant Countrywide for systematic mortgage servicing

[38] *Id.* (emphasis supplied). *See also* Written Testimony of Katherine Porter Before the Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, United States Senate, May 6, 2008 ("Porter Testimony") at 2 (http://judiciary.senate.gov/pdf/08-05-06Porter_Testimony.pdf), *citing*, Federal Trade Commission, *Mortgage Servicing: Making Sure Your Payments Count* (http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.shtm).("Any homebuyer can be a victim of abusive or illegal mortgage servicing. The documented instances of misbehavior are not limited to situations when a family files bankruptcy.")

[39] Porter Testimony at 1-2 (emphasis supplied).

practices determined to be " not reasonable," "reckless," an "abuse of process" and a "known problem" that Countrywide failed to correct despite "firm warnings from bankruptcy courts throughout the country."[40] Among other things, Judge Shea-Stonum found that:

> (1) "Countrywide's system for filing proofs of claim was designed to allow each actor in the process to act with indifference to the truth,"[41] which evidences "Countrywide's disregard for diligence and accuracy."[42]
>
> (2) Although Countrywide claimed to have made "improvements" to its discredited procedures, "none of them have sufficiently altered the nature of Countrywide's business model to prevent the same type of error and abuse from taking place in other … cases"[43]
>
> (3) "One problem with relying on the mortgage servicing industry to voluntarily improve its practices is the industry's incentives to increase costs. Its interests are not aligned with the borrower, nor even in some circumstances with its investor."[44]

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[40] *McDermott v. Countrywide Home Loans, Inc.*, Case No. 07-51027, Adv. No. 08-5031 (Bank. N.D. Ohio, July 31, 2009), Slip. Op. at 2, 3-4, 9. A copy of Judge Shea-Stonum's July 31, 2009 Opinion is attached as Exhibit A in the accompanying submission entitled "Compendium of Exhibits to Amended Class Action Complant," which is filed contemporaneously with this Amended Complaint. Documents included in this compendium are hereinafter identified as "Ex. __."

[41] *Id*. at 8.

[42] *McDermott v. Countrywide Home Loans, Inc.*, 2009 Bankr. LEXIS 2666, at *30-31 (Bank. N.D. Ohio, May 1, 2009).

[43] Ex. A at 8-9.

[44] *Id*. at 7-8, *quoting* Porter Study at 126-27. As a paper written by the Federal Reserve Bank of Boston concluded, "[t]he rules by which servicers are reimbursed for expenses may provide a perverse incentive to foreclose rather than modify" delinquent loans. Peter S. Goodman, *Mortgage Lenders Have Little Incentive to Help Homeowners*, N.Y. TIMES, July 30, 2009 (http://www.nytimes.com/2009/07/30/business/30services.html). Rich Miller, who oversaw "training" programs at Countrywide and worked as a project manager at Bank of America, told the *New York Times* that Bank of America's "short-term strategy" was to respond reluctantly to loan modification requests because there was greater profit to be made by waiting and hoping the economy will improve and delinquent customers will resume making payments. *Id*. David Dickey, a former Countrywide/Bank of America mortgage sales team leader, likewise told the *Times* that "[i]f they do a loan modification, they get a few shekels from the government," but "[t]here's all sorts of things behind the scenes" when it comes to the fee-generating rewards of foreclosures. *Id*. The dismal record of loan modifications compiled by Bank of America (*see* above at ¶ 39 n. 21 and 22) is eloquent testimony to its appreciation of "the perverse incentive to foreclose rather than modify" troubled homeowners' loan obligations.

57. In addition to the "firm warnings from bankruptcy courts throughout the country" mentioned by Judge Shea-Stonum,[45] Countrywide's mortgage abuses have also been the subject of investigation by the federal government, not only by the UST, but by the Federal Trade Commission and the Federal Bureau of Investigation.[46] This on top of civil actions brought by the Attorneys General of California and 10 other states, who obtained a settlement valued at $8.6 billion as a remedy for Countrywide's institutionalized "lending practices [that] turned the American dream into a nightmare for tens of thousands of families by putting them into loans they couldn't understand and

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[45] *See, e.g., Walton v. Countrywide Home Loans, Inc.*, 2009 WL 1905035, at *9 (S.D. Fla. June 9, 2009) (rejecting bankruptcy court conclusion that UST failed to state a claim for injunctive relief based on allegations that "Countrywide is a major national lender and servicer of secured loans that frequently seeks the payment of money from bankruptcy estates or the foreclosure of consumer mortgages. Countrywide has in the past … repeatedly failed to ensure the accuracy of its motions and pleadings when seeking relief from bankruptcy courts, which has abused the bankruptcy process and prejudiced parties in interest. Further, Countrywide's practices and conduct are likely to continue…."); *In re Countrywide Home Loans, Inc.*, 387 B.R. 467, 399 (Bankr. W.D.Pa. 2008) ("cases appear to reflect a common pattern, thread, or theme that runs through them involving the manner in which Countrywide, generally, calculates and determines the extent of its bankruptcy claims."); *In re Parsley*, 384 B.R. 138, 184 (Bankr. S.D. Tex. 2008) (criticizing "Countrywide's corporate culture" that "condones blockading personnel from communicating with outside counsel," "discourages the checking of outside counsel's work," and "promotes payment histories that are so confusing to the vast majority of persons, including attorneys and judges — not to mention borrowers — that it becomes necessary for legal assistants to 'simplify' them — leading to more errors and confusion; court called upon Countrywide to "reevaluate its policies and procedures … to ensure that its actions do not undermine the integrity of the bankruptcy system"); *Hill v. Countrywide (*No. 01-22574, Show Cause Order, Hearing Transcript (Bankr. W.D. Pa. Dec. 20-21, 2007) (Countrywide "recreated" escrow letters produced in post-discharge dispute, which the presiding judge described as "a smoking gun that something is not right in Denmark"; settlement required Countrywide to pay $100,000 to debtor in damages) (*see also* Gretchen Mortgenson, *Lender Tells Judge It 'Recreated' Letters*, N.Y. TIMES, Jan. 8, 2008, (http://www.nytimes.com/2008/01/08/business/08lend.html?_r=2&pagewanted=all)).

[46] *See* Countrywide Form 10-Q filed with the U.S. Securities and Exchange Commission for the period ended June 30, 2008, Note 26 to Consolidated Financial Statements at 52-53 (http://sec.gov/Archives/edgar/data/25191/000104746908009150/a2187147z10-q.htm); Jonathan Stempel, *Countrywide Faces FTC Probe Over Loan Serving*, REUTERS, Aug. 11, 2008 (http://www.reuters.com/article/idUSN1140200320080811);
See also http://www.ftc.gov/foia/frequentrequest.shtm (link for PDF copy of FTC's response to Freedom of Information Act request for consumer complaints against Countrywide; 1,269 complaints were received by FTC during the period from October 2005 through April 27, 2009).

ultimately couldn't afford," which in turn caused "catastrophic damage" to victimized homeowners.[47]

c. Wells Fargo's Documented History of Mortgage Servicing Abuse

58. Defendant Wells Fargo's record of institutionalized mortgage servicing abuse appears to be even worse than that of Defendant Countrywide. For example, on April 10, 2008, the Hon. Elizabeth W. Magner of the United States Bankruptcy Court for the District of Louisiana sanctioned Wells Fargo for a "systematic" policy and "corporate practice" that fails to "notify borrowers of the assessment of fees, costs, or charges [including sheriff's fee refunds] at the time they are incurred," a practice that exists during all stages of [Wells Fargo's] loan's administration and is not peculiar to loans involved in a bankruptcy."[48] Describing Wells Fargo's conduct as "duplicitous and misleading," Judge Manger observed:

> Although Wells Fargo was specifically asked to reconcile the amounts reflected on its prior proofs of claim with the amounts claimed on its account history, it did not. A review by the Court revealed why: the proofs of claim filed in the 2004 and 2007 Bankruptcies were so significantly erroneous that a reconciliation was not possible. Charges for NSF fees, tax searches, property preservation fees, and unapproved bankruptcy fees appeared on the proofs of claim filed in this and previous cases without explanation or substantiation.
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> * * *
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> The Court finds that Wells Fargo was negligent in its practices and took insufficient remedial action following this Court's rulings in *Jones v. Wells Fargo* to remedy problems with its accounting. The

[47] News Release, *Attorney General Brown Announces Landmark $8.68 Billion Settlement with Countrywide*, OFFICE OF CALIF. ATTY. GEN., Oct. 8, 2008 (http://www.ag.ca.gov/newsalerts/release.php?id=1618). *See also* Issue Paper, *Unfair and Unsafe: How Countrywide's Irresponsible Practices Have Harmed Borrowers and Shareholders*, CENTER FOR RESPONSIBLE LENDING, Feb. 7, 2008 (http://www.responsiblelending.org/mortgage-lending/research-analysis/unfair-and-unsafe-countrywide-white-paper.pdf).

[48] *In re Stewart*, 391 B.R. 327, 340, 342, 351 (Bankr. E,D. La. 2008), *aff'd in part, rev'd in part on other grounds*, 391 B.R. 577 (E.D.La. 2008). *See also In re Jones*, 366 B.R. 584 (Bankr.E.D.La. 2007) and *In re Jones*, 2007 WL 2480494 (Bankr.E.D.La.2007).

> Court will assess damages in the amount of $10,000.00, plus $12,350.00 in legal fees, for the abusive imposition of unwarranted fees and charges.[49]

59. Judge Manger's decision was affirmed on appeal by the District Court, but it remanded for further consideration part of her ruling that granted injunctive relief. On remand, Judge Magner again granted injunctive relief, which required Wells Fargo to "conduct an audit of all proofs of claim filed on its behalf in this District in cases pending on, or filed after, April 13, 2007, and to provide a complete loan history on every account."[50] In an opinion dated October 14. 2008, the Judge Manger explained:

> Given the admitted misapplication of payments systematically practiced by Wells Fargo, it is likely that trustees and debtors are paying on proofs of claim that are clearly erroneous. This Court can only assume that a review of the loans in question will necessitate amendments to proofs of claim.
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> * * *
>
> Wells Fargo maintains that it can flaunt this Court's rulings and its own contractual responsibilities and force every debtor to "prove" that it has misapplied payments. This is a ridiculous waste of judicial resources and an unacceptable burden on the trustees and debtors of the District. Having admitted to a systematic error in the administration of its loans, it is incumbent upon Wells Fargo to correct its error for all affected debtors. To do otherwise is to ignore its obligation to correct pleadings that are no longer accurate.[51]
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> * * *
>
> The imposition of monetary sanctions to reimburse Debtor for costs and legal fees incurred will not, in this Court's opinion, deter Wells Fargo from future objectionable conduct. Wells Fargo is a national lender, listed on the New York Stock Exchange, with

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[49] *In re Stewart*, 391 B.R. at 356-57.

[50] *In re Stewart*, 2008 Bankr. LEXIS 3226, at *9-10 (Bankr.E.D.La. October 14 2008) ("*Stewart II*"). One year later, these audits were still "ongoing," but Judge Manger found that "audits of the first fifty (50) accounts revealed discrepancies, in all but two cases, between the proper amortization of Wells Fargo loans and the proofs of claims on file." *In re Jones*, 2009 Bankr. LEXIS 3317, at *1, 2 (Bankr. E.D.La. Oct. 1, 2009).

[51] *Stewart II* at 11.

> considerable financial resources. The imposition of a $67,202.45 damage award is de minimis, and insufficient to act as a deterrent to future misconduct.[52]

60. Although she found as a matter of adjudicated fact that "Wells Fargo has demonstrated a pattern of overcharging borrowers and misapplying payments,"[53] Judge Manger hoped that her previous orders had "secured Wells Fargo's attention and that [Wells Fargo's] offer to amend its practices is real."[54] However, as Judge Manger came to realize, "the Court's belief that Wells Fargo would correct its previously flawed accountings was not confirmed" and injunctive relief was necessary to enforce "Wells Fargo's obligation to do so."[55]

61. A full year after Judge Manger arrived at this understanding, she wrote another opinion, this one dated October 1, 2009, which involved a different case where, after trial, the Court (1) found that Wells Fargo "willfully and egregiously" collected "undisclosed, unapproved fees and costs" during bankruptcy proceedings;[56] and (2) ordered the payment of damages, attorneys' fees and costs by Wells Fargo, and (with consent given in open court by Wells Fargo's counsel and its vice president for bankruptcy operations), ordered injunctive relief in the form of remedial accounting procedures to be adopted by Wells Fargo.[57] Wells Fargo appealed Judge Manger's orders, *inter alia*, by making a "disingenuous" claim that it did not consent to injunctive relief.[58] On appeal, the District Court affirmed "all findings of fact" and the "majority of the

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[52] *Stewart II* at 12-13, *quoting*, *In re Jones*, 2007 Bankr. LEXIS 2984, 2007 WL 2480494, at * 5 (Bankr. E.D.La. 2007). The United States District Court for the Eastern District of Louisiana affirmed Judge Magner's determinations in *In re Stewart*, 2009 U.S. Dist. LEXIS 76851 (E.D. La., Aug. 7, 2009).
[53] *Stewart II* at 43.
[54] *Stewart II* at 39, *quoting*, *In re Jones*, 2007 Bankr. LEXIS 2984, 2007 WL 2480494, at *7.
[55] *Stewart II* at 39-40
[56] *In re Jones*, 2009 Bankr. LEXIS 3317, at *1, 2 (Bankr. E.D.La. Oct. 1, 2009).
[57] *Id*., at *4.
[58] *Id*., at *4-5, *quoting*, *Jones v. Wells Fargo*, 391 B.R. 577, 611 (E.D.La. 2008).

rulings" by the Bankruptcy Court, but it remanded for further consideration the question of injunctive relief in light of the "subsequent and substantial change in Wells Fargo's position" on appeal.[59]

62. In her October 1, 2009 opinion, Judge Manger again explained the necessity of injunctive relief as a means of addressing Wells Fargo's persistent failure to correct known deficiencies in its accounting systems (and its "arrogant defiance of federal law"),[60] all which involve "transgressions" that affect "most likely every debtor with a Wells Fargo loan[61]":

> Wells Fargo has, on more than one occasion, distorted the facts, record and law. While parties have every right to fully litigate their position, the sheer number and magnitude of the post-trial pleadings filed in this and the appellate courts and the lapses in professionalism practiced, convince this Court that Wells Fargo has no interest in voluntarily correcting its mistakes.[62]
>
> * * *
>
> Wells Fargo asserts that every debtor in the district should be made to challenge, by separate suit, the proofs of claim or motions for relief from the automatic stay filed by Wells Fargo. It has steadfastly refused to audit the pleadings or proofs of claim on file in the district for errors and has refused to voluntarily correct any errors that come to light except through threat of litigation. Although its own representatives have admitted that it routinely misapplied payments on loans and improperly charged fees, they have refused to correct past errors. They stubbornly insist on limiting any change in their conduct prospectively, even as they seek to collect on loans in other cases for amounts owed in error.[63]

63. As Judge Manger observed, "Wells Fargo administers over 7.7 million loans nationwide. Just one improper fee or interest accrual of $ 10.00 per loan in any given year

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[59] *Id*., at *5, 8.
[60] *Id*., at *32.
[61] *Id*., at *22
[62] *Id*., at *21-22.
[63] *Id*., at *23-24.

amounts to $ 77 million in revenue," which "could potentially signal billions in improperly earned revenue."[64] The alternative to injunctive relief – individual litigation by financially hardpressed homeowners – is no solution to a problem of this size and scope. Again, according to Judge Manger:

> Because litigation with Wells Fargo has already cost this and other plaintiffs considerable time and expense, the Court can only assume that others who challenge Wells Fargo's claims will meet a similar fate. Over eighty (80%) of the chapter 13 debtors in this district have incomes of less than $ 40,000.00 per year. The burden of extensive discovery and delay is particularly acute to their interests. In this Court's experience, it takes four to six months for Wells Fargo to produce a simple accounting of a loan's history and over four court hearings. These debtors simply do not have the personal resources to demand much less verify the production of a simple accounting for their loans through a litigation process.[65]

64. Given their own personal encounters with Wells Fargo's institutionalized misconduct, other judges have expressed similar frustration. For example, on June 8, 2009, the Hon. Marvin Isgur of the United States Bankruptcy Court for the Southern District of Texas held that Wells Fargo and its counsel continued to file "intentionally inaccurate proofs of claim," which led the Court, like Judge Manger, to "caution" them that "immediate corrective actions should be taken to avoid similar actions in the future."[66] Likewise, the Hon. Audrey R. Evans of the United States Bankruptcy Court for the Eastern District of Arkansas granted an injunction against America's Servicing Company (an alternate name for the Wells Fargo's mortgage servicing division) in an effort to correct Wells Fargo's "servicing procedures" that "are not organized to ensure accuracy and accountability."[67]

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[64] *Id*., at *31 and n.59.
[65] *Id*., at *24.
[66] *In re Collins*, 2009 WL 1607737, at *1, 2, 3, 7 (Bankr. S.D. Tex, June 8, 2009).
[67] *In re Moffitt*, 390 B.R. 368, 388 (Bankr. E.D. Ark. 2008).

65. In similar circumstances, the Hon. John K. Olson of the United States Bankruptcy Court for the Southern District of Florida imposed more than $95,000 in sanctions against Wells Fargo and its foreclosure counsel for filing 45 "false affidavits" claiming that debtors owed penalty interest. Judge Olson concluded that this conduct resulted from Wells Fargo's "wayward accounting," which was "not unique to this case," and which resulted in a "systematic process of turning out unexamined and form pleadings" -- an "abuse of process" that required sanctions to deter the "continued recklessness" of Wells Fargo and its foreclosure lawyers.[68] Although his comment might be considered offensive by those who labor hard and honestly in the meat processing industry, Judge Olson observed that Wells Fargo and its counsel systematically "churn out unrefined and unexamined" legal documents with "all of the diligence and attention that goes into sausage making."[69]

66. As reckless and recalcitrant as Wells Fargo has been in continuing its systematic policy of saddling struggling homeowners with overstated and, in some cases, fabricated fees, Wells Fargo is no less defiant in pursuing its institutionalized practice of initiating mortgage foreclosure actions in the absence of any legal standing to do so.[70]

67. In several recent cases from jurisdictions throughout the United States, courts have identified repeated instances where Wells Fargo and its lawyers have raced to

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[68] *In re Haque*, 395 B.R. 799, 803, 804, 805 (Bankr. S.D. Fla. 2008).

[69] *Id* at 805.

