

CIVIL ACTION COVER SHEET	DOCKET NO. 11-4363 B.L.S.	Trial Court Of Massachusetts Superior Court Department County: SUFFOLK 	
PLAINTIFF(S) COMMONWEALTH OF MASSACHUSETTS		DEFENDANT(S) [SEE APPENDIX A, ATTACHED]	
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Amber Anderson Villa, AAG, John M. Stephan, AAG, Sara Cable, AAG, and Justin J. Lowe, AAG Office of the Attorney General One Ashburton Place Boston, MA 02108 617-727-2000 Board of Bar Overseers number 647566, 649509, 667084		ATTORNEY (if known) <div style="border: 2px solid black; padding: 10px; text-align: center; margin: 10px auto; width: fit-content;"> RECEIVED DEC 01 2011 <small>SUPERIOR COURT CIVIL MICHAEL JOSEPH DONOVAN CLERK, MALDEN</small> </div>	
Origin Code Original Complaint			
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)			
CODE NO. <u>BH2,BG1,BJ1</u>	TYPE OF ACTION (specify) Unfair and deceptive business practices in violation of M. G. L. c. 93A	TRACK * (B)	IS THIS A JURY CASE? () Yes (X) No
The following is a full and detailed statement of the facts on which plaintiff relies to determine eligibility in to The Business Litigation Session.			
In this action, the Commonwealth of Massachusetts seeks restitution, civil penalties and injunctive relief for violations of M. G. L. c. 93A arising out Defendants' unfair and deceptive acts during the height of the foreclosure crisis in Massachusetts. The conduct alleged has affected thousands of homeowners through their residential mortgage loans, and includes, without limitation:			
<ol style="list-style-type: none"> 1. Engaging in unfair and deceptive foreclosure practices by conducting foreclosures when the defendants lacked the right to do so and misrepresenting to homeowners their roles as mortgagees or as the holders of the mortgages; 2. Engaging in false documentation practices to facilitate their foreclosure practices; 3. Deceiving homeowners in the course of servicing mortgage loans by misrepresenting to borrowers regarding its loan modification programs, acting deceptively in implementing loan modifications and deceiving borrowers regarding foreclosure proceedings; and 4. Failing to comply with Massachusetts' registration statute. 			
The Defendants, and their subsidiaries and related entities, are responsible for the vast majority of unlawful foreclosures that occurred in the Commonwealth in the last four years. Given the scope of the conduct alleged, the complex facts involved, voluminous discovery anticipated, and the likely need for substantial case management, the Commonwealth contends that determination of this matter by the BLS is appropriate.			
* A Special Tracking Order shall be created by the Presiding Justice of the Business Litigation Session at the Rule 16 Conference.			
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT.			
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."			
Signature of Attorney of Record <u>Amber Anderson Villa</u>	DATE: <u>December 1, 2011</u>		

APPENDIX A

BANK OF AMERICA, N.A., BAC HOME LOANS SERVICING, LP, BAC GP, LLC,
JPMORGAN CHASE BANK, N.A., CITIBANK N.A., CITIMORTGAGE, INC., GMAC
MORTGAGE, LLC, WELLS FARGO BANK, N.A., MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC., and MERSCORP, INC.,

DEFENDANTS

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

11-4363

Civ. A. No. _____

COMMONWEALTH OF MASSACHUSETTS,

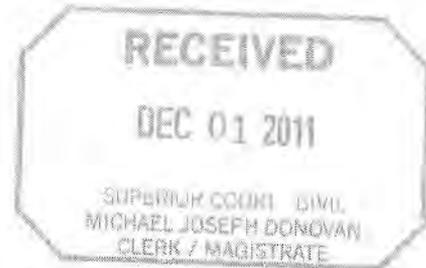
Plaintiff,

v.

BANK OF AMERICA, N.A., BAC HOME
LOANS SERVICING, LP, BAC GP, LLC,
JPMORGAN CHASE BANK, N.A., CITIBANK,
N.A., CITIMORTGAGE, INC., GMAC
MORTGAGE, LLC, WELLS FARGO BANK,
N.A., MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC., and
MERSCORP, INC.,

Defendants.

COMPLAINT



I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Martha Coakley, brings this enforcement action to hold multiple banks accountable for their rampant violations of Massachusetts law and associated unfair and deceptive conduct amidst the foreclosure crisis that has gripped Massachusetts and the nation since 2007. Accordingly, pursuant to the Massachusetts Consumer Protection Act, G. L. c. 93A, § 4, and G. L. c. 12, § 10, the Commonwealth seeks to require Defendants Bank of America, N.A., BAC Home Loans Servicing, LP, BAC GP, LLC, JPMorgan Chase Bank, N.A., Citibank, N.A., Citimortgage, Inc., GMAC Mortgage, LLC, and Wells Fargo Bank, N.A. (collectively the "Bank Defendants"), as well as Defendant Mortgage Electronic Registration System, Inc. and its parent corporation, MERSCORP, Inc. (collectively

“MERS”), to pay civil penalties, restitution and other compensation for the harms caused by their unfair and deceptive business conduct in Massachusetts. The Commonwealth also seeks injunctive relief in order to remedy, address, and prevent additional harm arising out of the defendants’ conduct.

II. JURISDICTION AND VENUE

2. The Attorney General is authorized to bring this action pursuant to G. L. c. 93A, § 4 and G. L. c. 12, § 10. This Court has jurisdiction over the subject matter of this action pursuant to G. L. c. 93A, § 4, G. L. c. 12, § 10, and G. L. c. 223A, § 3.

3. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5 and G. L. c. 93A, § 4.

4. The parties are properly joined in a single lawsuit pursuant to Mass. R. Civ. P. 20 due to the significant number of common issues of fact and law raised by the claims detailed below and because these claims arise out of the same series of transactions or occurrences, namely, foreclosures that failed to comply with Massachusetts law.

III. THE PARTIES

5. The Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest.

6. BAC Home Loans Servicing, LP is a limited partnership organized under the laws of Texas, with a principal place of business in Calabasas, California. From April 2009 through July 6, 2011, it was registered as a foreign limited partnership with the Secretary of the Commonwealth of Massachusetts. Prior to April 2009, BAC Home Loans Servicing, LP did business under the name Countrywide Home Loans Servicing, LP.

7. BAC GP, LLC is a Nevada corporation with a principal place of business in Calabasas, California. From June 2008 through September 29, 2011, it was registered as a foreign corporation with the Secretary of the Commonwealth of Massachusetts. Prior to April 2009, BAC GP, LLC did business as Countrywide GP, Inc. and Countrywide GP, LLC.

8. As subsidiaries of Bank of America, N.A., BAC Home Loans Servicing, LP and BAC GP, LLC were responsible, in whole or in part, for Bank of America, N.A.'s residential real estate loan servicing obligations, including servicing residential real estate loans in Massachusetts.

9. Bank of America, N.A. (together with BAC Home Loans Servicing, LP and BAC GP, LLC, "Bank of America") is a national bank with a principal place of business in Charlotte, North Carolina. Bank of America, N.A. controlled and directed the operations of its subsidiaries BAC Home Loans Servicing, LP and BAC GP, LLC. At various points, Bank of America N.A. either directly and/or indirectly through its agents, employees, subsidiaries and/or related companies, including without limitation BAC Home Loans Servicing, LP and BAC GP, LLC, held, serviced and/or engaged in transactions related to, mortgages of real property within the Commonwealth.

10. JPMorgan Chase Bank, N.A. ("Chase") is a national bank with a principal place of business in Columbus, Ohio. As described below, Chase, either directly and/or indirectly through its agents, employees, subsidiaries and/or related companies, including without limitation Chase Home Finance LLC, held, serviced and/or engaged in transactions related to, mortgages of real property within the Commonwealth.

11. Citibank, N.A. is a national bank with a principal place of business in Sioux Falls, South Dakota.

12. CitiMortgage, Inc. (together with Citibank, N.A., "Citi") is a Delaware corporation with its principal place of business in St. Louis, Missouri. As described below, Citi either directly and/or indirectly through its agents, employees, subsidiaries and/or related companies held, serviced and/or engaged in transactions related to, mortgages of real property within the Commonwealth.

13. Defendant GMAC Mortgage, LLC ("GMAC") is a limited liability company that has originated and serviced residential home mortgage loans in the Commonwealth. As described below, GMAC either directly and/or indirectly through its agents, employees, subsidiaries and/or related companies serviced and/or engaged in transactions related to, mortgages of real property within the Commonwealth.

14. Wells Fargo Bank, N.A. ("Wells Fargo") is a national bank with a principal place of business in Sioux Falls, South Dakota. As described below, Wells Fargo either directly and/or indirectly through its agents, employees, subsidiaries and/or related companies, including without limitation Wells Fargo Home Mortgage, Inc., held, serviced and/or engaged in transactions related to, mortgages of real property within the Commonwealth.

15. Defendant MERSCORP, Inc. is a Delaware corporation with its principal place of business in Vienna, Virginia. MERSCORP owns and operates the MERS System, which is a national registry that tracks ownership and servicing rights in residential mortgage loans, including residential mortgage loans secured by property in the Commonwealth.

16. Defendant Mortgage Electronic Registration System, Inc. (together with MERSCORP, Inc., “MERS”) is a Delaware corporation with a principal place of business in Reston, Virginia. It is a wholly-owned subsidiary of MERSCORP, Inc. and has done and is doing business in the Commonwealth.

IV. STATEMENT OF FACTS

A. **THE BANK DEFENDANTS ENGAGED IN UNFAIR OR DECEPTIVE FORECLOSURE PRACTICES.**

1. **A Party Seeking to Foreclose In Massachusetts Must Strictly Adhere With Each Aspect of the Statutory Scheme.**

17. Under Massachusetts law, the holder of a mortgage may foreclose the mortgagee’s right of redemption by exercising the statutory power of sale, if that power is granted by the mortgage.

18. Where the mortgage grants the mortgage holder the power of sale, it includes by reference the power of sale set forth at G. L. c. 183, § 21, as regulated by G. L. c. 244, §§ 11-17C, and 35A.

19. Under G. L. c. 183, § 21, after a mortgagor defaults in the performance of the underlying obligation secured by the mortgage, the mortgage holder may sell the property at a public auction and convey the property to the purchaser in fee simple. “[S]uch sale shall forever bar the mortgagor and all persons claim under him from all right and interest in the mortgaged premises, whether at law or in equity.” Id.

