IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CHARLES J. and DIANE GILES, and LAURINE SPIVEY, individually and on behalf of all others similarly situated,	:	**Civil Action No. _____**
Plaintiffs,	:	
v.	:	**JURY TRIAL DEMANDED**
PHELAN HALLINAN & SCHMIEG, LLP, PHELAN HALLINAN & SCHMIEG, P.C., LAWRENCE T. PHELAN, FRANCIS S. HALLINAN, DANIEL G. SCHMIEG, ROSEMARIE DIAMOND, FULL SPECTRUM SERVICES, INC., and LAND TITLE SERVICES OF NEW JERSEY, INC., WELLS FARGO & COMPANY, and WELLS FARGO BANK, N.A.	:	
Defendants.	:	

CLASS ACTION COMPLAINT

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On behalf of themselves and all others situated similarly, Charles J. and Diane Giles, and Laurine Spivey (collectively, "Plaintiffs," "Homeowners" or "Representative Homeowners") bring this proposed class action against Defendants for damages and injunctive relief.

Except for allegations concerning their own activities, the Representative Homeowners' allegations are based on information and belief obtained through a two-and-a half-year investigation undertaken by their counsel. This investigation includes, among other things:

1) Witness information;

2) Review and analysis of federal and state court filings and other public records;

3) Review and analysis of legal journals, Congressional testimony, Securities and Exchange Commission ("SEC") filings, and news media reports;

4) Review and analysis of documents disseminated by, among other government authorities, the United States Department of Justice, the Federal Trade Commission, the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the United States Department of Housing and Urban Development, the Federal Housing Finance Agency, the Consumer Financial Protection Bureau; members of the National Association of Attorneys General, and the New Jersey Administrative Office of the Courts; and

5) Review and analysis of documents disseminated by government-sponsored enterprises ("GSEs"), including the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

Additional evidentiary support confirming the truth of the Homeowners' allegations will be established through discovery from Defendants and non-parties with knowledge of the institutionalized misconduct alleged below.

I. SUMMARY OF ALLEGATIONS

1. This is a proposed class action on behalf of all persons in New Jersey and Pennsylvania who, during the period from January 1, 2005 through the present ("Class Period"), were (a) defendants in mortgage foreclosure actions prosecuted by Phelan Hallinan & Schmieg, P.C. or Phelan Hallinan & Schmieg LLP (collectively, the "Phelan firm") and (b) adversely affected by the Phelan firm's systematic abusive foreclosure practices, including:

i) Preparation, execution and notarization of fraudulent court documents and property records used, *inter alia*, to initiate and prosecute foreclosure actions in the name of entities without legal standing to sue, and/or

ii) Imposition of inflated or fabricated fees for "default management services"

2. Integral to their fraudulent scheme to inflate or fabricate foreclosure-related fees charged to homeowners threatened with loss of their homes, Defendants systematically bring foreclosure actions in the name of entities that do not possess (a) legal ownership of homeowners' mortgages or notes and (b) legal standing to sue homeowners obligated under those instruments. With speed and profit as their paramount objectives, Defendants file foreclosure lawsuits without undertaking even rudimentary investigation of basic facts concerning mortgage ownership and legal standing.

3. To create an illusion of mortgage ownership and standing, Defendants systematically create and use (a) falsified mortgage assignments and other property

records filed with county agencies, and (b) complaints, certifications, verifications, affidavits, motions, praecipes and other legal documents filed in New Jersey and Pennsylvania state courts, which contain untrue statements of material fact purportedly based "on personal knowledge" of employees of the Phelan firm, related entities and servicer clients (*See, e.g.,* ¶¶ 74-102, 108-112, 113-127 below).

4. While the *validity* of Defendants' foreclosure judgments is not challenged in this lawsuit, Plaintiffs do allege that Defendants are liable for the *fraudulent practices* they systematically employed in prosecuting foreclosure actions and in thereby obtaining millions of dollars in inflated or fabricated fees from Pennsylvania and New Jersey homeowners.

5. Defendants' false and misleading statements concerning mortgage ownership and legal standing operate as a fraud on the judicial system. They also (a) burden distressed homeowners with unnecessary attorneys' fees and other inessential expenses that undermine their ability to remain in their homes, and (b) contrive for Defendants illegitimate opportunities to foist inflated or fabricated foreclosure fees upon delinquent borrowers desperate to save their property.[1]

6. Fraudulent foreclosure-related fees obtained by Defendants from financially distressed homeowners include, by way of non-exhaustive example:

[1] The pervasive practice among mortgage servicers and their law firms of filing fraudulently executed or notarized legal documents (sometimes imprecisely called "robo-signing") has been reported extensively in the national news media since September 2010. *See*, *e.g.*, Scott Pelley, *Mortgage Paperwork Mess: The Next Housing Shock*?, CBS 60 MINUTES, April 3, 2011, http://www.cbsnews.com/video/watch/?id=7361572n&tag=related;photovideo; and Lisa Myers, Rich Gardella and John W. Schoen, *No End In Sight To Foreclosure Quagmire*, NBC NIGHTLY NEWS/MSNBC.COM, May 9, 2011, http://www.msnbc.msn.com/id/42881365/.

a) Overstated and objectively unreasonable attorneys' fees not authorized by contract or otherwise permitted by law (*see* ¶¶ 105-107, 116 and n.50, 128, 132-135 below);

b) Overstated and objectively unreasonable fees for real estate title searches, not authorized by contract or otherwise permitted by law (*see* ¶¶128, 132, 137-141 below);

c) Overstated and objectively unreasonable fees for property appraisals, including so-called "broker price opinions" ("BPOs"), not authorized by contract or otherwise permitted by law (*see* ¶¶ 105-107, 128, 132, 142-146 below); and

d) Overstated and objectively unreasonable fees for property inspection and/or maintenance, not authorized by contract or otherwise permitted by law (*see* ¶¶ 105-107, 128, 132, 147-148 below);

e) Overstated and incomprehensible charges for unspecified and undocumented "foreclosure fees and costs," including multiple or duplicated charges (*see* ¶¶ 105-107, 128, 132-133, 135-141 below).

The term "Piling On" describes the practice of "mortgage companies hitting families already in financial trouble with unfair fees and questionable practices to make it tougher for them to save their homes."[2] These spurious charges are also known as "junk fees."[3]

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[2] NBC's *Today* program, May 7, 2008, http://today.msnbc.msn.com/id/21134540/vp/24480566#24480566. *See also* 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; Adam J. Levitan and Tara Twomey, *Mortgage Servicing* (2011), GEORGETOWN LAW FACULTY AND OTHER WORKS, Paper 498, at 41-45; 43, 28 Yale J. On Reg. 1 (2011) ("Levitan and Twomey Paper"), http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1497&context=facpub

7. One judge in the Eastern District of Louisiana who has carefully examined the practices of Wells Fargo Bank, N.A. ("WFB") estimates that inflated or fabricated "default - management" fees generate potentially "billions [of dollars] in improperly earned revenue" to WFB alone.[4] This conclusion is supported by estimates of government officials and other experts, who have concluded that systematic abuses by the largest servicers in the United States (WFB prominently among them) have caused more than $20 billion in damages to distressed homeowners nationwide.[5]

8. The fraudulent schemes have been undertaken on an institutionalized basis through the knowing participation and coordination of each Defendant.

9. The Homeowners seek recovery of actual and statutory damages because of Defendants' wrongful conduct.

10. The Homeowners also seek equitable and injunctive relief, including Court appointment, at Defendants' expense, of:

- A forensic accounting firm to audit the Phelan firm's files for the purpose of quantifying Defendants' ill-gotten gains; and
- A special master to (a) recommend business management and accounting procedures that the Phelan firm must adopt and implement to avoid future mortgage foreclosure abuses and (b) monitor compliance by the Phelan firm

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[3] Testimony dated December 1, 2010 by Chapman University School of Law Professor Kurt Eggert before the Senate Committee on Banking, Housing and Urban Affairs ("Eggert Testimony"), at 2, 8-10, http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2ab0a78e-12ee-4cf8-bb70-745d0d0372ab

[4] *In re Jones*, 2009 Bankr. LEXIS 3317, at *31, and n. 59 (Bankr. E.D.La. Oct. 1, 2009).

[5] *See* Gretchen Morgenson, *A Low Bid For Fixing a Big Mess*, N.Y. TIMES, May 14,, 2011, (http://www.nytimes.com/2011/05/15/business/15gret.html) (major mortgage servicers have "offered to pay $5 billion to settle allegations about robo-signing and other shady practices that quick-step troubled borrowers out of their homes," a "fraction" of the $20 billion or more sought by state attorneys general). *See also* Alan Zibel, *FDIC's Bair: Millions of Foreclosures Could Be "Infected,"* WALL ST. J, May 12, 2011, http://blogs.wsj.com/developments/2011/05/12/fdics-bair-millions-of-foreclosures-could-be-infected/.

with business management and accounting procedures directed by the Court.

II. JURISDICTION AND VENUE

11. This proposed class action is instituted against Defendants for injuries sustained by financially distressed homeowners resulting from Defendants' violations of the Racketeer Influenced and Corruption Act ("RICO"), 18 U.S.C. §1962(c); the New Jersey Consumer Fraud Act ("NJCFA"), N.J.S.A. § 56.8-1 *et seq*.; and the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201 *et seq*. To remedy these violations, Plaintiffs seek actual and statutory damages (including treble damages), 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.

12. The Homeowners also seek actual damages for breach of contract, money had and received, and negligence.

13. In addition to actual and statutory damages, the Homeowners seek equitable relief in the form identified above at ¶10.

14. The Court may adjudicate the Homeowners' common law claims under principles of pendant jurisdiction.

15. Under the Class Action Fairness Act of 2005, federal jurisdiction over class actions also exists where, as here, any member of a plaintiff class 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).

16. This Court has *in personam* jurisdiction over Defendants, *inter alia*, because Defendants live in, maintain offices, have employees and agents, and regularly transact

business within this District.

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

III. PARTIES

A. The Representative Homeowners

18. Plaintiffs Charles J. and Diane Giles, husband and wife, were homeowners who reside in Barnegat Township, Ocean County, New Jersey.

19. Plaintiff Laurine Spivey is a homeowner who resides in Philadelphia, Pennsylvania.

B. Defendants

20. Defendant Phellan Hallinan & Schmieg, LLC ("Phelan LLC") is a high-volume mortgage foreclosure law firm having its principal place of business at 617 J.F.K. Boulevard, Suite 1400, Philadelphia, Pennsylvania 19103.

21. Also organized and operating as a professional corporation under the laws of the State of New Jersey, the Phelan firm maintains a principal office at 400 Fellowship Road, Suite 100, Mount Laurel, New Jersey 08054. The Phelan firm maintains another office at One Gateway Center, 11th Floor, Newark, New Jersey 07102. In New Jersey, the Phelan firm is known as Phelan Hallinan & Schmieg, P.C. ("Phelan P.C.") or sometimes as Phelan Hallinan Schmieg & Diamond, P.C.[6]

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[6] *See* Fannie Mae Retained Attorney List, July 22, 2011, https://www.efanniemae.com/sf/technology/servinvreport/amn/pdf/retainedattorneylist.pdf

On November 1, 2010, the Phelan firm opened an office at 888 SE 3rd Ave, Suite 201, Fort Lauderdale, FL 33316 under the name Phelan Hallinan PLC. This attempt by Phelan to enter the lucrative Florida foreclosure market coincides with the implosion of a once profitable operation run by David J. Stern ("Stern"), who owned a high-volume foreclosure law practice similar to the Phelan firm, as well as a company known as DJSP Enterprises, which purportedly provided title searches, litigation support and other "default management

22. Defendant Lawrence T. Phelan ("Larry Phelan") is the principal equity partner of the Phelan firm. Although he is not licensed to practice law in New Jersey, Larry Phelan serves as president and majority shareholder of Phelan P.C. He has an approximately 49% ownership interest in Phelan LLC and an approximately 41% interest in Phelan P.C.

23. Defendant Francis S. Hallinan ("Frank Hallinan") is an equity partner of the Phelan firm. Hallinan is administrator of the firm.

24. Defendant Daniel G. Schmieg ("Dan Schmieg") is an equity partner of the Phelan firm.

25. Defendant Rosemarie Diamond is an attorney with the Phelan firm who has responsibility for the firm's New Jersey operations.

26. Defendant Full Spectrum Services, Inc. ("Full Spectrum"), formerly known as Foreclosure Review Services, Inc., is a New Jersey corporation located at 400 Fellowship Road, Suite 200, Mount Laurel, New Jersey 08054. Full Spectrum is owned and controlled by Larry Phelan, Frank Hallinan and Dan Schmieg. Full Spectrum purportedly provides

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services" to its foreclosure firm founder. *See* Julie Kay, *Law Firms Descend on Florida to Take Over Foreclosure Business*, AM LAW.COM, Oct. 5, 2011; http://www.law.com/jsp/article.jsp?id=1202517889234&Law_Firms_Descend_on_Florida_to_Take_Over_Foreclosure_Business&slreturn=1; David McLaughlin, Foreclosure Fortune Buys Bugatti, Yacht and Mansions David McLaughlin, *Foreclosure Fortune Buys Bugatti, Yacht and Mansions for Attorney*," BLOOMBERG, Oct. 19, 2010, http://www.bloomberg.com/news/2010-10-19/florida-attorney-buys-bugatti-yacht-mansion-with-his-foreclosure-fortune.html; Andy Kroll, *Fannie and Freddie's Foreclosure Barons*, MOTHER JONES, Aug. 4, 2010, http://motherjones.com/politics/2010/07/david-j-stern-djsp-foreclosure-fannie-freddie?page=1
Having engaged in the same type of abusive conduct alleged here, the Stern firm was terminated by Fannie Mae and Freddie Mac, which resulted in the collapse of the firm. Susan Taylor Martin, *Collapse of David J. Stern Law Firm Throws Foreclosure Courts into Disarray*, TAMPABAY.COM, Mar. 9, 2011, http://www.tampabay.com/news/courts/civil/collapse-of-david-j-stern-law-firm-throws-foreclosure-courts-into-disarray/1156011; Andy Kroll, *Foreclosure King David Stern Shuttering His Law Firm*, MOTHER JONES, Mar. 7, 2011, http://motherjones.com/2011/03/foreclosure-david-stern-shutters-law-firm-florida. Phelan Hallinan PLC is now Freddie Mac designated counsel in Florida.
See http://www.freddiemac.com/service/msp/pdf/desigcounsel.pdf

services to law firms in Pennsylvania and New Jersey, including process serving, mortgage and judgment searches, and publication of legal notices.

27. Defendant Land Title Services of New Jersey, Inc. (“Land Title Services” or "LTS") is a New Jersey corporation located at 400 Fellowship Road, Suite 220, Mount Laurel, New Jersey 08054. Along with its affiliate, Land Services - PA, LTS is owned and controlled by Larry Phelan, Frank Hallinan and Dan Schmieg. LTS provides title searches and other real property services to the Phelan firm and its mortgage servicer clients.

28. Defendant Wells Fargo & Company, a Delaware corporation, is a diversified financial services company maintaining principal executive offices at 420 Montgomery Street, San Francisco, California 94163.

29. Defendant Wells Fargo Bank, N.A. ("WFB") is a national banking association chartered in Sioux Falls, South Dakota, with principal offices at 420 Montgomery Street, San Francisco, California 94163. WFB originates and services residential mortgages through its division Wells Fargo Home Mortgage or its trade name America’s Servicing Company ("ASC"). They maintain principal places of business at 7000 Vista Dr., West Des Moines, Iowa 50266-93 and 3476 Stateview Boulevard, Fort Mill, South Carolina 29715

IV. FACTUAL ALLEGATIONS

A. Foreclosure Processes of the Phelan Firm and WFB

30. For the past decade, most residential mortgages have been sold (*i.e*, “securitized”) by original lenders to investment banking firms that package the revenue streams of pooled mortgages into instruments known as Residential Mortgage Backed Securities ("RMBS"). These instruments are purchased by investors and traded in the

public securities markets.[7] Financial institutions (*i.e.*, "Trustees") are designated as legal owners of the securitized loans held in trusts administered by Trustees for the benefit of RMBS investors.

31. Mortgage servicers like WFB are hired to collect income from homeowners' mortgage payments, which they transmit to Trustees for distribution to investors. When homeowners fail to make payments required under their mortgages (*i.e.*, they "default" on their obligations), servicers are authorized to take reasonable action, at the homeowners' expense, to cure the default (*i.e.*, recover past due payments and costs incurred in doing so) and to restore the income-producing value of the mortgage assets, including, if necessary, by foreclosure proceedings to liquidate mortgaged property at public auctions (*i.e.*, "Sheriff's Sales"). The legal duties of Trustees and mortgage servicers are defined in documents known as Pooling and Servicing Agreements ("PSAs").

32. Mortgage servicers obtain revenue in three ways: (a) a fixed fee for each loan, typically between .25% and .50% of the principal amount; (b) "float" income from interest accrued between the time when servicers receive homeowners' mortgage payments and when those payments are transmitted to Trustees; and (c) "default management" fees charged to delinquent homeowners, which servicers are permitted to keep as compensation for their work.

33. Fannie Mae and Freddie Mac are the largest mortgage investors in the United States, collectively owning or guaranteeing about half of all outstanding mortgage debt nationwide. Servicers hired by the GSEs are required to abide by highly specific guidelines,

[7] In 2009, nearly 90% of first-lien residential mortgages originated were securitized. Levitan and Twomey Paper at 12, *citing*, 2 INSIDE MORTG. FIN., THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL 10 (2010) at 3.

including the requirement that legal work for foreclosures must be referred to a few law firms in each state that have been granted "designated counsel" or "retained attorney" status. Fannie Mae and Freddie Mac define the maximum rate of fees that can be charged by foreclosure law firms, as well as the maximum time in which foreclosures must be brought to conclusion. *See* below at ¶¶41 and nn.13-15, 47-49, ¶115 n.50, 134-135. Because of their market dominance, Fannie Mae and Freddie Mac have established prevailing industry standards that govern mortgage servicers and their foreclosure law firms.

34. Mortgage servicers like WFB are assisted by technologically sophisticated companies like Lender Processing Services, Inc. ("LPS") (and its wholly owned subsidiary, LPS Default Solutions, Inc. ("LPS Fidelity"))[8] and CoreLogic, Inc. (which on June 10, 2010 was spun off from the financial services business unit of The First American Corporation).[9]

35. According to LPS, the company's mortgage servicing platform ("MSP") is "the undisputed market leader with more than 50 percent of mortgages in the U.S. by dollar volume serviced on this computer platform." MSP is an integrated program that automates all areas of loan servicing.[10]

36. LPS's technology products include LPS Desktop, a web-based "workflow" information system used by servicers to process communications, information and data

[8] LPS is a Delaware corporation with principal executive offices at 601 Riverside Avenue, Jacksonville, Florida 32204. LPS was formed in July of 2008 as a spin-off from Fidelity National Information Services, Inc. LPS Fidelity (formerly known as Fidelity National Foreclosure & Bankruptcy Solutions) maintains principal offices at 1270 Northland Drive, Suite 200, Saint Paul, Minnesota 55120-1176.

[9] CoreLogic, Inc. is a Delaware corporation with principal executive offices at 4 First American Way, Santa Ana, California 92707-5913.

[10] http://www.lpsvcs.com/Products/Mortgage/Servicing/ServicingPlatform/MSP/Pages/default.aspx

throughout the entire lifecycle of residential mortgages.[11] VendorScape is a comparable product marketed to the foreclosure industry by CoreLogic. Both LPS Desktop and VendorScape are designed for use with MSP.

37. Mortgage servicers require outside foreclosure lawyers to purchase and pay license fees to use technology products sold by LPS and CoreLogic. These companies also provide "default management solutions" to mortgage servicers, which "outsource" many of their administrative and support functions to LPS and CoreLogic. Among other functions, LPS and CoreLogic refer servicers' cases to outside counsel, whose performance is monitored closely by these companies throughout the foreclosure process through LPS Desktop or VendorScape.

38. Servicers pay nothing for default management services provided by LPS. To avail themselves of these no-cost amenities, mortgage servicers are required by LPS to execute confidential "Default Services Agreements" ("DSAs") with LPS Fidelity, under which servicers must hire foreclosure lawyers who are members of an association of attorneys retained and managed by LPS Fidelity ("Fidelity Network"). Fidelity Network attorneys receive foreclosure and bankruptcy case referrals and assignments from LPS Fidelity through LPS Desktop.

39. As a condition to membership in the Fidelity Network (and thus the opportunity to gain a steady flow of referrals), foreclosure lawyers must enter into a "Network Agreement" with LPS Fidelity and Local Counsel Agreements with servicers using LPS's "default management services." These agreements obligate Fidelity Network members (a) to pay steep "technology" and "administrative" fees to LPS Fidelity, in

[11] http://www.lpsvcs.com/Products/Mortgage/Default/BankruptcyandForeclosure/Pages/default.aspx and http://www.lpsvcs.com/Products/Mortgage/Servicing/ProcessManagement/Pages/default.aspx.

exchange for which they obtain case referrals generating low, fixed-rate fees for all legal services provided and (b) accept rigorous demands on and oversight of their professional practices.[12]

40. To finish their assignments as quickly as possible (the common bottom-line requirement of servicers and GSEs like Fannie Mae and Freddie Mac), foreclosure lawyers must comply with strict timelines[13] in ramming their actions through the judicial system. With speed as their overriding priority,[14] these lawyers have been discouraged from communicating with their mortgage servicer clients.[15] Because all communications are

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[12] An analysis of the operational interplay among LPS, mortgage servicers and their high-volume foreclosure law firms is provided in *In re Taylor*, 407 B.R. 618, 623, 639, 649 and 651 (Bankr. E.D.Pa.. 2009). After several evidentiary hearings, Judge Diane Sigmund Weiss concluded that The Law Office of Mark J. Udren (a small high-volume foreclosure firm similar to Phelan Hallinan & Schmieg) misrepresented information about borrowers' accounts on a "systemic" basis because of its "slavish adherence" to its servicer clients' "computer driven models" created by LPS. Although the District Court reversed Judge Weiss's imposition of sanctions, the U.S. Court of Appeals for the Third Circuit reinstated them on both the Udren law firm and two of its foreclosure lawyers. *In re Taylor*, -- F.3d --, 2011 U.S. App. LEXIS 17651 (3d Cir. Aug. 24, 2011). As the Third Circuit explained, "the NewTrak system [the precursor to LPS Desktop] permits parties at every level of the filing process to disclaim responsibility for inaccuracies. HSBC [*i.e*, the servicer] has handed off responsibility to a third-party maintainer, LPS, which, judging from the results in this case, has not generated particularly accurate records. LPS apparently regards itself as a mere conduit of information. Appellees, the attorneys and final link in the chain of transmission of this information to the court, claim reliance on NewTrak's records. Who, precisely, can be held accountable if HSBC's records are inadequately maintained, LPS transfers those records inaccurately into NewTrak, or a law firm relies on the NewTrak data without further investigation, thus leading to material misrepresentations to the court? It cannot be that all the parties involved can insulate themselves from responsibility by the use of such a system. In the end, we must hold responsible the attorneys…." *Id*. at *26-*27.

