

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

CIVIL ACTION NO. 11-4363 [BLS1]

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.

FIRST AMENDED  
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 serial violations of Massachusetts law and associated unfair or deceptive conduct amidst the foreclosure crisis that has gripped Massachusetts and the nation since 2007. 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"), to pay civil penalties, restitution and other compensation for the harms caused by their unfair or 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.

#### **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 Foreclosure Scheme.**

15. 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.

16. 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.

17. Under G. L. c. 183, § 21, after a borrower 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.

18. Because this statutory foreclosure scheme allows the mortgage holder to exercise this extraordinary power without first obtaining judicial authorization, Massachusetts courts have consistently required strict compliance with the statutory foreclosure scheme and the power of sale. See U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637, 646-47 (2011) (“Recognizing the substantial power that the statutory [foreclosure] scheme affords to a mortgage holder to foreclose without immediate judicial oversight, we adhere to the familiar rule that ‘one who sells under a power [of sale] must follow strictly its terms. If he fails to do so there is no valid execution of the power, and the sale is wholly void.’ [Citations omitted.] One of the terms of the power of sale that must be strictly adhered to is the restriction on who is entitled to foreclose.”)

19. The Supreme Judicial Court further held:

A related statutory requirement that must be strictly adhered to in a foreclosure by power of sale is the notice requirement articulated in G.L. c. 244, § 14. That statute provides that ‘no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale,’ advance notice of the foreclosure sale has been provided to the mortgagor, to other interested parties, and by publication in a newspaper published in the town where the

mortgaged land lies or of general circulation in that town. [Citation omitted.] "The manner in which the notice of the proposed sale shall be given is one of the important terms of the power, and a strict compliance with it is essential to the valid exercise of the power."

Id. at 647-48.

20. The Supreme Judicial Court 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 requirement of the statutory foreclosure scheme.

In Massachusetts, that statutory foreclosure scheme requires the party to:

a. Provide notice to the borrower 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. Provide notice to the borrower 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.

c. 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.

d. Provide notice to the borrower 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.

e. 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. Massachusetts law further 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 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).

23. 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 borrower, 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).

24. The Supreme Judicial Court 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.

25. The Bank Defendants conducted invalid foreclosures by failing to strictly comply with Massachusetts foreclosure law by publishing notices of sale when they were not holders of the mortgages at the time of the publication in violation of G.L. c. 244, § 14.

26. By failing to strictly adhere to these statutory requirements in conducting foreclosures, the Bank Defendants violated those statutes, the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 2 and 4, and conducted invalid foreclosures.

**2. The Bank Defendants Failed to Strictly Comply with Massachusetts Foreclosure Laws by Conducting Foreclosures as the Purported Mortgagees When They Were Not the Holders of the Mortgages**

27. On numerous occasions, including without limitation as set forth in the illustrative examples below and on the spreadsheet annexed hereto as Exhibit A<sup>1</sup> and incorporated herein, 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 published notices of sale under c. 244, § 14 purporting to be the present holder of the mortgage.

28. Each foreclosure initiated or advanced by a Bank Defendant when it falsely identified itself as the mortgagee when it was not the current holder of the mortgage was unlawful and is void.

29. The Bank Defendants knew or should have known their failure to strictly comply with Massachusetts foreclosure law by failing to hold mortgages, or otherwise secure a valid, written assignment of the mortgage prior to publishing notices of sale violates G. L. c. 244, § 1, et seq., G. L. c. 183, § 21, is unfair or deceptive in violation of G. L. c. 93A, §§ 2 and 4, and voids any subsequent foreclosure.

30. The Bank Defendants' conduct has harmed the integrity of the Massachusetts public property records, has adversely affected the title to hundreds of

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<sup>1</sup> Exhibit A, attached hereto, is a list of properties where the Bank Defendants failed to strictly comply with Massachusetts foreclosure law by conducting foreclosures when they were not the holders of the mortgage.

properties in the Commonwealth, leaving homeowners unable to refinance or sell their homes.

### Illustrative Examples

#### CHASE

##### **38 Mascot Street, Unit 3, Boston, Massachusetts**

31. 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”).

32. On March 4, 2008, March 11, 2008, and March 18, 2008, Chase Home Finance caused to be published in the Boston Herald, pursuant to M.G.L. c. 244, § 14, a Notice of Mortgagee’s Sale of Real Estate stating that Chase Home Finance was “the present holder” of the Mascot Street Mortgage, and noticing March 26, 2008 as the date for a sale of the subject property at public auction.

