

A. WILLIAM LOEFFLER  
404.888.3372 telephone  
404.862.8614 facsimile  
bill.loeffler@troutmansanders.com

# TROUTMAN SANDERS

TROUTMAN SANDERS LLP  
Attorneys at Law  
Bank of America Plaza  
600 Peachtree Street, NE, Suite 5200  
Atlanta, Georgia 30308-2216  
404.885.2000 telephone  
troutmansanders.com

November 23, 2010

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, Georgia 30083

Re: Wekesa O. Madzimoyo v. GMAC Mortgage, LLC, et al., U.S. District Court,  
Northern District of Georgia, Case No. 1:09-cv-2355-CAP

Dear Mr. Madzimoyo:

Enclosed is your service copy of the Initial Disclosures of Defendants GMAC Mortgage, LLC, JPMorgan Chase Bank, and the Bank of New York Mellon Trust Company, N.A., which has been filed in the above-referenced action.

Very truly yours,



A. William Loeffler

Enclosure

Cc: Kelly L. Atkinson, Esq.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WEKESA O. MADZIMOYO,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. 1:09-cv-2355-CAP-GGB
GMAC MORTGAGE, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**INITIAL DISCLOSURES OF DEFENDANTS  
GMAC MORTGAGE, LLC, JPMORGAN CHASE BANK,  
AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

Defendants GMAC Mortgage, LLC (“GMAC”), JPMorgan Chase Bank, and The Bank of New York Mellon Trust Company, N.A. (“Defendants”), by and through their undersigned counsel, hereby make the following initial disclosures pursuant to FED. R. CIV. P. 26(a)(1) and Local Rule 26.1, based on information currently available to them. These initial disclosures are made without waiver of any applicable objections, including without limitation:

- any objections to the disclosure of information that is protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity;
- any objections based upon lack of relevance, that information or documents are confidential, that the production of documents would be unreasonably

cumulative or duplicative, that the information can be obtained from other source(s) more conveniently, with less burden and less expense, or, or that the burden or expense of discovery outweighs its likely benefit; and/or

- any objections to the production of witnesses, documents, or things that are outside of the jurisdiction of the Court and/or beyond Defendants' possession or control.

These initial disclosures are made early in this litigation and may, if warranted, be supplemented, modified, or amended, pursuant to Fed. R. Civ. P. 26(e) and Local Rule 26.1.

**(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response:**

Not applicable.

**(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.**

None at this time.

**(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or cross-claims asserted by defendant in the responsive pleading.**

On March 23, 1999, Plaintiff Wekesa Madzimoyo obtained a mortgage loan from FT Mortgage Companies d/b/a Equibanc Mortgage Corporation in the principal amount of \$140,600, which was secured by Plaintiffs' residence at 852 Brafferton Place, Stone Mountain Georgia, 30083 (the "Subject Property"). [Complaint, ¶ 16.] GMAC subsequently took over servicing the loan. The loan and deed were subsequently assigned to JPMorgan Chase Bank, and, on April 7, 2006, The Bank of New York Mellon Trust Company, National Association acquired JP Morgan's business. Plaintiff defaulted on the terms of the loan, and foreclosure was initiated. The foreclosure sale has been postponed. The foreclosure is proper in all respects, and Defendants deny any liability.

**(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendants contend are applicable to this action.**

Defendants adopt and incorporate herein by reference all of the authority in their memorandum of law in support of their motion for judgment on the pleadings, filed on October 12, 2010 (Doc. No. 23-1).

**(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)**

See Attachment A hereto.

**(6) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)**

At this time, Defendants have not retained any person who may be used at trial to present expert testimony or evidence, therefore, there is no Attachment B.

**(7) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)**

See Attachment C hereto.

**(8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)**

Not applicable, therefore, there is no Attachment D.

**(9) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.**

Not applicable, at this time.

**(10) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)**

At this juncture, Defendants do not believe that there is any insurance coverage for the claims alleged in the Complaint, therefore, there is no Attachment E.

**ATTACHMENT A**

1. **Wekesa O. Madzimoyo**

Plaintiff in this suit. Plaintiff has knowledge of the facts and circumstances surrounding the subject loan transaction, the default thereunder, and the foreclosure proceedings that ensued.