[13] *See* Fannie Mae Servicing Guidelines, Foreclosure Timelines (June 6, 2011) (specifying "maximum number of allowable days between referral to attorney (or trustee) and foreclosure sale date"), https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes.pdf.
See also USFN, *Foreclosure Timelines Matrix™*, http://www.usfn.org/Content/NavigationMenu/PUBLICATIONSANDPRODUCTS/TimelineMatricesStatebyState/default.htm

[14] *See* Ariana Eunjung Cha and Zachary A. Goldfarb, *For Foreclosure Processors Hired By Mortgage Lenders, Speed Equaled Money*, WASH. POST, Oct. 16, 2010 ("Millions of homes have been seized by banks during the economic crisis through a mass production system of foreclosures that was set up to prioritize one thing over everything else: speed"), http://www.washingtonpost.com/wp-dyn/content/article/2010/10/15/AR2010101506541.html

[15] *In re Taylor*, 2011 U.S. App. LEXIS 17651, at *6 (Although it is technically possible for a firm hired through NewTrak to contact [a servicer] to discuss the matter on which it has been retained, it is clear from the record that this was discouraged and that some attorneys, including at least one Udren Firm attorney, did not believe it to be permitted."

transmitted through LPS Desktop or VendorScape, the flow of all information exchanged between mortgage servicers and their foreclosure attorneys is effectively managed by LPS and CoreLogic.[16]

41. LPS tracks its network attorneys through an internal metric known as Attorney Performance Reviews ("APR"), which ranks foreclosure lawyers based on how fast they perform their tasks.[17] Appearing on the computer screens of Fidelity Network attorneys equipped with LPS Desktop are blinking "traffic" lights indicating the status of the attorneys' performance. Green represents satisfactory promptness. Yellow represents an alarming level of slowness. Red represents a warning of tardiness that could lead to financial penalties,[18] suspension of referrals or termination from the network. If Fidelity Network attorneys fail to achieve minimally acceptable APR ratings, their ability to receive

[16] The operational interplay among CoreLogic, mortgage servicers and their law firms is similar to the one described by the Third Circuit and Bankruptcy Court in *In re Taylor*. *See* above at ¶ 39 n. 12. For example, in *In re Schuessler*, 386 B.R. 458, 463-465 (Bank. S.D.N.Y. 2008), the Court sanctioned a mortgage servicer for authorizing the filing of a factually unsupported motion to lift an automatic stay facilitated by the parties' misuse of VendorScape. The Court observed that the "overly simplistic and myopic system" utilized by the servicer and its law firm constituted an "abuse of process" that allowed them to "disclai[m] responsibility" for their misconduct. *Id*. at 486, 493-494.

[17] As LPS explained, "[w]hen [servicer] 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…."

[18] "Dilatory" servicers are subject to payment of "compensatory fees" to Freddie Mac and Fannie Mae if their foreclosure law firms do not meet mandatory timeline requirements. *See* Freddie Mac, *Servicer Alignment Initiative*, Pub. No. 887, June 3, 2011, at 5, http://www.freddiemac.com/service/factsheets/pdf/servicing_alignment.pdf, and Fannie Mae, *Servicer Alignment Initiative – Overview for Fannie Mae Servicers*, April 28, 2011, at 4, https://www.efanniemae.com/sf/servicing/pdf/saioverview.pdf. On the other hand, foreclosure lawyers who race single-mindedly to begin and complete foreclosures receive industry awards and financial bonuses. *See* Jennifer Anthony and Lynn McNamee, *FNFS APR Random Audit Program*, THE SUMMIT (newsletter produced by LPS predecessor Fidelity National Foreclosure Solutions, Inc.), Oct. 2006 (Vol. 2, Issue 3) at 9-11 ("Each quarter, FNFS distributes financial incentive awards to the top ten performing firms in Foreclosure and Bankruptcy in the form of $20 per billable file, with the next ten firms receiving $10 per billable file. To date, FNFS distributed over $275,000 to top performing firms as quarterly incentive payouts"), http://www.scribd.com/doc/65934051/FNFS-2006-Summit-Newsletter

lucrative foreclosure work is impaired or eliminated. Conversely, high APR ratings obtained through very quick foreclosures translates into potentially thousands of new cases and enormous profits, generated in large part by owned-and-controlled companies set up by foreclosure lawyers to charge fees for "default management services" such as title searches, BPOs and property inspections. *See* above at ¶21 n.6 and below at ¶¶ 48-50, 54 and n. 26.

42. Foreclosure lawyers accept slim profit margins for their foreclosure work and they surrender their professional independence for one reason. To remain viable in their competitive industry, they have no alternative.

43. As Cherry Hill, New Jersey foreclosure lawyer Mark J. Udren testified in *In re Taylor*:

> [My firm] 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, [the law firm] has no choice but to participate in such a program if it wants to do business."[19]

44. However understandable the foreclosure lawyers' economic justification might be, judges have for good reason criticized servicers and their high-volume foreclosure law firms for fostering a corrosive "assembly line" culture of practicing law.[20]

45. Having outperformed its competition, the Phelan firm describes itself as the "premier default services operation" in Pennsylvania and New Jersey. The Phelan firm achieved this status through a barebones staff of about 20 lawyers. In 2008 alone, the

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[19] *In re Taylor*, 407 B.R. at 638.
Foreclosure lawyers have actually been encouraged to "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 ("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").
[20] *In re Taylor*, 407 B.R. at 641, *quoting*, *In re Parsley*, 384 B.R. 138, 183 (Bankr. S.D.Tex. 2008).

Phelan firm handled an estimated 24,000 to 26,000 foreclosure cases in Pennsylvania and New Jersey, representing almost every loan servicer, including WFB. In 2009 and 2010, Phelan firm, Full Spectrum and LTS obtained approximately $48 million from just *one* of its many clients. *See* below at ¶¶ 59-62.

46. Because of the colossal volume of foreclosure cases it handles and the haste with which it disposes of them, the Phelan firm is a Fannie Mae "retained attorney" and a Freddie Mac "designated counsel" in both New Jersey and Pennsylvania. Apropos of its achievements in meeting and exceeding the requirements of its clients, the Phelan firm calls its newsletter "THE TIMELINE."[21]

47. The Phelan firm otherwise boasts about the "speed and efficiency" with which the firm plows through its foreclosure cases. According to a 2009 version of the Phelan firm's Web site, its speed is accomplished through (a) the firm's ability to "leverage technology" by "completely computeriz[ing]" its office with "every case management and invoice reporting syste[m]" used in the foreclosure industry and (b) the firm's ownership and control of the "majority of its vendors to ensure a turnaround time as quick as humanly possible."

48. While cutting off a longstanding business relationship with a title search partner in March 2005, Larry Phelan described his "business model in the ever-changing foreclosure … industry." In an e-mail to Anthony R. Angelo, president of Aracor Search and Abstract Services, Inc. ("Aracor"),[22] Larry Phelan, on behalf of himself and his partners, explained:

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[21] *See* http://www.fedphe.com/pages/newsletter.htm

[22] Aracor is a Pennsylvania corporation formed in 1994 by Anthony Angelo, Larry Phelan, Frank Federman (senior partner of the Phelan firm's predecessor) and a fourth individual who divested his stock in Aracor in

- "Years ago, Freddie Mac asserted its investor rights over law firms nation-wide and instituted strict time frames. Law firms had to and continue to perform to the highest standards for the prized designated counsel status. [Predecessor firm] Federman & Phelan had to change over night [sic] or go out of business. Through hard and smart work, we adapted quickly and became one of the premier mortgage foreclosure firms in the country."

- "We are now experiencing another significant change in our industry. In-house [mortgage servicer] client default operations are being turned over to First American [now CoreLogic, Inc.] and [LPS] Fidelity. These two (2) title giants are outsourcing the foreclosure and bankruptcy referrals for a price, a very high price. … So, the title world has changed dramatically in the last two years, and *drastically* in just the last 9 months. So what do we do? We change. We have to change. We have to realize that the cheese has been moved and reinvent ourselves to protect our income streams." (Emphasis in original)

- Phelan Hallinan & Schmieg has three (3) equity partners and four (4) non-equity partners, with more associates looking to enhance their status. As important and key to the law firm's success is a core group [of] about twelve (12) middle managers, who are viewed as valued colleagues, all of whom are responsible for bringing in and keeping the legal work that creates the vendor related work, whether it is title, service [of process], investigations, closings etc."

- "The changes in the industry with outsource fees and other mandatory costs all cut deep into the firm's profit margins and leave the title area as one of the last areas of profit. We must therefore rearrange our business model. …"

- *Land Title Services, LTS, a company fully controlled and managed by the law firm*, was established in the beginning of [2005] and has moved quickly to adapt to the new title business environment. The goal was to implement a radical new approach to the title product process. … LTS outsources almost all of the typing work to India. LTS, in conjunction with Foreclosure Review Services ("FRS"), hired a large number of courthouse abstractors as employees and positioned them throughout the state to handle a high volume of search work, resulting in a very low price per search. Then, LTS management instituted a business process utilizing local and India

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1996. The three remaining shareholders held a one-third ownership in the company. Frank Federman was Aracor's vice president. Larry Phelan was secretary/treasurer.

> personnel to electronically process the work overseas and at night. … Not only is the search work much less expensive than that charged by Aracor (or any other title search vendor), the expected turnaround time once fully operational is about three (3) to five (5) business days of a typed and examined product. … Most important, under this process, LTS is making more than four (4) times the profit of Aracor, and with less than 80% the number of employees. Accordingly, this is our new *law firm-title business model.*[23] It would be stupid to do anything else." (Emphasis supplied)

49. A copy of Larry Phelan's March 31, 2005 e-mail to Angelo is attached here as Exhibit A.

50. The cost savings yielded by the Phelan firm's "radical new approach to the title product process" are not passed on to foreclosed-upon homeowners, who are instead systematically overcharged for cut-rate "title products" delivered by LTS. *See* below at ¶¶ 127, 131, 136-140. Moreover, "title products" obtained by the Phelan firm from its "fully controlled and managed" abstract company are often worthless because they fail to accomplish their fundamental purpose – to identify proper legal owners of properties and mortgages subject to the Phelan firm's foreclosure proceedings. *See, e.g.,* ¶¶ 73-101, 107-111, 112-122 below.

51. The Phelan firm's unreliable "title products" and its automatic pilot foreclosure system torment even financially secure homeowners who never miss a

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[23] The Phelan firm's "business model" violates the New Jersey Professional Services Corporation Act, N.J.S.A. 14A-17-9, which provides that, except for "investments" of a type not relevant here, "[n]o professional corporation shall engage in any business other than the rendering of professional services for which it was specifically incorporated." *See Chulsky v. Hudson Law Offices, P.C.,* 2011 U.S. Dist. LEXIS 29781, at *7-*15 (D.N.J. Mar. 22, 2011) (Wolfson, J.).

The "business model" also ignores Opinion No. 688 by the Advisory Committee on Professional Ethics of the New Jersey Supreme Court, which holds, among other things, that "principals of a law firm may [not] establish a separate title abstract company … to provide title reports for their law firm's clients." Advisory Comm. On Prof. Ethics., Op. No. 688, 159 N.J.L.J. 1050 (Mar. 13, 2000), http://lawlibrary.rutgers.edu/ethics/acpe/acp688_1.html ("lawyers must keep their practices entirely separate from their business enterprises").

mortgage payment. One example was chronicled in June 2010 by KYW television reporter Ben Simmoneau, who interviewed Judi and Ed Worrall of Chester County, Pennsylvania concerning the Phelan firm's effort to kick them out of their home through a Sheriff's Sale – despite a glaring misidentification of the Worralls' address in foreclosure documents associated with the default of a neighbor. For several months, the Worralls repeatedly called the error to the attention of Phelan firm attorneys, who assured them that the firm was "aware of the situation" and had already "addressed" the issue. When the Worralls later discovered that -- despite the Phelan firm's false assurances -- their home was still scheduled for Sheriff's Sale, they contacted their local television station.

52. To help the Worralls, Simmoneau on four occasions unsuccessfully called the Phelan firm seeking cancellation of the Sheriff's Sale. Unable to persuade the Phelan firm to correct its obvious mistake, Simmoneau and his camera crew visited the Phelan firm's Center City Philadelphia offices, only to be refused entry to the firm's offices. This visit was captured on videotape, showing Simmoneau stranded at a closed and locked front door, trying in vain to discuss the seriousness of the Worrell's problem with a Phelan firm employee through a speaker box. After ignoring more than three months of persistent complaint by the Worralls and Simmoneau (and only when it was confronted with the prospect of losing business because of negative publicity), the Phelan firm, without explaining its callous conduct, finally withdrew its Sheriff's Sale listing for the Worralls' home.[24]

[24] *See* http://homeequitytheft-cases-articles.blogspot.com/2010/06/pa-couple-current-on-house-payments.html

53. Other homeowners are not as fortunate as Mr. and Ms. Worrall. Nor is the unnecessary trouble visited upon the Worrells an insubstantial or isolated mistake. Instead, this and similar improper speed-driven and profit-maximizing foreclosure activities by the Phelan firm and its servicer clients are institutionalized, systematic and inexpensively automated -- all dictated by the financial imperatives of the "ever-changing foreclosure industry" described by Larry Phelan at ¶¶ 48-49 above.

54. The "business model" put into action by the Phelan firm,[25] David J. Stern, Steven J. Baum, P.C. ("Baum") and others has been phenomenally successful.[26] That success was recognized on Wall Street, which laid the foundation for the paradigm in the first place when it created esoteric investment vehicles like RMBSs.

55. In June, 2010, a Georgia company by the name of Prommis Solutions Holdings, Inc. ("Prommis") filed a preliminary prospectus ("Prospectus") with the SEC in connection with a proposed public stock offering ("Proposed IPO") underwritten by Credit

[25] One casualty of "business model" implemented by Larry Phelan was his former partner, Frank Federman, who was forced to "retire" from the law firm he founded. It also included the rebranding of his firm from "Federman & Phelan" to "Phelan, Hallinan & Schmieg."

[26] Unlike Stern, Baum remains in profitable operation -- despite its payment to the federal government of a $2 million fine to resolve an investigation by the U.S. Attorney for the Southern District of New York into foreclosure practices of Baum and its associated "default service" provider, Pillar Processing, LLC, including whether the firms "filed misleading pleadings, affidavits, and mortgage assignments in state and federal courts." Press Release, *Manhattan U.S. Attorney Announces Agreement With Mortgage Foreclosure Law Firm To Overhaul Its Practices and Pay $2 Million Fine*, U.S. ATTY. S.D.N.Y., Oct. 6, 2011, http://www.justice.gov/usao/nys/pressreleases/October11/stevenbaumpcagreementpr.pdf; Settlement Agreement Between United States of America, Steven J. Baum, P.C. and Pillar Processing, LLC dated October 6, 2011,http://www.scribd.com/doc/67905402/Settlement-Agreement-Between-USA-Steven-J-Baum-P-C-and-Pillar-Processing-LLC. This settlement elicited "howls of protest and disbelief at the low amount of the fine." Paul Tharp, *Feds Went Easy on NY's Largest Foreclosure Mill: Critics*, N.Y. POST, Oct. 7, 2011, http://www.nypost.com/p/news/business/wrist_slap_l96Tnda1l9YKXsSf0SpdxI; Thom Weidlich, *Baum Law Firm to Pay $2 Million Over Foreclosure Practices*, WASH. POST, Oct. 6, 2011, http://www.washingtonpost.com/business/baum-law-firm-to-pay-2-million-over-foreclosure-practices/2011/10/06/gIQAJj9aSL_story.html

Suisse and Deutsche Bank Securities.[27] The Prospectus stated that "the market for residential mortgage default resolution processing services in the United States was approximately $4.0 billion."

56. Prommis, owned in majority part by Grant Hill Partners, LLC, a Boston-based hedge fund, was established on February 24, 2006. At that time, the fund paid $137 million for the non-legal "mortgage default resolution processing operations" (*i.e.*, "back-office operations") of McCalla Raymer, LLC, a foreclosure law firm in Atlanta.[28] The managing partner of McCalla, Daniel D. Phelan, retained a 9.4% ownership interest in Prommis, which he hoped to cash out and sell to investors in the Proposed IPO.[29] Daniel Phelan served as Chief Executive Officer of Prommis from February 2006 to January 2008, in addition to his duties as Chairman of the Board from February 2006 to May 1, 2010, when he became Prommis's Vice Chairman of the Board.

57. Underscoring the strong economic interest of law firms and their interconnected "back-office operations" in favor of fee-generating foreclosures rather loan modifications, Prommis's prospectus disclosed to prospective investors the "risk" that:

> Government programs related to home ownership and the mortgage market and voluntary foreclosure relief efforts by mortgage lenders and servicers may reduce the number of foreclosures or restrict mortgage servicers' remedies in foreclosure, which may adversely

[27] A copy of the Prospectus is available at http://www.faqs.org/sec-filings/100621/Prommis-Solutions-Holding-Corp_S-1.A/

[28] McCalla Raymer and MR Default Services are same entities criticized by Bankruptcy Judge Jeff Bohm for debasing the judicial system through their "assembly line" culture of practicing law. *In re Parsley*, 384 B.R. 138, 183 (Bankr. S.D.Tex. 2008), *cited with approval* in *In re Taylor*, 407 B.R. 618, 641 (Bankr. E.D.Pa. 2009). *See* above at ¶44 and n.20.

[29] DJSP Enterprises, formed out of the "back-office operations" of the now defunct Law Offices of David J Stern issued shares through a similar public offering in which Stern personally received nearly $60 million. *See* Julie Creswell and Barry Meier, *Bet on Foreclosure Boom Turns Sour for Investors*, N.Y. TIMES, Feb. 1, 2011, http://www.nytimes.com/2011/02/02/business/02stern.html?pagewanted=all

> affect our revenue and results of operations. Federal and state governments and agencies and certain courts have proposed and in many cases enacted or adopted programs, regulations and rules in response to the increasing number of mortgage defaults and foreclosures in recent years. Additional programs, regulations and rules may be implemented, any of which may impose new restrictions or requirements on the processing of foreclosures, decrease the number of foreclosures and bankruptcies that we process and adversely affect our revenue and results of operations.
>
> Prospectus at 11-12.

58. While the Representative Homeowners at this time are unaware of a familial relationship between Defendant Larry Phelan and Daniel Phelan of Prommis, Larry Phelan does have a brother, Kenneth J. Phelan, who was Fannie Mae's Executive Vice President and Chief Risk Officer from April 2009 through February 2011.

59. At page 240 of its Annual Report on Form 10-K filed with the SEC on February 24, 2011,[30] Fannie Mae disclosed that:

a) In 2010, Phelan LLC invoiced approximately $8.5 million in legal fees relating to work performed for Fannie Mae

b) In 2010, Phelan P.C. invoiced approximately $6.8 million in legal fees relating to work performed for Fannie Mae

c) In 2010, Phelan LLC invoiced approximately $17.9 million in "third-party costs" relating to Fannie Mae matters

d) In 2010, Phelan P.C. invoiced approximately $11.2 million in "third-party costs" relating to Fannie Mae matters

e) In 2009, Phelan LLC invoiced approximately $6.8 million in legal fees relating to work performed for Fannie Mae

f) In 2009, Phelan P.C. invoiced approximately $4.7 million in legal fees relating to work performed for Fannie Mae

g) In 2009, Phelan LLC invoiced approximately $15.3 million in "third-party costs" relating to Fannie Mae matters

[30] *See* http://www.fanniemae.com/ir/pdf/earnings/2010/10k_2010.pdf

h) In 2009, Phelan P.C. invoiced approximately $6.7 million in "third-party costs" relating to Fannie Mae matters

i) In 2010, Full Spectrum Holdings LLC[31] billed the Phelan firm approximately $12.9 million for "work" performed on Fannie Mae matters, approximately 44% of the third-party vendor fees identified in subparagraphs (c) and (d) above.

j) In 2009, Full Spectrum Holdings LLC billed the Phelan firm approximately $8.3 million for "work" performed on Fannie Mae matters, approximately 38% of the third-party vendor fees identified in subparagraphs (g) and (h) above.

60. From Fannie Mae (*one single source*, not including profitable business from other entities, including Freddie Mac, other GSEs and private mortgage servicers), the Phelan firm, with only an undersized cadre of lawyers and three equity partners, obtained approximately $26.8 million in legal fees in 2009 and 2010 from Fannie Mae, whose flat-rate fee in Pennsylvania and New Jersey foreclosure actions is $1,300 per case.

61. From *one single source* (Fannie Mae), Full Spectrum and Land Title Services obtained approximately $21.2 million in third-party vendor fees in 2009 and 2010.

62. *From one single source (Fannie Mae), the Phelan firm, Full Spectrum and Land Title Services obtained approximately $48 million in foreclosure fees in 2009 and 2010.*[32]

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[31] Full Spectrum Holdings LLC, the holding company for Full Spectrum and Land Title Services, is wholly owned by Larry Phelan, Frank Hallinan and Dan Schmieg.

[32] On September 6, 2008, both Fannie Mae and Freddie Mac were placed under conservatorship of the Federal Housing Finance Agency ("FHFA") because they depleted shareholders' equity and required financial support from the U.S. Department of Treasury to continue operations. In its Report to Congress dated June 13, 2011 ("FHFA Report"), the FHFA concluded that there remain "critical safety and soundness concerns" about Fannie Mae's business practices, which "exhibit severe financial, nonfinancial, operational, or compliance weaknesses." FHFA Report at 9. One concern singled out for "special review" by the FHFA is Fannie Mae's "retained attorney network program." The special review was deemed necessary because of "growing concerns about foreclosure activities conducted by third parties." FHFA Report at 11-12.
See http://www.fhfa.gov/webfiles/21570/FHFA2010RepToCongress61311.pdf.