20. Because this statutory scheme allows the mortgage holder to exercise this extraordinary power without first obtaining judicial authorization, Massachusetts courts have consistently required that “one who sells under a power [of sale] must follow strictly its terms . . . [and i]f he fails to do so there is no valid execution of the power, and the sale is wholly void.” Moore v. Dick, 187 Mass. 207, 211 (1905). See Roche v.

Farnsworth, 106 Mass. 509, 513 (1871) (power of sale contained in mortgage “must be executed in strict compliance with its terms”). The Supreme Judicial Court recently reaffirmed this requirement in Bevilacqua v. Rodriguez:

Our recent decision in the case of U.S. Bank Nat’l Ass’n v. Ibanez, 458 Mass. 637, 647 (2011), however, concluded that “[a]ny effort to foreclose by a party lacking ‘jurisdiction and authority’ to carry out a foreclosure under [the relevant] statutes is void.”

460 Mass. 762, 778 (2011).

21. Accordingly, a party seeking to foreclose by exercising the statutory power of sale must strictly comply with each aspect of the statutory scheme. In Massachusetts, that statutory scheme requires the party to:

a. Provide notice to the mortgagor of the right to cure a default prior to accelerating the entire unpaid balance of the mortgage or otherwise enforcing the mortgage, including by exercising the power of sale. G. L. c. 244, § 35A. In accord with revisions to the statute in 2010, the mortgagee must provide such notice at least 150 days prior to accelerating the debt or otherwise enforcing the mortgage. Id. Between 2007 and 2010, the mortgagee was required to provide the statutory notice at least ninety days before taking further action to enforce the mortgage. See id.

b. File a complaint to foreclose the mortgage in the Land Court that seeks a judgment that the mortgagor is not entitled to the benefits of the Servicemembers Civil Relief Act, a federal statute that restricts foreclosures if the mortgagor is a member of the military presently on active duty. 50 U.S.C.A. §§ 521(b)(1) and 533(c).

c. File an affidavit with the Land Court, certifying compliance with the notice requirements specified in G. L. c. 244, § 35A. In that affidavit, the filing party

must attest either that it is the mortgagee or that it is authorized to act as the mortgagee.

Id.

d. Provide notice to the mortgagor at least fourteen days prior to the proposed date of sale stating, inter alia, the redemption amount as of thirty days prior to the date of sale and identifying the present holder of the mortgage. G. L. c. 244, § 14.

e. Cause notices of the sale to be published for three successive weeks in a newspaper with general circulation in the town where the mortgaged land lies. G. L. c. 244, § 14.

f. Provide notice to the mortgagor of the mortgagee's intent to collect a deficiency (if the mortgagee so intends) at least twenty-one days prior to the date of the sale. G. L. c. 244, § 17B. In addition, the party providing such notice must sign and file with the appropriate registry of deeds an affidavit attesting to its compliance with this portion of the foreclosure statute within thirty days following the foreclosure sale. See id.

g. Record an affidavit in the appropriate registry of deeds that "fully and particularly" states the acts taken in the course of conducting the foreclosure of the mortgage by sale and to which is attached copies of the notice of sale as published pursuant to Chapter 244, Section 14. G. L. 244, § 15.

22. By failing to strictly adhere to these statutory requirements in conducting foreclosures, the Bank Defendants violated those statutes and the Massachusetts Consumer Protection Act.

23. Massachusetts law further explicitly limits who is entitled to foreclose. The statutory power of sale explicitly identifies the parties who can exercise the power. The power can only be exercised by "the mortgagee or his executors, administrators,

successors or assigns.” G. L. c. 183, § 21. In addition, G. L. 244, § 14 authorizes only “[t]he mortgagee or person having his estate in the land mortgaged, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the legal guardian or conservator of such mortgagee or a person acting in the name of such mortgagee or person” to exercise the statutory power of sale. Accordingly, as the Supreme Judicial Court recently has held, “only a present holder of the mortgage is authorized to foreclose on the mortgaged property.” U.S. Bank, N.A. v. Ibanez, 458 Mass. 637, 648 (2011).

24. In addition, G. L. c. 244, § 14 provides that “no sale under [the statutory power of sale] shall be effectual to foreclose a mortgage, unless” advance notice of the foreclosure sale has been provided to the mortgagor, to other interested parties, and by publication. That notice must specifically identify the present holder of the mortgage at the time the notice is issued and the failure to do so voids any subsequent sale. G. L. c. 244, § 14; U.S. Bank, N.A. v. Ibanez, 458 Mass. 637, 648 (2011).

25. The Supreme Judicial Court has recently reaffirmed each of these requirements in U.S. Bank, N.A. v. Ibanez, 458 Mass. 637 (2011); see also Bevilacqua v. Rodriguez, 460 Mass. 762, 772 (2011) (“One of the terms of the power of sale that must be strictly adhered to is the restriction on who is entitled to foreclose.”) (quoting Ibanez, 458 Mass. at 647). Ibanez upheld decisions issued by the Land Court invalidating two foreclosures where, in each case, the foreclosing entity, while purporting to be the holder of the mortgage, had in fact failed to obtain a valid, written assignment of the mortgage prior to commencing foreclosure proceedings.

2. The Bank Defendants Conducted Foreclosures When They Lacked the Legal Right to do so and Misrepresented to Homeowners Their Roles as Mortgagees or as the Holders of the Mortgages.

26. As set forth in the illustrative examples below, the Bank Defendants repeatedly failed to strictly adhere to Massachusetts statutory requirements in conducting foreclosures, and knowingly foreclosed on mortgages secured by property within the Commonwealth even though they were neither the mortgagee, nor the holder of the mortgage, at the time they initiated foreclosure proceedings.

27. Furthermore, and as set forth in the illustrative examples below, the Bank Defendants falsely identified themselves as the present holder of certain mortgages throughout the foreclosure process, including in notices sent to the mortgagor, in court filings – including affidavits signed under the pains and penalties of perjury – and/or in published notices required under G. L. c. 244, § 1, et seq., G. L. c. 183, § 21, and 50 U.S.C.A. §§ 521(b)(1) and 533(c).

28. Accordingly, each foreclosure initiated or advanced by a Bank Defendant when it was not the current holder of the mortgage was unlawful and is void.

29. Such foreclosures are likewise void where a Bank Defendant falsely identified itself as the present holder of the mortgage in notices to the mortgagor, court filings, or in published notices required under G. L. c. 244, § 1, et seq., G. L. c. 183, § 21, and 50 U.S.C.A. §§ 521(b)(1) and 533(c).

30. The Bank Defendants' failures to secure a valid, written assignment of the mortgage prior to initiating a foreclosure violates G. L. c. 244, § 1, et seq., G. L. c. 183, § 21, and is unfair and deceptive in violation of G. L. c. 93A, § 2. The Bank Defendants'

conduct has adversely affected the title to hundreds, if not thousands, of properties in the Commonwealth.

Illustrative Examples

CHASE

8 Jericho Road, Hancock, Massachusetts

31. On June 15, 2007, a Hancock, Massachusetts resident (“Hancock Borrower”) borrowed \$442,000 from JPMorgan Chase Bank, N.A.¹ The loan was secured by a mortgage granted in favor of JPMorgan Chase Bank, N.A. on property located at 8 Jericho Road, Hancock, Massachusetts (the “Hancock Mortgage”).

32. On October 6, 2008, Chase Home Finance LLC (“Chase Home Finance”) filed a complaint to foreclose on the Hancock Mortgage (“Hancock Foreclosure Complaint”). The Hancock Foreclosure Complaint states that Chase “is the assignee and holder of a mortgage with the statutory power of sale given by [Hancock Borrower].”

33. On February 6, 2009, Chase Home Finance obtained an order of notice related to the Hancock Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Hancock Order”). In the Hancock Order, Chase Home Finance is named as the “holder of a Mortgage covering real property in Hancock, numbered 8 Jericho Road.”

34. As of October 6, 2008, when Chase Home Finance filed the Hancock Foreclosure Complaint, and as of February 6, 2009, when Chase Home Finance obtained the Hancock Order, it was not the holder of the Hancock Mortgage. It was not until

¹ All of the documents from which the Commonwealth’s allegations in these Illustrative Examples are drawn are available in the public record, including the identity of each mortgagor. Nonetheless, the Commonwealth refers to each mortgagor anonymously in order to avoid unnecessary disclosure of personal information.

March 15, 2009 that Chase Home Finance received an assignment of the Hancock Mortgage from JPMorgan Chase Bank, N.A., making Chase Home Finance the holder of the mortgage.

35. On December 16, 2009, Chase Home Finance sold the property at auction.

59 Rangeley Avenue, Brockton, Massachusetts

36. On November 4, 2003, two Brockton, Massachusetts residents (“Brockton Borrowers”) borrowed \$236,600 from Flagstar Bank, FSB. The loan was secured by a mortgage granted in favor of MERS on property located at 59 Rangeley Avenue, Brockton, Massachusetts (the “Brockton Mortgage”).

37. On September 5, 2008, Chase Home Finance LLC filed a complaint to foreclose on the Brockton Mortgage (“Brockton Foreclosure Complaint”). The Brockton Foreclosure Complaint states that Chase “is the assignee and holder of a mortgage with the statutory power of sale given by [the Brockton Borrowers].”

38. On November 6, 2008, Chase Home Finance obtained an order of notice related to the Brockton Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 et seq. (“Brockton Order”). In the Brockton Order, Chase Home Finance is named as the “holder of a Mortgage covering real property in Brockton, numbered 59 Rangeley Avenue.”

39. As of September 5, 2008, when Chase Home Finance filed the Brockton Foreclosure Complaint, and as of November 6, 2008, when it obtained the Brockton Order, Chase Home Finance was not the holder of the Brockton Mortgage. It was not until November 18, 2008 that Chase Home Finance received an assignment of the Brockton Mortgage from MERS, making it the holder of the mortgage.

40. On April 9, 2010, Chase Home Finance sold the property at auction.

38 Mascot Street, Unit 3, Boston, Massachusetts

41. On April 26, 2007, a Boston, Massachusetts resident (“Mascot Street Borrower”) borrowed \$272,000 from JPMorgan Chase Bank, N.A. The loan was secured by a mortgage granted in favor of JPMorgan Chase Bank, N.A. on property located at 38 Mascot Street, Unit 3, Boston Massachusetts (the “Mascot Street Mortgage”).

