

IN THE  
SUPREME COURT OF OHIO

11-0890

LOIS M. BLANK, ET AL.,	:	CASE NO. 1:10-CV-02709-S0
	:	
<b>Petitioners,</b>	:	<b>On Review of Certified Questions</b>
	:	<b>from the United States District</b>
vs.	:	<b>court for the Northern District of</b>
	:	<b>Ohio</b>
GMAC MORTGAGE, LLC, et l.,	:	<b>U.S. District Court Case Nos.</b>
	:	<b>3:10-cv-02537 and 1:10-cv-02709</b>
<b>Respondents.</b>	:	

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**MERIT BRIEF PETITIONER  
LOIS M. BLANK, ET AL.**

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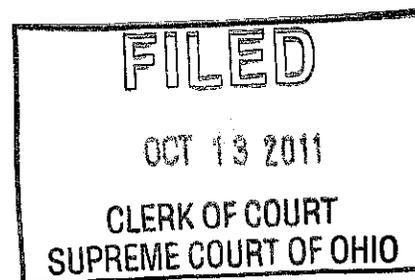
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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE AND FACTS.....	1
A.    GMAC involvement in the foreclosure crisis.....	1
B.    GMAC's use of false and improper affidavits in Ohio foreclosure cases.....	3
C.    Petitioners' Claims against GMAC for violation of the Ohio Consumer Sales Practices Act, and other claims.....	5
ARGUMENT.....	6
<b>Petitioner Lois Blank's Proposition of Law No. 1:</b>	8
<i>The Servicing of a residential mortgage loan is a "consumer transaction" as defined by the Ohio Consumer Sales Practices Act.....</i>	8
A.    GMAC as Loan Servicer.....	9
1.    Consumer Transaction.....	10
<b>Petitioner Lois Blank's Proposition of Law No. 2:</b>	13
<i>GMAC, in prosecuting foreclosure actions is engaging in a consumer" transaction" as defined by the Ohio Consumer Sales Practices Act.....</i>	13
<b>Petitioner Lois Blank's Proposition of Law No. 3:</b>	15
<i>GMAC as a servicer of residential mortgage loans, prosecuting foreclosure actions is a "supplier" as defined by the Ohio Consumer Sales Practices Act.....</i>	15
CONCLUSION.....	17
CERTIFICATE OF SERVICE.....	

**APPENDIX**

Petitioners' Amended Complaint, Lois Blank, et al., v GMAC, Case No.  
1:10-cv-02709-SO (Without attached Exhibits)..... A

Certification Order, *State of Ohio v. GMAC Mortgage, LLC*, Case No.  
2011-0890..... B

## TABLE OF AUTHORITIES

CASES	Page(s)
<u>Bethea v Wells Fargo</u> , Case No. 10-1264-JAR, November 23, 2010.....	11, 12, 13
<u>Bethea v Wells Fargo</u> , Case No. 10-1264-JAR, July 6, 2011.....	11, 12, 13
Burton v. Depew, (Ohio App. 12 Dist., 1988), 47 Ohio App.3d 107.....	8
<u>Celebreeze v. United Research, Inc.</u> , (Ohio App. 9 Dist., 1984) 19 Ohio App.3d 49.....	16
<u>Doe v. SexSearch.com</u> , 502 F.Supp.2d 719 (N.D. Ohio 2007).....	7
<u>Dollar Sav. &amp; Trust Co. of Youngstown v. Turner</u> , 39 Ohio St.3d 182 (Ohio, 1988).....	7
<u>Dowling v Litton Loan Servicing</u> (S.D. Ohio, 2006), 2006 U.S. Dist. LEXIS 87098.....	16, 17
<u>Einhorn v. Ford Motor Co.</u> , 48 Ohio St. 3d 27 (1990).....	7
<u>Garner v Borcharding Buick, Inc.</u> , (Ohio App. 1 Dist. 1992) 84 Ohio App.3d 61.....	17
Gebhart v. United States (1961), 172 Ohio St. 200.....	8
<u>Hunt v. Rohrbaugh Enterprises, Inc.</u> (1960), 171 Ohio St. 92.....	7
In Mermer v. Medical Correspondence Services, (Ohio App. 6 Dist., 1996) 115 Ohio.App 3d 717.....	15
<u>Inter Ins. Exchange v. Wagstaff</u> (1945), 144 Ohio St. 457.....	7
<u>Kline v. Mortgage Electronic Security Systems</u> , (S.D. Ohio 2009) 659 F.Supp.2d 940.....	16

McAllister v. Hartzell (1899), 60 Ohio St. 69.....	8
<u>Midland Funding LLC v Brent</u> , (N.D. Ohio 2009) 644 F.Supp.2d 961, 977.....	14
<u>Ohio Civil Rights Comm. v. Lysyj</u> , (1974), 38 Ohio St.2d 217.....	7, 8
Patterson v. Central Mills, Inc., (N.D. Ohio 2000). 112 F.Supp.2d 681.....	15
<u>Porter v. Fenner</u> , (1966) 5 Ohio St.2d 233.....	7
<u>Rice v. Wheeling Dollar Savings &amp; Trust Co.</u> (1951), 155 Ohio St. 391.....	7
<u>Schwartz v. McAtee</u> , (1986), 22 Ohio St.3d 14.....	7
<u>State ex rel Cordray v. Barclay's Capital Real Estate Inc.</u> , (Montgomery C.P. Sept. 16, 2010) Case No. 2009 CV 10136.....	17
<u>State, ex rel. Maher, v. Baker</u> (1913), 88 Ohio St. 165.....	7
<u>Wasyk v. Trent</u> (1963), 174 Ohio St. 525.....	7

## **STATEMENT OF THE CASE AND FACTS BEFORE THE COURT**

### **A. GMAC INVOLVEMENT IN THE FORECLOSURE CRISIS.**

The state of Ohio is directly involved in the national foreclosure crisis. There were approximately 85,773 foreclosures filed in 2008 and 89,053 in 2009 according to the Supreme Court of Ohio's *Ohio Courts Statistical Summary 2009*. The entire document can be found at:

<http://www.supremecourt.ohio.gov/Publications/annrep/09OCS/summary/Trend.pdf>

*See Amended Complaint ("A.Comp.") ¶28, Lois Blank v. GMAC, Case No. 2010 CV 01133 (Ashtabula County, Ohio, November 17, 2010), Attached as Apx. A. (Complaint attached without Exhibits).*

In certain Ohio cases, GMAC is the named plaintiff bringing the foreclosure action as well as the servicer. *A.Comp.*, ¶ 29. In other Ohio cases, GMAC services the loan on behalf of the named plaintiff. *A.Compl.* ¶31. As a servicer, GMAC is responsible for: collecting payments on the mortgage loans from borrowers and applying them as required by the applicable documents; communicating with the borrowers about insurance and tax payments the borrowers allegedly owe; negotiating with the borrowers over late fees, other fees and loan modifications; initiating and pursuing foreclosure proceedings against borrowers; obtaining affidavits and assignment of mortgage to pursue; and selling properties of the borrowers that have been foreclosed upon. *A.Comp.* ¶31.

~~When GMAC acts as a sub-servicers to the securitized loans, it is responsible for services similar to those it performs as a servicer including:~~

~~-communicating with the borrowers;~~

- sending monthly remittance statements to borrowers;
- collecting payments from borrowers;
- recommending a loss mitigation strategy for borrowers who have defaulted on their loan (i.e. repayment plan, modification, foreclosure, etc.)
- accurate and timely accounting, reporting and remittance of the principal and interest portions of monthly installment payments to the master servicer, together with any other sums paid by borrowers that are required to be remitted;
- accurate and timely accounting and administration of escrow impound funds, if applicable;
- accurate and timely reporting of negative amortization amount, if any;
- paying escrows for borrowers, if applicable;
- calculating and reporting payoffs and liquidations;
- maintaining an individual file for each loan; and
- maintaining primary mortgage insurance commitments for certificates if required, and filing any primary mortgage insurance claims.

*A.Comp. ¶ 32.*

Upon a determination by GMAC that a homeowner was in default, GMAC retained counsel and initiated foreclosure proceedings. As part of the foreclosure process and in order to comply with court rules and requirements, GMAC submitted assignments of mortgages and affidavits attesting that (1) GMAC has custody of, or is the loan servicing agent for, the subject note, mortgage, payment history; (2) the note and mortgage are in default for failure to make the required monthly payments; (3) the homeowner failed to cure the default; (4) GMAC gave the required notice of default and intent to accelerate.

**B. GMAC'S USE OF FALSE AND IMPROPER AFFIDAVITS IN OHIO FORECLOSURE CASES**

Petitioners' Lois Blank, William Stroble, Blair Ritze, Cornelius Ritze and Rebecca Lawson amended complaint centers on the filing of Affidavits and Assignments signed by employees of GMAC Mortgage in support of foreclosures of the Plaintiffs' homes. Specifically, these employees of GMAC Mortgage: (a) failed to fully read these Affidavits and Assignments signed by them, (b) failed to review or verify the accuracy of the information certified or verified by them in the Affidavits and Assignments, (c) falsely claim to have under their custody and control, records relating to the mortgage transactions referred to in the Affidavits and Assignments, (d) failed to review or otherwise have knowledge of all of the exhibits stated by them to be true copies referred to in and/or attached to these Affidavits and Assignments, and (e) falsely claim to sign the Affidavits in the presence of a witnessing notary public. *A.Comp.* ¶38. Petitioners' further claimed that GMAC Mortgage submitted false Affidavits and Assignments to Ohio courts knowing that these courts would rely upon them in determining whether or not to grant judgments in foreclosure on the homes of the Plaintiffs.

In 2006 GMAC was sanctioned by the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, in the matter of *TCIF REO2, LLC v. Liebowitz*, Case No. 16-2004-CA-4835, for its practice of submitting false affidavits of indebtedness in connection with summary judgment motions filed in foreclosure proceedings in that state. *A.Comp.* ¶¶40, 41. The Florida court required GMAC to provide a written confirmation that "~~affidavits filed in future foreclosure actions in Florida accurately memorialize the actions and conduct of the affiant's.~~" *A.Comp.* ¶42. GMAC responded by submitting a Notice of Compliance. *A.Comp.* ¶43.

GMAC's Notice of Compliance identified GMAC policies and as it relates to affidavits asserts:

1. Any signatory in behalf of the corporation must read and fully understand the instrument that is being signed. Do not sign unless you have that comfort level.
2. Any signatory in behalf of the corporation must be properly authorized by the corporation. When in doubt, consult with your manager or the Legal Staff for guidance.
3. Do not sign verifications on court pleading documents unless you have independently reviewed and checked the facts.
4. Sign instruments *only in the presence of* the witnessing notary public.
5. If the text of the notarial certificate contains an oath (e.g. "Subscribed and sworn to before me. . ." or similar words) the notary must affirmatively say to the signer, "Do you so swear?".
6. Pre-signing notarial certificates before the signer are prohibited by law everywhere.

Nevertheless, in two separate depositions, GMAC employee Jeffrey Stephan testified that GMAC Mortgage's policy, procedure and practice of filing false affidavits and assignments continued, and has been ongoing, that his team brought to him approximately 10,000 affidavits and assignments in a month for him to sign, that he did not sign the affidavits based on his personal knowledge and his team did not verify the accuracy of the information, nor did he ever ascertain the identity of the current promissory note holder, the amount due to whoever the holder of the note was, and whether proper notice alleging default had been sent to the borrower. *A.Comp.* ¶¶46-49, 58-60, 62.

In each of the Petitioners' cases, as well as hundreds of other Ohio foreclosure cases, Jeffrey Stephan executed affidavits directly used by the Plaintiff to obtain foreclosure judgments against Ohio homeowners.

**C. PETITIONERS' CLAIMS AGAINST GMAC FOR VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT, AND OTHER CLAIMS**

Petitioners filed in state court, Ashtabula County, Ohio, a Complaint and Amended Complaint against GMAC Mortgage, LLC ("GMAC") and Ally Financial, Inc., alleging claims for violations of OSCP, R.C. 1345.02, 1345.03, 1345.031 and 1345.09, by committing unfair, deceptive and unconscionable acts against Ohio consumers. Petitioners further alleged claims for Intentional Infliction of Emotional Distress, Abuse of Process, Fraud on the Court, Common Law Fraud and Constructive Fraud.

The Respondents removed the case to the United States District Court for the Northern District of Ohio. The district court then consolidated the Petitioners' case with the Ohio Attorney General' ("OAG") case, State of Ohio v. GMAC Mortgage, LLC and Jeffrey Stephan, Case No. 3:10-cv-02537-JZ, a case in which the OAG alleged claims for violation of the OCSA, R.C. 1345.02, 1345.03, and 1345.031, by committing unfair, deceptive and unconscionable acts against Ohio consumers. The OAG also alleged claims for common law fraud, asserting that Jeffrey Stephan intentionally misled trial courts and opposing parties in foreclosure proceedings.