On September 30, 2011, the FHFA's Office of Inspector General ("OIG") presented to Congress an Audit Report titled "FHFA's Oversight of Fannie Mae's Default Related Legal Services" ("OIG Audit Report"). The OIG

63. As Adam Levitin and Tara Twomey explained, institutionalized piling on of junk fees by mortgage servicers and their foreclosure law firms (through captive "default management service" affiliates) is an inherent consequence of misaligned economic incentives:

> Because servicers are permitted to retain ancillary fees, they have an incentive to charge borrowers as much in fees as they can, even if the fees are not provided for by the mortgage loan documents or a direct contract…..
>
> [A] defaulted homeowner is unlikely to have the presence of mind to notice an illegal fee, much less the financial means to fight it. Even if a mortgage is performing, a small fee is easily overlooked, especially as servicers are under no obligation to send borrowers detailed payment histories with the loan accounting, and typically send just an invoice. Thus, there is relatively low risk to imposing illegal fees upon defaulted accounts, and a significant upside. If challenged about an illegal fee, a servicer can easily refund the fee, apologize, and claim that it was a one-off mistake; the homeowner is unlikely to pursue legal action or to know if illegal fees are a systemic practice…..
>
> Many servicers also insource activities like force-placed insurance, appraisals, title searches, and legal services to affiliated entities. Insourcing allows servicers affiliates to charge inflated fees that get passed along to the homeowner and can come at the expense of investors if a foreclosure does not produce sufficient income to repay them all. The profit potential of retained fee income gives servicers a financial incentive to overreach in imposing ancillary fees and to load up accounts with such fees. This practice lowers the ultimate return to

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concluded that Fannie Mae learned as early as *2003* of "extensive foreclosure abuses" among foreclosure lawyers who later became members of its retained attorney network, but, until recently, Fannie Mae took no meaningful action to address the abuses. *See* OIG Audit Report at 13-16, 22-23, available at http://www.fhfaoig.gov/Content/Files/AUD-2011-004.pdf. *See also* Gretchen Morgensen, *Fannie Mae Knew Early of Abuses, Report Says*, N.Y. TIMES, Oct. 3, 2011,http://www.nytimes.com/2011/10/04/business/fannie-mae-ignored-foreclosure-misdeeds-report-says.html.The FHFA is not expected to complete implementation of the OIG's recommendations concerning oversight of foreclosure lawyers hired by Fannie Mae until the end of September 2012. OIG Audit Report, Exhibit C.

In 2009 and 2010, while Fannie Mae paid about $48 million in foreclosure fees to partnerships and companies owned by Larry Phelan, Frank Hallinan and Dan Schmieg, Fannie Mae sustained net losses of $86 billion. FHFA Report at 14. The overstated fees obtained by the Phelan firm and its affiliates (which systematically exceeded maximum amounts permitted under Fannie Mae's own servicing guidelines) came out of the pockets of American taxpayers. FHFA Report at 4 ("FHFA recognizes that [GSE] losses become taxpayer losses").

> investors by driving some borrowers into foreclosure in the first place or by reducing the share of foreclosure recoveries available to RRMBS investors because of the senior priority of servicers' fees.[33]

64. Because it is so easy for them to pile on and hide junk fees, servicers like WFB (and lawyers like those in the Phelan firm) file as many foreclosure cases as they can, quickly and by any means possible, even if their overstretched staffs cannot handle them properly, and even when there is no evidence of ownership of allegedly defaulted mortgages.[34]

65. According to an "*Interagency Review of Foreclosure Policies and Procedures*" ("Interagency Report") released in April 2011 by the Federal Reserve System, the Office of the Comptroller of the Currency and the Office of Thrift Supervision, "At the end of the fourth quarter of 2010, nearly 54 million first-lien mortgage loans were outstanding, 2.4 million of which were at some point in the foreclosure process. Additionally, two million mortgages were 90 or more days past due and at an elevated risk of foreclosure. New foreclosures are on pace to approach 2.5 million by the end of 2011."[35]

66. Before foreclosure activity declined after the mortgage servicer scandal broke nationally in September 2010, a trend now in reverse,[36] the volume of mortgage delinquencies and foreclosures exploded between January 1, 2005 and December, 2009.

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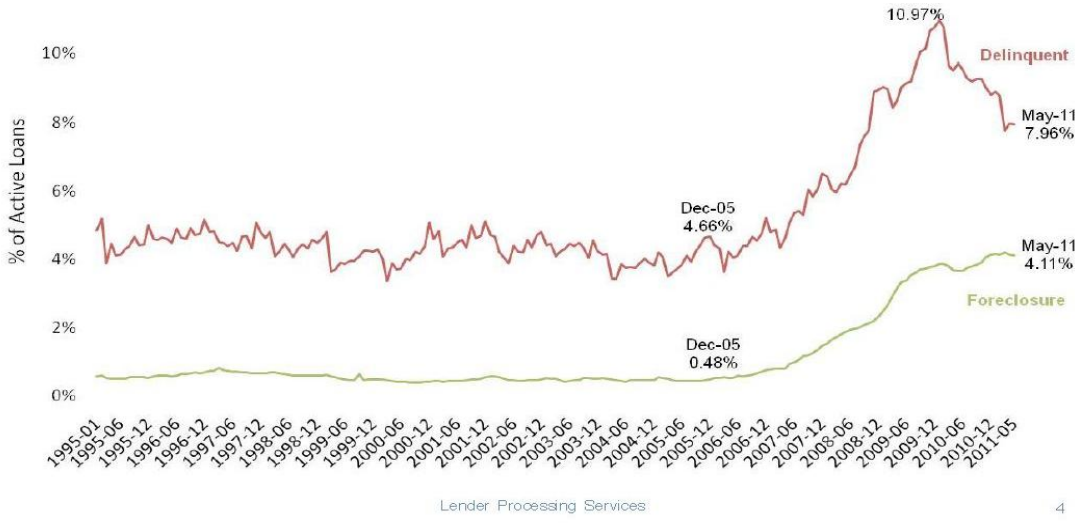
[33] Levitan and Twomey Paper at 43-45.

[34] Levitan and Twomey Paper at 5 ("[A] a servicer is not necessarily interested in maximizing the value of a loan for the mortgage investors.. … Defaulted homeowners find themselves streamlined to foreclosure, rather than to loan workouts. The result is elevated foreclosure levels"). *See also* Diane E. Thompson, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior: Servicer Compensation and Its Consequences*, NAT'L CONSUMER LAW CTR. (2009), and Prommis Prospectus quoted above at ¶ 58.

[35] *See* Interagency Report at 5, available at http://cdn.americanbanker.com/media/pdfs/interagency-413.pdf

[36] *See* Brady Dennis, *Banks Ramp Up Foreclosures Months After Action Against Delinquent Homeowners Slowed*, WASH. POST, Sept. 15, 2011, http://www.washingtonpost.com/business/economy/banks-ramp-up-foreclosures-months-after-action-against-delinquent-homeowners-slowed/2011/09/15/gIQAnWYlVK_story.html

67. As the following chart illustrates,[37] in December 2005, fewer than five percent of the nation's 51.6 homes with mortgages were in default, with about .48 percent of them in foreclosure. By December 2009, the number of mortgaged homes in default spiked to nearly 11 percent, with 4 percent of these homes in foreclosure.



68. Behind the statistics are families struggling during the continuing economic catastrophe known as the "Great Recession." As the Pew Charitable Trust stated in 2009, "[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."[38]

69. The lives of many of these families have been turned upside down by the fraudulent foreclosure schemes alleged in this Complaint.

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[37] *See* http://cr4re.com/charts/charts.html?Delinquency#category=Delinquency&chart=LPSMay2011.JPG

[38] *See Defaulting on the American Dream*, PEW CHARITABLE TRUST, April 2009, at 11-12, www.pewcenteronthestates.org/uploadedFiles/PCS_DefaultingOnTheDream_Report_FINAL041508_01.pdf

B. Representative Homeowners and Members of the Class Have Been Systematically Exploited By Fraudulent Foreclosure Practices of the Phelan Firm and WFB

70. The machinery that drives their foreclosure juggernaut has been running at an accelerating pace since at least January 1, 2005.[39] In that time, the Phelan firm and WFB have missed few opportunities to use the institutionalized apparatus they created to gain profit at the expense of distressed homeowners.

71. Along with thousands of other Class members, the Representative Homeowners have been harmed in substantial ways by Defendants' systematic fraudulent foreclosure practices.

Plaintiffs Charles J. and Diane Giles

Improper Foreclosure Action by the Phelan Firm and WFB on Behalf of "Wachovia"

72. Plaintiff Charles J. Giles ("Charlie Giles") was an emergency medical technician who became medically disabled after trying to help others escape the fire and smoke of the World Trade Center on September 11, 2001 and during later search efforts at Ground Zero. Dust and debris invaded his lungs, which caused numerous hospitalizations, difficult medical procedures and constant pharmaceutical treatments. Charlie Giles' life-threatening health conditions still diminish the quality of his life every day.[40]

73. After September 11th, Charlie Giles moved to a home at the Jersey shore in Barnegat Township, where he lived with his wife, Diane, and two daughters, Kaitlin and

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[39] As Mark Pearce, Director of the FDIC's Depositor and Consumer Protection Division, explained, "[T]he roots of today's mortgage servicing problems began before the financial crisis. For example, the traditional structure of third-party mortgage servicing fees created perverse incentives to automate critical servicing activities and cut costs at the expense of the accuracy and reliability of loan documents and information." *See* Statement of Mark Pearce at hearing before subcommittees of the House Committee on Financial Services on July 7, 2011, at 2-3, http://financialservices.house.gov/UploadedFiles/070711pearce.pdf

[40] *See* New Jersey 101.5 FM Radio video at http://www.youtube.com/watch?v=cql9WZK5Rn4.

Clarissa. When Charlie's physical problems worsened, he became unable to work. His medical bills skyrocketed past $200,000 as bureaucratic delays held up first-responder benefit payments from the New York State government.

74. When Charlie and Diane Giles fell behind on their mortgage, the Phelan firm filed a foreclosure Complaint against them on February 16, 2007 in the Superior Court, Chancery Division for Ocean County, New Jersey ("Ocean County Court"), Docket No. F-4671-07.

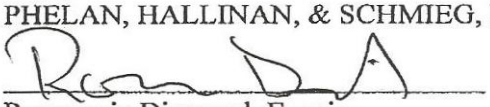
75. Paragraph 4 of the Complaint against Mr. and Mrs. Giles (purportedly signed by defendant Rosemarie Diamond) alleged that "holder of the obligation and Mortgage" was an entity called "Wachovia Bank, N.A., Trustee for the Pooling and Servicing Agreement dated as of November 1, 2004, Asset-Backed Pass-Through Certificate Series 2004-WWF1," pursuant to a "written assignment" from Argent Mortgage Company LLC ("Argent") to Wachovia that was "about to be recorded." Although one Court observed that it is "not at all clear" what kind of institution or thing the named plaintiff claims to be,[41] for purposes of simplicity, it shall be referred to here as the "Park Place Trust."

76. Paragraph 6 of the Complaint also alleged that, other than the mortgage originated by Argent, the prospective assignment and legal documents evidencing the Giles' marriage, "no other instruments appear of record which may affect the premises" in which the Giles lived.

77. The following is Rosemarie Diamond's "signature" as it appears in the Complaint against Charlie and Diane Giles:

[41] *See Schwend v. U.S. Bank, N.A.*, 2010 U.S. Dist. LEXIS 127915, at *7 (E.D.Mo. Dec. 3, 2010). *See also* below at ¶¶ 100-101.

PHELAN, HALLINAN, & SCHMIEG, P.C.



Rosemarie Diamond, Esquire
Attorneys for Plaintiff

78. In connection with the filing of this Complaint, Rosemarie Diamond also signed and filed with the Ocean County Court two Certifications: (a) one pursuant to Rule 4:5-1, attesting that "all parties who should be joined in this action have been joined" and (b) the other pursuant to Rule 4-5-1(b)(2), attesting that "prior to filing the within Complaint, [Ms. 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."

79. Except perhaps for the one identified in ¶78(b), the above-referenced representations ascribed to Rosemarie Diamond in the foreclosure Complaint were false.[42] Even if literal truth was mixed in with the falsity, Ms. Diamond's representation that she ordered a "title search of the public record" was materially misleading because any cut-rate title search obtained by the Phelan firm from Land Title Services in its foreclosure action against Charlie and Diane Giles was incomplete and inaccurate.

80. When the Complaint was filed and at all times since, the Phelan firm and Rosemarie Diamond had no authority to act on behalf of Wachovia in connection with Charlie and Diane Giles' mortgage. However, the Phelan firm, at the command of WFB and through fraudulent means, prosecuted a mortgage foreclosure action against the Giles

[42] False statements by attorneys in state court complaints and other legal pleadings are actionable under federal consumer law. *See Chulsky v. Hudson Law Offices, P.C.,* 2011 U.S. Dist. LEXIS 29781, at *23-*25 (D.N.J. Mar. 22, 2011) (Wolfson, J.).

through default judgment, writ of execution, the scheduling of a Sheriff's Sale, and a below-market distress sale of the Giles' home.

81. On April 18, 2007, *after* the Phelan firm filed its foreclosure Complaint against Charlie and Diane Giles, employees or agents of Larry Phelan, Frank Hallinan and Dan Schmieg recorded two purported assignments of the Giles' mortgage with the County Clerk of Ocean County, New Jersey ("Ocean County Clerk").

82. The first "assignment," which was purportedly notarized on September 28, 2004, attempted to convey ownership of the Giles' mortgage from Argent (the loan originator) to Ameriquest Mortgage Company ("Ameriquest," the "seller" of a pool of mortgages packaged into the Park Place Trust).[43] Although the Complaint represented that only *one* assignment from Argent to "Wachovia" was "about to be recorded," the purpose of this additional assignment was to convey legal ownership of the Giles' mortgage to Ameriquest so that it could be included in the pool of mortgages that Park Place Securities, Inc. (the "depositor," an affiliate of Ameriquest) attempted to package into RMBS certificates sold to investors through a public offering underwritten by Morgan Stanley, Bear, Stearns & Co. Inc., and Goldman, Sachs & Co.[44]

83. The second "assignment" (also purportedly notarized on September 28, 2004 and recorded simultaneously with the first) purportedly re-conveyed ownership of the

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[43] In 2006, Ameriquest, once the nation's largest sub-prime lender, entered into a $325 million settlement with attorneys general of 49 states who charged Ameriquest with unlawful predatory lending practices. Press Release, *Miller: Ameriquest Will Pay $325 Million and Reform its Lending Practices*, IOWA ATTY. GEN. OFF. (Jan. 23, 2006), http://www.iowa.gov/government/ag/latest_news/releases/jan_2006/Ameriquest_Iowa.html.
Ameriquest went out of business on or about August 31, 2007, while ACC Capital Holdings LLC, the parent of both Ameriquest and Argent, sold Argent's subprime loan origination business to Cititgroup, which changed the name of that business to Citi Residential Lending. *See* Dash, *Citigroup Buys Parts of a Troubled Mortgage Lender*, N.Y. TIMES, Sept 1, 2007, http://www.nytimes.com/2007/09/01/business/01citi.html.

[44] *See* Prospectus Supplement for Park Place Trust, available at http://www.secinfo.com/dqTm6.128d.htm

Giles' mortgage from Ameriquest to Wachovia, "as Trustee" of the Park Place Trust. The objective of this assignment was to re-transfer ownership of the Giles' mortgage to a party that had ostensible legal standing to bring a mortgage foreclosure action against Charlie and Diane Giles.

84. Whether or not the first "assignment" effectively transferred legal ownership of the Giles' mortgage to Ameriquest, *Wachovia was not Trustee of the Park Place Trust on February 16, 2007, when the Phelan firm filed its foreclosure Complaint against Charlie and Diane Giles on behalf of "Wachovia." Nor was Wachovia was Trustee of the Park Place Trust on April 18, 2007, when the employees or agents of Larry Phelan, Frank Hallinan and Dan Schmieg recorded an after-the-fact "assignment" to Wachovia. Nor was Wachovia was Trustee of the Park Place Trust on June 5, 2007, when the Phelan firm obtained a default judgment against the Giles on behalf of "Wachovia" – or at any time since.* In simple terms, Wachovia had no legal authority to act on behalf of the Park Place Trust. Neither WFB nor the Phelan firm had legal authority to act on behalf of Wachovia.

85. This is because, *on December 30, 2005*, Wachovia sold its entire corporate trust and institutional custody portfolio to a different financial institution, U.S. Bank, N.A. After that sale, Wachovia had no ownership interest in Charlie and Diane Giles' mortgage, if it ever did, and Wachovia had no legal standing to sue the Giles in the foreclosure action that WFB improperly directed the Phelan firm to prosecute.

86. Unaware of the Phelan firm's complicated subterfuge, Charlie and Diane Giles did not contest the foreclosure Complaint. On April 5, 2008, the Phelan firm filed with the Ocean County Clerk (a) a request for a default judgment against the Giles and (b) a certification of default. Both documents were purportedly signed by Rosemarie Diamond.

As shown below, the signature attributed to Ms. Diamond on this document does not bear the slightest resemblance to handwriting attributed to her on the foreclosure Complaint and Certifications:

PHELAN HALLINAN & SCHMIEG, PC

By: Rosemarie Diamond
Rosemarie Diamond

87. On June 5, 2007, the Ocean County Court entered a default judgment against Charlie and Diane Giles, authorizing a Sheriff's Sale of their home and determining that "Wachovia" was entitled to recover from the Giles an amount of $204,391.70, plus costs of suit and legal fees in an amount of $2,193.92.

88. Charlie and Diane Giles put their house up for sale and attempted to negotiate a resolution of their debt with representatives of WFB and the Phelan firm, including Rosemarie Diamond.

89. The Giles hired an attorney, Jerry J. Dasti, Esquire ("Mr. Dasti"), to protect their legal interests. By letter dated July 12, 2007, Mr. Dasti wrote to the Phelan firm (a) advising it of his representation of Charlie and Diane Giles and (b) requesting that all future communications concerning his clients be forwarded to his office.

90. The Phelan firm obtained a writ of execution on the judgment it procured on behalf of "Wachovia." By certified letter dated July 27, 2007 from Debbie Williams, a Phelan firm legal assistant, Charlie and Diane Giles, still believing that productive workout discussions were under way with Rosemarie Diamond and others, were shocked to learn

for the first time that a Sherriff's Sale of their home had been scheduled for "August 21, 2207 [sic]." The Phelan firm did not send a copy of this communication to Mr. Dasti.

91. The Sheriff's Sale scheduled for August 21, 2007 was adjourned by the Ocean County Sheriff.

92. On September 12, 2007, Charlie Giles filed with the Ocean County Court an Emergent Application for a Stay of the Sheriff's sale, which was later adjourned to September 18, 2007. In his application, Charlie Giles explained his dire health conditions to the Court, as well as the reasons why he suffered from them. He also told the Court about his rising medical expenses, and the three-time reduction that he and Diane made to the asking price of the home they had put up for sale. Charlie Giles informed the Court that, according to a township-wide assessment, the fair market value of his home was $287,700.

Wachovia Warned the Phelan Firm and WFB That They
Were Acting Improperly in The Name of a Party Without Legal Standing to Sue

93. After the Ocean County Court postponed the Sheriffs' Sale until October 30, 2007, friends and supporters of Charles and Diane Giles asked Wachovia's corporate headquarters for help. It was only because of this appeal that Wachovia found out that the Phelan firm was acting in its name without authorization, a finding that Wachovia shared with Mr. Dasti.

94. On October 23, 2007, Mark A. Farmer ("Mr. Farmer"), senior vice president and assistant general counsel of Wachovia, sent an e-mail to Mr. Dasti, thanking him for giving Wachovia "the name of the Plaintiffs firm" in the Giles foreclosure action (*i.e.*, the Phelan firm) and advising Mr. Dasti that Mr. Farmer "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."

95. On October 24, 2007, Mr. Farmer sent a letter by U.S. mail and e-mail to Vladimir Palma, an associate attorney working under Rosemarie Diamond's direction. Mr. Farmer wrote:

> 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.*, servicer WFB] 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.
>
> Sincerely,
>
> */s/ Mark A. Farmer*
>
> Mark A. Farmer
>
> Senior Vice President & Assistant General Counsel
> Wachovia Corporation for its subsidiary Wachovia Bank, N.A.

A copy of Mr. Farmer's letter is attached here at Exhibit B.

96. While the outpouring of support for Charlie and Diane Giles resonated at the highest levels of Wachovia's corporate management, a fundraiser was held at the community volunteer fire company in Barnegat Township on October 27, 2007. The fundraiser was attended by the township's mayor, council members, nearly 100 firefighters

and police officers, the Police Benevolent Association and other concerned neighbors, including a group of middle-school students. They collected about $5,000. Given the overriding speed and cost-slashing automation that controls their actions, this was not nearly enough to convince the Phelan firm and WFB to allow Charles and Diane Giles more time to sell or save their home.

97. On November 15, 2007, presumably in response to the executive-level protest by Mr. Farmer, the Phelan firm filed a motion, memorandum and attorney certification with the Ocean County Court seeking an Order "[r]escinding the assignment [to Wachovia] and amending all pleadings to correct the Plaintiff to U.S. Bank as Trustee" ("Motion to Rescind and Correct"). Because U.S. Bank purchased Wachovia's corporate trust and institutional custody portfolio on December 30, 2005, long before the filing of the Phelan firm's foreclosure Complaint against Mr. and Mrs. Giles, the Phelan firm had no choice but to *admit* that (a) its Complaint "incorrectly named" "Wachovia Bank. N.A." as plaintiff and as "Trustee" of the Park Place Trust, and (b) the Phelan firm and WFB erroneously identified the actual "holder" of the [Giles'] note and mortgage." However, Vladimir Palma's certified representation to the Ocean County Court that the Giles' "note and mortgage was … sold by Ameriquest Mortgage Company to 'Plaintiff,' U.S. Bank as Trustee" was nothing more than blind and factually baseless speculation.

98. Despite its attempt explain away these incapacitating inaccuracies, the Phelan firm made no attempt to present evidence demonstrating that:

- ownership of the assets of the Park Place Trust was transferred to (and continuously thereafter resided in) U.S. Bank; and
- Charlie and Diane Giles' mortgage was transferred to (and at all times thereafter remained part of) the pool of securitized mortgages in the Park Place Trust.

99. While it is unambiguously certain that Wachovia had no legal interest in or authority to act on behalf of the Park Place Trust when the Phelan firm filed its foreclosure Complaint and obtained a default judgment against the Giles, it is probable that U.S. Bank also lacked standing to maintain foreclosure actions on behalf of homeowners whose mortgages were purportedly transferred to the Park Place Trust. *See Schwend v. U.S. Bank, N.A.*, 2010 U.S. Dist. LEXIS 127915, at *6-*8 (E.D. Mo., Dec. 3, 2010).