42. At some point before January 30, 2008, Chase Home Finance LLC (“Chase Home Finance”) filed a complaint to foreclose on the Mascot Street Mortgage (“Mascot Street Foreclosure Complaint”). The Mascot Street Foreclosure Complaint states that Chase Home Finance “is the assignee and holder of a mortgage with the statutory power of sale given by [the Mascot Street Borrower].”

43. On January 30, 2008, Chase Home Finance obtained an order of notice related to the Mascot Street Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Mascot Street Order”). In the Mascot Street Order, Chase Home Finance is named as the “holder of a Mortgage covering real property in Boston, numbered 38 Mascot Street, Unit No. 3, 38 Mascot Street Condominium.”

44. On March 4, 2008, March 11, 2008, and March 18, 2008, Chase Home Finance caused Notices of Mortgagee’s Sale of Real Estate to be published in the Boston Herald, representing that Chase Home Finance was “the present holder” of the Mascot Street Mortgage, and noticing a date of March 26, 2008 as the date for a sale of the subject property at public auction.

45. On March 26, 2008, Chase Home Finance sold the property at auction.

46. On July 25, 2008, Chase Home Finance caused to be recorded a notarized Certificate of Entry (the “Mascot Street Certificate of Entry”). The Mascot Street

Certificate of Entry states that, on March 26, 2008, “Paul Mulkerron, attorney-in-fact and agent of Chase Home Finance LLC . . . the current holder of a certain mortgage given by [the Mascot Street Borrower]” made an entry onto the property located at 38 Mascot Street, Unit 3, Boston Massachusetts “for the purpose, by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

47. Chase Home Finance was not the holder of the Mascot Street Mortgage when it filed the Mascot Street Foreclosure Complaint (prior to January 30, 2008), when it obtained the Mascot Street Order (on January 30, 2008), when it caused notices of sale of the subject property to be published (on March 4th, 11th, and 18th of 2008), when it subsequently sold the property at auction (on March 26, 2008) or when it made entry into the subject property (on March 26, 2008) supposedly pursuant to rights flowing from the Mascot Street mortgage. In fact, it was not until July 2, 2008, at least six months after filing the Mascot Street Foreclosure Complaint and more than three months after the property was sold at auction, that Chase Home Finance received an assignment of the Mascot Street Mortgage from JPMorgan Chase Bank, N.A., making Chase Home Finance the holder of the mortgage.

CITI

22 Deluca Road, Milford, Massachusetts

48. On May 3, 2006, Milford, Massachusetts resident (“Milford Borrower”) borrowed \$253,600 from Sallie Mae Home Loans, Inc. (“Sallie Mae”). The loan was secured by a mortgage granted in favor of MERS on property located at 22 Deluca Road, Milford, Massachusetts (the “Milford Mortgage”).

49. Prior to January 24, 2008, Citibank, N.A., as Trustee (“Citibank, N.A.”) filed a complaint to foreclose on the Milford Mortgage (“Milford Foreclosure

Complaint”). The Complaint states that Citibank, N.A. “is the owner (or assignee) and holder of a mortgage with statutory power of sale given by [the Milford Borrower].”

50. On January 24, 2008, Citibank, N.A. obtained an order of notice related to the Milford Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Milford Order”). In the Milford Order, Citibank, N.A. is named as the “holder of mortgage covering real property in Milford, numbered 22 Deluca Road.”

51. On March 25, 2008, Citibank, N.A. caused the subject property to be sold at auction.

52. On July 18, 2008, Citibank, N.A. caused to be recorded a notarized Certificate of Entry (“Milford Certificate of Entry”). The Milford Certificate of Entry states that, on April 23, 2008, “John O’Hara, the attorney-in-fact and agent for Citibank, N.A. . . . the current holder of a certain mortgage given by [the Milford Borrower]” made an entry on the property located at 22 Deluca Road, Milford, Massachusetts “for the purpose by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

53. Citibank, N.A. was not the holder of the Milford Mortgage on January 24, 2008, March 25, 2008, or April 23, 2008. It was not until May 21, 2008, more than four months after it filed the Milford Foreclosure Complaint, that Citibank, N.A. received an assignment of the Milford Mortgage making it the holder of the mortgage. Thus, Citibank, N.A. initiated foreclosure proceedings, made an entry into the subject property supposedly pursuant to rights flowing from the Milford Mortgage, and even sold the subject property at auction, before it legally held the Milford Mortgage.

**65 East India Row, Unit 31G of Harbor Towers II Condominium
Boston, Massachusetts**

54. On June 14, 2004, a Boston, Massachusetts resident (“Harbor Towers Borrower”) borrowed \$510,000 from Washington Mutual Bank (“WAMU”). The loan was secured by a mortgage granted in favor of WAMU on property located at 65 East India Row, Unit 31G of Harbor Towers II Condominium, Boston, Massachusetts (the “Harbor Towers Mortgage”). On December 8, 2006, WAMU assigned the Harbor Towers Mortgage to EMC Mortgage Corporation (“EMC”).

55. On February 27, 2008, Citibank, N.A., as Trustee for certificate holders of Bear Stearns Asset Backed Securities Trust 2007-SD2, Asset Backed Certificates Series 2007-SD2 (“Citibank, N.A.”) filed a complaint to foreclose on the Harbor Towers Mortgage (“Harbor Towers Foreclosure Complaint”). The Harbor Towers Mortgage Complaint states that Citibank, N.A. “is the owner (or assignee) and holder of a mortgage with statutory power of sale given by [the Harbor Towers Borrower].”

56. On June 11, 2008, Citibank, N.A. obtained an order of notice related to the Harbor Towers Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Harbor Towers Order”). In the Harbor Towers Order, Citibank, N.A. is named as the “holder of Mortgage covering real property in Boston, numbered 65 East India Row, Unit 31G of the Harbor Towers II Condominium.”

57. On August 20, 2008, Citibank, N.A. caused the subject property to be sold at auction.

58. On November 18, 2008, Citibank, N.A. caused to be recorded a notarized Certificate of Entry (“Harbor Towers Certificate of Entry”). The Harbor Towers Certificate of Entry states that, on August 20, 2008, “John O’Hara, attorney-in-fact and

agent for [Citibank, N.A.] . . . the current holder of a certain mortgage given by [the Harbor Towers Borrower]” made an entry on the property located at 65 East India Row, Unit 31G of the Harbor Towers II Condominium in Boston, Massachusetts “for the purpose by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

59. Citibank, N.A. was not the holder of the Harbor Towers Mortgage on February 27, 2008, June 11, 2008, or August 20, 2008. It was not until November 17, 2008, more than nine months after it filed the Harbor Towers Foreclosure Complaint, that Citibank, N.A. received an assignment of the Harbor Towers Mortgage from EMC making it the holder of the mortgage. Thus, Citibank, N.A. initiated foreclosure proceedings, made an entry into the subject property supposedly pursuant to rights flowing from the Harbor Towers Mortgage, and even sold the subject property at auction, before it legally held the Harbor Towers Mortgage.

60. To confuse matters further, on November 14, 2008, just three days prior to the November 17, 2008 assignment from EMC to Citibank, N.A., WAMU executed an Assignment of Mortgage purporting to assign the Harbor Towers Mortgage to Citibank, N.A.

35-37 School Street, Northbridge, Massachusetts

61. On March 20, 2006, a Northbridge, Massachusetts resident (“Northbridge Borrower”) borrowed \$157,500 from Fairfield Financial Mortgage Group, Inc. (“Fairfield”). The loan was secured by a mortgage granted in favor of MERS on property located at 35-37 School Street, Northbridge, Massachusetts (the “Northbridge Mortgage”).

62. On November 8, 2007, Citibank, N.A., as Trustee (“Citibank, N.A.”) filed a complaint to foreclose on the Northbridge Mortgage (“Northbridge Foreclosure Complaint”). The Complaint states that Citibank, N.A. “is the owner (or assignee) and holder of a mortgage with statutory power of sale given by [the Northbridge Borrower].”

63. On February 5, 2008, Citibank, N.A. obtained an order of notice related to the Northbridge Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 et seq. (“Northbridge Order”). In the Northbridge Order, Citibank, N.A. is named as the “holder of Mortgage covering real property in Northbridge, numbered 35-37 School Street.”

64. On April 14, 2008, Citibank, N.A. caused the subject property to be sold at auction.

65. On September 17, 2008, Citibank, N.A. caused to be recorded a notarized Certificate of Entry (“Northbridge Certificate of Entry”). The Northbridge Certificate of Entry states that, on April 14, 2008, “John O’Hara, attorney-in-fact and agent for Citibank, NA . . . the current holder of a certain mortgage given by [the Northbridge Borrower]” made an entry on the property located at 35-37 School Street, Northbridge, Massachusetts “for the purpose by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

66. Citibank, N.A. was not the holder of the Northbridge Mortgage on November 8, 2007, February 5, 2008, or April 14, 2008. It was not until September 4, 2008, more than ten months after it filed the Northbridge Foreclosure Complaint, that Citibank, N.A. received an assignment of the Northbridge Mortgage making it the holder of the mortgage. Thus, Citibank, N.A. initiated foreclosure proceedings, made an entry

into the subject property supposedly pursuant to rights flowing from the Northbridge Mortgage, and even sold the subject property at auction, before it legally held the Northbridge Mortgage.

GMAC

14 Standish Street, Unit 3 Boston, Massachusetts

67. On October 30, 2006, a Dorchester, Massachusetts resident (“Standish Street Borrower”) borrowed \$260,000 from American Mortgage Network, Inc., d/b/a American Mortgage Network of MA. The loan was secured by a mortgage granted in favor of MERS on a property located at 14 Standish Street, Unit 3, Dorchester (Boston), Massachusetts (the “Standish Street Mortgage”).

68. At some point prior to January 31, 2008, GMAC filed a complaint to foreclose on the Standish Street Mortgage (“Standish Street Foreclosure Complaint”). The Standish Street Foreclosure Complaint states that GMAC “is the assignee and holder of a mortgage with the statutory power of sale given by [the Standish Street Borrower].”