[70] Wells Fargo's related institutionalized practice of targeting neighborhoods populated by racial and ethnic minorities for deceptive marketing of expensive sub-prime mortgages that ended in foreclosure has also prompted the City of Baltimore, the State of Illinois and the NAACP to file lawsuits on behalf of homeowners against Wells Fargo. *See* Michael Powell, *Bank Accused of Pushing Mortgage Deals on Blacks*, N.Y.TIMES, June 6, 2009 (http://www.nytimes.com/2009/06/07/us/07baltimore.html?_r=2&hp=&adxnnl=1&adxnnlx=1259241059-V/SvPvNoOfWVA9zwqlXeAA);
Press Release, *Madigan Sues Wells Fargo For Discriminatory and Deceptive Mortgage Lending Practices*, ILL. ATTY. GEN., July 31, 2009 (http://www.illinoisattorneygeneral.gov/pressroom/2009_07/20090731.html); Press Release, *NAACP Files Landmark Lawsuit Against Wells Fargo and HSBC*, March 13, 2009, NAACP (http://www.naacp.org/news/press/2009-03-13/index.htm).

the courthouse to file legal actions to remove families from their homes, without bothering to satisfy the fundamental requirement that creditors must hold legal title to or an equitable interest in mortgages on homeowners' property **at the time foreclosure actions are filed**.[71]

68. Observing that Wells Fargo is no "stranger" to the improper practice of bringing foreclosure actions on the basis of "anticipatory assignments" that may or may not be recorded after legal proceedings have begun against homeowners, the Hon. Timothy Patrick O'Reilly of the Court of Common Pleas for Allegheny County, Pennsylvania granted summary judgment in favor of homeowners and struck "assignments" that Wells Fargo recorded **after** its foreclosure action commenced.[72]

69. In similar fashion, by order and memorandum dated October 14, 2009, the Hon. Keith C. Long of the Commonwealth of Massachusetts Land Court invalidated a mortgage foreclosure judgment obtained by Wells Fargo because (despite Wells Fargo's "incorrect representation" to the court) Wells Fargo was not the owner of a mortgage at the time of its notice of sale of a family's home.[73] Judge Long explained:

> The issues in this case are not merely problems with paperwork or a matter of dotting i's and crossing t's. Instead, they lie at the heart of the protections given to homeowners and borrowers by the Massachusetts legislature. To accept the plaintiffs' arguments is to allow them to take someone's home without any demonstrable right to do so, based upon the assumption that they ultimately will

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[71] *See, e.g., Wells Fargo v. Jordan*, 2009 Ohio 1092; 2009 Ohio App. LEXIS 881, at *11, 12 (Ohio App., Eighth Jud. Dist., Mar. 12, 2009), *app. den.*, 123 Ohio St. 3d 1407; 2009 Ohio 5031; 914 N.E.2d 204; 2009 Ohio LEXIS 2730 (Sept. 30, 2009) (*citing, In re Foreclosure Cases*, 2007 WL 3232430 (N.D. Ohio, Oct. 31, 2007) (Boyko, J.); *In re Foreclosure Cases*, 521 F. Supp.2d 650 (S.D. Ohio 2007) (Rose, J.) and *Wells Fargo Bank, N.A. v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (Sep. 12, 2008).

[72] *Wells Fargo v. Janosik*, No. GD08-2561 (Pa. C.P. Allegheny Co., Mar. 23, 2009), Slip.Op. at 5 (Ex. B), *citing, Wells Fargo v. Long*, 934 A.2d 76 (Pa. Super. 2007), *aff'd*, 970 A.2d 488 (Table) (Pa. Superior 2009); *Wells Fargo v. Janosik*, Order to Strike Recorded Assignments of Mortgage, entered April 3, 2009 (Ex. C).

[73] *U.S. Bank, N.A. et. al. v. Ibanez et. al.*, No.08 MISC 38675517; LCR 679; 2009 Mass. LCR LEXIS 134, at *61-62 (Mass. Land Court, Oct. 14, 2009).

> be able to show that they have that right and the further assumption that potential bidders will be undeterred by the lack of a demonstrable legal foundation for the sale and will nonetheless bid full value in the expectation that that foundation will ultimately be produced, even if it takes a year or more. The law recognizes the troubling nature of these assumptions, the harm caused if those assumptions prove erroneous, and commands otherwise.

70. The Hon. Arthur M. Schack of the New York Supreme Court for Kings County is a prominent critic of mortgage industry members like Wells Fargo that file foreclosure actions without legal standing.[74] In one case, Judge Schack voided bogus after-the-fact assignments relied upon by Wells Fargo and its counsel in their attempt to remove people from their homes through foreclosures.[75] In another case, Judge Schack found that Wells Fargo "lacks standing to prosecute this matter because … it does not now, and has never owned the subject mortgage," and he ordered Wells Fargo's foreclosure lawyer to appear at a hearing and show cause why she and her law firm should not be sanctioned for filing a "frivolous" complaint that "asserts material factual statements that are false."[76] Responding to a suggestion by CBS News correspondent Seth Doane that he was throwing foreclosure cases out of court on the basis of a "small"

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[74] Michael Powell, *As a Foreclosure Judge, Arthur Schack Tosses Out Cases, Brooklyn Style*, N.Y. TIMES, Aug. 30, 2009 (http://www.nytimes.com/2009/08/31/nyregion/31judge.html?_r=5&emc=eta1); Amir Efrati, *Some Judges Stiffen Foreclosure Standards*, WALL ST. J, July 26, 2008 (http://meetings.abanet.org/webupload/commupload/RP282000/sitesofinterest_files/WSJjudgesstiffenforeclosures072608.com.pdf); Deborah Cassens Weiss, *Meet Judge Arthur Schack, Foreclosure Watchdog*, ABA J., July 28, 2008 (http://www.abajournal.com/news/article/meet_judge_arthur_schack_foreclosure_watchdog/);

[75] *Wells Fargo v. Farmer*, 19 Misc.3d 1141(A), 2008 WL 2309006 (N.Y.Sup. June 5, 2008). This invalid assignments at issue in this case were made by Argent Mortgage Company, LLC and Ameriquest Mortgage Company, both of which were owned by ACC Capital Holdings, a company that in 2006 agreed to pay $325 million to settle federal and state regulators claims of deceptive lending practices before being acquired by Citigroup on August 31, 2007. 2008 WL 2309006, at *3, *citing*, Eric Dash, *Citigroup Buys Parts of a Troubled Mortgage Lender*, N.Y.TIMES, September 1, 2007 (http://query.nytimes.com/gst/fullpage.html?res=9C04E4D61430F932A3575AC0A9619C8B63). Both Argent and Ameriquest also "executed" the bogus assignments relied upon by PHS in asserting a right to prosecute mortgage foreclosure actions against Plaintiffs Gerald Bender and Diane and Charles Giles in this case, assignments recorded months **after** PHS filed its foreclosure complaints. *See* (¶¶ 112-143, below).

[76] *Wells Fargo v. Reyes*, 20 Misc.3d 1104(A), 2008 WL 2466257, at * 1, 6 (N.Y. Sup. June 18, 2008).

"procedural issue," Judge Schack stated, "I don't think it's a small issue when somebody lives in a house and you're going to disrupt their lives and take away their home."[77]

71. Together with Judge O'Reilly in Pittsburgh and Judge Long in Boston, other courts concur with Judge Schack's reasoning, and they have taken comparable remedial action.[78]

72. In ruling that foreclosure plaintiffs must demonstrate that they are "the holder and owner of a Note and Mortgage **as of the date the Complaint was filed**" because it is a jurisdictional prerequisite for standing under Article III of the United States Constitution, the Hon. Christopher A. Boyko of the United States District Court for the Northern District of Ohio dismissed 14 foreclosures brought on behalf of investors in mortgage-backed securities.[79] In the process, Judge Boyko delivered a blistering admonishment to plaintiffs who ignored this centuries-old requirement of American jurisprudence:

> Plaintiff's, "Judge, you just don't understand how things work," argument reveals a condescending mindset and quasi-monopolistic system where financial institutions have traditionally controlled, and still control, the foreclosure process. Typically, the homeowner who finds himself/herself in financial straits fails to make the required mortgage payments and faces a foreclosure suit, is not interested in testing state or federal jurisdictional

[77] Seth Doane, *N.Y. Judge Takes On Foreclosures*, CBS EVENING NEWS.COM, Sept. 12, 2009 (*See* http://www.cbsnews.com/stories/2009/09/12/eveningnews/main5306009.shtml and video clip therein).

[78] *See, e.g., In re Parades*, 2009 WL 3571536 (Bankr. S.D.N.Y., Oct. 9, 2009) (Hon. Robert D. Drain disallowed and expunged proof of claim filed erroneously in the name of servicer of mortgage that held no ownership interest); *In re Wells*, No. 08-17639, 2009 WL 1872401 (Bankr. N.D. Ohio June 19, 2009) (disallowing claim because purported creditor did not show the note was negotiated to claimant bank); *In re Mitchell*, No. 07-16226-LBR, 2009 WL 1044368 (Bankr. D. Nev. March 31, 2009) (holding that MERS lacked standing to pursue stay relief when it could not show that it was either holder of the mortgage note or a transferee in possession of the note); *In re Jacobsen*, 2009 WL 567188 (Bankr. W.D. Wash. 2009) (denying motion for stay relief because movant had not established either identity of holder of note or movant's authority to act on behalf of that party); *In re Hayes*, 393 B.R. 259 (Bankr. D. Mass. 2008) (denying motion for relief from stay when mortgagee failed to show proper chain of title from loan originator). *See also Landmark National Bank v. Kesler*, 216 P.3d 158 (Kan. Sup. Ct. 2009) (MERS has no right or standing to bring an action for foreclosure).

[79] *In re Foreclosure Cases*, 2007 WL 3232430 (N.D. Ohio, Oct. 31, 2007) (emphasis in original).

> requirements, either *pro se* or through counsel. Their focus is either, "how do I save my home," or "if I have to give it up, I'll simply leave and find somewhere else to live."
>
> In the meantime, the financial institutions or successors/assignees rush to foreclose, obtain a default judgment and then sit on the deed, avoiding responsibility for maintaining the property while reaping the financial benefits of interest running on a judgment. The financial institutions know the law charges the one with title (still the homeowner) with maintaining the property. There is no doubt every decision made by a financial institution in the foreclosure process is driven by money. And the legal work which flows from winning the financial institution's favor is highly lucrative. There is nothing improper or wrong with financial institutions or law firms making a profit — to the contrary, they should be rewarded for sound business and legal practices. However, unchallenged by underfinanced opponents, the institutions worry less about jurisdictional requirements and more about maximizing returns. Unlike the focus of financial institutions, the federal courts must act as gatekeepers, assuring that only those who meet diversity and standing requirements are allowed to pass through. Counsel for the institutions are not without legal argument to support their position, but their arguments fall woefully short of justifying their premature filings, and utterly fail to satisfy their standing and jurisdictional burdens. The institutions seem to adopt the attitude that since they have been doing this for so long, unchallenged, this practice equates with legal compliance. Finally put to the test, their weak legal arguments compel the Court to stop them at the gate.
>
> The Court will illustrate in simple terms its decision: "Fluidity of the market" — "X" dollars," "contractual arrangements between institutions and counsel" — "X" dollars, "purchasing mortgages in bulk and securitizing" — "X" dollars, "rush to file, slow to record after judgment" — "X" dollars, "the jurisdictional integrity of United States District Court" — "Priceless."[80]

73. As alleged in further detail below, Defendants Countrywide and Wells Fargo are incorrigible recidivists that have victimized Plaintiffs and members of the Classes in a manner consistent with their systematic pattern of foreclosure abuses nationwide, all as documented by the many judges identified in the paragraphs above. In

[80] *Id.* at 3 n.3

the instance of the Pennsylvania and New Jersey homeowners who comprise the Classes in this litigation, the instrument of these abuses is PHS, whose activities benefit that law firm and its clients in ways both dishonest and illegal.

B. PHS Systematically Abuses Distressed Homeowners and the Legal System

74. Mortgage servicers like Defendants Countrywide and Wells Fargo depend upon accommodating foreclosure and bankruptcy counsel like PHS to aggressively prosecute distressed homeowners on a large-volume basis. Without such law firms, widespread mortgage servicing abuse could not take place.

75. By its own description, PHS is the "premier foreclosure operation" in the "region," "one of the few firms to handle foreclosures, bankruptcies and asset recoveries for the entire states of New Jersey and Pennsylvania."[81] "[R]epresenting almost every major lender and servicer" in the United States, PHS claims that it is the "largest" residential mortgage foreclosure firm in Pennsylvania and the "only" such firm in Pennsylvania to be "both Fannie Mae and Freddie Mac designated counsel."[82] In the City of Philadelphia alone, PHS has prosecuted "thousands" of foreclosure actions annually since 2004,[83] a number that has grown exponentially with the foreclosure crisis that caused the Philadelphia Court of Common Pleas to implement its Residential Mortgage Foreclosure Diversion Pilot Program in April 2008. According to sworn deposition testimony given by Defendant Hallinan in another case, PHS handled an estimated 24,000 to 26,000 foreclosure prosecutions in Pennsylvania and New Jersey during 2008

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[81] http://www.fedphe.com/

[82] *Id*.

[83] Jane M. Von Bergen, *Philadelphia Law Firm to Lower Foreclosure Fees*, PHILA. INQUIRER, July 18, 2004 (Describing PHS's predecessor, Federman & Phelan LLP, as the "main Philadelphia law firm that handles thousands of mortgage foreclosures a year in the city").

alone.[84] PHS says that it handles its enormous volume of work with a mere "17 attorneys and over 250 support personnel."[85]

76. PHS claims that it is able to obtain a supernatural level of "speed and efficiency" through two principal means: (1) its ability to "leverage technology" by "completely computeriz[ing]" its two offices with "every case management and invoice reporting systems [sic]" used by the residential mortgage foreclosure industry, including LenStar, VendorScape, NewTrak, iClear, Alltel and NewInvoice, all of which are "client-based web sites"[86]; and (2) its ownership and control of the "majority of its vendors to ensure a turnaround time as quick as humanly possible."[87]

77. While the "speed" with which PHS prosecutes its foreclosure actions serves the interest of clients like Defendants Countrywide and Wells Fargo, it is also the means by which PHS prosecutes far more foreclosure and bankruptcy cases than any comparably staffed law firm could possibly handle in a professionally responsible manner. As an accompanying benefit, such "speed" also "ensures" that PHS is in an optimal position to extract as much fees as "humanly possible" from financially strapped homeowners.

1. PHS Inflates Foreclosure Costs On An Institutionalized Basis

a. PHS Systematically Misappropriates Sheriffs' Deposit Refunds

78. After it obtains foreclosure judgments against defaulted borrowers, PHS sets in motion a process by which borrowers' homes are scheduled for auction at a

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[84] Transcript of Deposition Testimony of Francis S. Hallinan on March 17, 2009 ("Hallinan Transcript") in the matter entitled *Bank of New York v. Ukpe*, Docket No. F-10209-08 (Superior Court of New Jersey, Chancery Division, Atlantic County) at 51-52, 61-62. (Ex. D).

[85] http://www.fedphe.com/

[86] http://www.fedphe.com/. *See also* PHS listings in 2006 USFN Membership Directory at 11, 14 (http://www.zp-production.com/sm/pdf/ar-USFN06.pdf)

[87] http://www.fedphe.com/.

sheriffs' sale. As part of this process, county sheriffs require upfront deposits for payment of their fees, which include costs of providing public notice of sale, as well as other administrative functions required by law. To proceed with its mission of displacing families from their homes, PHS advances the payment of these fees to county sheriffs.

79. Sheriffs' sales are often cancelled as a result of (1) loan modifications; (2) the filing by borrowers of bankruptcy petitions; or (3) distress sales of homeowners' properties. When a sheriffs' sale is cancelled, sheriffs refund to PHS the "unused" portion of the deposit, which represents fees not actually incurred by the sheriffs. Under a loan modification, a Chapter 13 repayment plan or a distress sale, borrowers must pay the actual amount of money overdue on their loan accounts, including reasonable costs of foreclosure proceedings brought by PHS. This sum is known as "arrearages." In calculating the proper amount of arrearages, refunds issued by sheriffs to PHS are not properly included (or, if they are included, a corresponding credit must be subsequently issued to the borrowers' accounts).

80. In violation of its legal and professional duties, and as a matter of institutionalized practice (1) PHS does include the total amount of sheriffs' fee deposits in arrearages charged to homeowners, without deducting refunds received by PHS; (2) PHS does not take affirmative steps to credit homeowners' accounts for those refunds; and (3) PHS misappropriates and converts money from those refunds to its own use and/or that of its clients -- unless a specific demand for a refund credit is proactively pressed by counsel for the homeowners, a demand that PHS knows is seldom made.[88] PHS and/or its clients thereby obtain millions of dollars in unearned profits, presumably

[88] *See* Porter Study at 147 ("The vast majority of all claims (96%) pass undisturbed through the bankruptcy system without objection. Attorneys do not aggressively enforce their clients' rights against mortgage companies because the costs are too high and the incentives are too low…").

none of which is reported to the Internal Revenue Service as taxable income, despite the penalties provided under 26 U.S.C. § 7201.

81. Plaintiffs and class members in this action are victims of PHS's theft of sheriffs' deposit refund scheme.

Plaintiff Dennis A. Rhodes

82. PHS initiated and prosecuted a foreclosure action against Plaintiff Dennis A. Rhodes on behalf of Bank of New York, as trustee for investors of securities backed by a pool of mortgages serviced by Defendant Countrywide. After it obtained a foreclosure judgment against Plaintiff Rhodes, PHS paid a $2,000 deposit to the Sheriff for Berks County, Pennsylvania in connection with a sheriffs' sale of the Rhodes family residence scheduled for January 11, 2008.

83. On January 10, 2008, Plaintiff Rhodes filed a bankruptcy petition and thereby averted loss of his home through sheriffs' sale. On January 28, 2008, PHS, purportedly on behalf of Bank of New York, executed and filed a proof of claim in bankruptcy court, seeking payment of the full $2,000 sheriffs' deposit purportedly owed by Plaintiff Rhodes as part of his arrearages. This legal document, signed by PHS lawyer Jay B. Jones,[89] falsely represented that PHS would amend its claim "upon receipt of the most recent Sheriff's Refund, which is unavailable at the present time."

84. On May 8, 2008, the Berks County Sheriff refunded to PHS $909.08 out of $2,000 deposited in connection with the stayed sheriffs' sale of Plaintiff Rhodes' home. Rather than make good on the promise to amend its proof of claim "upon receipt" of the sheriffs' refund, PHS instead misappropriated and converted $909.08 to its own use and/or that of Countrywide.

[89] Ex. E.

85. On March 25, 2009, Plaintiff Rhodes and his co-plaintiffs filed their initial Complaint in this action ("Initial Complaint"), which exposed PHS's unlawful institutionalized practice of misappropriating and converting sheriffs' refunds.

86. Just days after the filing of the Initial Complaint, PHS filed an amended proof of claim dated April 7, 2009, which at last identified the sheriffs' deposit refund that PHS received on Plaintiff Rhodes' account **eleven months before**.[90] As Judge Shea-Stonum observed, Defendant "Countrywide's system for filing proofs of claim was designed to allow each actor in the process to act with indifference to the truth" and a "disregard for diligence and accuracy."[91] In this respect, PHS and/or Countrywide obtained an interest-free "loan" through their false proof of claim, money that would have otherwise been stolen outright by PHS and/or Countrywide but for the filing of this lawsuit.

Plaintiff Gerald A. Bender

87. PHS initiated and prosecuted a foreclosure action against Gerald A. Bender, purportedly on behalf of "Wachovia Bank, N.A.," as "trustee" for investors of securities backed by a pool of mortgages serviced by America's Servicing Company, part of Defendant Wells Fargo, N.A.[92] After it obtained a foreclosure judgment against Plaintiff Bender, PHS paid a $2,000 deposit to the Sheriff for Berks County, Pennsylvania in connection with a sheriffs' sale of the Bender family residence scheduled for June 6, 2008.

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[90] Ex. F. At the same time, PHS lawyer Andrew L. Spivack also filed a Mortgage Analysis for Payment Change on Plaintiff Rhodes' account, which was improperly submitted by PHS on behalf of **Countrywide**, the mortgage servicer, which Spivack misidentified as Plaintiff Rhodes' "secured creditor." (Ex. G).

[91] *See above* at ¶ 56.