100. As the Court in *Schwend* held in denying U.S. Bank's motion to dismiss a homeowner's state law claim for wrongful foreclosure:

> *[T]here is nothing in the record to show how US Bank, Wachovia Bank, or "Pooling and Servicing Agreement dated as of November 1, 2004" came to be the holder of this note.... From the record here it is not at all clear that US Bank was the lawful holder of the note with the power to foreclose, and if it was not, the claim for wrongful foreclosure is more than plausible.*[45]

Id. (Emphasis supplied)

101. Rather than prove a chain of title to the Giles' mortgage leading to U.S. Bank, as it was required to do under New Jersey law, the Phelan firm tried to blame WFB, whose "records, [allegedly] through mistake and inadvertence, named the holder of the note and mortgage as Wachovia Bank, N.A. as Trustee." According to the Phelan firm's brief in

[45] If U.S. Bank actually did succeed Wachovia as trustee for Park Place Trust, there would be ample legal documentation evidencing U.S. Bank's appointment. Under paragraph 807 of the Pooling and Servicing Agreement dated as of November 1, 2004 ("Park Place PSA"), a resigning trustee must provide *written notice* of its resignation to (1) the depositor, Park Place Securities, Inc., (2) the NIMS insurer; (3) the master servicer, WFB, and (4) the beneficial owners of the trust assets, the certificateholders (collectively, "Mandatory Notified Entities"). Under paragraph 808 of the Park Place PSA, any successor trustee must "*execute, acknowledge and deliver*" to the Mandatory Notified Entities a formal "instrument accepting [its] appointment" as trustee. A copy of the Park Place PSA is available at http://www.scribd.com/doc/66065721/Pooling-and-Servicing-Agreement-dated-as-of-November-1-2004-Asset-Backed-Pass-Through-Certificate-Series-2004-WWF1. Even if Wachovia and U.S. Bank did execute an agreement of some kind regarding transfer of Wachovia's trust operations to U.S. Bank, *there is apparently no document demonstrating that the U.S. Bank acquired and maintained legal ownership of the Giles' mortgage or any other mortgage supposedly part of the Park Place Trust*.

support of its Motion to Rescind and Correct, this "servicer error" had "no effect on the validity of the subject mortgage" because "neither U.S. Bank nor Defendants are in no way prejudiced [sic]" insofar as Mr. and Ms. Giles "have always communicated with the servicer, America's Servicing Company [*i.e.*, WFB]."

102. Despite the Phelan firm's ill-phrased *non-sequitur*, under New Jersey law, a party seeking to foreclose a mortgage must own or control the underlying debt. *Bank of New York v. Raftogianis,* 2010 N.J. Super. LEXIS 221, at *3 (Ch. Div. 2010). Without a showing of such ownership or control, a purported mortgagee lacks standing to proceed with a foreclosure action, and a complaint must be dismissed. *Id.,* at *33. *To establish standing to maintain a foreclosure action, a plaintiff must have ownership or control of the underlying debt as of the date of the filing of the complaint*. *Id.*, at *34. Under Rule 4:64-1(b)(10), when a foreclosure plaintiff is not the original mortgagee or the original nominee mortgagee, a *complaint must recite "all assignments in the chain of title*." *Id.*, at *45.[46] None of this essential information was provided by the Phelan firm or WFB to justify their wrongful foreclosure action against the Giles.

103. To stave off what they were led to believe was an inevitable loss of their home (and depleted of any remaining financial or emotional resources with which to stop the Phelan firm and WFB's runaway foreclosure freight train), Charlie and Diane Giles accepted a "low ball" offer to buy their home in early December 2007.

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[46] Pennsylvania foreclosure law is similar. As the Court summarized in *In Re Michelin Alcide*, 2011 Bankr. LEXIS 1989, at *22-23 (Bankr. E.D.Pa. May 27, 2011), "a mortgage foreclosure action may be maintained by the original holder of the mortgage or a subsequent assignee. ... In a foreclosure complaint, the plaintiff must allege its status as the holder of the mortgage and, if the plaintiff is an assignee, it must allege that it is the holder by assignment. See *Wells Fargo Bank, N.A. v. Lupori*, 2010 PA Super 205, 8 A.3d 919, 921-22 (Pa. Super. Ct. 2010). However, it is not necessary that the assignment be recorded prior to filing the complaint. *U.S. Bank, N.A. v. Mallory,* 2009 PA Super 182, 982 A.2d 986, 993 (Pa. Super. Ct. 2009)."

Fraudulent Expense Claims by the Phelan Firm and WFB

104. By an impersonal "Dear Mortgagor" letter dated and faxed on December 10, 2007, Jessica Hansbury, a Phelan firm staff member, responded to Mr. Dasti's request for a "payoff amount" on his clients' mortgage. In that letter, written on behalf of WFB, the Phelan firm represented falsely that Charlie and Diane Giles owed $223,704 on their mortgage, including an unfathomable $7,817 in "Legal Fees and Costs through December 10, 2007" and "Property Inspections/BPO" fees in an amount of $340.

105. Aware that his clients were in deep financial trouble, Mr. Dasti objected to the fraudulently manufactured junk fees sought by the Phelan firm and WFB.

106. On January 15, 2008, Charlie and Diane Giles lost their home. They sold it to eager buyers at a below-market price of $238,000 -- $49,000 less than its assessed value. Although Mr. Dasti's objections caused WFB to remove much of the bogus "Legal Fees and Costs" and "Property Inspections/BPO" fees claimed by the Phelan firm in its December 10, 2007 fax, Charlie and Diane Giles suffered financial damages, not only in the home equity wiped out through their coerced distress sale, but through $2,500 in legal fees they were required to pay Mr. Dasti and other counsel at closing.

The Phelan Firm and WFB Ignored Wachovia's Warning About Its Lack of Standing

107. On January 18, 2008, three days after the Giles' distress sale, the Ocean County Court tried to clean up the legal mess left over from the botched foreclosure action prosecuted by the Phelan firm and WFB. The Court entered an Order that (a) granted the Phelan firm's Motion to Rescind and Correct and (b) preserved the Giles' rights "as to all affirmative claims" resulting from the Phelan firm's wrongful foreclosure activities. The

Phelan firm "voluntarily" dismissed its case. The harm done to Charlie and Diane Giles did not away.[47]

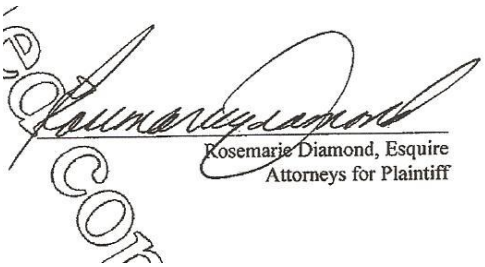
108. Although the Ocean County Court granted the Phelan firm's request to "correct the public record" by rescinding the "incorrect" assignment to Wachovia, and to substitute in its place a purported assignment to U.S. Bank, the public record never was fixed by the Phelan firm. This despite assurances that the Phelan firm had given to Wachovia's Vice President and Senior Counsel that it would do so promptly.

109. A purported assignment of the Giles mortgage from Ameriquest to U.S. Bank was created by the Phelan firm or WFB on or about October 26, 2007 (and that "assignment" was submitted to the Ocean County Court as an exhibit to its Motion to Rescind and Correct), but the "assignment" never was filed with the Ocean County Clerk.

110. On March 12, 2008, the Phelan firm filed one additional document with the Ocean County Clerk, a discharge of a lis pendens on Charlie and Diane Giles' former home. Although the Phelan firm's Motion to Amend and Correct dated November 14, 2008 argued to the Ocean County Court that it was necessary to "amen[d] all pleadings to correctly identify the foreclosing Plaintiff as U.S. Bank as Trustee," the Phelan firm continued to identify *Wachovia* as plaintiff in the caption of the lis pendens document it filed with the Ocean County Clerk three months later.

111. Rosemarie Diamond purportedly signed the Discharge of Lis Pendens. Her "signature" on this legal document appears below:[48]

[47] *See* Philadelphia NBC-10 television interview with Mr. and Ms. Giles, available at http://angelusbell888.bravejournal.com/
[48] Compare this signature with the different handwriting shown at ¶¶ 78, 87 above.



Plaintiff Laurine Spivey

Later Improper Foreclosure Action by the Phelan Firm and WFB in the Name of "Wachovia"

112. Despite its conclusive knowledge that Wachovia had no legal ownership in the pool of securitized mortgages held by the Park Place Trust after December 30, 2005, the Phelan firm and WFB nevertheless continued to prosecute a substantively identical Pennsylvania mortgage foreclosure action against Plaintiff Laurine Spivey on behalf of "Wachovia."

113. At the direction of WFB, on December 28, 2007, the Phelan firm began a mortgage foreclosure action against Ms. Spivey through the filing of a Complaint in the Philadelphia County Court of Common Pleas ("Philadelphia Court"), Case No. 07-004303. The Complaint, purportedly signed by Frank Hallinan,[49] averred that the mortgagee seeking foreclosure of Ms. Spivey's property was an entity called "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" -- the same improperly named "plaintiff" in the foreclosure action brought earlier by the Phelan firm and WFB against Charlie and Diane Giles.

114. In paragraph 3 of its Complaint against Laurine Spivey, the Phelan firm alleged that:

[49] Compare the many different "signatures" ascribed to Frank Hallinan in Exhibit C.

> On 09/17/2004 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 PHILADELPHIA County, in Instrument No: 51141053. By Assignment of Mortgage recorded 03/14/07 the mortgage was assigned to PLAINTIFF (*i.e.*, "*Wachovia," as Trustee for the Park Place Trust*) which assignment is recorded in DOCUMENT ID: 51649091. 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.

(Emphasis supplied)

115. In paragraph 6 of its Complaint against Laurine Spivey, the Phelan firm alleged that amounts "due on the mortgage" included $1,250 in "Attorney's Fees" and $550 for "Cost of Title." In paragraph 7, the Phelan firm claimed that its attorney's fees were "based on work actually performed" and were "in conformity with the mortgage and Pennsylvania law," both of which are requirements of GSEs like Fannie Mae.[50]

116. Accompanying its Complaint, the Phelan firm filed a verification, also allegedly signed by Frank Hallinan. The verification attested to the truth of the following "facts":

a) Frank Hallinan was "attorney" for "Wachovia" in the foreclosure action against Bender

b) Frank Hallinan was "authorized" by "Wachovia" to make a verification on "Wachovia's" behalf

c) Statements in the Complaint were "based on information provided" by "Wachovia," which Frank Hallinan purportedly "believed to be true and correct to the best of its knowledge, information and belief"

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[50] *See* Fannie Mae, Announcement 08-19**,** *New Foreclosure and Bankruptcy Attorney Network and Attorneys' Fees and Costs*, August 6, 2008 ("Fannie Mae Announcement 08-19") at 5 ("Fannie Mae reminds servicers of the *Servicing Guide's* requirements governing attorneys' fees, including the requirements that fees charged to borrowers be permitted under the terms of the note, security instrument, and applicable laws and be prorated to reasonably relate to the amount of work actually performed"), https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2008/0819.pdf

d) Frank Hallinan 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."

Except for the possible exception of subparagraph (d) above, all of the representations in Frank Hallinan's "verification" were false.

117. When the Complaint was filed and at all times since, the Phelan firm and Hallinan had no authority to act on behalf of Wachovia in connection with Laurine Spivey's mortgage. Nevertheless, the Phelan firm, at the command of WFB and through fraudulent means, prosecuted a mortgage foreclosure action against her through default judgment, writ of execution and the scheduling of a Sheriff's Sale.

118. The "assignment" (identified by the Phelan firm as "Document ID: 51649091" in the Philadelphia County recorder's office) did not convey ownership of Laurine Spivey's mortgage from Argent (the loan originator) to Ameriquest (the "seller" of a pool of mortgages packaged into the Park Place Trust). Without such an assignment, Laurine Spivey's mortgage could not possibly have been sold by Ameriquest through the Park Place Trust. Legal ownership of Laurine Spivey's mortgage remained in the successor(s) to the assets of Argent -- an entity that passed out of legal existence in August 2007.[51]

119. While the Phelan firm and its agents recorded their assignment in a vain attempt to convey ownership of the Giles' mortgage from *Ameriquest* to Wachovia (in other words, from one non-owner to another), the assignment did not confer upon Wachovia

[51] *See* above ¶ 82 n.43.

legal standing to bring a mortgage foreclosure action against Laurine Spivey. The chain of title to her mortgage was irretrievably broken.[52]

120. Even if the "assignment" recorded by the Phelan firm or its partners' employees and agents was sufficient to establish a chain of title leading to Wachovia[53] (and such a hypothetical has no basis in fact or law), Wachovia had no legal standing to prosecute a foreclosure action against Laurine Spivey for an even more fundamental reason: *Wachovia was not Trustee of the Park Place Trust on December 28, 2007, when the Phelan firm filed its foreclosure Complaint against Ms. Spivey. Nor was Wachovia Trustee of the Park Place Trust on March 14, 2007, when the employees or agents of Larry Phelan, Frank Hallinan and Dan Schmieg (without conveying title from Argent to Ameriquest) recorded an ineffective "assignment" of Ms. Spivey's mortgage from Ameriquest to Wachovia. Nor was Wachovia Trustee of the Park Place Trust at any time since, including on February 21, 2008, when the Phelan firm obtained a default foreclosure judgment against Laurine Spivey in favor of "Wachovia." See* below at ¶ 124. In basic terms, Wachovia had no legal authority to act on behalf of the Park Place Trust. Neither WFB nor the Phelan firm had legal authority to act on behalf of Wachovia.

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[52] Ameriquest and Argent's history of disregarding their obligation to prepare and maintain customers' mortgage documents properly suggests that it is impossible for WFB and the Phelan firm to produce evidence establishing a chain of title for Park Place Trust mortgages. *See, e.g.,* Joseph Rhee, *Document Dump: 40 Boxes of Ameriquest Mortgage Records Found in Dumpster*, ABC.com, Oct. 27, 2007, http://abcnews.go.com/blogs/headlines/2007/10/document-dump-4/; Atlanta NBC-TV affiliate video available at http://www.liveleak.com/view?c=1&i=4fb_1221763438. *See also* Press Release, *Nine Former Argent Mortgage Company Account Managers, Supervisors and Underwriters Indicted*, Cuyahoga County (Ohio) Prosecutor, June 22, 2011 (prosecutor Bill Mason said that "The securitization and selling of these fraudulent subprime loans on Wall Street typified the rampant greed of the industry that ultimately led to the financial crisis"), http://www.prosecutormason.com/mnc.aspx?type=PressRelease&mcid=737.

[53] For an analysis of other invalid assignments from Argent and Ameriquest in a mortgage foreclosure action brought by WFB, see *Wells Fargo v. Farmer,* 19 Misc. 3d 1141A; 867 N.Y.S.2d 21; 2008 N.Y. Misc. LEXIS 3248 (N.Y.Sup.Ct. , Kings Co., June 5, 2008).

121. This is because, as Wachovia senior vice president explicitly informed the Phelan firm by telephone conversation, supplemented by letter and fax dated *October 24, 2007*, Wachovia sold its entire corporate trust and institutional custody portfolio to U.S. Bank on *December 30, 2005*. After that sale, Wachovia no longer had an ownership interest in Laurine Spivey's mortgage, if it ever did, and it had *no legal standing to sue Ms. Spivey in the foreclosure action that WFB directed the Phelan firm to bring on behalf of Wachovia on December 28, 2007 – more than two months after the Phelan firm and WFB received Mark Farmer's definitive word about Wachovia's lack of interest in the operations and activities of the Park Place Trust*.

122. Years later, Wachovia still appears as the legal owner of Laurine Spivey's mortgage in public records maintained by the Philadelphia County recorder's office.

123. On February 21, 2008, the Phelan firm filed with the Philadelphia Court a document titled "Praecipe for Judgment and Assessment of Damages" against Laurine Spivey. This court filing was purportedly signed by Dan Schmieg.[54]

124. On February 21, 2008, the Phelan firm obtained a default foreclosure judgment against Laurine Spivey in favor of "Wachovia."

125. On February 26, 2008, the Phelan firm filed a praecipe for a writ of execution on the judgment obtained on behalf of "Wachovia." The writ was issued. A Sherriff's Sale of Laurine Spivey's home was scheduled.

126. On March 12, 2008, the Phelan firm filed a "Praecipe to Substitute Verification to Civil Action Complaint in Mortgage Foreclosure" purportedly signed by

[54] Compare different "signatures" ascribed to Dan Schmieg in Exhibit D.

Frank Hallinan.[55] Attached to the praecipe was a "fill-in-the-blank verification" dated December 31, 2007, bearing the purported signature of Yolanda Williams, who was identified as "Vice President of Loan Documentation" of ASC, WFB's mortgage servicing pseudonym. The "verification" contains no facts relating to Laurine Spivey's mortgage, but it includes only boilerplate references to unspecified allegations in an unidentified complaint. Yolanda Williams' "verification" exemplifies the discredited practice that has come to be known as "robo-signing."[56]

127. On May 7, 2008, the Phelan firm filed with the Philadelphia Court a document called “Motion to Reassess Damages,” together with a supporting memorandum of law. In those court filings, the Phelan firm identified the following “sums” that were purportedly "incurred or expended" on behalf of Laurine Spivey:

- “Legal fees” in an amount of $2,100
- “Costs of Suit and Title” in an amount of $1,333.40
- "Appraisal/Brokers Price Opinions" in amount of $285
- "Property Inspections/Property Preservation,” $165.

[55] Compare different "signatures" ascribed to Frank Hallinan in Exhibit C.

[56] In *Wells Fargo Bank N.A. v. Moise*, No. 13450/2009 (N.Y. Supreme Ct., Kings Co., April 27, 2010), the Court granted summary judgment against WFB for lack of standing in a foreclosure action in which a purported mortgage assignment was signed by Yolanda Williams in her "capacity" as Assistant Secretary of Mortgage Electronic Systems, Inc. The Court held that the assignment was invalid because the notary's acknowledgment stated that she witnessed and acknowledged the signature, not of Ms. Williams, but of a Herman John Kennerty, whose name did not appear anywhere else on the document. N.Y. LAW J., Vol. 243, No. 101, May 27, 2010, at 28-29. In *Wells Fargo Bank, N.A. v. Martin*, No. F-17240-09 (N.J. Super., Ch. Div., Sussex Co, Aug. 25, 2011), the Court also granted summary judgment against WFB for lack of standing in a foreclosure action in which an affidavit of lost note was signed by Yolanda Williams in her purported capacity as WFB's Assistant Vice President of Loan Documentation. The Court disregarded Ms. William's affidavit because it was "so vague as to be unreliable." *Id*. at 10-11. In addition, the Court rejected a purported mortgage assignment executed by Herman John Kennerty, who was described by the Court as "one of the legion of Vice Presidents of Loan Documentation for Wells Fargo Bank, N.A." in a "thundering herd of … out of control cases" in which Wells Fargo and other financial institutions failed to "adhere to basic business practices and … record keeping." *Id*. at 11-12 The Court's Order and Statement of Reasons is available at http://www.scribd.com/doc/66385201/Wells-Fargo-v-Martin.

128. Together with its "Motion to Reassess Damages," the Phelan firm filed with the Philadelphia Court a proposed order incorporating the "sums" identified above. On June 10, 2008, the proposed order was signed by the Philadelphia Court in the exact form submitted by the Phelan firm.

129. On June 3, 2008, Laurine Spivey filed a petition for relief under Chapter 13 of the U.S. Bankruptcy Code. The matter was brought in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania and assigned to the Hon. Eric C. Frank at Docket No. 08-13648-elf.

130. On August 5, 2008, *two months after the filing of Laurine Spivey's Chapter 13 petition*, the Phelan firm filed a praecipe informing the Philadelphia Court of Ms. Spivey's bankruptcy filing.

131. On August 27, 2008, the Phelan firm filed a proof of claim in the name of "Wachovia" as a "creditor" in Laurine Spivey's Chapter 13 proceeding. That document listed the following fees and expenses as part of the "prepetition arrearages" purportedly owed by Ms. Spivey to Wachovia:

- "Legal fees" in the amount of $3,900
- "Legal Costs" in an amount of $6,691.90
- "BPO fees" in amount of $285
- "Property Preservation" costs of $210
- "Preparation and filing of proof of claim," $150.

Fraudulent Expense Claims by the Phelan Firm and WFB

132. The mercurial foreclosure charges identified in the Phelan firm's Complaint (¶115 above), motion to "reassess damages" (¶127 above) and "proof of claim" (¶131

above) vacillated without comprehensible rhyme or reason. They cannot be reconciled to reach any conclusion other than that the expense claims of the Phelan firm and WFB were grossly and systematically inflated.

Excessive Charges for "Legal Fees"

133. The claimed charges for "Legal Fees" were not actually or reasonably incurred by the Phelan firm or WFB.

134. In its foreclosure Complaint against Laurine Spivey (¶115 above), the Phelan firm alleged that its legal fees were $1,250. That representation is consistent with the flat-rate fee structure established by GSEs for legal work in foreclosure actions. *See* Fannie Mae Announcement 08-19, Attachment 1, at 2-3 n.10 (Flat-rate fee "covers *all legal actions necessary to complete the standard foreclosure in Pennsylvania*, including motions to postpone or relist a sale and motions to reassess damages") and Fannie Mae Announcement 08-19 at 6 (Flat-rate fee includes "[p]reparing legal papers for entry of foreclosure judgment, whether by default or through summary judgment process"). (Emphasis supplied).

135. Using the Fannie Mae flat-fee schedule as an objective benchmark of reasonableness for attorneys' fees in standard residential foreclosure actions, the "Legal Fees" claimed by the Phelan firm in its "Motion to Reassess Damages" filed on May 5, 2008 (¶127 above) were inflated by about $850. "Legal Fees" claimed by the Phelan firm in its proof of claim filed on August 27, 2008 (¶131 above) were inflated by about $2,600. Laurine Spivey filed her Chapter 13 petition on June 3, 2008, *less than a month after the Phelan firm's motion to reassess damages*, yet the Phelan firm's bankruptcy proof of claim indicates that additional legal fees of $1,750 were incurred during the one-month pre-

petition period between May 5th and June 3rd of 2008. It is likely that, during this brief time, the Phelan firm performed no legal work at all in Ms. Spivey's foreclosure case.

Excessive Charges for "Costs of Suit and Title"

136. The claimed charges for "Costs of Suit and Title" or "Legal Costs" were likewise not actually or reasonably incurred by the Phelan firm or WFB.

137. In its foreclosure Complaint against Laurine Spivey (¶115 above), the Phelan firm alleged that its "Cost of Title" was $550. However, Frank Hallinan (the lawyer who signed and verified the Complaint) testified in other litigation that the Phelan firm's charge for title services "can vary anywhere from ... $200 to $300, possibly $350."[57] Hallinan's partner, Larry Phelan, also boasted about the "very low price" paid by the Phelan firm for "title products" procured from its wholly owned title company subsidiary, Land Title Services.[58] Accepting the Phelan firm partners' statements at face value, a $550 charge for "Cost of Title" is overstated by at least $200.

138. In its May 5, 2008 motion to reassess damages (¶127 above), the Phelan firm represented to the Philadelphia Court that *$1,333.40* was incurred for "Costs of Suit and Title" in "Wachovia's" foreclosure action against Laurine Spivey. By extreme contrast, the pre-petition "Legal Costs" asserted by the Phelan firm in its bankruptcy proof of claim filed on August 27, 2008 (¶131 above) were reported to be in an amount of *$6,691.90*. Given that there were fewer than 30 days between the May 5th filing of the Phelan firm's motion and the June 3rd filing of Laurine Spivey's Chapter 13 petition, there is no conceivable

[57] Transcript of Deposition Testimony of Frank Hallinan taken on March 3, 2009 ("Hallinan Transcript") in the matter titled *Bank of New York v. Ukpe*, Docket No. F-10209-08 (N.J. Super., Ch. Div., Atlantic Co.) at 49, lines 1-5. See http://www.scribd.com/doc/61750189/Hallinan-dep-1.