69. On January 31, 2008, GMAC obtained an order of notice related to the Standish Street Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Standish Street Order”). In the Standish Street Order, GMAC is named as the “holder of a Mortgage covering real property in Dorchester, numbered 14 Standish Street Unit 3, Standish Street Condominium.”

70. On March 13, 2008, March 20, 2008, and March 27, 2008, GMAC caused Notices of Mortgagee’s Sale of Real Estate to be published in the Boston Herald, representing that GMAC was “the present holder” of the Standish Street Mortgage, and noticing a date of April 4, 2008 as the date for a sale of the subject property at public auction.

71. On April 4, 2008, GMAC sold the property at auction.

72. On April 15, 2008, GMAC caused to be recorded a notarized Certificate of Entry (the “Standish Street Certificate of Entry”). The Standish Street Certificate of Entry states that, on April 4, 2008, “Joshua Montout, attorney-in-fact and agent of [GMAC] . . . the current holder of a certain mortgage given by [the Standish Street Borrower]” made an entry onto the property located at 14 Standish Street, Unit 3, Boston, Massachusetts “for the purpose, by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

73. GMAC was not the holder of the Standish Street Mortgage when it filed the Standish Street Foreclosure Complaint (prior to January 31, 2008), when it obtained the Standish Street Order (on January 31, 2008), when it caused notices of sale of the subject property to be published (on March 13, 2008, March 20, 2008, and March 27, 2008), when it subsequently sold the property at auction (on April 4, 2008), or when it made entry into the subject property (on April 4, 2008) supposedly pursuant to rights flowing from the Standish Street Mortgage. In fact, it was not until April 9, 2008, months after it filed the Standish Street Foreclosure Complaint, that GMAC received an assignment of the Standish Street Mortgage from MERS, making GMAC the purported holder of the mortgage.

4 Sumner Square, Boston, Massachusetts

74. On December 16, 2004, two Boston residents (“Sumner Square Borrowers”) borrowed \$364,000 from 1-800 East-West Mortgage Company, Inc. The loan was secured by a mortgage granted in favor of MERS on a property located at 4 Sumner Square, Dorchester (Boston), Massachusetts (the “Sumner Square Mortgage”).

75. At some point prior to January 15, 2008, GMAC filed a complaint to foreclose on the Sumner Square Mortgage (“Sumner Square Foreclosure Complaint”). The Sumner Square Foreclosure Complaint states that GMAC “is the assignee and holder of a mortgage with the statutory power of sale given by [the Sumner Square Borrowers].”

76. On January 15, 2008, GMAC obtained an order of notice related to the Sumner Square Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Sumner Square Street Order”). In the Sumner Square Order, GMAC is named as the “holder of a Mortgage covering real property in Dorchester (Boston), numbered 4 Sumner Square.”

77. On November 21, 2007, November 28, 2007, and December 5, 2007, GMAC caused Notices of Mortgagee’s Sale of Real Estate to be published in the Boston Herald, representing that GMAC was “the present holder” of the Sumner Square Mortgage, and noticing a date of December 13, 2007 as the date for a sale of the subject property at public auction.

78. On February 6, 2008, GMAC sold the property at auction.

79. On May 16, 2008, GMAC caused to be recorded a notarized Certificate of Entry (the “Sumner Square Certificate of Entry”). The Sumner Square Certificate of Entry states that, on March 12, 2008, “Jeffrey [illegible], attorney-in-fact and agent of [GMAC] . . . the current holder of a certain mortgage given by [the Sumner Square Borrowers]” made an entry onto the property located at 4 Sumner Square, Boston, Massachusetts “for the purpose, by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

80. GMAC was not the holder of the Sumner Square Mortgage when it filed the Sumner Square Foreclosure Complaint (prior to January 15, 2008), when it obtained the Sumner Square Order (on January 15, 2008), when it caused notices of sale of the subject property to be published (on November 21, 2007, November 28, 2007, and December 5, 2007), when it subsequently sold the property at auction (on February 6, 2008), or when it made entry into the subject property (on March 12, 2008) supposedly pursuant to rights flowing from the Sumner Square Mortgage. In fact, it was not until March 31, 2008, months after it filed the Sumner Square Foreclosure Complaint, that GMAC received an assignment of the Sumner Square Mortgage from MERS, making GMAC the purported holder of the mortgage.

7 South Hillside Street, Stoneham, Massachusetts

81. On May 5, 2003, a Stoneham, Massachusetts resident (“Stoneham Borrower”) borrowed \$225,000 from Cornerstone Mortgage Corporation, Inc. (“Cornerstone”). The loan was secured by a mortgage granted in favor of Cornerstone on property located at 7 South Hillside Street, Stoneham, Massachusetts (the “Stoneham Mortgage”).

82. That same day, Cornerstone assigned the Stoneham Mortgage to MERS.

83. On August 6, 2009, GMAC filed a complaint to foreclose upon the mortgage (“Stoneham Foreclosure Complaint”). The Stoneham Foreclosure Complaint states that GMAC “is the . . . assignee[] and holder of a mortgage with the statutory power of sale given by” the Stoneham Borrower and her husband.

84. When GMAC filed the Stoneham Foreclosure Complaint on August 6, 2009, it was not the holder of the Stoneham Mortgage. It was not until over a month

later, on September 22, 2009, that GMAC received an assignment of the Stoneham Mortgage from MERS, making GMAC the purported holder of the mortgage.

85. Notably, GMAC filed the Stoneham Foreclosure Complaint after the Land Court (Long, J.) issued its initial ruling in U.S. Bank, N.A. v. Ibanez, Nos. 384283 (KCL), 386018 (KCL), 386755 (KCL), 2009 WL 795201 (March 26, 2009).

86. On January 14, 2010, GMAC sold the property at auction.

50 Depot Street, Douglas, Massachusetts

87. On August 6, 2003, two Douglas, Massachusetts residents (“Douglas Borrowers”) borrowed \$153,000 from Sherwood Mortgage Group, Inc. (“Sherwood”). The loan was secured by a mortgage granted in favor of Sherwood on property located at 50 Depot Street, Douglas, Massachusetts (the “Douglas Mortgage”).

88. That same day, Sherwood assigned the Douglas Mortgage to MERS.

89. On September 4, 2009, GMAC filed a complaint to foreclose upon the Douglas Mortgage (“Douglas Foreclosure Complaint”). The Douglas Foreclosure Complaint states that GMAC “is the . . . assignee[] and holder of a mortgage with the statutory power of sale given by [the Douglas Borrowers].”

90. When GMAC filed the Douglas Foreclosure Complaint on September 4, 2009, it was not the holder of the Douglas Mortgage. It was not until nearly a month later, on October 2, 2009, that GMAC received an assignment of the Douglas Mortgage from MERS, making GMAC the purported holder of the mortgage.

91. Just as with the example above, GMAC filed the complaint to foreclose upon the mortgage in this instance after the Land Court (Long, J.) issued its initial ruling in U.S. Bank, N.A. v. Ibanez, Nos. 384283 (KCL), 386018 (KCL), 386755 (KCL), 2009 WL 795201 (March 26, 2009).

92. On February 5, 2010, GMAC sold the property at auction.

BANK OF AMERICA

62 Fairfield Street, Revere, Massachusetts

93. On November 24, 2004, two Revere, Massachusetts residents (“Revere Borrowers”) borrowed \$380,000 from BNC Mortgage, Inc. (“BNC”). The loan was secured by a mortgage granted in favor of MERS on property located at 62 Fairfield Street, Revere, Massachusetts (the “Revere Mortgage”). On January 5, 2009, the Revere Mortgage was assigned by MERS to LaSalle Bank National Association, as Trustee to Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2005-2 (“LaSalle Bank”). Bank of America is the successor-in-interest to LaSalle Bank, having acquired LaSalle Bank in October 2007.

94. On September 22, 2008, LaSalle Bank filed a complaint to foreclose on the Revere Mortgage (“Revere Foreclosure Complaint”). The Complaint states that LaSalle Bank “is the assignee and holder of a mortgage with statutory power of sale given by [the Revere Borrowers].”

95. On December 16, 2008, LaSalle Bank obtained an order of notice related to the Revere Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Revere Order”). In the Revere Order, LaSalle Bank is named as the “holder of a Mortgage covering real property in Revere, numbered 62 Fairfield Street.”

96. On September 22, 2008 and December 16, 2008, when LaSalle Bank filed the Revere Foreclosure Complaint and obtained the Revere Order, LaSalle Bank was not the holder of the Revere Mortgage. It was not until January 5, 2009 that LaSalle Bank received an assignment of the Revere Mortgage making it the holder of the mortgage.

97. On February 11, 2009, LaSalle Bank sold the property at auction.

272-274 Main Street, Oxford, Massachusetts

98. On May 19, 2005, two Oxford, Massachusetts residents (“Oxford Borrowers”) borrowed \$239,400 from Town and Country Credit Corp. (“Town and Country”). The loan was secured by a mortgage granted in favor of Town and Country on property located at 272-274 Main Street, Oxford, Massachusetts (the “Oxford Mortgage”). On May 27, 2005, Town and Country assigned the Oxford Mortgage to Ameriquest Mortgage Company (“Ameriquest”), and on that same day, Ameriquest assigned the Oxford Mortgage to MERS.

99. On February 26, 2009, Bank of America filed a complaint to foreclose on the Oxford Mortgage (“Oxford Foreclosure Complaint”). The Complaint states that Bank of America “is the assignee and holder of a mortgage with statutory power of sale given by [the Oxford Borrowers].”

100. On July 14, 2009, Bank of America obtained an order of notice related to the Oxford Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (“Oxford Order”). In the Oxford Foreclosure Complaint, Bank of America is named as the “holder of Mortgage covering real property in Oxford, numbered 272-274 Main Street.”

101. On February 26, 2009 and July 14, 2009, when Bank of America filed the Oxford Foreclosure Complaint and obtained the Oxford Order, Bank of America was not the holder of the Oxford Mortgage. It was not until September 15, 2009, nearly seven months later, that Bank of America received an assignment of the Oxford Mortgage making it the holder of the mortgage.