Petitioners ' Amended Complaint arises out of GMAC's use of false assignments and affidavits in the Ohio foreclosure cases, the end result being judgments in foreclosure against Ohio homeowners. Respondents filed a motion to dismiss the amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure asserting that Petitioners failed to state a claim for the requested relief. Respondents further claimed that they are immune from all liability based on the Witness Immunity Doctrine.

Respondents claimed that the OCSPA did not apply to them as they did not fit within the intended meaning of the act. Specifically, Petitioners failed to state a claim to establish the existence of a "consumer transaction" or a "supplier". The district court, finding no controlling precedent as to the applicability of the OCSPA to loan servicers certified three questions to this Court under S. Ct. Prac. R. 18: (1) "Does the servicing of a borrower's residential mortgage loan constitute a 'consumer transaction' as defined by the Ohio Consumer Sales Practices Act R.C. § 1345.04(A)?"; (2) "Does the prosecution of a foreclosure action by a mortgage servicer constitute a 'consumer transaction' as defined by the Ohio Consumer Sales Practices Act R.C. § 1345.04(A)?"; and (3) 'Is an entity that services a residential mortgage loan, and prosecutes a foreclosure action, a 'supplier...engaged in the business of effecting or soliciting consumer transactions' as defined by the Ohio Consumer Sales Practices Act R.C. § 1345.01(C)?" Certification Order, at 2, State of Ohio v. GMAC Mortgage, LLC, Case No. 2011-0890 (filed May 24, 2011) (attached as Apx.B).

This Court accepted review of the three certified questions as they relate to the within case. This Court also accepted certified questions in a related case, Anderson v. Barclays Capital Real Estate, Inc., No. 2011-0908.

## **ARGUMENT**

The OCSPA was adopted for the protection of Ohio consumers. The Act provides that no supplier shall commit an unfair, deceptive, or unconscionable act "in connection" with a consumer transaction. R.C. §§ 1345.02(A), 1345.03(A), 1345.031(A). In the present case, at issues is the applicability of the OCSPA to the servicing of residential home mortgage loans. Based on the plain meaning of the statute, it intent,

this Court should find that the OCSPA applies to Petitioners' claims because the servicing of a residential home mortgage loan is a "consumer transaction"; GMAC is a "supplier" of such transactions; and GMAC's use of false, improper and fraudulent documents in furtherance of its foreclosure process was unfair, deceptive and unconscionable.

The Ohio Consumer Sales Practices Act ("OCSPA") "*is a remedial law which must be liberally construed in favor of the consumer.*" Doe v. SexSearch.com, 502 F.Supp.2d 719, 732 (N.D. Ohio 2007), *aff'd* 551 F. 3d 412 (6th Cir. 2008) (Zouhary, J.), citing Einhorn v. Ford Motor Co., 48 Ohio St. 3d 27, 29 (1990).

Ohio Revised Code § 1.11 addresses remedial laws and how they should be construed. The Ohio Supreme Court reiterates the meaning of R.C. 1.11 stating "*that remedial statutes are to be afforded a liberal construction.*" Dollar Sav. & Trust Co. of Youngstown v. Turner, 529 N.E.2d 1261, 39 Ohio St.3d 182 (Ohio, 1988). See, also, Schwartz v. McAtee (1986), 22 Ohio St.3d 14, 18-19, 22 OBR 12, 16, 488 N.E.2d 479, 483; Ohio Civil Rights Comm. v. Lysyj (1974), 38 Ohio St.2d 217, 220, 67 O.O.2d 287, 289, 313 N.E.2d 3, 6; Porter v. Fenner (1966), 5 Ohio St.2d 233, 34 O.O.2d 465, 215 N.E.2d 389; Wasyk v. Trent (1963), 174 Ohio St. 525, 528-529, 23 O.O.2d 174, 176, 191 N.E.2d 58, 61; Hunt v. Rohrbaugh Enterprises, Inc. (1960), 171 Ohio St. 92, 96, 12 O.O.2d 122, 125, 168 N.E.2d 299, 302; Rice v. Wheeling Dollar Savings & Trust Co. (1951), 155 Ohio St. 391, 396, 44 O.O. 374, 376, 99 N.E.2d 301, 303-304; Inter Ins. Exchange v. Wagstaff (1945), 144 Ohio St. 457, 459-460, 30 O.O. 44, 45, 59 N.E.2d 373, 374-375; State, ex rel. Maher, v. Baker (1913), 88 Ohio St. 165, 102 N.E. 732, paragraph one of the syllabus. Moreover, this latter rule of statutory interpretation has been

deemed to prevail notwithstanding that the remedial legislation represented a departure from a preexisting common-law rule. See Ohio Civil Rights Comm. v. Lysyj, supra, 38 Ohio St.2d at 220, 67 O.O.2d at 289, 313 N.E.2d at 6; Gebhart v. United States (1961), 172 Ohio St. 200, 214, 15 O.O.2d 360, 368, 174 N.E.2d 615, 624; McAllister v. Hartzell (1899), 60 Ohio St. 69, 88, 53 N.E. 715, 717.

In Burton v. Depew, 47 Ohio App.3d 107, 109, (Ohio App. 12 Dist., 1988), the court reiterates that pursuant to R.C. 1.11 remedial statutes are to be liberally construed, stating "*[r]emedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice.*"

Contrary to GMAC's position, the Ohio Consumer Sales Practices Act clearly applies to the respective Petitioners' cases as the servicing of a borrower's residential mortgage loan constitutes a consumer transaction, the prosecution of a foreclosure action by a mortgage servicer constitutes a consumer transaction, and GMAC, in servicing residential mortgage loans and prosecution of a foreclosure actions was a supplier as defined by the OSCPA.

**Petitioner Lois Blank's Proposition of Law No. 1:**

**The Servicing of a residential mortgage loan is a "consumer transaction" as defined by the Ohio Consumer Sales Practices Act.**

Ohio courts define a "*consumer transaction*" as a transaction for personal purposes of the individual involved in the transaction rather than for a business purpose. In looking to R.C. § 1345.01(A), it provides that a "*consumer transaction*" means a "*sale, lease, assignment, award by chance, or other transfer of an item of*

*goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household."*

In the present case, Petitioners' Amended Complaint identifies GMAC as "suppliers" engaged in "consumer transactions". See Petitioners' Amended complaint, ¶ 153. Furthermore, Petitioners specifically indicates that each Plaintiff executed a Note and Mortgage on their homes.¶¶ 78, 95, 112, 130. Clearly, the loan were related to household purposes and fit within the OCSIPA requirement of a transaction that is "primarily personal, family, or household."

**A. GMAC as Loan Servicer.**

GMAC claims that their actions do not fit within the definitions of the OCSIPA because the servicing of thousands of Ohio loans, the collection of fees and foreclosing on those loans do not constitute a "consumer transaction," GMAC is not a "supplier" or did not provided a service. To the contrary, GMAC fits squarely within the definition of the OCSIPA, and in other district courts, it is quite clear that the foreclosure process including the collection of attorney fees associated with foreclosures clearly constitutes a consumer transaction.

Petitioners' case and those on whose behalf the Petitioners bring their cases establish that GMAC's activities clearly fall within the OSCP. GMAC functions in several roles. First, GMAC may be the holder of the note (the terms of which constitute the loan transaction) and the mortgage (the security instrument securing the note owners interest). As a holder, GMAC acts as the servicer, and in so doing enforces the terms and conditions of the note and mortgage, carrying out the day to day servicing of the loan on behalf of the owner of the note and mortgage. Because GMAC is not the

owner of the notes and mortgages, they have no beneficial interest, rather their interest lies in the fees and cost they collect in servicing the loans. In other circumstances, GMAC may be the owner of the notes and mortgages, also serving as the loan servicer. In these circumstances, GMAC has a beneficial interest as the owner, and in addition to this interest, they have an interest in the fees and cost they collect in servicing the loans. In the third circumstance, loans that have been securitized require a servicer to handle the day to day matters associated with the loans that are a part of the loan pool. In this situation GMAC, while not having a beneficial interest as owner of the loan, again has a financial interest in collecting fees and costs associated with the servicing of the loans in the pool.

In all of these circumstances, GMAC, actions as a servicer constitute a consumer transaction within the meaning of the OSCP.

**1. Consumer Transaction**

A "consumer transaction" is a transaction for personal purposes of the individual rather than for business purposes. Ohio Revised Code §1345.01(A) states a "*Consumer transaction*" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, **a service**, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. (emphasis added).

While GMAC is likely to argue that it falls within one of the OCSA exceptions, it does not. As the 1345.01(A) definition states, a consumer transaction includes "a service"... to an individual for purposes that are primarily personal, family, or household..." In each and every Ohio case in which GMAC serviced loans either owned by GMAC, or as a servicer or sub-servicer on behalf of the note owner, GMAC's actions

were “consumer transactions. Outlined in detail in the note and mortgage are the “services” carried out by GMAC. Specifically, GMAC collects monthly payments from the borrowers, GMAC communicates with the borrowers, GMAC controls how the payments are applied, GMAC determines what action to take when there are issues regarding liens or insurance, GMAC notifies the borrowers of late payments and charges and collects late fees and costs, GMAC communicates notices to the borrower regarding late payments and defaults, GMAC retains counsel for the filing of a foreclosure if the borrower is deemed to be in default, GMAC negotiates reinstatement and forbearance options, and GMAC signs off on affidavits to be used in the prosecution of foreclosure actions. See Plaintiffs’ Amended Complaint ¶¶ 29-32.

The Kansas District Court in two separate decisions in the case of Bethea v Wells Fargo, Case No. 10-1264-JAR November 23, 2010 (“Bethea I”) and Bethea v Wells Fargo, Case No. 10-1264-JAR July 6, 2011 (“Bethea II”) addressed the issue of whether the Kansas Consumer Protection Act (“KCPA”) applied to the collection of fees and costs related to a forbearance agreement arising out of a residential mortgage loan.

In Bethea I, despite a forbearance agreement, Wells Fargo proceeded with their foreclosure. Wells communicated with the homeowners, and attributed to Bethea certain fees and costs associated with the foreclosure. Bethea filed suit claiming among other things, Wells actions violated the KCPA by committing acts that were unconscionable, deceptive and in violation of the mortgage. Bethea alleged that the loan and loan reinstatement and loan servicing transactions are “consumer transactions”. KCPA defined a consumer transaction as “*a sale, lease, assignment or other disposition for value of property or services within this state (except insurance contracts regulated under state law) to a consumer; or a solicitation by a supplier with respect to any of*

*these dispositions.*" Bethea I at 9-10. Interestingly, neither party disputes that a mortgage loan transaction falls within the definition of "consumer transaction" under the KCPA. Id. at 10. The Kansas District Court, noting that the KCPA was to be liberally construed in favor of the consumer, denied Wells Fargo's motion to dismiss the claim under the KCPA.

Bethea amended his complaint and in response, Wells again moved to dismiss the claim under the KCPA. The Kansas District Court went through the same analysis and ultimately determined again that Wells Fargo actions were unconscionable, deceptive and in violation of the mortgage.

The Court in Bethea II noted that in Bethea I while the forbearance agreement did not constitute a "consumer transaction" under the KCPA, the plaintiff's stated a claim of a deceptive act or practice based on Wells Fargo's collection of payments set forth in the forbearance agreement which was "in connection with a consumer transaction." Thus, the Court concluded that assuming plaintiffs' factual allegations are true, Wells Fargo's alleged misrepresentations to plaintiffs were made in connection with Wells Fargo's attempt to collect the debt incurred on the original mortgage loan, which was a consumer transaction. Bethea II at 8-9.

The Kansas district court determined that Complaint alleged facts that, if true, would demonstrate unconscionable debt collection practices and again denied Wells motion to dismiss the claim under the KCPA. Id. at 9, 12.

The above referenced servicing activities carried out by GMAC all relate to residential mortgage loans, and, as referenced in the OCSPA 1345.01(A) are "services" provided to Ohio homeowners for purposes that are primarily personal, family, or household.

**Petitioner Lois Blank's Proposition of Law No. 2:**

**GMAC, in prosecuting foreclosure actions is engaging in a consumer transaction" as defined by the Ohio Consumer Sales Practices Act.**

As addressed above, GMAC, in servicing thousands of Ohio residential mortgages, is engaging in a consumer transaction. As part of the servicing it provides to Ohio homeowners under the note and mortgage, it also prosecutes foreclosure actions against customers who they determine are in default.

The rationale applied by the Kansas District court in Bethea I and Bethea II is equally applicable to the Petitioners' case. Specifically, GMAC is engaging in a consumer transaction through its servicing of Ohio residential mortgages. As discussed below, it is a "supplier" as defined by the OCSPA. The unfair, deceptive, unconscionable acts it has used in connection with its servicing, i.e., consumer transactions, subjects it to the OCSPA.

