**UNITED STATES DISTRICT COURT FOR THE**

**NORTHERN DISTRICT OF GEORIGA**

**ATLANTA DIVISION**

**Wekesa O. Madzimoyo,
Plaintiff,**

**v.**

 **THE BANK OF NEW YORK**

**MELLON TRUST COMPANY, NA., formerly known as The Bank of New
York Trust Company, N.A., JP MORGAN
CHASE BANK, NA, GMAC MORTGAGE, LLC
and ANTHONY DEMARLO, Attorney**

**Defendants.**

**CIVIL ACTION FILE**

**No. 1:09-CV-02355-CAP-GGB**

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**Defendants**

**PLAINTIFF’S OPPOSITION TO**

**DEFENDANTS MOTION TO STRIKE AMENDED COMPLAINT**

Come now the Plaintiff, WEKESA O. MADZIMOYO AND move the Court to deny **THE BANK OF NEW YORK MELLON TRUST COMPANY, NA.,
 formerly known as The Bank of New York Trust Company, N.A., JP MORGAN CHASE BANK, NA, GMAC MORTGAGE, LLC** motion to strike Plaintiff’s Amended Complaint.

**Plaintiff’s Opposition to Introduction and Statement of Facts**

The Plaintiff opposes Defendants version of the facts and submits:

1. It is not disputed that in April 2009, the Plaintiff Madzimoyo was current on his mortgage.
2. It is also not disputed that on April 13th, 2009 Plaintiff Wekesa Madzimoyo requested verification of lender documentation and servicing authority to HOMECOMINGS FINANCIAL, LLC pursuant to Fair Debt Collection Practices Act, 15 USC Sec.1692g.
3. It is not disputed and is documented by return receipts [Attachments to Original Complaint] For three consecutive months Plaintiff Wekesa Madzimoyo consistently asked each of the alleged servicers and lenders for official verification, they – the Defendants consistently refused to provide it.
4. On July 29th, 2009 Dekalb County Superior Court Judge Tangela M. Barrie directed the Defendants to appear in court with “proper evidence of chain of title on this property” [1083 Brafferton Place, Stone Mountain, GA]
5. The petition to Dekalb County Superior Court to was the last of many attempts starting April 13, 2009 to get the Defendants to provide lender documentation and servicing authority. [COMPLAINT]
6. Even though the Plaintiff never signed a security deed with any of the Defendants, and even though none of the Defendants appear in the Dekalb County Superior Court’s real estate records as the secured creditor or assignee for said property at 852 Brafferton PL Stone Mountain, GA 30083, the Defendants repeatedly refused to provide such information to validate their standing as agent, attorney, debt collector, lender, note holder, servicer, investor, trustee, attorney in fact or otherwise.
7. The Plaintiff, fearing that he was victim of fraud or a predatory lending scam, sought the protection of the court to stop the Defendants move to illegally foreclose on his home at 852 Brafferton PL. Stone Mountain, GA 30083. OCGA § 44-14-162.2 (a-c) requires that foreclosure action must proceed from the **secured creditor**. The Defendants have never properly established their status as such.
8. The Plaintiff has never defaulted on his loan. [COMPLAINT]
9. The Plaintiff has never owed money to any of the Defendants.

**OPPOSITION TO DEFENDANT’S ARGUMENTATION AND CITATION OF AUTHORITIES**

1. While the Plaintiff seemed to have erred in assuming that settling the matter of jurisdiction effectively moved the calendar, and apparently have missed the window for automatically filing an amendment without need for the Defendants agreement or leave from the Judge, the plaintiff contends:
2. That the amended complaint should stand for the very reason that Defendants oppose – to avoid undue delay in this case moving forward.
3. If stricken, the complaint will be withdrawn and will be resubmitted with the court’s permission, for the court’s approval, and
4. Pursuant to Federal Rule of Civil Procedure 15(a) contemplates that the court will freely grant leave to an amended complaint when the interest of justice so require.
5. The interest of justice require acceptance of this amended complaint because:

## This is the first time the plaintiff has amended the complaint

## The jurisdictional questions were outstanding

## Settlement of the jurisdictional question directly affects the Plaintiff’s pleadings, since the state pleadings only alleged the Defendant’s violation of OCGA § 44-14-162.2 (a-c)

## Plaintiff’s state complaint contained no federal claims for the state superior court judge to rule on.

## The Defendants, in their Motion for Removal, ignored the actual state claims and focused on the documents attached to Plaintiff’s state complaint which site Fair Debt Credit Protection and TILA as a basis for the Plaintiff’s right to request verification of servicer and lender standing.

