**PLAINTIFF’S AMENDED COMPLAINT FOR EMERGENCY TEMPORARY AND PERMANENT INJUNCTIVE RELIEF, DECLARATORY RELIEF AND JUDGEMENT, FRAUD, ASSIGNMENT AND TITLE FRAUD/SLANDER OF TITLE, VIOLATIONS OF FAIR DEBT COLLECTIONS ACT, VIOLATION OF DUTY OF GOOD FAITH AND FAIR DEALING, CLAIM FOR ATTORNEY FEES AND LITIGATION**

Plaintiff Wekesa O. Madzimoyo (Plaintiff, Plaintiff Madzimoyo) bring this action against the above named Defendants for emergency temporary and permanent injunctive relief, declaratory relief and judgment, fraud, assignment and title fraud/slander of title, violations of fair debt collections act, violation of duty of good faith and fair dealing, claim for litigation fees and costs

**STATEMENT OF FACTS**

**CLAIMS**

**Violations of Georgia Mortgage Laws**

**5.** Defendants violated O.C.G.A 44-14-162.2 (a-c) by moving to foreclose on subject property. The Plaintiff signed a security deed with FT MORTGAGE COMPANIES d/b/a EQUIBANC MORTGAGE CORPORATION on March 23, 1999 which was recorded in the office of the clerk of superior court of DEKALB COUNTY. To date, there has been one recorded assignment on March 26, 1999 to the First National Bank of Chicago as Trustee.

**6**. Since that time there has been no additional recorded assignment for the subject property, thereby precluding the Defendants from any standing to foreclose on subject property.

7. According to O.C.G. A. 44-14-64 (a-c) only the documented secured creditor/holder in due course can foreclose on subject property. Neither of the Defendants are documented assignees, creditors, secure creditors, servicers, etc.

8. Defendants also violated the Georgia law requirements for mailing notice to a debtor.

OCGA§44-14-162.2. states in “Sales Made On Foreclosure Under Power Of Sale -- Mailing Of Notice To Debtor -- Procedure For Mailing Notice.

1. Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the **secured creditor** no later than 30 days before the date of the proposed foreclosure. Such notice shall be in writing, shall include the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor, and shall be sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the property address or to such other address as the debtor may designate by written notice to the **secured creditor**. The notice required by this Code section shall be deemed given on the official postmark day or day on which it is received for delivery by a commercial delivery firm. Nothing in this subsection shall be construed to require a **secured creditor** to negotiate, amend, or modify the terms of a mortgage instrument.[emphasis added]

9. Neither of the Defendants has legally proven that they are indeed the secured creditor/note holder in due course and have to advertise the sale and auction of Plaintiff’s home illegally.

10 While O.C.G. A. § 44-14-64 (d) provides and exception to “recording” each assignment, it does not provide an exception for executing “valid” assignments for each transfer and creating a **valid chain of title** in writing as the statute of frauds would require.

11. Neither by proper assignment or legal documentation have the Defendants established any standing relative to subject property.

12. Defendants failed to provide verification of their standing as agent, attorney, debt collector, lender, note holder, servicer, investor, trustee, or otherwise in the matter, which would provide Plaintiff with evidence of the Defendants’ lawful standing in this matter and determine who the rightful lender/mortgage holder.

(a) Before the days of Securitization of Mortgages this was a simpler matter. Traditionally, in “legacy mortgage transactions,” when borrowers executed a promissory note and problem came us, they could easily deal with a local banker or someone from their community who could address their problems or issues. Their lender was someone they could see face-to-face and talk to.

(b) Today when problems arise in a loan transaction, a borrower typically only gets to speak to someone on the phone who may be across the country or overseas – like India or Mexico. The “contact person” is often a contractor or vendor (sub-servicer) for a servicer who is yet another contracted payment collector for a trust or other entity that is a contractor for the eventual owner or holder of a debt that could be a Wall St. firm, a hedge fund, foreign government intelligence agency and even a terrorist organization.

13. Clarifying roles are difficult or impossible. Therefore the Plaintiff is blocked from knowing the secured creditor/holder in due course with whom he can negotiate, re-negotiate, or otherwise modify the terms of the Plaintiff’s note as needed or desired.