102. On October 27, 2009, Bank of America sold the property at auction.

WELLS FARGO

234 Podunk Road, Sturbridge, Massachusetts

103. On May 9, 2003, a Sturbridge, Massachusetts borrower (“Sturbridge Borrower”) borrowed \$142,861 from “American Mortgage Network, Inc., dba American Mortgage Network of MA, a DE Corp.” (“American Mortgage”). The loan was secured by a mortgage granted in favor of MERS on property located at 234 Podunk Road, Sturbridge, Massachusetts (the “Sturbridge Mortgage”).

104. Prior to March 10, 2008, Wells Fargo filed a complaint to foreclose on the Sturbridge Mortgage (“Sturbridge Foreclosure Complaint”).

105. On March 10, 2008, Wells Fargo obtained an order of notice related to the Sturbridge Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 et seq. (“Sturbridge Order”). In the Sturbridge Order, Wells Fargo is named as the “holder of a Mortgage covering real property in Sturbridge numbered 234 Podunk Road.”

106. On May 5, 2008, Wells Fargo caused the subject property to be sold at auction.

107. Wells Fargo was not the holder of the Sturbridge Mortgage on March 10, 2008. It was not until April 18, 2008 that Wells Fargo received an assignment of the Sturbridge Mortgage making it the holder of the mortgage.

12 Bennett Circle, Lynn, Massachusetts

108. On July 21, 2003, two Lynn, Massachusetts residents, (“Lynn Borrowers”) borrowed \$359,900 from North Shore Mortgage (“North Shore”). The loan was secured by a mortgage granted in favor of North Shore on a property located at 12 Bennett [sic] Circle, Lynn, Massachusetts (the “Lynn Mortgage”).

109. On June 23, 2004, an entity named MIT Lending, claiming to be the holder of the Lynn Mortgage, assigned the mortgage to MERS.

110. On October 28, 2008, Wells Fargo filed a complaint to foreclose on the Lynn Mortgage (“Lynn Foreclosure Complaint”). The Lynn Foreclosure Complaint states that Wells Fargo “is the assignee and holder of a mortgage with the statutory power of sale given by [the Lynn Borrowers].”

111. On May 8, 2009, Wells Fargo obtained an order of notice related to the Lynn Foreclosure Complaint pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 et seq. (“Lynn Order”). In the Lynn Order, Wells Fargo is named as the “holder of a Mortgage covering real property in Lynn, numbered 12 Bennett Circle.”

112. When Wells Fargo filed the Lynn Foreclosure Complaint on October 28, 2008, as well as when it obtained the Lynn Order on May 8, 2009, Wells Fargo was not the holder of the Lynn Mortgage. It was not until June 3, 2009, months after it filed the Lynn Foreclosure Complaint, that Wells Fargo received an assignment of the Lynn Mortgage from MERS.

113. On December 13, 2010, Wells Fargo Bank sold the property at auction.

114. The examples alleged at paragraphs 30 through 113 are for illustrative purposes only. Bank of America, Chase, Citi, GMAC, and Wells Fargo engaged in similar conduct – commencing foreclosures prior to holding the mortgage – with respect to numerous mortgage loans across the Commonwealth. Discovery in this action will identify the precise number of unlawful foreclosures by each of the Bank Defendants.

3. The Bank Defendants Engaged in False Documentation Practices To Facilitate Its Foreclosure Practices.

115. As described above, prior to foreclosure, Massachusetts law requires that an entity wishing to foreclose file an affidavit demonstrating compliance with G. L. c. 244, § 35A, and its requirements that borrowers be provided with certain information prior to commencement of foreclosure proceedings.

116. In addition, following foreclosure, a foreclosing entity is required to record at the appropriate registry of deeds an affidavit “fully and particularly stating his acts, or the acts of his principal or ward” taken with regard to the foreclosure, including compliance with the notice requirements of the statutory power of sale. G. L. c. 244, § 15.

117. Affidavits under Massachusetts law require the affiant to attest under the pains and penalties of perjury as to the facts contained in his or her affidavit.

118. In addition, as relevant here, most affidavits filed or recorded on behalf of the foreclosing entity were notarized, attesting the affidavits were signed in the presence of the notary by the person named as the affiant.

119. In or around October 2010, evidence of the Bank Defendants’ failure to comply with the strict requirements of the affidavit and notary procedures became widely known. Proceedings in state and bankruptcy courts as well as filings with various registries of deeds revealed the pervasive use of mortgage servicer employees to sign hundreds – in some cases thousands – of affidavits and other sworn statements without any personal knowledge of the information contained in the affidavits.

120. Further flouting the affidavit and notarization requirements, the affiant's signature was frequently notarized on foreclosure documents without any verification by the notary as to the affiant's identity and without the affiant even being present.

121. Evidence has since indicated that these practices were not confined to the foreclosure context, but were also employed for documents concerning the creation, assignment, transfer, modification, and discharge of mortgages secured by property in Massachusetts.

122. The Bank Defendants knew or should have known that their failure to comply with Massachusetts foreclosure law, including, without limitation, initiating and conducting foreclosures without being the present holder of the mortgage and the use of false documentation practices to facilitate foreclosures, was unfair and deceptive.

123. Each of the Bank Defendants, through their employees and/or agents, filed or caused to be filed with registries of deeds and courts, documents that were false, failed to comply with the requirements for affidavits concerning personal knowledge, and failed to conform to the law governing notarization. Discovery in this action will identify the precise number of violations by each Bank Defendant.

B. THE BANK DEFENDANTS DECEIVED HOMEOWNERS IN THE COURSE OF SERVICING MORTGAGE LOANS.

I. The Bank Defendants Have Earned Significant Income By Assuming The Role of Servicer.

124. The Bank Defendants, in their roles as mortgage servicers, act as the agent for the current holders of mortgage loans, including investors, trusts, or other entities. In this role: the Bank Defendants process and collect monthly mortgage payments; interact with and respond to consumers; handle and disburse tax and insurance escrow accounts; negotiate and implement loan modifications and other loss mitigation solutions; and

manage foreclosure interactions, including managing local foreclosure counsel, ordering inspections or appraisals, and hiring real estate brokers or local companies to sell and manage bank owned property acquired at foreclosure auctions (also known as “REO” property). Thus, borrowers typically deal exclusively with their servicer, not the ultimate holder of their mortgage, with regards to the servicing of their loans.

125. The Bank Defendants have generated significant servicing income from the acquisition of mortgage servicing rights.

126. Against this backdrop, each of the Bank Defendants has engaged in deceptive practices with respect to the terms and requirements of its loan modification programs, the implementation of loan modifications, and the status of foreclosure proceedings. This deception has resulted in significant borrower harm by way of increased defaults, re-defaults, and foreclosures.

127. The Commonwealth does not contend that every distressed borrower seeking loan modification assistance is entitled to, or will qualify for a loan modification. It is the position of the Commonwealth, however, that each of the Bank Defendants must adhere to the promises it has made to borrowers and to the public and must consider distressed loans for modification or other loss mitigation, consistent with the programs it has promised to borrowers and the public.

2. Each of the Bank Defendants Deceived Borrowers Regarding Its Loan Modification Programs.

128. Collectively, the Bank Defendants service more than half of the mortgage loans in the United States and have been the servicer for approximately 65% of delinquent mortgages since 2009. As such, each Bank Defendant has, at all relevant

times, negotiated and implemented various loan modification programs, both proprietary and government-based.

129. At least since the United States Treasury Department announced the creation of the Making Home Affordable Program (“HAMP”), the Bank Defendants have publicly claimed to be engaged in widespread loan modification programs aimed at preserving home ownership and avoiding unnecessary foreclosures. Each of the Bank Defendants has also enacted proprietary loan modification programs which they tout as additional options for distressed borrowers.

130. In the course of implementing its loan modification programs, including HAMP, however, each Bank Defendant has misled borrowers about their eligibility for this program and the relief they will receive pursuant to this program.

131. For instance, as of the close of the fourth quarter of 2009 – more than a year after announcing its entrance into the HAMP program – Bank of America had modified less than 19% of the eligible delinquent loans nationwide. A year-and-a-half later, as of the end of July 2011, Bank of America had permanently modified only 132,763 of the more than 1,000,000 loans that were at one point more than 60 days delinquent and eligible for a HAMP modification. To varying degrees the other Bank Defendants converted a higher percentage of mortgages to permanent loan modifications. However, Massachusetts homeowners have complained across the board that each of the Bank Defendants has misled homeowners and provided them with misinformation regarding the loan modification process.

132. For example, a requirement of the HAMP program is that borrowers successfully complete a three-month trial modification period before they are placed in a

permanent loan modification. During that three-month trial period, borrowers are required to make reduced mortgage payments that are calculated by their servicer to be no more than 31% of their income. While making the reduced payments, borrowers are reported to the credit bureaus as delinquent, and if they are not converted to a permanent modification, borrowers are assessed the difference between their full mortgage payments and their reduced trial payments.

133. Prior to June 2010, Bank of America converted only approximately 30% of trial modifications to permanent modifications. Wells Fargo reported a similar conversion rate for that time period while Citi and Chase hovered at approximately 40%. Only GMAC reported a conversion rate above 70% for that period of time. Many borrowers were strung along in trial modifications for nine months or longer, subjecting them to plummeting credit scores and mounting delinquency amounts.

134. The Bank Defendants' modification efforts have been so poor that, for the first quarter of 2011, the United States Treasury Department withheld payment of the HAMP Servicer Incentives to Bank of America, Chase, and Wells Fargo, noting they were in "need of substantial improvement." Citi and GMAC were deemed marginally better and labeled in "need of moderate improvement." At the end of the second quarter, Bank of America and Chase were again deemed in need of substantial improvement and denied their servicer incentives.

135. An example of the deceptive conduct underlying the Bank Defendants' modification efforts can be found in the publicly reported data from the HAMP program. Specifically, at the end of the first quarter of 2011, the Treasury Department reported that:

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- For 31% of its loans, Chase incorrectly calculated borrower income by more than 5%;
 - For 27% of its loans, Wells Fargo incorrectly calculated borrower income by more than 5%;
 - For 22% of its loans, Bank of America incorrectly calculated borrower income for purposes of a HAMP modification by more than 5%;
 - For 10% of its loans, Citi incorrectly calculated borrower income by more than 5%;
 - For 6% of its loans, GMAC incorrectly calculated borrower income by more than 5%.