**Employees of GMAC and affiliates:**

2. **Juan Aguirre**  
**Manager-Litigation Support**

Mr. Aguirre has knowledge of the account records and payment history pertaining to Plaintiff's loan. He may only be contacted through the undersigned counsel of record.

3. **Defendants have provided or will provide to Plaintiff certain documents that may identify additional individuals who may have discoverable information relevant to this case. The individuals identified in those documents may only be contacted through the undersigned counsel of record.**

**ATTACHMENT C**

In accordance with Rule 26(a) and Local Rule 26.1, Defendants are making these initial disclosures based on information reasonably available to them at this time. Further discovery and developments in this case may dictate the need to identify additional relevant documents and/or tangible objects. In accordance with Fed. R. Civ. P. 26(e) and Local Rule 26.1, Defendants may supplement this disclosure. Without waiving any objections as to relevancy or admissibility at trial, Defendants provide the following disclosure:

1. Documents pertaining to Plaintiff's loan transaction, the default thereon, and the foreclosure proceedings that ensued, including without limitation:
  - Promissory Note, Security Deed, and other loan disclosures and documents.
  - Computer generated payment history and account notes.
  - Foreclosure notices and documents.

These documents will be made available for inspection at the offices of Defendants' counsel of record.

This the 23<sup>rd</sup> day of November, 2010.

/s/ A. William Loeffler

A. William Loeffler

Georgia Bar No. 755699

*bill.loeffler@troutmansanders.com*

Kelly L. Atkinson

Georgia Bar No. 431204

*kelly.atkinson@troutmansanders.com*

TROUTMAN SANDERS LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216  
(404) 885-3000

Counsel for Defendants  
GMAC Mortgage, LLC, JP Morgan  
Chase Bank, and The Bank of  
New York Mellon Trust Company

**Certification of Counsel**

I hereby certify, pursuant to Local Rule 5.1(c), that this document is  
submitted in Times New Roman 14 point font.

/s/ A. William Loeffler

A. William Loeffler

**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the within and foregoing using the Court's ECF system, which will effect service on the following:

Frank R. Olson, Esq.  
McCurdy & Candler, L.L.C.  
Building 6, Suite 700  
3525 Piedmont Road NE  
Atlanta, GA 30305

And I served Plaintiff a copy of same via United States mail, with adequate first-class postage affixed thereto, addressed as follows:

Wekeza O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

This 23<sup>rd</sup> day of November, 2010.

*/s/ A. William Loeffler*  
A. William Loeffler

**Discovery Documents**

1:09-cv-02355-CAP-GGB Madzimoyo v. The Bank of New York Mellon Trust Company, N.A. et al  
4months, SUBMMG

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

The following transaction was entered by Loeffler, Alan on 11/23/2010 at 11:46 AM EST and filed on 11/23/2010

**Case Name:** Madzimoyo v. The Bank of New York Mellon Trust Company, N.A. et al

**Case Number:** 1:09-cv-02355-CAP-GGB

**Filer:** GMAC Mortgage, LLC  
JP Morgan Chase Bank, NA

The Bank of New York Mellon Trust Company, N.A.

**Document Number:** 30

**Docket Text:**

**Initial Disclosures by GMAC Mortgage, LLC, JP Morgan Chase Bank, NA, The Bank of New York Mellon Trust Company, N.A.-(Loeffler, Alan)**

**1:09-cv-02355-CAP-GGB Notice has been electronically mailed to:**

Alan William Loeffler bill.loeffler@troutmansanders.com

Frank Reid Olson folson@mccurdyandcandler.com

John Dale Andrie jandrie@mccurdyandcandler.com

Kelly Lane Atkinson kelly.atkinson@troutmansanders.com

**1:09-cv-02355-CAP-GGB Notice has been delivered by other means to:**

Wekesa O Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1060868753 [Date=11/23/2010] [FileNumber=4045297-0] [979e254918f15989fd9905b131db4a7dcf02dc5a7f53682d49422ff79b04f9e11ef05346295ec692e5a1c556f7cbf44d4a2b7ce9e031ad8cfd0b421c14b34ae5]]