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

34. 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.”

35. Chase Home Finance was not the holder of the Mascot Street Mortgage when it: (a) caused notices of sale of the subject property to be published on March 4th,

11th, and 18th of 2008; (b) subsequently sold the property at auction on March 26, 2008; or (c) made entry into the subject property on March 26, 2008 to foreclose the mortgage. In fact, it was not until July 2, 2008 that JP Morgan Chase Bank, N.A., the record mortgagee, assigned the Mascot Street Mortgage to Chase Home Finance.

**CITIBANK, N.A.**

**22 Deluca Road, Milford, Massachusetts**

36. 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, acting solely as a nominee for the lender and the lender's successors and assigns, on property located at 22 Deluca Road, Milford, Massachusetts (the "Milford Mortgage").

37. On March 4, 2008, March 11, 2008, and March 18, 2008, Citibank, N.A. caused to be published in the Milford Daily News, pursuant to M.G.L. c. 244, § 14, a Notice of Mortgagee's Sale of Real Estate stating that Citibank, N.A. was "the present holder" of the Milford Mortgage, and noticing March 25, 2008 as the date for a sale of the subject property at public auction.

38. On April 23, 2008, Citibank, N.A. caused the subject property to be sold at auction.

39. 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.”

40. Citibank, N.A. was not the holder of the Milford Mortgage when it: (a) caused notices of sale of the subject property to be published on March 4, 11, and 18 of 2008; (b) subsequently sold the property at auction on April 23, 2008; or (c) made entry on the subject property on April 23, 2008 to foreclose the mortgage. In fact, it was not until May 21, 2008 that MERS, the record mortgagee, assigned the Milford Mortgage to Citibank, N.A.

**CITIMORTGAGE, INC.**

**448 Slade Street, Fall River, Massachusetts**

41. On November 13, 2006, a Fall River, Massachusetts resident (“Fall River Borrower”) borrowed \$176,366 from Allied Home Mortgage Corp. (“Allied Home Mortgage”). The loan was secured by a mortgage granted in favor of MERS, acting solely as a nominee for the lender and the lender's successors and assigns, on property located at 448 Slade Street, Fall River, Massachusetts (the “Fall River Mortgage”).

42. On September 9, 2008, September 16, 2008, and September 23, 2008, CitiMortgage, Inc. caused to be published in the Fall River Herald News pursuant to M.G.L. c. 244, § 14, a Notice of Mortgagee’s Sale of Real Estate, stating that CitiMortgage, Inc. was “the present holder” of the Fall River Mortgage, and noticing September 30, 2008 as the date for a sale of the subject property at public auction.

43. On September 30, 2008, CitiMortgage, Inc. sold the property at auction.

44. On November 13, 2008, CitiMortgage, Inc. caused to be recorded a notarized Certificate of Entry (“Fall River Certificate of Entry”). The Fall River

Certificate of Entry states that, on September 30, 2008, "John O'Hara, attorney-in-fact and agent for Citi Mortgage, Inc. . . . the present holder of a certain mortgage given by [the Fall River Borrowers]" made an entry on the property located at 448 Slade Street, Fall River, Massachusetts "for the purpose, by him/her declared, of foreclosing said mortgage for breach of conditions thereof."

45. CitiMortgage, Inc. was not the holder of the Fall River Mortgage when it: (a) caused notices of sale of the subject property to be published on September 9, 16, and 23 of 2008; (b) subsequently sold the property at auction on September 30, 2008; or (c) made entry on the subject property on September 30, 2008 to foreclose the mortgage. In fact, it was not until October 10, 2008 that MERS, the record holder of the mortgage, assigned the Fall River Mortgage to CitiMortgage, Inc.

#### **GMAC**

##### **14 Standish Street, Unit 3 Boston, Massachusetts**

46. 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, acting solely as a nominee for the lender and the lender's successors and assigns, on a property located at 14 Standish Street, Unit 3, Dorchester (Boston), Massachusetts (the "Standish Street Mortgage").

47. 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 April 4, 2008 as the date for a sale of the subject property at public auction.

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

49. 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."

50. GMAC was not the holder of the Standish Street Mortgage when it: (a) caused notices of sale of the subject property to be published on March 13, 20 and 27, 2008; (b) subsequently sold the property at auction on April 4, 2008; or (c) made entry on the subject property on April 4, 2008 to foreclose on the mortgage. In fact, it was not until April 9, 2008 that MERS, the record holder of the mortgage, assigned the Standish Street Mortgage to GMAC.