These error rates reflect the Defendant Banks' failure to adhere to their promises to consumers. Such errors are unacceptable at any rate when the homeowner's ability to stay in their home hangs in the balance.

136. The Bank Defendants frequently represent to borrowers and the public that they are actively assisting distressed borrowers. Each of their websites contains links for "Help for Homeowners" or "Homeowner Assistance," and include promises such as that on the Bank of America website, which states: "Let's work together; Help is available for homeowners experiencing payment difficulties. We'll do everything possible to come up with a solution to help you. No matter what your situation is, we're here to help;" or, as the Citi website states, "if you are having trouble making payments on your mortgage, CitiMortgage will work with you to find a mortgage solution;" or, as the Wells Fargo website states, "Count on us to work with you."

137. Instead, however, upon information and belief, each of the Bank Defendants has deceived Massachusetts borrowers about loan modification requirements, by, without limitation, misrepresenting that:

- Borrowers must be over sixty days delinquent to get a loan modification, when in fact actual delinquency is not required. Borrowers may be eligible even if they are at simply at risk of imminent default. Such misrepresentations result in increased and unnecessary defaults.
- If borrowers are over ninety days delinquent they will receive priority treatment, which is false, and which results in unnecessary additional defaults and extended delinquencies.
- Certain borrowers cannot be considered based on the type or seasonal nature of their income, when in fact such factors are not determinative of eligibility. This results in borrowers who otherwise may qualify for a loan modification being improperly denied or dissuaded from applying.

138. Each of the Bank Defendants knew or should have known that its misrepresentations regarding its loan modification programs are deceptive and unfairly disqualify borrowers from obtaining loan modifications.

3. The Bank Defendants Each Acted Deceptively in Implementing Loan Modifications.

139. In spite of the Bank Defendants' conduct above, certain borrowers have received loan modifications, often after waiting months, hiring counsel, and/or answering repeated requests to provide identical application information. Once approved, borrowers typically must execute and return written loan modifications to their servicer and then begin making the required modified monthly payments.

140. On numerous occasions, however, and often after months of accepting the borrowers' payments pursuant to the very loan modifications the Bank Defendants approved, each of the Bank Defendants has informed these borrowers that their loan

modifications were in fact rejected, were never accepted by investors, were never in place, and/or that foreclosure auctions were scheduled imminently.

141. Each of the Bank Defendants knows or should know that its misrepresentations regarding the implementation of its loan modifications are deceptive and misleading, and result in significant harm to borrowers.

4. Each of the Bank Defendants Have Deceived Borrowers Regarding Foreclosure Proceedings.

142. The Bank Defendants routinely make misrepresentations to borrowers and/or their counsel regarding pending foreclosure proceedings, including, among other misrepresentations, that while loan modification negotiations are occurring, foreclosure proceedings will not continue and/or that foreclosure auctions will be postponed. As negotiations progress, however, borrowers and/or their counsel often learn, whether through public notices or communications with other employees or agents of the relevant Bank Defendant, that the foreclosure auctions are continuing as scheduled.

143. Each of the Bank Defendants knows or should know that its misrepresentations regarding foreclosure proceedings are deceptive and misleading, and result in harm to borrowers.

C. THE BANK DEFENDANTS AND MERS FAILED TO COMPLY WITH THE MASSACHUSETTS REGISTRATION STATUTE.

144. MERSCORP was established in the late 1990s by several of the nation's largest banks, secondary market purchasers, and other industry stakeholders including the Mortgage Bankers Association and the American Land Title Association.

145. MERSCORP is the parent company of Mortgage Electronic Registration System, Inc., a corporation whose sole purpose is to serve as mortgagee of record and nominee for the beneficial owners of mortgage loans.

146. MERSCORP and Mortgage Electronic Registration System, Inc. are owned by some of the nation's biggest banks and mortgage companies, including several of the Bank Defendants and/or their subsidiaries.

147. MERS has created a private electronic database (the "MERS System"). The MERS System is designed to be a national electronic registry that tracks changes in beneficial ownership interests and servicing rights associated with mortgage loans. Full access to the MERS System is limited to members and/or owners of MERS.

148. Since 1997, more than 63 million home loans have been registered on the MERS System. Indeed, more than 60% of all newly-originated mortgage loans are registered on the MERS System.

149. Through the MERS System, MERS is named the mortgagee of record for participating members either at the origination of the mortgage – by being named the mortgagee as nominee for the originating lender and its successors and assigns in the mortgage documents – or by subsequent assignment of the mortgage to MERS. MERS is listed as the mortgagee in the official records maintained by the register of deeds for the county in which the property rests. The lenders retain the promissory notes, which they often sell to investors without recording the transaction in the public record. Lenders likewise are granted the servicing rights to the mortgage, which they either retain or transfer to other entities. As with the transfer of the promissory notes, a transfer of servicing rights is not recorded in the public record.

150. To facilitate the transfer of beneficial interests in mortgages, MERS and its members typically structure mortgage transactions as follows:

a. When the purchase of a home is financed, the lender obtains from the borrower a promissory note, which sets forth the repayment terms of the loan, and a mortgage instrument, which is intended to secure the repayment of the promissory note. The mortgage names MERS as the mortgagee (as nominee for the lender and its successors and assigns). In the mortgage, the borrower assigns his or her right, title, and interest in the property to MERS and the mortgage instrument is then recorded or registered in the local land records with MERS as the named mortgagee.

b. When the promissory note is sold, and potentially re-sold, in the secondary mortgage market, the transaction is, or is supposed to be, tracked in the MERS database as a transfer of beneficial rights from one investor to another. MERS members are responsible for entering accurate information into the MERS System reporting the transfer of the beneficial interests and servicing rights associated with each mortgage. Members of the general public, however, are unable to access this information.

c. As long as the parties involved in the sale are MERS members, MERS remains the mortgagee of record and purportedly acts as an agent for each new owner of the promissory note.

151. In Massachusetts, land is either “registered” or “unregistered.”

152. If land is registered, all of the documents affecting title to a particular parcel of real estate must be “registered” with the registries of deeds under the auspices of the Land Court.

153. Massachusetts’s system of land registration was established by the Land Court Act, which is codified as G. L. c. 185, §§ 26-118.

154. Registered land has a special status in Massachusetts. “The principal reason for establishing a land title registration system pursuant to G. L. c. 185 is to provide individuals with a means of ensuring that titles to land are indefeasible and certain.” Commonwealth Elec. Co. v. McCardell, 450 Mass. 48, 50 (2007).

155. Once registered, no one can have a claim to the land that does not appear on the face of the registered documents. As the Supreme Judicial Court has said, “the only rights are registered rights.” Deacy v. Berberian, 344 Mass. 321, 328 (1962) (quoting Tyler v. Judges of the Court of Registration, 175 Mass. 71, 81 (1900) (Holmes, C.J.)). Because of this, all persons who deal with registered land are entitled to rely on the registered documents.

156. Pursuant to G. L. c. 185, § 67, all instruments that in any way are associated with a mortgage on registered land must themselves be registered. Section 67 reads, in relevant part:

The owner of registered land may mortgage it by executing a mortgage deed. Such deed may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient in law for the purpose. But such mortgage deed, and *all instruments which assign, extend, discharge and otherwise deal with the mortgage, shall be registered*, and shall take effect upon the title only from the time of registration.

G. L. c. 185, § 67 (emphasis added).

157. The creation and use of the MERS System – including the assignment of mortgages to MERS “as nominee” for others, and the naming of MERS as the original mortgagee in the mortgage – was adopted by defendants principally to avoid registration and recording requirements. By cutting these corners, MERS and its industry owners,

among other purposes, have sought to avoid the payment of millions of dollars of filing fees.

158. In creating and using the MERS System, defendants ignored long-standing and well-established statutory requirements intended to protect property titles and their owners through the land title registration system. Their failure to follow these procedures solely to avoid paying registration fees – and without regard to the impact on the integrity of either the land title registration system or Massachusetts consumers – is unfair and deceptive.

159. Beyond violating the statutes applicable to registered land, this practice conceals from borrowers the true identity of the holder of the debt as memorialized in the promissory note. A borrower whose mortgage is held by MERS cannot readily identify the investor who owns their promissory note, impairing the borrower's ability to deal directly with the holder of the note.

160. The failure to register the transfer of the beneficial interests of these mortgages violates G. L. c. 185, § 67, and constitutes a per se violation of G. L. c. 93A, § 2. See 940 C.M.R. § 3.16(3).

Illustrative Examples

79 Barker Road, Wareham, Massachusetts 02538 – Plymouth District Certificate of Title Number 82931 (Bank of America)

161. On September 25, 2006, two Wareham, Massachusetts residents borrowed \$212,000.00 evidenced by a promissory note in favor of Shamrock Financial Corporation (“Shamrock”). The loan was secured by a mortgage in favor of MERS as nominee for Shamrock, and its successors and assigns, on the property known as 79 Barker Road, Wareham, Massachusetts.

162. 79 Barker Road, Wareham, Massachusetts is registered land.

163. While Shamrock was identified as the “lender” in the mortgage, MERS was named as the “mortgagee.”

164. The mortgage included the following language concerning its mortgagee:

“MERS” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(emphasis in original).

165. The mortgage was registered with the Plymouth District Registry of Deeds on September 25, 2006 and noted on Certificate of Title Number 82931.

166. On July 6, 2009, MERS, purporting to be the holder of the mortgage on 79 Barker Road, transferred the mortgage to “BAC Home Loans Servicing, LP.” An assignment to that effect was registered on July 9, 2009 and noted on certificate number 82931.

167. On July 7, 2009, BAC Home Loans Servicing, L.P. proceeded with foreclosure of the mortgage by filing with the Land Court a Complaint to Foreclose Mortgage and requesting an order of notice under the Servicemembers Civil Relief Act.

168. On April 27, 2011, the Servicemembers Civil Relief Act notice was registered with the registry of deeds on certificate number 82931.

169. On June 1, 2011, judgment on the Complaint to Foreclose Mortgage was entered by the Land Court.

170. MERS records, however, reflect that three days after the mortgage was registered on September 25, 2006, it was entered in the MERS System and assigned a unique identification number.