A. WILLIAM LOEFFLER  
404.885.3372 telephone  
404.962.6819 facsimile  
bill.loeffler@troutmansanders.com

# TROUTMAN SANDERS

TROUTMAN SANDERS LLP  
Attorneys at Law  
Bank of America Plaza  
600 Peachtree Street, NE, Suite 5200  
Atlanta, Georgia 30338-2216  
404.885.3000 telephone  
troutmansanders.com

November 24, 2010

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, Georgia 30083

Re: Wekesa O. Madzimoyo v. GMAC Mortgage, LLC, et al., U.S. District Court,  
Northern District of Georgia, Case No. 1:09-cv-2355-CAP

Dear Mr. Madzimoyo:

Enclosed are your service copies of the following documents, which have been filed in the above-referenced action:

1. Defendant's Motion to Strike Plaintiff's Amended Complaint; and
2. Defendant's Memorandum of Law in Support of Motion to Strike Plaintiff's Amended Complaint.

Very truly yours,



A. William Loeffler

Enclosures

Cc: Kelly L. Atkinson, Esq.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WEKESA O. MADZIMOYO,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. 1:09-cv-2355-CAP-GGB
GMAC MORTGAGE, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT**

Defendants GMAC Mortgage, LLC, JPMorgan Chase Bank, and The Bank of New York Mellon Trust Company, N.A. (collectively, "Defendants") submit this memorandum in support of their Motion to Strike Plaintiff's Amended Complaint. Plaintiff's Amended Complaint is due to be stricken because it was filed without consent of the Defendants or leave of Court, and leave to amend should be denied because the amendment is untimely, unduly prejudicial, and futile.

**STATEMENT OF THE CASE**

On March 23, 1999, Plaintiff Wekesa Madzimoyo obtained a mortgage loan from FT Mortgage Companies d/b/a Equibanc Mortgage Corporation in the principal amount of \$140,600, which was secured by real property located at 852 Brafferton Place, Stone Mountain, Georgia 30083. [Complaint, ¶ 16.] GMAC

subsequently took over servicing the loan. The loan and deed were later assigned to JPMorgan Chase Bank, and, on April 7, 2006, The Bank of New York Mellon Trust Company, National Association acquired JP Morgan's business.

Plaintiff defaulted on the loan by failing to make the required monthly payments. When he failed to cure the default, GMAC retained the law firm of McCurdy & Candler, LLC to initiate non-judicial foreclosure. Plaintiff filed the instant action on July 29, 2009, in an attempt to halt the foreclosure.

On April 15, 2010, Defendant McCurdy & Candler LLC filed a motion for judgment on the pleadings. [Dkt. No. 16.] On October 12, 2010, these Defendants also filed a motion for judgment on the pleadings. [Dkt. No. 23.] Plaintiff filed his Amended Complaint on October 27, 2010. [Dkt. No. 26.]

### **ARGUMENT AND CITATION OF AUTHORITY**

#### **A. Plaintiff's Amendment Violates Rule 15.**

Rule 15 requires that a plaintiff obtain "opposing party's written consent or the court's leave" before filing an amendment to a complaint, where the amendment is attempted after more than 21 days have elapsed since the defendant's answer was filed. Fed. R. Civ. P. 15(a)(2). Plaintiff obtained neither consent of the Defendants nor leave of Court before filing his amended pleading. Therefore, his Amended Complaint is of no force and effect. See Hoover v. Blue Cross and Blue Shield, 855 F.2d 1538, 1544 (11<sup>th</sup> Cir. 1988) ("In general, if an

amendment that cannot be made as of right is served without obtaining the court's leave or the opposing party's consent, it is without legal effect and any new matter it contains will not be considered unless the amendment is resubmitted for the court's approval."); Baxter v. Strickland, 381 F. Supp. 487, 491 (N.D. Ga. 1974) (same). Plaintiff's Amended Complaint should therefore be stricken.

**B. Leave to Amend Should Be Denied.**

Leave to amend should not be granted in the instant case. The court should consider various factors when evaluating a motion for leave to amend, including undue delay and prejudice and futility. See, e.g., Foman v. Davis, 371 U.S. 178, 182 (1962); Best Canvas Products & Supplies, Inc. v. Ploof Truck Lines, Inc., 713 F. 2d 618, 622-23 (11<sup>th</sup> Cir. 1983).