The Petitioners' Amended Complaint identifies in great detail numerous circumstances whereby GMAC undertook such alleged acts in preparing affidavits, assignment and other legal documents as part of its mortgage servicing business. The Petitioners' Amended Complaint further identifies those acts alleged to be unfair, deceptive and unconscionable. Specifically, circumstances whereby GMAC's agents prepared and executed thousands of affidavits in furtherance of their foreclosure cases, despite admittedly having no personal knowledge whatsoever or making no effort to verify the information to which they attested to as "facts".

In their Amended Complaint, Petitioners clearly point to the use of false assignments and affidavits used by the GMAC in order to file foreclosure cases against Ohio homeowners in Ohio Courts then obtain judgment. It is the use of these false

assignments and affidavits that are unfair, deceptive and unconscionable. The court in Midland Funding LLC v Brent, 644 F.Supp.2d 961, 977 (N.D. Ohio 2009), specifically noted that that "[t]he OCSPA prohibits "an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction." § 1345.02(A). As was discussed at length, supra, the use of the false affidavit was unfair and deceptive in nature."

Petitioners' Amended Complaint alleges that GMAC engaged in a pattern and practice of unfair, deceptive, and unconscionable acts in violation of Ohio Revised Code §§ 1345.02 and/or 1345.031 by authorizing, creating and directing the filing of affidavits, assignments and other documents containing material representations regarding consumers loans that were false and proceeded to foreclosure judgments based on these false documents. Petitioners' Amended Complaint, ¶¶ 155-156.

Petitioners' Amended Complaint further alleges that GMAC's conduct in providing false representations to the court, opposing parties and class members, in support of foreclosure actions, motions for default judgment and motions for summary judgment of foreclosure was and is unfair and deceptive under OCSPA because it was or is likely to cause and, or has caused substantial unjustified injury to consumers including but not limited to: (a) the loss of their homes to foreclosure, (b) the unfair charging of accounts of Ohio homeowners for the attorney fees and costs of the ~~Petitioners' in the GMAC Mortgage and GMAC Mortgage serviced~~ foreclosure actions, and, (c) unfairly imposing costs on Ohio homeowners for the defense of the GMAC

Mortgage and GMAC Mortgage serviced foreclosure actions. Petitioners' Amended Complaint, ¶¶ 157-158.

**Petitioner Lois Blank's Proposition of Law No. 3:**

**GMAC as a servicer of residential mortgage loans, prosecuting foreclosure actions is a "supplier" as defined by the Ohio Consumer Sales Practices Act.**

R.C. § 1345.01(C) defines a "supplier" as "*a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer.*" Plaintiffs' Amended Complaint identifies GMAC as a "supplier". ¶¶ 153.

GMAC provides loan servicing for residential mortgage loans held by homeowners throughout Ohio, and in so doing, effectuate thousands of consumer transaction with Ohio homeowners within the meaning of the OCSA.

While GMAC may argue there is no privity between them and homeowners, there is no requirement that there be privity between the parties in order for a plaintiff to recover damages for a violation of the OCSA. In Mermer v. Medical Correspondence Services, 115 Ohio.App 3d 717, 722 (Ohio App. 6 Dist., 1996) the court, in reviewing the OCSA confirms that "*nothing in the statute provides that privity of contract is a prerequisite to the recovery of damages. Rather, the definition of a supplier under the Ohio consumer sales practices act includes those who engage in the business of effecting consumer transactions, whether or not they deal directly with the consumer.*" See also, Patterson v. Central Mills, Inc., 112 F.Supp.2d 681, 692 (N.D. Ohio 2000).

In the Southern District of Ohio, entities engaging in the collection of debts are considered "suppliers" for purposes of the OCSPA. See Kline v. Mortgage Electronic Security Systems, 659 F.Supp.2d 940 (S.D. Ohio 2009), (the court rejected the argument that a law firm acting as a debt collector is not a supplier under the OCSPA). See also, Celebreeze v. United Research, Inc. 19 Ohio App.3d 49 (Ohio App. 9 Dist., 1984), (In the Syllabus, Paragraph 3, the court stated "[s]ince the Consumer Sales Practices Act provides protection through all phases of the transaction, the seller cannot relieve itself of its duty to act fairly by assigning its claim to an agent or assignee and having that assignee conduct practices prohibited by the Act. This, a collection agency is a "supplier" as defined by R.C. 1345.01(C)).

In Dowling v Litton Loan Servicing (S.D. Ohio, 2006), 2006 U.S. Dist. LEXIS 87098, servicing of Dowling's loan transferred from Fairbanks Capital Corporation to Litton Loan Servicing LP. A dispute arose between Dowling and Litton regarding delinquency payments allegedly owed by the Dowling. After paying off the delinquency, Dowling brought a separate action against Litton claiming violations of the OCSPA. **\*\*Id.** at 2-7. In ruling on cross-motions for summary judgment, the court held that that the OCSPA applied to Litton(**Id.** at \*44) even though it was a loan servicer. **Id.** at \*2.

In Midland, *supra*, at 976, the court noted that the weight of the authority in both the Federal District Courts and Ohio Courts consider debt collectors as "suppliers" and for purposes of protecting consumers against violations during the process of collecting debts, the Northern District agreed that debt collectors are considered "suppliers" under the OCSPA. **Id.**

More recently, in the case of State ex rel Cordray v. Barclay's Capital Real Estate Inc., Case No. 2009 CV 10136 (Montgomery C.P. Sept. 16, 2010) the court denied the defendant's motion to dismiss the OCSA claim adopting the holding in Dowling v Litton Loan Servicing (S.D. Ohio, 2006), 2006 U.S. Dist. LEXIS 87098. (See Exhibit 1).

The OCSA is designed to protect consumers damaged by a suppliers deceptive acts which occur in connection with the consumer transaction. Garner v Borcharding Buick, Inc., 84 Ohio App.3d 61, 64 (Ohio App. 1 Dist. 1992).

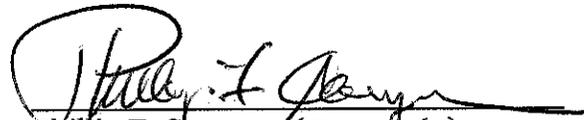
In the present case, while GMAC may take the position that in order to be a supplier they must be engaged in the business of effecting or soliciting consumer transactions, the law, however provides that there can be a violation of the OCSA regardless of whether they occur '*before, during, or after the transaction.*'" Garner, at 64. Plaintiffs' Amended Complaint, identifies the consumer transactions and identifies GMAC as a supplier.

### **CONCLUSION**

In considering the evidence before this Court, the plain reading of the Ohio Consumer Sales Practices Act, the legislative intent, and the actions of GMAC as a servicer to thousands of Ohio residential mortgage loans, the Petitioners' Amended Complaint has established GMAC's loan servicing business is a consumer transaction, GMAC acts as a supplier, and committed unfair, deceptive and unconscionable acts in violation of the Ohio Consumer Sales Practices Act by preparing and filing false and fraudulent affidavits in Ohio Courts in furtherance of their foreclosure process.

Petitioners on their own behalf and on behalf of thousands of Ohio homeowners respectfully request that this Court answer “yes” to the three certified questions before it and confirm that under the OCSPA, mortgage servicing is a “consumer transaction”, GMAC is a “supplier” and the prosecution of a foreclosure case with fraudulent affidavits is an unfair, deceptive and unconscionable act connected to the mortgage servicing.

Respectfully submitted



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Merit Brief of Petitioners Lois Blank, et al. was served upon the below identified counsel by ordinary U.S. Mail this 12<sup>th</sup> day of October, 2011:

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Carpenter Carpenter, Lipps & Leland  
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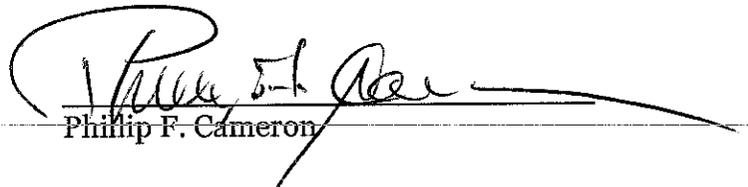
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Philip F. Cameron

# APPENDIX A

**IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO**

LOIS M. BLANK  
1710 Lyndon Avenue  
Ashtabula, Ohio 44004

CASE NO: 2010 CV 01133

JUDGE R. W. VETTEL

and,

WILLIAM H. STROBLE  
593 Brunner Drive  
Cincinnati, Ohio 45240

and,

BRANDON RITZE AND BLAIR RITZE  
1132 Burney Lane  
Cincinnati, Ohio 45230

and,

REBECCA LAWSON  
3345 Cavanaugh  
Cincinnati, Ohio 45211

PLAINTIFFS,

vs.

GMAC Mortgage, LLC  
c/o CSC-Lawyers Incorporating Service  
50 West Broad St., Suite 1800  
Columbus, Ohio 43215

**CLASS ACTION AMENDED  
COMPLAINT**  
(Jury Demand Endorsed Hereon)

and

ALLY FINANCIAL, INC.  
c/o Ct Corporation System  
1300 EAST ninth Street, Suite 1010  
Cleveland, Ohio 44114

DEFENDANTS.

CAROL A. MEAD  
CLERK OF COURTS  
COMMON PLEAS COURT  
ASHTABULA CO. OH

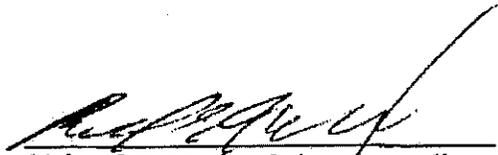
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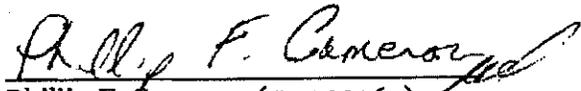
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Come Now, Plaintiffs Lois Blank, William Stroble, Blair Ritze, Cornelius (referred hereinafter to as "Brandon") Ritze and Rebecca Lawson, by and through their Counsel, and pursuant to Ohio Rule of Civil Procedure 15(A), hereby respectfully file their Class Action Amended Complaint and jury demand. Plaintiffs state that the Exhibits filed with their original Class Action Complaint are identical in content and Exhibit Number to the below referenced Exhibits and have not been included only to avoid duplicative and excessive paperwork for the Court and all parties.

Respectfully submitted



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## INTRODUCTION

1. Plaintiffs Lois Blank, William Stroble, Blair Ritze, Brandon Ritze and Rebecca Lawson bring this action on behalf of themselves and all similarly situated Ohio homeowners and former homeowners (collectively referred to as "Plaintiffs" or "Class Plaintiffs"). Plaintiffs by and through counsel, Richard Hackerd and Philip Cameron ("attorneys"), have reasonable cause to believe defendants GMAC Mortgage LLC ("GMAC Mortgage"), Ally Financial, LLC ("Ally"), and their employee Jeffrey Stephan ("Stephan") (GMAC Mortgage, and Ally collectively referred to as "Defendants"), have committed frauds and unfair, deceptive and unconscionable acts and practices on the Plaintiffs and other similarly situated consumers throughout the state of Ohio, and the judicial courts of Ohio through, among other ways, the signing of and causing the filing in the Ohio courts of hundreds of false affidavits and assignments of mortgages.

2. Plaintiffs bring this action to challenge the practices of Defendants in submitting false documents and making false representations to the court of Ohio in foreclosure actions and related proceedings. These false documents and representations are made in affidavits supporting motions for default judgment, affidavits supporting motions for summary judgment and Affidavits Regarding Account and Competency and Military Status, (collectively referred to as "Affidavits"). Furthermore, false representations are made through assignments of ownership of notes and mortgages (collectively referred to as "Assignments"). Both the affidavits and assignments have been signed, sworn and subscribed to by employees of GMAC Mortgage, including Jeffrey Stephan, in support of

foreclosure actions and related proceedings against Ohio homeowners and former homeowners.

**THE PARTIES**

3. Plaintiff Lois Blank is an individual who resides in Ashtabula, Ohio.
4. Plaintiff William H. Stroble is an individual who resides in Cincinnati, Ohio.
5. Plaintiff Blair Ritze is an individual who resides in Cincinnati, Ohio.
6. Plaintiff Brandon B. Ritze is an individual who resides in Cincinnati, Ohio.
7. Plaintiff Rebecca Lawson is an individual who resides in Cincinnati, Ohio.
8. Defendant GMAC Mortgage is a Delaware limited liability company with the principal place of business in Fort Washington, Pennsylvania.
9. Defendant Ally is a Delaware limited liability company with the principal place of business in Detroit, Michigan 48265-2000

**JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this matter pursuant to Ohio Revised Code § 2305.01.
11. Venue is appropriate inasmuch as the Plaintiffs are or were at all relevant times residents of the state of Ohio who have had foreclosure actions filed against them in the state of Ohio and the properties that are the subject of the foreclosure actions are located in Ohio. Venue is also proper in this Court because the Defendants systematically and continuously transact business in the state of Ohio and the causes of action set forth in this Complaint, arose at least in part, in the state of Ohio.