## **BANK OF AMERICA**

### **15 Burning Tree Road, Swansea, Massachusetts**

51. On September 11, 2006, a Swansea resident ("Swansea Borrower") borrowed \$290,000 from Mortgage Lenders Network USA, Inc. ("MLN"). The loan was secured by a mortgage granted in favor of MERS, acting solely as a nominee for the lender and the lender's successors and assigns, on property located at 15 Burning Tree Road, Swansea, Massachusetts (the "Swansea Mortgage").

52. On October 22, 2007, October 29, 2007 and November 5, 2007, LaSalle Bank, N.A. ("LaSalle Bank") caused to be published in the Fall River Herald News pursuant to M.G.L. c. 244, § 14, a Notice of Mortgagee's Sale of Real Estate, stating that

LaSalle Bank was “the present holder” of the Swansea Mortgage, and noticing December 13, 2007 as the date for a sale of the subject property at public auction.

53. On February 28, 2008, LaSalle Bank sold the property at auction.

54. On May 16, 2008, LaSalle Bank caused to be recorded a notarized Certificate of Entry (the “Swansea Certificate of Entry”). The Swansea Certificate of Entry states that, on February 28, 2008, “Joshua Montout, attorney-in-fact and agent of [LaSalle Bank] . . . the current holder of a certain mortgage given by [the Swansea Borrowers]” made an entry onto the property located at 15 Burning Tree Road, Swansea, Massachusetts “for the purpose, by him/her declared, of foreclosing said mortgage for breach of conditions thereof.” Although the Swansea Certificate of Entry claims an entry on February 28, 2008, it was signed and notarized on January 8, 2008.

55. LaSalle Bank was not the holder of the Swansea Mortgage when it: (a) caused notices of sale of the subject property to be published on October 22, 29, 2007 and November 5, 2007; (b) subsequently sold the property at auction on February 28, 2008; or (c) made entry on the subject property on February 28, 2008 to foreclose the mortgage. It was not until May 13, 2008, that MERS, the record holder of the mortgage, assigned the Swansea Mortgage to LaSalle Bank.

56. On or about October 1, 2007, Bank of America acquired LaSalle Bank, including all of its obligations and liabilities relating to the Swansea Mortgage arising prior to October 1, 2007, and is the successor-in-interest to LaSalle Bank with respect to all such obligations and liabilities. After October 1, 2007, Bank of America assumed custody and control of LaSalle Bank, including all conduct relating to the Swansea Mortgage, and is responsible for all aspects of the foreclosure occurring after October 1,

2007, referenced above, including publication of the notices of sale and the subsequent auction of the property.

## **WELLS FARGO**

### **1 Marion Place, East Boston, Massachusetts**

57. On March 31, 2005, two Boston residents ("Marion Place Borrowers") borrowed \$215,000 from WMC Mortgage Corp. ("MLN"). The loan was secured by a mortgage granted in favor of MERS, acting solely as a nominee for the lender and the lender's successors and assigns, on property located at 1 Marion Place, East Boston, Massachusetts (the "Marion Place Mortgage").

58. On April 29, 2008, May 6, 2008, and May 13, 2008, Wells Fargo, N.A. on behalf of the certificate holders of Morgan Stanley ABS Capital Inc. Trust 2005-WMC5 Mortgage Pass Through Certificates, Series 2005-WMC5 ("Wells Fargo") caused to be published in the Boston Globe pursuant to M.G.L. c. 244, § 14, a Notice of Mortgagee's Sale of Real Estate, stating that Wells Fargo was "the present holder" of the Marion Place Mortgage, and noticing May 20, 2008 as the date for a sale of the subject property at public auction.

59. On May 22, 2008, Wells Fargo sold the property at auction.

60. On November 24, 2008, Wells Fargo caused to be recorded a notarized Certificate of Entry (the "Marion Place Certificate of Entry"). The Marion Place Certificate of Entry states that, on May 22, 2008, "Paul Fortey, attorney-in-fact and agent for [Wells Fargo] . . . the present holder of a certain mortgage given by [the Marion Place Borrowers]" made an entry onto the property located at 1 Marion Place, East

Boston, Massachusetts “for the purpose, by him/her declared, of foreclosing said mortgage for breach of conditions thereof.”