[92] As documented below at ¶¶ 112-120, **two years before** PHS brought its foreclosure action against Plaintiff Bender, ostensibly on "behalf of" Wachovia, U.S. Bank, N.A. had already succeeded to Wachovia's position as "trustee" for investors owning this pool of mortgages. Neither PHS nor an apparently unaware Wachovia had any authority to bring this foreclosure lawsuit.

88. On June 4, 2008, Plaintiff Bender filed a bankruptcy petition and thereby averted loss of his home through sheriffs' sale. On July 3, 2008, PHS, purportedly on behalf of "Wachovia," executed and filed a proof of claim in bankruptcy court, seeking payment of the full $2,000 sheriffs' deposit purportedly owed by Plaintiff Bender to "Wachovia" as part of his arrearages. This legal document, signed by PHS lawyer Jay B. Jones,[93] stated that the "[m]ost recent Sheriff's Refund is unavailable at the present time."

89. On October 9, 2008, the Berks County Sheriff refunded to PHS $601.13 out of $2,000 deposited with the Sheriff in connection with stayed sheriffs' sale of Plaintiff Bender's home. PHS misappropriated and converted $601.13 to its own use and/or that of Wells Fargo.

90. Just days after his filing of the Initial Complaint on March 25, 2009, PHS filed an amended proof of claim dated April 7, 2009, which at last identified the sheriffs' deposit refund that PHS received on Plaintiff Bender's account **six months before**.[94] In this respect, PHS and/or Wells Fargo obtained an interest-free "loan" of funds that belonged to Plaintiff Bender, money that would have otherwise been stolen outright by PHS and/or Wells Fargo but for the filing of this lawsuit.

Plaintiff Edward H. Wolferd, Jr.

91. PHS initiated and prosecuted a foreclosure action against Plaintiff Edward H. Wolferd, Jr. on behalf of Defendant Wells Fargo. After it obtained a foreclosure judgment against Plaintiff Wolferd, PHS paid a $2,500 deposit to the Sheriff for

[93] Ex. H. PHS, having improperly brought a foreclosure action against Plaintiff Bender in the name of Wachovia (which had no legal interest to assert against Plaintiff Bender) compounded its transgression in bankruptcy court by filing a false proof of claim on behalf of a purported creditor identified as "Wachovia Bank, N.A., as Trustee, Pooling and Serving Agreement dated as of November [sic]." The false proof of claims signed by PHS lawyers in this case state on their face that the penalty under 11 U.S.C. §§ 152 and 3571 for presenting fraudulent claims is a fine of up to $500,000 or imprisonment for up to five years, or both.

[94] Ex. I.

Lancaster County, Pennsylvania in connection with a sheriffs' sale of Plaintiff Wolferd's residence scheduled for August 3, 2005.

92. On August 1, 2005, Plaintiff Wolferd filed a bankruptcy petition and thereby averted loss of his home through sheriffs' sale. On September 14, 2005, PHS, on behalf of Defendant Wells Fargo, executed and filed a proof of claim in bankruptcy court, seeking payment in the full of the $2,500 sheriffs' deposit purportedly owed by Plaintiff Wolferd as part of his arrearages. This legal document, signed by PHS lawyer Jay B. Jones,[95] falsely represented that PHS would amend its claim "upon receipt of the most recent Sheriff's Refund, which is unavailable at the present time."

93. On October 31, 2005, the Lancaster County Sheriff refunded to PHS $849.84 out of the sum of $2,500 deposited with the Sheriff in connection with the stayed sheriff's sale. On or about November 22, 2005, counsel for Plaintiff Wolferd incurred the time and expense of communicating with PHS to demand a proper credit for the returned sheriffs' deposit. Only then did PHS withdraw its overstated claim for sheriffs' fees by filing an amended proof of claim dated November 22, 2005.[96]

94. Independent of the false bankruptcy claims asserted by PHS against Plaintiffs Rhodes, Bender and Wolferd, before they filed the Initial Complaint, counsel for the proposed Classes reviewed and analyzed a randomly selected sample of 300 proofs of claim filed by a cross-section of PHS lawyers in Chapter 13 actions pending in the United States Bankruptcy Courts for the Eastern, Middle and Western Districts of Pennsylvania and the District of New Jersey, with that sample limited to filings in which PHS asserted a claim for the full amount of a sheriffs' deposit. In 261 (or 87 percent) of

[95] Ex. J.
[96] Ex. K.

these 300 cases, PHS failed to correct its overstated proofs of claim to properly account for deposits refunded by county sheriffs.

95. While homeowners who have not filed for bankruptcy are more vulnerable to mortgage servicing abuse than those who have availed themselves of that legal protection,[97] PHS operates in every case on the premise that it can charge whatever it pleases to homeowners as long as debtors' counsel, as in an estimated 96 percent of bankruptcy cases,[98] do not affirmatively step up to resist PHS's systematic exploitation of their clients. This disregard of its legal obligations is without justification.

96. As Judge Elizabeth Manger remarked in one of several published opinions rebuking Defendant Wells Fargo for its institutionalized practice of filing inaccurate bankruptcy claims: "[I]t is likely that trustees and debtors are paying on proofs of claim that are clearly erroneous. … Wells Fargo maintains that it can flaunt this Court's rulings and its own contractual responsibilities and force every debtor to 'prove' that it has misapplied payments. This is a ridiculous waste of judicial resources and an unacceptable burden on the trustees and debtors of the District[99]…. It is incumbent upon Wells Fargo to correct its error for all affected debtors. To do otherwise is to ignore its obligation to correct pleadings that are no longer accurate." [100]

97. Judge Manger recognized that, whenever Wells Fargo forces homeowners and their counsel to act affirmatively to fix one of Wells Fargo's inaccurate claims, it

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[97] *See* Porter Testimony at 2, *citing* Federal Trade Commission, *Mortgage Servicing: Making Sure Your Payment Counts*.)

[98] *See* Porter Study at 147.

[99] *Contrast with* Defendant's Memorandum of Law in Support of their Motion to Dismiss the [Initial] Complaint Pursuant to F.R.C.P 12b(6), at 10-11 (Docket Item 2-2) ("It is the duty of debtors' counsel on behalf of their clients to ensure that sums are properly credited to their client[s'] post-petition account -- something usually accomplished in a phone call and[,] if that fails, by motion to the Bankruptcy Court").

[100] *See* ¶ 59 above, *quoting*, 2008 Bankr. LEXIS 3226, at *11 (Bankr.E.D.La. October 14 2008)

causes quantifiable damage in the form of costs and fees incurred,[101] independent of other forms of damages sustained. Judge Marilyn Shea-Stonum reached the same conclusion concerning Defendant Countrywide's systematic assertion of bogus foreclosure fee claims:

> [T]he reality is that the typical consumer bankruptcy practitioner deals with extensive information gathering and documentation requirements for very modest compensation; against that busy backdrop few practitioners undertake a careful review of every mortgage claim. [ ] Those that do often find themselves dealing with initial information from the mortgage claimant that sometimes appears designed to be deliberately impenetrable. The cryptic presentation of the information by mortgage holders or those charged with servicing the mortgage holders' contract with the mortgagor can have the effect of visiting upon the mortgagor significant cost in getting the most basic information about the mortgage status as perceived by the mortgagee. This may or may not be part of an actual design to discourage mortgagors from asserting their rights. Whether that is an intended consequence of the mortgagee's agent's behavior, it is often the effect of that behavior.[102]

98. Plaintiff Wolferd had the misfortune of being victimized by PHS's theft of sheriffs' deposit refund scheme both in a capacity of bankrupt individual and as a non-bankrupt homeowner attempting to reach a loan modification agreement with Wells Fargo.

99. After more than three years of post-petition payments under Plaintiff Wolferd's Chapter 13 plan, Wells Fargo obtained an order granting it relief from the Bankruptcy Code's automatic stay on January 6, 2009.[103] On February 10, 2009, PHS filed a praecipe for a writ of execution of its earlier foreclosure judgment against Plaintiff

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[101] *Id*. *See also* ¶¶ 62-63, quoting, *In re Jones*, 2009 Bankr. LEXIS 3317, at *23-24; 31 and n.59 (Bankr. E.D.La. Oct. 1, 2009).

[102] *McDermott v. Countrywide Home Loans, Inc.*, Adv. No. 08-5031 (Bank. N.D. Ohio, July 31, 2009) (Ex. A) at 3-4, *citing* Porter Study at 121, 168.

[103] Plaintiff Wolferd's bankruptcy case was dismissed on May 14, 2009.

Wolferd, accompanied by a check payable to the Lancaster County Sheriff in the amount of $ 2,500.

100. A sheriffs' sale of Plaintiff Wolferd's home was scheduled and continued several times while Plaintiff Wolferd and Defendant Wells Fargo discussed a possible loan modification. Plaintiff Wolferd executed such an agreement on September 11, 2009, despite its requirement that he pay arrearages comprised in part of inflated, undocumented and unexplained mortgage foreclosure "costs."[104] His assistant having been told by a Wells Fargo representative that these charges were non-negotiable and that "the [foreclosure] lawyer always keeps that money as its fees," Plaintiff Wolferd surrendered to Wells Fargo's demands rather than accept the alternative of losing his home to foreclosure. The sheriffs' sale of Plaintiff Wolferd's home was cancelled again.

101. Plaintiff Wolferd is currently making the payments required under Wells Fargo's non-negotiable loan modification. On November 3, 2009, PHS received a refund in the amount of $503.32 from the Lancaster County Sheriff. As of the date of this Amended Complaint (notwithstanding the allegations about misappropriation of sheriffs' deposit refunds first made in the Initial Complaint on March 25, 2009), PHS and Wells Fargo have taken no steps to credit this sheriffs' refund to Plaintiff Wolferd's account.

b. PHS Systematically Uses Wholly-Owned "Vendors" to Inflate Foreclosure Costs

102. While PHS portrays its ownership and control of "the majority of its vendors" as a benign timesaving device,[105] it is more accurately the means by which PHS multiplies its already profitable fees in foreclosure cases. It is also the means by which PHS ignores or evades legal obstacles (such as the absence of a would-be plaintiff's legal

[104] *See* Ex. L.
[105] *See* http://www.fedphe.com/

title) that could otherwise eliminate the money-making potential of the automated case referrals it receives via "client-based" software programs required by mortgage servicers like Defendants Countrywide and Wells Fargo. (*See* ¶¶ 148-158, below).

103. Defendants Lawrence Phelan, Francis Hallinan and Daniel Schmieg are owners of a company named Full Spectrum Holdings, which is comprised of Full Spectrum Legal Services, Inc. ("Full Spectrum") and Land Title Services of New Jersey, Inc. ("Land Title"),[106] which in turn owns Land Title Services of Pennsylvania. All of these entities are located on the second floor (PHS occupies the first) of an office building located at 400 Fellowship Road, Mt. Laurel, New Jersey 08054, a multi-million dollar facility owned by a company called Camelot Enterprises, LLC, which is owned by Defendant Phelan.

104. Defendant Hallinan is president of Full Spectrum, a New Jersey domestic corporation that, among other things, claims to provide title services both in New Jersey and Pennsylvania, where it purportedly employs "a team of qualified courthouse searchers … [who] provide detailed property searches, copies of recorded documents, and can act as liaisons for the county offices."[107]

105. At various times and in a manner that parallels the conflicting representations made by PHS with respect to the identity of its "managing partner" in New Jersey and the different variations on name used by the law firm's New Jersey office,[108] Defendant Phelan and an individual named Eugene L. Terzano, Jr. have both been identified as president of Land Title. Terzano, licensed as a "resident producer" by the New Jersey Department of Banking and Insurance, appears to have been placed in

[106] *See Bank of New York v. Upke*, 2009 WL 4895253, at *3 (D.N.J. Dec. 9, 2009).
[107] *See* http://www.fullspectrumlegal.com/Services.html
[108] *See* ¶¶ 17, 20, above.

this position by PHS in an effort to circumvent Opinion No. 688, issued by the Advisory Committee on Professional Ethics of the New Jersey Supreme Court, which held that "principals of a law firm may [not] establish a separate title abstract company, in the form of a limited liability company, to provide title reports for their law firm's clients." [109]

106. As the Advisory Committee explained:

> [L]awyers should not be able to freely refer a client in need of a service related to the legal representation or its subject matter to any business enterprise in which they maintain an ownership or controlling interest, or from which they drive income or profit.
>
> It is clear that a client has a special trust in, and is frequently dependent upon, the independent judgment of the lawyer, which is always to be exercised in the client's best interests, free from any outside influences. The possibility of referral of legal clients to another business of the lawyer introduces an extraneous and potentially conflicting motive, which can threaten or interfere with the lawyer's independence of judgment. At the same time, because of the trust and dependence that the client must place on the lawyer, a client's ability to independently evaluate the desirability or necessity of following through on such a referral is presumptively impaired. The situation is inherently coercive, rendering even the standard approach of full disclosure and informed consent suspect.
>
> …. [A lawyer may only refer a legal client to a business the lawyer owns, operates, controls, or will profit from, if the lawyer has (1) disclosed to the client in writing, acknowledged by the client, the precise interest of the lawyer in the business, and that the same services may be obtained from other providers, and (2) advised the client, orally and in writing, of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice as to whether utilization of the business in question is in the client's interest.[110]

[109] N.J. Advisory Committee on Professional Ethics, Opinion 688 (Mar. 13, 2000), Ex. M.
[110] *Id*., at 2.

107. Given the systematic disregard of their own rights by PHS and its clients, Plaintiffs do not care whether PHS honors the duty of professional responsibility that it owes to its clients. While PHS or its clients are "reimbursed" for "costs" charged by Full Spectrum, Land Title and other entities owned and controlled by the principals of PHS, it is the foreclosed-upon homeowners who actually pay their inflated or fabricated "costs." In this respect, both PHS and its clients have a common rather than conflicting motive – to maximize payment of costs "recovered" from people against whom they bring foreclosure actions.[111]

108. Proofs of claim that PHS files in bankruptcy court – with or without authorization from clients with proper legal standing – demonstrate a lack of intelligible basis supporting many of the charges for which PHS seeks reimbursement from debtors. PHS's proofs of claim routinely reflect higher fees for title work than do the claims of other mortgage foreclosure law firms practicing in Pennsylvania and New Jersey -- precisely because PHS's principal lawyers themselves profit from those higher charges. To obscure the true extent and nature of those fees, PHS presents its claims, in the apt words of Judge Shea-Stonum, in ways that are both "impenetrable" and "cryptic."[112]

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[111] For example, Defendant Hallinan testified that "Full Spectrum Legal Services is a vendor for LandSafe Title Company" and that "Full Spectrum does the courthouse abstracting on behalf of LandSafe Title in some instances." See Hallinan Transcript at 27-28 (Ex. N). LandSafe Title Company, now a wholly owned subsidiary of Bank of America, was part of Countrywide's LandSafe, Inc. subsidiary, based in Plano Texas along with Defendant Countrywide Home Loans Servicing, LP. LandSafe, Inc. was a conglomeration of Countrywide subsidiaries that included LandSafe Appraisal Services Inc., LandSafe Title Agency Inc., LandSafe Credit Services Inc. and LandSafe Flood Determination Inc. *See* Steve Bergsman, *The LandSafe Story*, MORTGAGE BANKING, Aug. 3, 2003 (http://www.allbusiness.com/finance/3595413-1.html). The LandSafe subsidiaries enabled Countrywide to engage in the predatory lending practices that led to the $8.6 billion settlement obtained by state attorneys general throughout the United States. *See* above at ¶ 57.

[112] *See* ¶ 97, above, *quoting*, *McDermott v. Countrywide Home Loans, Inc.*, Adv. No. 08-5031 (Bank. N.D. Ohio, July 31, 2009) (Ex. A) at 3-4.

109. Examples of its practice of obscuring costs beyond understanding are evident from charges asserted by PHS against Plaintiffs:

(a) Rhodes Proof of Claim dated January 28, 2008 (Ex. E) (claiming $525 for undocumented and unexplained "services" described as "title bringdown," "property search/divorce check" and "record owner lien certificate/title report");

(b) Bender Proof of Claim dated July 2, 2008 (Ex. H) (claiming $1,105.51 for undocumented and unexplained "services" described as "BPO fees," "property preservation," "due diligent [sic] inquiry," "Freedom of Information Act letters," "record owner lien certificate," "property search," and "title bringdown");

(c) Wolferd Proof of Claim dated September 6, 2005 (Ex. J) (claiming $615 for undocumented and unexplained "services" described as "property preservation," "title bringdown," "record owner lien certificate" and "notice of sale"); and

(d) Wolferd Loan Modification form (Ex. L) (claiming $3,015.50 for undocumented and unexplained "services" described as "Corp Recov/Title/Mod Fees/Atty/FC/BPO/Appraisal");

Perhaps most egregiously, after counsel for Plaintiffs Diane and Charles Giles discovered that PHS brought its foreclosure lawsuit without authorization on behalf of a party without legal standing to sue (*see* ¶¶ 121-133) and after Mr. and Mrs. Giles found a buyer willing to purchase their home at price far below its true market value, PHS had the audacity to demand that Mr. and Mrs. Giles pay $7,817.50 for "legal fees and costs" of a lawsuit that PHS had no right to bring in the first place.[113] Only because counsel for Mr. and Mrs. Giles resisted PHS's attempt to plunder the dwindling financial resources of his

[113] *See* Letter dated December 10, 2007 from Phelan Hallinan & Schmieg, PC to Jerry J. Dasti (Ex. NN).

clients did Wells Fargo recognize the illegitimacy of PHS's claim for "legal fees and costs," which was quietly removed from Wells Fargo's final payoff statement.[114]

110. While a few of the above examples involve amounts of money may be modest to more fortunate Americans, these charges represent substantial, life-sustaining sums to families struggling to stay in their home, when literally every nickel counts. But, for the lawyers of PHS and their clients, each overcharge, multiplied by thousands of homeowners, represents a pot of gold unlawfully obtained.[115]

111. Beyond the overstated, fabricated and obfuscated foreclosure costs systematically claimed by PHS, in some cases Full Spectrum, Land Title or other PHS-controlled entities fail altogether to perform the "services" for which homeowners are charged, or such "services" are performed so incompetently that they are worthless or actually have a negative value. As shown below, title searches purportedly obtained by PHS through its wholly owned companies fail to properly identify record owners of properties upon which PHS seeks to foreclose, resulting in unauthorized lawsuits that produce foreclosure judgments that are null and void as a matter of law. Even more disturbing, there is compelling evidence that Full Spectrum and other companies owned by Lawrence Phelan, Francis Hallinan and Daniel Schmieg help PHS fraudulently **manufacture** legal standing for one of its biggest mortgage servicer clients, Defendant Wells Fargo.

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[114] *See* Statement dated January 9, 2008 from America's Servicing Company to Plaintiff Diane Giles (Ex. NN).

[115] *See, e,g.*, above at ¶ 63 and n. 64 (Hon. Elizabeth W. Magner fears that false proofs of claim filed by Wells Fargo alone "could potentially signal billions in improperly earned revenue").