**1. Plaintiff's late filing is unduly prejudicial.**

Plaintiff's Amended Complaint comes more than fourteen (14) months after he filed his original Complaint. It also comes after all Defendants have filed dispositive motions, seeking judgment as a matter of law on Plaintiff's original pleading. Plaintiff has provided no explanation or justification for his delay.

Filing an amended complaint one month before the close of discovery has been held to constitute "undue delay" and provided a proper basis for the court to deny leave to amend. See Muegge v. Heritage Oaks Golf and Country Club, Inc., 209 Fed. Appx. 936, 939 (11<sup>th</sup> Cir. 2006). In the instant case, Plaintiff's Amended

Complaint came more than two months after the close of the discovery which had previously been extended by Court Order. [Dkt. No. 14.] For these reasons, Plaintiff should not be granted leave to file his Amended Complaint.

**2. Plaintiff's Amended Complaint is futile.**

A claim is futile if it cannot withstand a motion to dismiss. See, e.g., Burger King Corp. v. Weaver, 169 F.3d 1310, 1315 (11<sup>th</sup> Cir. 1999) (futility is another way of saying "inadequacy as a matter of law"); Florida Power & Light Co. v. Allis Chalmers Corp., 85 F.3d 1514, 1520 (11<sup>th</sup> Cir. 1996).

Plaintiff's Amended Complaint, just as his original Complaint, fails to state a viable claim against the Defendants. His new allegations fail to be actionable for the very same reasons his original claims are due to be dismissed, as set out in the Defendants' respective motions for judgment on the pleadings. [Dkt. No. 16, 23.] Indeed, his Amended Complaint is just another "shotgun pleading."

The Eleventh Circuit has "specifically instructed district courts to prohibit, as fatally defective, shotgun pleadings similar to the one filed in this action." B.L.E. ex rel. Jefferson v. Georgia, 335 F. App'x 962, 963, 2009 U.S. App. LEXIS 23403, \*2-3 (11<sup>th</sup> Cir. 2009) (citing Davis v. Coca-Cola Bottling Co., 516 F.3d 955, 979 (11<sup>th</sup> Cir. 2008) and Bryne v. Nezhad, 261 F.3d 1075, 1130 n.108 (11<sup>th</sup> Cir. 2001)); see Davis, 516 F.3d at 979 and n.54 ("The complaint is a model 'shotgun' pleading of the sort this court has been roundly, repeatedly, and

consistently condemning for years, long before this lawsuit was filed.” Citing illustrative Eleventh Circuit precedent and noting that “since 1985 we have explicitly condemoed shotgun pleadings upward of fifty times.”).

A pleading should contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).

These rules work together to require the pleader to present his claims discretely and succinctly, so that his adversary can discern what he is claiming and frame a responsive pleading, the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted, and, at trial, the court can determine that evidence which is relevant and that which is not.

Davis, 516 F.3d at 980 (citing Fikes v. City of Daphne, 79 F.3d 1079, 1082-83 (11<sup>th</sup> Cir. 1996)).

The hallmark of a shotgun pleading is its “rambling, prolix” nature, contravening the dictates of Rule 8. B.L.E. ex rel. Jefferson, 335 F. App’x at 963; accord Pelletier v. Zweifel, 921 F.2d 1465, 1518-19 (11<sup>th</sup> Cir. 1991) (“quintessential shotgun pleadings” contain “ramhling recitatioos”). Such pleadings are “framed in complete disregard of the principle that separate, discrete canscs of action should be plead[ed] in separate counts.” Cesnik v. Edgewond Baptist Church, 88 F.3d 902, 905 (11th Cir. 1996); see also Fullman v. Graddick, 739 F.2d 553, 556-57 (11<sup>th</sup> Cir. 1984) (“A complaint may justifiably be dismissed

because of the conclusory, vague, and general nature of the allegations' asserted therein).