[58] *See* above at ¶48.

justification for an additional amount of *$5,353* arbitrarily piled into the same category of expense in "Wachovia's" proof of claim.

140. The true explanation for such extravagant overcharges is provided above at ¶¶ 48-50. By calculated design, excessive profits are extracted by the Phelan firm for Land Title Service's cheap "title products," which result in systematically inflated fees charged to distressed homeowners. The "very low price" and value of LTS's "title products" bear no rational relationship to the severely marked-up amounts charged for them by the Phelan firm. While the Phelan firm's fees for "title products" are excessive on their face, they are even more unconscionable in cases like Ms. Spivey's because they do not accomplish the essential purpose of identifying the actual owner of homeowners' mortgages.

Excessive Charge for "Appraisal/Brokers Price Opinions"

141. The $285 charge attributed by the Phelan firm to "Appraisal/Brokers Price Opinions" (¶¶ 127, 131 above) was also not actually or reasonably incurred.

142. As of December 10, 2010, Fannie Mae's maximum reimbursable rate for an "exterior BPO" was $80 and $105 for an "interior BPO."[59] The actual cost of a BPO is lower. According to the National Association of BPO Professionals, the cost of a BPO may be as little as $30."[60]

143. As of April 2011, Bank of America's LandSafe title abstract subsidiary paid licensed real estate brokers $55 for each BPO they provide, out of which LandSafe extracts from brokers 10% of their fees for use of its proprietary system.

[59] *See* Fannie Mae, Servicing Notice*, BPO Providers and Pricing Structure*, Dec. 10. 2010, https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce121710a.pdf
[60] http://www.nabpop.org/Advocacy-BPOBrief-2.php

144. After one foreclosure case in which nine BPOs were ordered and mischaracterized as "appraisals,[61] national counsel for WFB admitted to a Court that "only $50 of each invoice represented the actual cost incurred by WFB for a BPO."[62] The Court held that (a) "[t]he remaining amounts … were added to the actual costs by Wells Fargo" and (b) "these additional charges are an undisclosed fee, disguised as a third party vendor cost, … illegally imposed by Wells Fargo."[63] *The $285 charge attributed by the Phelan firm on behalf of WFB for "Appraisal/Brokers Price Opinions" was likewise "illegally imposed"* on Laurine Spivey[64]

145. Moreover, the Hon. Eric L. Frank, presiding judge in Ms. Spivey's bankruptcy proceeding, has in other litigation held that *fees for discretionary appraisals or BPOs are not reimbursable at all*. *See In re Lisa Battle*, No. 07-12474-ELF (Bank. E.D.Pa. Order dated July 1, 2008), at 6 n.7 and 7 n. 10.[65]

Excessive Charges for "Property Maintenance"

146. Neither the $185 charge for "Property Inspections/Property Maintenance" in the Phelan firm's motion to reassess damages (¶127, above), nor the $210 amount for the same purported "service" asserted in its proof of claim (¶131, above) was actually or reasonably incurred.

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[61] *In re Stewart*, 391 B.R. 327, 345 (Bankr. E,D. La. 2008), *aff'd in part, rev'd in part on other grounds*, 391 B.R. 577 (E.D.La. 2008).
[62] *Id*. at 346.
[63] *Id.*
[64] WFB is a defendant in a proposed class action by homeowners asserting that WFB's systematic imposition of unlawful BPO fees violates RICO. *Young v. Wells Fargo*, 2009 U.S. Dist. LEXIS 100419 (S.D. Iowa Oct. 27, 2009). The Court in that action held that the homeowners' Complaint stated a claim for relief. *Id*., at *87 ("[I]t is plausible that Wells Fargo acted with knowing intention when charging mortgagors excessive servicing fees and concealed the nature of those fees….").
[65] Available at http://www.scribd.com/doc/60103382/Cco-Poc-Obj-Order

147. As of March, 2011, Fannie Mae's maximum reimbursable rate for property inspection was $60.[66] The condition of Laurine Spivey's home was not such that the Phelan firm, on behalf of WFB, reasonably ordered properly inspection or maintenance services that could justify substantially higher charges of $185 and $210. This is another "default management service" that WFB has historically imposed on distressed borrowers without regard to the necessity of its loan administration.[67]

Improper "Pre-Petition" Charge for Post-Petition "Proof of Claim"

148. The proof of claim filed by the Phelan firm with the bankruptcy court includes a charge of $150 for the "preparation and filing" of that same proof of claim on August 27, 2008, several weeks *after* Laurine Spivey filed her Chapter 13 petition on June 3, 2008. However, post-petition expenses are not properly included in a bankruptcy proof of claim.

149. Section 502(b) of the Bankruptcy Code, 11 U.S.C. § 101 *et seq*., provides that a bankruptcy court "shall determine the amount of [a creditor's] claim in lawful United States currency *as of the date of filing the petition*...." (Emphasis supplied). *See In re Oakwood Homes Corp*., 449 F.3d 588, 591 (3d Cir. 2006). The Phelan firm's claim for payment of fees relating to preparation and filing of a post-petition proof of claim is improper as a matter of law.

Other False Representations

150. In its "motion to reassess damages" that contained so many fraudulent overcharges (and in the legal memorandum that accompanied that motion), the Phelan firm emphasized to the Philadelphia Court that (a) "the sole purpose" of its mortgage

[66] *See* Fannie Mae, Loan Servicing Solutions, *Form 571 Reference Guide*, March 2001, at 26, https://www.efanniemae.com/sf/servicing/pdf/571processguide.pdf

[67] *In re Stewart*, 391 B.R. at 344.

foreclosure action was to take [Laurine Spivey's] mortgaged property to Sheriff's Sale," which requires a dollar amount to establish the parameters of third-party "bidding"; (b) its mortgage foreclosure action against Ms. Spivey was "strictly *in rem*" and (c) its requested reassessment of "damages" did "not include any personal liability" against Ms. Spivey.

151. Despite its accurate description of Pennsylvania law, the Phelan firm and WFB actually *do* in other proceedings attempt to use "*in rem*" judgments as a means of establishing the amount of homeowners' "personal liability." *See In re Bender*, No. 08-21193 (Bankr. E.D.Pa.), Supplemental Memorandum in Opposition to Debtor's Objection to Proof of Claim (July 6, 2009) at 3 ("[A] foreclosure judgment fixes liability and constitutes a *res judicata* [sic] as to a later challenge to the amounts owed. The fact that a mortgage foreclosure judgment is *in rem* is completely irrelevant – the amounts fixed in the judgment are *res judicata* as to a later *in personam* challenge").[68]

152. Although the Phelan firm admitted to the Ocean County Court in its foreclosure action against Charlie and Diane Giles that its assignment of mortgage to Wachovia was "incorrect" and that it had improperly named Wachovia as plaintiff in its foreclosure complaint,[69] *the Phelan firm continued heedlessly to prosecute foreclosure and bankruptcy actions against many other homeowners in the name of "Wachovia, as Trustee" of the Park Place Trust*. *See*, *e.g.*, *Wachovia Bank, N.A. v. Hrubosky*, No. 070102422 (Pa. C.P. Phila. Co.); *In re Hrubosky*, No. 08-15375 (Bankr. E.D. Pa); *Wachovia Bank, N.A. v. Bender*, No. 07-6730 (Pa. C.P. Berks Co.); *In re Bender*, No. 08-21193 (Bankr. E.D.Pa.); *Wachovia*

[68] The memorandum is available at http://www.scribd.com/doc/66527750/Phelan-Res-Judicata-Supp-Br.
[69] *See* ¶ 97 above.

Bank, N.A. v. Smith, No. F-1358107(NJ Super., Ch. Div., Sussex Co.) (sheriff's sale listed for August 31, 2010).[70]

153. Despite the mortgage foreclosure scandal that unraveled nationally in September 2010 and metastasized in New Jersey in December 2010, the Phelan firm still continues to prosecute foreclosure actions in the name of "parties" without legal standing to bring them. *See*, *e.g.*, *U.S. Bank v. Spencer*, 2011 N.J. Super. Unpub. LEXIS 746, at *33-*34 (N.J. Super. Ch. Div. Bergen Co. March 22, 2011) (the Phelan firm, purportedly on behalf of U.S. Bank, "provided no documentation or support for its position [that U.S. Bank] is the trustee for [a RMBS trust], and therefore has not established its right to sue on behalf of [the Trust]").

C. Other Homeowners Have Been Harmed By the Same Pattern of Fraudulent Misconduct by the Phelan Firm and WFB

154. The fraudulently manufactured junk fees identified above are relatively small, but life-sustaining sums of money to families struggling to stay in their homes. For institutions like the Phelan firm and WFB, each overcharge, multiplied by thousands of homeowners, represents millions of dollars in unearned profit.

The Phelan Firm

155. The Phelan firm is, as it justifiably says, the "premier default services operation" in Pennsylvania and New Jersey. Like David J. Stern in Florida and Steven J. Baum in New York, it gained prominence and wealth by running its automated foreclosure steamroller over the backs of everyday people like Charlie and Diane Giles, and Laurine Spivey.

[70] *See* http://www.scribd.com/doc/66551195/Mechile-Smith-Newark-Wachovia

156. There are many other victims. One is Victor Ukpe, a self-employed taxi driver from Nigeria, who in 2005 was trying to support five children, all under 10-years-old.

157. At the height of the artificially inflated housing bubble pumped up by predatory subprime lenders like Countrywide and Ameriquest, Victor Ukpe had a passenger who worked as a mortgage broker. During and after his ride, the broker was so convincing that Mr. Ukpe and his homemaker wife, Enoabasi, were led to believe they could afford to buy a house big enough to accommodate their sprawling family. Victor and Enoabasi Ukpe applied for a $224,000 mortgage, even though their combined household adjusted gross income was just $12,198, an amount less than half the federal poverty guideline of $25,210 for a family of six. Despite the Ukpe's noticeable inability to make their mortgage payments, Countrywide lent them the money to buy the house anyway. Predictably, they defaulted on the loan.

158. On March 13, 2008, the Phelan firm and Rosemarie 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 ("CWABS Trust"), filed a foreclosure complaint against the Ukpes in the Superior Court, Chancery Division, for Atlantic County, New Jersey, Docket No. F-10209-08. The foreclosure action was assigned to the Hon. William C. Todd III ("Judge Todd").

159. Represented by South Jersey Legal Services and co-counsel, Victor and Enoabasi Ukpe filed an answer, affirmative defenses, counterclaims and a third-party complaint against the Phelan firm and other parties purporting to have an interest in the Ukpe's mortgage.

160. Lawyers for Victor and Enoabasi Ukpe alleged that there was insufficient evidence of Bank of New York's standing to bring the foreclosure action filed by the Phelan firm. Specifically, the Ukpe's lawyers alleged that the Phelan firm's foreclosure complaint was based on a fraudulent assignment of a mortgage from MERS to Plaintiff Bank of New York, as Trustee of the CWABS Trust.

161. In January 2009, Judge Todd considered these arguments and denied the Phelan firm's motions to dismiss the Ukpe's allegations.

162. Among the evidence presented to Judge Todd were facts demonstrating that:

> Francis Hallinan, a partner at the Phelan firm, executed [an] assignment in his capacity as a MERS officer…. 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 acknowledged tens of thousands of mortgage assignments for the Phelan firm, including the assignment in this case.*[71]

163. On January 16, 2009, Judge Todd called a hearing to "get to the bottom of what it viewed as a possible systemic problem involving the alleged false notarization of assignments in which [Frank Hallinan] played a central role in the process."[72] Judge Todd "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.'"[73]

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[71] *Bank of New York v. Ukpe*, 2009 U.S. Dist. LEXIS 115557, at *8-*9 (D.N.J. Dec. 9, 2009).
[72] Letter dated April 11, 2009 to the Hon. William C. Todd, III, P.J.Ch., from Abigail B. Sullivan, counsel for the Ukpes. (Emphasis supplied) *See* http://www.scribd.com/doc/61754294/4-11-09-Letter-SJLS-to-Judge-Todd
[73] *Id.*

164. By Order dated January 21, 2009, Judge Todd required the Phelan firm to produce Frank Hallinan and notary Thomas Strain at the hearing,[74] which was scheduled for April 20, 2009. Judge Todd also ordered the Phelan firm to produce the "original" copy of Full Spectrum's "notarization logs."

165. The hearing called by Judge Todd did not take place. On April 9, 2009, Defendants improperly removed the Ukpe case to this Court, where it was assigned to U.S. District Judge Joseph H. Rodriguez. By Order dated December 9, 2009, Judge Rodriguez remanded the case to Judge Todd's state court in Atlantic City.

166. Soon after he was seemingly ousted from jurisdiction in the Ukpe matter by defendants' April 9th removal to federal court, Judge Todd warned Chancery Court judges throughout New Jersey about falsified mortgage assignments "associated" with the Phelan firm.[75]

167. When Larry Phelan learned what Judge Todd had done, he sent an *ex parte* letter to the Court dated April 29, 2009,[76] representing that the Phelan firm had, at its own expense, re-executed and re-recorded 2,921 mortgage assignments notarized by Thomas Strain at the behest of Frank Hallinan.[77] Larry Phelan's April 29th letter also asked Judge Todd to circulate among other Chancery Court judges notice of the "corrective actions" purportedly taken by the Phelan firm.

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[74] Judge Todd's January 21, 2009 Order at ¶ 9, http://www.scribd.com/doc/61754869/Judge-Todd-Order-1-21-09

[75] *See* Letter dated May 8, 2009 from the Hon. William C. Todd III to Abigail B. Sullivan of South Jersey Legal Services, Inc. and Dashika R. Wellington of Wilentz, Goldman & Spitzer, enclosing *ex parte* letter dated April 29, 2009 from Larry Phelan to the Hon. William C. Todd III, http://www.scribd.com/doc/61755132/Phelan-Ex-Parte-Letter-to-Judge-Todd

[76] *Id*.

[77] Thomas Strain has been described in press reports as "the face of New Jersey's robo-signing scandal." *See* Kaja Whitehouse, *Report Rips NJ Foreclosure Robo-signing Notary*, N.Y. POST, Dec. 29, 2010, http://www.nypost.com/p/news/business/sign_of_the_times_wOvGHrYMdbzZqEVgonGR4K.

168. Forewarned by Judge Todd, the presiding judge of the Chancery Court in Hudson County, New Jersey, the Hon. Thomas P. Olivieri ("Judge Olivieri"), scheduled a hearing on May 27, 2009 to address his own "concern" regarding another mortgage assignment "executed" by Frank Hallinan and "notarized" by Thomas Strain. Judge Olivieri directed Hallinan to appear at the hearing.[78]

169. At that hearing, Frank Hallinan and his co-counsel[79] told Judge Olivieri that the Phelan firm had recorded a new "corrective assignment" in the matter pending before him.[80] Of the Phelan firm's re-execution and re-recording of 2,921 mortgage assignments "signed" by Frank Hallinan and "notarized" by Thomas Strain, Phelan firm counsel explained to the Court, *"[W]e couldn't tell you on any given assignment which was or which wasn't [improper]. It was almost like asking the short order cook do you recall flipping which hamburger on which day."*[81]

170. Although Judge Olivieri said he was no longer "as concerned" about the propriety of the assignment in the case before him given its re-execution by another Phelan firm lawyer and its re-notarization by another Full Spectrum employee,[82] he cautioned counsel that the Phelan firm's professional responsibilities in prosecuting foreclosure actions are not comparable to a short order cook working for minimum wage at Jack-In-The-Box:

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[78] See Transcript of May 27, 2009 Hearing, *U.S. Bank, N.A. v. Sinchegarcia*, No. F-18446-08 (Super. Ct., Ch. Div., Hudson Co.) ("5.27.09 Hearing Tr.") at 6 (lines 6-11) and 8 (lines 9-16), http://www.lsnj.org/keyRecentDevelopments/Foreclosure/materials/EXHIBITNHearing.PDF.

[79] Both Hallinan and his co-counsel, Daniel S. Bernheim 3d of Wilentz Goldman & Spitzer, appeared before Judge Olivieri in their ostensible capacity as lawyers representing "U.S. Bank National Association, as trustee." 5.27.09 Hearing Tr. at 3, lines 3-12.

[80] *Id*., at 5, lines 4-11.

[81] *Id*., at 14, lines 10-19.

[82] *Id*., at 8, lines 18-25.

> I feel very strongly that regarding the foreclosure process, sometimes there are actions taken simply to move the matter along more quickly, … whereby instead of doing it properly the first time, for the purpose of expediency it wasn't done properly. … [S]ometimes for the purpose of expediency and moving the matter along[,] certain formalities are overlooked or shunned or disregarded, and they may be simple formalities, they are important formalities.
>
> I think it is important that when a notary indicates that he or she saw the person, or the person was in his or her presence and signed the assignment, that that be accurate and not be something that is inaccurate….
>
> [G]oing forward I hope and trust that when other formalities – that when the [foreclosure] bar or the [foreclosing mortgagees] are faced with other formalities in the execution of documents regarding assignments, that these formalities are not overlooked….
>
> Honestly, the judges have spent a lot of time on this issue and it is unnecessary and the only reason why we are spending all this time is because a formality was overlooked or disregarded.
>
> For me, the formality is important because I think when we overlook or shun or disregard formalities such as these notarizations, and if the Bench countenances overlooking those types of formalities, it is a slippery slope that we start to climb, overlooking perhaps other more substantive formalities, and this is too important of a process, meaning the foreclosure process, to overlook those types of formalities….
>
> I am inferring that it won't happen again. And when I say again, I'm talking about inappropriate notarizations and other like formalities….
>
> It is too important. And it really sends, it sends an inappropriate message to the public that the Bar and the Bench would overlook those types of formalities.

5.27.09 Hearing Tr. at 10, line 6 – 13, line 3.

171. On January 16, 2009, Judge Todd, who became aware of a "systemic problem involving the alleged false notarization of assignments in which [Frank Hallinan] played a central role in the process," first raised the issue of "an appropriate remedy and recognized that the situation could impact a host of foreclosure cases." On May 27, 2009, Judge Olivieri

described the grave implications of the problems identified by Judge Todd. On December 20, 2010, the Hon. Stuart Rabner, Chief Justice of the New Jersey Supreme Court, confirmed the prescience of the observations by Judges Todd and Olivieri, and he ordered that immediate remedial action be taken. *See* below at ¶¶ 195-210.

172. As demonstrated above, the Phelan firm has repeatedly disregarded – and continues to disregard – the most fundamental "substantive formalities," including the Constitutional requirement that a party in whose name a mortgage foreclosure action is brought must have legal standing to sue. The Phelan firm has repeatedly attempted to evade – and has evaded – this Constitutional requirement through fraudulent court filings and property records, including assignments from and to entities that do not own mortgages upon which foreclosure is sought.

173. While the *validity* of foreclosure judgments obtained through deceptive means is not an issue in this litigation,[83] the Phelan firm and WFB are liable for the unlawful means they used to achieve their illegal objective: the multiplication of unearned profits by the Phelan firm and WFB through the systematic piling on of fraudulently manufactured junk fees and other inflated expenses disguised as "reimbursable default management service" charges.

[83] In the context of these claims, the *Rooker-Feldman* doctrine is no impediment to federal jurisdiction. *See Sheenan v. Mortgage Electronic Registration Systems, Inc.,* 2011 U.S. Dist. LEXIS 88514, at *9-*12 (D.N.J. Aug. 10, 2011) (Kugler, J.), *citing*, *In re Sabertooth, LLC. v. Simons*, 443 B.R. 671, 681 (Bankr. E.D. Pa. 2011), *quoting*, *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 167 (3d Cir. 2010) ("[A] claim that a judgment was procured by fraud is independent of the judgment and, therefore, does not fall within the *Rooker-Feldman* doctrine").

Wells Fargo Bank, N.A.

174. Independent of its unlawful activities relating to the Representative Homeowners in this case, WFB has engaged in a longstanding pattern of institutionalized mortgage servicing abuse.

175. For example, on April 28, 2008, the Hon. Elizabeth W. Manger ("Judge Manger") sanctioned WFB for the same kind of unlawful fee-gouging alleged here.[84] Among other things, Judge Manger found that WFB engaged in the practice of charging inflated BPO fees to distressed homeowners that were "disguised as a third party vendor cost" "illegally imposed by Wells Fargo." *See* above at ¶ 144.

176. Judge Manger also found that WFB engaged in an unlawful practice (implemented through its robotic use of the Fidelity MPS computer platform) of charging fees to distressed homeowners for unnecessary property inspections -- even when homeowners' properties were occupied and not in any state of disrepair. These "inspections" were never read or reviewed by any WFB employee, demonstrating that the charges purportedly incurred were fraudulently manufactured junk fees, unrelated to any legitimate interest of WFB in preserving its secured interest in borrowers' properties.[85]

177. Through multiple evidentiary hearings, Judge Manger acquired a deep knowledge and understanding of WFB's mortgage servicing and accounting practices. Her conclusions are thus highly relevant to the unlawful course of conduct alleged here. Among other things, Judge Manger found that:

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[84] *In re Stewart*, 391 B.R. 327, 345 (Bankr. E.D. La. 2008), *vacated in part on other grounds*, 2011 U.S. App. LEXIS 15029, at *11 (5th Cir. July 22, 2011) (court had no authority to grant injunction).
[85] *Id*., at 343-334.

a) WFB's improper actions were "willful and egregious"[86]

b) WFB's "own representatives have admitted that [WFB] routinely misapplied payments on loans and improperly charged fees"[87]

c) "Wells Fargo has demonstrated a pattern of overcharging borrowers and misapplying payments"[88]

d) "At the heart of the problem is Wells Fargo's failure to disclose to its borrowers/debtors ... the nature or amount of fees and charges assessed"[89]

e) "Wells Fargo's practices are systematic...."[90]

f) WFB's persistent misconduct "reveals an arrogant defiance of federal law."[91]

178. Other Courts have drawn the same conclusions about WFB's improper claims and institutionalized overcharges. *See*, for example:

a) *In re Moffitt*, 390 B.R. 368, 388 (Bankr. E.D. Ark. 2008) (WFB's "servicing procedures are not organized to ensure accuracy and accountability")

b) *In re Haque*, 395 B.R. 799, 803, 804, 805 (Bankr. S.D. Fla. 2008) (WFB's "wayward accounting" was "not unique to this case" and 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 WFB and its foreclosure lawyers)

c) *In re Collins*, 2009 WL 1607737, at *7 (Bankr. S.D. Tex, June 8, 2009) (WFB asserted "intentionally inaccurate" claims)

d) *In re Nibbelink*, 403 B.R. 113 (Bankr. M.D.Fla., 2009)(imposing $15,000 for punitive damages and $21,177 in attorney's fees based on findings that WFB acted in an "intentional and egregious" manner by charging "improper fees" and attempting "to collect those improper fees ... by making

[86] *In re Jones*, 2009 Bankr. LEXIS 3317, at *20 (Bankr. E.D.La. Oct. 1, 2009).
[87] *Id.*, at *23-*24.
[88] *In re Stewart*, 2008 Bankr. LEXIS 3226, at *43 (Bankr.E.D.La. October 14 2008).
[89] *In re Jones*, 2009 Bankr. LEXIS 3317, at *24-*25.
[90] *Id.*, at *26.
[91] *Id.*, at *32.

numerous telephone calls and sending numerous ominous letters to Plaintiffs demanding that Plaintiffs become current or face foreclosure").