2. PHS Systematically Prosecutes Foreclosure Actions in the Name of Parties Without Legal Standing To Sue

112. By Complaint dated June 22, 2007, signed by Defendant Hallinan, PHS brought a mortgage foreclosure action against Plaintiff Gerald A. Bender in the Court of Common Pleas for Berks County, Pennsylvania, Case No. C1-04-11635. The Plaintiff in this lawsuit was identified as "Wachovia Bank, N.A., Trustee for the Pooling and Servicing Agreement dated as of November 1, 2004, Asset-Backed Pass-Through Certificate Series 2004-WWF1 ['Series 2004-WWF1 PSA']"[116] The servicer of the mortgages owned by the investors of the Series 2004-WWF1 PSA certificates -- PHS's actual client -- was Defendant Wells Fargo,[117] an entity that the Hon. Timothy Patrick O'Reilly of the Court of Common Pleas for Allegheny County said is no "stranger" to the improper practice of bringing foreclosure actions on the basis of "anticipatory assignments" that may or may be real.[118]

113. In connection with the filing of his Complaint against Plaintiff Bender, Defendant Hallinan executed a verification attesting that (1) he was "attorney" for "Wachovia" in the foreclosure action against Plaintiff Bender; (2) he was "authorized" by "Wachovia" to make a verification on "Wachovia's" behalf pursuant to Pa.R.C.P. 1024; (3) the statements made in the Complaint were "based on information provided" by "Wachovia," which Hallinan purportedly "believed to be true and correct to the best of its knowledge, information and belief"; (4) he "intended to substitute a verification" from

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[116] *See* Ex. O.

[117] *See* Bender Proof of Claim dated July 2, 2008 (Ex. H).

[118] *See* ¶ 68, above, *quoting*, *Wells Fargo v. Janosik*, No. GD08-2561 (Pa. C.P. Allegheny Co., Mar. 23, 2009), Slip.Op. at 5, *aff'd*, 970 A.2d 488 (Table) (Pa. Superior 2009) (Ex. B) (*citing*, *Wells Fargo v. Long*, 934 A.2d 76 (Pa. Super. 2007)). *See also* ¶¶ 66-71, above (and cases cited therein).

Wachovia "upon receipt" and (5) he understood that his verification was made "subject to the penalties of 18 Pa.C.S. Sec. 4904 relating to unsworn falsifications to authorities," a second degree misdemeanor requiring "a fine of at least $1000." With the possible exception of the final part of his verification, all of Hallinan's statements were false.

114. In paragraph 3 of the Complaint that he signed and verified, Defendant Hallinan also alleged falsely that:

> On 09/24/2004 mortgagor(s) made, executed and delivered a mortgage upon the premises hereinafter described to ARGENT MORTGAGE COMPANY, LLC ["Argent"] which mortgage is recorded in the Office of the Recorder of BERKS County, in Book 4157, Page: 265. **PLAINTIFF [*i.e.*, Wachovia Bank, N.A., Trustee for the Series 2004-WWF1 PSA] is now the legal owner of the mortgage and is in the process of formalizing an assignment of same**. The mortgage and assignment(s), if any, are matters of public record and are incorporated by reference in accordance with Pa.C.C.P. 1019(g); which rule relieves the Plaintiff from its obligation to attach documents to pleadings if those documents are of public record.

115. When Defendant Hallinan caused this Complaint to be filed on June 22, 2007, Wachovia was no longer trustee for the Series 2004-WWF1 PSA, having been long ago been displaced as trustee by U.S. Bank, N.A. as a result of Wachovia's sale of its entire corporate trust and institutional custody businesses to U.S. Bank, N.A. on December 30, 2005.[119]

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[119] Press Release, *Wachovia Announces Sale of its Corporate Trust and Institutional Custody Businesses*, WACHOVIA, Nov. 28, 2005 (https://www.wachovia.com/foundation/v/index.jsp?vgnextoid=f3082e3d3471f110VgnVCM200000627d6fa2RCRD&vgnextfmt=default&key_guid=4dc7948df51eb110VgnVCM100000ca0d1872RCRD); Press Release, *U.S. Bank Completes Acquisition of the Corporate Trust and Institutional Custody Businesses of Wachovia*, U.S. BANCORP, Jan. 9, 2006 (http://phx.corporate-ir.net/phoenix.zhtml?c=117565&p=irol-newsArticle&ID=802061&highlight=); Internal Corporate Publication, Welcome From the U.S. Bank Corporate Trust Services President, U.S. BANK CORPORATE TRUST CONNECTION, Spring 2006 (http://www.usbank.com/commercial_business/products_and_services/corp_trust/pdf/CorpTrustSpr06.pdf

116. On October 11, 2007, four months after PHS filed its false and misleading foreclosure complaint against Plaintiff Bender, PHS's employees or agents simultaneously recorded two purported assignments of Plaintiff Bender's mortgage with the Recorder of Deeds for Berks County, Pennsylvania:

a. An "assignment" from Argent to Ameriquest Mortgage Company ("Ameriquest"), purportedly executed on September 20, 2004 by Tracy Phanzy and John Grudzien, both purportedly "authorized officers" of Argent, and notarized by Janice M. Baker, an "agent" of Argent, whose notary commission expired on May 19, 2007;[120]

b. An "assignment" from Ameriquest to Wachovia, as Trustee for the Series 2004-WWF1 PSA, also purportedly executed on September 20, 2004 by Tracy Phanzy and John Grudzien, both purportedly "authorized officers" of Ameriquest, and notarized by Janice M. Baker, an "agent" of Ameriquest, whose notary commission expired on May 19, 2007.[121] The Argent-to-Ameriquest "assignment" is identical to the purported Ameriquest-to-Wachovia assignment, except that a line intended for the purported "assignee" was apparently "whited out" before the addition of a handwritten entry identifying Wachovia as purported assignee.

117. By the time that PHS's employees or agents recorded these "assignments" on October 11, 2007, both Ameriquest and Argent had permanently shut their doors. On August 30, 2007, Citigroup acquired the remaining assets of ACC Capital Holdings, owner of Ameriquest and Argent, both of which were effectively out of business "for at least a year" after ACC Capital Holdings agreed in 2006 to pay $325 million to settle federal and state regulators' claims of deceptive lending practices.[122]

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[120] *See* Ex. P.

[121] *See* Ex. Q.

[122] Eric Dash, *Citigroup Buys Parts of a Troubled Mortgage Lender*, N.Y.TIMES, September 1, 2007(http://query.nytimes.com/gst/fullpage.html?res=9C04E4D61430F932A3575AC0A9619C8B63), *cited in Wells Fargo v. Farmer*, 19 Misc.3d 1141(A), 2008 WL 2309006, at *3 (N.Y.Sup. June 5, 2008).

118. In other words, the "assignments" that PHS's representatives filed with the Recorder of Deeds for Berks County, Pennsylvania on October 11, 2007 purported to convey a legal interest in Plaintiff Bender's mortgage from (1) two mortgage companies that no longer existed to (2) a bank that two years before relinquished its duties as trustee for investors that owned Plaintiff Bender's mortgage.

119. In addition, the "assignments" of the Bender mortgage, which were purportedly executed on September 20, 2004, predated the legal existence of the Series 2004-WWF1 PSA, which by its express terms is dated as of November 1, 2004. According to a Supplemental Prospectus filed with the U.S. Securities and Exchange Commission by Park Place Securities, Inc. ("Park Place," a direct and wholly owned subsidiary of Ameriquest, an "affiliate" of Argent and the "Depositor" under the Series 2004-WWF1 certificates), selection of the mortgage loan collateral deposited into this investment trust was not to occur until October 1, 2004, with the closing date of the entire transaction not scheduled until November 12, 2004.[123]

120. The Supplemental Prospectus filed in connection with the Series 2004-WWF1 certificates also expressly states that Park Place, as the "Depositor" of the investment trust, was required to deliver to Deutsche Bank National Trust Company, as Custodian, an "assignment of [each] mortgage in recordable form endorsed in blank without recourse, reflecting [a] transfer of the Mortgage Loan."[124] Use of "blank" assignments facilitates fraudulent assignments of the type manipulated by PHS's "vendors" to manufacture legal standing in mortgage foreclosure actions like the one

[123] *See* Summary of Prospectus Supplement for 2004-WWF1 asset backed, pass-through certificates ("Prospectus Summary") at S-2, obtained and excerpted from EDGAR service provided at www.sec.gov (Ex. R).

[124] Prospectus Summary at S-80.

against Plaintiff Bender. A "blank" assignment is, as the Hon. Keith C. Long of Massachusetts held, mere "bearer paper … negotiable by whichever entity possessed it," which is an "ineffective" means of transferring legal title to a mortgage because they "are not themselves an assignment and they are certainly not in recordable form."[125]

121. At about the same time that PHS and Hallinan committed fraud against Plaintiff Bender and the civil justice system in Berks County, Pennsylvania, almost 100 miles and another state away, PHS and Defendant Rosemarie Diamond were committing a virtually identical fraud against Plaintiffs Diane and Charles J. Giles and the civil justice system in Ocean County, New Jersey.

122. On September 11, 2001, Plaintiff Charles Giles, a certified emergency medical technician supervisor working in New York City, was among the first responders to put his life on the line attempting to save people trapped in the burning ruins of the World Trade Center. Although he needed the assistance of a Port Authority police officer to save his own life after the second tower fell, sustaining injuries that required his admission to the Jacobi Medical Center in the Bronx, Mr. Giles returned to the rubble of Ground Zero to join the search for missing survivors. His lungs contaminated by dust and debris, Plaintiff Charles Giles was diagnosed in 2002 with disabling health problems that threaten his life today.

123. After 9/11, Plaintiff Charles Giles moved to a home at the Jersey shore in Barnegat Township, where he lived with his wife, Diane, and two daughters, Kaitlin and Clarissa. Plaintiff Giles' lung, heart and other health problems worsened, putting him in the hospital on 13 separate occasions and leaving him unable to work. His medical bills

[125] *U.S. Bank, N.A. et. al. v. Ibanez et. al.*, No.08 MISC 38675517; LCR 679; 2009 Mass. LCR LEXIS 134, at *28-29 (Mass. Land Court, Oct. 14, 2009).

skyrocketed past $200,000 as bureaucratic delays held up benefit payments from the New York State government.

124. When Plaintiffs Diane and Charles Giles fell behind on their mortgage, PHS and Defendant Diamond brought a foreclosure action against them on February 23, 2007.[126] As with Plaintiff Bender, PHS and Diamond brought this action against Mr. and Mrs. Giles in the name of "Wachovia Bank, N.A., Trustee" for the Series 2004-WWF1 PSA -- despite Wachovia Bank's divestiture of its corporate trust and institutional custody businesses on December 30, 2005.[127] As with Plaintiff Bender, the servicer on Plaintiff Giles' mortgage was Defendant Wells Fargo, operating under its "America's Servicing Company" pseudonym.

125. According to the Complaint that PHS and Diamond filed against Mr. and Mrs. Giles on February 23, 2007, the "holder of the obligation and Mortgage was Wachovia Bank, N.A., Trustee" for the Series 2004-WWF1 PSA, pursuant to a "written assignment" from Argent to Wachovia that was "about to be recorded."[128] The Complaint also alleged that, other than the mortgage originated by Argent, the prospective "Argent-to-Wachovia" assignment and legal documents evidencing Mr. and Mrs. Giles' marriage, "no other instruments appear of record which may affect the premises" in which the Giles lived.[129]

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126 Ex. S.
127 *See* ¶ 115 and n. 119, above.
128 *See* Ex. S at ¶ 4.
129 *See* Ex. S at ¶ 6.

126. In connection with the filing of this Complaint, which contained misrepresentations of material fact relating to ownership of the Giles' mortgage, Defendant Diamond also executed two false Certifications[130]:

(a) a Certification pursuant to Rule 4:5-1, attesting that "all parties who should be joined in this action have been joined"; and

(b) a Certification pursuant to Rule 4-5-1(b)(2), attesting that "prior to filing the within Complaint, [Diamond] caused a title search of the public record to be made for the purpose of identifying any lien holders or other persons or entities with an interest in the property that is the subject of this foreclosure."

127. Two months **after** PHS and Diamond filed their Complaint against Mr. and Mrs. Giles, on April 18, 2007, PHS's employees or agents simultaneously recorded two purported assignments of the Giles' mortgage with the County Clerk of Ocean County, New Jersey:

a. An "assignment" from Argent to Ameriquest, purportedly executed on September 28, 2004 by Matt Polansky, a purported "agent" of Argent, and notarized by Darline Jean Charles, whose New York State notary commission expired on December 3, 2006;[131]

b. An "assignment" from Ameriquest to Wachovia, as Trustee for the Series 2004-WWF1 PSA, also purportedly executed on September 28, 2004 by Matt Polansky, a purported "agent" of Ameriquest, and notarized by Darline Jean Charles, whose New York State notary commission expired on December 3, 2006.[132] Except for a different "corporate seal" and the addition of a handwritten entry identifying Wachovia as purported assignee, the Argent-to-Ameriquest "assignment" is

[130] *See* Ex. S at p. 7, 8.
[131] *See* Ex. T.
[132] *See* Ex. U.

identical to the purported Ameriquest-to-Wachovia assignment.

128. On the basis of the false allegations in the foreclosure Complaint and Certifications filed by Defendant Diamond in the Superior Court, Chancery Division, for Ocean County, New Jersey, and based further on the manufactured "assignments" identified in the immediately preceding paragraph, PHS, purportedly on behalf of Wachovia, obtained a default foreclosure judgment against Mr. and Mrs. Giles on June 5, 2007,[133] which was jurisdictionally defective and without legal effect.

129. While PHS, Diamond and representatives of Wells Fargo, on one hand, and Mr. and Mrs. Giles, on the other hand, were still discussing a possible modification of the mortgage, PHS and Diamond caused the Ocean County Sheriff's Department to schedule a public auction of the Giles' home for August 21, 2007, after which Mr. and Mrs. Giles retained the services of a real estate attorney who obtained statutory adjournments of the sheriff's auction. On September 12, 2007, Plaintiff Charles Giles himself filed an emergent application for a stay of the sheriffs' sale re-scheduled for September 18, 2007. Over the objection of PHS, the Hon. Frank A. Buczynski of the Superior Court for Ocean County granted Mr. Giles' application and postponed the sheriffs' sale until October 30, 2007 (not coincidently, only 19 days after PHS recorded its nearly identical bogus "assignments" of Plaintiff Bender's mortgage with the Recorder of Deeds in Berks County, Pennsylvania).

130. Friends and supporters of Charles and Diane Giles appealed to Wachovia Bank for assistance, while the Giles themselves shared their difficult circumstances with the public through appearances on a nationally syndicated television program hosted by

[133] *See* Ex V.

legal reporter Star Jones.[134] Just days before the scheduled sheriffs' sale, on October 23, 2007, Mark A. Farmer, senior vice president and assistant general counsel of Wachovia Bank, sent an e-mail to Jerry Dasti, counsel for Mr. and Mrs. Giles, thanking Mr. Dasti for providing Wachovia Bank with "the name of the Plaintiffs firm" in the Giles foreclosure action (*i.e.*, PHS) and advising Mr. Dasti that Mr. Farmer had "contacted the attorney handling the matter and informed him that Wachovia has not been the Trustee of the subject Pooling and Servicing Agreement since 12/30/05."[135]

131. On October 24, 2007, Mark A. Farmer sent a letter by U.S. mail and e-mail to Vladimir Palma, a litigation attorney working under the direction of Defendant Diamond. This verbatim text of this letter to PHS is reproduced below[136]:

> Dear Mr. Palma:
>
> This letter is to confirm your voice message to me this morning and our subsequent conversation wherein you advised that you were able to reach your client [*i.e.*, Wells Fargo] and verify that Wachovia Bank, N.A. is not the proper Plaintiff as named in the referenced foreclosure action. Accordingly, your client has voluntarily agreed to postpone the sale date to November 19, 2007. During the interim, it is my understanding that you are awaiting the name of the proper Plaintiff from your client. Thereafter, you will file a motion to correct the name of the Plaintiff and ensure that the County records properly reflect the name of the true holder of the mortgage.
>
> As you are aware since Wachovia Bank, N.A. is not the Trustee and not the holder of the subject mortgage we are unable to address Mr. Charles Giles' situation. Thank you for your prompt attention to this matter and your efforts to correct the public record. I look forward to receipt of an Order deleting the name Wachovia Bank, N.A. from the foreclosure action and recorded evidence correcting the public records.

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[134] *See* videoclips at (1) http://vids.myspace.com/index.cfm?fuseaction=vids.individual&VideoID=20841698; (2) http://vids.myspace.com/index.cfm?fuseaction=vids.individual&VideoID=21158096

[135] *See* e-mail dated October 23, 2005 from Mark J. Farmer to Jerry J. Dasti (Ex. W).

[136] *See* Ex. X.

Sincerely,

/s/ Mark A. Farmer

Mark A. Farmer

Senior Vice President & Assistant General Counsel
Wachovia Corporation for its subsidiary Wachovia Bank, N.A.

132. This unusually candid admission resulted only through an outpouring of local and national support for Mr. and Mrs. Giles that was heard at the highest levels of Wachovia's corporate management. At the community level, on October 27, 2007, a fundraiser was held at the Pinewoods Estates Volunteer Fire Company in Barnegat, New Jersey, attended by the township's mayor, council members, about 100 firefighters and police officers, the Police Benevolent Association and other concerned neighbors. Through the generosity of these people and others, including students from the Kenneth R. Middle School in Tabernacle, New Jersey, about $ 5,000 was raised to help Mr. and Mrs. Giles in their time of need.

133. The compassion of the Giles' friends and neighbors was not sufficient to save his home. To avoid PHS's continued mortgage foreclosure activities, Plaintiff Giles was forced to sell his home at a price far below its true market value. Even then, PHS attempted to impose on Mr. and Mrs. Giles a ludicrous charge of $7,817.50 for "legal fees and costs" in a lawsuit that PHS never had any legal authority to prosecute (*see* ¶ 109, above, and Ex. NN). Although Plaintiff Charles Giles in February, 2009 received a long overdue workers' compensation award from a New York judge in February, 2009, he is still haunted by the distress sale of his home in 2007, something that he says "hurts the most" among the painful experiences he has suffered since reporting for duty on the morning of September 11, 2001. *See* videoclip at http://angelusbell888.bravejournal.com/.

134. The fraudulent practice of PHS in fabricating mortgage assignments to file foreclosure actions systematically harms thousands of vulnerable homeowners like Plaintiffs Charles and Diane Giles. **In the case of Plaintiff Bender, PHS continued its fictitious "representation" of Wachovia as the purported "Trustee" for the Series 2004-WWF1 PSA for more than 20 months after PHS received conclusive confirmation from Senior Vice President Mark A. Farmer that "Wachovia Bank, N.A. is not the Trustee and not the holder" of mortgages bundled into the Series 2004-WWF1 PSA investment instrument**.[137]

135. When PHS believed it needed the assistance of more substantial legal brainpower in connection with its assertion of "Wachovia's" claims against Plaintiff Bender in bankruptcy court, it turned to one of its defense lawyers in **this** litigation, Jonathan J. Bart of Wilentz, Spitzer & Goldman, P.A., who on June 24, 2009 entered a formal appearance "on behalf of WACHOVIA BANK, N.A., as Trustee" in the Bender bankruptcy matter.[138] While this unauthorized representation of "Wachovia" would no doubt have come as a surprise to Wachovia Senior Vice President Mark Farmer, who in October 2007 explicitly instructed PHS to "correct the public record" and desist in its representation of "WACHOVIA BANK, N.A. as Trustee," this was just one of many instances where Mr. Bart and Wilentz, Spitzer & Goldman, P.A. have served as "house counsel" for PHS and other foreclosure law firms defending charges of impropriety by the UST and distressed homeowners. (*see* below at ¶ 175f and n. 179, 182).

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[137] *See, e.g.*, Bender Amended Proof of Claim dated April 7, 2009 (Ex. I).