12. Plaintiffs in the proposed class limit their total class wide claims up to four million-nine hundred and ninety-nine thousand nine hundred and ninety-nine dollars (\$4,999,999).

**CLASS ACTION JURISDICTION**

13. This class action is brought on behalf of the Plaintiffs and Class Members (defined below) for the harm caused by GMAC Mortgage's submission of false Affidavits and Assignments in violation of Ohio law during the identified Class Period.

**CLASS ACTION-CIVIL RULE 23**

14. The Class is so numerous that joinder is impractical. Upon information and belief, the Class comprises many hundreds, if not thousands of individuals. There are questions of law and fact common to the members of the Class, which questions predominate over any individual issues.

15. The claims and defenses of the Plaintiffs are typical of the claims of all members of the Class since all members have been harmed by the same policies, procedures and actions of GMAC Mortgage, ie the submission of false Assignments and Affidavits. By proving their case, the Plaintiffs will simultaneously prove the case of the members of the Class. The Plaintiffs will fairly and adequately protect the interest of the Class. Plaintiffs are willing and able to serve as representatives of the Class, and they have no knowledge of any possible divergent interest between or among Plaintiffs and any member of the Class.

16. Plaintiffs have retained highly competent counsel, with experience in complex litigation including financial services related litigation, to provide representation on behalf of the Plaintiffs and the Class.

17. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendants.

18. Questions of law and fact common to the members of the Class predominate over any questions affecting individual members. The determinative facts and legal principles apply universally among Plaintiffs and the members of the Class. The predominant legal issues in this case, which cut across the entire Class, are whether GMAC Mortgage's conduct in filing false Assignments and Affidavits in GMAC Mortgage serviced foreclosure actions against Ohio homeowners were unfair and/or deceptive and/or an abuse of process and/or fraud on the Courts of Ohio.

19. A class action is superior to other available methods for the fair and efficient adjudication of the controversy for reasons including that, due to the expense of pursuing individual litigation regarding GMAC Mortgage's common course of conduct alleged herein, members of the Class would, as a practical matter, be effectively precluded from protecting and enforcing their legal rights.

20. This class action meets the requirements of Ohio Rule of Civil Procedure 23.

#### **CLASS MEMBERS**

21. Plaintiffs sue on their own behalf and on behalf of all persons under Civil Rule 23 of the Ohio Rules of Civil Procedure.

22. The members of the Class are every person named in an Ohio foreclosure action, during the Class Period, in which GMAC Mortgage was the servicing agent for the foreclosing Plaintiff. In such case:

(a) an Assignment was signed by Jeffrey Stephan or an employee, officer, or agent of GMAC Mortgage and filed in support of the action: and,

(b) a motion for default judgment or a motion for summary judgment filed in the foreclosure was supported by an Affidavit signed by Jeffrey Stephan or an employee of GMAC Mortgage.

23. The Class as defined above is identifiable, unambiguous, and based on objective information and criteria. The following persons shall be excluded from the Class: (a) Defendants, and its owners, subsidiaries and affiliates; (b) all persons who make a timely election to be excluded from the proposed Class; (c) governmental entities; and (d) the judge(s) to whom this case is assigned and any immediate family members thereof.

24. Lois Blank, William Stroble, Blair Ritze, Brandon Ritze and Rebecca Lawson are members of the Class.

#### **CLASS PERIOD**

25. The Class period is from four years prior to the date of filing of this lawsuit, to and including the date of filing.

#### **CLASS DAMAGES**

26. All Class members suffered damages as allowed under § 1345.09(B) of the Ohio consumer Sales Practices Act for each false Assignment or Affidavit submitted by GMAC Mortgage. All Class Members were harmed by GMAC Mortgage by putting Class members in imminent danger of losing their homes. All Class members have incurred fees and costs in addition to the principal and interest claimed by Defendant in its foreclosure action.

27. Certain Class members have suffered economic loss in amounts to be determined at the trial hereof including the premature loss of their homes based on GMAC Mortgage's use of false affidavits to obtain judgment.

#### **STATEMENT OF FACTS**

28. The state of Ohio is directly involved in the national foreclosure crisis. There were approximately 85,773 foreclosures filed in 2008 and 89,053 in 2009 according to the Supreme Court of Ohio's *Ohio Courts Statistical Summary 2009*. The entire document can be found at:

<http://www.supremecourt.ohio.gov/Publications/annrep/09OCS/summary/Trend.pdf>

#### **GMAC Mortgage as Plaintiff and/or loan servicing agent**

29. GMAC Mortgage has been the named plaintiff in hundreds if not thousands of Ohio mortgage foreclosure cases in at least the last four years, and in such cases, GMAC Mortgage purport to own the promissory note and mortgage that form the basis for the foreclosure action by virtue of Assignments executed by Jeffrey Stephan and other GMAC Mortgage document signers, days or weeks prior to the filing of the foreclosures. In such circumstances, Stephan, an employee of GMAC Mortgage, assigns the interests in the mortgages held by some other party, to GMAC Mortgage. *See Exhibit 1 attached to the Original Complaint, which are examples of Assignments signed by Stephan in Ohio foreclosure cases in which GMAC Mortgage is or was the plaintiff or the servicing agent for the named plaintiff (names of borrowers redacted and any exhibits omitted).*

30. Once the foreclosure cases have been filed, Jeffrey Stephan and other document signers, on behalf of GMAC Mortgage, executed Affidavits used in support of motions

for default or motions for summary judgment, and in using such false Affidavits allowed for GMAC Mortgage to obtain thousands of judgments against Ohio homeowners, thereby increasing GMAC Mortgage's profits at the expense of the Plaintiffs, other consumers throughout Ohio, and Ohio's system of justice. *See Exhibit 2 attached to the Original Complaint, which are examples of affidavits signed by Stephan in Ohio foreclosure cases in which GMAC Mortgage is or was the plaintiff (names of borrowers redacted and any exhibits omitted).*

### **GMAC Mortgage as servicer for Non-GMAC Plaintiff**

31. In many other Ohio cases, GMAC Mortgage is not the named plaintiff rather, it is the servicer or sub-servicer for the trustee holding in a "pool", hundreds or even thousands of mortgages for investors in certificate evidencing ownership interests in the securitized mortgage loans ("the trusts"). As a servicer for the trust, GMAC Mortgage is responsible for: collecting payments on the mortgage loans from borrowers and applying them as required by the applicable documents; communicating with the borrowers about insurance and tax payments the borrowers allegedly owe; negotiating with the borrowers over late fees, other fees and loan modifications; initiating and pursuing foreclosure proceedings against borrowers; obtaining affidavits and assignment of mortgage to pursue; and selling properties of the borrowers that have been foreclosed upon. *See Exhibit 3 attached to the Original Complaint, which are examples of affidavits signed by defendant Stephan in Ohio foreclosure cases in which GMAC Mortgage is or was the servicer or sub-servicer of a non-GMAC foreclosure Plaintiff (names of borrowers redacted and any exhibits omitted)*

**32.** GMAC Mortgage acted, and is still acting, as a sub-servicer for trustees and securitize transactions in many Ohio foreclosure cases. In the securitized transaction with the master servicer and sub-servicer, the sub-servicer has primary responsibility for communications with the borrowers and taking actions against the borrowers. The following excerpts from a *Prospectus Supplement* for a securitized transaction in which GMAC Mortgage acted as a sub-servicer establishes some of GMAC's responsibilities:

- communicating with the borrowers;
- sending monthly remittance statements to borrowers;
- collecting payments from borrowers;
- recommending a loss mitigation strategy for borrowers who have defaulted on their loan (i.e. repayment plan, modification, foreclosure, etc.)
- accurate and timely accounting, reporting and remittance of the principal and interest portions of monthly installment payments to the master servicer, together with any other sums paid by borrowers that are required to be remitted;
- accurate and timely accounting and administration of escrow impound funds, if applicable;
- accurate and timely reporting of negative amortization amount, if any;
- paying escrows for borrowers, if applicable;
- calculating and reporting payoffs and liquidations;
- maintaining an individual file for each loan; and
- maintaining primary mortgage insurance commitments for certificates if required, and filing any primary mortgage insurance claims.

This *Prospectus Supplement* dated December 6, 2007 (to prospectus dated April 9, 2007) \$2,538,093 RALI Series 2006-QS6 Trust Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QS6, at along with the entire document is found at: <http://www.secinfo.com/d1zj61.u1Da.htm#5npc>

**33.** In order to facilitate the mortgage securitization process, when a borrower executes a mortgage, typically that mortgage is either (a) granted to Mortgage Electronic Registration Systems, Inc. ("MERS") or (b) the original mortgage is assigned to MERS. MERS is a corporation created by the mortgage banking industry whose shareholders consist of banks and other financial institutions, including GMAC Residential Funding Corporation, a subsidiary of Defendant Ally.

**34.** MERS was created by the mortgage banking industry to streamline the mortgage process and save money by using electronic commerce to eliminate paper and the need to file assignment of mortgage every time a mortgage is transferred in the securitization process or subsequent changes occur in servicing. MERS claims "*Our mission is to register every mortgage loan in the United States on the MERS® System. Beneficiaries of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorder's and consumers. MERS acts as a nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times servicing is traded.*"

**35.** Unless MERS is the plaintiff in a foreclosure case, MERS does not hold the note of a borrower and is not named in the note or any transfer of the note, but simply is named the secured party in the mortgage filed in the local real estate records as the nominee of the note holder.

**36.** When a trustee of the securitized transaction initiates a foreclosure action as a plaintiff, the servicer, sub-servicer or its agent is responsible for the preparation of the papers filed in the Ohio foreclosure action. In the many securitized transactions in

which GMAC Mortgage was or is the servicer or sub-servicer of Ohio mortgage loans, GMAC Mortgage has been responsible for the preparation of the necessary documents, including an Assignment of Mortgage assigning the mortgage from MERS to the trustee. In some cases MERS gives servicers and sub-servicer's the authority to execute Assignments of Mortgages from MERS to the trustee. However, MERS never authorizes servicers or sub-servicer's to execute and assignment of mortgage that includes an assignment of a note.

**37.** In spite of this lack of the authority, GMAC Mortgage has caused assignment of mortgage to be prepared and executed by agents of GMAC Mortgage to improperly purport to assign a note from MERS to the trustee and falsely claim that the GMAC Mortgage employee executing the assignment has authority to assign the note on behalf of MERS. Stephan has executed many such improper and false Assignments (see **Exhibit 1**) that have been filed in Ohio foreclosure cases and then serve the purpose of trying to deceive the borrower in the courts as to who is the note holder.

**38.** Plaintiffs' complaint centers on the filing of Affidavits and Assignments signed by employees of GMAC Mortgage in support of foreclosures of the Plaintiffs' homes. Specifically, these employees of GMAC Mortgage: (a) failed to fully read these Affidavits and Assignments signed by them, (b) failed to review or verify the accuracy of the information certified or verified by them in the Affidavits and Assignments, (c) falsely claim to have under their custody and control, records relating to the mortgage transactions referred to in the Affidavits and Assignments, (d) failed to review or otherwise have knowledge of all of the exhibits stated by them to be true copies referred to in and/or attached to these Affidavits and Assignments, and (e) falsely claim to sign the Affidavits in the presence of a witnessing notary public.

39. GMAC Mortgage submitted false Affidavits and Assignments to Ohio courts knowing that these courts would rely upon them in determining whether or not to grant judgments in foreclosure on the homes of the Plaintiffs.

**GMAC Mortgage signed and filed false affidavits in 2006**

40. In 2006, GMAC Mortgage was sanctioned by the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, in the matter of TCIF REO2, LLC v. Liebowitz, Case No. 16-2004-CA-4835, for its practice of submitting false affidavits of indebtedness in connection with summary judgment motions filed in foreclosure proceedings in that state. The affidavit in that case was submitted to the court in August, 2004.

41. In the Liebowitz case, the court stated, "*plaintiff, through its servicing entity, GMAC Mortgage Corporation, submitted false testimony to the court in the form of Affidavits of Indebtedness signed and subscribed by a ... 'Limited Signing Officer' with GMAC Mortgage Corporation...[who] would attest to review of the relevant loan documents... when in fact... she neither reviewed the referenced records nor was familiar with the manner in which the records were created by GMAC on behalf of Plaintiff... none of the Affidavits were signed before a Notary.*" A copy of the Order Granting Defendants' Motion for Sanctions in TCIF REO2, LLC v. Liebowitz is attached to the Original Complaint as **Exhibit 4**.

42. The court sanctioned the plaintiff in the Liebowitz decision and ordered GMAC Mortgage Corporation to provide a written confirmation that "*affidavits filed in future foreclosure actions in Florida accurately memorialize the actions and conduct of the affiant's.*" See **Exhibit 4**.