179. WFB has likewise demonstrated a sustained pattern of mortgage servicing abuse in orchestrating the filing of foreclosure actions in the names of entities without legal standing to bring them – the identical practice that WFB and the Phelan firm implemented in their wrongful prosecution of foreclosure cases "on behalf of Wachovia" against Charlie and Diane Giles in New Jersey, and Laurine Spivey in Pennsylvania.

180. The following are other non-exhaustive examples of WFB's institutionalized disregard of Constitutional legal standing requirements:

a) *U.S. Bank, N.A. et. al. v. Ibanez et al.*, 2009 Mass. LCR LEXIS 134, at *9 (Mass. Land Court, Oct. 14, 2009), *aff'd*, 2011 Mass. LEXIS 5 (S.J.C. Jan. 7. 2011) ("[N]either U.S. Bank (in *Ibanez*) nor Wells Fargo (in *Larace*) was the holder of the mortgage (either on or off record) at the time notice of the foreclosure sale was given or at the time the sale took place…. [A]s a matter of law, the sales were invalid")

b) *Wells Fargo Bank, N.A. v. Ford*, 418 N.J. Super. 592, 600; 15 A.3d 327, 331; 2011 N.J. Super. LEXIS 13 (App. Div. Jan. 28, 2011) ("Wells Fargo did not establish its standing to pursue this foreclosure action by competent evidence")

c) *Wells Fargo Bank, N.A. v. Lupori*, 2010 PA Super 205; 8 A.3d 919, 922; 2010 Pa. Super. LEXIS 3818, at *7 (Pa. Super. Nov. 12, 2010) ("The alleged April 1, 2005 assignment … to Wells Fargo was *dehors* the record as of the time of the default judgment. Since the record did not support entry of the default judgment, the trial court erred in declining to strike the judgment from the record")

d) *Wells Fargo Bank v. Marchione*, 69 A.D.3d 204, 211; 887 N.Y.S.2d 615 (N.Y. App. Div., 2009) ("Wells Fargo had no standing to bring this action")

e) *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) ("WFB lacked standing to bring a foreclosure action….")

f) *In re Tandala*, 438 B.R. 52, 57 (Bankr. S.D.N.Y., 2010) ("As Wells Fargo has failed to prove it owns the Note, it has failed to establish that it has standing to pursue its state law remedies with regard to the Mortgage and Property")

g) *Wells Fargo v. Farmer*, 19 Misc.3d 1141(A), 2008 WL 2309006, at *3 (N.Y. Sup. June 5, 2008). ("It is clear that plaintiff WELLS FARGO, with the invalid assignments of the instant mortgage and note from ARGENT, lacks standing to foreclose on the instant mortgage")

h) *Wells Fargo v. Reyes*, 20 Misc.3d 1104(A), 2008 WL 2466257, at *1, 6 (N.Y. Sup. June 18, 2008). (WFB "lacks standing to prosecute this matter because … it does not now, and has never owned the subject mortgage")

i) *Wells Fargo Bank, N.A. v. Byrd,* 897 N.E.2d 722, 728; 178 Ohio App.3d 285, 292; 2008 Ohio 4603 (Ohio App., 2008) ("The trial court properly dismissed the foreclosure complaint filed by Wells Fargo in this case because, at the time the complaint was filed, it did not own the mortgage that was the basis for the suit")

181. As the Hon. Keith C. Long observed in *Ibanez*, these 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 [legal] protections given to homeowners and borrowers."[92] The observations of Judge Christopher A. Boyko are equally pertinent:

> 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.[93]

[92] *Ibanez*, 2009 Mass. LCR LEXIS 134, at *61.
[93] *In re Foreclosure Cases*, 2007 U.S. Dist. LEXIS 84011, at *8-*9 (N.D. Ohio, Oct. 31, 2007).

182. Despite the efforts of conscientious judges, by September 2010, it was apparent that profit-maximizing financial institutions and their law firms had trampled down those legal protections, leaving in their wake a foreclosure fraud epidemic of scandalous proportions.

D. The Foreclosure Fraud Scandal Confirms Defendants' Unlawful Practices

The Scandal Unravels

183. On September 20, 2010, Ally Financial ("Ally," also known as GMAC Mortgage) announced that it had temporarily suspended evictions of homeowners living in 23 states that require judicial action to authorize residential mortgage foreclosures. An Ally spokesman admitted that in a number of cases the legal documents it submitted in foreclosure proceedings "may have been executed without direct personal knowledge stated in the affidavit" and were not signed in the presence of a notary public.[94]

184. Thereafter, law enforcement officials from Connecticut, California, Illinois, Iowa, North Carolina and Texas opened investigations into practices of Ally and other mortgage servicers that "relied on shoddy or fabricated paperwork to deal with the massive pile" of foreclosure actions they initiated.[95]

185. On September 29, 2010, J.P. Morgan Chase announced that it too was temporarily suspending foreclosures against 56,000 borrowers in 23 states because of allegations of forged documents and signatures and similar problems. Earlier, one of J.P.

[94] Ariana Eunjung Cha, *Ally Suspends Evictions on Foreclosed Homes*, WASH. POST, Sept. 20, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092006175.html

[95] Ariana Eunjung Cha and Brady Dennis, *Connecticut and California Join Probe of Ally, Order Foreclosures Freeze*, Sept. 27, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092706190.html.

Morgan Chase "employees, Beth Ann Cottrell, admitted that she and her team signed off on about 18,000 foreclosures a month without checking whether they were justified."[96]

186. On September 30, 2010, John Walsh, acting director of the Office of the Comptroller of the Currency, directed WFB and other mortgage servicers to review their foreclosure processes. According to Walsh, these foreclosure processes "clearly had deficiencies."[97]

187. On October 1, 2010, Bank of America, N.A. ("BofA") announced that it was temporarily putting foreclosures on hold in 23 states because of concerns about the propriety of its legal documentation."[98] BofA announced on October 8, 2010 that its action had expanded to all 50 states.[99] But within weeks, BofA resumed foreclosure activity.

Government Investigations Begin

188. On October 13, 2010, the National Association of Attorneys General issued a news release announcing that:

> It has recently come to light that a number of mortgage loan servicers have submitted affidavits or signed other documents in support of either a judicial or non-judicial foreclosure that appear to have procedural defects. In particular, it appears affidavits and other documents have been signed by persons who did not have personal knowledge of the facts asserted in the documents. In addition, it appears that many affidavits were signed outside of the presence of a notary public, contrary to state law. This process of signing documents without confirming their accuracy has come to be known as "robo-signing." We believe such a process may constitute a

[96] Ariana Eunjung Cha, *J.P. Morgan Chase to Freeze Foreclosures Over Flawed Paperwork*, WASH. POST, Sept. 29, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/09/29/AR2010092907268.html

[97] Ariana Eunjung Cha, *7 Major Lenders Ordered to Review Foreclosure Procedures*, WASH. POST, Sept. 30, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/09/30/AR2010093006563.html

[98] Ariana Eunjung Cha, *Bank of America Latest to Put Hold on Foreclosures Amid Paperwork Concerns*, WASH. POST, Oct. 1, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/10/01/AR2010100106678.html

[99] News Release, *Statement from Bank of America Home Loans*, Oct. 8, 2010, http://mediaroom.bankofamerica.com/phoenix.zhtml?c=234503&p=irol-newsArticle&ID=1480657&highlight=

> deceptive act and/or an unfair practice or otherwise violate state laws.
>
> In order to handle this issue in the most efficient and consistent manner possible, the states have formed a bi-partisan multistate group to address issues common to a large number of states. The group is comprised of both state Attorneys General and the state bank and mortgage regulators. Fifty state Attorneys General have joined this coordinated multistate effort…. Through this process, the states will attempt to speak with one voice to the greatest extent possible.[100]

189. In an article written for publication in the *Huffington Post* on October 17, 2010, U.S. Secretary for Housing and Urban Development Shaun Dovovan said that "[t]he recent revelations about foreclosure processing" are "shameful" and have "rightly outraged the American people."[101] Secretary Donovan promised that:

> A comprehensive review of the situation [is] underway and [the government] will respond with the full force of the law where problems are found. The Financial Fraud Enforcement Task Force that President Obama established last November has made this issue priority number one. Bringing together more than 20 federal agencies, 94 US Attorney's Offices and dozens of state and local partners to form the broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to combat fraud, the Task Force is examining this issue and the Attorney General has said publicly that if it finds any wrongdoing the members of the task force will take the appropriate action. The Federal Housing Administration and Federal Housing Finance Agency have launched reviews to make sure servicers are in full compliance with the law. The Office of the Comptroller of the Currency has directed seven of the nation's largest servicers to review their foreclosure processes, fix the processing problems and determine whether there is specific harm that has been caused in individual cases.
>
> The message all these institutions are sending is the same: banks must follow the law -- and those that haven't should immediately fix what is wrong.

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[100] News Release, *50 States Sign Mortgage Foreclosure Joint Statement*, THE NAT'L ASSOC. ATTY. GEN, Oct. 13, 2010, http://www.naag.org/joint-statement-of-the-mortgage-foreclosure-multistate-group.php

[101] Shaun Donovan, *How We Can Really Help Families*, HUFFINGTON POST, Oct. 17, 2010, http://www.huffingtonpost.com/shaun-donovan/how-we-can-really-help-fa_b_765528.html

190. On October 25, 2010, Ben S. Bernanke, Chairman of the Board of Governors of the Federal Reserve Board addressed a conference in Arlington, Virginia on the subject of "Mortgage Foreclosure and the Future of Housing Finance." Chairman Bernanke told his audience that:

> [W]e have been concerned about reported irregularities in foreclosure practices at a number of large financial institutions. The federal banking agencies are working together to complete an in-depth review of practices at the largest mortgage servicing operations. We are looking intensively at the firms' policies, procedures and internal controls related to foreclosures and seeking to determine whether systematic weaknesses are leading to improper foreclosures. We take violations of proper procedures very seriously.[102]

191. On October 27, 2010, WFB finally joined other mortgage servicers that had already acknowledged systematic problems in their foreclosure documentation processes. While it expressed no intention to suspend foreclosures, WFB did say that it was submitting additional affidavits for about 55,000 foreclosures pending in 23 states.[103]

192. On November 18, 2010, a subcommittee of the House Financial Services Committee held a hearing on the subject of "Robo-Singing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing." Among the experts invited to the hearing was Georgetown University Law Center Professor Adam J. Levitin, who testified:

> Servicers' business model … encourages them to cut costs wherever possible, even if this involves cutting corners on legal requirements, and to lard on junk fees and in-source expenses at inflated prices. The financial incentives of mortgage servicers also encourage them to foreclose, rather than modify loans in many cases, even when modification would maximize the net present value of the loan for investors.

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[102] *See* http://www.federalreserve.gov/newsevents/speech/bernanke20101025a.pdf

[103] Jia Lynn Yang, *Wells Fargo Acknowledges Problems in Foreclosure Paperwork*, WASH. POST, Oct. 27, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/10/27/AR2010102707361.html

> The chain of title problems are highly technical, but they pose a potential systemic risk to the US economy. … These problems are very serious. At best they present problems of fraud on the court, clouded title to properties coming out of foreclosure, and delay in foreclosures that will increase the shadow housing inventory and drive down home prices. At worst, they represent a systemic risk that would bring the US financial system back to the dark days of the fall of 2008.[104]

193. At a meeting on November 23, 2010,[105] former Assistant Treasury Secretary Thomas A. Barr told members of the Financial Stability Oversight Council ("FSOC")[106] that:

a) There are widespread and "inexcusable" breakdowns in basic controls in the foreclosure process

b) "These problems must be fixed"

c) Federal regulators have been conducting onsite examinations of the nation's largest mortgage servicers, designed to ensure that filed foreclosures meet legal requirements and that affidavits the firms are filing in the nation's courts are accurate, and

d) The federal investigation includes (i) "an assessment of each servicer's foreclosure policies and procedures, organizational structure and staffing, vendor management, quality control, loan documentation, including custodial management, and foreclosure processes" and (ii) "interviews with personnel and reviewing samples of individual borrower foreclosure files from all 50 states that include both in-process and completed foreclosures."

194. On December 1, 2010, the U.S. Senate's Committee on Banking, Housing and Urban Affairs convened a hearing on "Problems in Mortgage Servicing From Modification to

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[104] *See* http://financialservices.house.gov/Media/file/hearings/111/Levitin111810.pdf

[105] A C-SPAN video of the meeting can be seen at http://www.c-spanarchives.org/program/OversightC. *See also* Brady Dennis, *Foreclosure Process 'Must Be Fixed,' Treasury Official Says*, WASH. POST, Nov. 23, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/11/23/AR2010112305480.html

[106] Members of the FSOC include the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation and the Director of the Federal Housing Finance Agency. *See* FSOC 2011 Annual Report, issued July 26, 2011, http://www.treasury.gov/initiatives/fsoc/Pages/annual-report.aspx

Foreclosure." In his testimony before the Committee, Terence Edwards, Executive Vice President of Credit Portfolio Management for Fannie Mae, said that his organization was "closely monitoring the work performed" by members of its Retained Attorney Network, which resulted in the termination of its relationship with the Law Office of David J. Stern in Florida.[107] Edwards said that Fannie Mae was planning further steps "to establish a more robust regimen for monitoring our approved attorney network to ensure compliance with proper procedures and operations," including "on-site monitoring and in-depth training."[108]

Judicial Action in New Jersey

195. In New Jersey, Supreme Court Chief Justice Stuart Rabner also recognized the necessity for his state's judicial system to take "more robust" measures to stop mortgage foreclosure fraud.

196. On December 20, 2010, the Administrative Office of the Courts in New Jersey ("Administrative Office") issued three public documents: (a) a press release,[109] (b) a Notice to the Bar concerning "emergent amendments" to court rules governing residential mortgage foreclosures in New Jersey, and accompanying Order by Chief Justice Rabner,[110] and (c) Administrative Order 01-2010, signed by the Hon. Glenn A. Grant, acting director of the Administrative Office ("Grant Order"), requiring servicers filing 200 or more residential mortgage foreclosure actions in 2010 to "demonstrate affirmatively that there are no

[107] *See* above at ¶ 21 n.6. In February 2011, Fannie Mae took the same action against another high-volume foreclosure firm in Florida, Ben-Ezra & Katz. *See* below at ¶245 n.155.
[108] *See* Testimony of Terence Edwards, December 1, 2010, at 8-9, http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8081e67c-9d07-4e59-b0db-823834d7beeb
[109] http://www.judiciary.state.nj.us/superior/press_release.htm
[110] http://www.judiciary.state.nj.us/notices/2010/n101220a.pdf

irregularities in their handling of foreclosure proceedings" through "submissions" to a retired judge acting as a special master.[111]

197. Also on December 20, 2010, the Hon. Mary C. Jacobson, Presiding Judge of the Chancery Court in Mercer County, New Jersey, *sua sponte* initiated an action titled, *In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities*, Docket No. F-059553-10 ("*Foreclosure Irregularities Matter*"). Judge Jacobson issued an Order requiring WFB and five other major servicers to show cause why the Court should not suspend the processing of all of their uncontested foreclosure matters and appoint a Special Master to review their past and proposed foreclosure practices ("Show Cause Order"). *See* http://www.judiciary.state.nj.us/notices/2010/n101220c.pdf.

198. In its December 20, 2010 press release, the Administrative Office announced that Chief Justice Rabner initiated "a series of steps to protect the integrity of filings of foreclosures in New Jersey." Those steps included Judge Jacobson's Order directing WFB (among other servicers "implicated in irregularities in connection with their foreclosure practices") to show cause why the processing of uncontested residential mortgage foreclosure actions they filed should not be suspended.

199. As Chief Justice Rabner explained in the December 20th press release:

> Today's actions are intended to provide greater confidence that the tens of thousands of residential foreclosure proceedings underway in New Jersey are based on reliable information. Nearly 95 percent of those cases are uncontested, despite evidence of flaws in the foreclosure process. For judges to sign an order foreclosing on a person's home, they must first be able to rely on the accuracy of documents submitted by lenders. *That step is critical to the integrity of the judicial process*.[112]

[111] http://www.judiciary.state.nj.us/notices/2010/n101220b.pdf
[112] Emphasis supplied.

200. In her Show Cause Order, Judge Jacobson likewise held that "the exigencies of the circumstances, especially the immediate need to restore integrity to foreclosure processing," required "an in-depth review of the [implicated servicers'] policies, procedures, processes and systems to ensure that sufficient, properly trained staff and adequate quality controls are in place to satisfy compliance with the Rules of Court and laws of New Jersey, and to prevent and/or cure any potential fraud upon the court, and to ensure that Plaintiffs' employees, agents, servants or third-party independent contractors acting on their behalf follow proper policies, procedures and processes."[113]

201. WFB and five other "implicated" servicers were specifically identified by Judge Jacobson as having demonstrated "a *public record of questionable practices* that this court must address now in its supervisory capacity over the processing of foreclosure matters."[114]

202. The "public record" referenced in the Show Cause Order was summarized in the Grant Order, which, among other things, singled out for special criticism the fraudulent notarization practices of the Phelan firm and Full Spectrum, described above at ¶¶ 155-173:

> In state court proceedings, Thomas Strain, an employee of a servicing company associated with the New Jersey and Pennsylvania law firm of Phelan, Hallinan & Schmieg, LLP (Phelan), admitted in a deposition to notarizing approximately fifty foreclosure-related documents per day, often outside the signer's presence. After New Jersey Chancery Division judges expressed concerns related to Phelan's mortgage assignment practices, Phelan spent $175,000 to redo approximately 3,000 assignments that Strain had notarized.[115]

[113] Show Cause Order at 2-4.
[114] *Id*., at 2 (Emphasis supplied).
[115] Admin. Order at 4-5. (Footnotes omitted)

203. Citing *Bank of New York v. Raftogianis*, 2010 N.J. Super. LEXIS 221, at *3 (Ch. Div. 2010) (*see* above at ¶ 87), the Grant Order stated that:

> Questions have … arisen as to whether plaintiffs filing foreclosure actions actually own the underlying mortgages. In a recent case, a New Jersey equity court found that a plaintiff attempting to foreclose a mortgage, which had been transferred through a series of securitizations, never obtained actual title to the underlying mortgage. Confounding the problem, the court found that plaintiff's filings made "no meaningful attempt to comply with the provision of R. 4:64-1(b)(1) by 'reciting all assignments in the chain of title.'"[116]

204. The Grant Order further highlighted deposition testimony of WFB employees who admitted that they did not review or have personal knowledge of the facts in legal documents they signed in mass-produced fashion (relying instead on outside counsel or other servicer employees for accuracy).[117] The Grant Order also took due note of Congressional testimony and other information coming from Washington, as well as developments in other states.[118]

205. Based on information already in the "public record," the New Jersey judiciary:

- Effectively suspended uncontested foreclosure actions prosecuted by WFB and five other implicated servicers
- Required servicers to justify their actions with detailed non-public information to be provided to a special master charged with determining the sufficiency of the servicers' foreclosure practices and processes, and
- Established and implemented new court rules specifically requiring foreclosure law firms to identify steps they have taken to verify evidentiary support for factual statements in the legal documents they sign, including their compliance

[116] *Id*., at 5. (Footnotes omitted)
[117] *Id*., at 5-6, 9-10. (Footnotes omitted)
[118] *Id*., at 11-13. (Footnotes omitted). *See also Report to Congressional Requesters: MORTGAGE FORECLOSURES Documentation Problems Reveal Need for Ongoing Regulatory Oversight*, U.S. GOV'T. ACC'T. OFF., May 2011 ("GAO-11-433"), at 40 ("some courts have been imposing their own new requirements to help ensure the accuracy of filings; for example in New York state and Cuyahoga County, Ohio, attorneys are required to sign statements affirming that the facts in affidavits are accurate"), http://www.gao.gov/new.items/d11433.pdf

> with Rule 4:64-1(b)(10), which requires that "if plaintiff is not the original mortgagee or original nominee mortgagee," a foreclosure complaint must provide "the name of the original mortgagee and a recital of all assignments in the chain of title."[119]

206. On January 5, 2011, WFB filed its Response to the Show Cause Order. Unlike other servicers, notably BofA, WFB refused to acknowledge any institutionalized shortcomings in its foreclosure processes, either in its own operations or in those of its outside foreclosure counsel like the Phelan firm.[120] Instead, WFB challenged the Court's jurisdiction, the Constitutionality of the Court's action and the necessity of the special master. Despite compelling evidence in the public record concerning its systematic wrongdoing in foreclosure cases, WFB insisted that these issues may be addressed only in the context of individual foreclosure proceedings.

207. On March 18, 2011, WFB and other implicated servicers agreed to a stipulation providing for the appointment, at the servicer's expense, of a special master. Among other things, the special master was given responsibility for (a) evaluating submissions that servicers must make in order to establish a *prima facia* case demonstrating that their processes and procedures are sufficiently reliable to permit resumption of uncontested foreclosure actions; (b) obtaining additional information necessary for making a determination of the sufficiency of the servicers' processes and procedures, and (c) making recommendations to Judge Jacobson.[121]

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[119] *Id*., at 14-18. (Footnotes omitted)
[120] Appearance of Wells Fargo, N.A., filed on January 5, 2011, Foreclosure Irregularities Matter, http://www.judiciary.state.nj.us/superior/Wells%20Fargo%20Response.pdf
[121] Recommended Stipulation filed on March 18, 2011, http://www.judiciary.state.nj.us/superior/stipulation.pdf

208. After a hearing in Trenton on March 29, 2011, Judge Jacobson entered an Order approving the stipulation and appointing as special master the Hon. Richard J. Williams, a retired Chancery Court judge.[122]

209. On June 9, 2011, Chief Justice Rabner entered an order finalizing amendments to court rules governing residential mortgage foreclosures in New Jersey.[123] Among other things, the Order requires foreclosure lawyers to execute certifications and affidavits providing specific information demonstrating that they have confirmed the accuracy of facts in foreclosure legal documents through direct communications with servicer employees.