[138] *See* "Notice of Appearance and Demand for Service of Papers Pursuant to Section 1109(b) of the Bankruptcy Code and Rules 1020 and 2002 of the Federal Rules of Bankruptcy Procedure" filed by Jonathan J. Bart of Wilentz, Spitzer & Goldman, P.A. on June 24, 2009 in *In re Bender*, Bankr. No. 08-21193 REF (Bankr. E.D.Pa.) (capitalization in original)(Docket Item 55) (Ex. Y).

136. Years after Wachovia sold its corporate trust and institutional custody businesses on December 30, 2005, and long after PHS learned authoritatively that it was improper for it to initiate foreclosure actions in the name of "Wachovia" as trustee for owners of securitized mortgages, PHS nevertheless continued to file and prosecute the same kind of improper foreclosure actions "on behalf" of Wachovia, "as Trustee." *See, e.g.,* Lebanon County Sheriff List of Valuable Real Estate to be sold on February 10, 2009, Sale No. 15, pursuant to a writ of execution obtained by PHS in an action entitled *Wachovia Bank, N.A., as Trustee for GSMPS 2005-RP3 v. Douglas A. Schultz*.[139]

137. Another disturbing case is that of Victor and Enoabasi Ukpe, a self-employed taxi driver from Nigeria and his homemaker wife who support five children under 10-years-old.[140] After giving a ride to a passenger who worked as a mortgage broker, Victor Ukpe and his wife were persuaded to purchase a house and take out a $224,000 mortgage loan, based upon a household adjusted gross income of just $12,198 (an amount less than half the federal poverty guideline of $25,210 for a family of six).[141]

138. The Ukpes were unable to afford their mortgage payments. On March 13, 2008, PHS and Defendant Diamond, purportedly on behalf of Bank of New York as Trustee for the Certificate Holders of CWABS, Inc., Asset-Backed Certificates Series 2005-AB-3,[142] filed a mortgage foreclosure complaint against the Ukpes in the Superior

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[139] *See* Ex. Z at p. 2.
[140] *See Bank of New York v. Ukpe*, (D.N.J. Dec. 9, 2009) ("*Ukpe* Remand Order)."
[141] *See Bank of New York v. Ukpe*, 09-cv-01710-JHR-JS (D.N.J.), Excerpts from Brief of Defendant/Third-Party Plaintiffs Victor and Enoabasi Ukpe in Opposition to Motion to Daniel Bernheim, Esq. Pro Hac Vice and in Support of Cross-Motion to Disqualify Wilentz, Goldman & Spitzer, P.A., filed on September 8, 2009 (Docket Item 31) (Ex. A1) at 3.

Court, Chancery Division, for Atlantic County, New Jersey.[143] The action filed by PHS against the Ukpes was assigned to the Hon. William C. Todd III.

139. With assistance from South Jersey Legal Services, Inc, the Ukpes filed an answer, affirmative defenses, counterclaims and a third-party complaint against PHS and other parties with an interest in the Ukpes' mortgage, including its servicer, Defendant herein Countrywide.[144] Among other things, the Ukpes alleged that PHS's "foreclosure complaint was based on a fraudulent assignment of a mortgage note from Mortgage Electronic Registration Systems, Inc. ['MERS'] to Plaintiff [Bank of New York]." Based on these allegations and on supporting evidence presented by counsel for the Ukpes, in January 2009, Judge Todd denied PHS's motions to strike the Ukpes' answer and for summary judgment.[145]

140.With respect to the Ukpes' affirmative claims for relief against PHS and its clients, PHS refused to provide critical discovery requested by the Ukpes' counsel. Nevertheless, the Ukpes' counsel were able to obtain testimonial and documentary evidence to support allegations that (in the words of the Hon. Joseph H. Rodriguez of the United States District Court for the District of New Jersey):

> Francis Hallinan, a partner at the Phelan firm, executed the assignment in his capacity as a MERS officer, while the Phelan firm was a vendor to MERS, the assignor; the Phelan firm also represents the Plaintiff [Bank of New York] in this foreclosure action, as well as the mortgage servicer, Countrywide Home Loans Servicing, LP. The three Phelan firm named partners, including Hallinan, own Full Spectrum Holdings, which is comprised of Full Spectrum Legal Services, Inc. (FSLS) and Land Title Services. **The in-house notary for FSLS, Thomas Strain, testified during deposition that over the previous three years, he falsely**

[143] See *Upke* Remand Order at 3.
[144] *Id*.
[145] *Id*. at 5.

> **acknowledged tens of thousands of mortgage assignments for the Phelan firm, including the assignment in this case.**[146]

141.In a telephone conference on January 16, 2009, Judge Todd "called for a plenary hearing" to:

> get to the bottom of what it viewed as a possible systemic problem involving the alleged false notarization of assignments in which a [PHS] lawyer played a central role in the process….The Court expressed a great deal of concern about the process by which the assignment in this and other cases was created, the circumstance that the lawyer, Mr. Hallinan, signed the assignment representing one party to the transaction while his law firm represented the other party. The Court expressed suspicion about the various roles played by Mr. Hallinan and noted the potential for conflicts. The major problem the Court had was not with the alleged false notarization by the notary. Rather the problem was the attorney's participation in the process. The Court also raised the issue of an appropriate remedy and recognized that the situation could impact a host of foreclosure cases. Ultimately, the Court expressed a goal to get to the bottom of the matter and to make sure "everybody gets it right."[147]

142.Judge Todd entered an Order dated January 21, 2009, requiring PHS to "produce" Defendant Hallinan and notary Thomas Strain at the plenary hearing,[148] which was ultimately scheduled for April 20, 2009. Judge Todd also required PHS to produce at the hearing the "original" copy of Full Spectrum's "notarization logs."

143.Having no desire for Judge Todd to learn the true facts or "get it right" at the April 20, 2009 hearing, defendants abruptly removed the Ukpe's action to federal court in Camden on April 9, 2009, where it was assigned to Judge Rodriguez. Upon motion by the Ukpes, Judge Rodriguez remanded the case to New Jersey Chancery Court by Order dated December 9, 2009.

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[146] *Id*. at 6 (emphasis supplied).
[147] Letter dated April 11, 2009 to the Hon. William C. Todd, III, P.J.Ch., from Abigail B. Sullivan, counsel for the Ukpes. (Ex. B1) (emphasis supplied).
[148] Ex. C1 at ¶ 9.

144.In the meantime, Judge Todd did not overlook the evidence presented to him by counsel for the Ukpes. Judge Todd took the extraordinary initiative of advising other Chancery Court judges in New Jersey about falsified mortgage assignments "associated" with PHS's office.[149] In a furtive attempt to rehabilitate the reputation of his firm, Defendant Lawrence Phelan sent an *ex parte* letter to Judge Todd (1) notifying the judge that PHS had at its own expense re-executed and re-recorded 2,921 mortgage assignments that were fraudulently notarized by Full Spectrum employee Thomas Strain at the behest of Defendant Hallinan, described in PHS's web site as the law firm's "'behind the scenes' manager who ensures that the job gets done"[150] – evidently by any means necessary; and (2) imploring the judge to "circulat[e]' PHS's "notification of [its] corrective actions" to other Chancery Court judges.

145.As demonstrated throughout this Complaint, the so-called "corrective actions" described by Defendant Phelan are far too little and years too late. Even then, these "corrective actions" relating to improper land recording practices were transparently superficial and ineffective because they did not also extend to Pennsylvania homeowners like Plaintiff Rhodes, who were likewise sued in foreclosure actions by PHS on the basis of problematic "assignments" that were (1) executed by Defendant Hallinan, purportedly as "vice president" of MERS (2) to "Bank of New York as Certificateholders of [a] CWABS Asset Backed Certificate Series"; (3) acknowledged by notary Thomas Strain; and (4) recorded upon the ostensible authority of PHS's real client, mortgage servicer Countrywide. In the case of Plaintiff Rhodes' mortgage assignment, the "precise

[149] *See* Letter dated May 8, 2009 from the Hon. William C. Todd III to Abigail B. Sullivan, Esq. of South Jersey Legal Services, Inc. and Dashika R. Wellington, Esq. of Wilentz, Goldman & Spitzer (there as here counsel for PHS), enclosing *ex parte* letter dated April 29, 2009 from Defendant Lawrence T. Phelan to the Hon. William C. Todd III. (Ex. D1).

[150] www.fedphe.com/pages/FSH.htm

address" of the "named assignee" is listed as that of Countrywide rather the assignee specifically identified in the instrument, Bank of New York.[151]

146.Six years ago, PHS spurned an opportunity to undertake real "corrective actions" to the wrongful practices that are so out of control today. In *Abramson v. Federman & Phelan, LLP*, 313 B.R. 195, 198 (Bank. W.D.Pa. 2004), PHS's predecessor firm (represented by Daniel Bernheim and Jonathan Bart, the same lawyers now acting as counsel for PHS in this litigation) persuaded the Hon. Warren W. Bentz of the United States Bankruptcy Court for the Western District of Pennsylvania to dismiss a proposed class action alleging that Federman & Phelan violated, *inter alia*, the FDCPA by virtue of the law firm's filing of bankruptcy "proofs of claim which overstated the mortgage arrears as part of a course of conduct in which mortgage arrears are regularly overstated." 313 B.R. at 196. Without making any determination concerning the truth of plaintiff's allegations, Judge Wentz felt constrained to limit plaintiff's remedies to those explicitly enumerated in the Bankruptcy Code, a conclusion not required by statutory or case law.[152]

147.Emboldened by their "success" before Judge Wentz, PHS's lawyers proclaimed on a former web site that they are "Leader[s] In Protecting Lenders In Bankruptcy Class Actions."[153] These lawyers boasted that their supposed legal acumen provides their clients "a measure of security against the rapid expansion of class action

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[151] *See* "Assignment" of Plaintiff Rhodes' mortgage dated November 17, 2007 (Ex. E1).

[152] *See* Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss the initial complaint in this litigation, filed on May 8, 2009 (Docket Item 3) at 14-19. *See also Kline v. Mortgage Electronic Security Systems, Inc*., 2009 WL 3064660 (S.D.Ohio Sept. 21, 2009), *citing*, *Randolph v. IMBS, Inc*., 368, 726, 730 (7th Cir. 2004) (rejecting magistrate's recommendation to dismiss FDCPA allegations involving the filing of false bankruptcy proof of claims because "there is no indication that the Bankruptcy Code … covers the whole subject of the FDCPA and was clearly intended as a substitute").

[153] *See* Ex. F1.

litigation claims against lenders."[154] (*See* below at ¶¶ 175f and n. 179, 182). Rather than undertake remedial measures to amend the systematic problems brought to Judge Wentz' attention in 2004, as responsible lawyers would have done, PHS was so convinced of its "security" against class actions that it continued to conduct its illegal operations with impunity, an ongoing abuse of struggling homeowners and the judicial system that reflects neither conscience nor restraint.[155]

3. PHS's Wrongful Conduct Is Facilitated By Its Thoughtless, Mechanical Application of Client-Mandated Computer Programs

148. In the words of PHS's own litigation counsel, "loan administration is generally automated, so if charges are erroneously inputted, incorrect charges will be generated."[156]

149. By its own account, both of PHS's offices are "completely computerized" and equipped with "every case management and invoice reporting system[]" used by the mortgage foreclosure industry, including LenStar, VendorScape, NewTrak, iClear, Alltel and NewInvoice, all of which are "client-based web sites."[157]

150. As demonstrated above at ¶¶ 56-65, many state and federal judges throughout the United States have found that accounting systems used by Defendants Countrywide and Wells Fargo are systematically incapable of generating reliable financial information about their borrowers' mortgages.

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[154] *Id.*

[155] Defendant Rosemarie Diamond of PHS shared her insight into the topic of the "FDCPA and Class Actions" as a panelist at a meeting of the USFN trade group at the Grand Hyatt Hotel in Denver on July 19-20, 2007 (http://www.usfn.org/Content/NavigationMenu/SEMINARSTRAININGEVENTS/USFNSeminarArchive/2007LegalIssuesSeminar/LegIss07_Brochure_FINAL_06.01.07_Clickable_rev.pdf).

[156] *Id.*

[157] http://www.fedphe.com/. *See also* PHS listings in 2006 USFN Membership Directory at 11, 14 (http://www.zp-production.com/sm/pdf/ar-USFN06.pdf)

151. As a condition of its retention by clients like Defendants Wells Fargo and Countrywide, PHS is required to use whatever case management and invoice reporting system is dictated by its clients. It is through these systems that PHS (1) receives its initial case referrals; (2) obtains financial and legal information used to perform its work assignments; (3) is required to submit periodic status reports; and (4) submits invoices and receives payments from its clients.

152. These systems also permit PHS's clients to monitor the speed by which PHS performs its "services," which is measured against specific "timelines" for the completion of specified tasks during the foreclosure and bankruptcy processes.[158] PHS receives specific "grades" from its clients with respect to its performance vis-a-vis required timeliness. A "good" grade may translate into more case referrals. Conversely, a "bad" grade can result in a significant reduction of work assigned to PHS.[159] Thus, PHS's web site, which is used by PHS as a marketing tool to both existing and prospective clients, emphasizes (1) PHS's proficiency in the use of "every case management and invoice

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[158] PHS and Wells Fargo are "default management" clients of Lender Processing Services, Inc. ("LPS"), as was Countrywide until its acquisition by Bank of America. LPS describes itself as "the nation's leading provider of mortgage processing services, settlement services, mortgage performance analytics, and default solutions, which are used by a "majority of the 50 largest U.S. banks" that "rely on" its services. (http://interchange.lendingsvcs.com/providers.html; (http://interchange.lendingsvcs.com/providers.html.

According to LPS's web site, "[w]hen clients refer a loan to local counsel through LPS Foreclosure Solutions, Inc., the loan timeline is managed until resolution. Clients identify the unique requirements of their portfolios, and the loans are processed through LPS Foreclosure Solutions, Inc. to ensure the most efficient outcome. Internal time limitations for key events are set, and active monitoring is conducted to minimize the overall timeframe from referral to resolution. The loan-level data is reported to LPS partners on a daily basis using LPS Desktop, a Web-based default management technology"). (http://www.lpsvcs.com/DefaultSolutions/ForeclosureandBankruptcyOutsourcing/Pages/default.aspx).

[159] *See Solving Foreclosure Management Challenges Series: Foreclosure Timeline Mangement*, FREDDIE MAC at 14 ("Refer business to the firms with the best timelines") and at 26 ("Communicate our foreclosure timeline requirements to all your staff and attorneys. Encourage them to actively decrease timelines. Instruct all of your staff and attorneys to strive for timelines that are less than our published state foreclosure timelines").
(http://74.125.93.132/search?q=cache:uQ22Vyvaj2kJ:www.freddiemac.com/learn/pdfs/service/sdmcftrec.pdf%20mortgage%20foreclosure%20counsel%20%20%20timelines&hl=en&gl=us)

reporting system" in the industry; and (2) PHS's ability to "ensure as quick a turnaround time as humanly possible."[160]

153. Given the substantial rewards that PHS receives from its single-minded devotion to rapid delivery of its "services," PHS demonstrates no concern about accurate billing of foreclosure costs, proper legal standing of its "clients" to bring foreclosure actions or the success of programs like Philadelphia's Residential Mortgage Foreclosure Diversion Pilot Program. For lawyers like PHS's Rosemarie Diamond, the cost/benefit analysis requires no difficult calculation. "Delay is "unproductive" and "waste[ful]"[161]; on the other hand, speed is highly profitable and the means by which PHS maintains its position as the "premier" mortgage foreclosure law firm in the Pennsylvania-New Jersey "region" and the "largest" such firm in Pennsylvania.[162] Stated another way, there is little for PHS to gain by doing its job responsibly or by giving distressed homeowners a fair opportunity to remain in their homes during a time of national financial crisis but, to quote a well-known phrase, there are millions of unearned dollars to be made by subscribing to the "greed is good" philosophy of doing business.

154. On April 15, 2009, the Hon. Diane Weiss Sigmund of the United States Bankruptcy Court for the Eastern District of Pennsylvania wrote a 58-page opinion describing improper industry-wide practices of profit-obsessed foreclosure law firms like PHS.[163]

155. In that case, Judge Sigmund granted the UST's request for discovery concerning use by foreclosure law firms of computerized mortgage "default solutions"

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[160] http://www.fedphe.com/
[161] *See* ¶ 44, above.
[162] http://www.fedphe.com/.
[163] *In re Taylor*, 407 B.R. 618 (Bankr. E.D.Pa. 2009)

provided by LPS, including a product called NewTrak,[164] which is also part of PHS's smorgasbord of "client-based" computer programs.[165] After "four lengthy evidentiary hearings" in which the UST was invited to participate, Judge Sigmund found that one "high-volume" Philadelphia-area mortgage foreclosure law firm with a comparable attorney-to-staff member ratio to PHS,[166] on a "systemic" basis,[167] demonstrated a "slavish adherence"[168] to its client's "computer-driven models and communications to inexpensively traverse the path to foreclosure [that] offends the integrity of our American bankruptcy system."[169]

156. After evaluating the evidence presented during four evidentiary hearings, Judge Sigmund concluded that:

- "[M]ortgage lenders upload all or part of the mortgage documents and loan records of specified borrowers into the NewTrak system. Attorneys are engaged on a case by case basis through NewTrak to handle specified tasks. They get their assignments from NewTrak and report and/or seek further direction by "opening up an issue" on NewTrak."[170]

- The manager in charge of the law firm's bankruptcy department "relied on the NewTrak system for all factual information about the loan," without any direct contact with the firm's client. The law firm's "processors (including paralegals) were instructed to communicate by NewTrak and could only deviate from this practice by using [the law firm's] "escalation procedures, i.e., making a request of an assistant manager and then manager." Neither the bankruptcy department manager "nor anyone that she supervised was requested to check the accuracy of any of the NewTrak data"[171]

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[164] *Id*. at 623.
[165] *See* ¶ 76, above.
[166] While PHS says that it has 17 attorneys and 250 staff members, the foreclosure law firm before Judge Sigmund has 10 lawyers and 130 staff members. *In re Taylor*, 407 B.R. at 626.
[167] *Id*. at 639
[168] *Id*. at 649
[169] *Id*. at 651
[170] *Id*. at 623.
[171] *Id*. at 632-33.

- "NewTrak interposes a LPS processor as intermediary" between mortgage lenders or servicers "and the law firm that the system engages from a list pre-approved" by the lender or servicer. With the loan data uploaded to a LPS system by the lender or servicer, "LPS responds to the perceived needs of retained counsel to perform the assigned task," at times addressing the lender or servicer electronically for further information. "The retained counsel does not address the client directly."[172]

- In a brief to the court (written by Messrs. Bernheim and Bart, who now represent PHS in this litigation), the foreclosure firm acknowledged that it "is one of many law firms that conduct a high volume foreclosure bankruptcy practice and if a lender requires that a law firm enter into an agreement with its agent, a servicing company such as Fidelity [National Information Services, also known as LPS], [the law firm] has no choice but to participate in such a program if it wants to do business."[173]

157. In this context, Judge Sigmund agreed with an observation by the Hon. Jeff Bohn of the United States Bankruptcy Court for the Southern District of Texas, who remarked that mortgage lenders and servicers, together with their "high volume foreclosure law firms," have fostered a corrosive "assembly line" culture of practicing law.[174]

158. In sanctioning the law firm before her, Judge Sigmund specifically criticized (1) a senior-level attorney for becoming "so enmeshed in the assembly line of managing the bankruptcy department's volume mortgage lender practice that she has lost sight of her duty to the court and has compromised her ethical obligations"[175] and (2) the firm's sole shareholder (who argued that "his firm's reliance on NewTrak and other such aids [was] essential to the economic structure of the law practice") for fostering a law

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[172] *Id*. at 637.