43. GMAC provided a Notice of Compliance with the Court's Order on June 14, 2006 and included a Policy Directive regarding document signing procedures distributed throughout GMAC Mortgage. *A copy of GMAC Mortgage's Notice of Compliance with the Court's Order is attached to the Original Complaint as Exhibit 5.*

44. Despite the promise to stop falsely executing assignments and affidavits, GMAC Mortgage continued to engage in these sanctioned practices.

### **GMAC Mortgage continued to file false affidavits in 2009 and 2010**

#### **December, 2009 Deposition of Jeffrey Stephan**

45. Jeffrey Stephan has been the team leader in the foreclosure department of GMAC Mortgage for years, including through at least August 2, 2010. Stephan has been an employee of GMAC Mortgage, or affiliates, for approximately 5 years.

46. In a December 10, 2009 deposition relative to a Florida state court foreclosure case, Stephan, as head of GMAC Mortgage's Document Signing Department, reaffirmed in the matter of *GMAC Mortgage, LLC v. Neu*, Case No. 50-2008-040805XXXX MB, (then pending in the Circuit Court of the 15th Circuit in and for Palm Beach County, Florida) that GMAC Mortgage's policy, procedure and practice of filing false affidavits and assignments continued, and has been ongoing. *A copy of the deposition transcript from the December 10, 2009 deposition of Jeffrey Stephan is attached to the Original Complaint as Exhibit 6, the "2009 Deposition".*

47. Stephan testified that his team brought to him approximately 10,000 affidavits and assignments in a month for him to sign. *(2009 Deposition p. 7, Lines 18-20).*

48. Stephan testified in the 2009 Deposition that he did not sign the affidavits based on his personal knowledge and that he relied on others. *(2009 Deposition p. 10, Lines*

6-15). Stephan also testified that his team did not verify the accuracy of the information stating: *"They do not go into the system and verify the information is accurate. We are relying on our attorney network to ensure that they are asking for the correct information."* (2009 Deposition pp. 12-13, Lines 16-25 and 1-4). Stephan knew that these hundreds of affidavits would be filed in Ohio courts and relied upon by Ohio Common Pleas judges and magistrates in deciding whether the plaintiff in the particular case has a right to foreclose on Ohio residents.

49. When Stephan executed an affidavit, he testified he did not ascertain who the current promissory note holder was (2009 Deposition p. 31, Lines 12-14), even though his affidavits always stated or implied that the plaintiff was the holder of the note. The agents of GMAC Mortgage prepared these affidavits to mislead the courts in Ohio on such matters as who kept the applicable records, who the holder of the note was, the amount due to whoever the holder of the note was, and whether proper notice alleging default had been sent to the borrower.

50. In spite of his lack of personal knowledge, Stephan swore in the hundreds of affidavits he signed for Ohio courts that *"I have personal knowledge of the facts contained in this affidavit,"* or equivalent words (See as examples **Exhibits 2 and 3**). Stephan signed hundreds of these false affidavits, and Defendants caused hundreds of these false affidavits to be filed in hundreds of mortgage foreclosure cases in the Ohio.

51. Stephan - claiming to be an officer of MERS - signed Assignments of Mortgages used for many Ohio foreclosure cases, falsely claiming that he assigned the borrower's mortgage and note from MERS (See attached **Exhibit 1**), even though he did not have the authority of MERS to assign a note to any party.

52. Stephan signed hundreds of affidavits outside of the presence of a notary public (2009 Deposition p. 13, Lines 10-17) that were filed in Ohio foreclosure cases.

53. Stephan was acting within the scope of his employment with GMAC Mortgage when he executed the false affidavits, when he executed the affidavits outside the presence of notaries public and when he executed the false assignments of note and mortgage from MERS to plaintiffs in Ohio mortgage foreclosure cases.

54. Ally and GMAC Mortgage have authority over and the right to control the actions of Stephan and others in the document signing department, and benefited financially from the actions of Stephan and others in the document signing department. The actions of Stephan and others in the document signing department were part of the business plans of Ally and GMAC Mortgage.

55. GMAC Mortgage has outsourced various pieces of the foreclosure process. For instance, GMAC Mortgage contracts with Fiserv, Inc. ("Fiserv") to provide computer services such as recording payments received from borrowers, and the amounts allegedly due, lenders. Fiserv advertises that it is a "*the leading global provider of information management and electronic commerce systems for the financial services industry*" which provides "*solutions for optimizing all aspects of the payments mix to help create efficiency and drive growth.*"

56. GMAC Mortgage employees executed thousands of false affidavits and assignments and purported to enter payments, failures to pay, and other information into computers for the Fiserv system.

57. It is Fiserv that creates and maintains the records and calculates the amounts allegedly due from borrowers.

**June, 2010 Deposition of Jeffrey Stephan**

**58.** In the June 7, 2010 Stephan again reaffirmed GMAC Mortgage's continuing policies, procedure and practice of filing false affidavits in foreclosure proceedings in the matter of *FNMA v Bradbury*, RE-09-65 (ME. Dist. Ct. 9, Bridgton) ("Maine Foreclosure Case"). This reaffirmation was made through the testimony of GMAC Mortgage's employee Jeffrey Stephan who continued as head of the GMAC Mortgage Document Signing Department. *A copy of the deposition transcript from the June 7, 2010 deposition of Jeffrey Stephan is attached to the Original Complaint as Exhibit 7, ("2010 Deposition").*

**59.** Stephan's testimony in the 2010 Deposition reaffirmed that such policies, practices and procedures that resulted in the filing of false affidavits and assignments were continuing and were fully in accordance with GMAC Mortgage corporate policies.

**60.** Stephan testified that he did not have "*any knowledge about how GMAC insurers the accuracy of the data entered into the system*" (2010 deposition, p. 30, Lines 10-13).

**61.** Lender Processing Services, Inc. ("LPS") provides a separate system that creates documents for GMAC Mortgage in the foreclosure process and acts as an intermediary between attorneys for GMAC Mortgage and GMAC Mortgage in the foreclosure process (2010 Deposition, pp. 35-42, and 56-57).

**62.** As part of GMAC Mortgage policy, Stephan did not read every paragraph of the summary judgment affidavits he signed (2010 Deposition, pp. 61-64). Stephan confirmed, as in the 2009 Deposition, he does not verify if the information contained in the affidavits is accurate. (2010 Deposition, p. 45, lines 16-21).

63. GMAC Mortgage knew or should have known that failure to supervise the accuracy of the input of information into, maintenance of information in, and calculations provided by, the outsourced computer systems and document preparation would lead to errors and inaccuracies that would violate GMAC Mortgage's duty to consumers to accurately account for payments received by consumers and payments owed by consumers.

64. GMAC and Ally learned of the 2009 Deposition soon after the deposition took place, but took no corrective action.

65. During the 2010 Deposition, Stephan testified : (a) he signed the affidavits outside of the presence of a notary (2010 Deposition, p. 56, lines 10-18); (b) when he signed a summary judgment affidavit he did "not inspect any exhibits attached to it" (2010 Deposition, p. 54, lines 12-25); (c) he did not read every paragraph of the summary judgment affidavits he signed (2010 Deposition, p. 60, lines 24-25 and p. 62, lines 1-3); and (d) the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required of him by GMAC Mortgage. (2010 Deposition, p. 64, lines 8-14).

66. GMAC and Ally learned of the 2010 Deposition in, June, 2010.

### **Sanctions in Maine**

67. The defendant in the Maine Foreclosure Case [*FNMA v Bradbury*, RE-09-65 (ME. Dist. Ct. 9, Bridgton)] moved for sanctions for a false affidavit signed by Stephan and relied upon by the court in granting summary judgment for plaintiff. The main court held oral arguments on the motion on September 1, 2010.

68. On September 24, the Maine court vacated the grant of summary judgment and also addressed the motion for protective order that had been filed that would have prohibited the dissemination of the deposition of Stephan taken in the case. The Maine court stated that "*Plaintiffs point to the embarrassment GMAC and its employees have suffered, and will continue to suffer, from the posting of excerpts from Stephan's deposition transcript on an Internet blog.*" A copy of the Order on Four Motions from the Maine Foreclosure Case is attached to the Original Complaint as **Exhibit 8**, see Page 3. The Maine court denied the motion for protective order, noting "*Stephan's deposition was taken to advance a legitimate purpose....*"

69. The Maine court then granted the motion for sanctions filed by the borrower, awarding to the borrower's attorneys fees: "*Rather than being an isolated or inadvertent instance of misconduct, the Court finds that GMAC has persisted in its unlawful document signing practices long after and even in the face of the Florida Court's order, and that such conduct constitutes 'bad faith' under rule 56(g). These documents are submitted to a court with the intent that the court find a homeowner liable to the plaintiff for thousands of dollars and subject to foreclosure on the debtor's residents. Filing such a document without significant regard for accuracy, which the court in an ordinary circumstance may never be able to investigate or otherwise verify, is a serious and troubling matter.*" **Exhibit 8**, p. 5.

70. Since the oral argument in the Maine mortgage foreclosure case was held on September 1, 2010 GMAC Mortgage knew after September 1 that sanctions were imminent.

71. On September 17, 2010, Ally sent a memo to "GMAC Preferred Agents" directing these agents that GMAC Mortgage "*may need to take corrective action in connection*

*with some foreclosures” in 23 states, including Ohio. In addition, for these states, including Ohio, it directed the agents: (a) “Evictions: Do not proceed with evictions, cash for keys transactions, or lockouts. All files should be placed on hold, regardless of occupant type. (b) REO Closings: Do not proceed with REO sale closings.”*

72. In spite of his admissions in his depositions, Jeffrey Stephan is still employed by GMAC Mortgage, reflecting the fact that his actions were in accordance with GMAC Mortgage policy.

73. In light of the actions of Ally, GMAC and the sworn testimony of Stephan, there is reasonable cause to believe that GMAC Mortgage employees, in addition to Stephan, have signed false affidavits, assignments of notes and other documents in connection with Ohio foreclosure cases.

74. On September 27, 2010 the Ohio Attorney General sent a letter to the General Council of Ally expressing concern over GMAC Mortgage’s actions and requested that Ally/GMAC Mortgage describe the steps being taken to remedy the problems identified, the steps to alert Ohio courts of the problems, including cases that had already proceeded to a foreclosure judgment, and the actions to ensure that the problems related to its foreclosure affidavits not reoccur in the future. On September 30, the Ohio Attorney General requested that Ally/GMAC agreed not to proceed towards a judgment, sale, eviction, or transfer of any property in Ohio until there was agreement that proper remedial action had been taken.

75. GMAC Mortgage and Ally claim that they will review the affidavits signed by Stephan and other GMAC Mortgage employees since July of 2009, but not affidavits signed before July of 2009. They have not yet reviewed the majority of the affidavits signed by Stephan or other GMAC Mortgage employees. Ally/GMAC Mortgage said they

would review all of the affidavits by the end of October of 2010, but did not indicate they would review any assignments executed by Stephan, even though they were improperly prepared and executed.

76. Ally/GMAC Mortgage said they would substitute new affidavits for improper affidavits, without any assurance of which affidavits they would consider improper and while still asserting they would rely on their outsourced system for the calculation of amounts allegedly due. Ally/GMAC Mortgage has not explained how it planned to determine from its review of outsourced computer records, who the holder of the note and mortgage was in any particular case, which of necessity, must involve a review of the actual note, mortgage and any assignments or endorsements.

77. Ally and GMAC mortgage have refused to halt pursuing mortgage foreclosures while it's "review" is proceeding, even though that will mean more cases will proceed to a foreclosure judgment based on improper affidavits and assignments of notes and mortgages and more Ohio citizens will suffer.

**LOIS BLANK - GMAC MORTGAGE SERVICED LOAN**

78. Lois Blank executed a Note through SouthStar Funding, LLC on her home located at 1710 Lyndon Avenue, Ashtabula, Ohio 44004 on January 7, 2005.

79. On the same day, Lois Blank executed a mortgage to Mortgage Electronic Registration System, Inc. ("MERS") as Nominee for SouthStar Funding, LLC.

80. Subsequently, the mortgage was allegedly assigned by MERS as Nominee for SouthStar Funding, LLC to The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, NA a as trustee of MARM 2004-6. The Assignment was

executed by GMAC Mortgage employee Jeffrey Stephan. *See Lois Blank Assignment, attached to the Original Complaint EXHIBIT 9.*

81. On or about April 28, 2009 The Bank of New York filed a Complaint for Foreclosure in Ashtabula County, Ohio Court of Common Pleas, Case No. 2009 CV 00479.