171. Less than a month later, on October 16, 2006, Shamrock purportedly transferred the beneficial interest in the mortgage to Bank of America, N.A. Two days after that, MERS records indicate that Bank of America transferred the beneficial interest in the mortgage to the Federal National Mortgage Association (“Fannie Mae”). No document reflecting either of these transfers was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

172. Accordingly, on at least two occasions, MERS and/or its member, Bank of America, failed to register transfers of the beneficial interest in the mortgage of 79 Barker Road, Wareham, Massachusetts in violation of G. L. c. 185, § 67.

110 East Park Avenue, Lynn, Massachusetts 01902 – Southern Essex District Certificate of Title Number 59992 (Bank of America; EMC; Citi)

173. On August 17, 2006, two Lynn, Massachusetts residents borrowed a total of \$313,500.00 evidenced by two promissory notes in favor of from Sallie Mae Home Loans, Inc. (“Sallie Mae”). The two loans were secured by separate mortgages, in favor of MERS as nominee for Sallie Mae, and its successors and assigns, on the property known as 110 East Park Avenue, Lynn, Massachusetts.

174. 110 East Park Avenue, Lynn, Massachusetts is registered land.

175. The first mortgage was in the amount of \$264,000.00. The second for the remaining \$49,500.00.

176. While Sallie Mae was identified as the “lender” in each mortgage, MERS was named as the mortgagee.

177. The first mortgage included the following language concerning its mortgagee:

“**MERS**” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(emphasis in original)

178. The second mortgage included substantially similar language concerning MERS and its role as mortgagee:

“THIS MORTGAGE is made this 17th day of AUGUST 2006, between the Mortgagor . . . (herein “Borrower”) and the Mortgagee, Mortgage Electronic Registration Systems, Inc. (“MERS”), (solely as nominee for Lender, as hereinafter defined, and Lender’s successors and assigns). MERS is organized under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026 tel. (888) 679-MERS.

(emphasis in original).

179. Both mortgages were registered with the Southern Essex District Registry of Deeds on August 23, 2006 and noted on Certificate of Title Number 59992.

180. On March 12, 2008, MERS, in its capacity as “nominee for Sallie Mae Home Loans, Inc. its successors and assigns” [sic] transferred the first mortgage to “Citibank, N.A. as trustee.” An assignment of mortgage to that effect was registered on March 20, 2008 in the Southern Essex District Registry of Deeds on certificate number 59992. No trust or beneficiary for whom Citibank is trustee is identified in this or any other document registered with the registry of deeds.

181. On October 24, 2008, "Citibank, N.A. as trustee" proceeded with foreclosure of the first mortgage by filing with the Land Court a Complaint to Foreclose Mortgage and requesting an order of notice under the Servicemembers Civil Relief Act.

182. On April 8, 2009, the Servicemembers Civil Relief Act notice was registered with the registry of deeds on certificate number 59992.

183. On May 5, 2009, judgment on the Complaint to Foreclose Mortgage was entered by the Land Court. That judgment was registered on July 22, 2009 on certificate number 59992.

184. MERS records, however, reflect that two days after the mortgages were registered on August 23, 2006, they were entered in the MERS System and each was assigned a unique identification number.

185. Just over a month later, on September 28, 2006, Sallie Mae purportedly transferred the beneficial interest in each mortgage to EMC Mortgage LLC ("EMC"). No document reflecting these transfers was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

186. Thereafter, on November 1, 2006, EMC purportedly transferred the beneficial interest in the first mortgage to Citibank, N.A. No document reflecting this transfer was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

187. The next day, on November 2, 2006, EMC transferred the beneficial interest in the second mortgage to Bank of America, N.A. No document reflecting this transfer was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

188. Accordingly, on at least four occasions, MERS and its members failed to register transfers of the beneficial interest in the mortgage of 110 East Park Ave., Lynn, Massachusetts in violation of G. L. c. 185, § 67.

100 Bayberry Circle, Bridgewater, Massachusetts 02324 – Plymouth Registry of Deeds Certificate of Title Number 60193 (Citi)

189. On May 8, 2006, two Bridgewater, Massachusetts residents borrowed \$254,000.00 from VIP Mortgage Corporation (“VIP”) as evidenced by a promissory note in favor of VIP. The loan was secured by a mortgage in favor of MERS as nominee for VIP, and VIP’s successors and assigns, on property known as 100 Bayberry Circle, Bridgewater, Massachusetts.

190. 100 Bayberry Circle, Bridgewater, Massachusetts is registered land.

191. While VIP was identified as the “lender” in the mortgage, MERS was named as the “mortgagee.”

192. The mortgage included the following language concerning its mortgagee:

“**MERS**” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(emphasis in original).

193. The mortgage was registered with the Plymouth District Registry of Deeds on May 15, 2006 and noted on Certificate of Title Number 60193.

194. On December 8, 2008, CitiMortgage, Inc. proceeded with foreclosure of the mortgage by filing with the Land Court a Complaint to Foreclose Mortgage and requesting an order of notice under the Servicemembers Civil Relief Act.

195. On April 28, 2010, judgment on the Complaint to Foreclose Mortgage was entered by the Land Court.

196. MERS records, however, reflect that the mortgage was entered in the MERS System and assigned a unique identification number.

197. On August 15, 2006, MERS records show that the beneficial interest in the mortgage was transferred from CitiMortgage, Inc. to Fannie Mae. MERS records do not indicate how or when CitiMortgage received the beneficial interest in the mortgage. Moreover, no document reflecting the transfer from CitiMortgage to Fannie Mae was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

198. On October 17, 2008, MERS, purporting to be the holder of the mortgage on 100 Bayberry Circle, transferred the mortgage to CitiMortgage, Inc.. Despite its execution on October 17, 2008, that assignment purported to be “effective” on May 1, 2008. Fifteen months thereafter, on February 25, 2010, this assignment was registered and noted on certificate of number 60193.

199. Accordingly, on at least two occasions, MERS and its members failed to register transfers of the beneficial interest in the mortgage of 100 Bayberry Circle, Bridgewater, Massachusetts in violation of G. L. c. 185, § 67.

**22 Pisces Lane, Plymouth, Massachusetts 02360 – Plymouth Registry of Deeds
Certificate of Title Number 83308 (Chase)**

200. On May 29, 2007, two Plymouth, Massachusetts residents borrowed \$227,000.00 evidenced by a promissory note in favor of a division of American Brokers Conduit (“ABC”). The loan was secured by a mortgage in favor of MERS as nominee for ABC, and its successors and assigns, on the property known as 22 Pisces Lane, Plymouth, Massachusetts.

201. 22 Pisces Lane, Plymouth, Massachusetts is registered land.
202. While ABC was identified as the “lender” in the mortgage, MERS was named as the “mortgagee.”
203. The mortgage included the following language concerning its mortgagee:

“**MERS**” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(emphasis in original).

204. The mortgage was registered with the Plymouth District Registry of Deeds on June 4, 2007 and noted on Certificate of Title Number 83308.
205. On May 13, 2010, MERS, purporting to be the holder of the mortgage on 22 Pisces Lane, transferred the mortgage to EMC Mortgage Corporation (“EMC”). An assignment to that effect was registered on May 14, 2010 and noted on certificate number 83308.
206. On May 19, 2010, EMC proceeded with foreclosure of the mortgage by filing with the Land Court a Complaint to Foreclose Mortgage. On or about August 16, 2010, an Order of Notice under the Servicemembers Civil Relief Act was issued. That Order of Notice was registered on August 20, 2010 and noted on certificate number 83308.
207. MERS records, however, reflect that on June 8, 2007, the mortgage was entered in the MERS System and assigned a unique identification number.

208. On July 16, 2007, the beneficial interest in the mortgage was transferred to JPMorgan Chase Bank, N.A. Thereafter, on September 19, 2007, JPMorgan Chase Bank, N.A. transferred the beneficial interest in the mortgage to the Federal Home Loan Mortgage Corporation (“Freddie Mac”). No document reflecting either of these transfers was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

209. Accordingly, on at least two occasions, MERS and its members failed to register transfers of the beneficial interest in the mortgage of 22 Pisces Lane, Plymouth, Massachusetts in violation of G. L. c. 185, § 67.

**41 Clarendon Avenue, Brockton, Massachusetts 02301 – Plymouth District
Certificate of Title Number 84438 (GMAC)**

210. On September 9, 2003, a Brockton, Massachusetts resident borrowed \$200,000.00 evidenced by a promissory note in favor of Mortgage Master, Inc. (“Mortgage Master”). The loan was secured by a mortgage in favor of Mortgage Master on the property known as 41 Clarendon Avenue, Brockton, Massachusetts.

211. The same day the mortgage was originated, Mortgage Master assigned the mortgage to MERS “as nominee for” GMAC Mortgage Corporation (“GMAC”).

212. 41 Clarendon Avenue, Brockton, Massachusetts is registered land.

213. Both the mortgage and the assignment from Mortgage Master to MERS were registered with the Plymouth District Registry of Deeds on September 16, 2003 and noted on Certificate of Title Number 84438.

214. On February 26, 2010, MERS executed a document entitled “Assignment of Deed of Trust” purporting to transfer its interest in both the promissory note and

mortgage to Nationstar Mortgage, LLC (“Nationstar”). This document was registered as an assignment of mortgage on certificate number 84438.

215. Thereafter, on March 15, 2010, Nationstar proceeded with foreclosure of the mortgage by filing a complaint under the Servicemembers Civil Relief Act. An Order of Notice under the Servicemembers Civil Relief Act issued on May 18, 2010 and was registered with the registry of deeds on certificate number 84438 on May 25, 2010.

216. MERS records, however, reflect that, on September 25, 2003, the mortgage was entered in the MERS System and assigned a unique identification number.

217. Less than five days after the mortgage was entered in the MERS System, on September 29, 2003, GMAC transferred the beneficial interest in the mortgage to Fannie Mac. No document reflecting this transfer was ever registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

218. Accordingly, on at least one occasion, MERS and its members failed to register a transfer of the beneficial interest in the mortgage of 41 Clarendon Avenue, Brockton, Massachusetts in violation of G. L. c. 185, § 67.

315 Arcadia Boulevard, Springfield, MA 01118 – Hampden District Certificate of Title Number 32394 (Wells Fargo)

219. On November 17, 2008, a Springfield, Massachusetts resident borrowed \$164,884.00 evidenced by a promissory note in favor of Avelo Mortgage, LLC (“Avelo”). The loan was secured by a mortgage in favor of MERS as nominee for Avelo, and its successors and assigns, on the property known as 315 Arcadia Boulevard, Springfield, Massachusetts.