[173] *Id*. at 638. *See also*, Michael Sasso, *Law Firm Gorges On Home Defaults*, TAMPA TRIB., January 3, 2010 ("Dubbed foreclosure mills by some in the industry, these [law firms] have turned the job into a factorylike process. Speed is the key to their success") (http://www2.tbo.com/content/2010/jan/03/na-law-firm-gorges-on-home-defaults/news-breaking/).

[174] *In re Taylor*, 407 B.R. at 641, *quoting*, *In re Parsley*, 384 B.R. 138, 183 (Bankr. S.D.Tex. 2008).

[175] *Id*. at 648.

firm "culture" that "appears to value production over professionalism, a priority acceptable for a business but potentially antagonistic to the practice of law."[176]

159. Observing that the anomalies she identified "are not isolated to this case or to this residential mortgage lender law firm,"[177] Judge Sigmund expressed hope that her published opinion will lead to "systemic changes" in the institutionalized practices of high-volume foreclosure law firms, which (in their ambition to cultivate "advantageous … business relationships with [their] mortgage lender client base" and to enhance their "own bottom line") abandon their professional responsibilities through "rigid adherence" to their client's "automated procedures."[178]

159. If the past is prologue to the future, PHS and law firms of its dollar-driven disposition will not serve voluntarily as constructive agents of "systemic change" in the foreclosure industry. Systemic change, if it comes at all, must result from judicial

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[176] *Id* at 648-49

[177] *Id* at 649. Judge Sigmund's observation is borne out by an agenda distributed at USFN's "Fall Regional Default Servicing Seminar" at the Omni Hotel in San Diego on September 20-22, 2006, an event where Fidelity National Information Services (now LPS) acted as the "MVP Sponsor" and where PHS was identified among the foreclosure law firms listed as a "Heavy Hitter" and a "Gold" Sponsor. The "session outline" of group's meeting on September 21st reveals, as Judge Sigmund noted, that "timeline management" and "report cards," and strictly circumscribed day-to-day communication between attorneys and their servicer clients are issues of paramount importance to "America's Mortgage Banking Attorneys" and their corporate masters (*e.g.*, "Verbal Communication" is limited by "Contact Matrices," "Voice Mail Polic[ies]" and "Escalation" procedures, while "Non-Verbal Communication" is reserved for "SOS" or "Urgent Situations.") *See* http://www.southlaw.com/USFN.Fall.06.pdf. The "session outline" of group's meeting on September 22nd also reveals what this group believed to be the "Benefits of Standardization and Automation of Restatement Process": (a) "Reduction of Costs"; (b) "Increase in Speed" and (c) and, only then, as an evident afterthought, "Improvement of Accuracy." *Id*. Among the featured panelists at the USFN's soirée in San Diego was Jeff Niklawski of Defendant Wells Fargo. *Id*.

[178] *In re Taylor*, 407 B.R. at 649, 645. While Judge Sigmund hopes that foreclosure attorneys will rely less on technology and more on their professional training, the reality is that the foreclosure industry is working in the opposite direction toward the objective of having "attorneys … do ***all*** of their work in their case management system." *See* http://www.usfn.org/AM/Template.cfm?Section=Home&CONTENTID=6867&TEMPLATE=/CM/HTMLDisplay.cfm&SECTION=Article_Library (emphasis supplied) ("Automating these critical business processes can provide maximum return on investment for firms by reducing labor overhead and building resource capacity to handle more files").

enforcement of homeowners' legal rights, a fundamental privilege of American citizenship ignored by PHS and its co-defendants.

V. CLASS ACTION ALLEGATIONS

160. Plaintiffs bring this lawsuit individually and as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class ("PHS Overcharge Class"):

> All homeowners who, during the period from January 15, 2004 through the present ("Class Period"), (1) were defendants in mortgage foreclosure actions prosecuted by Phelan Hallinan & Schmeig, LLP, Phelan Hallinan & Schmeig, P.C., Phelan Hallinan Schmeig & Diamond, P.C., their predecessors, affiliates, subsidiaries or attorneys ("PHS"); (2) obtained a stay of sheriffs' sale proceedings and (3) sustained damages resulting from inflated or fabricated mortgage foreclosure costs charged or claimed by PHS.

161. Plaintiffs also bring this lawsuit individually and as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class ("PHS Improper Representation Class"):

> All homeowners who, during the period from January 15, 2004 through the present ("Class Period"), were defendants in mortgage foreclosure actions (1) prosecuted by Phelan Hallinan & Schmeig, LLP, Phelan Hallinan & Schmeig, P.C., Phelan Hallinan Schmeig & Diamond, P.C., their predecessors, affiliates, subsidiaries or attorneys ("PHS"); and (2) in which PHS purported to represent a party that lacked legal standing to bring a mortgage foreclosure action at the time PHS filed its complaint.

162. The PHS Overcharge Class and the PHS Improper Representation Class are collectively referred to in this Complaint as the "Classes."

163. This litigation is properly maintainable as a class action.

164. The Classes are so numerous and geographically dispersed that joinder of all members is impracticable. Defendant PHS's web site boasts that it is the "largest

[residential mortgage foreclosure] firm in Pennsylvania" and "one of the few law firms to handle foreclosures, bankruptcies and asset recovery actions for the entire states of New Jersey and Pennsylvania." According to Defendant Hallinan, PHS handled an estimated 24,000 to 26,000 foreclosure prosecutions in Pennsylvania and New Jersey during 2008 alone, a fraction of the foreclosure actions prosecuted by PHS during the entire Class Period.[179]

165. There are questions of law and fact common to the Classes. These common questions relate to the existence of the wrongful conduct alleged, and to the type and common pattern of injury sustained as a result thereof. The questions include but are not limited to:

a. Whether Defendants as a matter of regular practice overstated or fabricated the amount of fees due from Plaintiffs and members of the Classes in connection with foreclosure sales that did not proceed to completion, including, *inter alia*, (1) sheriffs' deposit refunds; (2) attorneys' fees; (3) real estate title and litigation support costs; (4) property inspection and valuation fees; and (5) duplicative costs for "services" already included in independent charges.

b. Whether PHS as a matter of regular practice misappropriated and converted to its own use (and/or the use of its clients) deposits refunded by county sheriffs to PHS in connection with foreclosure sales that did not proceed to completion, the amounts of which should have been credited without delay to the accounts of Plaintiffs and members of the Classes.

c. Whether PHS as a matter of regular practice filed foreclosure actions

[179] *See* above at ¶ 75.

against homeowners in the name of "clients" that lacked proper legal standing to bring suit.

d. Whether PHS (or its employees or agents) as a matter of regular practice falsified or caused the falsification of mortgage and note assignments recorded with public agencies in connection with or after the filing of foreclosure actions prosecuted by PHS.

e. Whether PHS conducted its illegal practices with the assistance or knowing acquiescence of Defendants Countrywide and Wells Fargo.

f. The duration, sequence and character of the conduct alleged in this Complaint, including particular acts performed by Defendants and others that deprived Plaintiffs and members of the Classes of their legal rights and property.

g. The identity of other co-conspirators (including non-defendant lenders, mortgage servicers, litigation attorneys, computerized mortgage servicing program vendors, and mortgage foreclosure industry trade groups), and the extent of the co-conspirators' participation in the conduct complained of herein.

h. Whether the conduct alleged in this Complaint violated RICO.

i. Whether the conduct alleged in this Complaint violated the FDCPA.

j. Whether the conduct alleged in this Complaint violated the UTPCPL.

k. Whether the conduct alleged in this Complaint states a cause of action for common law fraud, breach of contract, breach of duty of good faith and fair dealing, money had and received, and/or negligent misrepresentation in violation of the common laws of the Commonwealth of Pennsylvania and the State of New Jersey.

l. Whether Defendants' conduct, as alleged in this Complaint, caused

injury to the person and property of Plaintiffs and other members of the Classes.

m. The appropriate measure of damages sustained by Plaintiffs and other members of the Classes.

n. Whether restitution and disgorgement of profits are appropriate forms of relief for the wrongful conduct alleged in this Complaint.

o. Whether injunctive relief is warranted to restrain Defendants from continuing to engage in the wrongful conduct alleged in this Complaint, and

p. Whether an auditor or special master should be appointed to (1) ascertain the amount of money wrongfully taken by Defendants, which should be disgorged to Plaintiffs and members of the Classes; (b) recommend specific business management and accounting procedures that Defendants must adopt and implement to avoid future repetition of the wrongful conduct documented throughout this Complaint; and (c) monitor Defendants' compliance with all business management or accounting procedures that may be ordered by the Court in granting injunctive relief in this action.

166. Plaintiffs Bender, Giles (and probably Rhodes) are members of both Classes. All Plaintiffs are members of the PHS Overcharge Class. Plaintiffs' claims are typical of the claims of other Class members. Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs' interests are aligned with, and not antagonistic to, those of the other members of the Classes. In addition, competent counsel experienced in the prosecution of class action litigation represents Plaintiffs.

167. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

168. Defendants have acted, and refused to act, on grounds generally applicable to the Classes, thereby making appropriate injunctive relief with respect to the Classes as a whole.

169. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

170.A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Members of the classes are readily ascertainable, *inter alia*, through records maintained in the regular course of business by PHS and other Defendants. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many class members who otherwise could not afford to litigate substantively complex issues like those asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

VII. CLAIMS FOR RELIEF

COUNT I

VIOLATIONS OF 18 U.S.C. § 1962(c) (RICO)

171. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege and incorporate by reference each of the allegations in the preceding paragraphs of this Complaint.

172. This cause of action, which alleges violations of Section 1962(c) of RICO, 18 U.S.C. § 1962(c), is asserted against all Defendants on behalf of the Classes.

173. Plaintiffs, each member of the Classes, and each Defendant is a "person" within the meaning of 18 U.S.C. § 1961(3).

174. At all relevant times, in violation of 18 U.S.C. § 1962(c), Defendants conducted the affairs of the association-in-fact enterprises identified below, the affairs of which affected interstate commerce, through a pattern of racketeering activity.

A. The Enterprise

The PHS Mortgage Foreclosure and Bankruptcy Enterprise

175. The PHS Mortgage Foreclosure and Bankruptcy Enterprise is an association-in-fact consisting of the following persons and entities:

a. PHS, including defendants Lawrence T. Phelan, Francis S. Hallinan, Daniel G. Schmieg, Rosemarie Diamond, Judith T. Romano (and non-defendants Jay B. Jones, Andrew L. Spivack, Vladimir Palma, Peter J. Mulchay, Michelle Bradford, Brian Blake, Thomas Bodowski, Joseph Schalk and other salaried staff or contract lawyers), together with PHS's non-defendant managerial personnel, including but not limited to financial officer John Corporale, accounts receivable "team leaders" such as Eugene Jaskiewicz, and administrative officer Susan Hoers.

b. Full Spectrum Services, Inc., Full Spectrum Legal Services, Inc., Full Spectrum Review Services, Inc., Foreclosure Review Services, Inc., Land Title Services of New Jersey, Inc., Land Title Services of Pennsylvania, LGI Abstract Agency, Inc., Creditors' Services, Inc., Eugene L. Terzano, Jr., Jean Mole, Jay Mullen, Thomas Strain, and other agents and representatives who provide foreclosure and bankruptcy-related

services to PHS in Pennsylvania and/or New Jersey, including, *inter alia*, property searches; duplication and filing of recorded mortgages, notes and assignments; notary public services; and the filing, service or publication of court documents. PHS uses these entities and individuals to implement its fraudulent foreclosure fee overcharge scheme, as well as its institutionalized practice of prosecuting legal proceedings on behalf of clients with no proper legal standing.

c. Mortgage servicers (including but not limited to Defendant Countrywide and Defendant Wells Fargo) that "refer" mortgage foreclosure and bankruptcy matters to PHS for prosecution. While monitoring and grading PHS on the "speed" of its performance, these mortgage servicers facilitate and profit from PHS's fraudulent foreclosure fee overcharge scheme, as well as from its institutionalized practice of prosecuting legal proceedings on behalf of clients with no proper legal standing. They accomplish this result, *inter alia*, through PHS's mandatory use of "client-based" case management and invoice reporting systems.

d. Non-defendant manufacturers, marketers and distributors of "client-based" case management and invoice reporting systems used throughout the residential mortgage foreclosure industry, including (1) Loan Processing Services, Inc. ("LPS," formerly known as Fidelity National Information Services, Inc.), a Delaware Corporation with principal executive offices at 601 Riverside Avenue, Jacksonville, Florida 32204; (2) The First American Corporation, a California Corporation with principal executive offices at 1 First American Way, Santa Ana, California 92707; and (3) ISGN Solutions, Inc., a subsidiary of a corporation owned by Indian company named CFCL Technologies Ltd., which maintains its United States headquarters at 3220 Tillman Drive, Suite 301,

Bensalem, Pennsylvania 19020. Through its use of the "client-based" case management and invoice reporting systems developed and sold by these parties, PHS, Wells Fargo and Countrywide implement the unlawful schemes identified throughout this Complaint.

e. Non-defendant USFN (also known as "America's Mortgage Banking Attorneys"), a foreclosure industry trade association located at 14471 Chambers Road, Suite 260, Tustin California 92780, whose members include foreclosure law firms, mortgage servicers and lenders, and case management and invoice reporting system providers. Through its membership and leadership position in USFN, PHS cultivates key business relationships and exchanges inside information with other participants in the residential mortgage foreclosure industry, some of which are used by PHS to engage in the unlawful conduct identified in this Complaint. PHS is a "founding member" of the USFN.[180]

f. Non-defendant lawyers Daniel S. Bernheim 3[d] ("Bernheim") and Jonathan J. Bart ("Bart") (both formerly affiliated with a defunct Philadelphia law firm named Silverman, Bernheim & Vogel, now resident lawyers in the Philadelphia office of New Jersey-based Wilentz, Goldman & Spitzer, P.A. ["Wilentz firm"]). Bernheim and Bart maintain a litigation practice that they claim establishes them as "Leader[s] In Protecting Lenders In Bankruptcy Class Actions," who provide their clients "a measure of security against the rapid expansion of class action litigation claims against lenders."[181] From their offices at 1500 Market Street, Two Penn Center Plaza, Suite 910, Philadelphia, Pennsylvania 19102, Bernheim and Bart have become veritable "house counsel" to PHS. Bernheim (who graduated with Defendant Lawrence Phelan in Villanova Law School's

[180] http://www.fedphe.com/
[181] *Id*.

Class of 1980) and/or Bart have defended PHS in, *inter alia*, the following actions other than this one[182]:

- *In re Bender*, Bankr. No. 08-21193 REF (Bankr. E.D.Pa.)
- *Abramson v. Federman & Phelan, LLP*, 313 B.R. 19 (Bankr. W.D.Pa. 2004)[183]
- *Bank of New York v. Ukpe*, 09-cv-01710-JHR-JS (D.N.J.), and No. F-10209-08 (Sup. Ct, Chan. Div. N.J.)[184]
- *Dalara v. Phelan, Hallinan& Schmieg,LLP*, No. 09-2704 (E.D.Pa.)
- *Wright v. Phelan, Hallinan & Schmieg, LLP*, No. 09-3538 (E.D.Pa.)
- *Shivone v. Washington Mutual Bank, N.A.*, No. 07-1038 (E.D.Pa.)

While representing PHS in this lawsuit, Bart and the Wilentz firm, at the instigation of PHS, entered a formal appearance in Plaintiff Bender's bankruptcy action, despite the fact that neither PHS nor the Wilentz firm had any legal authority to represent their illusory mutual "client," Wachovia Bank, N.A. – an entity with no legal standing to assert a claim in Plaintiff Bender's bankruptcy case. *See* ¶ 135 and n. 138, above. In actively assisting PHS in its professional misconduct and unlawful activities, Bart and the Wilentz firm have participated directly in the wrongdoing at issue in this litigation, thus making Bernheim, Bart and other Wilentz firm employees necessary and

[182] Bernheim, Bart and the Wilentz firm have also applied the intimate perspective they gained their frequent collaborations with PHS to their representation of another high-volume foreclosure law firm, which was sanctioned for its misconduct in *In re Taylor*, 407 B.R. 618 (Bankr. E.D.Pa. 2009), now under appeal in No. 09-02479 (E.D.Pa.). *See also Fryson v. Udren Law Offices, PC*, 07-cv-00164-TON (E.D.Pa.)

[183] *See* ¶¶ 146-147, above.

[184] *See* ¶¶ 137-144, above.

important fact witnesses.[185]

176. The PHS Mortgage Foreclosure and Bankruptcy Enterprise is an ongoing, continuing group or unit of persons and entities associated together for the common purpose of maximizing revenue through the prosecution of residential mortgage foreclosure lawsuits and related bankruptcy court proceedings. The Enterprise operated continuously throughout the Class Period.

177. The PHS Mortgage Foreclosure and Bankruptcy Enterprise engages in, and its activities affect, interstate commerce.

178. While all Defendants participate in and are part of the PHS Mortgage Foreclosure and Bankruptcy Enterprise, they also have an existence separate and distinct from the Enterprise.

179. The members of the PHS Mortgage Foreclosure and Bankruptcy Enterprise

[185] In the absence of a voluntary withdrawal of the Wilentz firm, Plaintiffs will be required to file a motion to disqualify Bernheim, Bart and the Wilentz firm from further representation of PHS in this action. It should be noted that these lawyers and this law firm have also represented PHS in *Bank of New York v. Ukpe* under similar conflicts of interest, there simultaneously representing Bank of New York (the purported mortgage holder), MERS (the purported assignor of the mortgage), Countrywide (the mortgage servicer), in addition to Thomas Strain (the notary employed by Full Spectrum who testified that he falsified thousands of mortgage assignment acknowledgements on behalf of PHS, including the fraudulent assignment to Bank of New York). *See* ¶¶ 137-144, above. The active participation of Bernheim, Bart and the Wilentz firm in PHS's unlawful activities (together with their sustained involvement in the legal affairs of PHS, Full Spectrum and its former employee Thomas Strain) establish that Bernheim, Bart and the Wilentz firm act in effect as PHS's "house counsel," circumstances that should disqualify them from serving as counsel for PHS in this litigation. *See, e.g., United States v. Locasio*, 6 F.3d 924, 931-32 (2d. Cir. 1993), *citing* the "thoughtful and well-reasoned opinion" of the Hon. I. Leo Glasser in *United States v. Gotti*, 771 F.Supp. 552, 560 (E.D.N.Y.1991), which found that attorney Bruce Cutler, who "served as [John] Gotti's attorney in previous criminal trials in federal court … had acted as 'house counsel' to the Gambino Crime Family by receiving 'benefactor payments' from Gotti to represent others in the criminal enterprise." Here, there is little doubt that Bernheim and Bart received payments from PHS for their representation of Mr. Strain – as well as for their own unauthorized joint representation of Wachovia). Moreover, befitting their role as "enforcer" for the PHS Mortgage Foreclosure and Bankruptcy Enterprise, Bernheim and Bart attempt to intimidate adversaries through unseemly assaults on their character. *See, e.g., In re Taylor*, 407 B.R. at 648 n. 60 (Judge Sigmund criticized the "aggressive stance" taken on behalf of a sanctioned foreclosure firm represented by Bernheim and Bart, who failed to acknowledge "any deficiencies in the firm's practice," "blamed" debtor's counsel and the court for those deficiencies, and argued that "the problem was everyone but the responsible [sanctioned law firm] attorneys"; highlighting the disservice done to their client, Judge Sigmund said she hoped that the client's "posture" represented the overheated "advocacy of its counsel" rather than that of the client itself).

are linked systematically through contractual relationships, financial transactions and coordinated activities, much of which are executed through electronic case management and invoice reporting systems utilized by virtually the entire residential mortgage foreclosure industry.