82. Attached to the Complaint was the Note and Mortgage.

83. On June 3, 2009 The Bank of New York filed an *Affidavit Regarding Account and Competency and Military Status* executed by GMAC Employee Jeffrey Stephan. ("Lois Blank Affidavit"). The Lois Blank Affidavit contained only a copy of the Note. *See Lois Blank Affidavit attached to the Original Complaint as EXHIBIT 10.*

84. In the Lois Blank Affidavit, Stephan falsely asserted that he is "*competent to testify to the matters in this affidavit*", and that he makes his statements based on his personal knowledge. *See EXHIBIT 10, Lois Blank Affidavit Introduction and ¶ 1.*

85. Stephan also asserted that a "*true and accurate copies*" of the original Note and mortgage are attached to his Affidavit, however, only a purported copy of the Note was attached. No copy of a mortgage or assignment of mortgage was attached. Stephan had no personal knowledge of whether these documents were in fact true and correct. *See EXHIBIT 10, Lois Blank Affidavit, ¶ 2.*

86. Stephan asserts that a written notice of default was given, however, no such notice is attached to the affidavit. *See EXHIBIT 10, Lois Blank Affidavit, ¶ 6.*

87. Stephan also asserts that "*Plaintiff is due on the Note principal in the amount of ... plus interest...Late charges, advances made ....., and expenses incurred for the enforcement of the note and mortgage...*" but he had no personal knowledge of this. *See EXHIBIT 10, Lois Blank Affidavit, ¶ 7.*

**88.** Stephan states the total amount owed by Lois Blank, including added fees and costs:

<b>Property Inspection Fee</b>	<b>\$22.50</b>
<b>Property Valuation Fee (Broker Price Opinion)</b>	<b>\$83.00</b>
<b>Escrow/Impound Funds Due</b>	<b>\$122.52</b>
<b>Late Charges</b>	<b>\$141.01</b>
<b>Foreclosure Costs*</b>	<b>\$1,765.00</b>

**\*Foreclosure Costs include:**

<b>Complaint Filing Fee</b>	<b>\$545.00</b>
<b>Service Fees</b>	<b>\$395.00</b>
<b>Preliminary Judicial Report</b>	<b>\$618.00</b>
<b>Final Judicial Report</b>	<b>\$125.00</b>
<b>Skip Trace Fee</b>	<b>\$50.00</b>
<b>Assignment Recording Fee</b>	<b>\$32.00</b>

The total amount in fees and costs being \$ 2,134.03. See **EXHIBIT 10**, *Lois Blank Affidavit*, ¶ 8.

**89.** Stephan's signature is followed by the signature of a notary public attesting that Stephan personally appeared and swore under oath that the affidavit signed by him was true, but Stephan did not sign before that notary. See **EXHIBIT 10**, *Lois Blank Affidavit*.

**90.** The Bank of New York, relying on Stephan's false Affidavit, moved for default judgment filed on June 3, 2009.

**91.** The Bank of New York filed a motion for summary judgment on March 8, 2010 and subsequently withdrew the motion on September 14, 2010.

**92.** The Bank of New York filed a motion to dismiss the case on October 20, 2010.

**93.** The fees and costs associated with GMAC Mortgage's filing of The Bank of New York's foreclosure action against Lois Blank were charged to Lois Blank's account.

94. GMAC Mortgage, by filing a false affidavit and obtaining an invalid judgment to sell Lois Blank's home intentionally caused Lois Blank severe emotional distress.

**WILLIAM STROBLE - GMAC MORTGAGE SERVICED LOAN, GMAC MORTGAGE AS PLAINTIFF**

95. William Stroble executed a Note through GMAC Mortgage, LLC on his home located at 593 Brunner Dr., Cincinnati, Ohio 45240 on May 9, 2008.

96. On the same day, William Stroble executed a mortgage to Mortgage Electronic Registration System, Inc. ("MERS") as Nominee for GMAC Mortgage, LLC f/k/ GMAC Mortgage Corporation.

97. Subsequently, the mortgage was allegedly assigned by MERS as Nominee for to GMAC Mortgage, LLC f/k/ GMAC Mortgage Corporation to GMAC Mortgage, LLC. The Assignment was executed by GMAC Mortgage employee Jeffrey Stephan.LLC. See *Stroble Assignment, attached to the Original Complaint as EXHIBIT 11.*

98. On or about April 27, 2010 GMAC Mortgage filed a Complaint for Foreclosure in Hamilton County, Ohio Court of Common Pleas, Case No. A1004103.

99. Attached to the Complaint was the Note, Mortgage and Assignment of mortgage transferring the mortgage from MERS to GMAC Mortgage.

100. On July 6, 2010, GMAC Mortgage filed an *Affidavit Regarding Account Military Status* executed by Jeffrey Stephan. "Stroble Affidavit"). The Stroble Affidavit contained the Note and Mortgage. See *Stroble Affidavit attached to the Original Complaint as EXHIBIT 12.*

101. In the Stroble Affidavit, Stephan falsely asserted that he was "*competent to testify to the matters in this affidavit*", and that he makes his statements based on his personal knowledge. See *EXHIBIT 12, Stroble Affidavit Introduction and ¶ 1.*

**102.** Stephan also asserted that a “*true and accurate copies*” of the original Note and mortgage are attached to his Affidavit, but he had no personal knowledge of whether these documents were in fact true and correct. See **EXHIBIT 12**, *Stroble Affidavit*, ¶ 2.

**103.** Stephan asserts that a written notice of default was given, however, no such notice is attached to the affidavit. See **EXHIBIT 12**, *Stroble Affidavit*, ¶ 6.

**104.** Stephan also asserts that “*Plaintiff is due on the Note principal in the amount of ... plus interest...Late charges, advances made ....., and expenses incurred for the enforcement of the note and mortgage...*” but he had no personal knowledge of this. See **EXHIBIT 12**, *Stroble Affidavit*, ¶ 7.

**105.** Stephan's signature is followed by the signature of a notary public attesting that Stephan personally appeared and swore under oath that the affidavit signed by him was true, but Stephan did not sign before that notary. See **EXHIBIT 12**, *Stroble Affidavit*.

**106.** GMAC Mortgage, relying on Stephan's false Affidavit, moved for default judgment filed on July 6, 2010.

**107.** GMAC withdrew its motion for default judgment on July 23, 2010 and moved for summary judgment pursuant to Ohio Rules of Civil Procedure 56 filed July 23, 2010.

**108.** A Magistrate's Decision was issued granting GMAC Mortgage's motion for summary judgment on August 17, 2010.

**109.** GMAC Mortgage filed a motion to vacate the Magistrate's Decision on October 6, 2010.

**110.** The fees and costs associated with GMAC Mortgage's filing of GMAC Mortgage's foreclosure action against William Stroble were charged to William Stroble's account.

111. GMAC Mortgage, by filing a false affidavit and obtaining an invalid judgment to sell William Stroble's home intentionally caused William Stroble severe emotional distress.

**Blair Ritze and Brandon Ritze - GMAC MORTGAGE SERVICED LOAN, GMAC MORTGAGE AS PLAINTIFF**

112. Blair Ritze executed a Note through GMAC Bank on her home located at 1132 Birney Lane, Cincinnati, Ohio 45230 on April 20, 2005.

113. On the same day, Blair Ritze and her husband Brandon Ritze executed a mortgage to Mortgage Electronic Registration System, Inc. ("MERS") as Nominee for GMAC Bank.

114. Subsequently, the mortgage was allegedly assigned by MERS as Nominee for GMAC Bank to GMAC Mortgage. The Assignment was executed by GMAC Mortgage employee Jeffrey Stephan.LLC. See *Ritze Assignment, attached to the Original Complaint as EXHIBIT 13.*

115. On or about July 17, 2009 GMAC Mortgage filed a Complaint for Foreclosure in Hamilton County, Ohio Court of Common Pleas, Case No. A0906890.

116. Attached to the Complaint was the Note, Mortgage and Assignment of mortgage transfer the mortgage from MERS to GMAC Mortgage.

117. On September 9, 2009 GMAC Mortgage filed an *Affidavit Regarding Account and Competency and Military* executed by Jeffrey Stephan. ("Ritze Affidavit"). The Ritze Affidavit contained the Note and Mortgage. See *Ritze Affidavit attached to the Original Complaint as EXHIBIT 14.*

**118.** In the Ritze Affidavit, Stephan falsely asserted that he was “*competent to testify to the matters stated in this affidavit*”, and that he makes his statements based on his personal knowledge. See **EXHIBIT 14**, *Ritze Affidavit Introduction and ¶ 1*.

**119.** Stephan also asserted that a “*true and accurate copies*” of the original Note and Mortgage are attached to his Affidavit, but he had no personal knowledge of whether these documents were in fact true and correct. See **EXHIBIT 14**, *Ritze Affidavit, ¶ 2*.

**120.** Stephan asserts that a written notice of default was given, however, no such notice is attached to the affidavit. See **EXHIBIT 14**, *Ritze Affidavit, ¶ 6*.

**121.** Stephan also asserts that “*Plaintiff is due on the Note principal in the amount of ... plus interest...Late charges, advances made ....., and expenses incurred for the enforcement of the note and mortgage...*” but he had no personal knowledge of this. See **EXHIBIT 14**, *Ritze Affidavit, ¶ 7*.

**122.** Stephan's signature is followed by the signature of a notary public attesting that Stephan personally appeared and swore under oath that the affidavit signed by him was true, but Stephan did not sign before that notary. See **EXHIBIT 14**, *Ritze Affidavit*.

**123.** GMAC Mortgage moved for summary judgment pursuant to Ohio Rules of Civil Procedure 56 filed September 4, 2009.

**124.** A Magistrate's Decision was issued granting GMAC Mortgage's motion for judgment on May 18, 2010.

**125.** GMAC Mortgage filed a Praecipe for Order of Sale on May 28, 2010.

**126.** GMAC Mortgage filed a motion to vacate order of sale and withdraw property from sale on June 7, 2010.

**127.** An Order vacating the sale and withdrawing the property from sale was issued by the Court on June 16, 2010.

**128.** The fees and costs associated with GMAC Mortgage's filing of the GMAC Mortgage's foreclosure action against Blair Ritze and Brandon Ritze were charged to the Ritze's account.

**129.** GMAC Mortgage, by filing a false affidavit and obtaining an invalid judgment to sell Blair Ritze and Brandon Ritze's home intentionally caused Blair Ritze and Brandon Ritze severe emotional distress.

**REBECCA LAWSON - GMAC MORTGAGE SERVICED LOAN**

**130.** Rebecca Lawson executed a Note through Freemont Investment & Loan on her home located at 3345 Cavanaugh, Cincinnati, Ohio 45211 on May 22, 2002.

**131.** On the same day, Rebecca Lawson executed a mortgage to Freemont Investment & Loan.

**132.** The mortgage was allegedly assigned by Freemont Investment & Loan to JPMorgan Chase Bank as Trustee, C/O Residential Funding Corporation.

**133.** The mortgage was then allegedly assigned by JPMorgan Chase Bank as Trustee, C/O Residential Funding Corporation to LaSalle Bank National Association as Trustee for RAMP 2007RP3 C/O GMAC Mortgage Corporation. The Assignment to LaSalle Bank was signed on behalf of JPMorgan Chase Bank as Trustee by Jeffrey Stephan. See *Lawson Assignment to LaSalle Bank, attached to the Original Complaint as **EXHIBIT***

**15.**

**134.** The mortgage was then allegedly assigned by LaSalle Bank National Association as Trustee for RAMP 2007RP3 to Bank of America, National Association as successor by merger to LaSalle Bank National Association as Trustee for RAMP 2007RP3. The Assignment to Bank of America was signed on behalf of LaSalle Bank National

Association as Trustee for RAMP 2007RP3 by Jeffrey Stephan. *See Lawson Assignment to Bank of America, attached to the Original Complaint as EXHIBIT 16.*

135. On or about December 30, 2009 Bank of America filed a Complaint for Foreclosure in Hamilton County, Ohio Court of Common Pleas, Case No. A0912271.

136. Attached to the Complaint was the Note, Mortgage and three Assignment of mortgage transfers, the final transfer being to Bank of America.

137. On May 26, 2010 Bank of America filed an *Affidavit Regarding Account and Competency and Military* executed by GMAC employee Jeffrey Stephan. ("Lawson Affidavit"). The Lawson Affidavit contained the Note, Mortgage and three Assignments. *See Lawson Affidavit attached to the Original Complaint as EXHIBIT 17.*

138. In the Lawson Affidavit, Stephan falsely asserted that he was "*competent to testify to the matters stated in this affidavit*", and that he makes his statements based on his personal knowledge. *See EXHIBIT 17, Lawson Affidavit Introduction and ¶ 1.*

139. Stephan also asserted that a "*true and accurate copies*" of the original Note, the mortgage are attached to his Affidavit, but he had no personal knowledge of whether these documents were in fact true and correct. *See EXHIBIT 17, Lawson Affidavit, ¶ 2.*

140. Stephan asserts that a written notice of default was given, and in this case such notice is attached to the affidavit. *See EXHIBIT 17, Lawson Affidavit, ¶ 10.*

141. Stephan also asserts that "*Plaintiff is due on the Note principal in the amount of ... plus interest...Late charges, advances made ....., and expenses incurred for the enforcement of the note and mortgage...*" but he had no personal knowledge of this. *See EXHIBIT 17, Lawson Affidavit, ¶ 11.*

**142.** Stephan's signature is followed by the signature of a notary public attesting that Stephan personally appeared and swore under oath that the affidavit signed by him was true, but Stephan did not sign before that notary. See *EXHIBIT 17, Lawson Affidavit*.