## Once the jurisdiction question was finally settled against a remand, the initial complaint’s claims needed amending to account for the scope of the court and to include both state and federal claims.

1. There is no prejudice to any Defendant is harmed by this action.
2. Delay is not an issue because Defendants have already requested delays in calendaring.
3. In the interest of justice and pursuant to rule Federal Rule of Civil Procedure 15 (d) which allows for “a supplemental pleadings,” Plaintiff could request the Court to consider the additional claims.”
4. In the interest of justice and to expedite this case moving forward, Leave to Amend Should Be Granted. The question of jurisdiction and the basis for Defendant’s removal of the case to Federal Court demand that the claims be amended or the Plaintiff will be unduly harmed.

 **Plaintiff opposed Defendant’s claim that late filing is unduly prejudicial.**

1. Defendants contend that there are only 29 days left for discovery, yet Defendants [GMAC] only filed their INITIAL DISCLOSURES on November 23, 2010.
2. Federal Rule 26 (a) (C) regarding INITIAL DISCLOSURE stipulates: “In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference .”
3. Defendant McCurdy has not filed INITIAL DISCLOSURES at all, nor has any party scheduled the INITAIL CONFERENCE. All of this suggests that due to the recent settling of the Jurisdiction issue, we are at the beginning of discovery, not the end of discovery.
4. The Defendants’ claim that the filing is late - coming 14 months after Plaintiff filed the original Complaint - completely ignores the relevance of the jurisdiction question. The Plaintiff, had he amended his Complaint for Federal Court, would be at a disadvantage if it were Remanded back to State Court.

**The Plaintiff opposes the Defendant’s claim of
 that the Plaintiff Complaint is “futile.”**

1. The Plaintiff chooses to let the Courts determine the “futility” of this Complaint that
	1. The Defendants have no standing in the issue of Plaintiff’s mortgage
	2. The Defendants violated GA state laws OCGA § 44-14-162.2 (a-c) in moving to illegally foreclose on the property occupied by the Plaintiff at 852 Brafferton PL Stone Mountain, GA 30030
	3. The Defendants violated various state and federal laws as specified in Plaintiffs’ Original and Amended Complaint
	4. That such actions have, and if not stopped by the Court, will continue to injure the Plaintiff [Original and Amended Complaint]

 **Plaintiff opposes Defendant’s “shotgun” argument as a reason to strike.**

1. If the Plaintiff pleadings seem “shotgun” it is because the Defendants’ egregious and illegal actions are so broad and new to the area of home mortgage borrowing and lending. When mortgage lending was a simple transaction between bankers and borrowers, the claims, violations, and remedies were simple. Simple and mortgage no longer abide together for reasons the Plaintiff’s are better equipped to answer.
2. For example, by their own admission, the Defendants have used the Plaintiff’s mortgage (without his awareness and consent) as a part of an elaborate Wall Street security instrument and process. This process of mortgage to securities is now the industry rule, not the exception.
3. The range of the Plaintiff’s Amended Complaint and the supporting information is needed to help explain and ferret out the actions of the various Defendants who change hats from servicers, to lenders, to trustees, to debt collectors seemingly at will in apparent disregard of State and Federal mortgage, laws.

**CONCLUSION**

WHEREFORE, Plaintiff prays that the Court deny Defendants’ Motion to Strike and let stand Plaintiff’s Amended Complaint.

Submitted this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2010

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Wekesa O. Madzimoyo

 Pro See Litigant

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**FONT VERIFICATION**

Pro se Litigant, Wekesa Madzimoyo, certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1C, namely Times New Roman (14 point).

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 Wekesa O. Madzimoyo

 Pro se Litigant

**CERTIFICATE OF SERVICE**

 I hereby certify that I have served the foregoing on the following by electronic mail or by placing a copy of the same in the United States mail, postage prepaid and properly addressed, this the 26th day of October, 2010 to:

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