B. Defendants' Use of the U.S. Mails and Interstate Wire Facilities

180. The PHS Mortgage Foreclosure and Bankruptcy Enterprise necessarily engaged in and affected interstate commerce by virtue of its members' physical locations in many different states throughout the United States: (1) PHS maintains offices, employees and controlled companies in both Pennsylvania and New Jersey; (2) Wells Fargo maintains corporate headquarters in California and conducts mortgage servicing business from offices in Iowa; (3) before its acquisition by Bank of America, Countrywide maintained corporate headquarters in California and conducted mortgage servicing business from offices in Texas; (4) Bank of America maintains corporate headquarters in North Carolina and, like Countrywide before it, conducts mortgage servicing business from offices in Texas; (5) the major providers of case management and invoice reporting systems used by the Enterprise are based in Florida, California and Pennsylvania; (6) the USFN ("America's Mortgage Banking Attorneys") is based in California and conducts "seminars" in resort locations throughout the nation; and (7) PHS "house counsel" Bernheim and Bart have offices in Pennsylvania, and they are shareholder and counsel of the New Jersey-based Wilentz firm.

181. During the Class Period, Defendants' illegal conduct and wrongful practices were carried out by an array of legal and mortgage servicing personnel, working across state boundaries, who necessarily engaged in frequent transfers of correspondence, legal

documents, loan data, information, products, invoices, account statements, financial instruments and currency, in most cases by use of the U.S. mail and interstate wire facilities.

182. For purposes of executing and/or attempting to execute the above-detailed schemes to inflate or fabricate foreclosure costs and to initiate foreclosure actions in the name of parties without legal standing to bring them, Defendants, in violation of 18 U.S.C. § 1341, (a) placed in United States Post Offices and/or in other authorized repositories matters or things to be sent or delivered by the United States Postal Service; (b) caused matter and things to be sent or delivered by the Postal Service; (c) caused matter and things to be delivered by commercial interstate carriers, and (d) received matter and things delivered by the Postal Service and/or commercial interstate carriers. The matter and things described herein include, but are not limited to, correspondence, land records, court filings, legal agreements, property searches, invoices, reports, financial data, invoices, account statements, currency and all other documents regularly transmitted during the residential mortgage foreclosure process.

183. For purposes of executing and/or attempting to execute the above-detailed schemes to inflate or fabricate foreclosure costs charged to homeowners and to prosecute foreclosure lawsuits in the name of parties without legal standing to bring them, Defendants, in violation of 18 U.S.C. § 1343, transmitted and received by wire or other electronic means of communication, matter and things, including, but not limited to, correspondence, land records, court filings, legal agreements, property searches, invoices, reports, financial data, invoices, account statements, currency and all other documents regularly transmitted during the residential mortgage foreclosure process.

184. Many of the precise dates of Defendants' uses of the U.S. mails and

interstate wire facilities (and corresponding RICO predicate acts of mail and wire fraud) have been concealed by Defendants and cannot be alleged in complete detail here without access to Defendants' books and records. However, as alleged below, Plaintiffs can identify specific transactions in which Defendants used the U.S. mail and wire facilities, specific occasions on which RICO predicate acts of mail fraud and wire fraud occurred, and they can describe specifically how those acts were in furtherance of Defendants' schemes to inflate or fabricate foreclosure costs charged to homeowners and to prosecute foreclosure actions in the name of parties without legal standing to bring them.

185. In 2007, Defendant Countrywide sent an electronic transmission to PHS, requesting PHS to initiate a mortgage foreclosure lawsuit against Plaintiff Rhodes on behalf of the Bank of New York, as trustee for investors of a mortgage-backed financial instrument. After it obtained a judgment against Plaintiff Rhodes, PHS used the U.S. mail and/or wire facilities to request the Sheriff of Berks County, Pennsylvania to conduct a sheriffs' sale of Plaintiff Rhodes' home on January 11, 2008, accompanied by the sum of $2,000 as a deposit for sheriffs' fees. After Plaintiff Rhodes filed a bankruptcy petition on January 10, 2008, PHS received an electronic transmission from Countrywide, instructing PHS to file a proof of claim against Plaintiff Rhodes on behalf of Bank of New York. To ascertain the amount of such claim, PHS presumably obtained invoices, reports and statements from Countrywide and PHS's "service providers," whether by mail or by electronic means. Through the federal court system's electronic filing system, PHS filed the false proof of claim dated January 28, 2008, identified above at ¶¶ 83, 109. Thereafter, on or about May 8, 2008, PHS received, either electronically or by U.S. mail, the sum of $ 909 from the Sheriff of Berks County, Pennsylvania, representing the partial return of Plaintiff

Rhodes' sheriffs' deposit to be credited to Plaintiff Rhodes' account. However, upon receipt of this money, PHS (electronically, by U.S. mail or otherwise) instead deposited the $ 909 into an unknown account (either an account of Countrywide or an account owned by PHS or one of its controlled entities). Either electronically or by U.S. mail, PHS received a receipt or statements reflecting Plaintiff Rhodes' sheriffs' refund into the unknown account, where that money remained or was put to other uses by PHS and/or Countrywide for eleven months before it was, only after the initiation of this lawsuit, finally credited to Plaintiff Rhodes' account through the electronic filing by PHS of an amended bankruptcy proof of claim dated April 7, 2009.

186. In the days immediately before June 22, 2007, Defendant Wells Fargo sent an electronic transmission to PHS, requesting PHS to initiate a mortgage foreclosure lawsuit against Plaintiff Bender in the name of the Wachovia Bank, N.A, as trustee for the Series 2004-WWF1 PSA, which had no interest in Plaintiff Bender's mortgage. On June 22, 2007, PHS caused to be filed with the Court of Common Pleas for Berks County, Pennsylvania the false and misleading mortgage foreclosure complaint identified above at ¶¶ 112-115 and Ex. O. Electronically or through the U.S. mail, PHS communicated with Wells Fargo and its "service providers" about the necessity of preparing and filing two purported "assignments" of Plaintiff Bender's mortgage, one from Argent to Ameriquest, the other from Ameriquest to Wachovia, which were in fact recorded with the Recorder of Deeds for Berks County, Pennsylvania on October 11, 2007 (*see* ¶ 116 and Ex. P and Q). After PHS obtained a judgment against Plaintiff Bender, it used the U.S. mail and/or wire facilities to request the Sheriff of Berks County, Pennsylvania to conduct a sheriffs' sale of Plaintiff Bender's home, accompanied by the sum of $2,000 as a deposit for sheriffs' fees. After

Plaintiff Bender filed a bankruptcy petition on June 4, 2008, PHS received an electronic transmission from Wells Fargo, instructing PHS to file a proof of claim against Plaintiff Bender on behalf of Wachovia Bank. To ascertain the amount of such claim, PHS presumably obtained invoices, reports and statements from Wells Fargo and PHS's "service providers," whether by mail or by electronic means. Through the federal court system's electronic filing system, PHS filed the false proof of claim dated July 3, 2008, identified above at ¶¶ 88, 109. Thereafter, on or about October 9, 2008, PHS received, either electronically or by U.S. mail, the sum of $ 601 from the Sheriff of Berks County, Pennsylvania, representing the partial return of Plaintiff Bender's sheriffs' deposit to be credited to Plaintiff Bender's account. However, upon receipt of this money, PHS (electronically, by U.S. mail or otherwise) instead deposited the $ 601 into an unknown account (either an account of Wells Fargo or an account owned by PHS or one of its controlled entities). Either electronically or by U.S. mail, PHS received a receipt or statements reflecting Plaintiff Bender's sheriffs' refund into the unknown account, where that money remained or was put to other uses by PHS and/or Wells Fargo for six months before it was, only after the initiation of this lawsuit, finally credited to Plaintiff Bender's account through the electronic filing by PHS of an amended bankruptcy proof of claim dated April 7, 2009. PHS, through electronic means or otherwise, later requested Bart and the Wilentz firm to enter an appearance in Plaintiff Bender's bankruptcy case on behalf of Wachovia Bank (*see* ¶¶ 135, 175f, Ex. Y), which was in fact accomplished through the electronic filing in the United States Bankruptcy Court for the Eastern District of Pennsylvania of an entry of appearance of Bart and the Wilentz firm on behalf of Wachovia Bank on June 24, 2009.

187. In 2005, Defendant Wells Fargo sent an electronic transmission to PHS, requesting PHS to initiate a mortgage foreclosure lawsuit against Plaintiff Wolferd. After it obtained a judgment against Plaintiff Wolferd, PHS used the U.S. mail and/or wire facilities to request the Sheriff of Lancaster County, Pennsylvania to conduct a sheriffs' sale of Plaintiff Wolferd's home, accompanied by the sum of $2,500 as a deposit for sheriffs' fees. After Plaintiff Wolferd filed a bankruptcy petition on August 1, 2005, PHS received an electronic transmission from Wells Fargo, instructing PHS to file a proof of claim against Plaintiff Wolferd on its behalf. To ascertain the amount of such claim, PHS presumably obtained invoices, reports and statements from Wells Fargo and PHS's "service providers," whether by mail or by electronic means. Through the federal court system's electronic filing system, PHS filed the false proof of claim dated September 14, 2008, identified above at ¶¶ 92, 109. Thereafter, on or about October 31, 2005, PHS received, either electronically or by U.S. mail, the sum of $ 849.84 from the Sheriff of Lancaster County, Pennsylvania, representing the partial return of Plaintiff Wolferd's sheriffs' deposit to be credited to Plaintiff Wolferd's account. Upon receipt of this money, PHS (electronically, by U.S. mail or otherwise) instead deposited the $ 849.84 into an unknown account (either an account of Wells Fargo or an account owned by PHS or one of its controlled entities). Either electronically or by U.S. mail, PHS received a receipt or statements reflecting Plaintiff Wolferd's sheriffs' refund into the unknown account, where that money remained or was put to other uses by PHS and/or Wells Fargo until November 22, 2005 when, PHS, after receiving a telephone call from Plaintiff Wolferd's counsel, credited $ 849.84 to Plaintiff Wolferd's account through the electronic filing by PHS of an amended bankruptcy proof of claim. After Plaintiff Wolferd's bankruptcy action was

dismissed, in the days immediately before February 10, 2009, Wells Fargo sent an electronic transmission to PHS, requesting PHS to re-institute its mortgage foreclosure lawsuit against Plaintiff Wolferd. On February 10, 2009, PHS, electronically, by U.S. mail or otherwise, filed with the Prothonotary of Lancaster, Pennsylvania a praecipe for a writ of execution on Plaintiff Wolferd's property, and PHS caused to be forwarded to the Lancaster County Sheriff, by U.S. mail or by electronic means, a check in the amount of $2,500 for a sheriff's sale deposit. While representatives of Wells Fargo and Plaintiff Wolferd discussed by telephone Wells Fargo's non-negotiable terms for a loan modification, including retention of mortgage foreclosure costs by PHS (*see* ¶¶ 98-101), on July 23, 2009, September 22, 2009 and November 2, 2009, PHS sent facsimile transmissions to the Lancaster County Sheriff requesting continuations of the sheriffs' sale of Plaintiff Bender's property. On or about September 11, 2009, representatives of Wells Fargo and Plaintiff Wolferd, by electronic means and/or through U.S. mail, exchanged legal documentation concerning the proposed loan modification. On November 2, 2009, the Lancaster County Sheriff's Office stayed the writ of execution and, on November 3, 2009, it mailed a refund check to PHS in an amount of $ 503.32, which has not been credited to Plaintiff Wolferd's mortgage loan account as of the date of this Complaint.

188. In the days immediately before February 23 2007, Defendant Wells Fargo sent an electronic transmission to PHS, requesting PHS to initiate a mortgage foreclosure lawsuit against Plaintiffs Diane and Charles Giles in the name of the Wachovia Bank, N.A, as trustee for the Series 2004-WWF1 PSA, which had no interest in Mr. and Mrs. Giles' mortgage. On February 23, 2007, PHS caused to be filed with the Superior Court, Chancery Division, for Ocean County, New Jersey the false and misleading mortgage

foreclosure complaint identified above at ¶¶ 124-126 and Ex. S. On February 28, 2007, Ralph P. Schritenthal of Full Spectrum executed an affidavit swearing that PHS' complaint was served on Plaintiff Charles Giles -- Schritenthal's signature was notarized by Thomas P. Strain, the same person who testified in *Bank of New York v. Ukpe* that he had falsely acknowledged thousands of mortgage assignments for PHS. Electronically or through the U.S. mail, PHS communicated with Wells Fargo and its "service providers" about the necessity of preparing and filing purported "assignments" of Mr. and Mrs. Giles' mortgage, which were in fact recorded with the Clerk of Ocean County, New Jersey on April 18, 2007. After PHS obtained a default judgment against Plaintiff Diane and Charles Giles on June 5, 2007, it used the U.S. mail and/or wire facilities to request the Sheriff of Ocean County, New Jersey to conduct a sheriffs' sale of Plaintiff Giles' home. On July 27, 2007, PHS sent a notice of sheriffs' sale to Plaintiffs Diane and Charles Giles by regular and certified U.S. mail. In the period between July 27, 2007 and October 24, 2007, there were numerous telephone and e-mail communications between Mr. and Mrs. Giles and attorney Jerry Dasti, on one hand, and representatives of PHS and Wells Fargo and the other, relating to (1) the scheduled sheriffs' sale of the Giles' home (2) a possible loan modification and (3) a possible distress sale of the Giles' home. On or about October 23 and 24, 2007, there were several telephone conversations, e-mails and letters exchanged between or among Wachovia Bank's Senior Vice President Mark A. Farmer, PHS attorney Vladimir Palma, other attorneys affiliated by PHS and representatives of Wells Fargo relating to (1) the improper commencement of a foreclosure action on behalf of Wachovia Bank against Mr. and Mrs. Giles and (2) the identity of the actual trustee of the Series 2004-WWF1 PSA (*see* ¶¶ 130-131 and Ex. W and X). By letter dated December 10, 2007

from PHS to counsel for Mr. and Mrs. Giles, PHS asserted a claim for $7,817.50 for "legal fees and costs" in connection with PHS's unauthorized and improper foreclosure lawsuit (*see* ¶¶ 109, 133 and Ex. NN). This letter was followed by telephone communications between and among counsel for Mr. and Mrs. Giles and representatives of PHS and Wells Fargo relating to the impropriety of that claim, which in turn was followed by a written payoff statement dated January 9, 2008 sent from Wells Fargo's mortgage servicing unit to Plaintiff Diane Giles, which abandoned PHS's claim for legal fees and costs (*see* ¶¶ 109 and Ex. NN).

189. Defendants' use of the U.S. mail and interstate wire facilities to perpetuate Defendants' schemes to inflate or fabricate foreclosure costs charged to homeowners or to prosecute foreclosure actions in the name of parties without legal standing to bring them involved thousands of homeowners like Plaintifs Rhodes, Bender, Wolferd and Giles and thousands of communications similar to the ones identified specifically above.

C. Conduct of the RICO Enterprise's Affairs

190. Throughout the Class Period, Defendants exerted control over the PHS Mortgage Foreclosure and Bankruptcy Enterprise and, in violation of 18 U.S.C. § 1962(c), Defendants conducted or participated in the conduct of the affairs of the Enterprise by inflating or fabricating foreclosure costs charged to homeowners or by prosecuting foreclosure actions in the name of parties without legal standing to bring them.

191. PHS conducted or participated in the conduct of the affairs of the Enterprise, *inter alia*, in the following ways:

(a) By soliciting from mortgage servicer clients (including Defendants Countrywide and Wells Fargo) referrals to prosecute foreclosure actions against

homeowners with promises of rapid delivery of its services and rigid adherence to "timelines" monitored by clients through mandated automated case management and invoicing systems. (Because the "timeliness" of PHS's performance is a primary factor in determining the volume of work assignments that PHS receives from servicer clients, PHS strives to compete with other high-volume foreclosure firms by recording even faster results than required by client "timelines");[186]

(b) By racing to county courthouses to file thousands of foreclosure actions in the names of entities identified only by its servicer clients' case management systems, without making any meaningful independent determination that such entities have proper legal standing to bring them. (Despite this, PHS routinely makes affirmatively **false** allegations in its foreclosure complaints that entities named as plaintiffs by PHS **are** the legal owners of homeowners' mortgages);

(c) By fabricating after-the-fact mortgage assignments filed by PHS's agents or representatives (many of them affiliated with PHS owned and controlled companies like Full Spectrum and Land Title Services) with government land recording agencies in an effort to manufacture legal standing for plaintiffs that lack legal standing at the time that PHS files its foreclosure complaints;

(d) Together with mortgage servicer clients like Countrywide and Wells Fargo (and through PHS's use of clients' mandated automated case management and invoicing programs), by systematically misappropriating and converting sheriffs' deposit refunds that should be credited to the accounts of homeowners who avoid loss of their homes through sheriffs' sales;

(e) Through PHS's use of owned and controlled companies like Full

[186] *See* ¶ 152 n. 159, above.

Spectrum and Land Title Services, by systematically overstating, inflating, fabricating and obsfuscating foreclosure costs charged to homeowners who avoid loss of their homes through sheriffs' sales;

(f) Through PHS's day-to-day use and promotion of "every case management and invoice reporting system[]" used in the residential mortgage foreclosure industry,"[187] by advancing the common objective of PHS and vendors of such systems to enable foreclosure lawyers to "do all of their work in their case management system" so that high-volume foreclosure firm like PHS can obtain "maximum returns on investment" by "reducing labor overhead and building resource capacity to handle more files."[188]

(g) Through its "founding" membership, active participation in, and financial support of the USFN, by "educating" (and by obtaining "education" from) other members about matters of common interest among participants in the residential foreclosure industry, including, *inter alia*, (1) how to satisfy mortgage servicers' demand for rapid and inexpensive legal representation in foreclosure and bankruptcy matters by means of automated case management programs that limit "verbal communication" between servicers and their outside counsel to "SOS" or "Urgent Situations;"[189] (2) avoidance of class actions brought under the FDCPA,[190] and (3) the supposed futility of mandatory mediation initiatives like Philadelphia's Residential Mortgage Foreclosure Pilot Program[191] (the latter two items being of special interest to Defendant Diamond).

(h) Through PHS's longstanding collaboration with its "aggressive"[192]

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[187] www.fedphe.com
[188] *See* ¶ 158 n.178, above
[189] *See* ¶ 158 n. 177, above.
[190] *See* ¶ 147 n. 155, above.
[191] *See* ¶ 44 and n.30, above.
[192] *See* ¶ 175f and n.182, above.

house counsel, Bernheim, Bart and the Wilentz firm, by systematically working in concert to deny the legal rights of homeowners who have been abused by PHS's institutionalized unlawful conduct.