220. 315 Arcadia Boulevard, Springfield, Massachusetts is registered land.

221. While Avelo was identified as the “lender” in the mortgage, MERS was named as the “mortgagee.”

222. The mortgage included the following language concerning its mortgagee:

“**MERS**” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(emphasis in original).

223. The mortgage was registered with the Hampden District Registry of Deeds on December 16, 2008 and noted on Certificate of Title Number 32394.

224. On December 11, 2009, MERS, purporting to be the holder of the mortgage on 315 Arcadia Boulevard, transferred the mortgage to Wells Fargo Bank, N.A. An assignment to that effect was registered on December 22, 2009 and noted on certificate number 32394.

225. On or before November 5, 2010, Wells Fargo proceeded with foreclosure of the mortgage by filing with the Land Court a Complaint to Foreclose Mortgage. On November 5, 2010 an Order of Notice under the Servicemembers Civil Relief Act was issued. That Order of Notice was registered on December 14, 2010 and noted on certificate number 32394.

226. MERS records, however, reflect that on November 25, 2008, the mortgage was entered in the MERS System and assigned a unique identification number.

227. On March 2, 2009, the beneficial interest in the mortgage was transferred from Avelo to “Wells Fargo Home Mortgage a Division of Wells Fargo Bank NA.” No

document reflecting this transfer was registered with the registry of deeds or Land Court, in violation of G. L. c. 185, § 67.

228. Accordingly, on at least one occasion, MERS and its members failed to register transfers of the beneficial interest in the mortgage of 315 Arcadia Boulevard, Springfield, Massachusetts.

229. The examples set forth at paragraphs 161 through 228 are for illustrative purposes only. MERS and its members, including the Bank Defendants, engaged in similar conduct – failing to register transfers of the beneficial interest in a mortgage pursuant to G. L. c. 185, § 67 – with respect to numerous mortgage loans across the Commonwealth. Discovery in this action will identify the precise number of times in which MERS and its members failed to register transfers of the beneficial interest in a mortgage.

230. In addition to the Defendants' routine failure to register the transfer of beneficial interests in mortgages, on information and belief, MERS and the Bank Defendants also failed to register assignments of the actual mortgages. These failures similarly serve to undermine the integrity of registered land records and provided false or misleading information the public concerning the identity of the actual holder of the mortgage.

231. By letters dated October 4, October 24, and November 22, 2011, the Attorney General gave the Bank Defendants the required notice pursuant to G. L. c. 93A, § 4 of its intention to bring an action under the Consumer Protection Act.

232. By letter dated October 4, 2011, the Attorney General gave MERS the required notice pursuant to G. L. c. 93A, § 4 of its intention to bring an action under the Consumer Protection Act.

V. CAUSES OF ACTION

Count I

**Unfair or Deceptive Acts or Practices in Violation of G. L. c. 93A, § 2:
Foreclosing Without Being the Holder of the Mortgage
(as to the Bank Defendants)**

233. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

234. Each of the Bank Defendants initiated foreclosure proceedings on properties located within Massachusetts for which it was not the actual holder of the mortgage.

235. Each of the Bank Defendants knew or should have known that it lacked the legal authority to foreclose without first becoming the holder of the mortgage.

236. By foreclosing on properties without being the holder of the mortgage, each of the Bank Defendants knew or should have known that its conduct violated G. L. c. 244, § 1, et seq., G. L. c. 183, § 21, and G. L. c. 93A, § 2, including, without limitation, by violating 940 C.M.R. 3.16.

Count II

**Unfair or Deceptive Acts or Practices in Violation of G. L. c. 93A, § 2:
Failing to Identify the Present Holder of the Mortgage in Notice of Sale
(as to the Bank Defendants)**

237. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

238. G. L. c. 244, § 1, et seq. requires that a foreclosing entity provide advance notice of the foreclosure sale to the mortgagee, to other interested parties, and by

publication. That notice must specifically identify the present holder of the mortgage at the time the notice is issued and the failure to do so voids any subsequent sale.

239. By failing to identify the correct present holder of the mortgage in notices issued prior to foreclosure, each of the Bank Defendants violated G. L. c. 244, § 1, et seq. and G. L. c. 93A, § 2, including, without limitation, by violating 940 C.M.R. 3.16.

Count III

**Unfair or Deceptive Acts or Practices in Violation of G. L. c. 93A, § 2:
Falsely Representing Status as Holder of Mortgage
(as to the Bank Defendants)**

240. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

241. Each of the Bank Defendants engaged in communications with mortgagors, in public notices, and in court filings in which it falsely identified itself as the holder of the mortgages relevant to those communications.

242. By falsely identifying itself as the holder of certain mortgages and by identifying itself as the party authorized to foreclose upon those mortgages, each of the Bank Defendants engaged in unfair and deceptive acts and practices in violation of 940 C.M.R. 3.16 and G. L. c. 93A, § 2.

Count IV

**Unfair or Deceptive Acts or Practices in Violation of G. L. c. 93A, § 2:
Deceptive Loan Modification and Servicing Practices
(as to the Bank Defendants)**

243. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

244. By engaging in the servicing practices described above, each of the Bank Defendants engaged in deceptive acts and practices, in violation of G. L. c. 93A, § 2(a).

and regulations promulgated thereunder pursuant to G. L. c. 93A, § 2(c). The Bank Defendants' deceptive conduct includes, without limitation:

- a. deceiving borrowers about its loan modification programs, including, without limitation, the Making Home Affordable Program;
- b. deceiving borrowers with respect to the implementation of loan modifications; and
- c. deceiving borrowers about the details and status of foreclosure proceedings on their homes.

245. Each of the Bank Defendants knew or should have known that its conduct was deceptive in violation of G. L. c. 93A, § 2(a) and 940 C.M.R. 3.16.

246. Each of the Bank Defendants knew or should have known that its deceptive practices would harm borrowers, neighbors, communities and the public at large.

Count V
Unfair or Deceptive Acts or Practices in Violation of G. L. c. 93A, § 2:
Failure to Register Assignment of Mortgages
(as to All Defendants)

247. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

248. G. L. c. 185, § 67 permits the mortgaging of registered land, provided that "all instruments which assign, extend, discharge and otherwise deal with the mortgage, shall be registered."

249. Upon information and belief, the defendants assigned mortgages of registered land without registering such assignments as required by Massachusetts law.

250. Defendants knew or should have known that their conduct violated G. L. c. 185, § 67 and G. L. c. 93A, § 2, including, without limitation, by violating 940 C.M.R. 3.16.

Count VI
Declaratory Judgment:
Failure to Register Transfer of Beneficial Interests in Mortgages
in Violation of G. L. c. 185, § 67
(as to All Defendants)

251. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

252. G. L. c. 185, § 67 permits the mortgaging of registered land, provided that “all instruments which assign, extend, discharge and otherwise deal with the mortgage, shall be registered.”

253. Notwithstanding the obligations of G. L. c. 185, § 67, the defendants transferred the beneficial interests in mortgages of registered land within the Commonwealth without registering any of the instruments associated with those transfers.

254. Accordingly, the Commonwealth seeks a declaration pursuant to G. L. c. 231A, § 1 that G. L. c. 185, § 67 requires that the instruments transferring the beneficial interest in a mortgage secured by registered land must be registered.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court grant the following relief:

1. After trial on the merits, enter judgment in favor of the Commonwealth and order that the defendants pay:
 - a. Civil penalties of \$5,000 for each violation of G. L. c. 93A,
 - b. Attorneys’ fees;

- c. Costs; and
- d. Other relief available under G. L. c. 93A.

2. After a trial on the merits, enter judgment in favor of the Commonwealth including permanent injunctive and equitable relief, including:

- a. Enjoining all defendants, and their officers, agents, servants, employees, attorneys, successors and assigns, and all other persons and entities, whether acting individually or in active participation or concert with them, directly or indirectly, or through any corporation, trust or other device, who receive actual notice of the order from:
 - i. initiating any foreclosure without first obtaining a valid, written assignment of the mortgage or other appropriate written documentation verifying that it is the holder of the mortgage;
 - ii. publishing any notice pursuant to G. L. c. 244, § 14 that fails to identify the present holder of the mortgage;
 - iii. providing any notice to the mortgagor pursuant to G. L. c. 244, § 35A that fails to identify the present holder of the mortgage;
 - iv. submitting to any court or Registry of Deeds located within the Commonwealth any affidavit, declaration, or attestation that is not based upon the personal knowledge of the affiant;
 - v. submitting to any court or Registry of Deeds located within the Commonwealth any documents that purport to create, assign, transfer, modify, or discharge a mortgage secured by property in

- Massachusetts where the actual signatory is not the named signatory in the document;
- vi. submitting to any court or Registry of Deeds located within the Commonwealth any documents that purport to create, assign, transfer, modify, or discharge a mortgage secured by property in Massachusetts where the actual signatory is not authorized to sign the document and/or bind the defendant(s) to the content of the document;
 - vii. submitting to any court or Registry of Deeds located within the Commonwealth any notarized document in which the signatory to the document did not personally appear before the notary;
 - viii. submitting to any court or Registry of Deeds located within the Commonwealth any notarized document in which the notary did not verify the identity of the signatory of the document sufficient to comply with Massachusetts Revised Executive Order No. 455 (04-04);
 - ix. transferring, receiving, or participating in the transfer of, any beneficial interest in any mortgage loan secured by registered land within the Commonwealth without registering the transfer of such beneficial interest pursuant to G. L. c. 185, § 67;
- b. Requiring each of the Bank Defendants to take all actions necessary to cure defects in title resulting from its initiation of foreclosure proceedings on mortgages secured by land within the Commonwealth where (i) it was

not the holder of such mortgages or (ii) it published notices that failed to accurately identify the present holder of the mortgage; and

- c. Requiring the defendants to take all action necessary to cure defects in title resulting from their failure to register all assignments or transfers of beneficial interests in mortgages secured by registered land in the Commonwealth.

The Commonwealth reserves the right to seek additional relief or orders, including relief available prior to the commencement of trial should the public interest so demand.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

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at Boston, Massachusetts.