61. Wells Fargo was not the holder of the Marion Place Mortgage when it: (a) caused notices of sale of the subject property to be published on April 29, 2008, May 6, and 13, 2008; (b) subsequently sold the property at auction on May 22, 2008; or (c) made entry on the subject property on May 22, 2008 to foreclose the mortgage. It was not until September 22, 2008, that MERS, the record holder of the mortgage, assigned the Marion Place Mortgage to Wells Fargo.

62. The examples alleged at paragraphs 36 through 66, and the additional examples in Exhibit A hereto, are for illustrative purposes only and without limitation. Bank of America, Chase, Citi, GMAC, and Wells Fargo conducted hundreds of foreclosures where they were not the holder of the mortgage at the time of publication of notices of sale in violation of G.L. c. 244 § 14, nor at the time when entry was made to foreclose. Discovery in this action will identify the precise number of unlawful foreclosures by each of the Bank Defendants.

## **V. CAUSE OF ACTION**

### **Count I**

#### **Unfair or Deceptive Acts or Practices in Violation of G. L. c. 93A, §§ 2 and 4: Foreclosing Without Being the Holder of the Mortgage**

**(as to the Bank Defendants)**

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

64. Each of the Bank Defendants initiated and completed foreclosure proceedings on properties located within Massachusetts when it was not the actual holder of the mortgage.

65. 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.

66. 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 and 4, including, without limitation, by violating 940 C.M.R. 3.16.

### **PRAYERS FOR RELIEF**

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

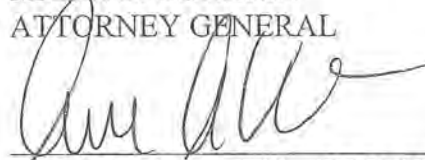
1. After trial on the merits, enter judgment in favor of the Commonwealth and order that the defendants pay:
  - a. Civil penalties of \$5,000 for each violation of G. L. c. 93A,
  - b. Attorneys' fees;
  - c. Costs; and
  - d. Other relief available under G. L. c. 93A.
2. After a trial on the merits, 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 initiating or advancing 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; and

- b. Requiring each of the Bank Defendants to take all actions necessary to cure defects in title resulting from its foreclosure on mortgages secured by land within the Commonwealth where it was not the holder of such mortgages.
3. 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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*Deputy Attorney General*

Executive Bureau

One Ashburton Place

Dated: October 28, 2013  
at Boston, Massachusetts.

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# Exhibit A

to Commonwealth's First Amended Complaint

## EXHIBIT A

### BANK OF AMERICA

Foreclosing Party	Property	Lender	Date of 1st Publication of Notice of Sale	Date of Purported Entry	Date of Auction	Execution Date of Assignment of Mortgage to Foreclosing Party
LaSalle Bank, N.A. as Trustee for MLMI Trust Series 2007-MLNI	15 Burning Tree Road, Swansea, Bristol County	Mortgage Lenders Network USA, Inc.	10/22/2007	2/28/08	2/28/2008	5/13/2008
LaSalle Bank, N.A., as Trustee under the Pooling and Servicing Agreement dated as of December 1, 2006 GSAMP Trust 2006-HE8	59 Vernon St., Worcester, Worcester County	SouthStar Funding LLC	1/17/2008	2/7/2008	2/7/2008	5/8/2008
Countrywide Home Loans, Inc.	35 Riverwalk Way, Unit R118, Lowell, Middlesex County	Mortgage Partners, Inc.	3/18/2008	4/9/2008	4/9/2008	4/15/2008 <sup>1</sup>
LaSalle Bank National Association as Trustee for the C-Bass Mortgage Loan Asset-Backed Certificates	43 Sparks Street, Lowell, Middlesex County	Fieldstone Mortgage Co.	2/7/2008	2/28/2008	2/28/2008	5/14/2008

<sup>1</sup> On December 18, 2008, Countrywide Home Loans, Inc. attempted to correct the title defect by executing a "Corrective Assignment of Mortgage," which attempted to backdate the assignment of the subject mortgage to November 22, 2007.

Series 2007-CB5						
Countrywide Home Loans, Inc.	8 Elm Ct., Milbury, Worcester County	Countrywide Home Loans <sup>2</sup>	6/18/2008	7/8/2008	7/8/2008	7/18/2008

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<sup>2</sup> The holder of the mortgage at the time of the first publication of the notice of sale was MERS.