14. Today a lender, tomorrow a servicer, the next day -who knows? Their true role at any given point in the mortgage transaction process is a mystery. For example, Defendant McCurdy and Candler alternately and simultaneously identify themselves a attorneys and debt collectors.

**Mortgage Fraud Via - Securitization**

15. The Defendants admitted in the foreclosure notice that Plaintiff Madzimoyo’s loan had been securitized via RAMP 2006RP2 (Residential Asset Mortgage Products) with JPMorgan Chase Trust, NA (JPMC)

16. According to Defendants’ Notice of Foreclosure, Bank of New York Mellon Trust, NA (BNYMT) succeeded JPMC as Trustee

17. The Plaintiff was never told this mortgage would be securitized, nor did he have any knowledge of it, nor did he give his consent.

18. BNYMT as trustee is attempting to foreclose illegally, because the underlying promissory note and deed to secure debt was never lawfully negotiated, transferred to, or possessed by either JPMorgan Chase Bank, NA as Trustee for RAMP 2006RP2 (Residential Asset Mortgage Products) or Bank of New York Mellon Trust Company, N.A. fka The Bank of New York Trust Company, and the trust is an empty shell.

In fact, the investors in RAMP are suing the Wall Street financers and banks that defrauded them, and claim in their own suit that they as well as borrowers were defrauded by the fraudulent appraisals and incomes used in the loan origination, approval, and underwriting process.

While the Plaintiff’s 18 questions in the initial request might at first glance seem excessive, the illusive and sometime fraudulent nature of mortgage back securities made them necessary.

When Defendants refuse to provide information to help borrows like the Plaintiff-Madzimoyo ascertain the true holder(s) in due course, even though they helped to create and benefit from the securitized mortgage labyrinth, at the very least they are operating in bad faith.

**Bad Faith**

**19**. O.C.G.A. 23-2-114 states in part that “Powers of Sale in deeds of trust, mortgages, and other instruments ***shall be strictly construed and shall be fairly exercised***.” [emphasis added]

20. The Defendants, in bad faith, have refused to provide Plaintiff Madzimoyo with requested documents claiming “proprietary and confidential” business and trade practices.

21. It seems that some of those industry business and trade practices are becoming a little less confidential. Reputable newspapers like the New York Times feature articles that show a pattern of wide-spread fraud and abuse in the industry. The **New York Times on Oct. 15th** reported:

(a) “The documents from the lender, GMAC Mortgage, were approved by an employee whose title was "limited signing officer," an indication to the lawyer that his knowledge of the case was effectively nonexistent.

(b) Mr. Cox eventually won the right to depose the employee, who casually acknowledged that he had prepared 400 foreclosures a day for GMAC and that contrary to his sworn statements, they had not been reviewed by him or anyone else.”

22. Defendants are currently being investigated by Georgia and other state’s Attorney Generals to determine among other things if they:

1. Destroyed and concealed assignments and;

2. Fabricated and even forged assignments in order to:

* 1. Create standing or authority to foreclose;
	2. Conceal the fact that the note was pledge and assigned to multiple parties;
	3. Fix known broken chains in title;
	4. Unlawfully transfer assets out of the estates and property of bankrupt mortgage companies
	5. Conceal other parties to prevent suits upon investors due to assignee liability

22.The Defendants refusal or inability to provide evidence of the completed chain of title as ordered by DeKalb Superior Court Judge Tangela Barrie, and subsequent rush to removal raises the Plaintiff’s suspicions and leaves the Plaintiff in adversary proceedings with ghosts.

23. Any grant of a certificate of title to an entity other than the Plaintiff creates an incurable defect in title. There is no recording of any document in the DeKalb county records relative to the subject property which predates BNYMT’s attempt to initiate foreclosure which would authorize them to proceed.

**FDCPA VIOLATIONS**

24. Defendant ANTHONY DEMARLO AND MCCURDY & CANDLER LLC by their own admission in the July 3rd Notice of Foreclosure Sale assert that:

25. “THIS LAW FIRM IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.” They are therefore a subject to the rules of THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA), 15 U.S.C. §§ 1692-1692p.

26. The text of Defendant ANTHONY DEMARLO AND MCCURDY & CANDLER LLC letters to the Plaintiff indicate they were sent to induce the homeowner to settle the alleged mortgage-loan debt in order to avoid foreclosure. They were admittedly “sent in connection with an attempt to collect a debt,” **Ruth v. Triumph P’ships, 577 F.3d 790, 798 (7th Cir. 2009)**, and were in violation of the FDCPA.