**143.** Bank of America moved for summary Judgment pursuant to Ohio Rules of Civil Procedure 56 filed May 26, 2010.

**144.** A Magistrate's Decision was issued granting Bank of America's motion for summary judgment on July 14, 2010.

**145.** The judge adopted the Magistrate's Decision on August 12, 2010.

**146.** A sale was set on September 22, 2010.

**147.** An Order vacating the sale date was issued on October 19, 2010.

**148.** During the pendency of the foreclosure action, on at least two occasions, property preservation personnel, acting on direction of GMAC and on behalf of Bank of America, broke into Rebecca Lawson's home, placed notices throughout her home indicating they had been there inspecting the plumbing, heating and cooling units, despite the fact that Rebecca Lawson was in full possession of the residence and no sale had occurred giving Bank of America or its agents a legal right to enter the residence. At no time did the Defendants' agents have Rebecca Lawson's consent to enter her residence

**149.** The fees and costs associated with Bank of America's filing of the Bank of America foreclosure action against Rebecca Lawson was charged to the Rebecca Lawson's account.

**150.** GMAC Mortgage, by filing a false affidavit and obtaining an invalid judgment to sell Rebecca Lawson's home intentionally caused Rebecca Lawson severe emotional distress.

**COUNT I**

**Violations of the Ohio Consumer Sales Practices Act**

151. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 150 of this complaint as if fully set forth and rewritten in this Count I of the Complaint.

152. Plaintiffs bring this claim on their own behalf and on behalf of each member of the class described above.

153. Defendants are engaged in “*Consumer transactions*” as “*suppliers*” and “*nonbank mortgage lenders*” within the meaning of O.R.C. § 1345.01.

154. Plaintiffs are “*Consumers*” within the meaning of O.R.C. § 1345.01.

155. Defendant GMAC Mortgage has engaged in a pattern and practice of unfair, deceptive, and unconscionable acts in violation of Ohio Revised Code §§ 1345.02 and/or 1345.031 by authorizing, creating and directing the filing of affidavits, assignments and other documents containing material representations regarding consumers loans that were false and by proceeding to foreclosure judgments in spite of the false affidavits, assignments and other documents.

156. Defendant Ally has engaged in a pattern and practice of unfair, deceptive, and unconscionable acts in violation of Ohio Revised Code §§ 1345.02 and/or 1345.031 by directing GMAC Mortgage in its mortgage foreclosure activities, by benefiting financially from the filing of false affidavits, the filing of false and incorrect assignments and other documents, and by proceeding to foreclosure judgment in spite of the affidavits, assignments and other documents that were false.

157. The Defendants conduct in providing false representations to the court and class members in support of foreclosure actions, motions for default judgment and motions

for summary judgment of foreclosure was and is unfair and deceptive under Ohio's Consumer Sales Practices Act because it was or is likely to cause and, or has caused substantial unjustified injury to consumers including but not limited to: (a) the loss of their homes to foreclosure, (b) the unfair charging of accounts of Ohio homeowners for the attorney fees and costs of the Plaintiffs in the GMAC Mortgage and GMAC Mortgage serviced foreclosure actions, and, (c) unfairly imposing costs on Ohio homeowners for the defense of the GMAC Mortgage and GMAC Mortgage serviced foreclosure actions.

**158.** The Defendants conduct in providing false representations to the court and opposing parties in support of foreclosure actions, motions for default judgment and motions for summary judgment of foreclosure was and is unconscionable under Ohio's Consumer Sales Practices Act because it was or is likely to cause and, or has caused substantial unjustified injury to consumers including but not limited to: (a) the loss of their homes to foreclosure, (b) the unfair charging of accounts of Ohio homeowners for the attorney fees and costs of the Plaintiffs in the GMAC Mortgage and GMAC Mortgage serviced foreclosure actions, and, (c) unfairly imposing costs on Ohio homeowners for the defense of the GMAC Mortgage and GMAC Mortgage serviced foreclosure actions.

**159.** Defendants' conduct was not reasonably avoidable by consumers.

**160.** Defendants' conduct is not outweighed by any countervailing benefits to consumers or competition.

**161.** Defendants' conduct is part of a general business practice that is unfair and deceptive in violation of O.R.C. § 1345.02.

**162.** Defendants' conduct is part of a general business practice that is unconscionable in violation of O.R.C. § 1345.031.

**163.** Defendants' practices, as outlined above, are willful and knowing.

**164.** As a result of Defendants' practices the plaintiffs have suffered a loss of money and/or property.

**165.** Such acts and practices have been previously determined by a court in Ohio to violate the Consumer Sales Practices Act, O.R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to O.R.C. § 1345.05(A)(3). See *Midland Funding LLC v. Brent*, 644 F.Supp.2d 961 (N.D. Ohio, 2009), (“The OCSA prohibits ‘an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.’ § 1345.02(A). As was discussed at length, supra, the use of the false affidavit was unfair and deceptive in nature.”)

**166.** By reason of the aforesaid violations of the Ohio Consumer Sales Practices Act, Defendants are liable to the Plaintiffs for damages, and other appropriate relief as a class under Civil Rule 23, as amended.

**167.** Furthermore, in accordance with O.R.C. §1345.09, GMAC Mortgage is liable to the Plaintiffs reasonable attorneys fees and costs incurred in connection with this action.

## **COUNT II**

### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

**168.** Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 167 of this complaint as if fully set forth and rewritten in this Count II of the Complaint.

**169.** Plaintiffs bring this claim on their own behalf and on behalf of each member of the class described above.

**170.** Defendants, in filing false affidavits in support of obtaining invalid judgments against Plaintiffs and Class Members knew or should have known that filing such false affidavits would result in serious emotional distress to the Plaintiffs and Class Members;

**171.** The Defendants conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as 'utterly intolerable in a civilized community.

**172.** The Defendants actions were the proximate cause of Plaintiffs' and Class Members' emotional distress of losing their homes.

**173.** The Defendants actions in filing false affidavits in order to obtain an invalid judgment cause the Plaintiffs and Class Members to suffer mental anguish serious and of a nature that no reasonable person could be expected to endure it.

**174.** The conduct of GMAC Mortgage justifies an award of damages including punitive damages.

### **COUNT III**

#### **ABUSE OF PROCESS**

**175.** Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 174 of this complaint as if fully set forth and rewritten in this Count II of the Complaint.

**176.** Plaintiffs bring this claim on their own behalf and on behalf of each member of the class described above.

**177.** Upon information and belief, Defendants filed legitimate claims with probable cause, for legitimate purposes, to wit foreclosure actions, against Plaintiffs, in the proper

forum but used an improper manner, i.e., filed false affidavits, in order to obtain an otherwise legitimate result and in so doing, those proceedings were perverted.

**178.** Defendants engaged in repeated abuses of process when they misused individual legal procedures and actions for foreclosure in various Ohio courts.

**179.** Defendants perverted their foreclosure actions when Defendants engaged in improper conduct including but not limited to:

(a) Abuse by GMAC Mortgage of Ohio case law requiring that the Plaintiffs upon whose behalf the foreclosure case is being filed provide proof of ownership of the mortgage at the time of the filing of the foreclosure in order to satisfy standing requirements.

(b) abuse by GMAC Mortgage of the summary judgment procedures under Ohio Rules of Civil Procedure 56, including Ohio Rules of Civil Procedure 56(G), by its bad faith filing of supporting Affidavits that contained untrue statements, that were signed without personal knowledge of the Affidavit statements or referenced exhibits, and that purported to be, but were not sworn to before a notary.

**180.** GMAC Mortgage's intent was to avoid the internal expense and external legal fees that would be required for the presentation of proper Assignments and Affidavits in support of motions to obtain foreclosure judgments against Ohio residents more quickly than would have otherwise been possible with the preparation and filing of proper Assignments and Affidavits.

**181.** GMAC Mortgage's conduct was intentional and was carried out with the willful, wanton and malicious disregard of the legal rights of Ohio homeowners to have their

homes taken from them in foreclosure only after the presentation of proper pleadings and evidence for consideration by the Ohio courts.

**182.** As a result of the abuse by GMAC Mortgage in filing false and fraudulent assignments with Ohio court's, GMAC Mortgage has placed Plaintiffs in the position of having to participate in foreclosure actions without having accurate and reliable knowledge of: the owners of their loans, the guidelines that apply to potential loan modifications or loss mitigation efforts as required by the true owner of the loan, what entity has the legal capacity to enter into loan modification agreements or other resolutions of the foreclosure claims, that amounts actually due.

**183.** As a result of the abuse by GMAC Mortgage of the summary judgment process set forth in Ohio Rule of Civil Procedure 56, in the presentation of affidavits made in bad faith, Plaintiffs who have had judgments rendered against them have lost their homes, have been placed in imminent danger of losing their homes and have had legal fees and costs added to their loan accounts by GMAC Mortgage.

**184.** The conduct of GMAC Mortgage was intentional, long-standing in nature, and widespread and was carried out by GMAC Mortgage with the full knowledge that such conduct would have the effect of misleading the Ohio courts into the granting improperly supported motions for default or summary judgment and causing Ohio homeowners and their families to lose their homes due to judgments solely supported by false affidavits.

**185.** The conduct of GMAC Mortgage was so extreme and outrageous as to imply malice toward the members of the class on whose behalf this action is brought.

**186.** The conduct of GMAC Mortgage justifies an award of damages including punitive damages

**COUNT IV**

**FRAUD ON THE COURT**

**187.** Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 186 of this complaint as if fully set forth and rewritten in this Count III of the Complaint.

**188.** Plaintiffs bring this claim on their own behalf and on behalf of each member of the class described above.

**189.** Almost all residential foreclosure actions currently being filed in the state of Ohio are being decided on the basis of motions for default judgment or motions for summary judgment filed by the foreclosing parties, and:

(a) such motions for default judgment or motions for summary judgment are generally disposed of in a very short period of time;

(b) such motions for default judgment or summary judgment are often being decided before pretrial discovery has occurred;

(c) the vast majority of such motions for default judgment and motions for summary judgment are granted to foreclose on the mortgages held by plaintiffs, including GMAC Mortgage and entities for whom it services loans, without any legal representation for the homeowners involved; and,

(d) Due to the high volume of foreclosure cases being filed in Ohio courts and the very limited judicial resources, the Ohio courts are entirely dependent upon the honesty and integrity of parties seeking foreclosure and their attorneys, including GMAC Mortgage and its attorneys, in filing truthful affidavits in support of motions for default and motions for summary judgment that comply

with all of the substantive requirements of Ohio law, including Ohio Rule of Civil Procedure 56.

**190.** There is a huge economic disparity between GMAC Mortgage and the Ohio homeowners upon whom it is foreclosing, in that:

**(a)** GMAC Mortgage is the fourth or fifth largest servicer of residential mortgage loans in the United States;

**(b)** GMAC Mortgage has significant financial resources to allow it to hire lawyers to represent it in thousands of foreclosure actions throughout the entire country;

**(c)** the economic resources of Ohio homeowners upon whom GMAC Mortgage is foreclosing are often limited to the value of their homes and other nominal assets, their incomes are generally low and a far more often than not lack the resources to hire lawyers to protect their interests in GMAC Mortgage foreclosure actions.

**191.** The subject matters of the GMAC mortgage foreclosure actions are the homes of the GMAC Mortgage foreclosure defendants and their families, which are critical to their survival.

**192.** Because so few Ohio homeowners are able to afford legal counsel in Ohio residential foreclosure actions brought by GMAC Mortgage and because legal services organizations in Ohio are able to represent only a small minority of foreclosure defendants, the issues presented by the false assignments and affidavits have not been and are rarely litigated to a final hearing where the court resolving the matter has the benefit of evidence or arguments presented on behalf of the Ohio homeowners. Further, in cases where homeowners' counsel do raise issues, GMAC Mortgage has begun the

practice of withdrawing its motion for default or motion for summary judgment or seeking to dismiss its foreclosure action in order to avoid scrutiny of the motions for default or motions for summary judgment. In numerous cases throughout the Ohio GMAC Mortgage is either withdrawing its motion for default or motion for summary judgment, or if judgment has already been obtained, GMAC Mortgage has instructed its attorneys to file motions to vacate judgment. In circumstances where judgment has been obtained and sheriff's sales have been scheduled, GMAC Mortgage has instructed its attorneys to vacate sheriff's sales.