192. Defendants Wells Fargo and Countrywide conducted or participated in the conduct of the affairs of the PHS Mortgage Foreclosure and Bankruptcy Enterprise, *inter alia*, by:

(a) Indiscriminately filing residential mortgage foreclosure lawsuits, which are cheaper and faster than loan modifications,[193] and which present special incentives and opportunities to increase costs charged to homeowners that translate into massive corporate profits.[194]

(b) Cultivating relationships with volume-driven foreclosure firms like PHS, which are in turn pitted against one another in competition for lucrative work assignments. As a condition of any work assignment they receive, foreclosure law firms like PHS are required to use "client-based" automated case management and invoicing systems that (1) refer work assignments to such firms; (2) monitor the speed of such

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[193] Report, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior: Servicer Compensation and its Consequences*, NAT'L CONSUMER LAW CENTER, INC., October 2009 (http://www.nclc.org/issues/mortgage_servicing/content/Servicer-Report1009.pdf).

[194] Peter S. Goodman, *Lucrative Fees May Deter Efforts to Alter Loans*, N.Y. TIMES, July 29, 2009 (http://www.nytimes.com/2009/07/30/business/30services.html?pagewanted=all). ("[M]any mortgage companies are reluctant to give strapped homeowners a break because the companies collect lucrative fees on delinquent loans. Even when borrowers stop paying, mortgage companies that service the loans collect fees out of the proceeds when homes are ultimately sold in foreclosure. So the longer borrowers remain delinquent, the greater the opportunities for these mortgage companies to extract revenue — fees for insurance, appraisals, title searches and legal services"); *McDermott v. Countrywide Home Loans, Inc*., Adv. No. 08-5031 (Bank. N.D. Ohio, July 31, 2009) at 8, *quoting* Porter Study at 126-27 ("Mortgage servicers earn revenue in three major ways. First, they receive a fixed fee for each loan. Typical arrangements pay servicers between 0.25% and 0.50% of the note principal for each loan. Second, servicers earn "float" income from interest accrued between when consumers pay and when those funds are remitted to investors. Third, servicers often are permitted to retain all, or part, of any default fees, such as late charges, that consumers pay. In this way, a borrower's default can boost a servicer's profits. A significant fraction of servicers' total revenue comes from retained-fee income. Because of this structure, servicers' incentives upon default may not align with investors' incentives. Servicers have incentives to make it difficult for consumers to cure defaults").

firm's performance through "timelines" against which they are measured, which results in specific "grades" that reward firms like PHS that perform with reckless haste; and (3) severely restrict the circumstances under which foreclosure law firms are permitted to communicate directly with their clients' "in-house" mortgage servicing personnel and counsel, with all but the most problematic issues expected to be resolved by foreclosure firms themselves through "mechanical" use of raw data appearing on computer screens.[195]

(c) Uploading into their mandatory automated systems for use by PHS and other foreclosure firms of financial information that is, as demonstrated above at ¶¶ 56-65, the unreliable byproduct of accounting systems criticized by many courts as being systematically "wayward," "not reasonable," "reckless," "duplicitous and misleading," "so significantly erroneous that … reconciliation [is] not possible," and a "known problem" that evidences an "indifference to the truth" and "a disregard for diligence and accuracy."

(d) Ignoring judicial orders and warnings to make systemic changes to their inaccurate and irresponsible accounting systems.[196]

(e) Establishing, mandating and implementing rigid foreclosure and related bankruptcy processes that have both the purpose and effect of (1) rewarding foreclosure law firms for their speed and penalizing them for professional diligence that might ensure accuracy but impede prompt completion of assigned activities; and (2)

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[195] *In re Taylor*, 407 B.R. at 638. As Bernheim and Bart wrote in a brief in *In re Taylor*, their client (here as there) "is one of many law firms that conduct a high volume foreclosure bankruptcy practice and if a lender requires that a law firm enter into an agreement with its agent, [a provider of case management and invoice systems], [the law firm] has no choice but to participate in such a program if it wants to do business." *Id*. at 638.

[196] *See* ¶¶ 56-65, above.

creating an informational vacuum and absence of personal accountability that (i) precipitates a race to the courthouse that encourages uninvestigated filing of improper foreclosure lawsuits by overzealous law firms like PHS and (ii) invites the inflation and fabrication of foreclosure costs charged as arrearages to homeowners who avoid sheriffs' sales through loan modifications, bankruptcy filings and distress sales, which might otherwise be detected and avoided through responsible human oversight.

193. In foregoing ways and others, PHS and Wells Fargo and Countrywide, working as "attorney" and "client" infrequently and as co-dependent wrongdoers at all other times, each benefit from their unlawful conduct and participation in the affairs of the PHS Mortgage Foreclosure and Bankruptcy Enterprise.

D. Defendants' Pattern of Racketeering Activity

194. Each Defendant conducted and participated in the affairs of the PHS Mortgage Foreclosure and Bankruptcy Enterprise through a pattern of racketeering activity, including acts that are indictable under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud. Defendants' pattern of racketeering involved thousands of separate instances of use of the U.S. mails and interstate wire facilities in furtherance of their fraudulent schemes to inflate or fabricate foreclosure costs charged to homeowners and to prosecute foreclosure actions in the names of parties without legal standing to sue. Each of these fraudulent mailings and interstate wire transmissions constitutes a "racketeering activity" within the meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5), in which Defendants intended to defraud Plaintiffs and members of the Classes.

195. Defendants' racketeering activities amount to a common course of conduct, with similar pattern and purpose, intended to inflate or fabricate foreclosure costs charged to homeowners or to prosecute foreclosure actions in the name of parties without legal standing to bring them. Each separate use of the U.S. mails and/or interstate wire facilities employed by Defendants was related, had similar intended purposes, involved similar participants and methods of execution, and had the same results affecting the same victims – Plaintiffs and members of the Classes. Each Defendant engaged in the pattern of racketeering activity for the purpose of conducting the ongoing business affairs of the Enterprises.

E. Damages Caused by the Defendants' Scheme

196. Defendants' violations of federal law and their pattern of racketeering activity have directly and proximately caused Plaintiffs and members of the Classes to be injured in their business or property because Plaintiffs and members of the Classes have lost substantial money by virtue of Defendants' schemes to inflate or fabricate foreclosure costs charged to homeowners and to prosecute foreclosure actions in the names of parties without legal standing to sue.

197. Under 18 U.S.C. § 1964(c), Defendants are jointly and severally liable to Plaintiffs and members of the Class for three times the damages that Plaintiffs and the Class members have sustained, plus the costs of bringing this suit, including reasonable attorneys' fees.

COUNT II

VIOLATIONS OF 15 U.S.C. § 1692 *et seq.* (FDCPA)

198. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

199. The Count is directed to Defendant PHS and its attorneys only.

200. At all times relevant to this Complaint, Plaintiffs and all members of the Classes were "consumers" within the meaning of 15 U.S.C. § 1692a(3).

201. At all times relevant to this Complaint, PHS and its attorneys have been "debt collectors" within the meaning of 15 U.S.C. § 1692a(6). *See also Heintz v. Jenkins*, 514 U.S. 291, 299 (1995) ("the Act applies to attorneys who 'regularly' engage in consumer-debt collection activity").

202. Beginning before March 25, 2008 and continuing through the present, PHS and its attorneys have committed unfair practices proscribed by 15 U.S.C. § 1692(e)(2)(A) and (B) because, in systematically submitting inflated or fabricated claims against Plaintiffs and members of the Classes, PHS and its individual attorneys made false, deceptive, or misleading representations in connection with the collection of mortgage debt, concerning, *inter alia*, (1) the character, amount, or legal status of any debt and (2) services rendered or compensation which may be lawfully received by PHS for the collection of a debt.

203. Beginning before March 25, 2008 and continuing through the present, PHS and its attorneys have committed unfair practices proscribed by 15 U.S.C. 1692f(1) because, in systematically submitting inflated or fabricated claims against Plaintiffs and members of the Classes, the amount of "debt" that Defendants sought to collect was not expressly authorized by any agreement creating the debt, and was not otherwise permitted by law.

204. Beginning before March 25, 2008 and continuing through the present, PHS and its attorneys have committed unfair practices proscribed by 15 U.S.C. 1692g(2) because, in systematically submitting unauthorized bankruptcy claims and lawsuits against Plaintiffs and members of the Classes on behalf of parties that lacked legal standing or interest, PHS and its attorneys have routinely misidentified the names of creditors to whom any debt may have been owed.

205. PHS failed to maintain thorough, ongoing procedures reasonably calculated to prevent the foregoing violations of the FDCPA.

206. As a direct and proximate result of foregoing violations of the FDCPA by PHS and its attorneys, Plaintiffs and members of the Classes have sustained actual and statutory damages for which PHS and the individual defendants are liable, together with reasonable attorneys fees and the costs of prosecuting this litigation.

COUNT III

VIOLATIONS OF 73 P.S. § 201-1 *et seq*. (UTPCPL)

207. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

208. Defendants' practices constituted acts of trade or commerce within the meaning of 73 P.S. § 201-2(3).

209. Defendants' practices constituted deceptive conduct that created a likelihood of confusion and/or misunderstanding within the meaning of 73 P.S. § 201-2(4)(xxi).

210. As documented in detail above, Defendants knowingly engaged in systematic scheme to impose inflated or fabricated foreclosure charges upon homeowners

who averted loss of their homes to sheriffs' sale, including (1) misappropriation or conversion of sheriffs' deposit refunds that were not credited properly to homeowners' accounts; (2) unreasonable attorney's fees or attorney fees that were not actually incurred; (3) excessive real estate title and litigation "support" costs generated through inside transactions with related companies owned and controlled by Defendants Lawrence T. Phelan, Francis S. Hallinan and Daniel G. Schmieg; (4) unessential property inspection and valuation fees; and (5) duplicative costs for "services" already included in independent charges assessed by Defendants, all of which Defendants attempted to conceal through impenetrable and cryptic statements of claims for payment of arrearages.

211. As further documented in detail above, Defendants, in a fraudulent scheme to generate the aforementioned foreclosure fees, knowingly and systematically filed mortgage foreclosure actions on behalf of entities that did not have legal standing to bring them. Among other things, Defendants and their agents (1) recorded phony assignments with county land record agencies; (2) throughout foreclosure litigation and related bankruptcy proceedings, maintained the false pretense of an attorney-client relationship with entities that had not retained or authorized PHS to represent its interests; and (3) filed false court filings and bankruptcy claims.

212. Plaintiffs and other members of the Classes relied justifiably on Defendants' false and misleading representations, having no reason to suspect that a law firm whose attorneys owe a duty of candor to the court would, *inter alia*, (1) systematically file verified or certified foreclosure complaints that contained misrepresentations of fact; (2) systematically overcharge or fabricate charges passed on to homeowners; (3) systematically file false bankruptcy proof of claims in defiance of the

severe penalties for such conduct under 11 U.S.C. §§ 152 and 3557; and (4) systematically commit mail and wire fraud, and engage in the pattern of racketeering identified above at ¶¶ 175-196.

213.As a direct and proximate result of Defendants' fraudulent misrepresentations of material fact, Plaintiffs and members of the Class have sustained actual and statutory damages (including treble damages under 73 P.S. § 201-9.2) for which Defendants are liable, together with reasonable attorneys fees and costs of prosecuting this action.

COUNT IV

COMMON LAW FRAUD

214. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

215. As documented in detail above, Defendants knowingly made misrepresentations of material fact relating to the amount of arrearages owed by homeowners who averted loss of their homes to sheriffs' sale, which appeared in loan modification and loan payoff statements and in bankruptcy proofs of claim. These misrepresentations concerned inflated or fabricated amounts charged for (1) sheriffs' fees; (2) attorney's fees; (3) real estate title and litigation "support" costs; (4) property inspection and valuation fees; and (5) duplicative or non-existent "services," the impropriety of which Defendants attempted to conceal through impenetrable and cryptic statements of claims for payment of arrearages.

216. As further documented in detail above, Defendants, in a fraudulent scheme to generate the aforementioned fees, made false and misleading representations of material fact relating to foreclosure actions on behalf of entities that did not have legal

standing to bring them. Among other things, Defendants and their agents (1) filed false court documents; (2) recorded phony assignments with county land record agencies; (2) throughout foreclosure litigation and related bankruptcy proceedings, maintained the false pretense of an attorney-client relationship with entities that had not retained or authorized PHS to represent its interests; and (3) filed false creditor claims.

217. Plaintiffs and other members of the Classes relied justifiably on Defendants' false and misleading representations, having no reason to suspect that a law firm whose attorneys owe a duty of candor to the court would, *inter alia*, (1) systematically file verified or certified foreclosure complaints that contained misrepresentations of fact; (2) systematically file false bankruptcy proof of claims in defiance of the severe penalties for such conduct under 11 U.S.C. §§ 152 and 3557; and (3) systematically commit mail and wire fraud, and engage in the pattern of racketeering identified above at ¶¶ 175-196.

218. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiffs and members of the Class have sustained actual damages in an amount to be determined at trial, in addition to reasonable attorneys fees and the costs of prosecuting this action.

COUNT V

BREACH OF CONTRACT

219. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

220. This Count is directed only to Defendants Countrywide and Wells Fargo.

221. Plaintiffs and other members of the Class entered into contracts for mortgage loans originated by financial institutions that assigned their servicing rights to Defendants Wells Fargo and Countrywide. None of these contracts permitted Wells Fargo or Countrywide to charge defaulted borrowers more than costs or expenses actually incurred for services actually performed in connection with any legal action to enforce the terms of the mortgages.[197]

222. Defendants Wells Fargo and Countrywide breached the mortgage contracts with Plaintiffs and members of the Classes by causing and/or permitting its agents, including PHS and its individual lawyers, to charge homeowners for costs, fees and expenses in connection with foreclosure actions in amounts in excess of those actually or reasonably incurred by Wells Fargo, Countrywide and PHS.

223. As a result of breaches of the mortgage contracts by Wells Fargo and Countrywide, Plaintiffs and members of the Classes were damaged by the amount of costs, fees and expenses that they overpaid in connection with foreclosure proceedings prosecuted against them by Wells Fargo, Countrywide, PHS and its individual lawyers. Plaintiffs and members of the Class have sustained actual damages in an amount to be determined at trial, in addition to reasonable attorneys' fees and the costs of prosecuting this action.

COUNT VI

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

224. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

[197] *See* Rhodes Mortgage (Ex. G1) at ¶ 9; Bender Mortgage (Ex. H1) at ¶ 14; Wolferd Mortgage (Ex.I-1) at ¶ 18;

225. This Count is directed only to Defendants Countrywide and Wells Fargo.

226.Each of the mortgage contracts signed by Plaintiffs and other members of the Classes obligated the mortgages and their assignees, Wells Fargo or Countrywide, to discharge a duty of good faith and fair dealing toward Plaintiffs and other Class members. Included within this obligation was the duty to charge no more than its actual costs, fees and expenses, including attorneys' fees, in connection with foreclosure proceedings.

227. Wells Fargo and Countrywide breached their duty of good faith and fair dealing by, *inter alia*, directly or indirectly, retaining PHS to pursue foreclosure proceedings and, subsequently, to cause, direct and or approve PHS's actions seeking payment of costs, fees and expenses from homeowners in excess of amounts that were actually incurred by Wells Fargo, Countrywide and PHS.

228**.** As a result of breaches of their duty of good faith and fair dealing by Wells Fargo and Countrywide, Plaintiffs and members of the Classes were damaged by the amount of costs, fees and expenses that they overpaid in connection with foreclosure proceedings prosecuted against them by Wells Fargo, Countrywide, PHS and its lawyers. Plaintiffs and members of the Class have sustained actual damages in an amount to be determined at trial, in addition to reasonable attorneys' fees and the costs of prosecuting this action.

COUNT VII

MONEY HAD AND RECEIVED

229. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

230. As further documented in detail above, Defendants demanded and collected amounts for sheriffs' deposits, attorneys' fees, real estate title and litigation support costs, property inspection and valuation fees, and duplicative costs, which were in excess of amounts permitted by contract or Pennsylvania and New Jersey law.

231. In the process of charging inflated or fabricated fees to Plaintffs and members of the Classes, Defendants have come into the possession of money that they received and had no right to possess, either at law or in equity.

232. It would be inequitable for Defendants to retain any such money or to exercise the use of money that they had no legal right to demand or collect.

233.Defendants' inequitable retention and use of their money has damaged Plaintiffs and members of the Classes in an amount to be determined at trial. As a result of the wrongful conduct documented above, Plaintiffs and members of the Classes seek full disgorgement and restitution of Defendants' ill-gotten gains.

COUNT VIII

NEGLIGENT MISREPRESENTATION

234. The allegations set forth in each of the preceding paragraphs are incorporated by reference as if set forth fully herein.

235. As documented in detail above, Defendants made misrepresentations of material fact relating to the amount of arrearages owed by homeowners who averted loss of their homes to sheriffs' sale, which appeared in loan modification and loan payoff statements and in bankruptcy proofs of claim. These misrepresentations and omissions concerned inflated or fabricated amounts charged for (1) sheriffs' fees; (2) attorneys'

fees; (3) real estate title and litigation support costs; (4) property inspection and valuation fees; and (5) duplicative or non-existent "services."

236. As further documented in detail above, Defendants made false and misleading representations of material fact relating to mortgage foreclosure actions on behalf of entities that did not have legal standing to bring them, under which PHS purported to "establish" attorney-client relationships with entities that had neither retained nor authorized PHS to represent their interests in foreclosure and bankruptcy proceedings.

237. While the evidence demonstrates overwhelmingly that Defendants made the foregoing misrepresentations and omissions of material fact with criminal or fraudulent intent, these misrepresentations and omissions were, at bare minimum, negligently made.

238. As a direct and proximate cause of Defendants' negligence, Plaintiffs and members of the Classes sustained damages in an amount to be determined at trial.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), plaintiffs demands a trial by jury of all of the claims asserted in this Complaint so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

A. The Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

B. The conduct of Defendants be determined to have violated the Racketeer Influenced and Corruption Act, 18 U.S.C. §1962(c).

C. The conduct of Defendants be determined to have violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*.

D. The conduct of Defendants be determined to have violated Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et. seq*.

E. Defendants be found liable to Plaintiffs and members of the class under the common laws of the Commonwealth of Pennsylvania and the State of New Jersey for (1) common law fraud; (2) breach of contract; (3) breach of the duty of good faith and fair dealing; (4) money had and received; and (5) negligent misrepresentation.

F. Judgment be entered against Defendants for damages sustained by Plaintiffs and the members Classes to the maximum extent allowed by law, together with the costs of this action, including reasonable attorneys' fees.

G. Judgment be entered ordering an accounting, restitution and disgorgement of funds obtained by Defendants as a result of their wrongful conduct.

H. Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be temporarily and permanently enjoined and ordered to:

(1) Establish and implement corrective policies and procedures designed to eliminate their practices of inflating or fabricating claims the amount of foreclosure costs, fees or expenses owed by homeowners who have averted loss of their homes through to sheriffs' sales; and

(2) Establish and implement corrective policies and procedures designed to eliminate their practices of initiating or prosecuting residential mortgage foreclosure lawsuits and related bankruptcy court claims in the absence

of explicit authorization by clients with actual legal standing to sue or legal interest to protect.

a. The Court order the appointment of an auditor or special master to

(1) Ascertain the amount of money wrongfully taken by Defendants from Plaintiffs and members of the Classes;

(2) Recommend specific business management and accounting procedures that Defendants must adopt and implement to avoid future repetition of the wrongful conduct documented throughout this Complaint; and

(3) Monitor Defendants' compliance with any business management or accounting procedures that may be ordered by the Court in granting injunctive relief in this action.

J. Plaintiffs and members of the Classes have such other, further and different relief as the case may require and the Court may deem just and proper under the facts and circumstances of this case.

Dated: January 15, 2010

Respectfully submitted,

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