**CHASE**

<b>Foreclosing Party</b>	<b>Property</b>	<b>Lender</b>	<b>Date of 1st Publication of Notice of Sale</b>	<b>Date of Purported Entry</b>	<b>Date of Execution of Foreclosure Deed</b>	<b>Execution Date of Assignment of Mortgage to Foreclosing Party</b>
Chase Home Finance LLC	38 Mascot Street, Unit 3, Boston, Suffolk County	JPMorgan Chase Bank, N.A.	3/4/2008	3/26/2008	3/26/2008	7/2/2008
Chase Home Finance LLC	13 River Street, Mattapan, Suffolk County	Infinity Mortgage Co., Inc.	9/2/2008	9/24/2008	9/24/2008	9/26/2008
Chase Home Finance LLC	75 Pine Hill Rd., Chelmsford, Middlesex County	JP Morgan Chase Bank, N.A.	12/27/2007	1/17/2008	1/17/2008	4/29/2008
Chase Home Finance LLC	615 Nashua Rd, Unit 1, Dracut, Middlesex County	JP Morgan Chase Bank, N.A.	7/25/2008	8/18/2008	8/18/2008	9/2/2008
JPMorgan Chase Bank, N.A. as successor in interest to those assets of Washington Mutual	61 Katrina Road, Middleboro, Plymouth County	American Home Mortgage	10/9/2008	10/31/2008	10/31/2008	2/20/2009

**CITIBANK, N.A.**

<b>Foreclosing Party</b>	<b>Property</b>	<b>Lender</b>	<b>Date of 1st Publication of Notice of Sale</b>	<b>Date of Purported Entry</b>	<b>Date of Execution of Foreclosure Deed</b>	<b>Execution Date of Assignment of Mortgage to Foreclosing Party</b>
Citibank, N.A.	22 Deluca Road, Milford, Worcester County	Sallie Mae Home Loans, Inc.	3/04/2008	4/23/2008	4/23/2008	5/21/2008
Citibank, N.A.	65 East India Row, Unit 31G of Harbor Towers II Condominium, Boston, Suffolk County	Washington Mutual Bank	7/30/2008	8/20/2008 <sup>3</sup>	8/20/2008	11/17/2008
Citibank, N.A.	35-37 School Street, Northbridge, Worcester County	Fairfield Financial Mortgage Group, Inc.	3/21/2008	4/14/2008	4/14/2008	9/4/2008
Citibank, N.A. as Trustee for Structured Asset Mortgage Investments II, Inc. Bear Sters ALT-A Trust Mortgage Pass Through Certificates Series 2006-8	21 Fruit Street, Milford, Worcester County	Drew Mortgage Associates, Inc.	5/12/2008	7/8/2008	7/8/2008	10/21/2008
Citibank, N.A.	23 Alton Drive, Dudley, Worcester County	Sallie Mae Home Loans, Inc.	10/26/2007	12/20/2007	12/20/2007	5/20/2008

<sup>3</sup> Citibank, N.A. has since recorded a new certificate of entry that reflects a purported date of entry of September 22, 2011, after the execution of the assignment. However, the three-year entry period has not yet run and the foreclosure by entry is not completed.

**CITIMORTGAGE, INC.**

<b>Foreclosing Party</b>	<b>Property</b>	<b>Lender</b>	<b>Date of 1st Publication of Notice of Sale</b>	<b>Date of Purported Entry</b>	<b>Date of Execution of Foreclosure Deed</b>	<b>Execution Date of Assignment of Mortgage to Foreclosing Party</b>
Citimortgage, Inc.	448 Slade Street, Fall River, Bristol County	Allied Home Mortgage Corp.	9/9/2008	9/30/2008	9/30/2008	10/10/2008
Citimortgage, Inc.	8 Baker Street, Assonet (Freetown), Bristol Country	Capital One Home Loans, LLC	4/14/2008	6/10/2008	6/10/2008	7/22/2008
Citimortgage, Inc.	33 Burns Street, Lowell, Middlesex County	Mortgage Master, LLC	10/2/2008	10/23/2008	10/23/2008	11/7/2008
Citimortgage, Inc.	14 Bangor Street, Worcester, Worcester County	Principal Residential Mortgage, Inc.	3/11/2008	4/2/2008	4/2/2008	4/16/2008
Citimortgage, Inc.	59 Autumn Circle, Holden, Worcester County	Merrimack Mortgage Co.	7/23/2008	8/13/2008	8/13/2008	8/27/2008