Dismissal is appropriate where "Plaintiff's complaint is an argument about the merits of his claim, rather than a complaint for relief," and contains a litany of "citations and statements of law." Rose v. GMAC Mortgage, LLC, Case No. 1:10-cv-1990-JEC, at Doc. No. 16, p. 4 (N.D. Ga. Sept. 20, 2010) (citing Branham v. Astrue, 2009 WL 1025393 at \*1 (M.D.Ga. 2009)). With a shotgun complaint, "it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." Anderson v. District Bd. of Trustees of Cent. Fla. Cmty. Coll., 77 F.3d 364, 366 (11<sup>th</sup> Cir. 1996); see also Johnson Enterprises of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290, 1333 (11<sup>th</sup> Cir. 1998) ("district courts have the power and the duty to define the issues at the earliest stages of litigation.").

There is nothing in Plaintiff's Complaint even approximating "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Nor is there any "simple, concise, and direct" allegation of any wrongdoing that Defendants are purported to have committed. Fed. R. Civ. P. 8(d)(1). Accordingly, Plaintiff's Amended Complaint should be stricken.

**CONCLUSION**

For the foregoing reasons, the Court should enter an Order striking Plaintiff's Amended Complaint and allowing no further amendment to the pleadings.

This the 24<sup>th</sup> day of November, 2010.

/s/ A. William Loeffler  
A. William Loeffler  
Georgia Bar No. 755699  
*bill.loeffler@troutmansanders.com*  
Kelly L. Atkinson  
Georgia Bar No. 431204  
*kelly.atkinson@troutmansanders.com*

TROUTMAN SANDERS LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216  
(404) 885-3000

Counsel for Defendants  
GMAC Mortgage, LLC, JP Morgan  
Chase Bank, and The Bank of  
New York Mellon Trust Company

**Certification of Counsel**

I hereby certify, pursuant to Local Rule 5.1(c), that this document is submitted in Times New Roman 14 point font.

/s/ A. William Loeffler  
A. William Loeffler

**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the within and foregoing using the Court's ECF system, which will effect service on the following:

Frank R. Olson, Esq.  
McCurdy & Candler, L.L.C.  
Building 6, Suite 700  
3525 Piedmont Road NE  
Atlanta, GA 30305

And I served Plaintiff a copy of same via United States mail, with adequate first-class postage affixed thereto, addressed as follows:

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

This 24<sup>th</sup> day of November, 2010.

/s/ A. William Loeffler  
A. William Loeffler

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WEKESA O. MADZIMOYO,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. 1:09-cv-2355-CAP-GGB
GMAC MORTGAGE, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO STRIKE  
PLAINTIFF'S AMENDED COMPLAINT**

Defendants GMAC Mortgage, LLC, JPMorgan Chase Bank, and The Bank of New York Mellon Trust Company, N.A. (collectively, "Defendants") move the Court to strike Plaintiff's Amended Complaint. That pleading was filed without consent of Defendants and without leave of Court, therefore running afoul of Fed. R. Civ. P. 15(a). It is also untimely, unduly prejudicial to Defendants, and futile.

This motion is supported by the pleadings and Defendants' memorandum of law filed contemporaneously herewith.

This the 24<sup>th</sup> day of November, 2010.

/s/ A. William Loeffler

A. William Loeffler

Georgia Bar No. 755699

*bill.loeffler@troutmansanders.com*

Kelly L. Atkinson

Georgia Bar No. 431204

*kelly.atkinson@troutmansanders.com*

TROUTMAN SANDERS LLP

5200 Bank of America Plaza

600 Peachtree Street, N.E.

Atlanta, Georgia 30308-2216

(404) 885-3000

Counsel for Defendants

GMAC Mortgage, LLC, JP Morgan

Chase Bank, and The Bank of

New York Mellon Trust Company

**Certification of Counsel**

I hereby certify, pursuant to Local Rule 5.1(c), that this document is submitted in Times New Roman 14 point font.

/s/ A. William Loeffler

A. William Loeffler

**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the within and foregoing using the Court's ECF system, which will effect service on the following:

Frank R. Olson, Esq.  
McCurdy & Candler, L.L.C.  
Building 6, Suite 700  
3525 Piedmont Road NE  
Atlanta, GA 30305

And I served Plaintiff a copy of same via United States mail, with adequate first-class postage affixed thereto, addressed as follows:

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

This 24<sup>th</sup> day of November, 2010.

/s/ A. William Loeffler  
A. William Loeffler