210. On August 15, 2011, based on the special master's report accepting assurances by WFB that their new and improved foreclosure procedures could now be relied upon by New Jersey courts, Judge Jacobson entered an Order permitting WFB to resume uncontested foreclosure actions. The foreclosure activities of WFB and other implicated servicers will be formally monitored for one year.[124]

Ongoing Federal and State Attorneys General Investigations

211. On February 25, 2011, WFB filed with the SEC its Annual Report on Form 10-K for the year ended December 31, 2010, which incorporated by reference an Annual Report disseminated to shareholders. In a footnote to financial statements appearing at page 170 of that Annual Report, WFB disclosed that:

> Several government agencies are conducting investigations or examinations of various mortgage related practices of Wells Fargo Bank. The investigations relate to … whether Wells Fargo's practices

[122] http://www.judiciary.state.nj.us/superior/order_approving_stipulation.pdf
[123] http://www.scribd.com/doc/57947188/Residential-Mortgage-Foreclosure-Rules-and-Revised-Form-Certifications-Affidavits
[124] *See* http://www.judiciary.state.nj.us/superior/order_wells_fargo.pdf

> and procedures relating to mortgage foreclosure affidavits and documents relating to the chain of title to notes and mortgage documents are adequate. *With regard to the investigations into foreclosure practices, it is likely that one or more of the government agencies will initiate some type of enforcement action against Wells Fargo, which may include civil money penalties.*[125] Wells Fargo continues to provide information requested by the various agencies.

(Emphasis supplied)

212. As one part of the government investigations disclosed by WFB, the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Board ("the Fed"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS") jointly conducted "horizontal" examinations of foreclosure processing at the 14 largest federally regulated mortgage servicers, including WFB ("Interagency Review").[126]

213. The OCC's First Senior Deputy Comptroller and Chief Counsel described the Interagency Review as follows:

> The primary objective of the examinations was to evaluate the adequacy of controls and governance over bank foreclosure processes, including compliance with applicable federal and state law. Examiners also evaluated bank self-assessments and remedial actions as part of this process, assessed foreclosure operating procedures and controls, interviewed bank staff involved in the preparation of foreclosure documents, and conducted an in-depth review of approximately 2,800 borrower foreclosure cases in various stages of foreclosure. Examiners focused on foreclosure policies and procedures; organizational structure and staffing; vendor management of third parties, including foreclosure attorneys; quality

[125] It is possible that more than "civil money penalties" may result from government investigations. As the U.S. General Accounting Office reported, the U.S. Department of Justice "is also taking actions to address foreclosure documentation issues. Justice staff could not comment on investigations, but told us that they are working with investigatory and regulatory partners to look into the servicers' foreclosure practices. While they said that federal civil and *criminal statutes could apply in complaints or charges in areas of mortgage fraud*, *including mail and wire fraud*, false statements, Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) civil actions, and fraud against the government, if the mortgage loans involved were federally insured or guaranteed, Justice staff told us that the state attorneys general and other regulators also have enforcement authority to address these issues." GAO-11-433 at 37. (Emphasis supplied)

[126] *See* Testimony of Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel of the OCC, at July 7, 2011 hearing before subcommittees of the House Committee on Financial Services ("Williams Testimony") at 2-3, http://financialservices.house.gov/UploadedFiles/070711williams.pdf

control and audits; accuracy and appropriateness of foreclosure filings; and loan document control, endorsement, and assignment.[127]

214. On April 13, 2011, OCC, the Fed, FDIC, and OTS issued the Interagency Report,[128] which, among other things, concluded that:

a) Deficiencies in servicers' processes, procedures, controls, and staffing resulted in numerous inaccurate affidavits and other foreclosure-related documents. Examiners found that most servicers had affidavit signing protocols that expedited the processes for signing foreclosure affidavits without ensuring that the individuals who signed the affidavits personally conducted the review or possessed the level of knowledge of the information that they attested to in those affidavits….[129]

b) [T]he servicers reviewed generally did not properly structure, carefully conduct, or prudently manage their third-party-vendor relationships with outside law firms and other third-party foreclosure services providers. Failure to effectively manage third-party vendors resulted in increased reputational, legal, and financial risks to the servicers.[130]

c) Servicers typically used third-party law firms to prepare affidavits and other legal documents, to file complaints and other pleadings with courts, and to litigate on their behalf in connection with foreclosure and foreclosure-related bankruptcy proceedings. The servicers reviewed generally showed insufficient guidance, policies, or procedures governing the initial selection, management, or termination of the law firms that handled their foreclosures.[131]

d) [P]roblems include instances in which law firms signed documents on behalf of servicers without having the authority to do so, or they changed the format and content of affidavits without the knowledge of the servicers. These defects could, depending upon the circumstances, raise concerns regarding the legality and propriety of the

127 Williams Testimony at 4.
128 The Interagency Report is available at http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf
129 Interagency Report at 8.
130 *Id.*, at 9.
131 *Id.*

> foreclosure even if the servicer had sufficient documentation available to demonstrate authority to foreclose.[132]

215. Having found that WFB and others engaged in "unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing," the OCC on April 13, 2011 announced formal enforcement action against WFB and other servicers.[133]

216. As part of that action, WFB entered into a Consent Order with the OCC,[134] which requires WFB to:

> a) Correct the deficiencies in mortgage servicing and foreclosure processing identified in the Interagency Report
>
> b) Provide robust oversight and controls of third-party vendors, including outside legal counsel and vendors who provide default and foreclosure processing services to ensure that those who act on their behalf comply with these obligations as well as all laws and regulations, both state and federal
>
> c) Implement a comprehensive "revision" of its foreclosure processes for the purpose of restoring "integrity" to the foreclosure process; those revisions must be identified in "detailed Action Plans" acceptable to federal government regulators, and
>
> d) Engage "independent firms" approved by federal government regulators for the purpose of conducting a "look-back" investigation to identify borrowers who (during the period from January 1, 2009 through December 31, 2010) suffered financial harm as a result of foreclosure processing deficiencies and to compensate them for financial injury.[135]

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[132] *Id*., at 9-10

[133] News Release No. 2011-47, *OCC Takes Enforcement Action Against Eight Servicers for Unsafe and Unsound Foreclosure Practices*, OCC, April 13, 2011 ("OCC News Release"), http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html;

[134] Consent Order dated March 31, 2011 in the proceeding entitled *In the Matter of Wells Fargo Bank, N.A*., The Comptroller of the Currency of the United States of America,, No. AA-EC-11-19, http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47k.pdf

[135] Williams Testimony at 5-7. *See also* GAO-11-433 at 30.

217. According to Acting Comptroller of the Currency John Walsh:

> These comprehensive enforcement actions, coordinated among the federal banking regulators, require major reforms in mortgage servicing operations….[136] Our enforcement actions are intended to fix what is broken, identify and compensate borrowers who suffered financial harm, and ensure a fair and orderly mortgage servicing process going forward.[137]

218. On April 13, 2011, the Fed also announced an enforcement action against WFB and other servicers,[138] which entered into Consent Orders similar to the ones obtained by the OCC.[139] In its press release, the Fed stated that forceful government action[140] was needed to "address a *pattern of misconduct* and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing," which "represent *significant and pervasive compliance failures and unsafe and unsound practices* at these institutions."[141]

219. While the OCC and the Fed announced their enforcement actions and Consent Orders, the FDIC, one of agencies participating in the Interagency Review and Report, issued a separate press release on April 13, 2011. There, the FDIC placed the actions of the Fed and OCC in the context of a broader government and private response to the foreclosure fraud scandal:

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[137] OCC News Release.

[138] Press Release, the Fed, April 13, 2011 ("Fed Press Release"), http://www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm

[139] Consent Order dated April 13, 2011 in the enforcement action titled *In the Matter of Wells Fargo & Company*, Board of Governors of The Federal Reserve System, Docket No. 11-025-B-HC, http://www.federalreserve.gov/newsevents/press/enforcement/enf20110413a10.pdf

[140] Some have questioned the effectiveness and adequacy of relief obtained by the OCC and the Fed. *See, e.g.*, Joe Nocera, *Letting the Banks Off the Hook*, N.Y. TIMES, April 18. 2011, http://www.nytimes.com/2011/04/19/opinion/19nocera.html?_r=2&scp=3&sq=nocera&st=cse; Mark DeCambre, *Foreclosure Fix: Feds' Settlement With Banks a Wreck, Say Critics*, N.Y. POST, April 14, 2011, http://www.nypost.com/p/news/business/foreclosure_fix_qgZLNx7HZfZwms8yt85OXM#ixzz1TnGuQBHd

[141] Fed Press Release (Emphasis supplied)

> The enforcement orders issued today are important, but they are only a first step in setting out a framework for these large institutions to remedy these deficiencies and to identify homeowners harmed as a result of servicer errors. While today's orders put these large servicers on a path to improving their management of the foreclosure process, they do not purport to fully identify and remedy past errors in mortgage-servicing operations of large institutions. Much work remains to ensure that the servicing process functions effectively, efficiently, and fairly going forward. Importantly, these enforcement orders do not contain monetary remedial measures. There is evidence that some level of wrongful foreclosures has occurred. It is important that servicers identify any harmed homeowners and provide appropriate remedies. This is essential to managing litigation and reputation risk, as well as fairness to borrowers. In addition, the FDIC continues to fully support the separate federal and state collaboration between the State Attorneys General and federal regulators led by the U.S. Department of Justice. The enforcement orders announced today complement, rather than preempt or impede, this ongoing collaboration.[142]

220. In her testimony on May 26, 2011 before the House Subcommittee on Financial Institutions and Consumer Credit, former FDIC Chairman Sheila C. Bair also emphasized that the OCC and Fed investigations and Consent Orders were not quick or all-encompassing solutions to the foreclosure fraud scandal:

> [E]ven though the FDIC is not the primary federal regulator for the largest loan servicers, our examiners participated with other regulators in horizontal reviews of these servicers, as well as two companies that facilitate the loan securitization process. In these reviews, federal regulators cited *"pervasive" misconduct in foreclosures* and significant weaknesses in mortgage servicing processes.
>
> Unfortunately, the horizontal review only looked at processing issues. *Since the focus was so narrow, we do not yet really know the full extent of the problem.* The Consent Order … requires these servicers to retain independent, third parties to review residential mortgage foreclosure actions and report the results of those reviews back to the regulators. However, *we have heard concerns regarding the thoroughness and transparency of these reviews, and we continue to press for a comprehensive approach to this "look back"*….

[142] Press Release, FDIC Statement on Enforcement Orders Against Large Servicers Related to Foreclosure Practices, FDIC, April 13, 2011, http://www.fdic.gov/news/news/press/2011/pr11069.html

> The enforcement orders do not preclude additional supervisory actions or the imposition of civil money penalties.[143]

221. As Mark Pearce, Director of the FDIC's Depositor and Consumer Protection Division, also said, the OCC and Fed Consent Orders "do not fully identify and remedy past errors in mortgage-servicing operations of large institutions; in fact, the scope of the interagency review did not include a review of …. the fees charged in the servicing process. Much work remains to identify and correct past errors and to ensure that the servicing process functions effectively, efficiently, and fairly going forward."[144]

222. As of the filing of this Complaint, identification of "past errors" is far from complete, and it is not clear that mortgage foreclosure abuses have been or will be adequately addressed. In late July 2011, Reuters and Associated Press reported that mortgage servicers and their lawyers continue to file questionable documents in foreclosure cases, including false mortgage assignments.[145]

223. On July 20, 2011, Sen. Robert Menendez (D-NJ), chairman of the Senate Subcommittee on Housing, Transportation and Community Development, and nine other senators sent a letter to Fed Chairman Ben Bernanke, Acting Comptroller of the Currency John Walsh and Acting FDIC Chairman Martin Gruenberg. The Senators' letter said, in part:

> We write today to urge you to make public critical information related to enforcement actions taken against mortgage servicers regarding their improper foreclosure practices. This is especially important given this week's allegations that mortgage servicers continue to

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[143] http://www.fdic.gov/news/news/speeches/chairman/spmay2611.html

[144] Statement of Mark Pearce at hearing before subcommittees of the House Committee on Financial Services on July 7, 2011, at 4 n.2, http://financialservices.house.gov/UploadedFiles/070711pearce.pdf

[145] *See* Scot J. Paltrow, *States Negotiating Immunity For Banks Over Foreclosures*, REUTERS, July 20, 2011, ("Reuters Report") http://www.reuters.com/article/2011/07/20/foreclosure-banks-immunity-idUSL3E7IK4EN20110720; Michelle Conlin and Pallavi Gogoi, *Mortgage 'Robo-Signing' Goes On*, A.P., July 19, 2011, http://abcnews.go.com/US/wireStory?id=14100463

> engage in widespread "robo-signing" despite your assurances that these illegal actions would not continue…..
>
> [W]e believe that the full disclosure of these documents to the public is necessary given the recent reports by both the Associated Press and Reuters of the continued widespread practice of "robo-signing" among mortgage servicers. Both have alleged that servicers continue to file thousands of property documents that appear to be fabricated. Reuters also quoted top representatives from the mortgage servicing industry saying that the Consent Orders have "not put a stop to questionable practices." David Stevens, president of the Mortgage Bankers Association, tellingly said that some loan servicers "continue to cut corners" and "the real question is whether the servicer complied with all legal requirements."[146]

224. Amid this uncertainty, the coalition of states' attorneys general, along with the U.S. Department of Justice, continue negotiations for a settlement with WFB and four other major servicers. According to multiple news reports, law enforcement officials have demanded that WFB and other servicers pay as much as $25 billion in penalties and to comply with new uniform mortgage servicing rules.[147] However, as of the filing of this Complaint, California, the largest state in the nation, has withdrawn from the negotiations, and attorneys general of New York and a few other states have rejected liability releases proposed by implicated financial institutions.[148]

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[146] Letter dated July 20, 2011 from Senators Robert Menendez, Richard Blumenthal, Daniel Akaka, Al Franken, Bernard Sanders, Mark Begich, Maria Cantwell, John D. Rockefeller IV, Jon Tester and Sherrod Brown, http://menendez.senate.gov/imo/media/doc/Letter%20to%20regulators%20on%20transparency%20in%20foreclosure%20reviews.pdf

[147] Reuters Report; Gretchen Morgenson, *A Low Bid For Fixing a Big Mess*, N.Y. TIMES, May 14,, 2011, http://www.nytimes.com/2011/05/15/business/15gret.html; David Savage, *Talks to Settle Foreclosure Probes Could Take Months*, L.A. TIMES, Mar. 25, 2011, http://articles.latimes.com/2011/mar/31/business/la-fi-foreclosure-talks-20110331

[148] *See* Letter dated September 30, 2011 from California Attorney General Kamala D. Harris to Iowa Attorney General Tom Miller and Assistant U.S. Attorney General Thomas Perrelli, available at http://www.scribd.com/doc/67059857/Kamala-Harris-Letter-to-Tom-Miller-9-30-11; Alejandro Lazo and Nathaniel Popper, *California Exits Foreclosure Talks*, L.A. TIMES, Sept. 30, 2011, http://www.latimes.com/business/la-fi-foreclosure-settlement-20111001,0,5731658.story;

V. CLASS ACTION ALLEGATIONS

225. The Representative Homeowners 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:

> All individuals in Pennsylvania and New Jersey who, during the period from January 1, 2005 through the present ("Class Period") were (a) defendants in mortgage foreclosure actions prosecuted by the Phelan firm and (b) were affected by abusive foreclosure practices, including (i) preparation, execution and notarization of fraudulent court documents and property records used to initiate and prosecute foreclosure actions in the name of entities without legal standing to bring them, and/or (ii) imposition of inflated or fabricated fees for "default management services."

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

227. The Class is so numerous and geographically dispersed that joinder of all members is impracticable. According to Frank Hallinan, the Phelan firm handled an estimated 24,000 to 26,000 foreclosure prosecutions in Pennsylvania and New Jersey during 2008 alone, a fraction of the foreclosures prosecuted by Phelan firm during the entire Class Period.

228. There are questions of law and fact common to the Class. These common questions relate to the existence of the pattern of 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 falsified or caused the falsification of statements made in complaints, affidavits, verifications, certifications, motions and other legal documents filed by the Phelan firm with Pennsylvania and New Jersey courts in residential mortgage foreclosure proceedings.

b) Whether Defendants falsified or caused the falsification of mortgage assignments recorded with public agencies in connection with the filing of foreclosure actions prosecuted by the Phelan firm.

c) Whether Defendants filed foreclosure actions against homeowners in the name of entities that lacked proper legal standing to bring suit.

d) Whether Defendants systematically overstated or fabricated the amount of "default management servicing" fees due from homeowners, including, *inter alia*,

- Attorneys' fees not authorized by contract or otherwise permitted by law
- Fees for property title searches not authorized by contract or otherwise permitted by law
- Fees for "appraisals" and BPOs not authorized by contract or otherwise permitted by law
- Fees for property inspections and maintenance services not authorized by contract or otherwise permitted by law
- Charges for unspecified and undocumented "foreclosure fees and costs," including multiple or duplicated charges for the same "services" allegedly rendered.

e) 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 Class of their legal rights and property.

f) The identity of other co-conspirators (including non-defendant mortgage servicers, litigation attorneys, third-party default management service vendors, and mortgage foreclosure industry trade groups), and the extent of the co-conspirators'

participation in the conduct complained of herein.

g) Whether the conduct alleged in this Complaint violated RICO.

h) Whether the conduct alleged in this Complaint violated the NJCFA.

i) Whether the conduct alleged in this Complaint violated the UTPCPL.

j) Whether the conduct alleged in this Complaint states a cause of action for breach of contract, money had and received, and/or negligence under the common laws of the State of New Jersey and the Commonwealth of Pennsylvania.

k) Whether Defendants' conduct, as alleged in this Complaint, caused injury to the person and property of the Representative Plaintiffs and other members of the Class.

l) The appropriate measure of damages sustained by Plaintiffs and other members of the Class.

m) Whether restitution and disgorgement of profits are appropriate equitable relief for the wrongful conduct alleged in this Complaint.

n) Whether injunctive relief is warranted to restrain the Phelan firm from continuation of the wrongful conduct alleged in this Complaint, and

o) Whether a forensic accounting firm and special master should be appointed to (i) quantify Defendants' ill-gotten gains to be disgorged to Plaintiffs and members of the Class; (ii) recommend business management and accounting procedures that the Phelan firm must adopt and implement to avoid future continuation of the wrongful conduct documented throughout this Complaint; and (iii) monitor the Phelan firm's compliance with business management or accounting procedures that may be ordered by the Court.

229. All Plaintiffs are members of the 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 Class. Plaintiffs' interests are aligned closely with, and are not antagonistic to, those of the other members of the Class. In addition, Plaintiffs are represented by competent counsel experienced in the prosecution of class action litigation.

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

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

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

233. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Members of the Class are readily ascertainable, *inter alia*, through records maintained in the regular course of business by the Phelan firm and WFB. 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.

VI. CLAIMS FOR RELIEF

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

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

235. 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 Class.

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

237. In violation of 18 U.S.C. § 1962(c), Defendants at all relevant times conducted the affairs of the association-in-fact enterprises identified below. The affairs of this enterprise affected interstate commerce through a pattern of racketeering activity.

A. The Enterprise

The Phelan, Hallinan and Schmieg Foreclosure Enterprise

238. The Phelan, Hallinan and Schmieg Foreclosure Enterprise (the "Enterprise") is an association-in-fact consisting of the following persons and entities:

a) Larry Phelan, Frank Hallinan, Dan Schmieg and Rosemarie Diamond

b) Phelan Hallinan & Schmieg, LLP, and its individual attorneys

c) Phelan Hallinan & Schmieg, P.C., and its individual attorneys

d) Full Spectrum Holdings LLC, 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, and their individual managers and employees

e) WFB

f) Non-party mortgage servicers

g) Non-party LPS[149]

h) Non-party CoreLogic, Inc.

i) Non-party Fannie Mae

j) Non-party Freddie Mac

k) Members of non-party USFN®, formerly known as U.S. Foreclosure Network, a foreclosure industry trade association.[150]

239. The Enterprise is an ongoing, continuing group or unit of persons and entities associated together for the common purpose of limiting costs and maximizing profits through rapid, automated prosecution of residential mortgage foreclosure lawsuits by the Phelan firm. The Enterprise operated continuously throughout the Class Period.

240. The Enterprise engages in, and its activities affect, interstate commerce.

241. While all Defendants participate in and are part of the Enterprise, they also have an existence separate and distinct from the Enterprise.

242. Members of the Enterprise are linked systematically through contractual relationships, financial transactions and coordinated activities, including similar understandings concerning the selection, duties, performance and oversight of the Phelan firm's prosecution of mortgage foreclosure actions, including its use of captive "third-party vendors" providing so-called default management services.

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[149] LPS is embroiled in its own legal difficulties in the foreclosure fraud scandal, including an investigation by the U.S. Attorney's Office for the Middle District of Florida; like WFB and BofA, LPS also agreed to Consent Orders with the Fed and OCC. *See* LPS Form 10-Q for the period ended June 30, 2011, at 45, http://phx.corporate-ir.net/phoenix.zhtml?c=222167&p=irol-SECText&TEXT=aHR0cDovL2lyLmludC53ZXN0bGF3YnVzaW5lc3MuY29tL2RvY3VtZW50L3YxLzAwMDE0Mjk3NzUtMTEtMDAwMDAzL3htbA%3d%3d

[150] Other institutions and individuals are also integral to the operation of the Enterprise. It is unnecessary to identify them specifically at this time.

B. Predicate Acts of Mail and Wire Fraud

Fraudulent Schemes and Intent to Defraud

243. As alleged above, at the beginning of 2005, the Phelan firm adopted a "business model" whose purpose is to maximize profits and severely limit costs, while at the same time processing an exploding volume of foreclosure cases at breakneck speed and in assembly line fashion, all with only a handful of lawyers, a large support staff, and wholly-owned non-legal "service" providers.

244. The template used by the Phelan firm is calculated to, and does, generate systematic overcharges assessed to distressed homeowners for "default management services" that are unessential, unperformed, and unauthorized by contract or law. To obtain the unearned profits that this system is set up to manufacture, the Phelan firm files foreclosure lawsuits on the basis of untrue assertions of fact, which are included in court filings and property records that often contain falsified signatures and notarizations, all to facilitate the prosecution of foreclosure lawsuits in the name of entities without legal standing to sue.

245. The Phelan firm acts under the direction and command of WFB and other mortgage servicers, which themselves have established institutionalized means of maximizing profits and limiting costs. As a major source of revenue from their servicing operations, WFB and other financial institutions receive part of the proceeds of inflated and manufactured "default servicing" fees extracted from distressed homeowners by the Phelan firm and similar organizations, such as the Law Office of David J. Stern, Ben-Ezra & Katz[151]

[151] Ben-Ezra & Katz is another Flordia foreclosure firm whose "approved attorney" status was terminated by Fannie Mae in February 2011. Miami-Dade Circuit Judge Maxine Cohen Lando also held the founding member of that firm, Marc Ben-Ezra, in contempt for filing "sham" foreclosure documents that were "a fraud upon the court." Kimberly Miller and Christine Stapleton, *Lawyer Held in Contempt Over 'Fraud' in Foreclosure Filing*,

and Steven J. Baum. WFB and other servicers also regulate and control the activities of such law firms through their (a) use of default management "outsource" companies like LPS and CoreLogic; (b) selection of foreclosure law firms limited to those that are members of "attorney networks" run by LPS and CoreLogic or those that have achieved "approved attorney" or "designated counsel" status from Fannie Mae or Freddie Mac; and (c) monitoring of foreclosure lawyers' performance in meeting mandatory timelines through computerized mortgage servicing programs like LPS Desktop and VendorScape.