27. Defendant ANTHONY DEMARLO AND MCCURDY & CANDLER LLC also threatened legal action on behalf of co Defendants that it could not execute because said co-Defendants were in violation of GA mortgage requirements nor had the provided legal documentation that to establish that they were indeed the secured creditors, authorized servicers, holders in due course. This was in direct violation of FDCPA sections § 1692 e and f

28.Typically creditors argue that they were shielded from liability by the FDCPA's "bona fide error defense," which provides that debt collectors are not liable for FDCPA violations that were "not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c)

29. However, the **US Supreme Court on April 21, 2010 ruled 7-2 in Jerman v. Carlisle, McNeelie, RINI, Dramer & Ulrich LPA (No. 08-1200)** otherwise to making sure that debt collectors are treated like everyone else when violating a federal statute, and that unlawful behavior will not be excused, and will be punished to the fullest extent of the law. Specifically, the Supreme Court held that the

i. “bona fide error defense in §1692k(c) does not apply to a violation of the FDCPA resulting from a debt collector’s incorrect interpretation of the requirements of that statute.”

ii. Given the absence of similar language in §1692k(c), it is fair to infer that Congress permitted injured consumers to recover damages for “intentional” conduct, including violations resulting from a mistaken interpretation of the FDCPA, while reserving the more onerous administrative penalties for debt collectors whose intentional actions reflected knowledge that the conduct was prohibited. Congress also did not confine FDCPA liability to “willful” violations, a term more often understood in the civil context to exclude mistakes of law. See, e.g., Trans World Airlines, Inc. v. Thurston, 469 U. S. 111, 125–126. Section 1692k(c)’s requirement that a debt collector maintain “procedures reasonably adapted to avoid any such error” also more naturally evokes procedures to avoid mistakes like clerical or factual errors. Pp. 6–12.

30. One of the basic tenets of FDCPA is that creditors must validate the debt and verify (not validate) their standing as “creditors.” Defendants steadfastly refused to do this, and as such forfeit their standing as “creditors” to any debt owed by the Plaintiff.

31. For months prior to the attempted illegal foreclosure, Plaintiff sent letters to Defendants (including an Affidavit for them to Cease and Desist) asking for validation of both the alleged debt and their standing to collect by providing documents governing the myriad of agreements that would clarify their standing. They refused to provide the requisite documents. Most just ignored the request, but one response on Homecomings Financial’s letter-head stated:

(a) “the information requested is subject to business and trade practices which are proprietary and confidential and will not be provided.”

31. While the letter was printed on company letter-head, the letter was unsigned. **(See Petition - Attachment E Copies of Defendants Letters June 22, 2009)**

32. The Plaintiff Madzimoyo maintains that he doesn’t owe any of the Defendants anything, therefore their continued communication with him is in doing so violated FDCPA section § 1692 g.

**QUIET TITLE**

33. In addition to seeking compensatory, consequential, punitive and other damages, Plaintiffs seeks declaratory relief as to what (if any) party, entity or individual or group thereof is the owner of the promissory note executed at the time of the loan closing by Madzimoyo, and whether the purported Deed to Secure Debt (“Deed”) secures any obligation of the Plaintiff to any Defendant, and if not, a Final Judgment granting Defendant Quiet Title in the subject property and an unsecured note payable to its true owners.

34. In violation of O.C.G.A 44-14-162.2 (A-C) The Defendants routinely refused and failed to show in any way how any one of them have the capacity, standing, and or authority to:

1. Accelerate the Madzimoyo Note;
2. Exercise and valid Power of Attorney to conduct a non-judicial foreclosure sale of the property;
3. Advertise and notice a non-judicial foreclosure action;
4. Modify any terms or conditions of the Madzimoyo Note;
5. Collect any fees owed to the note’s defined “Note Holder;”
6. Release and satisfy the Madzimoyo Deed;
7. Cancel and return the Madzimoyo Note.

35. There is a genuine issue of material fact whether the Madzimoyo note was ever equitably and lawfully assigned to any party, let alone the Defendants, and the claimed intervening owners and holders in the alleged securitization chain.

Wherefore….