**193.** GMAC mortgages widespread practice of the filing of false assignments and affidavits has injured the Ohio judicial system and impaired and prevented it from performing the task of judging Ohio foreclosure cases in a fair and impartial manner based on the evidence being presented in support of GMAC Mortgage foreclosure cases. Because of such practices, Ohio courts cannot trust and rely upon the honesty and integrity of the assignments and affidavits being presented to it by GMAC Mortgage. Ohio homeowners' lawyers are present in only a very small minority of cases to bring the court's attention to the significant defects found in such assignments and affidavits.

**194.** By its practice of filing false assignments and affidavits, in violation of Ohio's Rules of Civil Procedure, Ohio's Revised Code and Ohio case law, GMAC Mortgage is forcing defendants to defend cases in courts and mediations without knowing the true identity of the owners of their loans. The conduct of GMAC Mortgage was intentional, long-standing in nature, and widespread and was carried out by GMAC Mortgage with the full knowledge and intent that such conduct would have the effect of misleading the Ohio courts into granting improperly supported motions for default and motions for

summary judgment and causing Ohio homeowners and their families to lose their homes.

**195.** The conduct of GMAC Mortgage was and continues to be so extreme and outrageous as to imply malice and total disregard towards the Plaintiffs on whose behalf this Complaint is brought.

**196.** The conduct of GMAC Mortgage justifies an award of damages including punitive damages.

### **COUNT V**

#### **COMMON LAW FRAUD**

**197.** Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 196 of this complaint as if fully set forth and rewritten in this Count IV of the Complaint.

**198.** Plaintiffs bring this claim on their own behalf and on behalf of each member of the class described above.

**199.** Defendants through employees or agents including Jeffery Stephan signed Affidavits and Assignments in Ohio foreclosure cases (a) which contained representations, (b) which were material to the foreclosure proceedings, (c) some of which were made with knowledge of their falsity and others which were made with utter disregard for whether they were true or false, (d) which were made with the intent of misleading the courts, Class Plaintiffs and Class Members into relying upon them, and (e) on which the courts, Class Plaintiffs and Class Members justifiably relied.

Specifically, Defendants asserted personal knowledge where there was none, Defendants asserted there was a specific review of documents where such review did not occur,

Defendants asserted they had custody of records of which the Defendants did not have custody. Further because the signing person had no knowledge and reviewed no records, the statements of fact with respect to default, ownership of notes and mortgages, assignments, payments, balances and jurisdictional elements were all made with reckless and utter disregard for the truth.

**200.** As a result of Defendants filing false affidavits in order to obtain judgments against Plaintiffs and Class Members, Plaintiffs and Class Members suffered damages including but not limited to additional fees and costs being added to their accounts, loss or fear of premature loss of their homes and imminent fear of loss of enjoyment and use of their homes.

**201.** Ally directed GMAC Mortgage in its foreclosure activities in Ohio and benefited financially from the filing of false Affidavits and Assignments.

**202.** GMAC Mortgage, Ally and Stephan created, maintained and exclusively controlled the information referenced in their affidavit's and assignments.

**203.** GMAC Mortgage, Ally and Stephan had exclusive control over the preparation, execution and filing of these assignments and affidavits.

**204.** GMAC Mortgage, Ally and Stephan were in a superior position to that of the courts, Plaintiffs and Class Members, and in such superior position, the courts, Plaintiffs and Class Members relying on these representations, had no reason to believe GMAC Mortgage, Ally and Stephan would submit fraudulent documents in furtherance of their foreclosure efforts.

~~**205.** The conduct of GMAC Mortgage was and continues to be so extreme and outrageous as to imply malice and total disregard towards the Plaintiffs on whose behalf this Complaint is brought.~~

**206.** The conduct of GMAC Mortgage justifies an award of damages including punitive damages.

## **COUNT VI**

### **CONSTRUCTIVE FRAUD**

**207.** Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 206 of this complaint as if fully set forth and rewritten in this Count IV of the Complaint.

**208.** Plaintiffs bring this claim on their own behalf and on behalf of each member of the class described above.

**209.** In the alternative to Common Law Fraud, Defendants' actions of filing false Assignments, Affidavits and other documents in support of motions to obtain judgment constituted constructive fraud.

**210.** GMAC Mortgage's action constitute a breach of a legal or equitable duty to Plaintiffs and Class Members.

**211.** GMAC Mortgage's actions were conducted with the intent to deceive Plaintiffs and Class Members.

**212.** GMAC Mortgage's actions violate public and/or private confidence in the banking industry.

**213.** GMAC Mortgage's actions violate public and/or private confidence in the judicial system.

**214.** GMAC Mortgage's actions have injured public interest by compromising the confidence in the banking industry and judicial system.

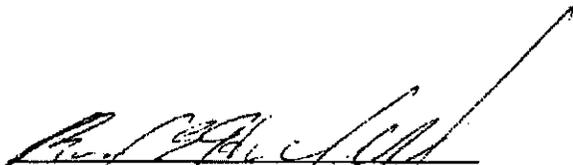
**215.** GMAC Mortgage's actions are presumed fraudulent in order to allow for the protection of valuable social interests based upon an enforced concept of confidence both public and private.

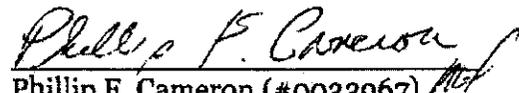
**216.** The conduct of GMAC Mortgage justifies an award of damages including punitive damages.

**WHEREFORE,** Plaintiffs Lois Blank, William Stroble, Blair Ritze, Brandon Ritze and Rebecca Lawson hereby respectfully request the following relief from this Honorable Court:

1. An Order confirming that this case is properly maintainable as a class action as defined above and appointing Plaintiffs and their undersigned counsel to represent the class;
2. A judgment in an amount to be determined at trial, but in all events not less than \$4,999,999.00 and all monetary relief authorized by law or referenced in the Complaint;
3. All remedies available under Ohio's Consumer Sales Practices Act;
4. An award of damages, including statutory damages, compensatory damages, actual damages;
5. An award of punitive damages;
6. An award of attorney's fees; and,
7. Any other and further relief to which the Plaintiff may be entitled at law or in equity.

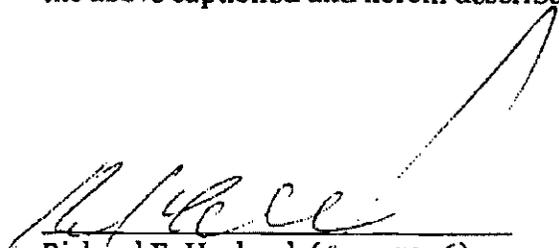
Respectfully submitted

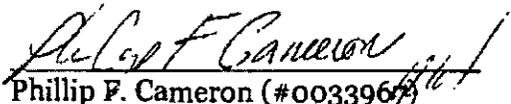
  
Richard E. Hackerd, (#0055306)  
1370 Ontario Street, Suite 2000  
Cleveland, OH 44113-1726  
Telephone: (216) 241-8282  
Telefacsimile: (866) 201-0249  
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Phillip F. Cameron (#0033967) *Att*  
441 Vine Street, Suite 4300  
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Telephone: (513) 421-4343  
Telefacsimile: (513) 381-4757  
Email: [pfclaw4400@hotmail.com](mailto:pfclaw4400@hotmail.com)

**JURY DEMAND**

Plaintiff demands a trial by the maximum number of jurors available by law for the above captioned and herein described matter.

  
Richard E. Hackerd, (#0055306)

  
Phillip F. Cameron (#0033967)

# APPENDIX B

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**ORIGINAL**

I hereby certify that this instrument is a true and correct copy of the original on file in my office.  
Attest: Geri M. Smith Clerk  
U.S. District Court  
Northern District of Ohio

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

STATE OF OHIO, ex rel.  
MICHAEL DEWINE,  
ATTORNEY GENERAL OF OHIO, et al.

Case Nos. 3:10-cv-02537-JZ  
1:10-cv-02709-JZ

*D. Ann Cox*  
Deputy Clerk

Plaintiffs,

CERTIFICATION ORDER

JUDGE JACK ZOUHARY

11-0890

-vs-

GMAC MORTGAGE, LLC, et al.

Defendants.

FILED  
MAY 24 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

STATEMENT OF FACTS

This case involves claims by Plaintiffs, the State of Ohio and Lois Blank, *et al.*, alleging violations of Ohio's Consumer Sales Practices Act by Defendants, GMAC Mortgage, LLC, Ally Financial, Inc., and Jeffrey Stephan. The alleged conduct at issue involves activity in connection with foreclosure actions prosecuted in Ohio, and the execution of affidavits by GMAC employees submitted to Ohio courts in support of default judgment or summary judgment.

GMAC Mortgage, LLC ("GMAC") is a "mortgage servicer" in the business of servicing residential mortgages of individuals for personal, family or household purposes. GMAC is not an entity defined in R.C. § 5725.01.

Plaintiffs allege that GMAC claims to be the holder of promissory notes and mortgages that form the basis for many foreclosure actions brought by GMAC (Doc. No. 1-4, at 4). Plaintiffs also allege that GMAC is a servicer or sub-servicer for a trustee holding a pool of mortgages for investors with certificates of ownership in the securitized mortgage loans (Doc. No. 1-4, at 4).

Among these mortgage activities, it is alleged that GMAC (Doc. No. 1-4, at 4):

- collects payments on residential mortgage loans from borrowers and applies them as required by the applicable documents;
- communicates with borrowers about insurance and tax payments owed;
- negotiates with borrowers over late fees, other fees, and loan modifications;
- initiates and pursues foreclosure proceedings against borrowers, including obtaining affidavits and assignments of mortgage; and
- sells foreclosed properties of borrowers.

#### QUESTIONS OF LAW TO BE ADDRESSED

This Court has determined that the interpretation of Ohio Rev. Code § 1345.01(A) & (C), effective December 28, 2009, may be determinative of this proceeding, and that there is no controlling precedent on this issue in the decisions of the Supreme Court of Ohio. Therefore, pursuant to Rule 18 of the Rules of Practice of the Supreme Court of Ohio, this Court certifies the following questions to the Supreme Court of Ohio:

1. Does the servicing of a borrower's residential mortgage loan constitute a "consumer transaction" as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A)?
2. Does the prosecution of a foreclosure action by a mortgage servicer constitute a "consumer transaction" as defined in the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A)?
3. Is an entity that services a residential mortgage loan, and prosecutes a foreclosure action, a "supplier . . . engaged in the business of effecting or soliciting consumer transactions" as defined in the Ohio Consumers Sales Practices Act, R.C. § 1345.01(C)?

#### NAMES OF PARTIES AND COUNSEL

The Plaintiffs are the State of Ohio, Ohio Attorney General Michael DeWine, Lois Blank, William H. Stroble, Brandon and Blair Ritze, and Rebecca Lawson. Plaintiffs' counsel are follows:

Susan Choe  
Jeffrey Loeser  
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Consumer Protection Section  
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Email: susan.choe@ohioattorneygeneral.gov  
Email: jeff.loeser@ohioattorneygeneral.gov

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Cincinnati, OH 45202  
513-421-4343  
Email: pfcaw@gmail.com

Richard Hackerd  
2000 Standard Building  
1370 Ontario Street  
Cleveland, OH 44113  
440-526-8780  
Email: richard@hackerd.com

The Defendants are GMAC Mortgage, LLC, Ally Financial, Inc., and Jeffrey Stephan.

Defendants' counsel are as follows:

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Jeffrey Lipps  
Barton Keyes  
Carpenter, Lipps & Leland  
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215-972-7777  
Email: chall@saul.com  
Email: gschwab@saul.com

**DESIGNATION OF MOVING PARTY**

Plaintiffs State of Ohio and Ohio Attorney General Michael DeWine are hereby designated as the moving parties. The Clerk of the United States District Court for the Northern District of Ohio, Western Division, is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

s/ Jack Zouhary  
JACK ZOUHARY  
U. S. DISTRICT JUDGE

May 18, 2011

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**CERTIFICATE OF SERVICE**

3:10CV2537  
1:10CV2709

In re: STATE OF OHIO, ex rel. MICHAEL DEWINE, ATTORNEY GENERAL OF  
OHIO, et al. vs. GMAC MORTGAGE, LLC, et al.

This is to certify that copies of the foregoing Order Certifying Question of State Law  
to the Supreme Court of Ohio was filed electronically on the 18th day of May, 2011, to  
all counsel of record listed below:

Phillip F. Cameron, Susan A. Choe, Richard E. Hackerd, Christopher R. Hall, Khary I.  
Hanible, Richard M. Kerger, Barton R. Keyes, Jeffrey A. Lipps, Jeffrey R. Loeser, Saul  
Ewing, Gregory G. Schwab, David A. Wallace,

Geri M. Smith, Clerk of Court  
Northern District of Ohio

S/DeAnna L. Cox  
Courtroom Deputy Clerk

Toledo, Ohio

I hereby certify that this  
instrument is a true and  
correct copy of the original  
on file in my office.

Attest: Geri M. Smith Clerk  
U.S. District Court  
Northern District of Ohio

By DeAnna Cox  
Deputy Clerk