GMAC

Foreclosing Party	Property	Lender	Date of 1st Publication of Notice of Sale	Date of Purported Entry	Date of Execution of Foreclosure Deed	Execution Date of Assignment of Mortgage to Foreclosing Party
GMAC Mortgage LLC	14 Standish Street, Unit 3, Boston, Suffolk County	American Mortgage Network, Inc., d/b/a American Mortgage Network of MA	3/13/08	4/04/08	4/4/2008	4/09/08
GMAC Mortgage LLC	4 Sumner Square, Boston, Suffolk County	1-800 East-West Mortgage Company, Inc.	11/21/07	3/12/08	3/12/2008	3/31/08
GMAC Mortgage LLC	2 Erica Lane, Auburn, Worcester County	Lendia, Inc.	2/27/08	3/26/08	3/26/08	3/31/08 <sup>4</sup>
GMAC Mortgage LLC	27 Oak Street, Gardner, Worcester County	WMC Mortgage Corp.	2/22/08	3/18/08	3/18/08	4/16/08 <sup>5</sup>
GMAC Mortgage LLC	14 West Chester St., Worcester, Worcester County	Mortgage Financial Inc.	11/13/2007	12/27/2007	12/27/2007	3/27/2008

<sup>4</sup> On July 29, 2008, GMAC Mortgage LLC attempted to correct the title defect by executing a "Confirmatory Assignment of Mortgage," which attempted to backdate the assignment of the subject mortgage to November 12, 2007.

<sup>5</sup> On May 21, 2008, GMAC Mortgage LLC attempted to correct the title defect by executing a "Corrective Assignment of Mortgage," which attempted to backdate the assignment of the subject mortgage to January 14, 2008.

WELLS FARGO BANK, N.A.

Foreclosing Party	Property	Lender	Date of 1st Publication of Notice of Sale	Date of Purported Entry	Date of Execution of Foreclosure Deed	Execution Date of Assignment of Mortgage to Foreclosing Party
Wells Fargo, N.A. on behalf of certificateholders of Morgan Stanley ABS Capital Inc. Trust 2005-WMC5 Mortgage Pass Through Certificates, Series 2005-WMC5	1 Marion Place, East Boston, Suffolk County	WMC Mortgage Corp.	4/29/2008	5/22/2008	5/22/2008	9/22/2008
Wells Fargo Bank, N.A. as trustee for certificateholders of Bear Stearns Asset Backed Securities I LLC Asset Backed Certificates Series 2007-AC5	63 Festa Rd., Revere, Suffolk County	Community Lending, Inc.	4/29/2008	5/21/2008	5/21/2008	11/12/2008
Wells Fargo Bank, N.A.	380-382 Elmwood Rd., Winchendon, Worcester County	Heartland Home Finance, Inc.	12/19/2007	1/21/2008	1/21/2008	3/18/08 <sup>6</sup>

<sup>6</sup> On January 9, 2009, Wells Fargo Bank, N.A. attempted to correct the title defect by executing a "Corrective Assignment of Mortgage," which attempted to backdate the assignment of the subject mortgage to September 5, 2007.

Wells Fargo Bank, N.A.	61 Bean Rd., Sterling, Worcester County	Drew Mortgage Associates, Inc.	2/22/2008	3/19/2008	3/19/2008	3/31/08 <sup>7</sup>
Wells Fargo, N.A. on behalf of Certificateholders Park Place Securities Inc. Asset-Backed Pass Through Certificate Series 2005-WCWI	7 Crowningshield Road, Worcester, Worcester County	Argent Mortgage, Co.	6/19/2008	7/11/2008	7/11/2008	8/27/2008

<sup>7</sup> On November 7, 2008, Wells Fargo Bank, N.A. attempted to correct the title defect by executing a "Corrective Assignment of Mortgage," which attempted to backdate the assignment of the subject mortgage to October 31, 2007.

**CERTIFICATE OF SERVICE**

I, Amber Anderson Villa, Esq., hereby certify that on this 28<sup>th</sup> day of October 2013, I caused to be served a copy of the foregoing by United States First Class mail, postage prepaid, upon the following:

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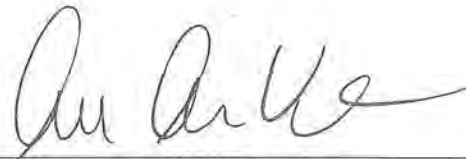
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