246. Having achieved success in its industry, the Phelan firm has consistently met or exceeded the demands of WFB and other servicers. In turn, given the tight institutional constraints within which it operates, the Phelan firm has taken little or no action without the express approval or knowing acquiescence of WFB and other servicer clients.

Defendants' Fraudulent Use of Interstate Wire Facilities and U.S. Mail

247. Pursuant to these fraudulent schemes, mail and wire fraud was routinely committed by the Phelan firm and WFB. The following are non-exhaustive *examples* of fraudulent misrepresentations made by Defendants to the Representative Homeowners through use of the U.S. Mail or interstate wire facilities.

248. On April 18, 2007, currently unidentified employees or agents of Larry Phelan, Frank Hallinan and Dan Schmieg caused to be recorded two purported assignments of Diane and Charlie Giles' mortgage with the Clerk of Ocean County, New Jersey. *See* above at ¶¶ 81-85. These assignments (ostensibly signed and notarized in Westchester County, New York, and transmitted thereafter to and in New Jersey by mail or interstate wire facilities) were

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PALM BEACH POST, Feb. 12, 2011,http://www.palmbeachpost.com/money/foreclosures/lawyer-held-in-contempt-over-fraud-in-foreclosure-1248825.html

false, misleading and unlawfully fabricated by the Phelan firm and WSB for the sole purpose of filing a foreclosure action against the Giles on behalf of "Wachovia Bank, N.A.," an entity without legal standing to sue. *Id*.

249. On July 27, 2007, Debbie Williams, a legal assistant with the Phelan firm, sent a Notice of Sheriff's Sale to Charlie and Diane Giles via U.S. Postal Service, certified mail, return receipt requested, which was received by Mr. and Ms. Giles at 10:35 a.m. on August 1, 2007. The Notice of Sheriff's Sale (like the Phelan firm's foreclosure Complaint and Certifications dated February 16, 2007 and its Certification of Default dated April 5, 2007) falsely identified Wachovia Bank, N.A. as plaintiff in the mortgage foreclosure action wrongfully prosecuted against them by the Phelan firm and WFB. In fact, Wachovia Bank, N.A. did not own the Giles' mortgage or note and had no legal standing to sue. *See* above at ¶¶ 80-85, 94-95, 97-102.

250. On December 10, 2007, Jessica Hansbury, a Phelan firm employee, faxed a letter to Jerry Dasti, counsel to the Giles, falsely representing that Charlie and Diane Giles owed WFB $7,817 in "Legal Fees and Costs through December 10, 2007" and "Property Inspections/BPO" fees in an amount of $340. The falsity of the Phelan firm's misrepresentation is demonstrated by the removal of most of those manufactured fees on January 15, 2008, when the Giles were forced to sell their home at a significantly below-market value and to pay $2,500 for services of their own attorneys. *See* above at ¶¶ 104-102.

251. On November 14, 2007, Oliver Ayon, a Phelan firm legal assistant, served by regular and certified U.S. Mail copies of the Phelan firm's Motion to Rescind and Correct (together with its supporting brief and attorney certification) to Charles and Diane Giles, and their attorney, Jerry J. Dasti. The representations made in these court documents concerning the nature and circumstances of (a) the "incorrect" assignment to Wachovia and (b) the

foreclosure complaint the Phelan firm erroneously filed in the name of Wachovia were false and misleading for the reasons detailed above at ¶¶ 97-102.

252. On March 14, 2007, currently unidentified employees or agents of Larry Phelan, Frank Hallinan and Dan Schmieg caused to be filed with the Philadelphia recorder's office a purported assignment of Laurine Spivey's mortgage from Ameriquest to Wachovia. *See* above at ¶¶ 114-121. This assignment (ostensibly signed and notarized in Orange County, California, and transmitted thereafter to and in Pennsylvania by mail or interstate wire facilities) was false, misleading and unlawfully fabricated by the Phelan firm and WFB for the sole purpose of filing a foreclosure action against the Ms. Spivey on behalf of "Wachovia Bank, N.A.," an entity without legal standing to sue. *Id*.

253. On or about March 12, 2008, Frank Hallinan sent a "Praecipe to Substitute Verification" of the foreclosure Complaint dated December 28, 2007 (together with a purported verification of Yolanda Williams) by regular U.S. Mail to Laurine Spivey. In attesting to the accuracy of the allegations in the Complaint, the verification mailed by Frank Hallinan to Ms. Spivey made false and misleading representations that Wachovia Bank, as Trustee of the Park Place Trust, was the legal holder of Ms. Spivey's mortgage and note. *See* above at ¶ 126 and n.56.

254. On or about May 5, 2008, Phelan firm attorney Michelle Bradford mailed to Laurine Spivey a motion to reassess damages that contained false and misleading representations concerning, *inter alia*, amounts purportedly due to "Wachovia" on Ms. Spivey's mortgage for legal fees, legal costs, cost of title work, and fees for BPOs and property inspections. The false and misleading nature of these representations is detailed above at ¶¶ 127-128, 132-147, 150-151.

255. On or about August 27, 2008, through use of the U.S. Bankruptcy Court's Electronic Case Filing system, Phelan firm attorney Andrew L. Spivack filed and served on Laurine Spivey's counsel a proof of claim that contained false and misleading representations concerning, *inter alia*, amounts purportedly due to "Wachovia" on Ms. Spivey's mortgage for legal fees, legal costs, BPOs, property inspections and proof of claim preparation and filing. The false and misleading nature of these representations is detailed above at ¶¶ 131-149.

Defendants Depend On Interstate Wire Facilities and U.S. Mail For *Most* Business Communications

256. The entirety of Defendants' business operations, not just their fraudulent activities, are carried out by an array of legal and mortgage servicing personnel, working across state boundaries, who engage in constant transfers of correspondence, legal documents, loan data, information, invoices, account statements, financial instruments and currency. These information transfers occur primarily through interstate wire facilities or U.S. Mail.

257. According to Timothy P. O'Brien, a Senior Vice President and WFB's "Manager of Default Documents:

- "The loan balance information included in judgment affidavits and certifications comes directly from the mortgage servicing computer programs that house all loan balance and related information of record for mortgage loans serviced by Wells Fargo. Wells Fargo refers to these systems as its systems of record or the Mortgage Servicing Platform ('MSP')"

- "Wells Fargo employees and Wells Fargo's third party vendors, including foreclosure counsel, have access to MSP borrower information"

- "Wells Fargo's New Jersey foreclosure counsel communicate with Wells Fargo primarily through a computer program known as Vendorscape. All of the law firms that represent Wells Fargo in residential mortgage foreclosures in New Jersey have the Vendorscape computer program. Vendorscape is used to

manage the foreclosure process, including communications with foreclosure lawyers"

- "Vendorscape allows a foreclosure law firm to obtain information from Wells Fargo over a secure internet connection and provide status updates to Wells Fargo electronically. Vendorscape allows Wells Fargo and its foreclosure law firms to share electronic copies of loan documents and other loan related information."

- "Vendorscape is not the only source of communication between foreclosure counsel and Wells Fargo employees. Telephone, e-mail, and regular mail are all used to supplement the general updates utilized on Vendorscape."[152]

258. To the extent that the Phelan firm and WFB made *any* fraudulent misrepresentation to homeowners (and there is abundant evidence that they made *hundreds of thousands* of misrepresentations to members of the Class), Defendants' systematic use of interstate wire facilities and the U.S. Mail were and are an indispensable part of their fraudulent schemes.

C. Conduct of the Enterprise's Affairs

259. Throughout the Class Period, the Phelan firm and WFB exerted control over the Enterprise. In violation of 18 U.S.C. § 1962(c), they conducted or participated in the conduct of the affairs of the Enterprise by (a) filing or directing the filing of foreclosure lawsuits on the basis of untrue assertions of fact, some of them in court filings and property records containing counterfeit signatures and sham notarizations, all of them intended to create the false appearance of legal standing to bring residential mortgage foreclosure actions; and (b) systematically inflating or fabricating junk fees charged to distressed homeowners for "default management services" that are unessential, unperformed, and

[152] Certification of Timothy P. O'Brien dated May 4, 2011, filed in the Foreclosure Irregularities Matter before Judge Jacobson in Mercer County, New Jersey, at ¶¶ 16, 20, 60, 61 and 64, http://www.judiciary.state.nj.us/superior/F-59553-10-Wells%20Fargo/wells_fargo_1.pdf

unauthorized by contract or law;

260. WFB conducted or participated in the conduct of the affairs of the Enterprise, *inter alia,* by:

a) Outsourcing selection and monitoring of foreclosure law firms to CoreLogic and/or LPS (including their corporate predecessors), which (i) collect high fees from the Phelan firm as a condition to its membership in "networks" of attorneys deemed eligible for "referrals" of foreclosure cases from WFB, (ii) manage the flow of almost all information between WFB and the Phelan firm, and (iii) monitor the Phelan firm for the speed of its performance in meeting strict timelines required by Fannie Mae, Freddie Mac and others, the satisfaction of which is a condition to future referrals of foreclosure cases to the Phelan firm

b) Directing or encouraging the Phelan firm to prepare, sign, notarize and record assignments of mortgages and notes that do not reflect actual transfers of ownership

c) Directing or encouraging the Phelan firm to file complaints, affidavits, certifications, verifications, motions and other legal documents, which (a) contain false statements, including those attesting to personal knowledge of untrue factual assertions, and (b) are intended to (and do) mislead the Courts and homeowners concerning the legal standing of the purported mortgagees in whose names the Phelan firm brings suit

d) Knowingly sharing in the proceeds of unlawfully inflated or fabricated junk fees charged to distressed homeowners for "default management services" ordered by the Phelan firm through its wholly owned affiliates, Full Spectrum and Land Title Services.

261. The Phelan firm conducted or participated in the conduct of the affairs of the Enterprise, *inter alia*, by:

a) Developing and implementing a "business model" designed to adapt to foreclosure industry "changes" mandated by GSEs and outsourced default management companies hired by WFB and other servicer clients, including companies now known as LPS and CoreLogic. Recognizing the profit-making limitations

of the flat-fee structure of attorneys' fees for foreclosure work; the "strict timeframes" for completion of foreclosures; and the "very high" "outsource fees and other mandatory costs [that] all cut deep" into the Phelan firm's "profit margins," the Phelan firm created Full Spectrum and Land Title Services to provide title searches and other non-legal functions ancillary to foreclosures. This was seen by the Phelan firm's as its "last areas of profit."[153] The benchmark of this business model is extremely low cost and extremely high speed, and disregard for the quality, effectiveness and propriety of services allegedly performed by Full Spectrum and Land Title Services

(b) Meeting or exceeding "strict timelines" required by Fannie Mae, Freddie Mac, USFN and others by any means possible, including willful failure to perform investigations necessary to determine the factual basis of allegations made in foreclosure complaints, affidavits, certifications, verifications, motions and other court documents. Instead, the Phelan firm and its agents prepare, sign, notarize and file such documents, which (a) contain false statements attesting to the personal knowledge of facts asserted therein and (b) are intended to (and do) mislead the Courts and homeowners concerning the legal standing of the purported mortgagees in whose names the Phelan firm brings suit at the direction and command of WFB and other servicer clients

c) Preparing, signing, notarizing and recording of assignments of mortgages and notes that do not reflect actual transfers of ownership in order to manufacture superficial "support" for uninvestigated and factually baseless claims made by the Phelan firm in foreclosure complaints, affidavits, certifications, verifications, motions and other documents filed with Pennsylvania and New Jersey state courts at the direction and command of WFB and other servicer clients, and

d) Through its wholly owned affiliates, Full Spectrum and Land Title Services, charging unlawfully inflated or fabricated junk fees to distressed homeowners for "default management services" ordered by the Phelan firm, a portion of which is kicked-back as profit to WFB and other servicer clients.

[153] *See above* at ¶¶ 48-50.

262. In the foregoing ways and others, the Phelan firm and WFB, collectively and individually, benefit from their unlawful conduct and participation in the affairs of the Enterprise.

D. Defendants' Pattern of Racketeering Activity

263. Each Defendant conducted and participated in the affairs of the Enterprise through a pattern of racketeering activity, including acts indictable under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud.

264. Defendants' pattern of racketeering can be discerned within their fraudulent conduct directed to the Representative Homeowners. *See* above at ¶¶ 72-152.

265. Defendants' pattern of racketeering can be discerned within their fraudulent conduct directed to other homeowners, as described by many federal and state judges who have identified and condemned Defendants' unlawful activities. *See* above at ¶¶ 153-180.

266. Defendants' pattern of racketeering can be discerned within the actions taken by the New Jersey courts at the direction of Supreme Court Chief Justice Stuart Rabner in *In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities*, Docket No. F-059553-10 (N.J. Super. Ch. Div., Mercer Co.). *See* above at ¶¶195-210.

267. Defendants' pattern of racketeering can be discerned within the investigations and actions of the Fed, OCC, FDIC and other federal regulators, including the *Interagency Review*, and the Complaints and Consent Orders announced on April 13, 2011. *See* above at ¶¶ 188-194, 211-221 and ¶218 (The Fed's press release specifically denounced the *"pattern of misconduct"* by WFB and other servicers).

268. Defendants' pattern of racketeering can be also discerned within the investigations, settlement negotiations and potential prosecutions of state attorneys general and the U.S. Department of Justice, which are challenging the legality of foreclosure activities of the nation's largest mortgage servicers, including WFB. *See* above at ¶ 222.

269. On thousands of separate occasions, Defendants used the U.S. mails and interstate wire facilities in furtherance of their fraudulent schemes. 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 the Representative Homeowners and members of the Class.

270. Defendants' racketeering activities constitute a common course of conduct, with similar pattern and purpose. 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 – the Representative Homeowners and members of the Class. Each Defendant engaged in the pattern of racketeering activity for the purpose of conducting the ongoing business affairs of the Enterprise.

E. Damages Caused by Defendants' Scheme

271. Defendants' violations of federal law and their pattern of racketeering activity have directly and proximately caused the Representative Homeowners and members of the Class to be injured in their property. These damages and injuries include, *inter alia*, (a) payment of inflated or manufactured foreclosure fees to avoid dispossession of their homes

through Sheriff's Sales; (b) payment of legal fees and costs to their own counsel to challenge Defendants' inflated or manufactured junk fees and/or Defendants' attempt to seize their property through foreclosure actions brought in the name of entities without legal standing to sue; and (c) loss of property value in distress sales or Sheriff's Sales caused by Defendants' wrongful foreclosure activities.

272. 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 TWO: VIOLATIONS OF N.J.S.A. § 56.8-1 *et seq.*(NJCFA)

273. The allegations in each of the above paragraphs are incorporated by reference here.

274. This Count is directed to all Defendants other than Rosemarie Diamond and the Phelan firm.

275. As documented above, Defendants knowingly engaged in systematic scheme to (a) file or direct the filing of foreclosure lawsuits on the basis of untrue assertions of fact in court filings and property records, some of them containing counterfeit signatures and sham notarizations, all of them intended to create the false appearance of legal standing to bring residential mortgage foreclosure actions; and (b) inflate or manufacture junk fees charged to distressed homeowners for "default management services" that are unessential, unperformed, and unauthorized by contract or law;

276. Defendants' systematic fraudulent misconduct has directly, foreseeably and proximately caused ascertainable damages and injuries to the Representative Homeowners

and members of the Class, in an amount not currently quantified. These damages and injuries include, *inter alia*, (a) payment of inflated or manufactured foreclosure fees to avoid dispossession of their homes through Sheriff's Sales; (b) payment of legal fees and costs to their own counsel to challenge Defendants' inflated or manufactured junk fees and/or Defendants' attempt to seize their property through foreclosure actions brought in the name of entities without legal standing to sue; and (c) loss of property value in distress sales or Sheriff's Sales caused by Defendants' wrongful foreclosure activities.

277. Defendants' misconduct constitutes acts, uses or employment of unconscionable commercial practices, deception, fraud, false pretenses, misrepresentations of material fact, or the concealment, suppression or omission of material facts with the intent that others rely upon them, in connection with the sale or advertisement of merchandise or real estate in violation of the NJCFA.

278. 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 N.J.S.A. 56:8-19), together with reasonable attorneys' fees and costs of prosecuting this action.

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

279. The allegations in each of the above paragraphs are incorporated by reference here.

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

281. 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).

282. As documented above, Defendants knowingly engaged in systematic scheme to (a) file or direct the filing of foreclosure lawsuits on the basis of untrue assertions of fact in court filings and property records, some of them containing counterfeit signatures and sham notarizations, all of them intended to create the false appearance of legal standing to bring residential mortgage foreclosure actions; and (b) inflate or manufacture junk fees charged to distressed homeowners for "default management services" that are unessential, unperformed, and unauthorized by contract or law; and (c) loss of property value in distress sales or Sheriff's Sales caused by Defendants' wrongful foreclosure activities.

283. Plaintiffs and other members of the Class relied justifiably on Defendants' false and misleading representations, having no reason to suspect that a law firm whose attorneys owe a mandatory duty of candor to the court would intentionally, on behalf of WFB and other heavily regulated financial institutions, *inter alia*, (a) systematically file with the court verified or certified foreclosure complaints and other legal documents that contain material misrepresentations of fact; (b) systematically inflate or fabricate foreclosure fees charged to struggling homeowners; and (c) systematically commit mail and wire fraud, and engage in the pattern of racketeering identified above.

284. Defendants' systematic fraudulent misconduct has directly, foreseeably and proximately caused ascertainable damages and injuries to the Representative Homeowners and members of the Class, in an amount not currently quantified. These damages and injuries include, *inter alia*, (a) payment of inflated or manufactured foreclosure fees to avoid dispossession of their homes through Sheriff's Sales; (b) payment of legal fees and costs to their own counsel to challenge Defendants' inflated or manufactured junk fees and/or Defendants' attempt to seize their property through foreclosure actions brought in

the name of entities without legal standing to sue; and (c) loss of property value in distress sales or Sheriff's Sales caused by Defendants' wrongful foreclosure activities. In addition to actual damages, Plaintiffs and members of the Class are entitled to statutory treble damages under 73 P.S. § 201-9.2, together with reasonable attorneys' fees and costs of prosecuting this action.

COUNT FOUR: BREACH OF CONTRACT

285. The allegations in each of the above paragraphs are incorporated by reference here.

286. This Count is directed to WFB only.

287. The Representative Homeowners and other Class members entered into contracts for mortgage loans for which servicing rights were assigned to WFB. None of these contracts permitted WFB 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. Nor did any of these mortgage contracts authorize WFB to cause the filing of foreclosure lawsuits on the basis of untrue assertions of fact in court filings and property records, some of which contain counterfeit signatures and sham notarizations, or to prosecute such lawsuits in the name of entities lacking legal standing to sue.

288. WFB breached mortgage contracts with the Representative Homeowners and Class members by causing and/or permitting its "third-party vendors," including the Phelan firm, Full Spectrum and Land Title Services, to charge homeowners for costs, fees and expenses in connection with foreclosure actions in amounts in excess of those actually or reasonably incurred. WFB also breached the contracts through false and misleading

court documents filed by the Phelan firm and through falsified mortgage and note assignments recorded by the employees or agents of Larry Phelan, Frank Hallinan and Dan Schmieg.

289. As a result of mortgage contract breaches by WFB, the Representative Homeowners and members of the Class were damaged by (a) the amount of costs, fees and expenses they overpaid in connection with foreclosure proceedings prosecuted against them by WFB and the Phelan firm; (b) the amount of legal fees and costs paid to their own counsel to challenge inflated or manufactured junk fees and/or attempts by WFB and the Phelan firm to seize property through foreclosure actions brought in the names of entities without legal standing to sue; and (c) loss of property value through distress sales or Sheriff's Sales caused by Defendants' wrongful foreclosure activities. The Representative Homeowners and Class members 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 FIVE: MONEY HAD AND RECEIVED

290. The allegations in each of the above paragraphs are incorporated by reference here.

291. As documented above, Defendants demanded and collected money for purported foreclosure fees and costs that exceeded amounts permitted by contract or by Pennsylvania and New Jersey law.

292. In the process of charging inflated or fabricated fees to the Representative Homeowners and other members of the Class, the Phelan firm and WFB have come into possession of money they had no right to receive or retain, either at law or in equity.

293. It would be inequitable for Defendants to retain any such money or to exercise the use of such money.

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

COUNT SIX: NEGLIGENCE

295. The allegations in each of the above paragraphs are incorporated by reference here.

296. Defendants owed the Representative Homeowners and other Class members a duty of reasonable care in processing their foreclosure actions and in collecting only actual and reasonable costs incurred in connection with such actions.

297. As documented above, Defendants breached their duty of due care by making, or causing to be made, misrepresentations of material fact relating to the amount of foreclosure fees purportedly owed by homeowners.

298. As documented above, Defendants also breached their duty of due care by making, or causing to be made, misrepresentations of material fact in purported assignments of mortgages and notes, and in foreclosure complaints, certifications, verifications, motions and other court filings in foreclosure actions brought on behalf of entities that did not have legal standing to bring them.

299. While there is abundant evidence demonstrating that Defendants made the foregoing misrepresentations of material fact with criminal and/or fraudulent intent, these misrepresentations and omissions were, at minimum, negligently made.

300. As a direct and proximate cause of Defendants' negligence, the Representative Homeowners and other Class members sustained damages in an amount to be determined at trial.

VII. JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of all non-equity claims asserted in this Complaint.

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

C. Defendants' conduct be determined to have violated New Jersey's Consumer Fraud Act, N.J.S.A. § 56.8-1 *et seq*.

D. Defendants' conduct 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 the Representative Homeowners and other Class members under the common laws of the Commonwealth of Pennsylvania and the State of New Jersey for (1) breach of contract; (2) breach of the duty of good faith and fair dealing; (3) money had and received; and (4) negligence.

F. Judgment be entered against Defendants for damages sustained by the Representative Plaintiffs and other Class members 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. The Court appoint a forensic accounting firm, at Defendants' expense, to audit the Phelan firm's files for the purpose of quantifying Defendants' ill-gotten gains; and

I. The Court appoint a special master, at Defendants' expense, to (a) recommend business management and accounting procedures that the Phelan firm must adopt and implement to avoid continued mortgage foreclosure abuses and (b) monitor compliance by the Phelan firm with business management or accounting procedures directed by the Court.

J. Plaintiffs and members of the Class have such other relief that the Court may deem just and proper.

Dated: October 24, 2011

Respectfully submitted,

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